

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

CONSULTATION DOCUMENT

CONSULTATION ON THE PROPOSED REVISED RULEBOOKS APPLICABLE TO COLLECTIVE INVESTMENT SCHEMES

[MFSA REF.: 15-2016]

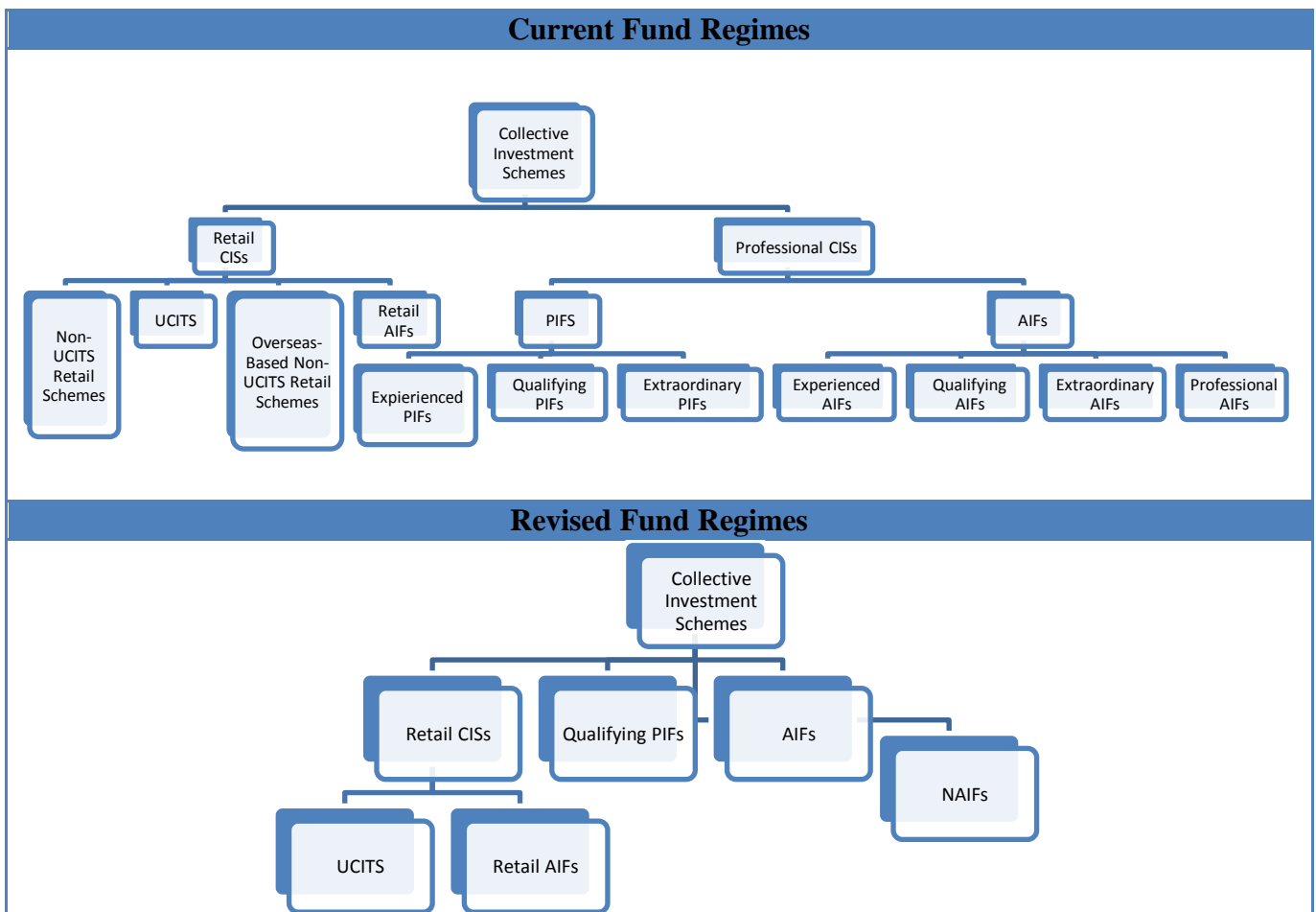
23 November 2016

Closing Date: 5 January 2017

1. Introduction

On 1 April 2016, the Authority announced the intention to consolidate and reduce the number of fund frameworks which were available to fund promoters in terms of the Investment Services Act and the applicable Investment Services Rules. This announcement was further followed by a Circular to the industry outlining the manner in which the fund frameworks will be consolidated and reduced.

The table below outlines the manner in which the Authority has consolidated the fund frameworks:



2. Purpose of this consultation exercise

The purpose of the consultation exercise is to provide the industry with the revised versions of the rulebooks and forms and to solicit any feedback which it may have in this regard. These Rulebooks are also being reviewed internally and at the end of the whole process all feedback will be collated. This consultation exercise will run till **5 January 2017**. The new Rulebooks will come into force on the date of publication thereof.

The following sections will provide an outline of the new proposed Rulebooks. In particular, the following have been revised/introduced in the Rulebooks:

- The term ‘SLC’ is being replaced with ‘Rule’;
- The term ‘custodian’ is being replaced with ‘depository’;
- Parts A of all Rulebooks has been restructured and is broadly standard in all three Rulebooks. In particular, the section dealing with the application process has been revised and now incorporates a three-month period during which the ‘in principle’ approval granted by the Authority will be valid.
- Schedule A (Application Form) has been revised considerably taking into account all the developments relating to EUVECAs, EUSEFs and ELTIFs where applicable. The content of the new Application Forms will be outlined during the session which the Authority will be holding for the industry on 2 December 2016.
- The Authority is proposing to revise the Competence Form and the PQ and to merge the former in the PQ. The revised PQ is not being issued for consultation since this document is still currently being finalised;
- Schedule B of the Investment Services Rules for Retail Collective Investment Schemes which provided the form relating to the application for a licence to operate as an overseas based retail collective investment scheme has been deleted;
- A chapter on the duties of the governing body of the scheme has been introduced in all the Parts B of the Rulebooks. Furthermore a requirement has been included to the effect that the governing body of the scheme must at all times have one or more members independent from the fund manager and the depository and that it shall be composed of at least three members one of whom must be resident in Malta;
- The definition of ‘Qualifying Investor’ has been revised as indicated in the circular dated 26 May 2016;
- The requirements included in the MFSA Circular dated 19 August 2016 outlining the documentation which must accompany correspondence to the Authority in specific instances such as inter alia resignations and requests for derogations have been included in the Parts B of all the Rules.

The documents which are being issued for consultation bear track changes and comments to evidence any changes from the Rulebooks which are currently applicable to the new Rulebook.

Licence holders are to note that collective investment schemes which had been granted a licence prior to the publication of the new Rulebooks will continue to be regulated by the Rulebooks which are currently in force. Nonetheless, these Rulebooks are also being reviewed and any changes will be subject to a second consultation exercise which will be launched shortly.

3. Part A of the Rulebooks

The table below indicates the manner in which Part A of the Rulebooks is being structured:

- *Regulation of collective investment schemes in terms of the Investment Services Act* – This section gives a brief overview of the provisions of the Act and the licencing requirement pursuant to the provisions of the Act;
- *Criteria which the MFSA will apply in considering an application for a licence and ongoing regulatory requirements* – This section deals with the requirements of fitness and probity which the Authority applies at application stage and on an ongoing basis;
- *Service Providers* – This section outlines the service providers which must be appointed to service the scheme.
- *Applications for a Collective Investment Scheme Licence* – This section provides an overview of the application process and the application documents required. It also deals with licencing of additional sub-funds of an existing scheme and applications for the approval of additional classes of shares/units of an existing scheme;
- *Cessation of a collective investment scheme licence* – This section provides for the procedure applicable where a scheme intends surrendering its collective investment scheme licence;
- *Fees* - This section provides for the fees payable in terms of the Investment Services Act (Fees) Regulations. In this regard, reference is made to the Legal Notice 371 of 2016 which has introduced the concept of Retail AIFs and the application/supervisory fees applicable thereto.

4. Investment Services Rules for Retail Collective Investment Schemes

During the 1 April 2016 session with the industry, the Authority informed the industry that the regime relating to the authorisation of Non-UCITS retail schemes would be gradually phased out and that with effect from 3 June 2016, it would not issue any new collective investment scheme licences under this category. This was further confirmed in the circular dated 26 May 2016.

In a bid to provide an alternative to this regime, the Authority is proposing to replace the Non-UCITS Retail Schemes regime with Retail AIFs, whilst retaining the UCITS regime.

In relation to the regime dealing with Overseas Based Non-UCITS Retail Schemes, the Authority has communicated with the local representatives of Overseas Based non-UCITS Retail Schemes for the purposes of clarifying the regulatory status of these schemes post-AIFMD transposition.

The following table provides an overview of the contents of the proposed Investment Services Rules for Retail Collective Investment Schemes.

Contents	Comments
<i>PART A – THE APPLICATION PROCESS</i>	
Part A – The application process	Part A has been revised to deal with the licencing process applicable to UCITS and Retail AIFs. Furthermore, any reference to Overseas Based Non-UCITS Retail Schemes has been removed since this is regime has been phased out.
Schedule A – Application for a licence to operate as a Malta-based retail collective investment scheme	Schedule A has been revised to deal with UCITS and Retail AIFs.
Schedule B – Notification letter for the marketing of unit or shares of EU AIFs in Member States other than the home Member State of the AIFM	Schedule B was sourced from the Investment Services Rules for Alternative Investment Funds.
<i>Schedule B has not undergone any changes and therefore does not form part of this consultation process.</i>	
Schedule C – Notification letter to be submitted by a Maltese UCITS Scheme wishing to market its units in a host Member State	Schedule C featured in the original Rulebook.
<i>Schedule C has not undergone any changes and therefore does not form part of this consultation process.</i>	
Schedule D – National rules for marketing of European UCITS Schemes in Malta	Schedule D featured in the original Rulebook.
<i>Schedule D has not undergone any changes and therefore does not form part of this consultation process.</i>	
<i>PART B – STANDARD LICENCE CONDITIONS</i>	
Part BI – Rules applicable to Malta-based retail Alternative Investment Funds	Part BI has been reviewed to outline the Rules applicable to Retail AIFs. It has replaced the former Part BI which dealt with Non-UCITS Retail Schemes.

Part BII – Rules applicable to Malta-based UCITS Collective Investment Schemes	Part BII featured in the original Rulebook. There have been some changes in relation to the structure of this Section of the Rulebook.
Appendix I – Contents of the prospectus <ul style="list-style-type: none"> ○ Annex I includes information to be included in the prospectus of a Retail AIF; ○ Annex II includes information to be included in the prospectus of a Maltese UCITS Scheme. 	Appendix I featured in the original Rulebook. However the section which was applicable to Non-UCITS Retail Schemes has been replaced with the content of Appendix 4 of the AIF Rulebook. Appendix 4 which outlined the contents of the prospectus was applicable exclusively to Retail AIFs.
Appendix II: Contents of the financial statements of UCITS	Appendix II featured in the original Rulebook and is applicable exclusively to UCITS Schemes
<i>Appendix II has not undergone any changes and therefore does not form part of this consultation process.</i>	
Appendix III: Contents of the constitutional documents	The Rules included in Appendix III featured in the original Rulebook as well as in the Investment Services Rules for Alternative Investment Funds. This Appendix has been retained and has been made applicable to both UCITS and Retail AIFs.
<i>Appendix III has not undergone any changes and therefore does not form part of this consultation process.</i>	
Appendix IV: Distribution of income	The Rules included in Appendix IV featured in both the original Rulebook as well as in the Investment Services Rules for Alternative Investment Funds. This Appendix has been retained and has been made applicable to both UCITS and Retail AIFs.
<i>Appendix IV has not undergone any changes and therefore does not form part of this consultation process.</i>	
Appendix V: Rules applicable to Retail AIFs and UCITS Schemes adopting different structures	<p>The information which is included in Appendix V featured in the original Part BII in Sections 14, 15, 17 and 18.</p> <p>The Investment Services Rules for Alternative Investment Funds also made provision for these Rules in Appendix I thereof.</p> <p>Appendix V incorporates all these Rules and it has been made applicable to both UCITS and Retail AIFs.</p>
Appendix VI: Additional rules on risk management, counterparty risk exposure and issuer concentration applicable to Maltese UCITS Schemes	This Appendix featured in the original Rulebook and has been retained.

<i>Appendix VI has not undergone any changes and therefore does not form part of this consultation process.</i>	
Appendix VII: Additional Rules applicable to schemes set up as money market funds	This Appendix featured in the original Rulebook as well as in the Investment Services Rules for Alternative Investment Funds. It has been retained and made applicable to both UCITS Schemes and Retail AIFs.
Appendix VIII: Additional Rules applicable to self-managed UCITS Schemes	This Appendix featured in the original Rulebook. It has been reviewed to include the Rules which were included in Part BII and which applicable to self-managed UCITS.
Appendix IX: Additional rules applicable to self-managed retail AIFs	The Rules included in this Appendix were originally included in Part B of the Investment Services Rules for Alternative Investment Funds. The Rules have been reviewed and have been included in this Appendix. Appendix IX is further supplemented by the templates applicable in relation to the reporting obligations in terms of the AIFMD.
Appendix X: Complaints handling	The Rules included in this Appendix featured in the original Rulebook and is applicable to both UCITS and Retail AIFs.

5. Investment Services Rules for Professional Investor Funds

Currently, the Professional Investor Fund regime (PIFs) counts three categories of PIFs namely: [i] PIFs targeting Experienced Investors; [ii] PIFs targeting Qualifying Investors and [iii] PIFs targeting Extraordinary Investors.

In the circular dated 26 May 2016, the Authority announced that with effect from 3 June 2016 it would not issue any collective investment scheme licence for PIFs targeting Experienced and Extraordinary investors.

The following table provides an overview of the contents of the proposed Investment Services Rules for Professional Investor Funds.

Contents	Comments
<i>PART A – THE APPLICATION PROCESS</i>	
Part A – The application process	Part A has been revised to deal solely with PIFs targeting qualifying investors. Part A of this Rulebook also refers to European Venture Capital Funds and European Social Entrepreneurship Funds.

Schedule A – Application for a collective investment scheme licence for Professional Investor Funds	Schedule A has been revised as indicated above.
<i>PART B – STANDARD LICENCE CONDITIONS</i>	
Part B – Rules applicable to Professional Investor Funds targeting Qualifying Investors	Part B has carried forward the previous requirements which were applicable to Qualifying PIFs. There have also been changes to the definition of Qualifying Investor and these have been reflected in Part B.
Appendix I – Rules applicable to Qualifying Investor PIFs adopting different structures <ul style="list-style-type: none"> ○ Annex I includes AIFM-specific information to be reported (Article 3(3) AIFMD) ○ Annex II includes AIF-specific information to be reported (Article 3(3) AIFMD) 	Appendix I featured in the original Rulebook. It also includes the requirements applicable to self-managed PIFs and hence incorporates the AIFMD reporting templates.
Appendix II: Contents of the offering document	Appendix II featured in the original Rulebook. Any parts dealing with Experienced or Extraordinary PIFs have been removed.
Appendix III: Qualifying Investor Declaration Form	Appendix III has been reviewed to retain the Qualifying Investor Declaration Form
Appendix IV: Additional rules applicable to PIFs established as money market funds	Appendix IV featured in the original Rulebook and has been retained.
Appendix V: Guidance for AIFMs managing PIFs	This Appendix featured in the original Rulebook.

6. Investment Services Rules for Alternative Investment Funds

Currently, apart from the retail AIFs (discussed in Section 3 of this Consultation Document), the AIF regime also makes provision for the following categories of AIFs: [i] AIFs targeting Experienced Investors; [ii] AIFs targeting Qualifying Investors; [iii] AIFs targeting Extraordinary Investors; and [iv] AIFs targeting Professional Investors.

In the circular dated 26 May 2016, the Authority announced that it was restricting the categories of AIFs to two namely: [i] AIFs targeting Professional Investors as defined in MiFID; and [ii] AIFs targeting Qualifying Investors.

The following table provides an overview of the contents of the proposed Investment Services Rules for Alternative Investment Funds:

Contents	Comments
<i>PART A – THE APPLICATION PROCESS</i>	
Part A – The application process	Part A has been revised in view of the different categories of AIFs now available. Reference is also made to European Venture Capital Funds, European Social Entrepreneurship Funds and European Long Term Investment Funds
Schedule A – Application for a collective investment scheme licence to operate as an Alternative Investment Fund	Schedule A has been revised considerably.
Schedule C – Notification letter for the marketing of units or shares of EU AIFs in Member States or EEA States other than the home Member State of the AIFM	Schedule C featured in the original Rulebook
<i>Schedule C has not undergone any changes and therefore does not form part of this consultation process.</i>	
<i>PART B – STANDARD LICENCE CONDITIONS</i>	
Part B – Rules applicable to Alternative Investment Funds	Part B has been revised in view of the different categories of AIFs now available. In particular all the Rules applicable to Retail AIFs have been deleted.
Appendix I – Additional rules applicable to AIFs adopting different structures.	The Rules included in Appendix I already featured in the former Rulebook. The Rules have been reviewed.
Appendix II: Additional rules applicable to schemes established as money market funds	The Rules incorporated in Appendix II already featured in the former Rulebook. These Rules have been incorporated in an ad hoc Appendix on money market funds. This Appendix is standard in all Rulebooks.
Appendix III: Contents of the Offering Document	Appendix III featured in the original Rulebook. This Appendix has undergone considerable changes.
Appendix IV: Remuneration Policy	This Appendix featured in the original Rulebook.
<i>Appendix IV has not undergone any changes and therefore does not form part of this consultation process.</i>	
Appendix V: Disclosure requirements applicable to self-managed AIFs	This Appendix featured in the original Rulebook.
<ul style="list-style-type: none"> ○ Annex I includes AIFM-specific information to be reported (Article 3(3) and Article 24(1) AIFMD) ○ Annex II includes AIF-specific information to be reported (Article 3(3) and 24(1) AIFMD) ○ Annex III includes AIF- specific information to be reported (Article 24(2) AIFMD) 	

<ul style="list-style-type: none"> ○ Annex IV includes AIF-specific information to be reported (Article 24(4) AIFMD) 	
<p>Appendix VI – Declaration Forms</p>	<p>Appendix VI has been revised in view of the different categories of AIFs now available.</p>

7. Contacts

Interested parties are to send their comments in writing by not later than **Thursday 5 January 2017**.

The Authority will also be holding an information session with the industry to outline the changes in the authorisation process. This information session will be held on **2 December 2016**.

Any comments and feedback are to be addressed to Dr. Isabelle Agius, Senior Manager, Authorisation Unit on iagius@mfsa.com.mt or Ms. Judy Catania, Analyst on jcatania@mfsa.com.mt

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