

# MFSA

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## MALTA FINANCIAL SERVICES AUTHORITY

### **Circular on Collective Investment Schemes which have not commenced the licenced activities and / or have a Zero NAV**

The Authority noted, from a review of its records, that there are a number of licenced Collective Investment Schemes and Sub-Funds (collectively referred to as “Licenced Entity(ies)”) that have a zero NAV and/ or have not been launched despite obtaining a licence, i.e. have not commenced the activities which they were authorised to carry on within the time provided for in the licence or has ceased to provide such service.

The purpose of this document is to inform the industry of the most common findings identified from said review and sharing the expectations of the Authority, particularly with respect to the surrendering any applicable Collective Investment Scheme Licence and subsequently winding up any fund structures.

#### **1. Findings of the Authority**

With regard to Licenced Entities that have a zero NAV and/ or have not commenced the activities which it was authorised to carry on within the time provided for in the licence or has ceased to provide such service, it is noted by the Authority that:

- a) such Licenced Entities, which have been in existence for a prolonged period in excess of one year, may have fallen in breach of the provisions of the Investment Services Act (*Cap. 370 Laws of Malta*) and the Investment Services Rules issued thereunder;
- b) the Offering Documentation presented to the Authority by such Licenced Entities at authorisation stage could have become outdated;
- c) on numerous occasions, the Authority receives several requests to approve extensive changes to the Offering Documentation of Licenced Entities to such an extent that the fund structures differ completely from those initially approved by the Authority;
- d) on a number of occasions, there is an increased risk as key service providers and officials resign from such Licenced Entities, with the consequence that the Authority and investors/ potential investors are not informed of such and/or other material changes.

## **2. Ongoing monitoring conducted by the Authority**

It is being noted that the Authority carries out close monitoring to ensure compliance with the applicable regulatory framework, and where required, it has to take possible enforcement measures against Licenced Entities as referred to in this documents, in terms of article 7(3) of the Investment Services Act.

## **3. Applicable Regulatory Framework**

The Directors are being advised that in line with SLC 1.03 of Part B of Investment Services Rules for Alternative Investment Funds, an AIF shall commence its activities within 12 months from the date of issue of the Collective Investment Scheme Licence. If, for any reason the AIF is not in a position to comply with this condition, it shall notify the MFSA in writing setting out the reason(s) for such a delay indicating the proposed date of commencement of business. On the basis of the information provided and depending on the circumstances of the case, the MFSA may decide to suspend or cancel the Licence in accordance with the relevant provisions of the Investment Services Act.

In relation to Professional Investor Funds, the Authority expects such Licence Holders to commence their activities within a reasonable timeframe from authorisation date, and ideally by not later than 12 months from the date of issue of the Collective Investment Scheme Licence.

Moreover, it is being highlighted that in line with SLC 16.5 of Part BII of Investment Services Rules for Retail Collective Investment Schemes, a Licenced Entity shall commence its business as soon as the licence has been granted.

## **4. Extension of the Initial Offering Periods**

Based on numerous requests received by the Authority, it is to be advised that requests to extend Initial Offering Periods (“IOP”), where permitted by the relevant legislation, would still need to be justified on a case-by-case basis as these expire and repeated requests of this nature would necessarily raise questions as to why the Scheme in question has failed to commence its activities. Failure on the part of a Scheme and/or its Manager to request any such extensions, where due, would entail a breach of ongoing obligations and consequential regulatory action.

## **5. Process of Surrender of a Collective Investment Scheme Licence**

For the ease of reference, the Authority advises that the process of voluntary surrender of a Collective Investment Scheme Licence is the appropriate procedure to follow, whenever a licenced entity cannot meet its launch objectives or has disposed of its asset portfolio and redeemed the investors. This process is outlined in Section 6 in Part A of the Investment Services Rules for [Professional Investor Funds](#), Section 10 in Part A of the Investment Services Rules for [Alternative Investment Funds](#) and Section 9 in Part A of the Investment Services Rules for [Retail Collective Investment Schemes](#).

## **6. MFSA's approval of surrender of the Collective Investment Scheme Licence**

An internal process, at the Authority, is normally set in motion for approval of the surrender of the Collective Investment Scheme Licence as soon as all the requirements listed in the Sections outlined in point 6 are satisfied, the respective Supervisory Fees are settled, the Scheme is delisted from any regulated market and passporting notifications have been withdrawn (as applicable). In the event of approval of the surrender of the Collective Investment Scheme licence, the MFSA conveys its final decision to the Scheme and issues a public notice regarding the surrender of the Scheme's Licence.

### **Request for review**

In light of the above, the Authority requests the Board of Directors of Licenced Entities and/ or Managers thereof (if applicable) to undertake a review of the respective fund structure/s falling under their responsibility. The Directors should consider surrendering any Collective Investment Scheme Licence and subsequently wind up any fund structures. Consideration should also be taken in respect of any fund structures the launch of which is envisaged to protract unduly.

### **Way forward**

The Directors are advised that deadline for a completion of these reviews is **Friday, 29 June 2018**. After this date, the Authority will be contacting the relevant Licenced Entities to determine whether action has been taken and whether the surrender process has been initiated, as appropriate. It is to be noted that failure to undertake such action may entail a cancellation or a suspension of the Collective Investment Scheme Licence by the Authority in terms of the provisions of Article 7(1) and Article 7(3) of the Investment Services Act. Specifically, Article 7(3)(d) of the Investment Services Act permits the Authority to exercise its power against Licenced Entities which have not commenced the activities which they were authorised to carry on within the time stipulated in the licence or have ceased to carry on such activities.

### **Contacts**

Any queries or requests for clarifications in relation to this circular are to be addressed to the following officials at the Securities and Markets Supervision Unit, MFSA by e-mail on: Joseph Agius [jagius@mfsa.com.mt](mailto:jagius@mfsa.com.mt); Christopher Micallef [cmicallef@mfsa.com.mt](mailto:cmicallef@mfsa.com.mt); Sandra Saliba [ssaliba@mfsa.com.mt](mailto:ssaliba@mfsa.com.mt).

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**Malta Financial Services Authority**  
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