

INVESTMENT SERVICES RULES FOR QUALIFYING
PROFESSIONAL INVESTOR FUNDS
PART A: THE APPLICATION PROCESS

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1 Regulation of Collective Investment Schemes in terms of the Investment Services Act

- 1.01 Collective investment schemes, including professional investor funds ('PIFs') are regulated by the Investment Services Act¹ (hereinafter referred to as "the Act") which provides the statutory basis for regulating collective investment schemes constituted in or operating in or from Malta. Qualifying PIFs are a special class of collective investment schemes which fall within the provisions of the Act.
- 1.02 Article 2 of the Act defines a "collective investment scheme" as any scheme or arrangement which has as its object or as one of its objects the collective investment of capital acquired by means of an offer of units for subscription, sale or exchange and which has the following characteristics:
- (a) the scheme or arrangement operates according to the principle of risk spreading; and either
 - (b) the contributions of the participants and the profits or income out of which payments are to be made to them are pooled; or
 - (c) at the request of the holders, units are or are to be repurchased or redeemed out of the assets of the scheme or arrangement, continuously or in blocks at short intervals; or
 - (d) units are, or have been, or will be issued continuously or in blocks at short intervals.

The Act also provides that an alternative investment fund that is not promoted to retail investors and that does not have the characteristic listed in paragraph (a) shall only be deemed to be a collective investment scheme if the scheme, in specific circumstances as established by regulations under this Act, is exempt from such requirement and satisfies any conditions that may be prescribed.

- 1.03 Article 2 of the Act defines an "alternative investment fund" or "AIF" as meaning 'a collective investment undertaking, including the investment compartments thereof, which raises capital from a number of investors with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and does not require authorisation pursuant to Article 5 of Directive 2009/65/EC².
- 1.04 In terms of the AIFMD³, the following undertakings shall not be considered as AIFs:
- (a) a holding company;

¹ Cap. 370 – Laws of Malta

² Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS).

³ Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers (hereinafter referred to as 'AIFMD').

- (b) an institution for occupational retirement provision which is covered by Directive 2003/41/EC;
- (c) employee participation schemes or employee savings schemes;
- (d) securitisation special purpose vehicles.

1.05 The exclusions referred to in SLC 1.04 and further exemptions can be granted from the requirement to obtain a collective investment scheme licence in terms of the Investment Services Act (Exemption) Regulations⁴ and the Investment Services Act (Recognition of Private Collective Investment Schemes) Regulations⁵.

2 Criteria which the MFSA will apply in considering an application for a licence

2.01 The MFSA may only grant a collective investment scheme licence to a Qualifying Investor PIF if it is satisfied that the scheme will comply in all respects with the provisions of the Act, the applicable regulations and the rules included in these Investment Services Rules. Furthermore, the MFSA must also be satisfied that the directors and officers/ trustee(s)/ general partner(s), are "fit and proper" persons to carry out the functions required of them in connection with the PIF.

2.02 In accordance with article 6(3) of the Act, when considering whether to grant or refuse a licence, the MFSA will, in particular, have regard to:

- (a) the protection of investors and the general public;
- (b) the protection to the reputation of Malta taking into account Malta's international commitments;
- (c) the promotion of competition and choice; and
- (d) the reputation and suitability of the applicant and all other parties connected with the scheme.

2.03 In assessing an application for a collective investment scheme as a qualifying investor PIF, the MFSA will consider the nature of the scheme and the nature of the investors to whom it will be marketed. It will then look into the experience and track record of all parties who will be involved with the PIF. Such persons should be of good standing and should be competent. The MFSA reserves the right to refuse a licence if it does not approve a party involved with the PIF.

2.04 Although the Act provides for the licensing of many different categories of schemes, the MFSA applies the same standards relating to the "fit and proper" status of the applicant and its service providers.

⁴ S.L. 370.06

⁵ S.L. 370.02

- 2.05 The "fit and proper" test is one which an applicant and a licence holder must satisfy on a continuing basis. The MFSA assesses each case on its own merits and on the basis of the relevant circumstances.
- 2.06 Nonetheless, the onus of proving that it meets the required standards on an on-going basis rests on the applicant and/or licensed PIF as the case may be. It is not the MFSA's task to prove that an applicant is fit and proper either on licencing or thereafter.
- 2.07 In carrying out the "fit and proper" test, the MFSA adopts a cumulative approach. It may decide that a PIF has failed the test after considering various circumstances, each of which on its own may or would not lead to that conclusion. For this reason, it is essential that the information provided to the MFSA is truthful and as complete as possible.
- 2.08 When arriving at its decision as to whether an applicant has met the required standards, the MFSA will take account both of what is disclosed and of what ought to have been disclosed. It should be noted that it is an offence to provide inaccurate, false or misleading information to the MFSA.
- 2.09 In general terms, the applicant must meet three criteria to satisfy the "fit and proper" test namely: (a) integrity; (b) competence; and (c) solvency.
- 2.10 Integrity requires that the PIF, its officers and its service providers act honestly and in a trustworthy fashion.
- 2.11 Competence means that the persons responsible for running the PIF must be able to demonstrate an acceptable amount of knowledge, professional expertise and experience. The degree of competence required will depend upon the job being performed. The MFSA will take into account the qualifications, experience and skills of those involved.
- 2.12 Solvency involves ensuring that proper financial controls and management of liquidity and capital is applied.

3 Professional Investor Funds

European venture capital funds and European social entrepreneurship funds

- 3.01 The fund manager may establish the scheme as a European venture capital fund in terms of Regulation (EU) No 345/2013 and in this regard opt to use the designation 'EuVECA' in relation to the marketing of the qualifying venture capital funds in the Union.
- 3.02 Similarly, the fund manager may establish the scheme as a European social entrepreneurship fund in terms of Regulation (EU) No 346/2013 and in this regard opt to use the designation 'EuSEF' in relation to the marketing of the qualifying social entrepreneurship funds in the Union.
- 3.03 In the cases referred to in Rules 3.06 and 3.06, the fund manager shall be guided by the provisions of Regulations (EU) No 345/2013 and 346/2013 prescribing rules for the marketing of qualifying venture capital funds/ social entrepreneurship funds to eligible investors across the Union, for the portfolio composition of the qualifying venture capital funds/ social entrepreneurship funds, for the eligible investment instruments and techniques to be used by qualifying venture capital funds/ social entrepreneurship funds as well as for the organisation, conduct and transparency of managers that market qualifying venture capital funds/ social entrepreneurship funds across the Union.

Investor base

- 3.04 In terms of the MFSA's regulatory regime applicable to collective investment schemes, PIFs can be promoted only to qualifying investors as defined and outlined in these Rules. Thus unless otherwise indicated, all references to PIFs throughout these Rules shall be understood as referring to PIFs promoted to qualifying investors:

Provided that where the fund manager intends establishing the scheme as a European venture capital fund or a European social entrepreneurship fund, it shall be guided by the provisions of the applicable EU Regulations referred to above prescribing the investor base of these funds.

- 3.05 A PIF promoted to qualifying investors may be established as an investment company with variable share capital (SICAV)⁶; an investment company with fixed share capital⁷; an incorporated cell company⁸ or an incorporated cell of a recognised

⁶ Companies Act (Investment Companies with Variable Share Capital) Regulations

⁷ Companies Act (Investment Companies with Fixed Share Capital) Regulations

⁸ Companies Act (SICAV Incorporated Cell Company) Regulations

incorporated cell company⁹; a limited partnership under the Companies Act; a unit trust¹⁰; a contractual fund¹¹; or a limited partnership under the Investment Services Act (Special Limited Partnership Funds) Regulations.

- 3.06 A “qualifying investor”, is an investor that fulfils the following criteria:
- (a) invests a minimum of EUR 100,000 or its currency equivalent in the PIF, which investment may not be reduced below this minimum amount at any time by way of a partial redemption;
 - (b) declares in writing to the fund manager and the PIF that he/she is aware of and accepts the risks associated with the proposed investment; and
 - (c) satisfies at least one of the following:
 - (i) is a body corporate which has net assets in excess of EUR 750,000 or which is part of a group which has net assets in excess of EUR 750,000 or, in each case, the currency equivalent thereof;
 - (ii) is an unincorporated body of persons or association which has net assets in excess of EUR 750,000 or the currency equivalent thereof;
 - (iii) is a trust where the net value of the trust's assets is in excess of EUR 750,000 or the currency equivalent thereof;
 - (iv) is an individual whose net worth or joint net worth with that of the person's spouse, exceeds EUR 750,000 or the currency equivalent thereof; or
 - (v) is a senior employee or director of a service provider to the PIF.
- 3.07 In the case of ‘joint holders’, all holders should individually satisfy the definition of “Qualifying Investor”.
- 3.08 In relation to investments made by an entity holding on a nominee basis, the underlying investors considered to be the beneficial owners must individually satisfy the definition of “Qualifying Investors”.
- 3.09 The minimum investment requirement is EUR 100,000 or the currency equivalent thereof. The total amount invested shall not fall below this threshold unless this is the result of a fall in the net asset value. Provided that the minimum threshold is satisfied, additional investments – of any size – may be made. The minimum investment requirement applies to each individual “Qualifying Investor”. In the case of joint holders, the minimum investment requirement is EUR 100,000 or the currency equivalent thereof.

⁹ Companies Act (Recognised Incorporated Cell Companies) Regulations

¹⁰ Trust and Trustees Act

¹¹ Investment Services Act (Contractual Fund) Regulations

- 3.10 In the case of an umbrella fund comprising of sub-funds each of which is set up as a PIF, the EUR 100,000 requirement or the currency equivalent thereof is applicable on a per scheme basis rather than on a per sub-fund basis.
- 3.11 PIFs promoted to qualifying investors are not subject to any investment or borrowing (including leverage) restrictions other than those which may be specified in their offering document.

4 Service Providers

- 4.01 A PIF may appoint any service provider as it may deem necessary. Ordinarily, these service providers may include, amongst others, a manager, an administrator, an investment adviser and/or a custodian/prime broker.
- 4.02 The service providers of a PIF shall be established and regulated in a recognised jurisdiction. Recognised jurisdictions include EU and EEA Members, and signatories to a Multilateral MoU or Bilateral MoU with the MFSA covering the relevant sector of financial services.

Manager

- 4.03 A PIF may be a self-managed PIF or appoint a third party manager.
- 4.04 The fund manager of a PIF may be one of the following:
- (a) a *de minimis* AIFM in possession of a Category 2 Investment Services Licence issued in terms of Article 6 of the Act and should be duly licensed and authorised by the MFSA to provide management services to collective investment schemes;
 - (b) a *de minimis* AIFM which is registered/authorised in an EU or EEA Member State and which is subject to regulation in an equal or comparable level in the EU or EEA Member State concerned;
 - (c) a third country AIFM which is authorised/licenced in a third country with whom the MFSA has signed a co-operation agreement in terms of the AIFMD.
- 4.05 Where the proposed manager has appointed a sub-manager with limited or full discretion in respect of the management of the assets of the PIF, the sub-manager is not subject to MFSA's approval and no eligibility criteria apply. In such case, the MFSA expects the manager to exercise care and diligence in the selection of the sub-manager and to assume responsibility for the acts of the sub-manager.

Fund administrator

- 4.06 Administrative services in relation to a PIF may either be carried out by the manager or by a delegated third party administrator.
- 4.07 Where the proposed fund administrator is established in Malta, it shall be in possession of a Fund Administration recognition certificate issued in terms of Article 9A of the Act.

Custodian

- 4.08 A PIF is not required to appoint a custodian in terms of the Investment Services Act (Custodians of Collective Investment Schemes) Regulations¹². Nonetheless a PIF is required to make the necessary arrangements for the appointment of an entity entrusted with safekeeping the PIF's assets.
- 4.09 Where the PIF does not appoint a custodian, responsibility for the establishment of proper arrangements for the safe keeping of the PIF's assets remains with the governing body and the officers of the PIF. The applicant will be required to outline as part of the application process the arrangements that will be put in place to ensure adequate safekeeping of the assets of the PIF.
- 4.10 Where the PIF wishes to appoint a custodian established in Malta, the custodian can be in possession of a Category 4a or Category 4b Investment Services Licence. In this case, the custodian shall ensure compliance with the applicable provisions of the Investment Services Act (Custodians of Collective Investment Schemes) Regulations.

Investment advisor

- 4.11 The investment adviser is a person responsible for the provision of investment advice to the PIF or its manager on the assets of the PIF. It is understood that the investment adviser will not have any discretion with respect to the investment and re-investment of the assets of the PIF.
- 4.12 PIFs are generally not required to appoint a third party investment adviser. Moreover, the proposed investment adviser need not be established and regulated in Malta.
- 4.13 Where the investment adviser is appointed directly by the manager, rather than by the PIF, it will not be subject to MFSA's approval and no eligibility criteria apply.

¹² L.N. 114 of 2016

- 4.14 Where the proposal includes the appointment – directly by the PIF – of a third party investment adviser, and the proposed investment adviser is established in Malta, it should be in possession of a Category 1A, 1B, 2 or 3 Investment Services Licence issued in terms of Article 6 of the Act and should be duly licensed and authorised by the MFSA to provide investment advice to collective investment schemes.

5 Applications for a Collective Investment Scheme Licence

The application process

- 5.01 When submitting an application for a collective investment scheme licence under the Act, the promoter should ensure that the appropriate application form¹³ is completed.
- 5.02 The application requirements which must be satisfied by a PIF promoted to qualifying investors are summarised below.
- 5.03 There are three phases to the application process namely (i) Phase One being the preparatory phase; (ii) Phase two being the pre-licencing phase; and (iii) Phase three being the post-licencing phase.

A preliminary meeting between the promoters of the Scheme and officials of the MFSA shall be mandatory during the Preparatory Phase of the application process for a PIF proposing to invest in virtual currencies. This preliminary meeting should take place in advance of submitting an application for a licence.

- 5.04 **Phase one** consists of the following steps:
- i. The MFSA recommends that the promoters complete the application form and submit it with the supporting documents as specified in the application form itself. The application form must be signed by the promoter and shall be complete with all the information and documents required. The application form and the supporting documentation will be reviewed and comments are provided to the applicant generally within three weeks from submission of the application documents.
 - ii. The MFSA may ask for more information and may make such further enquiries as it considers necessary. Furthermore, the MFSA carries out the necessary due diligence checks at this stage.

¹³ Schedule A to Part A of these Rules

- iii. The MFSA will consider the nature of the proposed scheme and will apply the rules included in Part B of this Rulebook which represent the ongoing requirements to which the scheme will be subject, if and when licensed.

5.05 **Phase two** consists of the following steps:

- i. Once the MFSA concludes the review of the application and supporting documents, it will issue its 'in principle' approval for the issue of a licence. The 'in principle' approval is valid for a period of **three months** during which, the applicant will be required to finalise any outstanding matters. Should the three months elapse without the satisfactory resolution of all pre-licencing outstanding issues; the 'in principle approval' issued will cease to have effect.
- ii. Once any outstanding matters have been finalised, the application form and the supporting documentation are endorsed by the members of the governing body of the scheme and are resubmitted to MFSA.
- iii. The MFSA will proceed with the issue of a licence as soon as all pre-licensing issues are resolved.

5.06 During **phase three**, the applicant may be required to satisfy a number of post-licensing matters prior to formal commencement of business.

The application documents

- 5.07 An applicant for a PIF licence is ordinarily required to submit the following documents:
- i. application form (Schedule A to this Part);
 - ii. application fee;
 - iii. draft version of the instruments of incorporation¹⁴;
 - iv. draft version of the offering document. The offering document shall at least include the information listed in Appendix II to Part B of these Rules;
 - v. resolution of the governing body¹⁵ of the PIF:

¹⁴ Memorandum and articles of association in the case of a SICAV, deed of partnership in the case of a limited partnership, trust deed/ deed of constitution (either by public deed or private writing) in the case of unit trust or contractual fund. **In the case of a limited partnership being established in terms of the Investment Services Act (Special Limited Partnership Fund) Regulations, the draft partnership agreement shall be submitted in conjunction with Annex AX55 – Limited Partnership Agreement Checklist.**

¹⁵ Board of directors in the case where the scheme is established as an investment company; general partners where the PIF is established as a limited partnership; manager in the case of unit trust.

- (a) confirming the intention of the governing body to apply for a licence in favour of the PIF¹⁶;
 - (b) identifying the person(s) responsible for signing the application documents;
 - (c) identifying the person(s) responsible for acting as a point of liaison with the MFSA;
 - (d) identifying the person(s) responsible on behalf of the governing body for the compliance obligations of the PIF;
 - (e) identifying the person(s) responsible on behalf of the governing body for the AML obligations of the PIF;
 - (f) approving and assuming responsibility for the contents of the offering document.
- vi. personal questionnaires of the individuals proposed to carry out the functions of compliance officer and money laundering reporting officer.

5.08 In addition, where the PIF is established as an **investment company**, it is required to submit the following additional documents:

- i. personal questionnaires of the directors of the PIF:
 - (a) if individuals: personal questionnaires of the proposed director(s);
 - (b) if corporate and regulated in a recognised jurisdiction:
 - details of the regulatory status of the proposed corporate director(s);
 - name of the individual that will represent the corporate director on the board of directors of the PIF.
- ii. in relation to the founder shareholder(s) holding more than 10% of the voting shares:
 - (a) if individuals: personal questionnaires of the founder shareholders;
 - (b) if corporate and regulated in a recognised jurisdiction: details of the regulatory status of the proposed corporate founder shareholder(s);
 - (c) if corporate and not regulated in a recognised jurisdiction:
 - personal questionnaire of the directors of the proposed corporate founder shareholder(s);
 - personal questionnaire of the qualifying beneficial owners of the proposed corporate founder shareholder(s); and
 - last three years audited financial statements of the proposed corporate founder shareholder(s).

¹⁶ Where the PIF is established as an incorporated cell company, the resolution must confirm the intention of the board of directors to apply for a collective investment scheme licence in favour of a scheme as an incorporated cell company.

5.09 In addition to the requirements outlined in established as an **incorporated cell company**, additional documents:

- i. personal questionnaires of the directors of the PIF:
 - (a) if individuals: personal questionnaires of the proposed director(s);
 - (b) if corporate and regulated in a recognised jurisdiction:
 - details of the regulatory status of the proposed corporate director(s);
 - name of the individual that will represent the corporate director on the board of directors of the PIF.
- ii. in relation to the founder shareholder(s) holding more than 10% of the voting shares:
 - (a) if individuals: personal questionnaires of the founder shareholders;
 - (b) if corporate and regulated in a recognised jurisdiction: details of the regulatory status of the proposed corporate founder shareholder(s);
 - (c) if corporate and not regulated in a recognised jurisdiction:
 - personal questionnaire of the directors of the proposed corporate founder shareholder(s);
 - personal questionnaire of the qualifying beneficial owners of the proposed corporate founder shareholder(s); and
 - last three years audited financial statements of the proposed corporate founder shareholder(s).

5.10 In addition to the requirements outlined in Rules 5.07 and 5.09 above, in the case of **incorporated cells** the MFSA requires the following additional documentation:

- i. a copy of the agreement between the incorporated cell and the stated ICC;
- ii. the draft resolution of the governing body of the incorporated cell shall include a confirmation of the governing body to apply for a collective investment scheme licence in favour of the PIF to operate as an incorporated cell of the SICAV incorporated cell company or the incorporated cell of the recognised incorporated cell company (RICC);
- iii. a copy of the resolution passed of the board of directors of the SICAV ICC (umbrella fund) or the RICC which:
 - approves the name of the incorporated cell being established;
 - approves the terms of the memorandum and articles of association of the incorporated cell and resolves that the said memorandum and articles of association of the incorporated cell are to be entered into by the incorporated cell company; and
 - authorises, if applicable, the subscription by the incorporated cell company of a share or shares in the incorporated cell.

- iv. personal questionnaires of the directors of the PIF:
 - (a) if individuals: personal questionnaires of the proposed director(s);
 - (b) if corporate and regulated in a recognised jurisdiction:
 - details of the regulatory status of the proposed corporate director(s);
 - name of the individual that will represent the corporate director on the board of directors of the PIF.

- v. in relation to the founder shareholder(s) holding more than 10% of the voting shares:
 - (a) if individuals: personal questionnaire of the proposed founder shareholder(s);
 - (b) if corporate and regulated in a recognised jurisdiction: details of the regulatory status of the proposed corporate founder shareholder(s);
 - (c) if corporate and not regulated in a recognised jurisdiction:
 - personal questionnaire of the directors of the proposed corporate founder shareholder(s);
 - personal questionnaire of the qualifying beneficial owners of the proposed corporate founder shareholder(s); and
 - last three years audited financial statements of the proposed corporate founder shareholder(s).

5.11 In addition to the requirements outlined in SLC 5.07 above, in the case where the PIF is established as a **limited partnership**, the following additional documents are required:

- i. general partner(s) of the scheme:
 - (a) if individuals: personal questionnaires of the proposed general partner(s);
 - (b) if corporate, regulated in a recognised jurisdiction:
 - personal questionnaire of the directors of the proposed corporate general partner(s);
 - personal questionnaire of the qualifying beneficial owners of the proposed corporate general partner(s);
 - the name of the individual(s) who will represent the corporate general partner(s); and
 - last three years audited financial statements of the proposed corporate general partner(s).
 - (c) if corporate, not regulated in a recognised jurisdiction:
 - personal questionnaire of the directors of the proposed corporate general partner(s);
 - personal questionnaire of the qualifying beneficial owners of the proposed corporate general partner(s);

- the name of the individual(s) who will represent the corporate general partner(s); and
- last three years audited financial statements of the proposed corporate general partner(s).

5.12 In addition to the requirements outlined in SLC 5.07 above, in the case where the PIF is established as a **unit trust** or **common contractual fund**, the details of the regulatory status of the proposed trustee are required.

5.13 Where the PIF is established as a **self-managed scheme**, the MFSA requires the following additional application documents:

- i. personal questionnaire of the Portfolio Manager(s) and where appointed of the Risk Manager. For the purposes of the above and (iii) below, 'Portfolio Manager(s)' should be interpreted as the person(s) in charge of the day-to-day investment management of the Scheme, whether he/she is also a member of the Investment Committee or otherwise. Provided that, when the Investment Committee is to be considered as being collectively responsible for the day-to-day investment management of the assets of the Scheme, all its members would be required to submit a Personal Questionnaire, and paragraphs (ii) and (iii) below shall apply to all of them;
- ii. terms of reference regulating the procedures of the investment committee;
- iii. confirmation from the Portfolio Manager(s) (as applicable) that he/she/they will:
 - (a) operate in accordance with the investment objective and policy described in the PIF's offering document in general and the investment guidelines issued by the Investment Committee in particular;
 - (b) report to the Investment Committee on a regular basis any transactions effected on behalf of the PIF; and
 - (c) provide the Investment Committee with any information as the Investment Committee may require from time to time;
- iv. confirmation from the Portfolio Manager(s) that they have appropriate resources available to them to ensure on-going access to the market information which they would need to take account of in making investment management decisions.

5.14 In addition to the requirements outlined in the above rules, where the PIF proposes to appoint service providers which do not operate from a recognised jurisdiction, the MFSA requires the following additional application documents:

- personal questionnaires of the directors and qualifying shareholders (>10% control) of the relevant service provider;

- latest three years audited financial statements; and
- evidence of their respective authorisation.

5.15 The MFSA reserves the right to request such additional information as it may require when processing an application for a licence.

Additional application documents to be submitted for PIFs investing in virtual currencies

5.16 The following additional documents shall be submitted to the Authority where the PIF proposes to invest in virtual currencies:

- i. An assessment undertaken by the governing body that the proposed service providers have business organisation, systems, experience and expertise in the field of information technology, Virtual Currencies and their underlying technologies, including but not limited to the Distributed Ledger Technology, to act as service providers to PIFs investing in Virtual Currencies.
- ii. Where the PIF appoints a third party Manager, confirmation by the governing body that the proposed Manager has an Investment Committee set-up in line with SLC 9.8 of Appendix I to Part BII of these Rules together with the Terms of Reference regulating the procedures of the Investment Committee of the said Manager.
- iii. In accordance with the requirements of SLCs 9.8 and 9.27 of Appendix I to Part BII of these Rules, confirmation by the governing body that the Investment Committee Member/s has/have a sufficient and proven track record of trading on an established Virtual Currency exchange.

5.17 The MFSA reserves the right to request such additional information as it may require when processing an application for a licence.

Applications for the licencing of additional sub-funds of an existing PIF

5.18 A licensed PIF constituted in the form of an umbrella fund wishing to establish additional sub-funds, is ordinarily required to submit the following documents:

- i. formal notification to the MFSA of its intention to apply for a licence in favour of the sub-fund;
- ii. a confirmation from the governing body of the scheme signifying its intention to apply for a licence in favour of the sub-fund;

- iii. a final draft of the revised offering document/ offering supplement (as applicable);
- iv. the appropriate application fee; and
- v. a draft copy of the approval by the governing body of the scheme of the revised offering document/ offering supplement (as applicable).

Applications for the approval of additional classes of shares/units of an existing PIF

5.19 A licensed PIF constituted in the form of an umbrella (i.e. with sub-funds) or multi-class (i.e. without sub-funds) fund wishing to issue an additional class of shares/ units is ordinarily required to the documents listed hereunder. The additional class of shares/ units shall not constitute a distinct sub-fund of the PIF.

5.20 The documents required are the following:

- i. formal notification to the MFSA of its intention to issue additional classes of shares/ units;
- ii. a final draft of the revised offering document;
- iii. a draft copy of the approval of the governing body of the PIF of the offering document; and
- iv. a confirmation from the governing body of the PIF signifying its intention to issue additional classes of shares/ units.

Listing on a regulated market

5.21 A PIF that has been granted or has applied for a collective investment scheme licence in terms of the Act may apply for admissibility to listing with the Listing Authority. The MFSA is the Listing Authority in terms of the Financial Market Act.

5.22 Where an application for admissibility to listing has been submitted concurrently with an application for a collective investment scheme licence, the documents submitted as part of the application for a collective investment scheme licence need not be resubmitted as part of the application for admissibility to listing.

5.23 In addition, provided the MFSA is informed of the PIF's intention to apply for admissibility to listing – once these documents have been approved by the MFSA, they will be deemed to be approved in relation to both the application for a

collective investment scheme licence as well as in relation to the application for admissibility to listing.

6 Cessation of a Collective Investment Scheme Licence

- 6.01 The scheme shall inform the MFSA at an early stage of its intention to surrender its collective investment scheme licence. The MFSA may require the scheme to delay the surrender of its licence, or to wind-up such business in accordance with conditions imposed by the MFSA, in order to protect the interests of unit-holders.
- 6.02 The general procedure for surrendering a collective investment scheme licence is outlined below, although the MFSA reserves the right to impose additional requirements or vary them according to the particular circumstances of the case.
- 6.03 Following a notification to the MFSA of its intention to surrender its collective investment scheme licence, the scheme shall submit the following documentation to the MFSA:
- i. a formal request to the MFSA asking for its approval to surrender the collective investment scheme licence;
 - ii. a resolution from the governing body of the scheme:
 - (a) confirming the scheme's intention to surrender its licence, subject to the MFSA's approval and once the necessary formalities are finalised;
 - (b) confirming that the scheme has informed its auditor, custodian and relevant service providers of its intention to surrender its licence;
 - (c) confirming, when the scheme is set up in a corporate form, that its shareholders have consented, in writing, to the scheme's intention to surrender its licence,; by way of derogation from SLC 6.07
 - iii. a written confirmation that due notice was given to its Unit-holders of its intention to surrender its licence, once the necessary formalities are finalised.
- 6.04 Subsequently the scheme shall also submit:
- i. a confirmation from the scheme's administrator that there are no investors in the scheme;
 - ii. a confirmation from the scheme's administrator that no complaints/ litigation are/is pending arising from any event which arose whilst there were investors in the scheme;

- iii. a confirmation from the scheme's administrator that the accruals and liabilities of the scheme have been cleared;
 - iv. a confirmation from the custodian (where applicable) or administrator that the disbursement of the assets of the scheme has been completed in order; and
 - v. the original licence/s granted to it by the MFSA.
- 6.05 Once all the requirements listed above have been satisfied, the respective supervisory fees are settled, the scheme is delisted from any regulated market and passporting notifications have been withdrawn (as applicable), an internal process will be set in motion for approval of the surrender of the collective investment scheme licence.
- 6.06 The MFSA will convey its final decision to the scheme and will issue a public notice regarding the surrender of the scheme's licence.
- 6.07 Where the scheme consists of different sub-funds, and the licence which had been granted in relation to the sub-fund is to be surrendered, this section will nonetheless apply and any references to 'the scheme' shall be deemed to refer to 'the sub-fund'.

7 Conversion of a PIF into a Notified PIF ('NPIF')

- 7.01 The PIF shall obtain the written consent of the MFSA before applying for a conversion of the PIF into a Notified PIF. The PIF shall inform the MFSA at an early stage of its intention to convert from a PIF into a Notified PIF.
- 7.02 Requests for conversions from licensed PIFs to NPIFs, will be subject to the satisfactory resolution of the requirements stipulated within this section and are at the discretion of the MFSA.
- 7.03 The MFSA may require the scheme to delay the conversion in accordance with conditions imposed by the MFSA, in order to protect the interests of unitholders.
- 7.04 The general procedure for conversion is outlined below, although the MFSA reserves the right to impose additional requirements or vary them according to the particular circumstances of the case.
- 7.05 The governing body of the PIF shall submit to the MFSA:
- a. a signed confirmation which:

- i. Provides the rationale for the required conversion;
 - ii. Confirms that there are no regulatory implications associated with the required conversion;
 - iii. Discloses whether there are any open breaches, in relation to any applicable framework, relating to the licensed PIF, and provides the MFSA with an updated breaches register of the scheme;
 - iv. Declares that existing investors in the PIF have been duly notified of the prospective conversion:
Provided that the application for conversion to a NPIF of an existing PIF can only be made after any redemptions linked to investors opting to exiting the fund have been duly satisfied and any applicable redemption fees would also need to be waived accordingly;
 - v. Confirms that there will be no subscription fees for existing investors in the PIF.;
 - vi. Confirms that the PIF has informed its service providers of its intention to give up its licensed status and convert to a Notified PIF.
- b. A declaration by the service provider appointed in terms of Regulation 18 of S.L. 370. – the Investment Services Act (Notified CISs) Regulations – confirming that it has carried out the necessary due diligence with regards to the functionaries and the governing body of the NPIF. This declaration must include a statement that the service provider (appointed in terms of Regulation 18 of the Regulations) is satisfied with the outcome of this due diligence exercise.
- c. The original licence/s granted to it by the MFSA.

8 Conversion of a NPIF into a PIF

- 8.01 The licencing process for PIFs is also available to collective investment schemes which are included in the List of Notified PIFs, in terms of the Investment Services Act (Notified CISs) Regulations:

Provided that, in cases of conversions, any redemption fees in relation to investors wishing to exit the NPIF prior to the conversion shall be waived and no subscription fees will be levied on existing investors in the NPIF.

