

## INVESTMENT SERVICES RULES FOR RETAIL COLLECTIVE INVESTMENT SCHEMES

### PART B: STANDARD LICENCE CONDITIONS

#### Appendix VIII

#### **Supplementary Licence Conditions Applicable to Self-Managed Schemes**

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This Appendix includes the supplementary obligations which must be fulfilled by a Scheme which is set up as a self-managed Maltese UCITS. This Appendix is divided as follows:

**Annex 1** includes the provisions regulating the conflict of interests policy which must be implemented on an ongoing basis by a Scheme;

**Annex 2** includes the conduct of business rules which must be implemented on an ongoing basis by a Scheme;

**Annex 3** includes the provisions regulating the establishment and the role of the Investment Committee which must be set up by a Scheme;

**Annex 4** stipulates the provisions regulating the risk management function which must be implemented on an ongoing basis by a Scheme.

*For the purposes of this Appendix, any reference to the term “Scheme” shall be understood as referring to a retail Collective Investment Scheme set up as a Self-Managed UCITS.*

## **Annex I**

### **Conflicts of Interest Policy**

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#### **1. Requirements on Conflict of Interests Applicable to Schemes**

1.01. For the proper implementation of the requirements specified in SLC 16.8 of Part BII of these Rules, a Scheme shall comply with the requirements prescribed in this Annex.

#### **2. Criteria for the Identification of Conflicts of Interest**

2.01. For the purposes of identifying the types of conflict of interest that arise in the course of providing services and activities and whose existence may damage the interests of a Scheme, it must take into account, by way of minimum criteria, the question of whether it, or a relevant person, or a person directly or indirectly linked by way of control thereto, is in any of the following situations, whether as a result of providing collective portfolio management activities or otherwise:

- a. the Scheme or that person is likely to make a financial gain or avoid a financial loss at the expense of the Scheme,
- b. the Scheme, or that person has an interest in the outcome of a service or activity provided to the Scheme or another client or of a transaction carried out on behalf of the Scheme or another client, which is distinct from the Scheme's interest in that outcome;
- c. the Scheme or that person has a financial or other incentive to favour the interest of another client or group of clients over the interests of the Scheme;
- d. the Scheme, or that person carried on the same activities for the Scheme and for another client or clients which are not the Scheme;
- e. the Scheme or that person receives or will receive from a person other than the Scheme, an inducement in relation to collective portfolio management activities provided to the Scheme, in the form of monies, goods or services other than the standard commission or fee for that service.

2.02. When identifying the types of conflict of interest, the Scheme shall take into account:

- a. its interests, including those deriving from its belonging to a group or from the performance of services and activities, the interests of the clients and the duty of the Scheme;
- b. the interests of two or more managed Schemes.

### **3. Conflicts of Interest Policy**

- 3.01. A Scheme shall establish, implement and maintain an effective conflicts of interest policy.
- 3.02. The conflicts of interest policy shall be set out in writing and shall be appropriate to the size and organisation of the Scheme and the nature, scale and complexity of its business.
- 3.03. Where the Scheme is a member of a group, the conflicts of interest policy shall also take into account any circumstances of which the company is or should be aware which may give rise to a conflict of interest resulting from the structure and business activities of other members of the group.
- 3.04. The conflicts of interest policy established in accordance with SLCs 3.01 to 3.03 shall include the following:
- a. the identification of, with reference to collective portfolio management activities carried out by or on behalf of the Scheme, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of the Scheme or one or more other clients;
  - b. procedures to be followed and measures to be adopted to manage such conflicts.

### **4. Independence in Conflicts Management**

- 4.01. The procedures and measures provided for in SLC 3.04(b) are designed to ensure that the relevant persons engaged in different business activities involving a conflict of interest carry on those activities at a level of independence appropriate to the size and activities of the Scheme and of the group to which it belongs and to the materiality of the risk of damage to the interests of clients.
- 4.02. The procedures to be followed and measures to be adopted pursuant to SLC 3.04(b) shall include the following where necessary and appropriate for the Scheme to ensure the requisite degree of independence:
- a. effective procedures to prevent or control the exchange of information between relevant persons engaged in collective portfolio management activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of one or more clients;
  - b. the separate supervision of relevant persons whose principal functions involve carrying out collective portfolio management activities on behalf of, or providing services to, clients or to investors whose interests may conflict, or

who otherwise represent different interests that may conflict, including those of the Scheme;

- c. the removal of any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;
  - d. measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out collective portfolio management activities;
  - e. measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate collective portfolio management activities where such involvement may impair the proper management of conflicts of interest.
- 4.03. Where the adoption or the practice of one or more of the aforementioned measures or procedures does not ensure the requisite degree of independence, the Scheme will adopt such alternative or additional measures and procedures as are necessary and appropriate for those purposes.

## **5. Management of Activities Giving Rise to Detrimental Conflicts of Interest**

- 5.01. A Scheme shall keep and regularly update a record of the types of collective portfolio management activities undertaken by it in which a conflict of interest entailing a material risk of damage to its interests or other clients has arisen or, in the case of an ongoing collective portfolio management activity, may arise.
- 5.02. A Scheme shall ensure that where the organisational or administrative arrangements made by same for the management of conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the Scheme or of its unit-holders will be prevented, the senior management or other competent internal body of the Scheme is promptly informed in order for them to take any necessary decision to ensure that in any case the Scheme acts in its best interests and of its unit-holders.
- 5.03. The Scheme shall report situations referred to in SLC 5.02 to investors by any appropriate durable medium and give reasons for its decision.

## **6. Strategies for the Exercise of Voting Rights**

- 6.01. A Scheme shall develop adequate and effective strategies for determining when and how voting rights attached to instruments held in the managed portfolios are to be exercised, to its exclusive benefit.

6.02. The strategy referred to in SLC 6.01 shall determine measures and procedures for:

- a. monitoring relevant corporate events;
- b. ensuring that the exercise of voting rights is in accordance with the investment objectives and policy of the relevant Scheme; and
- c. preventing or managing any conflicts of interest arising from the exercise of voting rights.

6.03. A summary description of the strategies referred to in SLC 6.01 shall be made available to investors.

6.04. Details of the actions taken on the basis of the aforementioned strategies shall be made available to the unit-holders free of charge and on their request.

## **Annex II**

### **Operational Arrangements of Schemes**

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#### **1. General Principles**

- 1.01 This Annex stipulates the provisions regulating the conduct of business rules which must be implemented on an ongoing basis by a Scheme.
- 1.02 For the proper implementation of the requirements prescribed in SLC 16.8 of Part BII of these Rules, a Scheme shall comply with the requirements specified in this Annex.

#### **2. Duty to Act in the Best Interests of the Scheme and its Unit-Holders**

- 2.01. A Scheme shall ensure that unit-holders are treated fairly.
- 2.02. A Scheme shall refrain from placing the interests of any group of unit-holders above the interests of any other group of unit-holders.
- 2.03. A Scheme shall apply appropriate policies and procedures for preventing malpractices that might reasonably be expected to affect the stability and integrity of the market.
- 2.04. A Scheme shall ensure that fair, correct and transparent pricing models and valuation systems are used, in order to comply with the duty to act in the best interests of the unit-holders.
- 2.05. A Scheme must be able to demonstrate that its portfolios have been accurately valued.
- 2.06. A Scheme shall act in such a way as to prevent undue costs being charged thereto and its unit-holders.

#### **3. Due Diligence Requirements**

- 3.01. A Scheme shall ensure a high level of diligence in the selection and ongoing monitoring of investments, in its best interests and in the interest of the integrity of the market.
- 3.02. A Scheme shall ensure it has adequate knowledge and understanding of the assets in which it invests.
- 3.03. A Scheme shall establish written policies and procedures on due diligence and implement effective arrangements for ensuring that its investment decisions are carried out in compliance with the objectives, investment strategy and risk limits of the Scheme.

3.04. When implementing its risk management policy, and where it is appropriate after taking into account the nature of a foreseen investment, a Scheme shall formulate forecasts and perform analysis concerning the investment's contribution to the Scheme's portfolio composition, liquidity and risk and reward profile before carrying out the investment.

Provided that the analysis must only be carried out on the basis of reliable and up-to-date information, both in quantitative and qualitative terms.

3.05. A Scheme shall exercise due skill, care and diligence when entering into, managing or terminating any arrangements with third parties in relation to the performance of risk management activities. Before entering into such arrangements, a Scheme shall take the necessary steps in order to verify that the third party has the ability and capacity to perform the risk management activities reliably, professionally and effectively. The Scheme shall establish methods for the on-going assessment of the standard of performance of the third party.

#### **4. Handling of Subscription and Redemption Orders - Reporting Obligations in Respect of Execution of Subscription and Redemption Orders**

4.01. Where a Scheme has carried out a subscription or redemption order from a unit-holder, it must notify the unit-holder, by means of a durable medium, confirming execution of the order as soon as possible, and no later than the first business day following execution or, where the confirmation is received by the Scheme from a third party, no later than the first business day following receipt of the confirmation from the third party.

4.02. SLC 4.01 shall not apply where the notice would contain the same information as a confirmation that is to be promptly dispatched to the unit-holder by another person.

4.03. The notice referred to in SLCs 4.01 and 4.02 shall, where applicable, include the following information:

- a. the investment company's /the Scheme's identification;
- b. the name or other designation of the unit-holder;
- c. the date and time of receipt of the order and method of payment;
- d. the date of execution;
- e. the nature of the order (subscription or redemption);
- f. the number of units involved;

- g. the unit value at which the units were subscribed or redeemed;
- h. the reference value date;
- i. the gross value of the order including charges for subscription or net amount after charges for redemptions; and
- j. a total sum of the commissions and expenses charged and, where the investor so requests, an itemised breakdown.

4.04. Where orders for a unit-holder are executed periodically, a Scheme shall either take the action specified in SLC 4.01 and 4.02 or provide the unit-holder, at least once every 6 months, with the information provided in SLC 4.03 above in respect of those transactions.

4.05. A Scheme shall provide the unit-holder, upon request, with information about the status of his order.

## **5. Execution of Decisions to Deal on Behalf of the Scheme**

5.01. A Scheme shall act in its best interests when executing decisions to deal in the context of the management of its portfolios.

5.02. For the purposes of SLC 5.01, a Scheme shall take all reasonable steps to obtain the best possible result, taking into account price, costs, speed, likelihood of execution and settlement, order size and nature, or any other consideration relevant to the execution of the order.

5.03. The relative importance of such factors as referred to in SLC 5.02 shall be determined by reference to the following criteria:

- a. the objectives, investment policy and risks specific to the Scheme, as indicated in the prospectus or as the case may be in the fund rules or instruments of incorporation;
- b. the characteristics of the order;
- c. the characteristics of the financial instruments that are the subject of that order; and
- d. the characteristics of the execution venues to which that order can be directed.

5.04. A Scheme shall establish and implement effective arrangements for complying with the obligation referred to in SLCs 5.02 and 5.03. In particular, a Scheme shall establish and implement a policy to allow it to obtain, for its orders, the best possible



result in accordance with SLC 5.02 and 5.03 taking into account price, costs, speed, likelihood of execution and settlement, order size and nature, or any other consideration relevant to the execution of the order.

- 5.05. A Scheme shall make available appropriate information on the execution policy to unit-holders in accordance with these Rules and on any material changes to their policy.
- 5.06. A Scheme shall monitor on a regular basis the effectiveness of its arrangements and policy for the execution of orders in order to identify and, where appropriate, correct any deficiencies.
- 5.07. A Scheme shall review the execution policy on an annual basis. A review shall also be carried out whenever a material change occurs that affects the Scheme's ability to continue to obtain the best possible result.
- 5.08. A Scheme shall be able to demonstrate that it has executed orders in accordance with its execution policy.

## **Placing Orders to Deal on Behalf of the Scheme with Other Entities for Execution**

- 5.09. A Scheme shall act in its best interests when placing orders to deal with other entities for execution, in the context of the management of its portfolios.
- 5.10. A Scheme shall take all reasonable steps to obtain the best possible result taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order. The relative importance of such factors shall be determined by reference to SLCs 5.02 and 5.03.
- 5.11. For those purposes, a Scheme shall establish and implement a policy to enable it to comply with the obligation referred to in SLC 5.10. The policy shall identify, in respect of each class of instruments, the entities with which the orders may be placed. The Scheme shall only enter into arrangements for execution where such arrangements are consistent with obligations laid down in this Section.
- 5.12. A Scheme shall make available to unit-holders appropriate information on the policy established in accordance with these Rules and on any material changes to this policy.
- 5.13. A Scheme shall monitor on a regular basis the effectiveness of the policy established in accordance with SLCs 5.10 to 5.12 and, in particular, the execution quality of the entities identified in that policy and, where appropriate, correct any deficiencies.
- 5.14. A Scheme shall review the policy on an annual basis.

- 5.15. Such a review shall also be carried out whenever a material change occurs that affects the ability of the Scheme to continue to obtain the best possible result.
- 5.16. A Scheme shall be able to demonstrate that it has placed orders in accordance with the policy established in accordance with SLCs 5.10 to 5.12.

## **6. Handling of Orders - General Principles**

- 6.01. A Scheme shall establish and implement procedures and arrangements which provide for the prompt, fair and expeditious execution of portfolio transactions.
- 6.02. These procedures and arrangements as referred to in SLC 6.01 shall satisfy the following conditions:
- a. ensure that orders executed are promptly and accurately recorded and allocated; and
  - b. execute otherwise comparable Scheme orders sequentially and promptly unless the characteristics of the order or prevailing market conditions make this impracticable, or the interests of the Scheme require otherwise.
- 6.03. Financial instruments or sums of money, received in settlement of the executed orders shall be promptly and correctly delivered to the account of the Scheme.
- 6.04. A Scheme shall not misuse information relating to its pending orders, and shall take all reasonable steps to prevent the misuse of such information by any of its relevant persons.

## **Aggregation and Allocation of Trading Orders**

- 6.05. A Scheme shall not be permitted to carry out an order in aggregate with an order of another Scheme or another client or with an order on its own account, unless the following conditions are met:
- a. it must be unlikely that the aggregation of orders will work overall to the disadvantage of any Scheme or clients whose order is to be aggregated; and
  - b. an order allocation policy must be established and implemented, providing in sufficiently precise terms for the fair allocation of aggregated orders, including how the volume and price of orders determines allocations and the treatment of partial executions.
- 6.06. Where a Scheme aggregates an order with one or more orders of other Schemes or other clients and the aggregated order is partially executed, it allocates the related trades in accordance with its order allocation policy.

- 6.07. A Scheme which has aggregated transactions for own account with one or more Schemes or other clients' orders, shall not allocate the related trades in a way that is detrimental to the Scheme or another client.
- 6.08. Where a Scheme aggregates an order of a Scheme or other clients with a transaction for own account and the aggregated order is partially executed, it shall allocate the related trades to the Scheme or other client in priority over those for own account.
- 6.09. If the Scheme is able to demonstrate to the Scheme or its other client on reasonable grounds that it would not have been able to carry out the order on such advantageous terms without aggregation, or at all, it may allocate the transaction for own account proportionally, in accordance with the policy as referred to in SLC 6.05(b).

## **7. Inducements - Safeguarding the Best Interests of the Scheme**

- 7.01. A Scheme shall not be regarded as acting honestly, fairly and professionally in accordance with its best interests if, in relation to the activities of investment management and administration thereof, it pays or is paid any fee or commission, or provides or is provided with any non-monetary benefit, other than the following:
- a. a fee, commission or non-monetary benefit paid or provided to or by the Scheme or a person on behalf of the Scheme;
  - b. a fee, commission or non-monetary benefit paid or provided to or by a third party or a person acting on behalf of a third party, where the following conditions are satisfied:
    - i. the existence, nature and amount of the fee, commission or benefit, or, where the amount cannot be ascertained, the method of calculating that amount, must be clearly disclosed to the Scheme in a manner that is comprehensive, accurate and understandable, prior to the provision of the relevant service;
    - ii. the payment of the fee or commission, or the provision of the non-monetary benefit must be designed to enhance the quality of the relevant service and not impair compliance with its duty to act in its best interests;
  - c. proper fees which enable or are necessary for the provision of the relevant service, including custody costs, settlement and exchange fees, regulatory levies or legal fees, and which, by their nature, cannot give rise to conflicts with the duties of the Scheme to act honestly, fairly and professionally in accordance with the best interests of the Scheme.

- 7.02. For the purposes of SLC 7.01 (b)(i), a Scheme shall be able to disclose the essential terms of the arrangements relating to the fee, commission or non-monetary benefit in summary form, provided that the Scheme undertakes to disclose further details at the request of the unit-holder and provided that it honours that undertaking.

## Annex III

### Establishment and Role of the Investment Committee

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#### 1. General

- 1.01. This Annex stipulates the provisions regulating the establishment and role of the Investment Committee which must be set-up by a Scheme.
- 1.02. For the proper implementation of the requirements set out in SLC 16.11 of Part BII of these Rules, a Scheme shall comply with the requirements prescribed in this Annex.

#### 2. Establishment of the Investment Committee

- 2.01. The Board of Directors of a Scheme shall establish an in-house Investment Committee.
- 2.02. The Investment Committee shall be made up of at least three members and may also include members of the Board of Directors of the Scheme.
- 2.03. The terms of reference of the Investment Committee and any changes thereto shall be subject to the prior approval of the MFSA.
- 2.04. The role of the Investment Committee will be that of:
- a. monitoring and reviewing the investment policy of the Scheme;
  - b. establishing and reviewing guidelines for investment by the Scheme;
  - c. issuing rules for stock selection;
  - d. setting up the portfolio structure and asset allocation; and
  - e. making recommendations to the Board of Directors of the Scheme.
- 2.05. The majority of Investment Committee meetings – the required frequency of which should depend on the nature of the Scheme’s investment policy, but which should be at least quarterly – are to be physically held in Malta.
- Provided that Investment Committee meetings are deemed to be physically held in Malta if the minimum number of members that form a quorum necessary for a meeting are physically present in Malta.
- 2.06. The minutes of the Investment Committee meetings should be available in Malta for review during MFSA’s compliance visits.

- 2.07. Where the Scheme has not appointed an Investment Committee, the functions referred to in SLC 2.01 shall be undertaken by the Directors of the Scheme.
- 2.08. The Investment Committee may delegate the day-to-day investment management of the assets of the Scheme to at least two officials of the Scheme (hereinafter referred to as the “Portfolio Managers”).
- 2.09. The Portfolio Managers will effect day-to-day transactions within the investment guidelines set by the Investment Committee and in accordance with the investment objectives, policy and restrictions described in the Prospectus.
- 2.10. The Scheme may also delegate the day-to-day investment management of its assets to a third party Manager appointed by the Scheme.
- 2.11. The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of a member of the Investment Committee or a Portfolio Manager. The request for consent of the appointment or replacement of a member of the Investment Committee or a Portfolio Manager, where applicable shall be transmitted to the MFSA at least twenty one business days prior to the proposed date of appointment.
- 2.12. The MFSA reserves the right to object to the proposed replacement or appointment and to require such additional information as it considers appropriate.
- 2.13. The MFSA shall be satisfied, on a continuing basis, of the fitness and properness, including competence, of the members of the Investment Committee and of the Portfolio Managers.
- 2.14. The request for consent of the appointment or replacement of a member of the Investment Committee or a Portfolio Manager shall be accompanied by the required documentation as prescribed in the Investment Services Rules.
- 2.15. The Scheme shall notify the MFSA in writing of the departure of a member of the Investment Committee and/or Portfolio Manager within 14 days from the departure.
- 2.16. The Scheme shall also request the Investment Committee and/or Portfolio Manager, as applicable, to confirm that his/her departure has not regulatory implications or otherwise provide any relevant details as appropriate. A copy of such request shall be provided to the MFSA.
- 2.17. The Scheme shall have adequate arrangements, in agreement with and subject to the approval of the MFSA, to ensure the adequate monitoring of the activities of Portfolio Managers and the Investment Committee.
- 2.18. The Scheme shall on a continuing basis ensure that it has sufficient management resources to effectively conduct its business.

## Annex IV

### Risk Management Function

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#### 1. General

- 1.01. This Annex stipulates the provisions regulating the risk management function which must be implemented on an ongoing basis by a Scheme.
- 1.02. For the proper implementation of the requirements set out in SLC 16.12 of Part BII of these Rules a Scheme shall comply with the requirements prescribed in this Annex.

#### 2. Permanent Risk Management Function

- 2.01. A Scheme shall establish and maintain a permanent risk management function which shall be hierarchically and functionally independent from the operating units.
- 2.02. Without prejudice to SLC 2.01, the MFSA may allow the Scheme to derogate from the obligation referred to in SLC 2.01, where the derogation is appropriate and proportionate in view of the nature, scale and complexity of the Scheme's business.

Provided that the Scheme must be able to demonstrate that appropriate safeguards against conflicts of interest have been adopted so as to allow an independent performance of risk management activities and that its risk management process satisfies the requirements prescribed in Appendix VI of these Rules.

- 2.03. The permanent risk management function shall:
  - a. implement the risk management policy and procedures;
  - b. ensure compliance with the Scheme's risk limit system, including statutory limits concerning global exposure and counterparty risk in accordance with Part BII of these Rules stipulating risk management processes, counterparty risk exposure and issuer concentration;
  - c. provide advice to the board of directors as regards the identification of the risk profile of the Scheme;
  - d. provide regular reports to the Board of Directors and, where possible, the supervisory function, on:
    - i. the consistency between the current levels of risk incurred by the Scheme and the risk profile agreed for that Scheme;
    - ii. the compliance of the Scheme with relevant risk limit systems;

- iii. the adequacy and effectiveness of the risk management process, indicating in particular whether appropriate remedial measures have been taken in the event of any deficiencies;
  - e. provide regular reports to the senior management outlining the current level of risk incurred by the Scheme and any actual or foreseeable breaches to their limits, so as to ensure that prompt and appropriate action can be taken;
  - f. review and support where appropriate, the arrangement and procedures for the valuation of OTC derivatives as referred to in Appendix VI stipulating risk management processes, counterparty risk exposure and issuer concentration.
- 2.04. The permanent risk management function shall have the necessary authority and access to all the relevant information necessary to fulfil the tasks set out in SLC 2.03.

### **3. Risk Management Policy**

- 3.01. A Scheme shall establish, implement and maintain an adequate and documented risk management policy which identifies the risks the Scheme is or might be exposed to.
- 3.02. The risk management policy shall comprise such procedures as are necessary to enable a Scheme to assess the exposure of that Scheme to market, liquidity and counterparty risks, and the exposure of the Scheme to all other risks, including operational risks, which may be material for the Scheme.
- 3.03. A Scheme shall address at least the following elements in the risk management policy:
- a. the techniques, tools and arrangements that enable them to comply with the obligations stipulated in Appendix VI;
  - b. the allocation of responsibilities within a Scheme pertaining to risk management.
- 3.04. A Scheme shall ensure that the risk management policy referred to in SLC 3.01 to 3.03 above states the terms, contents and frequency of reporting of the risk management function set out in SLC 2.01 to 2.04 above to the board of directors and to senior management and, where appropriate, to the supervisory function.
- 3.05. For the purposes of SLCs 3.01 to 3.04, a Scheme shall take into account the nature, scale and complexity of its business.

### **4. Assessment, Monitoring and Review of the Risk Management Policy**

- 4.01. A Scheme shall assess, monitor and periodically review:



- a. the adequacy and effectiveness of the risk management policy and of the arrangements, processes and techniques set out in Appendix VI;
- b. the level of compliance by the Scheme with the risk management policy and with arrangements, processes and techniques set out in Appendix VI;
- c. the adequacy and effectiveness of measures taken to address any deficiencies in the performance of the risk management process.

4.02. A Scheme shall notify the MFSA of any material changes to the risk management process.

4.03. The requirements prescribed in SLC 4.01 above shall be subject to review by the MFSA on an on-going basis and accordingly when granting a licence.