

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

INVESTMENT SERVICES RULES FOR ALTERNATIVE INVESTMENT FUNDS

PART B

APPENDIX I: RULES APPLICABLE TO ALTERNATIVE INVESTMENT FUNDS ADOPTING DIFFERENT STRUCTURES

1. INTRODUCTION

1.01 The Rules prescribed in this Appendix are applicable to Maltese AIFs ('scheme(s)') whether these are third-party managed or self-managed schemes in terms of Part B of these Rules.

2. ADDITIONAL RULES APPLICABLE TO SCHEMES ESTABLISHED AS LIMITED PARTNERSHIPS

2.01 The scheme shall obtain the written consent of the MFSA before admitting a general partner. The request for consent shall be accompanied by a Personal Questionnaire ("PQ") in the form set out in Schedule B to Part A of these Rules duly completed by the person proposed (in the case of an individual) or by the directors and qualifying shareholders of the proposed general partner (in the case of a body corporate).

2.02 Where the proposed corporate general partner is regulated in a recognized jurisdiction, the request for consent need not be accompanied by the PQ of the directors and qualifying shareholders of the proposed corporate general partner, but shall include details of the regulatory status of the general partner.

2.03 General partners shall be persons falling within any one of the following categories:

- i. a company licensed under the Investment Services Act for the provision of fund management services; or
- ii. a company falling within the exemptions applicable to overseas fund managers; or
- iii. any other entity of sufficient standing and repute as approved by the MFSA;
- iv. any other individual who satisfies the fit and proper test.

Where the general partner falls under paragraphs (iii) and (iv) above, and in the absence of a manager (as per paragraphs (i) or (ii)) acting as an additional general partner, the scheme shall appoint an AIFM acceptable to the MFSA.

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2.04 The scheme shall notify the MFSA in writing of the departure of a general partner within 14 days of the departure. In particular, the notification submitted by the scheme shall include the following information:

- (A) the name and role of the official departing;
- (B) the reason of departure i.e. resignation, dismissal, re-organisation etc.;
- (C) the effective date of resignation;
- (D) the proposed replacement.

The scheme shall also request the general partner to confirm in writing to the MFSA:

- (i) whether the departure has any regulatory implications, or if otherwise, to provide any relevant details;
- (ii) the information required in terms of paragraphs (A) to (C) above.

A copy of the scheme's request to the departing official shall be provided to the MFSA together with the scheme's notification of departure.

Commented [IA1]: A per 19th August Circular

2.05 The MFSA shall be entitled to be satisfied to be satisfied, on a continuing basis, of the fitness and properness of the general partner(s) and of any service provider appointed by the scheme.

2.06 Where applicable, the scheme, or the AIFM or administrator on behalf of the scheme, is required to disclose to potential investors, the identity of the beneficial owners of the general partner(s) upon request.

3. ADDITIONAL RULES APPLICABLE TO SCHEMES ESTABLISHED AS INVESTMENT COMPANIES

3.01 The scheme shall at all times have one or more directors independent from the AIFM and the depositary.

3.02 The scheme shall obtain the written consent of the MFSA prior to the appointment or replacement of a director. The scheme shall not appoint a corporate director unless such corporate director is regulated in a recognized jurisdiction.

3.03 The request for consent of the appointment or replacement of an individual as director shall be accompanied by a PQ in the form set out in Schedule B to Part A of these Rules duly completed by the person proposed. In the case of a corporate director, the request for consent shall include details of its regulatory status. The MFSA reserves the right to object to the proposed appointment or replacement and to require such additional information it considers appropriate.

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3.04 The scheme shall notify the MFSA in writing of the departure of a director within 14 days of the departure. In particular, the notification submitted by the scheme shall include the following information:

- (A) the name and role of the official departing;
- (B) the reason of departure i.e. resignation, dismissal, re-organisation etc.;
- (C) the effective date of resignation;
- (D) the proposed replacement.

The scheme shall also request the general partner to confirm in writing to the MFSA:

- (i) whether the departure has any regulatory implications, or if otherwise, to provide any relevant details;
- (ii) the information required in terms of paragraphs (A) to (C) above.

A copy of the scheme's request to the departing official shall be provided to the MFSA together with the scheme's notification of departure.

Commented [IA2]: As per circular dated 19th August 2016

3.05 Minutes of the meetings of the board of directors shall be held in Malta at the registered office of the scheme or at any other place as may be agreed with the MFSA.

3.06 Where the scheme has issued "voting shares" to the promoters and "non-voting shares" to investors, any changes in the beneficial ownership of the "voting shares" of the scheme shall be subject to the prior approval of the MFSA. The scheme, or the AIFM or administrator on behalf of the scheme, is required to disclose to potential investors, the identity of the beneficial owners of the "voting shares" upon request.

3.07 The scheme shall obtain the written consent of the MFSA prior to:

- (a) making any changes to the rights of its 'voting shares';
- (b) redeeming its 'voting shares';
- (c) issuing additional 'voting shares'.

3.08 The scheme shall act honestly, fairly and with integrity – in the best interests of its investors/shareholders and of the market. Such action shall include:

- i. avoiding conflicts of interest where this is possible and, where it is not, ensuring – by way of disclosure, internal procedures or otherwise – that investors are treated fairly. The following procedures should be followed during meetings (including but not limited to board meetings), where a member considers that s(he) has or may have a conflict of interest:
 - a. that person should declare that interest to the other members either at the meeting at which the issue in relation to which s(he) has an

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interest first arises, or if the member was not at the date of the meeting interested in the issue, at the next meeting held after s(he) became so interested;

- b. unless otherwise agreed to by the other members, a member shall avoid entering into discussions in respect of any contract or arrangement in which s(he) is interested and should withdraw from the meeting while the matter in which s(he) has an interest is being discussed;
 - c. the interested member should not vote at a meeting in respect of any contract or arrangement in which s(he) is interested, and if s(he) shall do so, his/her vote shall not be counted in the quorum present at the meeting;
 - d. the minutes of the meeting should accurately record the sequence of such events.
- ii. abiding by all relevant laws and regulations, including in respect of prevention of money laundering;
 - iii. not making any claim of independence or impartiality which is untrue or misleading; and
 - iv. not making misleading or deceptive representations to investors.

4. ADDITIONAL RULES APPLICABLE TO SCHEMES ESTABLISHED AS INCORPORATED CELL COMPANIES WITH INCORPORATED CELLS (ICC) PURSUANT TO THE COMPANIES ACT (SICAV INCORPORATED CELL COMPANIES) REGULATIONS

- 4.01 Both the incorporated cell company ('ICC') and the individual incorporated cells ('IC') shall be licenced by the MFSA.
- 4.02 The ICC and the individual ICs shall have at least one common director between them.
- 4.03 The ICC and the individual ICs shall have a common registered office.

5. ADDITIONAL RULES APPLICABLE TO SCHEMES ESTABLISHED AS INCORPORATED CELLS ('IC') UNDER A RECOGNISED INCORPORATED CELL COMPANY ('RICC') PURSUANT TO THE COMPANIES ACT (RECOGNISED INCORPORATED CELL COMPANIES) REGULATIONS

- 5.01 Incorporated cells ('IC') set up under a recognised incorporated cell company ('RICC') in terms of the Companies Act (Recognised Incorporated Cell Companies) Regulations may be set up as:

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- i. an investment company with variable share capital (SICAV) in terms of the Companies Act (Investment Companies with Variable Share Capital) Regulations;
 - ii. an investment company with fixed share capital in terms of the Companies Act (Investment Companies with Fixed Share Capital) Regulations.
- 5.02 Each IC can be either third-party managed or self-managed. In the case where an IC is third-party managed, it will be required to appoint an investment manager, which shall be approved by the RICC.
- 5.03 An IC which is third-party managed shall appoint its own investment manager which may be the same or different from the investment manager appointed by any other ICs set up under the same RICC. However, in any case, the investment manager appointed must be approved by both the RICC and the MFSA.
- 5.04 An IC shall, unless otherwise authorised in writing by the MFSA, appoint the service providers selected for it by its RICC, under the same terms and conditions as shall have been approved by the MFSA for this purpose.
- 5.05 An IC shall have the same registered office as its RICC at all times.
- 5.06 Each IC shall be regulated by its own memorandum and articles of association. Each of the instruments of incorporation or any changes thereto must be endorsed by the RICC. No changes to the instruments of incorporation of the IC shall be effected except as approved by resolution of the board of directors of the IC and the RICC and in accordance with the Rules applicable to such schemes.
- 5.07 Each IC must issue its own offering document which may either be based on the standard form used by ICs that belong to the same RICC or specific to the particular IC:

Provided that no offering document or changes thereto shall be issued by the IC unless it has first been approved by the RICC and the MFSA.
- 5.08 An IC that has been granted or has applied for a collective investment scheme licence may apply for admissibility to listing with the Listing Authority¹.
- 5.09 The directors of an IC are not required to be the same as those of the RICC. However the RICC and the IC must have at least one common director. The MFSA may require that directors with different competencies sit on the different boards of directors of the ICs. The common director shall report to the board of directors of the RICC on a regular basis and must provide the RICC with any

¹ The MFSA is the Listing Authority in terms of the Financial Market Act, 1990.

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information that may be relevant to the fulfilment of the RICC's compliance obligations in relation to its ICs.

- 5.10 In addition to the obligations arising under the Companies Act, the IC shall notify the RICC and the MFSA within 14 days of a director of the IC being appointed or ceasing to be a director of the cell.
- 5.11 An IC may create sub-funds. In this regard, an IC is required to comply with Rule 4.16 of Part A of these Rules, as applicable.
- 5.12 Unless expressly prohibited by any rules, laws or regulations or by its instruments of incorporation, an IC shall be permitted to own shares in any other IC of its RICC subject to any conditions that may apply in terms of its licence.
- 5.13 An IC of an RICC shall also indicate in a suitable manner in all of its business letters and forms that it is an IC of a RICC and the name of the RICC.
- 5.14 No IC of a RICC shall transfer, relocate or convert itself in any other manner except as authorised by the competent authority and subject to any conditions which the latter deems fit to impose.
- 5.15 An IC shall apply for a collective investment scheme licence as if it were an independent scheme, provided that it shall also be required to provide the relevant endorsements, resolutions and other approvals from its RICC as required by the applicable Rules and Regulations and will be required to comply with Part A of these Rules, as applicable.
- 5.16 On application, the IC must provide information on any departure from the standard model agreements endorsed by the RICC.
- 5.17 An IC must provide a draft copy of its agreement with the RICC referred to in section 3 of Part BIII of the Investment Services Rules for Recognised Persons.
- 5.18 The IC must inform its RICC of any departure from any standard model agreement and must submit the relevant changes to the MFSA for approval.
- 5.19 The MFSA shall only grant a collective investment scheme licence to an IC if it is satisfied that the scheme will comply in all respects with the provisions of the Investment Services Act, the relevant Regulations and the applicable Investment Services Rules issued thereunder.
- 5.20 An IC of a RICC shall pay the licencing and supervision fees applicable to an AIF as stipulated the Investment Services Act (Licence) Regulations. Sub-funds of the

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IC shall pay the licensing and supervision fees applicable to sub-funds of a collective investment scheme in terms of the same Regulations.

6. ADDITIONAL RULES APPLICABLE TO SCHEMES USING TRADING COMPANIES/SPECIAL PURPOSE VEHICLES (“SPVS”) FOR INVESTMENT PURPOSES

- 6.01 The SPVs must be established in Malta or in a jurisdiction which is not an FATF Blacklisted country.
- 6.02 The scheme shall – through its directors or general partner(s) – at all times maintain the majority directorship of any SPV.
- 6.03 The scheme shall ensure that the investments effected through any SPV are in accordance with the investment objectives, policies and restrictions of the scheme.