

DRAFT MFSA RULES - These Rules compliment the provisions of Regulation 3A of Draft Legal Notice on Contractual Funds and include the proposed Licence Conditions applying to the use of SPV's by Contractual Funds

The following conditions shall also apply with respect to each Special Purpose Vehicle ('SPV') of a contractual fund:

- 6.1 The SPV must be wholly owned by the fund or by a wholly owned subsidiary or subsidiaries of the fund that are themselves set up in conformity with these Rules and the applicable Regulations (L.N. ___ of ___);
- 6.2 The custodian of the fund shall be appointed as custodian to an SPV set up by the fund and, in the case of multilayer SPVs set up in accordance with the provisions of paragraph (i), must be in a position to demonstrate to the competent authority that it has sufficient controls in relation to each layer of the special purpose vehicle structure;
- 6.3 The shares in each SPV must be registered in the name of the custodian of the Fund;
- 6.4 The underlying assets must be registered in the name of the custodian on behalf of the fund or its SPV;
- 6.5 Assets of the SPV shall be valued by the fund or a person delegated by the fund for this purpose at intervals as may be required by the licence conditions and the offering memorandum of the fund;
- 6.6 The majority of directors appointed to the board of the SPV shall be appointed by the manager from among the directors of the fund. Subject to this, the fund may act as corporate director on the board of directors of the SPV;
- 6.7 The Directors of the SPV shall be subject to the approval of the competent authority and the authority shall have the right to require the replacement of directors on the SPV;
- 6.8 The majority of Board Meetings of the SPV must be held in Malta;
- 6.9 The minutes of board meetings shall be kept in Malta at the registered office of the Scheme or at any other place as may be agreed with the competent authority;
- 6.10 Any reports prepared by the contractual fund shall include any information on any SPV established by the fund which would otherwise have been required to be reported had the activity carried out within the SPV been carried out directly by the fund;
- 6.11 A certificate of compliance attesting that the SPV is complying with the investment objective policies applicable to the fund and signed by the Directors of the SPV shall be submitted to the Manager on a on a six monthly basis.

6.12 A contractual fund intending to carry out any activity that requires the set up of an SPV shall, in addition to the documentation to be submitted with its application for a licence under the Act, submit the following documentation with respect to any SPV intended to be set up under the fund:

- a)* a copy of the memorandum and articles of association of the SPV;
- b)* PQs of Directors of the SPV who need to satisfy the fit and proper test;
- c)* details of where documentation related to the SPV is to be retained;
- d)* any other document that may be required by the MFSA;

Where it is envisaged that an SPV may be set up after the commencement of operations of the fund this documentation may be submitted with the application for an extension of the fund licence to incorporate the relevant SPV.