**INVESTMENT SERVICES RULES FOR ALTERNATIVE INVESTMENT FUNDS**

**PART B: STANDARD LICENCE CONDITIONS**

**Appendix 1**

**Supplementary Licence Conditions applicable to Alternative Investment Funds adopting different structures**

1. **Introduction**
   1. The supplementary licence conditions prescribed in this Appendix are applicable to Maltese AIFs whether these are third-party managed or self-managed AIFs in terms of Part B of these Rules.
2. **Supplementary Conditions for AIFs established as Limited Partnerships**
   1. The AIF 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).

Provided that 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.

* 1. General Partners shall be persons falling within any one of the following categories:

1. a company licensed under the Investment Services Act, 1994, for the provision of fund management services; or
2. a company falling within the exemptions applicable to overseas fund managers; or
3. any other entity of sufficient standing and repute as approved by the MFSA;
4. any other individual who satisfies the fit and proper test.

Where the General Partner falls under (iii) and (iv) above, and in the absence of a Manager (as per (i) or (ii)) acting as an additional General Partner, the AIF shall appoint a Manager acceptable to the MFSA.

* 1. The AIF 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:

1. the name and role of the general partner departing;
2. the reason of departure i.e. resignation, dismissal, re-organisation etc.;
3. the effective date of resignation;
4. the proposed replacement.

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

1. whether the departure has any regulatory implications, or if otherwise, to provide any relevant details;
2. 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 MFSA together with the scheme’s notification of departure.

An e-mail notification of resignation shall be sent to the MFSA on [ausecurities@mfsa.com.mt](mailto:ausecurities@mfsa.com.mt). This e-mail shall be followed up by the submission of original and hard copies to the MFSA.

The scheme shall ensure that the relevant forms related to the departure and approval of officials, where applicable, are filed with the Registry of Companies.

* 1. The MFSA shall be entitled 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 AIF.
  2. Where applicable, the AIF, or the AIFM or Administrator on behalf of the AIF, is required to disclose to potential investors, the identity of the beneficial owners of the General Partner(s) upon request.

1. **Supplementary Conditions for AIFs established as Investment Companies** 
   1. The AIF shall at all times have one or more Directors independent from the AIFM and the Custodian.
   2. The AIF shall obtain the written consent of the MFSA before the appointment or replacement of a Director provided that the AIF shall not appoint a Corporate Director unless such Corporate Director is regulated in a recognized jurisdiction.
   3. 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.
   4. Where the AIF has issued “Voting Shares” to the promoters and “non-Voting Shares” to Professional Investors, any changes in the beneficial ownership of the “Voting Shares” of the AIF shall be subject to the prior approval of the MFSA. The AIF, or the AIFM or Administrator on behalf of the AIF, is required to disclose to potential investors, the identity of the beneficial owners of the “Voting Shares” upon request.
   5. The AIF shall act honestly, fairly and with integrity – in the best interests of its investors/shareholders and of the market. Such action shall include:
2. 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:
   1. 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 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;
   2. 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;
   3. 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;
   4. the minutes of the meeting should accurately record the sequence of such events.
3. abiding by all relevant laws and regulations, including in respect of prevention of money laundering;
4. not making any claim of independence or impartiality which is untrue or misleading; and

not making misleading or deceptive representations to investors.

1. **Supplementary Conditions regarding the use of Trading Companies/Special Purpose Vehicles (“SPVs”) for investment purposes**
   1. The SPVs must be established in Malta or in a jurisdiction which is not an FATF Blacklisted country.
   2. The AIF shall – through its directors or general partner(s) – at all times maintain the majority directorship of any SPV.
   3. The AIF shall ensure that the investments effected through any SPV are in accordance with the investment objectives, policies and restrictions of the AIF.
2. **Supplementary Conditions for AIFs set up as Incorporated Cell Companies with Incorporated Cells (ICC)**
   1. Both the Incorporated Cell Company and the individual incorporated cells shall be licenced by the MFSA.
   2. The Incorporated Cell Company and the individual incorporated cells shall have at least one common director between them.
   3. The Incorporated Cell Company and the individual incorporated cells shall have a common registered office.
3. **Supplementary Conditions for AIFs established as Incorporated Cells (‘IC’) under a Recognised Incorporated Cell Company (‘RICC’)**
   1. Incorporated Cells (‘IC’) set up under a Recognised Incorporated Cell Company (‘RICC’) in terms of the Companies Act (Recognised Incorporated Cell Companies) Regulations, 2012 may be set up as:
4. an investment company with variable share capital (SICAV) in terms of the Companies Act (Chapter 386 of the Laws of Malta); or
5. an investment company with fixed share capital in terms of the Companies Act (Chapter 386 of the Laws of Malta).
   1. 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 should be approved by the RICC.
   2. 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 incorporated cells set up under the same RICC. However, in any case, the investment manager appointed has to be approved by both the RICC and the MFSA.
   3. 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 Authority for this purpose.
   4. An IC shall have the same registered office as its RICC at all times.
   5. Each IC is regulated by its own Memorandum and Articles of Association. Each of the constitutional documents or any changes thereto must be endorsed by the RICC. No changes to the constitutional documents 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 Standard Licence Conditions applicable to such AIFs.
   6. Each IC must issue its own Offering Document which may either be based on the standard form used by incorporated cells that belong to the same RICC or specific to the particular incorporated cell. 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.
   7. An IC that has been granted or has applied to be licenced as an AIF may apply for admissibility to listing with the Listing Authority (the MFSA is the Listing Authority in terms of the Financial Market Act, 1990).
   8. 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 incorporated cells. The common director shall report to the Board of the RICC on a regular basis and must provide the RICC with any information that may be relevant to the fulfilment of the RICC’s compliance obligations in relation to its incorporated cells.
   9. 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.
   10. An IC may create sub-funds. In this regard, an IC is required to comply with Section 6.3 of Part A of the Investment Services Rules for Alternative Investment Funds, as applicable.
   11. Unless expressly prohibited by any rules, laws or regulations or by its articles of association, 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.
   12. In addition to the requirements of article 6 of the Companies Act, 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.
   13. 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.
   14. An IC shall be set up as an AIF and shall be licenced as such as if it were an independent fund, 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 the Investment Services Rules for Alternative Investment Funds, as applicable.
   15. On application, the IC must provide information on any departure from the standard model agreements endorsed by the RICC.
   16. 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.
   17. 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.
   18. The MFSA may only licence an IC as an AIF if it is satisfied that the AIF will comply in all respects with the provisions of the Investment Services Act, the relevant Regulations and MFSA Rules and Standard Conditions.
   19. An IC of a RICC shall pay the licencing and supervision fees applicable to an AIF as stipulated the Investment Services Act (Licence and Other Fees) Regulations. Sub-funds of the IC shall pay the licensing and supervision fees applicable to sub-funds of an AIF in terms of the same Regulations.
6. **Supplementary Conditions for AIFs operating as Money Market Funds** 
   1. An AIF operating as a Money Market Fund:
7. shall comply with the provisions of the Act, the applicable conditions prescribed in Parts A and B of these Rules as well as the Supplementary Licence Conditions prescribed in this section; and
8. have the primary objective of maintaining the principal investment of the fund and shall aim to provide a return in line with money market rates.

Furthermore, MFSA shall not allow a fund to include the term “money market fund” in its name unless the fund adheres with the supplementary licence conditions prescribed in this section.

* 1. An AIF shall provide appropriate information to investors on the risk and reward profile of the AIF so as to enable them to identify any specific risks linked to the investment strategy of the AIF.
  2. An AIF shall indicate, in its prospectus drawn up in accordance with the Investment Services Act (Prospectus of Collective Investment Schemes) Regulations, 2005, whether it is a Short-Term Money Market Fund or a Money Market Fund.
  3. An AIF shall invest in money market financial instruments which comply with the criteria prescribed hereunder in SLC 7.05 or in deposits with credit institutions.
  4. An AIF shall only invest in the following types of money market financial instruments:
     1. Money market financial instruments admitted to or dealt in on a Maltese regulated market which has been granted authorisation in terms of the Financial Markets Act (Cap. 345) and which appears on the list of regulated markets prepared and published by the European Commission;
     2. Money market financial instruments dealt in on another regulated market in another Member State or EEA State, which operates regularly and is recognised and open to the public and which appears on the list of regulated markets prepared and published by the European Commission;
     3. Money market financial instruments admitted to official listing on a stock exchange in a third country or dealt in on another regulated market in a third country which operates regularly and is recognised and open to the public provided that the choice of stock exchange or market has been approved by the competent authorities or is provided for in law or the fund rules or the instruments of incorporation of the investment company;
     4. Money market financial instruments issued or guaranteed by a central, regional or local authority or central bank of a Member State, the European Central Bank, the Community or the European Investment Bank, a third country or by a public international body to which one or more Member States belong;
     5. Money market financial instruments issued by an undertaking any securities of which are dealt in on regulated markets referred to in points (a), (b) or (c);
     6. Money market financial instruments issued or guaranteed by an establishment subject to prudential supervision, in accordance with criteria defined by Community law, or by an establishment which is subject to and complies with prudential rules considered by the competent authorities to be at least as stringent as those laid down by Community law;
     7. Money market financial instruments issued by other bodies belonging to the categories approved by the competent authority of the home Member State provided that investments in such instruments are subject to investor protection equivalent to that laid down in points (d), (e) or (f) and provided that the issuer is a company whose capital and reserves amount to at least € 10,000,000 and which presents and publishes its annual accounts in accordance with Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies, and is an entity which, within a group of companies which includes one or several listed companies, is dedicated to the financing of the group or is an entity which is dedicated to the financing of securitisation vehicles which benefit from a banking liquidity line.
  5. The money market financial instruments in which an AIF invests shall be of high quality, as determined on the basis of, inter alia, the following factors by the management company:
     1. The credit worthiness of the financial instrument shall be that of a money market financial instrument of high quality;
     2. The nature of the asset class represented by the money market financial instrument;
     3. For structured financial instruments, the operational and counterparty risk inherent within the structured financial transaction; and
     4. The liquidity profile of the money market financial instrument.
  6. For the purposes of paragraph (a) of SLC 7.06 above, ensure that the fund manager performs its own document assessment of the credit quality of the money market instruments that allows it to consider a money market instrument as high quality. Where one or more credit rating agencies registered and supervised by ESMA have provided a rating of the instrument, the fund manager’s internal assessment should have regard to, inter alia, those credit ratings. Where there should be no mechanistic reliance on such external ratings, a downgrade below the two highest short-term credit ratings by any agency registered and supervised by ESMA that has rated the instrument should lead the fund manager to undertake a new assessment of the credit quality of the moment market instrument to ensure it continues to be of high quality.
  7. An AIF shall have no direct or indirect exposure to equity or commodities, including by virtue of derivatives, and shall only use derivatives in line with the AIF’s money market investment strategy.
  8. Where derivatives which give exposure to foreign exchange are used in accordance with SLC 7.08, such derivatives shall only be used for hedging purposes.
  9. An AIF may invest in non-base currency financial instruments, but shall ensure that the currency exposure is fully hedged.
  10. An AIF shall carry out and issue daily net asset value and price calculations, and provide for daily subscription and redemption of units.
  11. Where an AIF is marketed solely as an employee savings scheme to a specific category of investors and is subject to divestment restrictions, it may provide weekly subscription and redemption of units.
  12. When calculating the weighted average life for securities, including structured financial instruments, an AIF shall base the maturity calculation on the legal residual maturity of the financial instruments until the legal redemption of the instruments.
  13. Where a financial instrument embeds a put option, the exercise date of the put option may be used instead of the legal residual maturity of the financial instrument, subject to the following conditions:
      1. The put option may be freely exercised by the management company at its exercise date;
      2. The strike price of the put option shall remain close to the expected value of the financial instrument at the next exercise date; and
      3. The investment strategy of the AIF gives an indication that there is a high probability of the option being exercised at the next exercise date.
  14. When calculating its weighted average life, an AIF shall take into account the impact of financial derivative instruments, deposits and efficient portfolio management techniques.
  15. An AIF shall only invest in securities with a residual maturity until the legal redemption date of less than or equal to two years:

Provided that, the time remaining until the next interest rate reset date shall be less than or equal to three hundred and ninety-seven days.

* 1. Floating rate securities shall reset to a money market rate or index.
  2. An AIF shall have a portfolio of investments which has a weighted average maturity of not more than six months and a weighted average life of not more than twelve months and shall take into account the impact of financial derivative instruments, deposits and efficient portfolio management techniques for both its weighted average maturity and weighted average life calculations.
  3. An AIF shall only invest in other AIFs which are labelled or marketed as Short-Term Money Market Funds or Money Market Funds.
  4. Without prejudice to SLC 7.06(a), an AIF may hold sovereign issuance of a lower internally-assigned credit quality based on the documented assessment of credit quality of the fund manager of the AIF. Where one or more credit rating agencies registered and supervised by ESMA have provided a rating of the instrument, the fund manager’s internal assessment should have regard to, inter alia, those credit ratings. While there should not be mechanistic reliance on such external ratings, a downgrade below investment grade or any other equivalent rating grade by any agency registered and supervised by ESMA that has rated the instrument should lead the fund manager to undertake a new assessment of the credit quality of the money market instrument to ensure it continues to be of appropriate quality. ‘Sovereign issuance’ should be understood as money market instruments issued or guaranteed by a central, regional or local authority or central bank of a Member State, the European Central Bank, the European Union or the European Investment Bank.
  5. An AIF shall have a fluctuating net asset value.

**Supplementary Conditions for AIFs set up as Short Term Money Market Funds**

* 1. In addition to the general requirements prescribed in SLCs 9.01 to 9.15 above, an AIF set up as a Short-Term Money Market Fund shall also comply with the following requirements.
  2. An AIF shall only invest in securities with a residual maturity until the legal redemption date which is less than or equal to three hundred and ninety-seven days.
  3. An AIF shall have a portfolio of investments with a weighted average maturity of not more than sixty days and a weighted average life of not more than one hundred and twenty days, and shall take into account the impact of financial derivative instruments, deposits and efficient portfolio management techniques for both its weighted average maturity and weighted average life calculations.
  4. An AIF shall only invest in other AIFs which are labelled or marketed as Short-Term Money Market Funds.
  5. An AIF shall have either a constant or a fluctuating net asset value.
  6. A constant NAV money market fund accounts for portfolio holdings at amortised cost. As set out in CESR’s Guidelines concerning eligible assets for UCITS, strict requirement apply to credit quality, sensitivity to market parameters, diversification and maturity of these holdings and the portfolio must be market to market on a regular basis.
  7. Variable net asset value money market funds account for portfolio holdings at market value, although instruments which comply with the amortisation method requirements specified in the CESR Guidelines concerning eligible assets for UCITS may be valued at amortised cost.