

INVESTMENT SERVICES RULES FOR ALTERNATIVE INVESTMENT FUNDS

Appendix 11

Supplementary Licence Conditions for AIFs set up as private equity funds

SCOPE AND APPLICABILITY

An AIF established and authorised as a private equity fund shall, in addition to complying with any laws, regulations or Standard Licence Conditions applicable thereto, **also** comply with the Standard Licence Conditions prescribed in this Appendix.

For the purposes of these Investment Services Rules (the “Rules”), a private equity fund shall be understood as being a scheme whose objective is to generally invest in non-listed companies or issuers.

1 GENERAL REQUIREMENTS

- 1.01 The following Standard Licence Conditions lay down uniform rules for the establishment and marketing of a collective investment scheme established as a private equity fund in terms of the Investment Services Act, 1994 (‘the Act’), hereinafter referred to as ‘the Scheme’.
- 1.02 The Scheme may be structured as either an open-ended or a closed-ended fund as defined in the Commission Delegated Regulation No. 694/2014 of 17 December 2013 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regards to regulatory technical standards determining types of alternative investment fund managers.

2 SERVICE PROVIDERS

Fund Management

- 2.01 Where the Scheme does not appoint an external fund manager but opts for a self-managed structure, it shall be subject to all the Supplementary Licence Conditions prescribed in Section 6 of this Appendix as well as the applicable SLCs prescribed in the Investment Services Rules for Alternative Investment Funds applicable to Self-Managed Collective Investment Schemes:

Provided that the Board of Directors (or equivalent body) of the Scheme shall monitor the compliance by the individuals performing investment management with all the obligations for which they are responsible in terms of these Rules.

- 2.02 The fund manager may have an established place of business in Malta. Alternatively, the fund manager shall either be a European AIFM or be a fund manager authorised/licenced in a recognised jurisdiction or be in possession of a licence from a recognised jurisdiction.

- 2.03 Where the fund manager is established in Malta, it shall be in possession of a Category 2 Investment Services Licence as a *de minimis* fund manager or a Category 2 Investment Services Licence as an Alternative Investment Fund Manager ('AIFM') and in both instances authorised by the MFSA as a fund manager in terms of the Act:

Provided that the fund manager shall ensure compliance with the applicable Standard Licence Conditions prescribed in Part BIII of the Investment Services Rules for Investment Services Providers.

- 2.04 The fund manager shall also be required to provide the MFSA with evidence that it has experience in the area of private equity investment activities.

Custodial Arrangements

- 2.05 The Custodian shall be the holder of a Category 4a or Category 4b Investment Services Licence issued by the MFSA or a credit institution having its registered office in the EU and authorised in accordance with Directive 2013/36/EU.

Valuation

- 2.06 In addition to complying with the ongoing requirements specified in the Investment Services Rules for Alternative Investment Funds, the Scheme shall notify the MFSA before proposing a material change in the valuation methodology of the underlying investments in the Scheme.

3 INVESTMENT OBJECTIVES, POLICIES AND RESTRICTIONS

- 3.01 To ensure adequate mitigation of conflicts of interest, the investment restrictions of the Scheme shall contain provisions regarding the ability of the Board of Directors (or equivalent body) to:

- (i) manage funds (whether private equity funds or other) or accounts with a similar investment mandate;
- (ii) offer co-investment opportunities to other private equity funds or principals and affiliate companies of the Board of Directors;
- (iii) engage in other investment activities similar to those of the Scheme;
- (iv) cause the Scheme to engage in transactions with principals and affiliate companies of the Board of Directors; and
- (v) act in other instances in which there is or may be a conflict of interest.

Borrowing and Leverage Restrictions

- 3.02 The Scheme shall be regulated by the provisions of the Investment Services Rules for Alternative Investment Funds with regards to borrowing and leverage.
- 3.03 Clarity on permitted leverage and borrowing at both the level of the Scheme and at the level of any underlying Special Purpose Vehicle (to the extent that these are used) should be ensured and clearly disclosed in the Scheme's Offering Document and Constitutional Documents.

Eligible Investors and Minimum Entry Levels

- 3.04 Schemes established in terms of these Rules shall be open exclusively to the following types of specific professional investors:
- a. investors which are considered to be professional clients in accordance with Section I of Annex II to Directive 2004/39/EC; or
 - b. investors which, on request, elect to be treated as professional clients in accordance with Section II of Annex II to Directive 2004/39/EC and commit to investing a minimum of EUR 100,000.
- 3.05 Schemes established in terms of these Rules cannot be set up as Alternative Investment Funds promoted to Retail investors or Alternative Investment Funds marketed to Experienced Investors. However, subject to the definition of ‘eligible investors’ prescribed in SLC 3.05 and subject to compliance with the SLCs prescribed in Appendix, these Schemes may be established as Alternative Investment Funds marketed to Qualifying Investors or Extraordinary Investors in accordance with the applicable Investment Services Rules.

Commitments and Drawdowns

- 3.06 The Scheme may require investors to make a capital commitment that is drawn down from time to time upon a specified period of notice by the Board of Directors (or equivalent body) of the Scheme.

4 DISCLOSURE TO INVESTORS

- 4.01 The Scheme shall make available to investors, in accordance with its Constitutional Documents and/or Offering Document and prior to their investment in the Scheme, the following information and any material changes thereto in addition to the disclosure obligations outlined in Section 6 of Appendix 4:
- a. The possibility to create side-pockets and any other measures designed to capture and mitigate against the inherent illiquidity of private equity funds;
 - b. Details of penalties on investors who default on their commitment obligation including any grace period, as well as the right to terminate the investors’ right to contribute subsequent capital, to buy out the defaulting investor for a fraction of the amount previously contributed and/ or to actively locate a buyer for the defaulting investor’s interest and other sanctions;
 - c. Details of any equalisation mechanism in order to compensate initial investors for having funded earlier investments in which the new investors will participate.
- 4.02 The Scheme shall also inform investors without delay of any changes with respect to custodian liability.

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

- 4.03 The Scheme shall disclose the identity of the regulated entity and its regulator or regulators in all correspondence, advertisements and other documents. Wording similar to the following shall be used: “Licenced by the MFSA as an Alternative Investment Fund/ [or] Professional Investor Fund available to specified professional investors.”

5 REPORTING REQUIREMENTS

- 5.01 The Scheme shall comply with any reporting requirements which the MFSA may prescribe from time to time in relation to the obligations prescribed in these Rules.

Financial Year End

- 5.02 In determining the financial year end of the Scheme the Board of Directors shall take into consideration that the audit of the underlying investments of the Scheme might take considerable time and this would in turn adversely effect the Scheme’s ability to meet the regulatory timeframes for submission.

6 SUPPLEMENTARY LICENCE CONDITIONS APPLICABLE TO SELF-MANAGED SCHEMES

Capital Requirements

- 6.01 The initial paid-up share capital for the Scheme should not be less than EUR 300,000 and the NAV of the Scheme is expected to exceed this amount on an ongoing basis.
- 6.02 The Scheme shall notify the MFSA as soon as its NAV falls below EUR 300,000.

Operational Arrangements

- 6.03 The Scheme shall organise and control its affairs in a responsible manner and shall have adequate operational, administrative and financial procedures and controls to ensure compliance with all regulatory requirements and shall provide the MFSA with all the information it may require from time to time.
- 6.04 Where the Scheme is self-managed, the obligations which would usually be incumbent on the fund manager shall be carried out by the Scheme.