

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

*Guide to submitting a complete application for a
collective investment scheme licence*

1. Introduction

- 1.1. This guidance is being issued for the purpose of assisting applicants in the authorisation process and to ensure that applications are as complete as possible.
- 1.2. The Investment Services Act¹ (“the Act”) provides for the regulatory and the supervisory regime of collective investment schemes in Malta. Article 4(1) of the Act provides that “no collective investment scheme shall issue or create any units or carry on any activity in or from within Malta unless there is in respect of it a valid collective investment scheme licence.”
- 1.3. The Malta Financial Services Authority is the competent authority in terms of the Act for the authorisation of collective investment schemes.
- 1.4. The application pack shall be as **comprehensive** as possible and shall be submitted complete and not in piecemeal fashion. The Authority does not accept applications which are not complete.
- 1.5. A soft copy of the application pack shall be submitted to ausecurities@mfsa.com.mt
- 1.6. Prior to completing an application for authorisation of a collective investment scheme, applicants shall read carefully Part A of the following Rulebooks as applicable:
 - (a) Investment Services Rules for Retail Collective Investment Schemes where the application concerns a UCITS Scheme or a Retail AIF;
 - (b) Investment Services Rules for Professional Investor Funds where the application concerns a Qualifying Professional Investor Fund;
 - (c) Investment Services Rules for Alternative Investment Funds where the application concerns an Alternative Investment Fund marketed to professional investors or qualifying investors.
- 1.7. **The MFSA will not start processing an application unless the application form is accompanied by the fee payable or by evidence that the fee has been paid.**
- 1.8. The relevant **application fees** are listed in the Investment Services Act (Fees) Regulations. Application fees, shall be paid preferably by bank transfer or by cheque payable to the Malta Financial Services Authority.
- 1.9. Details for Bank transfer are as follows:

Bank name:	Bank of Valletta plc, 229, Fleur De Lys Road, Santa Venera
Account Name:	Current
Account Number:	15803811041
IBAN:	MT06 VALL 2201 3000 0000 1580 3811 041
BIC/ Swift Code:	VALL MT MT
Beneficiary:	Malta Financial Services Authority

¹ Cap. 370 - LOM

In respect of

Give full details of settlement so that the MFSA can allocate payment

Please note that any bank charges will be incurred by applicants.

The application form includes the following:

The MFSA expects the applicant to submit a complete application form signed by the applicant or by a person authorised to sign on behalf of the applicant. Once the MFSA issues its 'in principle' approval, the application is re-submitted and is countersigned by the members of the governing body of the scheme or a person with authority to bind the scheme.

During the process of assessment of an application, the MFSA may from time to time request clarifications or additional supporting documentation.

1.10. The application is further supplemented by the following:

- [i] a **Covering Letter** and note to the Application Form, the Authority is including a Collective Investment Scheme Summary. This summary is intended to provide a profile of the application together with the parties involved.
- [ii] a '**Checklist**' which includes the list of the supporting documentation submitted with an application. When completing an application, the applicant must ensure that this checklist is duly completed in relation to the scheme. The aim of this checklist is to ensure completion of the application pack.
- [iii] a **Prospectus/ Offering Document Checklist**: the Authority expects the applicant to include the correct references in the said checklist. **In the case where from a random first check, the references included are incorrect, the Authority will not commence the processing of the application but will be returning the application pack for revision.**

For UCITS applications a checklist relating to the **Depositary Agreement** is being included with the application form. This Checklist includes the requirements prescribed in UCITS V and the Commission Delegated Regulation (EU) 2016/438 of 17 December 2015 supplementing Directive 2009/65/EC of the European Parliament and of the Council with regard to obligations of depositaries.

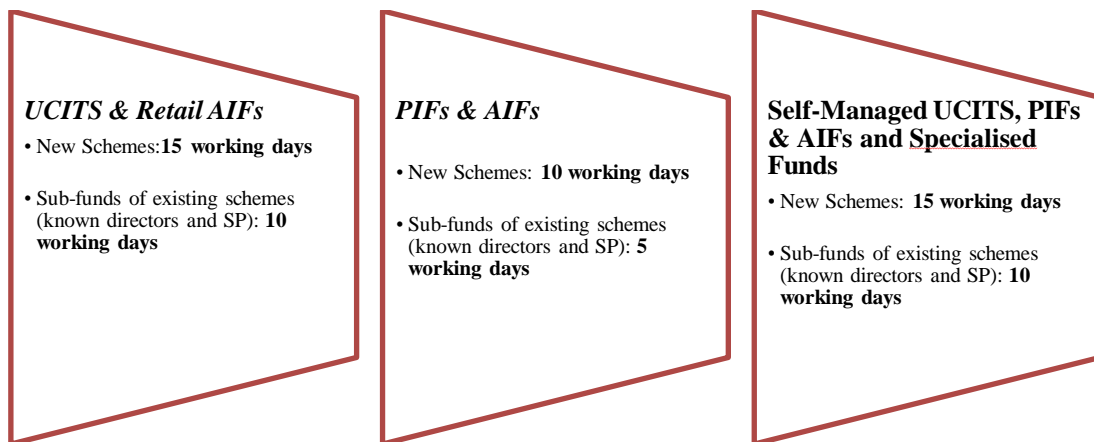
The following sections explain what information is being expected from proposed applicants to assist in an efficient processing of an application. The time taken to determine each application is significantly affected by the quality of the application submitted.

Applicants are to note that in the case of Sub-Funds of Schemes which are already in possession of a licence, the Offering Supplement should be submitted together with the Offering Document Checklist.

2. Applicable timeframes

- 2.1. Once an application is received, the Authorisation Unit will acknowledge receipt of a complete application within **2 working days**. In the case where the application is not deemed to be complete, applicant will be required to resubmit a complete application.

2.2. Once an application is deemed to be complete, the Authority commits to revert with an initial letter of comments within the following timeframes:



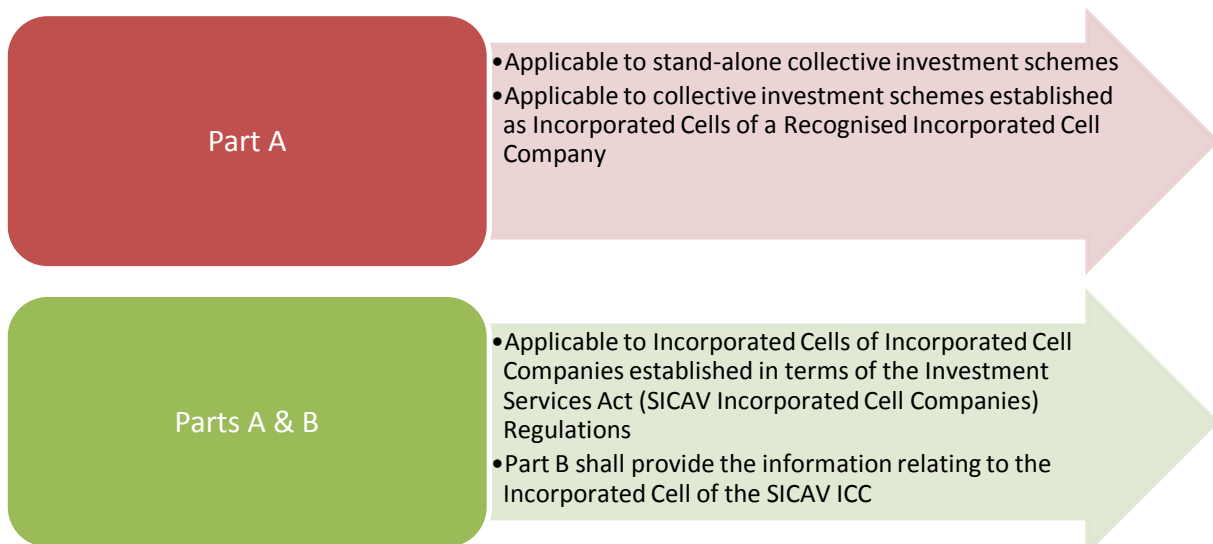
3. Covering letter and Introduction

2.1 The covering letter as well as the introduction section should be completed and signed by the applicant who takes responsibility for the application pack or anyone with authority to bind the applicant.

2.2 Any correspondence by the MFSA will be sent **directly to the applicant** who in turn will be considered responsible for any information provided in the application and to the MFSA.

3 Section 1: Details concerning the scheme

3.1 Section 1 is divided into two parts as follows:



3.2 GENERAL INFORMATION - Section 1 requires the applicant to provide information concerning the name of the scheme, the classification i.e. whether UCITS, AIF or PIF, and the legal form of the scheme.

3.3 TYPE OF MANAGEMENT STRUCTURE - The applicant is required to indicate whether the scheme will be third-party managed or self-managed.

3.4 SERVICE PROVIDERS - The applicant is required to provide details concerning any service providers which the scheme intends appointing.

3.5 LEGAL FORM - The applicant should refer to the regulations listed in Table 1 and ensure compliance therewith depending on the legal form chosen. The name chosen for the proposed collective investment scheme shall clearly denote the legal form chosen as indicated in the indicated legislation.

3.6 TYPE OF STRUCTURE - When opting to structure a fund as open-ended or closed-ended, the applicant shall keep present that not all collective investment schemes can be structured as closed-ended funds. UCITS Schemes **cannot** be established as closed-ended schemes.

3.7 GOVERNING BODY - The applicant is required to provide the names of the members of the governing body of the scheme and to indicate the names of the independent directors. (The applicant shall refer to and be guided by the Corporate Governance Manual for Directors of Investment Companies and Collective Investment Schemes).

SICAV	Companies Act (Investment Companies with Variable Share Capital) Regulations [S.L. 386.02]
INVCO	Companies Act (Investment Companies with Fixed Share Capital) Regulations [S.L. 386.04]
SICAV ICC	Companies Act (SICAV Incorporated Cell Company) Regulations [S.L. 386.14]
Incorporated Cell of RICC	Companies Act (Recognised Incorporated Cell Company) Regulations [S.L. 386.15]
Limited Partnership	Companies Act [Cap. 386 - LOM]
Unit Trust	Trusts and Trustees Act [Cap. 331 - LOM]
Contractual Fund	Investment Services Act (Contractual Funds) Regulations [S.L. 370.16]

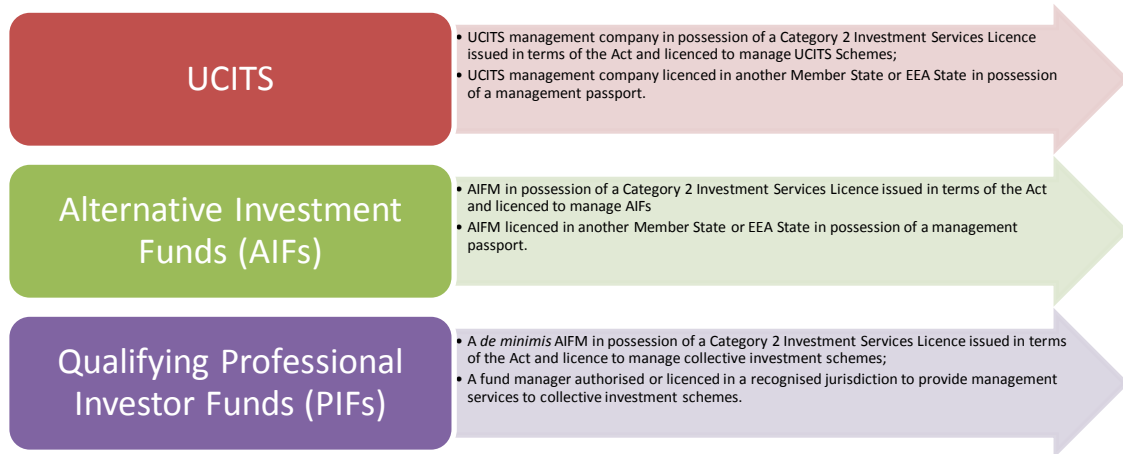
Table 1

3.8 APPLICABLE LAW - The applicant shall refer to and comply with the requirements stemming from EU legislation, depending on the label chosen i.e. UCITS or AIF:

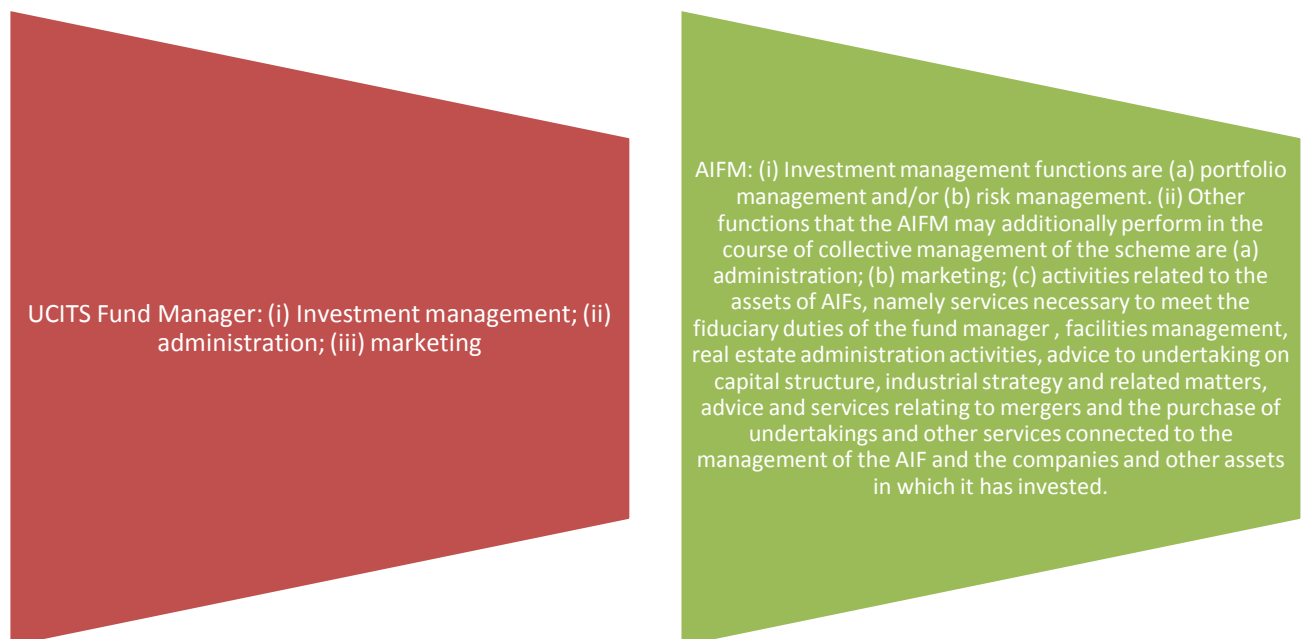
EU Directives/ Regulations						
UCITS			AIFs			
Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities	Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending Directive 2009/65/EC	Commission Delegated Regulation (EU) 2016/438 of 17 December 2015 supplementing Directive 2009/65/EC of the European Parliament and of the Council with regard to obligations of depositaries	Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers	Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European Venture Capital Funds	Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European Social Entrepreneurship Funds	Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds

4 **Section 2: Details of the external manager**

- 4.1 If the scheme is being structured as a self-managed scheme, this section shall be marked as ‘Not Applicable’.
- 4.2 The status of the external manager depends largely on the type of collective investment scheme for which a licence is being sought.



- 4.3 Depending on whether the proposed collective investment scheme is a UCITS Scheme or an AIF, the applicant should ensure that the fund manager is licenced to provide specific activities which are listed in the respective Directives. In particular, where the scheme is being proposed as a PIF and the fund manager is licenced as a Category 2 *de minimis* AIFM, the fund manager must ensure that the value of the assets under management does not exceed the thresholds indicated in Article 3(2) of the AIFMD.
- 4.4 The table below indicates the functions which a UCITS Fund Manager and an AIFM are bound to provide in terms of the UCITS Directive and the AIFMD respectively.



4.5 The applicant should provide a clear indication of the services which the fund manager will be providing to the fund.

5 Auditor’s declaration

5.1 The provisions of the Act require each entity which is licenced in terms of the Act to appoint an auditor. Article 18 of the Act deals with the duty of auditors.

5.2 The auditor’s declaration serves the purpose of notifying the MFSA which auditing firm has been appointed as auditor of the proposed entity. It is important that the Auditor’s Declaration be submitted in original.

5.3 The auditor must be approved by the Authority to provide services to collective investment schemes.

6 Details of other service providers

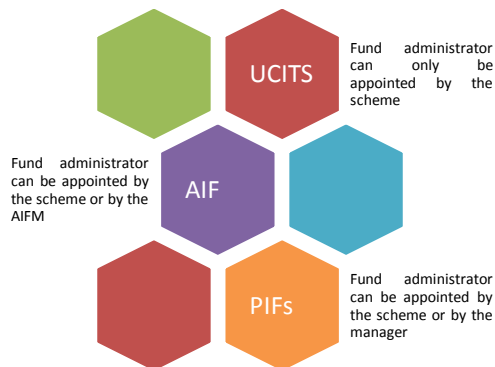
6.1 The applicant shall complete section 3 as applicable depending on the service providers which will be appointed.

6.2 The administration services applicable to both schemes include legal and fund management, customer enquiries, valuation and pricing including tax returns, regulatory compliance monitoring, maintenance of unit/shareholder register, distribution of income, unit/shares and redemptions, contract settlements, including certificate dispatch and record keeping.

6.3 The service providers which may be appointed are the following:



6.4 The *fund administrator* can be established in Malta and in possession of a Recognition Certificate issued by the MFSA. Where the fund administrator is established in another Member State/ EEA State or Recognised Jurisdiction, it must be a regulated entity. The fund administrator can be appointed as follows:



6.5 The *depositary* of a UCITS scheme or AIF is regulated by the provisions of UCITS V and AIFMD as applicable. Where the scheme is established as a **UCITS Scheme**, the

depository shall be appointed by the scheme and shall be in possession of a **Category 4a Investment Services Licence** to be able to provide the activities of safe keeping, oversight and monitoring as prescribed in the UCITS V Directive.

- 6.6 Where the scheme is established as an **AIF**, the depository shall be appointed by the scheme or by the AIFM. Where the depository is appointed by the AIF, the AIFM must ensure that a depository is appointed. Applicants are to note that in terms of Article 61(5) of the AIFMD, the depository of an AIF may be a credit institution established in another Member State or EEA State until 22 July 2017. Where the depository is established in Malta, it shall be in possession of a **Category 4a Investment Services Licence**.
- 6.7 A **Category 4b Investment Services Licence Holder** can be appointed solely in two instances:
- in the case of AIFs which are managed by a Maltese or EU AIFM or are self-managed AIFs and which have no redemption rights exercisable during the period of five years from the date of the initial investments and which, in accordance with their core investment policy, generally do not invest in assets that must be held in custody in accordance with Article 21(8)(a) AIFMD or which generally invest in issuers or non-listed companies in order to acquire control of such companies in accordance with Article 26 AIFMD; or
 - in the case of third country AIFs which are marketed in Malta by a Maltese or EU AIFM in terms of regulation 7 of the Investment Services Act (Alternative Investment Fund Manager) (Third Country) Regulations.
- 6.8 Where the scheme is established as a **PIF**, the applicant can appoint a Category 4b Investment Services Licence Holder or make arrangements for safe-keeping of assets. In the latter case, the applicant must indicate in the application form, the arrangements which the scheme will be entering into to provide for safe-keeping e.g. through the appointment of a prime broker.
- 6.9 In all cases, the applicant shall refer to the requirements prescribed in the Investment Services Act (Custodians of Collective Investment Schemes) Regulations and Part BIV of the Investment Services Rules for Investment Services Providers.

7 **Additional information for self-managed schemes**

Applicants should note that a self-managed AIF will automatically be deemed as an AIFM and as such falls under the AIFMD requirements. Similarly a self-managed UCITS will be required to provide additional information under the UCITS IV Directive.

8 **Section 6: Declaration**

- 8.1 The declaration should be signed by the approved signatories of the applicant. In the declaration, the applicant confirms that all the information provided is correct and not inconsistent with the instruments of incorporation/ prospectus of the fund. The applicant also undertakes to notify the MFSA of any material changes to the information provided either prior to or post licencing.

9 **Checklists**

- 9.1 Please refer to the below Appendix I, which lists all documents necessary for submission. All applicants are required to determine relevant and applicable documents suitable for the structure which is a subject of the application.

Appendix I

1. Documents to be submitted with all applications

1.1. The following documents shall be submitted as part of the application pack for **all applications** requesting the licencing of a collective investment scheme whether third party managed or self-managed:

- ❖ **Application fee** as prescribed in the [Investment Services Act \(Fees\) Regulations](#);
- ❖ **Instruments of incorporation** –i.e. memorandum and articles of association in the case of a SICAV, deed of partnership in the case of a limited partnership, trust deed/ deed of constitution (either by public deed or private writing) in the case of unit trust or contractual fund;
- ❖ Where the scheme is a **Retail Scheme**, applicant shall submit a draft version of the **prospectus**. Where the scheme is a **PIF** or a **Professional AIF**, applicant shall submit a draft version of the **offering memorandum**;
- ❖ In the case of UCITS Schemes and Retail AIFs, applicant shall submit a copy of the **Key Investor Information Document ('KIID')**.
With effect from 31 December 2016, Retail AIFs are required to produce a KID which complies with the requirements of the PRIIPs Regulation;
- ❖ In the case of **Retail Schemes**, applicants shall submit a **detailed marketing plan**;
- ❖ In the case of **Retail Schemes**, applicant shall submit **draft management, administration, depositary and advisory agreements** as applicable;
- ❖ A **resolution of the governing body of the scheme**:
 - (a) confirming its intention to apply for a UCITS/Retail AIF/ PIF/ AIF licence in favour of the scheme;
Where the scheme is established as an **incorporated cell company**, the resolution must confirm the intention of the board of directors to apply for a collective investment scheme licence in favour of a scheme as an incorporated cell company.
Where the scheme is established as an **incorporated cell company or incorporated cell**, the resolution of the board of directors of the scheme shall confirm the intention of the board of directors to apply for a collective investment scheme licence in favour of a scheme as an incorporated cell company/incorporated cell.
 - (b) identifying the person(s) responsible for signing the application documents;
 - (c) identifying the person(s) responsible on behalf of the governing body of the scheme for its compliance obligations;
 - (d) identifying the person(s) responsible on behalf of the governing body of the scheme for its anti-money laundering obligations;
 - (e) approving and assuming responsibility for the contents of the offering document;
- ❖ **Personal questionnaires** of the:
 - (a) portfolio manager/ investment manager;

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- (b) risk manager;
 - (c) compliance officer;
 - (d) money laundering reporting officer;
 - (e) investment advisor (where applicable)
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2. Additional documents to be submitted depending on the set-up opted for

2.1. In addition to the documents listed in Section 1, the following documents shall be required, where the applicant proposes to establish the scheme as an **investment company** in terms of the

- i. **Companies Act (Investment Companies with Variable Share Capital) Regulations**
- ii. **Companies Act (SICAV Incorporated Cell Company) Regulations; and**
- iii. **Companies Act (Recognised Incorporated Cell Company) Regulations**

❖ **Personal questionnaires of the directors of the scheme:**

- (a) where the directors are **individuals**, the applicant shall submit personal questionnaires of the individual proposed directors;
- (b) where the directors are **corporate and regulated in a recognised jurisdiction**, the applicant shall:
 - [i]** details of the regulatory status of the proposed corporate director(s);
 - [ii]** name of the individual(s) that will represent the corporate director on the board of directors of the scheme.

❖ **Personal questionnaires of the founder shareholders which hold more than 10% of the voting shares:**

- (a) where the founder shareholders are **individuals**, the applicant shall submit personal questionnaires of the individual founder shareholders;
- (b) where the founder shareholders are **corporate and regulated in a recognised jurisdiction**, the applicant shall submit details of the regulatory status of the proposed corporate founder shareholder(s);
- (c) where the founder shareholders are **corporate but not regulated in a recognised jurisdiction**, the applicant shall submit the following:
 - [i]** personal questionnaire of the directors of the proposed corporate founder shareholder(s);
 - [ii]** personal questionnaire of the qualifying beneficial owners of the proposed corporate founder shareholder(s);
 - [iii]** last three years' audited financial statements of the proposed corporate founder shareholder(s).

Note: The MFSA reserves the right to request additional information in the case of corporate structures.

❖ **Where** the applicant proposes to establish the scheme as an **incorporated cell**, it shall submit an **additional resolution of the board of directors of the incorporated cell** company:

- (a) approving the name of the incorporated cell being established;
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- (b) approving the terms of the memorandum and articles of association of the incorporated cell and resolving that the said memorandum and articles of association of the incorporated cell are to be entered into by the incorporated cell company;
 - (c) authorising, where applicable, the subscription by the incorporated cell company of a share or shares in the incorporated cell.
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2.2. In addition to the documents listed in Section 1, the following documents shall be required, where the applicant proposes to establish the scheme as a **limited partnership in terms of the Tenth Schedule of the Companies Act**:

❖ **Personal questionnaires of the general partners of the scheme:**

- (a) where the general partners are **individuals**, the applicant shall submit personal questionnaires of the individual proposed general partners;
 - (b) where the general partners are **corporate and regulated in a recognised jurisdiction**, the applicant shall submit:
 - [i] details of the regulatory status of the proposed corporate general partner(s);
 - [ii] name of the individual(s) that will represent the corporate general partner(s).
 - (c) where the general partners are **corporate but not regulated in a recognised jurisdiction**, the applicant shall submit:
 - [i] personal questionnaire of the directors of the proposed corporate general partner(s);
 - [ii] personal questionnaire of the qualifying beneficial owners of the proposed corporate general partner(s);
 - [iii] the name of the individual(s) who will represent the corporate general partner(s);
 - [iv] last three years' audited financial statements of the proposed corporate general partner(s).
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2.3. In addition to the documents listed in Section 1, where the scheme is established as a **unit trust in terms of the Trusts and Trustees Act** or as a **contractual fund in terms of the Investment Services Act (Contractual Funds) Regulations**, the applicant shall also submit details of the regulatory status of the trustee.

3. **Additional documents to be submitted when the scheme is self-managed**

3.1. In addition to the documents listed in Section 1, where the applicant proposes to establish the scheme as a **self-managed scheme**, it shall submit the following documents irrespective of whether the scheme is a UCITS/PIF/AIF:

❖ **Personal questionnaires and detailed curriculum vitae of:**

- (a) the members of the investment committee;
 - (b) the portfolio manager;
 - (c) the risk manager.
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❖ **Terms of reference** regulating the procedures of the investment committee;

- ❖ **A confirmation from the portfolio manager(s) (as applicable)** that he/she/they will:
- (a) operate in accordance with the investment objective and policy described in the scheme's prospectus/offering document in general and the investment guidelines issued by the investment committee in particular;
 - (b) report to the investment committee on a regular basis any transactions effected on behalf of the scheme; and
 - (c) provide to the investment committee any information as the investment committee may require from time to time.

❖ **The risk management policy document**

3.2. In addition, where the applicant proposes to establish the scheme as a **self-managed AIF**, it shall submit the following documents:

❖ **Information on the experience and competence** that each individual involved in the investment management of the scheme has in relation to the scheme

❖ **Programme of activities/ business plan;**

❖ Where the scheme intends to cover potential professional liability risks by way of professional indemnity insurance, a copy of the **cover note to the insurance policy;**

❖ A **declaration** by the scheme that it has a **formal remuneration policy** in place which is in line with the principles set out in Annex II AIFMD and the Guidelines on sound remuneration policies issued by ESMA

❖ A **declaration** by the scheme confirming that it has a **conflict of interest policy** which is in line with the requirements stipulated in Article 14 AIFMD and Article 13 AIFMR.

❖ Details of any derogation request from the requirement to establish a permanent risk **management** function which is hierarchically and functionally independent from the operating units

❖ **Personal** questionnaire of the individuals undertaking the risk management function;

❖ **Curriculum Vitae** of the individual(s) monitoring the delegated risk management, **including** the CV of the individual(s) carrying out the risk management function within the delegated party

❖ A declaration by the scheme confirming that it has in place appropriate and consistent **procedures** for a proper and independent valuation of the assets

The declaration shall also confirm that the valuation policies:

- (a) Ensure a fair, appropriate and transparent valuation methodology for each type of asset, in accordance with applicable national law, with the prospectus and instruments of incorporation of the scheme;
 - (b) Provide for inputs, models and selection criteria for pricing and for market data sources;
 - (c) Provide that prices be obtained from independent sources;
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- (d) Address the competence and independence of personnel carrying out the valuation process;
 - (e) Identify the obligations, roles and responsibilities of all parties involved in the valuation process.

The scheme shall also confirm that it has verified that the method and frequency applied to the calculation and publication of the NAV is in accordance with Articles 72 and 74 AIFMR

- ❖ Details of any derogation request from the requirement to establish a permanent risk management function which is hierarchically and functionally independent from the operating units
- ❖ Personal Questionnaire of the individuals undertaking the risk management function
- ❖ Where applicable the relevant portfolio/risk management delegation agreements
- ❖ A declaration by the scheme wherein it confirms that [Section 3]:
 - (a) depositary contractual arrangements are in place;
 - (b) the contents of the depositary agreement reflects the requirements of Article 21 AIFMD and Chapter IV AIFMR;
 - (c) the MFSA may contact the indicated depositary in order to discuss the depositary arrangements in place in respect of the scheme.
- ❖ A declaration outlining that the prospectus of the scheme is in line with the transparency and disclosure requirements in accordance with Articles 22 and 23 AIFMD

3.3. In addition, where the applicant proposes to established the scheme as a self-managed UCITS Scheme, it shall submit the following additional documents:

- ❖ A declaration by the scheme that it has a formal remuneration policy in place which is in line with the principles set out in UCITS V and the Guidelines on sound remuneration policies issued by ESMA ;
- ❖ A declaration by the scheme confirming that it has a conflict of interest policy which is in line with the requirements stipulated in Commission Directive 2010/43/EC;
- ❖ Risk management policy document
- ❖ Details of any derogation request from the requirement to establish a permanent risk management function which is hierarchically and functionally independent from the operating units;
- ❖ Personal Questionnaire of the individuals undertaking the risk management function;
- ❖ Curriculum Vitae of the individual(s) monitoring the delegated risk management, including the CV of the individual(s) carrying out the risk management function within the delegated party.