1. **Additional Rules applicable to AIFMs in relation to AIFs which are notified to the MFSA in terms of the Investment Services Act (List of Notified AIFs) Regulations, 2016 (the ‘Regulations’).**
	1. An AIFM may submit a notification to the MFSA in terms of the Regulations for inclusion of an AIF (hereinafter referred to as ‘NAIF’) in the List of Notified AIFs. The AIFM shall be:
	2. an AIFM:
2. which is in possession of an investment services licence issued in terms of the Investment Services Act to provide fund management services to AIFs established in Malta;
3. which has satisfied all post-licencing business conditions imposed by the MFSA; and
4. whose investment committee members and portfolio managers have been approved by the MFSA and the MFSA is satisfied with the competence assessment carried out.

**or**

* 1. an AIFM which is authorised to provides services to an AIF established in Malta in accordance with Article 33 of the AIFM Directive as transposed in regulations 6 and 7 of the Investment Services Act (Alternative Investment Fund Manager) (Passport) Regulations.
	2. An AIFM falling within the scope of SLC 11.01(a) shall comply with the following on an ongoing basis:
1. the provisions of the Regulations;
2. sections 1 to 9 of this Part of the Investment Services Rules applicable to AIFMs together with the rules included in this section:

Provided that the AIFM shall endeavour to comply on a best efforts basis with the Corporate Governance Manual for Directors of Investment Companies and Collective Investment Schemes.

* 1. An AIFM falling within the scope of SLC 11.01(b) shall comply with the following on an ongoing basis:
1. the provisions of the Regulations;
2. this section of the Investment Services Rules for Investment Services Providers.
	1. The AIFM may submit a notification to the MFSA in terms of the Regulations, for AIFs which:
	2. are managed by the AIFMs; and
	3. are marketed solely and exclusively to professional and, or qualifying investors as defined in the Investment Services Act (List of Notified AIFs) Regulations, 2016.

Provided that:

1. AIFs which are self-managed;
2. AIFs established as loan funds which fall to be authorised in terms of the Act and regulated by the Standard Licence Conditions applicable to Collective Investment Schemes authorised to invest through loans;
3. AIFs which invest in instruments and assets other than financial instruments listed in Section C of Annex I of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments

cannot become Notified AIFs in terms of the Regulations:

Provided that AIFs established as private equity funds shall not be deemed to fall within the scope of paragraph [iii] above;

Provided that AIFs which invest in immovable property or infrastructure shall not be deemed to fall within the scope of paragraph [iii] above;

Provided further that in the case of SPVs, a look-through approach will be applied in determining whether the AIF falls within the provisions of paragraphs [ii] and [iii];

Provided further that AIFs which are already in possession of a collective investment scheme license issued in terms of the Act may not convert to Notified AIFs in terms of the Regulations.

* 1. The AIFM may establish the NAIF using any one of the following structures:
1. an investment company with variable share capital under the Companies Act (Investment Companies with Variable Share Capital) Regulations;
2. an investment company with fixed share capital under the Companies Act (Investment Companies with Fixed Share Capital) Regulations;
3. an incorporated cell company under the Companies Act (SICAV Incorporated Cell Company) Regulations;
4. an incorporated cell of a Recognised Incorporated Cell Company under the Companies Act (Recognised Incorporated Cell Companies) Regulations;
5. a limited partnership under the Companies Act;
6. a unit trust under the Trusts and Trustees Act;
7. a contractual fund under the Investment Services Act (Contractual Fund) Regulations.

The AIF may be established as an open-ended or a closed-ended collective investment scheme as defined in Commission Delegated Regulation (EU) No 694/2014 of 17 December 2013 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to regulatory technical standards determining types of alternative investment fund managers.

* 1. When structuring the AIF as an investment company, the AIF shall at all times have one or more directors independent from the AIFM and the custodian. Furthermore, the board of directors of the investment company shall be composed of at least three members one of whom must be resident in Malta:

Provided that the governing body of the AIF shall endeavour to comply with the Corporate Governance Manual for Directors of Investment Companies and Collective Investment Schemes (“the Manual”). Where the governing body of the NAIF does not fulfil the independence requirements outlined in the Manual, the offering documentation of the NAIF shall include a statement to this effect.

* 1. An AIFM shall submit a request to the MFSA for the inclusion of a Notified AIF or one or more sub-funds of a NAIF in the List of Notified AIFs in accordance with regulation 6 of the Regulations.
	2. NAIFs may only be marketed to:
1. professional investors, being investors which are considered to be professional clients or may, on request, be treated as professional clients within the meaning of Annex II to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments; and, or
2. qualifying investors, being investors that fulfil the following criteria:
3. invest a minimum of EUR 100,000 or its currency equivalent in the AIF which investment may not be reduced below this minimum amount at any time by way of a partial redemption;
4. declare in writing to the AIFM and the AIF that they are aware of and accept the risks associated with the proposed investment; and
5. satisfy at least one of the following:
6. a body corporate which has net assets in excess of EUR 750,000 or which is part of a group which has net assets in excess of EUR 750,000 or, in each case, the currency equivalent thereof;
7. an unincorporated body of persons or association which has net assets in excess of EUR 750,000 or the currency equivalent;
8. a trust where the net value of the trust's assets is in excess of EUR 750,000 or the currency equivalent;
9. an individual whose net worth or joint net worth with that of the person's spouse, exceeds EUR 750,000 or the currency equivalent; or
10. a senior employee or director of a service provider to the AIF.

Provided that the marketing of a the NAIF in Member States or EEA States other than Malta to investors other than professional investors as defined above is not automatic and may be allowed subject to national provisions applicable in the respective jurisdiction as prescribed in Article 43 of the AIFM Directive.

* 1. The notification request made by the AIFM shall be made in the prescribed format and shall be accompanied by the following documentation:
1. a prospectus containing the minimum contents outlined in SLC 11.16 and duly compiled having regard to the templates attached to these Rules. The prospectus templates available are marked as Annexes ‘IA’, ‘IB’, and ‘IC’ in Appendix 17 to these Rules;
2. a resolution by the governing body of the AIF marked as Annex ‘II’ to Appendix 17 certifying that the prospectus has the minimum contents outlined in SLC 11.16 and that it has been drafted in accordance therewith and with the applicable templates referred to in paragraph (i) above;
3. a self-certification by the AIFM marked as Annex ‘III’ to Appendix 17 in which the AIFM certifies that, having regard to any delegate manager(s) or advisers it has in place, it has the necessary competence and experience to manage the AIF and monitor effectively any delegate. The self-certification is to be given in respect of the applicable investment strategy;
4. a joint declaration by the AIFM and the governing body of the AIF marked as Annex ‘IV’ to Appendix 17, by which each undertakes responsibility for the Notified AIF, including, *inter alia*, the obligations arising under the AIFMD;
5. a declaration by the AIFM marked as Annex ‘V’ to Appendix 17 confirming that it has carried out the necessary due diligence with regard to the service providers and the governing body of the AIF. This declaration must include a statement that the AIFM is satisfied with the outcome of this due diligence exercise and there are no untoward features.

Thereafter, following the inclusion of the AIF in the List of Notified AIFs, the AIFM (where the AIFM is licenced by the MFSA) shall submit to the Authority a copy of the updated Terms of Reference and Risk Management Policy as applicable.

The AIFM shall also ensure that the relevant Valuation Policy and Procedures are updated. Furthermore, the AIFM will submit for the Authority’s consideration and approval any new valuation arrangements which it will be implementing in respect of the NAIF.

* 1. The notification form together with the accompanying documents referred to in SLC 11.09 shall be submitted to the MFSA within **30 calendar days** from the date of the resolution of the governing body of the AIF as referred to in paragraph (b) of SLC 11.09 and prior to the effective date of the prospectus.
	2. The MFSA will proceed to include the AIF in the List of Notified AIFs within **10 working days** from the date of filing of a duly completed notification pack and thereafter the prospectus may be dated:

Provided that the 10 working days start running from the date of receipt of the complete notification pack including the original signed declarations and the notification fee.

* 1. All rights, other than any rights to income or capital, of any founder or similar shares must be transferred to and exercisable only by the AIFM upon inclusion of the AIF in the List of Notified AIFs.
	2. The compliance function of the NAIF shall be carried out by the compliance officer of the AIFM. In this regard, the AIFM shall ensure that a NAIF complies on an ongoing basis with the provisions of the Act and any applicable rules or regulations issued thereunder, including the Regulations. The AIFM shall also comply with any obligations in respect of the NAIF and its investors under the AIFMD and the relevant rules and regulations thereunder as well as any other applicable regulations in any jurisdiction where the NAIF is marketed.
	3. The MFSA shall reject notifications which do not comply with the requirements prescribed in the Regulations and these Rules.

Contents of the prospectus

* 1. The prospectus accompanying the notification made in accordance with SLC 11.07 shall as a minimum include the following contents:
1. information concerning the NAIF;
2. the date of establishment of the NAIF and information on the duration of the NAIF;
3. sub-funds and/or NAIF’s unit classes;
4. the NAIF’s investment objectives, policies and restrictions and how these may be changed;
5. the manner in which the value of the NAIF’s units (NAV) may be calculated;
6. a detailed description of the valuation methodology for the NAIF’s assets particularly for hard to value assets;
7. where the NAIF is established as a SICAV, the amounts of authorised and paid up share capital;
8. the manner in which accounting records will be maintained and distributed;
9. information regarding the AIFM;
10. information on the depository and its responsibilities towards the NAIF;
11. identification of the NAIF’s auditor;
12. identification of the NAIF’s legal advisors in any relevant jurisdiction;
13. information regarding the NAIF’s other service providers such as the administrator, prime brokers and investment advisors (as applicable);
14. a description of all entities involved in the implementation of the investment policy;
15. subscription and redemption procedures;
16. fees and expenses regime specifying which costs are borne by the NAIF, the AIFM and the investors;
17. disclosures on conflicts of interest;
18. disclosures of side letters;
19. disclosure of any dealing commission arrangements;
20. risk warnings and a clear indication of the principal risks associated with investing in the NAIF;
21. any listing, where relevant;
22. the manner and content of periodic and regular investor reporting, including a description of the manner in which reporting will be provided to investors on a regular basis regarding the NAIF’s performance and commission sharing arrangements; and
23. an explanation regarding the NAIF’s winding up, liquidation or dissolution procedures.
	1. The prospectus shall include, or the AIFM shall otherwise make available to investors, the information required pursuant to Appendix 13 of these Rules.
	2. A disclaimer shall be included in the following form on the front page of the prospectus in a prominent position printed in font whose pitch is at least 12:

|  |
| --- |
| “XXXXX Fund is a Notified AIF under the Investment Services Act (List of Notified AIFs) Regulations. The Fund has been entered onto the List of Notified AIFs on the basis of a notification submitted by the AIFM confirming that:- 1. the AIFM is in possession of either:
2. a licence granted by the MFSA under the Investment Services Act; or
3. a management passport under Article 33 of AIFMD; and
4. the governing body of the XXXXX Fund has approved the prospectus.

The entry of the xxxxxx Fund on the List of Notified AIFS is not an endorsement, guarantee or statement of approval by the MFSA nor is the MFSA responsible for the contents of this document or the selection or adequacy of its governing body or service providers. The MFSA has made no assessment or value judgment of the soundness of the Fund or for the accuracy or completeness of statements made or opinions expressed with regard to it. The MFSA has not reviewed or approved this document. Any person making statements to the contrary may be prosecuted under the Maltese Criminal Code [Chapter 9 – Laws of Malta]. Investors must rely solely upon their own and their advisors’ due diligence in making any decision to invest.” |

* 1. The procedure outlined above in relation to notification of an AIF to the MFSA shall also be applicable to the notification of additional sub-funds of a Notified AIF to the MFSA.
	2. All necessary information for the sub-fund(s) and class(es) may be included (i) in the main prospectus, (ii) in a separate document that is distributed with and directly references the main prospectus, or (iii) in a prospectus which contains all relevant information for the Notified AIF and the relevant sub-fund and/or class(es) concerned and references the existence and brief terms of the other sub-fund(s) and/or class(es) including any material risks that such other sub-fund(s)/class(es) may pose to the sub-fund(s) and/or class(es) concerned.

Due Diligence

* 1. Prior to submitting a request for notification of an AIF to the MFSA, the AIFM shall carry out the necessary due diligence processes to ensure that the service providers and the governing body of the NAIF satisfy at the time of notification and on an ongoing basis, the high fitness and properness standards expected by the MFSA.
	2. In carrying out the necessary due diligence processes, the AIFM shall apply the “fit and proper” test in order to ensure that service providers or members of the NAIF’s governing body meet the following three criteria namely:
1. integrity which means that the service providers and/or members of the NAIF’s governing body act honestly and in a trustworthy fashion;
2. competence which involves that the service providers and/or members of the AIF’s governing body are able to demonstrate professional expertise and experience; and
3. solvency which involves ensuring proper financial controls and management of liquidity and capital where applicable.

The MFSA shall make available to AIFMs *ad hoc* Guidance on the manner in which it expects AIFMs to carry out the due diligence exercise.

* 1. The AIFM shall ensure that each service provider and member of the governing body of the NAIF maintains such standards on an ongoing basis and immediately notifies the MFSA of any change in such circumstances as they become known to the AIFM.
	2. The AIFM shall retain records of all evidence and correspondence related to the due diligence process carried out in relation to each service provider and member of the governing body of the NAIF.
	3. The AIFM shall make available to the MFSA all the documentation related to the due diligence exercise carried out in relation to each service provider and member of the governing body of the NAIF, upon request for inspection by the MFSA.
	4. The AIFM shall ensure that the due diligence records are updated annually. The AIFM shall retain records of all the updates carried out and shall make these available to the MFSA upon request.

The MFSA may carry out random check on compliance with the provisions of the Regulations and these Rules and give all the necessary directions it deems fit in the circumstances. Any adverse findings by the MFSA in relation to any appointment of service providers and members of the governing body of the NAIF may lead, *inter alia* to the removal of the NAIF from the List of Notified AIFs.

Anti-Money Laundering Obligations

* 1. The AIFM shall appoint a money laundering reporting officer to carry out the money laundering reporting function in relation to the Notified AIF:

Provided that the AIFM shall notify the MFSA of the appointment, resignation or removal of the money laundering reporting officer.

* 1. Without prejudice to its ongoing responsibilities under these Rules, the AIFM may, in terms of the Implementing Procedures issued pursuant to the Prevention of Money Laundering and Fund of Terrorism Regulations [S.L. 373.01] delegate the money laundering reporting function of the NAIF to either one of the following:
1. the administrator of the NAIF, provided that such administrator is a Recognised Fund Administrator in terms of Article 9A of the Act or is authorised in an EU Member State, or in a reputable jurisdiction:
2. an officer of the NAIF who is resident in Malta and has sufficient seniority and command in accordance with the Implementing Procedures referred to above; or
3. the money laundering reporting officer of the AIFM itself.
	1. The outsourcing of the money laundering reporting function shall be made by means of a written agreement entered into between the AIFM, the NAIF and the fund administrator[[1]](#footnote-1) (as applicable).
	2. Where the fund administrator is entrusted with the money laundering reporting function, it shall be responsible to carry out the reporting obligations of the NAIF.
	3. The governing body of the NAIF will at all times remain responsible for compliance with its obligations as prescribed in the Prevention of Money Laundering and Funding of Terrorism Regulations and the Implementing Procedures issued thereunder and for the carrying out of the measures specifically assigned to the NAIF.
	4. For the purpose of ensuring compliance with the customer due diligence requirements in relation to the anti-money laundering obligations, the AIFM, the administrator or the money laundering reporting officer shall at least on a quarterly basis, submit to the governing body of the NAIF a periodic report which includes the following information:
4. a complete list of unit-holders of the NAIF;
5. details of subscriptions and redemptions carried out by the unit-holders within that period of time to which the report relates; and
6. a description of the customer due diligence measures carried out by the NAIF or the administrator on the unit-holders.

The governing body of the NAIF will be responsible for reviewing the report. Where the report has been drafted by the administrator, a copy thereof shall be transmitted to the AIFM.

* 1. The governing body of the NAIF shall ensure that the customer due diligence measures being carried out by the administrator comply with the requirements prescribed in the Prevention of Money Laundering and Funding of Terrorism Regulations and the Implementing Procedures issued thereunder.
	2. Where the implementation of the anti-money laundering or counter financing terrorism measures and procedures is outsourced to an administrator, the administrator shall be required to confirm to the AIFM and the governing body of the NAIF that the record-keeping, reporting, ongoing monitoring, risk management and any other measure being conducted by the administrator are in line with the requirements of the Prevention of Money Laundering and Funding of Terrorism Regulations and the Implementing Procedures issued thereunder.
	3. The governing body of the NAIF must ensure the taking of any action it may deem fit based on the conclusions and findings of the administrator’s report or other anti-money laundering concerns that the governing body of the NAIF may become aware of at any time.
	4. Notwithstanding that the reporting obligations have been outsourced to the administrator, should a suspicion of money laundering or financing of terrorism be identified by the governing body of the NAIF or the AIFM, it shall file a report with the Financial Intelligence Analysis Unit in accordance with the Prevention of Money Laundering and Funding of Terrorism Regulations and the Implementing Procedures issued thereunder.

Amendments to the prospectus and other reporting obligations

* 1. The AIFM shall make the annual report of the NAIF available to the MFSA and where applicable, the European Regulatory Authority of the home Member State or EEA State of the AIFM. The NAIF’s annual report shall be published and provided to investors in the AIF, and submitted to the MFSA within six months respectively of the end of the period concerned.
	2. The AIFM shall submit to the MFSA any statistical returns in relation to the NAIFs which may be required by the Central Bank of Malta to fulfil European and other relevant reporting obligations, on the following e-mail address: fundreporting@mfsa.com.mt
	3. Where the NAIF has already been included in the List of Notified AIFs, the AIFM will submit to the MFSA a notification with any amendments to the prospectus in terms of regulation 11 of the Regulations and provided the following requirements are met:
1. the NAIF’s prospectus continues to have regard to the templates referred to in SLC 11.09 (a) above;
2. the governing body of the NAIF certifies under its own responsibility that:
3. the amendments are not contrary to the requirements prescribed in the Regulations;
4. the NAIF’s prospectus, as amended, has the minimum contents required in terms of these Rules; and
5. the NAIF’s prospectus, as amended, is compliant with the appropriate template referred to in SLC 11.09(a) above.
	1. The AIFM shall include with the notification to the MFSA the following documents:
6. a resolution of the governing body of the NAIF certifying that the amendments to the prospectus comply with the standards prescribed in these Rules and with the templates available;
7. if changes to the investment objectives, policies and restrictions are being made, the governing body of the NAIF should also confirm that the NAIF currently operates in line with the investment objectives, policies and restrictions as set out in the prospectus and that the NAIF and its sub-fund(s) are not in breach of either the provisions set out in the prospectus and Constitutional Documents;
8. confirmation from the governing body of the NAIF confirming that changes to the prospectus have been undertaken in accordance with the provisions of the Constitutional Documents and in line with the relevant SLCs; and
9. the NAIF’s prospectus as amended, both a clean version and a version showing the amendments made for records purposes only.
	1. Changes to the investment objectives of the NAIF shall be notified to investors in advance of the change. The notice period should be sufficiently long to allow for redemption requests to be submitted by investors and processed prior to the change being effected. The change in the investment objectives should only become effective after all pending redemptions linked to the change in the investment objectives have been satisfied. Any applicable redemption fees would also need to be waived accordingly.
	2. Any changes to the prospectus shall be carried out in accordance with any procedures set out in the NAIF’s prospectus.
	3. The AIFM shall submit a notification in relation to any amendments to the prospectus together with the documents required in terms of SLC 11.39 within thirty calendar (30) days from the date of the resolution of the governing body of the NAIF approving the amendments to the prospectus of the NAIF.
	4. The MFSA shall acknowledge receipt of the amendments to the prospectus within ten (10) business days from the date of filing of the notification request together with the documents required in terms of SLC 11.39 with the MFSA. Changes to the prospectus shall not be effective until such time as they are acknowledged and noted by the MFSA.

Removal from the List of Notified AIFs

* 1. The MFSA may remove a NAIF, including any sub-fund, from the List of Notified AIFs at any time at its sole discretion, following notification thereof to the AIFM.
	2. The AIFM shall report to the MFSA issues which have a material impact on the NAIF and/or its investors as soon as it becomes aware of such issues. These material issues may include, but are not limited to, breaches of the provisions of the offering documentation, pricing errors and valuation errors:

Provided that the MFSA, may, at its discretion allow the AIFM a period of time, which shall be established by the Authority, within which to rectify the issue or breach. Where, after expiry of such period of time, the issue or breach has not be rectified or resolved to the satisfaction of the MFSA, then the Authority may proceed to remove the NAIF from the List of Notified AIFs.

* 1. The AIFM may submit a request to the MFSA for the removal of a NAIF from the list of Notified AIFs. In particular, a request shall be submitted in the following circumstances:
1. upon expiration of the duration of the NAIF or its winding up;
2. in any case where the custodian has given notice of termination under the custody agreement or is in liquidation or subject to bankruptcy proceedings or has had its license to provide custody services in respect of NAIFs suspended or cancelled:

Provided that the AIFM shall request the competent authority to remove the NAIF from the List of Notified AIFs where the transitional period agreed to between the parties in terms of regulation 8 of the Investment Services Act (Custodians of Collective Investment Schemes) Regulations will expire in less than 10 days and the AIFM has not entered into any arrangements with a substitute custodian or where at any time during such transitional period, it becomes clear to the AIFM that a replacement custodian will not be appointed before the end of the transitional period;

1. in any case where the AIFM has given notice of termination or is in liquidation or subject to bankruptcy proceedings or has had its licence to act as an AIFM suspended or cancelled and an eligible replacement AIFM has not been appointed within thirty (30) days from notice of termination;
2. in any case where any member of the governing body of the NAIF or any service provider appointed by the NAIF or by the AIFM on behalf of the NAIF fails to comply on an ongoing basis with the required high standards of fitness and properness and the AIFM has not within thirty (30) days arranged for a replacement member of the governing body or service provider to be appointed;
3. in all other cases as may be specified in the agreement between the NAIF and the AIFM as grounds for requesting removal of the NAIF from the List of NAIFs in terms of the regulations and these rules;
4. in all other cases as may be specified in the custody agreement between the NAIF or the AIFM on behalf of the NAIF and the custodian as grounds for requesting removal of NAIF from the List of Notified AIFs in terms of the regulations and these rules; and
5. in any other case where the AIFM reports to the MFSA material issues or breaches pursuant to SLC 11.45 and such issue or breach has not been rectified or resolved within the period of time established by the MFSA .

* 1. Following a notification for removal of a NAIF or sub-fund of a NAIF from the List of Notified AIFs, the MFSA will proceed to strike off the NAIF or sub-fund from the List of Notified AIFs and thereafter the NAIF or sub-fund shall cease trading other than for the purpose of winding down the operations of the NAIF or the sub-fund and the NAIF or sub-fund must be liquidated or otherwise terminated in accordance with the requirements of Maltese law.
1. The written agreement may form part of the administration agreement. [↑](#footnote-ref-1)