

# MFSA

MALTA FINANCIAL SERVICES AUTHORITY

## INVESTMENT SERVICES RULES FOR PROFESSIONAL INVESTOR FUNDS

### PART B

#### APPENDIX II - CONTENTS OF THE OFFERING DOCUMENT

##### 1. GENERAL REQUIREMENTS

- 1.01 Unless otherwise agreed with the MFSA, a scheme shall issue or cause to be issued an offering document for which the scheme shall be responsible. The purpose of the offering document is to provide sufficient information to enable potential qualifying investors to make an informed investment decision.
- 1.02 The offering document shall contain all material information which at the date of the offering document is within the knowledge of the governing body of the scheme to be relevant for the purpose of making an informed judgement about the merits of participating in the scheme and the extent of the risks accepted by so participating. The offering document shall include the information outlined in the following sections.

##### 2. INFORMATION CONCERNING THE SCHEME

- 2.01 The offering document shall include the following statements – which shall be in a prominent position printed in font whose pitch is at least 12:
- “[name of the scheme] is licensed by the Malta Financial Services Authority (“MFSA”) as a Professional Investor Fund which is available to Qualifying Investors.
  - 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.”.

##### 2.02 The offering document shall include the following statements:

- (a) a statement that the governing body of the scheme confirming their approval of the content of the offering document;

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<#>In the case of PIFs targeting Extraordinary Investors, the Offering Memorandum should also provide that: “PIFs targeting Extraordinary Investors are subject to the minimum level of supervision for a Fund regulated in Malta.”. ¶

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- (b) a statement indicating that:
- i. changes to the investment policies and restrictions of the scheme, or in the case of an umbrella scheme, its subfunds, shall be notified to investors in advance of the change;
  - ii. changes to the investment objectives of the scheme, or in the case of an umbrella scheme its subfunds, shall be notified to investors in advance of the change. The change in the investment objectives will only become effective after all redemption requests received during such notice period, have been satisfied.
- (c) 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. In the event that the “Voting Shares” are held by a corporate entity or a trustee, the offering document may include the name of the said corporate entity/ trustee without disclosing the names of the individual beneficial owners/ beneficiaries. The offering document would also need to state that the identity of the ultimate beneficial owners of the holders of “Voting Shares” will be disclosed upon request.

2.03 The following information shall be provided in the offering document:

- (a) name of the scheme;
- (b) date of establishment of the scheme and a statement as to its duration, if limited;
- (c) name or style, form in law and registered office;
- (d) in the case of an umbrella scheme, an indication of the subfunds;
- (e) in the case of an incorporated cell company, an indication of the incorporated cells;
- (f) the investment objectives, policies and restrictions of the scheme, together with the extent of use of leverage. In the case of an umbrella scheme, this information must be provided for each subfund;
- (g) accounting and distribution dates;
- (h) name of auditor;
- (i) details of the types and main characteristics of the units and in particular:
  - the nature of the right represented by the unit;
  - indication of the voting rights, if any of the unitholders.

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- (j) procedures and conditions for the creation, issue and sale of units;
- (k) procedures and conditions for the repurchase, redemption and cancellation of units, and details of the circumstances in which repurchase or redemption may be suspended;
- (l) rules for the valuation of assets;
- (m) the method to be used for the determination of the creation, sale and issue prices and the repurchase, redemption and cancellation prices of units, in particular:
  - (i) the method and frequency of the calculation of the net asset value;
  - (ii) information concerning the charges relating to the sale or issue and the repurchase or redemption of units; and
  - (iii) arrangements whereby holders of units and prospective holders of units may deal.
- (n) in the case of an umbrella scheme, the charges applicable to the switching of investments from one subfund to another;
- (o) information concerning the nature, amount and the basis of calculation in respect of remuneration payable by the scheme to the manager (or in the case of a self-managed scheme to the investment committee), fund administrator, depositary (where applicable), adviser, third parties, and in respect of the reimbursement of costs by the scheme to the manager, to the depositary (where applicable) and to third parties;
- (p) in the case of a scheme set up as an investment company, the amounts of authorised and paid-up share capital;
- (q) in the case of a Scheme set up as an investment company, brief details of the members of the board of directors of the scheme. Where the scheme has appointed one or more corporate directors, this section should include brief details on the corporate director and its directors, including a brief description of the nature/ objects of the company. In the case of a corporate director with nominee shareholders and directors, this section should either disclose the ultimate beneficial owners of the corporate director or include a statement that such information will be available upon request;
- (r) in the case of a scheme set up as a limited partnership, brief details of the general partner(s). Where the scheme has appointed one or more corporate general partner(s), this section should include brief details on the corporate general partner(s) and its directors, including a brief description of the nature/ objects of the company. In the case of corporate general partner(s)

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with nominee shareholders and directors, this section should either disclose the ultimate beneficial owners of the corporate general partner(s) or include a statement that such information will be available upon request;

- (s) in the case of a scheme set up as an investment company with variable share capital and opting to issue shares subject to full payment by a settlement date, in accordance with regulation 16 of the Companies Act (Investment Companies with Variable Share Capital) Regulations, the scheme shall indicate in its offering document, the settlement date by which payment of the full subscription price is to be received, which date cannot be later than five working days from the date of issue of those shares;
- (t) where the scheme is established as an investment company with variable share capital and opting to issue shares for a consideration other than cash, in accordance with regulation 10 of the Companies Act (Investment Companies with Variable Share Capital) Regulations, the scheme shall indicate in its prospectus/offering document, the procedure to be followed by a prospective investor contemplating an application in specie;

*Information concerning the manager, investment adviser, fund administrator, depositary/prime broker (where applicable) ("the Service Provider")*

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2.04 The following information shall be provided in the offering document:

- (a) name or style, registered office and head office;
- (b) if the service provider is part of a group, the name of that group;
- (c) the regulatory status of the service provider;
- (d) in the case of the investment adviser or the fund administrator, a statement whether the investment adviser or the fund administrator is appointed by the scheme or the manager;
- (e) where one or more service providers have not been appointed, a description should be provided concerning how the functions normally undertaken by each functionary will be carried out: e.g. if a depositary/prime broker is not appointed, the offering document should include a description of the safekeeping arrangements that will be put in place with respect to the assets of the scheme;
- (f) in the case of a self-managed scheme, details of the members of the investment committee, including an overview of their experience and expertise together with an outline of the person(s) responsible for the day to day management of the assets of the scheme.

*Information concerning the local representative (where appointed)*

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2.05 The following information shall be provided in the offering document in relation to the appointment of the local representative:

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- (d) name, registered office and head office, if different from registered office;
- (e) main activities.

## *Risk warnings*

- 2.06 This section should provide a detailed and clear indication of the principal risks associated with investing in the scheme.
- 2.07 Where it is possible for the scheme to enter into agreements with investors for the purpose of committing funds for the subscription at a future date to units at a specific price, a risk warning should be made to the effect that should the scheme issue units at a discount with respect to its current NAV, in terms of the such agreements, there will be a risk of dilution to the net asset value of the scheme.
- 2.08 There should also be a clear risk warning that while investors entering into an agreement with the scheme for the purpose of committing funds for the subscription at a future date to units at a specific price, would in effect be subscribing for such units at a discount if the NAV per unit prevailing at the time the draw-down request is made exceeds the price at which the investor had agreed to subscribe for units in terms of such agreement, on the other hand, if the NAV per unit at the time a draw-down request is made is lower than the price at which the investor had agreed to subscribe for units in terms of such agreement, the investor would, in effect, be paying a premium for such units.

## *General Information*

- 2.09 The offering document shall provide the following information:
- (a) a description of the potential conflicts of interest which could arise between the manager, or the investment adviser, or the depositary/prime broker and the scheme;
  - (b) the name of any entity which has been contracted by the manager or the scheme to carry out its work;
  - (c) information concerning the arrangements for making payments to holders of units, purchasing or redeeming units and making available information concerning the scheme.

- 2.010 Where the scheme proposes through invest through joint ventures, the offering document shall provide:
- (a) a description of proposed investments via co-investments or joint ventures;
  - (b) a description of the manner in which the scheme intends to safeguard the interest of shareholders in the instances where it may not have majority control;

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- (c) a description of the manner in which the scheme will ensure the suitability of investments undertaken by such joint ventures and how it will ensure on an ongoing basis that these reflect the investment objectives and policies of the scheme

## 3. USE OF TRADING COMPANIES AND SPECIAL PURPOSE VEHICLES

3.01 Where applicable, the offering document shall contain an indication that the scheme will use trading companies or special purpose vehicles as part of its investment strategy. In particular, in relation to the use of special purpose vehicles, the offering document shall include a description outlining the relevant criteria and requirements applicable in relation to the financing of such special purpose vehicles. The offering document shall specify the manner in which such financing will be made i.e. either by capital contributions only, or a combination of capital contributions and loan facilities (as applicable). The offering document could also include details relating to the main terms of a loan facility arrangements to be entered into by the scheme and the special purpose vehicle in question which could inter alia include the following:

- (a) that the scheme should not be obliged to honour any request for lending made by the special purpose vehicle in the case where the scheme does not have sufficient liquid assets or if the scheme deems necessary the retention of such assets to finance other investments of the sub-fund or the retention of such assets as reserves for any current or future contingent liability;
- (b) that any amount borrowed by the special purpose vehicle 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 investors in the case where these cannot be satisfied from liquid assets available to the scheme;
- (c) that any proceeds of any loan made to the special purpose vehicle shall be used by it solely to finance the acquisition of the assets or property referred to in the loan agreement, which shall always reflect and be in line with the objectives and policies of the sub-fund;
- (d) any other safeguards deemed appropriate by the directors of the scheme.

## 4. Use of Side Pockets

4.01 Where applicable in the case of use of side pockets, the offering document shall provide:

- (a) the circumstances/criteria where a side pocket may be employed, the policy for transferring assets to side pockets, including the nature of the assets that may be allocated to side pockets and the circumstances in which such allocations may be made as well as the procedure for the allocation of investments to side pockets; a disclosure of any side pocket arrangements together with the clause in the instruments of incorporation which permits the creation of side pockets;

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- (b) the policy and procedure to be followed by the scheme for transferring assets out of side pockets or for redeeming such assets as well as the procedure to be followed for the redemption or re-conversion of the units representing the side pocket. In this regard, upon the occurrence of a 'liquidity event whereby an asset allocated to a side pocket becomes liquid or capable of valuation, the scheme may decide to redeem such asset or to transfer such asset to the liquid pool of assets – details pertaining to the policy and procedure to be adopted are to be clearly disclosed;
- (c) limits (where applicable) on the size of side pockets, including the maximum percentage of the scheme/sub-fund which can be allocated to the side pocket in aggregate, and in the case where no limits are set, disclosure to this effect;
- (d) policies for the valuation of assets allocated to a side pocket. This disclosure should be comprehensive on the methodology for the valuation of these types of assets and should also refer to a consistent approach to be adopted when valuing such assets;
- (e) fee structure relating to the class of units representing the side pocket; and
- (f) relevant risk warnings in particular arising from the fact that side pocket assets may be hard to value, the illiquidity of side pocket assets, the difficulty which investors may find to exit from an investment in a side pocket rather than from a 'normal' share class in the scheme, and associated restrictions in realising interests in such assets.

**Commented [IA1]:** Disclosure requirements included in Circular dated 31 May 2010 on the use of side pockets by Collective Investment Schemes

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<#>Closed ended schemes set up as Professional Investor Funds targeting Experienced Investors which make an offer of securities to the public shall:¶

¶<#>not be subject to the requirements outlined in Section 1 of this Appendix; and¶

¶<#>draw up their Offering Document in line with the requirements of Schedule C of Appendix 9 to the current Investment Services Rules for Recognised Persons and Retail Collective Investment Schemes. ¶

¶<#>The Offering Document shall be made available to Experienced Investors as soon as practicable and in any case, within a reasonable time in advance of, and at the latest, at the beginning of the offer of Units. In the case of an initial offer of Units in a closed ended Scheme not already admitted to trading on a Regulated Market that is to be admitted to trading for the first time, the Offering Document shall be available at least six working days before offer opens. ¶

¶<#>Where the Offering Document is made available by publication in electronic form, a paper copy must nevertheless be delivered to the investor, upon his request and free of charge, by the Scheme or the financial intermediaries placing or selling the Scheme's Units. The Offering Document of the Scheme must be made available in a printed form at the registered office of the Scheme or its manager or other financial intermediaries placing or selling the Units in the Scheme.¶

¶<#>The Directors of the Scheme, or its administrative management or supervisory body – whose names and functions or in the case of legal persons their names and registered offices appear on the Offering Document – must include a declaration in the Offering Document to the effect that to the best of their knowledge the information contained therein is in accordance with facts and that the Offering Document makes no omission likely to effect its import.¶

¶<#>The text and the format of the Offering Document, and/or the supplements to the Offering Document, published or made available to the public, shall at all times be identical to the latest version approved by the MFSA.¶

¶<#>Every significant new factor, material mistake or inaccuracy relating to the information included in an Offering Document of the Scheme which is capable of affecting the investors' assessment of the Units on offer and which arises or is noted between the time when the Offering Document is approved and the final closing of the offer to the public or, as the case may be, the time when trading on a Regulated Market begins, shall be mentioned in a supplement to the Offering Document. Such a supplement shall be approved in the same way within a maximum of seven working days and published in accordance with at least the same arrangements as were applied when the original Offering Document was published. The summary, and any translations thereof, shall also be supplemented, if necessary to take into account the new information included in the supplement. Investors who have already agreed to purchase or subscribe for the Units before the supplement is published shall have the right, exercisable within a time limit which shall not be shorter than two...

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