**INVESTMENT SERVICES RULES FOR PROFESSIONAL INVESTOR FUNDS**

**PART B: STANDARD LICENCE CONDITIONS**

**Part BIII: Professional Investor Funds targeting Extraordinary Investors**

|  |  |
| --- | --- |
| |  | | --- | | **Applicability of Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European Venture Capital Funds and of Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April on European Social Entrepreneurship Funds**  Where the Scheme is established as:   1. a European Venture Capital Fund in terms of Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European Venture Capital Funds; or 2. a European Social Entrepreneurship Fund in terms of Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European Social Entrepreneurship Funds;   it shall refer to and comply with the applicable provisions of the aforementioned Regulations as well as the SLCs prescribed in this Rulebook.  In the case of conflict between these Rules and the provisions prescribed in the aforementioned EU Regulations, the provisions of the latter shall prevail. | |
| * 1. Apart from the conditions listed in this section, where the Scheme is established in the form of a limited partnership or an investment company, it shall also be subject to the supplementary conditions for Schemes established as limited partnerships or as investment companies – as applicable – set out in Appendix I. In the case of umbrella schemes, reference to “the Scheme” shall be construed, where applicable, as reference to the sub-funds of the Scheme. |
|  |
| * 1. The MFSA shall be entitled to be satisfied, on a continuing basis, of the fitness and properness of any party appointed by the Scheme. |
|  |
| * 1. Apart from being constituted as a Professional Investor Fund, the Scheme shall not carry out any activity for which a licence is required, unless prior approval is obtained from the MFSA. The MFSA may in such circumstances, request such additional information and impose such additional conditions it deems appropriate. |
|  |
| * 1. The MFSA has the right, from time to time, and following advance notification to the Scheme, to vary or revoke any licence condition or to impose any new conditions. |
|  |
| **Manager** |
|  |
| * 1. The Scheme shall appoint a third-party manager approved by the MFSA with responsibility for the discretionary investment management of the assets of the Scheme:   Provided that, where a third-party manager is not appointed, the supplementary conditions applicable to self-managed schemes set out in SLCs 4.2 to 4.15 of Appendix I shall apply *in lieu* of SLCs 1.6 and 1.7 below; |
|  |
| Provided further that PIFs which are self-managed and which qualify for the *de minimis* exemption prescribed therein shall also be subject to SLC 4.1 of Appendix 1. |
|  |
| * 1. The manager shall have the business organisation, systems, experience and expertise deemed necessary by the MFSA for it to act as manager. The Scheme shall be required to satisfy the MFSA that the proposed manager meets the above requirements. |
|  |
| * 1. The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of any party to act in the capacity of manager to the Scheme. The MFSA reserves the right to object to the proposed replacement or appointment and to require such additional information it considers appropriate |
|  |
| **Administrator** |
|  |
| * 1. The Scheme may appoint an administrator. Where an administrator is not appointed, the manager shall be responsible for the administration function. |
|  |
| * 1. The administrator shall have the business organisation, systems, experience and expertise deemed necessary by the MFSA for it to act as administrator. The Scheme shall satisfy the MFSA that the proposed administrator meets the above requirements. |
|  |
| * 1. The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of any party to act in the capacity of administrator to the Scheme. The MFSA reserves the right to object to the proposed replacement or appointment and to require such additional information it considers appropriate. |
|  |
| **Investment adviser** |
|  |
| * 1. The Scheme may appoint an investment adviser. The investment adviser shall have the business organisation, systems, experience and expertise deemed necessary by the MFSA for it to act as investment adviser. The Scheme shall satisfy the MFSA that the proposed investment adviser meets the above requirements. |
|  |
| * 1. The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of any party to act in the capacity of investment adviser to the Scheme. The MFSA reserves the right to object to the proposed replacement or appointment and to require such additional information it considers appropriate. |
|  |
| **Custodian** |
|  |
| * 1. The assets of the Scheme shall be subject to adequate safekeeping arrangements. The Scheme may entrust its assets to a custodian or prime broker for safekeeping. In the absence of an appointed custodian, the Scheme will be responsible for the establishment of proper arrangements for the safekeeping of its assets. Such arrangements shall be described in the offering document/ marketing document and shall be subject to MFSA approval. |
|  |
| * 1. The custodian, where appointed, shall be regulated by the provisions of the Investment Services Act (Custodians of Collective Investment Schemes) Regulations. |
|  |
| * 1. The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of any party to act in the capacity of custodian or prime broker to the Scheme. The MFSA reserves the right to object to the proposed replacement or appointment and to require such additional information it considers appropriate. |
|  |
| **Local representative** |
|  |
| * 1. Where the Scheme’s service providers are all based outside Malta and where the Scheme has not appointed a local resident director (in the case of a Scheme set up as an investment company, or a local general partner (in the case of a Scheme set up as a limited partnership), or a local trustee (in the case of a Scheme set up as a unit trust or a common contractual fund), it shall be required to appoint a local representative. |
|  |
| * 1. The local representative shall be based in Malta and shall carry out the following functions: |
| 1. act as point of liaison between the MFSA and the Scheme; |
| 1. receive any instructions from the MFSA; |
| 1. provide any information to the MFSA as may be requested by the MFSA from time to time; |
| 1. to act as the Scheme’s money laundering reporting officer. |
|  |
| The local representative may also act as the Scheme’s compliance officer. |
|  |
| * 1. The local representative should have access to all records regarding the Scheme in order to be in a position to provide any documents or respond to any queries that the MFSA may have, as the need arises. |
|  |
| * 1. The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of any party to act in the capacity of local representative to the Scheme. The MFSA reserves the right to object to the proposed replacement or appointment and to require such additional information it considers appropriate. |
|  |
| **Compliance officer** |
|  |
| * 1. Responsibility for the Scheme’s compliance with its licence conditions rests with the governing body of the Scheme. |
|  |
| * 1. The Scheme shall at all times have a compliance officer. |
|  |
| * 1. The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of a compliance officer in advance. The request for consent of the appointment or replacement of a compliance officer shall be accompanied by a Personal Questionnaire (“PQ”), in the form set out in Schedule C to Part A of these Rules duly completed by the person proposed. The MFSA reserves the right to object to the proposed appointment or replacement and to require such additional information it considers appropriate. |
|  |
| * 1. The Scheme shall notify the MFSA of the resignation or removal of its compliance officer upon becoming aware of the proposed resignation or removal.   In particular, the notification submitted by the scheme shall include the following information:   1. the name and role of the official 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 director or senior manager, portfolio manager, compliance office, money laundering reporting officer and risk manager 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 Scheme shall require its compliance officer to prepare a “Compliance Report” at least on a six monthly basis, which shall be presented to the governing body of the scheme. |
|  |
| The “Compliance Report” should indicate any: |
| 1. breaches of the investment and borrowing restrictions; |
| 1. breaches to the provisions outlined in these Rules; |
| 1. complaints from unit-holders in the Scheme and the manner in which these have been handled; |
| 1. material valuation errors (higher than 0.5% of NAV) and the manner in which these have been handled; and |
| 1. material compliance issues during the period covered by the Compliance Report. |
|  |
| The “Compliance Report” shall also include a confirmation that all the local Prevention of Money Laundering requirements have been satisfied. This confirmation shall be obtained from the Scheme’s money laundering reporting officer. |
|  |
| * 1. A copy of the “Compliance Report” shall be held in Malta at the registered office of the Scheme and made available to the MFSA during compliance visits. |
|  |
| **Money laundering reporting officer** |
|  |
| * 1. Responsibility for the Scheme’s compliance with its prevention of money laundering obligations rests with the governing body of the Scheme. |
|  |
| * 1. The Scheme shall at all times have a money laundering reporting officer [‘MLRO’]. |
|  |
| * 1. The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of a MLRO in advance. The request for consent of the appointment or replacement of a MLRO, shall be accompanied by a Personal Questionnaire (“PQ”), in the form set out in Schedule C to Part A of these Rules duly completed by the person proposed. The MFSA reserves the right to object to the proposed appointment or replacement and to require such additional information it considers appropriate. |
|  |
| * 1. The Scheme shall notify the MFSA of the resignation or removal of its MLRO upon becoming aware of the proposed resignation or removal.   In particular, the notification submitted by the scheme shall include the following information:   1. the name and role of the official 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 director or senior manager, portfolio manager, compliance office, money laundering reporting officer and risk manager 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. |
| **Auditor** |
|  |
| * 1. The Scheme shall appoint an auditor approved by the MFSA. The Scheme shall replace its auditor if requested to do so by the MFSA. The MFSA’s consent shall be sought prior to the appointment or replacement of an auditor. |
|  |
| * 1. The Scheme shall make available to its auditor, the information and explanations he/ she needs to discharge his/ her responsibilities as an auditor and in order to meet the MFSA's requirements. |
|  |
| * 1. The Scheme shall not appoint an individual as an auditor, nor appoint an audit firm where the individual directly responsible for the audit, or his/ her firm is: |
| 1. a director, partner, qualifying shareholder, officer, representative or employee of the Scheme; |
| 1. a partner of, or in the employment of, any person in (a) above; |
| 1. a spouse, civil partner, parent, step-parent, child, step-child or other close relative of any person in (a) above; |
| 1. a person who is not otherwise independent of the Scheme; or |
| 1. a person disqualified by the MFSA from acting as an auditor of a Scheme. |
|  |
| For this purpose an auditor shall not be regarded as an officer or an employee of the Scheme solely by reason of being auditor of that Scheme. |
|  |
| * 1. The Scheme shall obtain from its auditor a signed letter of engagement defining clearly the extent of the auditor's responsibilities and the terms of his appointment. The Scheme shall confirm in writing to its auditor its agreement to the terms in the letter of engagement. |
|  |
| * 1. The letter of engagement shall include terms requiring the auditor: |
| 1. to provide such information or verification to the MFSA as the MFSA may request; |
| 1. to afford another auditor all such assistance as he/ she may require; |
| 1. to vacate his/ her office if he/ she becomes disqualified to act as auditor for any reason; |
| 1. if he/ she resigns, or is removed or not reappointed, to advise the MFSA of that fact and of the reasons for his/ her ceasing to hold office. The auditor shall also be required to advise the MFSA if there are matters he/ she considers should be brought to the attention of the MFSA; |
| 1. in accordance with section 18 of the Act, to report immediately to the MFSA any fact or decision of which he/ she becomes aware in his/ her capacity as auditor of the Scheme which: |
| * is likely to lead to a serious qualification or refusal of his audit report on the accounts of the Scheme; or |
| * constitutes or is likely to constitute a material breach of the legal and regulatory requirements applicable to the Scheme in or under the Act; |
| * relates to any other matter which has been prescribed. |
|  |
| * 1. If at any time the Scheme fails to have an auditor in office for a period exceeding four weeks the MFSA shall be entitled to appoint a person to fill the vacancy; the fees and charges so incurred being payable by the Scheme. |
|  |
| * 1. In respect of each annual accounting period, the Scheme shall require its auditor to prepare a management letter in accordance with International Standards on Auditing. The management letter shall be sent to the MFSA. |
|  |
| **Investment objectives, policies and restrictions** |
|  |
| * 1. The Scheme shall be subject to the investment objectives, policies and restrictions outlined in its offering document/ marketing document. The manager or the Scheme shall take all reasonable steps to comply with the investment policies and restrictions of the Scheme. The manager or the Scheme shall not be bound to comply with the principle of risk spreading. |
|  |
| * 1. Changes to the investment policies and restrictions of the Scheme shall be notified to investors in advance of the change. |
|  |
| * 1. Changes to the investment objectives of the Scheme shall be notified to investors in advance of the change. The notice period should be sufficiently long to allow for redemption requests to be submitted by investors and processed prior to the change being effected. The change in the investment objectives should only become effective after all pending redemptions linked to the change in the investment objectives have been satisfied. Any applicable redemption fees would also need to be waived accordingly. |
|  |
| * 1. The following shall be the rules applicable in the event of an inadvertent breach of investment restrictions: |
| 1. if one or more of the Scheme’s investment restrictions are at any time contravened for reasons beyond the control of the manager or the Scheme, the manager or the Scheme must take such steps as are necessary to ensure a restoration of compliance with such restriction(s) as soon as is reasonably practicable having regard to the interests of the unit-holders and, in any event, within the period of six months beginning on the date of discovery of the contravention of such restriction(s). |
|  |
| The above is aimed at addressing circumstances which may arise following acquisition of the Scheme’s assets and include market price movements of the Scheme’s underlying assets or market illiquidity. The above is without prejudice to the duty of the manager and the Scheme to comply with the Scheme’s investment restrictions and to ensure that such restrictions are not contravened as a direct result of any acquisition of its underlying assets. |
|  |
| 1. a contravention of an investment restriction which may arise due to the circumstances outlined in (i) above shall not be considered as a breach of a licence condition and will therefore not be subject to MFSA’s notification requirements. However, where the contravention is not remedied by the manager or Scheme within the maximum six month period stipulated in (i) above, a breach of this Licence Condition is deemed to arise and the relevant notification requirements will apply |
|  |
| **Cross sub-fund investments** |
|  |
| * 1. A sub-fund may invest in units of one or more sub-funds within the same scheme, subject to this being permitted in the instruments of incorporation and the offering memorandum of the said Scheme and subject to the following: |
| 1. the investment company should in its memorandum of association elect to have the assets and liabilities of each sub-fund comprised in that company treated as a patrimony separate from the assets and liabilities of each other sub-fund of such company in terms of Regulation 9 of the Companies Act (Investment Companies with Variable Share Capital) Regulations; |
| 1. the sub-fund is allowed to invest up to 50% of its assets into any sub-fund within the same scheme; |
| 1. the target sub-fund/s may not themselves invest in the sub-fund which is to invest in the target sub-fund/s; |
| 1. in order to avoid duplication of fees, where the manager of the sub-fund and the manager of the target sub-fund is the same or (in the case of different managers) where one manager is an affiliate of the other, or in the case where a self-managed scheme invests in another self-managed scheme, where both schemes are linked to a great extent by common management and/or investment management personnel, only one set of management (excl. performance fees), subscription and/or redemption fees applies between the sub-fund and the target sub-fund, provided that this restriction shall apply only in respect of and to the extent (up to the portion) of the investment of the sub-fund in the target sub-fund; |
| 1. any voting rights acquired by the sub-fund from the acquisition of the units in the target sub-fund shall be disapplied as appropriate. |
|  |
| **Offering document/ Marketing document** |
|  |
| * 1. The Scheme shall publish an offering document or a brief marketing document. |
|  |
| * 1. The offering document or the marketing document as applicable, shall be offered to investors free of charge before they become committed to investing. |
|  |
| * 1. The offering document or the marketing document as applicable, shall be dated and shall be kept up-to-date. |
|  |
| * 1. The offering document shall contain sufficient information for investors to make an informed judgement about the investment proposed to them and shall contain at least the information listed in Appendix II. |
|  |
| * 1. The marketing document shall contain sufficient information for investors to make an informed judgement about the investment proposed to them and shall contain at least the following information: |
| 1. a list of service providers including the directors, general partner(s) or trustee (as applicable), and their respective contact details; |
| 1. a definition of Extraordinary Investor; |
| 1. a risk warnings section describing in brief at least the principal risks associated with investing in the Scheme; |
| 1. investment objectives, policies and restrictions of the Scheme; |
| 1. fee structure; |
| 1. details of the classes of units on offer (whether these constitute a distinct sub-fund or not); |
| 1. overview of the safekeeping arrangements (where a custodian/ prime broker is not appointed) |
| 1. a Statement – where the Scheme has issued “Voting Shares” to the promoters and “non-Voting Shares” to prospective investors – identifying the holders of the “Voting Shares” of the Scheme. This section should also provide that the identity of the ultimate beneficial owners of the holders of “Voting Shares” will be disclosed upon request; |
| 1. the subscription form; |
| 1. Extraordinary Investor Declaration Form; |
| 1. the following text:  * *“[name of the Scheme] is licensed by the Malta Financial Services Authority (“MFSA”) as a Professional Investor Fund which is available to investors qualifying as ‘Extraordinary Investors’. This entails the minimum level of supervision for a Fund regulated in Malta.* * *Professional Investor Funds are non–retail schemes. Therefore, the protection normally arising as a result of the imposition of the MFSA’s investment and borrowing restrictions and other requirements for retail schemes do not apply.* * *Investors in PIFs are not protected by any statutory compensation arrangements in the event of the fund’s failure.* * *The MFSA has made no assessment or value judgment on the soundness of the fund or for the accuracy or completeness of statements made or opinions expressed with regard to it.”* |
|  |
| * 1. The marketing document shall also include as an Annex, either the most recent version of the instruments of incorporation of the Scheme or a summary thereof. In the latter case the marketing document should provide that a copy of the Scheme’s instruments of incorporation will be provided to prospective investors upon request. |
|  |
| * 1. The Scheme shall approve the offering document/ marketing document including any amendments thereto, and confirm its approval to MFSA. |
|  |
| * 1. The offering document/ marketing document and any amendments thereto – for so long as the amendments do not relate to the creation of a new class of units or to any other matter that requires approval in terms of these Rules – including a copy of the Scheme’s approval of the revised offering document/ marketing document – shall be submitted to the MFSA within five business days from publication. Any amendments to the offering document/ marketing document which relate to the creation of a new class of units or to any other matter that requires approval in terms of these Rules must be submitted to the MFSA for approval before publication. |
|  |
| **Instrument of incorporation** |
|  |
| * 1. Any changes to the instruments of incorporation of the Scheme must be approved by the MFSA in advance of implementation. |
|  |
| **Promotion** |
|  |
| * 1. The Manager and/or any appointed intermediary may only promote the Scheme to Extraordinary Investors. In the event of active promotion of the Scheme through the use of mass media advertising, investment advertisements should clearly indicate that the Scheme is not available for investment by the general public but is only available for investors satisfying the applicable Extraordinary Investor criteria set out in the Scheme’s offering document/ marketing document. The Scheme, its manager or administrator may in turn only accept subscriptions from Extraordinary Investors. |
|  |
| * 1. The promotion of the Scheme is subject to Section 11 of the Act, and to the requirements of Section 3 of Part B of the Investment Services Rules for Investment Services Providers as more fully explained in the relevant Guidance Notes issued by the MFSA. |
|  |
| * 1. The Scheme may only be promoted in jurisdictions outside Malta if it satisfies the relevant rules of such jurisdictions. |
|  |
| * 1. All publicity comprising an invitation to purchase units in the Scheme shall be approved by the compliance officer. All promotional material issued by the Scheme shall indicate that an offering document/ marketing document exists and the places where it, and any documents updating it, may be obtained. |
| **Minimum entry levels** |
|  |
| * 1. The minimum investment which the Scheme may accept is EUR750,000 or its currency equivalent. Once the minimum investment has been made, any additional amount may be invested but the total amount invested must not at any time be less than EUR750,000 or its currency equivalent unless this is the result of a fall in the net asset value. In the case of an umbrella Scheme where each of the sub-funds is set up as a Professional Investor Fund, the threshold of EUR750,000 or its currency equivalent may apply on a per scheme basis rather than on a per sub-fund basis. |
|  |
| **Extraordinary Investor Declaration Forms** |
|  |
| * 1. Before investing in the Scheme, investors must sign the declaration referred to in Appendix III stating that they qualify as “Extraordinary Investors” and that they have read and understood the risk warnings in the offering document/marketing document. In the case of joint holders, all holders should individually qualify as “Extraordinary Investors”. The Scheme may rely upon the declaration provided by the investor in the absence of information to the contrary. |
|  |
| * 1. Copies of the Extraordinary Investor Declaration Forms and records evidencing compliance with the local prevention of money laundering requirements shall be held in Malta at the registered office of the Scheme and shall be available for inspection by the MFSA during compliance visits. |
|  |
| **Side letters** |
|  |
| * 1. Side letters to be entered into by the Scheme must be circulated and approved by the governing body of the Scheme prior to issue. |
|  |
| * 1. Side letters issued by the Scheme shall be retained in Malta at the registered office of the Scheme and shall be available for inspection by the MFSA during compliance visits. |
|  |
| **Distributions of income** |
|  |
| * 1. The Scheme shall effect any distributions of income in accordance with the provisions of its instruments of incorporation and/ or offering document/ marketing document. |
|  |
| **Foreign Currency Lending** |
|  |
| * 1. The Scheme shall, in as far as these may be applicable to any foreign currency lending which it may carry out, abide by the high level principles on foreign currency lending as outlined in [MFSA Rule 1 of 2012](http://www.mfsa.com.mt/pages/viewcontent.aspx?id=497) on foreign currency lending, which is modelled on the Recommendation of the European Systemic Risk Board on lending in foreign currencies (ESRB/2011/1). |
|  |
| * 1. Foreign currency lending means lending in any currency other than the legal tender of the country in which the borrower is domiciled. This includes situations where the Euro is the foreign currency due to the borrower’s domicile being outside the euro zone. |
|  |
| * 1. When the Scheme has engaged in any form of foreign currency lending during the period under review, it shall submit a confirmation to this effect together with its annual report. Any foreign currency lending activity shall be indicated as a percentage of the scheme’s total NAV. A Scheme which has not carried out any foreign currency lending during the period under review is not required to submit a ‘nil’ return. |
| **Acquisitions in specie**   * 1. The scheme shall issue units/shares for a consideration other than cash in accordance with the provisions of its instruments of incorporation and the provisions of the offering memorandum.   2. A report on any consideration other than cash shall be drawn up by a valuer which shall satisfy the following criteria:   3. the valuer needs to be independent of the scheme, its officials or any other service providers of the scheme;   4. the valuer needs to be of good standing with recognised and relevant qualifications and an authorised member of a Recognised Professional Body in the jurisdiction of the assets;   5. the valuer shall be appointed by the Directors of the scheme subject to the approval of the appointment by the auditors of the scheme.   6. The report drawn up in accordance with Rule 1.65 shall include:  1. a description of each of the assets comprising the consideration; 2. the value of each asset and a description of the method of valuation used; 3. a confirmation that the value of the consideration is at least equal to the net asset value of the shares to be issued in return for such consideration.    1. The report shall be held in Malta at the registered office of the scheme and shall be made available to the MFSA for inspection during the compliance visits.    2. Shares on the scheme shall only be used (in favour of the investor) once the assets referred to in the valuer’s report have been transferred in favour of the scheme to the satisfaction of the depositary and/or prime broker.   **Financing of SPVs**   * 1. Where a sub-fund proposes to invest through the use of SPVs and thus the scheme will grant any form of financing to the SPV, the terms of the loan facility arrangements between the scheme and the SPV shall inter alia provide:  1. that the scheme should not be obliged to honour any request for lending made by the SPV in the case where the scheme does not have sufficient liquid assets (such as cash/ deposits) or if the Scheme deems it prudent to retain such assets to finance other investments of the fund or to keep such assets as reserves for any (current/ future) contingent liability; 2. that any amount borrowed by the SPV will be repayable on or within a short period of time following any request in this regard by the scheme in order to ensure the liquidity of the scheme and allow the scheme to satisfy redemption requests by shareholders in the case where these cannot be satisfied from liquid assets available to the scheme; and 3. that the proceeds of any loan made to the SPV shall be used by the SPV solely to finance the acquisition of the asset which shall always reflect and be in line with the objectives and policies of the fund; and 4. for any other safeguards deemed appropriate by the directors of the Scheme.    1. The scheme shall make available to the MFSA for inspection during compliance visits the following documentation:    2. registration certificates and other registration documents of any underlying SPV, including full details of the relevant shareholders and directors (where applicable); and    3. audited financial statements of any underlying SPV (where applicable).   **Investments through joint ventures in the case of minority interests**   * 1. Where a scheme proposes to invest through joint ventures, it shall safeguard the interest of shareholders in the instances where it may not have majority control. Furthermore, the scheme shall ensure the suitability of investments undertaken by such joint ventures and ensure an on-going basis that they reflect the investments objectives and policies of the Scheme   2. The investment decisions and the scheme’s participation in any particular project shall be undertaken in such a way which will enable the subfund to evaluate the proposed investment in each project to its satisfaction prior to commitment.   3. The objectives of such companies shall not change without the consent of the scheme.   4. The scheme shall ensure that it is represented on the board of directors of the joint venture entity (where this is a corporate entity) or on the investment decision-making organ or process of the joint venture (where this is not a corporate entity).   5. The scheme shall seek a contractual right under the joint venture agreement, to ensure that in the case of a proposed change in the investment objectives of the joint venture, the scheme shall either:  1. cease its participation in the joint venture; or 2. block such a change either through a requirement of the scheme’s prior consent to such change or through a qualified majority voting requirement or otherwise. |
| **General** |
|  |
| * 1. The scheme shall commence its activities within 12 months from the date of issue of the collective investment scheme licence. If for any reason, the scheme is not in a position to comply with this condition, it shall notify the MFSA in writing setting out the reasons for such a delay indicating the proposed date of commencement of business. On the basis of the information provided and the circumstances of the case, the MFSA may decide to suspend or cancel the licence in accordance with the relevant provisions of the Act.   2. Where a Rule demands that the scheme notifies the MFSA of an event, such notification shall be made to the MFSA formally, in a durable medium. The request to notify the MFSA of an event shall not be satisfied merely by the fact that the information which ought to be notified to the MFSA is included in a standard regulatory return.   3. The Scheme – or the Manager or Administrator on its behalf – shall submit copies of the Scheme’s annual audited financial statements and half-yearly report (if any) to the MFSA and such other information, as the MFSA may from time to time request. The half-yearly (if any) and annual reports shall be published and provided to investors in the Scheme, and submitted to the MFSA within two and six months respectively of the end of the period concerned. |
|  |
| The Scheme shall also submit to the MFSA, on the following email address: [fundreporting@mfsa.com.mt](mailto:fundreporting@mfsa.com.mt), any statistical returns it is required which may be required by the Central Bank of Malta to fulfil European and other relevant reporting obligations. |
|  |
| When requested to do so by the MFSA, a Scheme shall also submit, on the following email address: [statistics@mfsa.com.mt](mailto:statistics@mfsa.com.mt) any statistical returns may be required under MFSA Rule 1 of 2012 on foreign currency lending. |
|  |
| * 1. The financial statements shall not be submitted to the MFSA unless these are a full and complete set of the required documentation and signed by all the signatories as required.   2. In the case where the submission of the financial statements to the MFSA will be justifiably and exceptionally delayed, the Scheme shall at least one week prior to the deadline for the submission of the financial statements, submit a request with the MFSA to consider the possibility of such a delay. This request shall be accompanied by the following documents:   3. a resolution from the governing body of the Scheme setting out clearly the reasons which justify the delay and requesting the MFSA to grant the proposed extension period which should be clearly stated in the resolution;   4. a written confirmation from the fund administrator of the Scheme that the underlying investors of the scheme have been informed of the delay and the reasons for such delay;   5. a written confirmation from the external auditor of the Scheme supporting the request for extension and confirming that the audit will be completed within the proposed extended deadline.   Provided that where the delay consists of two or three days, the documents requested in paragraphs (a) to (c) need not be submitted.   * 1. The Scheme shall pay promptly all amounts due to the MFSA. In particular, the supervisory fee shall be payable by the Scheme on the day the licence is first issued, and thereafter annually within one week from the anniversary of that date.   2. The scheme shall co-operate in an open and honest manner with the MFSA and inform it promptly of any relevant information. It shall co-operate fully with any inspection or other enquiry carried out by or on behalf of the MFSA and provide promptly any relevant information. The scheme shall provide the MFSA with such information and returns as the MFSA may require to monitor compliance with the conditions referred to in the Act and any rules and regulations issued thereunder. |
|  |
| * 1. The Scheme and its service providers shall comply with all Maltese and overseas regulations to which they are subject. |
|  |
| * 1. 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: “*Licensed by the MFSA as a Professional Investor Fund available to Extraordinary Investors”.* |
|  |
| * 1. The Scheme shall comply with the applicable laws and regulations relating to the prevention of money laundering. |
|  |
| * 1. The MFSA shall not be liable in damages for anything done or omitted to be done unless the act or omission is shown to have been done or omitted to be done in bad faith. |
|  |
| * 1. A request for a variation of the Licence shall be submitted to the MFSA in writing, giving details of the variation requested and the reasons. |
|  |
| * 1. The MFSA shall be informed of any material information concerning the Scheme, its management, its operation or its service providers, as soon as the Scheme becomes aware of that information. This shall include notifying the MFSA in writing of: |
|  |
| 1. any evidence of fraud or dishonesty by an official of the Scheme immediately upon becoming aware of the matter; |
|  |
| 1. any actual or intended legal proceedings of a material nature by or against the Scheme immediately the decision has been taken or on becoming aware of the matter; |
|  |
| 1. any other material information concerning the Scheme, its business or its officials in Malta or abroad which a reasonable person would expect the MFSA to wish to be informed about - immediately upon becoming aware of the matter. |
|  |
| * 1. The scheme shall notify the MFSA in writing of:  1. a change in the Scheme’s name or business name (if different) at least one month in advance of the change being made; 2. a change of address: at least one month in advance; 3. any material changes to the conditions for initial authorisation, in particular material changes to the information provided during the application process – at least one month in advance of the change being made; 4. the departure of a director or senior manager, portfolio manager, compliance officer, money laundering reporting officer and risk manager 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 official 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 director or senior manager, portfolio manager, compliance office, money laundering reporting officer and risk manager 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. any proposed material change to its business – at least one month before the change is to take effect and where a new collective investment scheme licence is required, the new business shall not begin until the new collective investment scheme licence has been granted or the amendment has been approved; 2. a decision to make a material claim on any insurance policy held in relation to the scheme’s business. The notification should be provided as soon as the decision is taken; 3. any actual or intended legal proceedings of a material nature by or against the scheme immediately after the decision has been taken or on becoming aware of the matter; 4. the fact, where applicable, that it has not carried out any investment activity for the preceding six months, setting out the reasons for such inactivity and providing a business plan for future activity; 5. any instances of incorrect pricing:   Provided that the notification to the MFSA of a valuation error/incorrect pricing shall *inter alia* include:   1. the manner in which the valuation occurred; 2. the date of identification and the full details of the dealing day effected; 3. details of the financial impact of the valuation error and/or the wrong prices/valuation in the case where subscriptions/redemptions were dealt with; 4. details of any remedial measures which result from the valuation errors for the scheme and/or its investors; and 5. the communications to be made to the investors particularly if remedial measures are adopted. 6. any other material information concerning the scheme, its business or its officials in Malta or abroad – immediately upon becoming aware of the matter.    1. The scheme shall obtain the written consent of the MFSA before: 7. taking any steps to cease its operations; 8. agreeing to sell or merge the whole or any part of the undertaking; 9. the appointment of a director or senior manager[[1]](#footnote-1), compliance officer, money laundering reporting officer and (and where the scheme is self-managed, also of a risk manager, investment committee member, portfolio manager and investment advisor - where the investment advisor is an individual) in advance. The request for consent shall be accompanied by a Personal Questionnaire in the form set out in Schedule C to Part A of these Rules – duly completed by the person proposed. The individual proposed as investment advisor to a self-managed scheme need not complete the Personal Questionnaire.   Where the person proposed had within the previous five years submitted a PQ to the MFSA, the request for consent need not be accompanied by a new PQ. In such instances, it shall be accompanied by a confirmation by the proposed person as to whether the information included in the PQ previously submitted is still current, and indicating any changes or up-dates thereto. This confirmation is to be countersigned by an authorised official of the Licence Holder, confirming that he/she has seen the said PQ.   1. the change in the responsibilities of a director or senior manager[[2]](#footnote-2) in advance. The request for consent of the change in responsibilities of a director or senior manager shall be accompanied by a PQ unless the individual concerned had within the previous three years submitted a PQ to the MFSA in connection with another role occupied by such individual with the same scheme, in which case it shall be accompanied by a confirmation by the director or senior manager as to whether the information included in the PQ previously submitted is still current, and indicating any changes or updates thereto:   Provided that a change in the responsibilities of a director or senior manager shall only be notified to the MFSA when such a change is material, which shall include a change in the status or seniority of the person concerned upwards or downwards.   * 1. The Scheme shall ensure compliance with the Rules included in this Rulebook.   2. Without prejudice to SLC 1.91, the Scheme may submit to the MFSA a request for a derogation from any specific SLC included in the Rulebook.   3. A request submitted in terms of SLC 1.92 shall include the following:  1. an indication of the specific SLC and the content thereof; 2. reasons why a derogation from this SLC is being requested; 3. a description of the risks to the scheme and the investor if the MFSA approves the derogation and the manner in which these risks can be mitigated; 4. the expected duration of the derogation; and 5. a resolution of the governing body of the scheme supporting the request for a derogation.    1. The MFSA will assess open-ended requests for derogations on a case-by-case basis.    2. The Scheme will be expected to assess on a continuous basis and certainly prior to expiration whether the derogation is still required.    3. In the case where, prior to expiration, the Scheme deems that the derogation is still appropriate and required, the scheme shall submit to the MFSA an updated assessment prior to the expiration of such derogation.    4. The Scheme, the manager or the administrator on behalf of the scheme shall notify the MFSA of any breach of the Licence Conditions or of any of the provisions of the offering document/ marketing document or instruments of incorporation of the Scheme as soon as the Scheme or its Manager or Administrator becomes aware of the breach. |
|  |
| * 1. Any notification to the MFSA of a breach shall as a minimum include the following information:  1. an indication of the SLC or the investment restriction breached (in the case advertent breaches) and the contents thereof; 2. the date/period when the breach occurred and when/by whom it was discovered; 3. the nature of the breach and the manner in which it occurred; 4. the impact of the breach on the scheme and the underlying investors. In the case where the scheme or the investors suffered a loss, this loss shall be quantified; 5. the action taken to prevent the recurrence of the breach.    1. The Scheme shall not be required to make public the issue and redemption prices of its units. However, these must be made available to unit-holders upon request. |
|  |
| * 1. If dealings in the units and/or the issue of NAV are suspended, the Scheme – or the manager or administrator on its behalf – shall inform the MFSA forthwith stating the reason for this suspension. The period of suspension shall be as brief as is practicable.   2. The notification to the MFSA informing of the suspension of dealings and/or NAV publication and the determination of the NAV of the scheme shall *inter alia* include:  1. the reason for the suspension of dealings and determination of the NAV; 2. a confirmation from the Administrator that the underlying investors of the scheme have been informed of the suspension; 3. a resolution from the governing body of the scheme confirming the approval of the suspension; 4. a confirmation from the scheme, the manager or the Administrator on behalf of the scheme that any provision relating to the suspension of dealings and determination of the NAV in the offering memorandum and instruments of incorporation of the scheme have been fully complied with; 5. the envisaged timeframe by when the suspension of dealings and NAV is expected to be lifted.   Provided that when the suspension of dealings is for two or three days as a result of closures of the main markets where the scheme invests or closures of the main exchanges where the assets of the scheme are traded, the documents requested in paragraphs (b) and (c) above need not be submitted. |
|  |
| * 1. The Scheme, its manger or administrator on its behalf shall keep such accounting and other records as are necessary to enable it to comply with these conditions and to demonstrate that compliance has been achieved. Accounting records shall be retained for a minimum period of ten years. During the first two years they shall be kept in a place from which they can be produced within two working days of their being requested. After the first two years they shall be kept in a place from which they can be produced within five working days of their being requested. |
|  |
| * 1. In the event of a winding-up, the Scheme must give MFSA at least two weeks’ notice of this intention. The prior approval of the MFSA shall be obtained for the approach to be adopted. If requested to do so by the MFSA, the Scheme and its manager, shall do all in its power to delay the winding-up or to proceed with the winding-up in accordance with conditions imposed by the MFSA. |
|  |
| * 1. Any changes to the financial year-end of the Scheme shall be notified to the MFSA and disclosed in the offering document/ marketing document. |
|  |
| * 1. The Scheme shall at all times monitor the regulatory status of the fund manager. In the event that the fund manager is no longer a *de minimis* fund manager, the Scheme must ensure that it becomes compliant with the requirements prescribed in the AIFM Directive as outlined in Appendix 6 to these Rules. |

**Governing body of the Scheme**

* 1. The governing body[[3]](#footnote-3) of the scheme shall be responsible for ensuring that the scheme complies with its obligations under these Rules.
  2. The governing body of the scheme shall at all times have one or more members independent from the manager and the custodian/ prime broker. Furthermore, the governing body shall be composed of at least three members one of whom must be resident in Malta:

Provided that the governing body of the scheme could be required to have more than three members depending on the complexity and size of the scheme and the aggregate skill set desired.

* 1. The MFSA shall be satisfied on a continuing basis of the fitness and properness of the members of the governing body.
  2. The members of the governing body shall act honestly and in good faith in what they consider to be the best interests of the scheme and its investors.
  3. The members of the governing body shall exercise reasonable care, skill and diligence.
  4. The members of the governing body have, both collectively as a Board and individually, an obligation to acquire and maintain sufficient knowledge and understanding of the scheme’s business to enable them to discharge their functions as directors.
  5. The governing body must not merely carry out a vetting function with regards to all the documents which are submitted for its attention. It is the duty of the governing body of the scheme to inform itself of its investment activities and have a proper understanding of its financial condition.
  6. The members of the governing body of the scheme shall exercise the powers they have for the purposes for which such powers were conferred and they shall not misuse such powers.
  7. The governing body shall exercise its powers independently without subordinating such powers to the will of others.
  8. Whilst the governing body of the scheme may be entitled under the memorandum and articles of association to delegate particular functions, the delegation of such functions shall not absolve the governing body from the duty to supervise the discharge of such delegated functions.
  9. The members of the governing body shall carry out all the necessary checks to satisfy themselves that the scheme’s overall structure is consistent with the standards prescribed in the Act and in these Rules and that the terms agreed to in the contracts with the service providers are reasonable and consistent with the standards adopted by the industry. Furthermore, the governing body must ensure that all the service providers appointed in relation to the scheme create an overall structure which will ensure an adequate division of responsibilities in relation to the fund.
  10. The governing body shall continuously monitor the execution of the functions delegated to the service providers and shall be satisfied that they are performing their functions in accordance with their contractual obligations.
  11. The members of the governing body shall hold regular board meetings and shall ensure that detailed minutes are taken to record accurately the matters discussed and considered. The agenda should be well structured and prepared, giving sufficient time to allow for the input of all the notice parties and service providers before the meeting.
  12. Minutes of the meetings of the governing body must be held in Malta at the scheme’s registered office or at any other place as may be agreed with the MFSA.
  13. The governing body shall also be guided by the provisions of the [Corporate Governance Manual for Directors of Investment Companies and Collective Investment Schemes](http://www.mfsa.com.mt/pages/readfile.aspx?f=/files/Publications/Corporate%20Governance/MFSA%20Corporate%20Governance%20Manual%20-%20Sept%202014.pdf) which has been issued by the MFSA.

1. For the purposes of this paragraph, ‘senior manager’ should be interpreted as the person occupying the most senior role following that of director, so that in the case where there are various management grades, it is the most senior manager who will require the MFSA’s authorisation. [↑](#footnote-ref-1)
2. For the purposes of this paragraph, ‘senior manager’ should be interpreted as the person occupying the most senior role following that of director, so that in the case where there are various management grades, it is the most senior manager who will require the MFSA’s authorisation. [↑](#footnote-ref-2)
3. which includes the board of directors, trustee, or general partners where applicable [↑](#footnote-ref-3)