

A Guide to the Establishment of Collective Investment Schemes



Senglea – Malta

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

The Guide to the Establishment of Collective Investment Schemes has been designed to assist promoters of Collective Investment Schemes - and their professional advisors - to obtain an overview of the regulatory regime that applies in Malta.

The guide does not purport to provide more than an overview. Any reader interested in obtaining further information about the establishment of a Collective Investment Scheme in Malta or about any related topic is invited to make contact with the MFSA.

TABLE OF CONTENTS

1. INTRODUCTION	4
2. LICENCING AND AUTHORISATION	5
2.1. INVESTMENT SERVICES RULES	5
3. LEGAL FORMS	6
4. THE APPLICATION PROCESS	6
4.1. PREPARATORY PHASE	6
4.2. PRE-LICENCING PHASE	7
4.3. POST-LICENCING/PRE-COMMENCEMENT OF BUSINESS	7
5. SERVICE PROVIDERS	7
6. SCHEDULE OF FEES	8
7. LISTING OF A COLLECTIVE INVESTMENT SCHEME	8
APPENDIX I	9
APPENDIX II	Error! Bookmark not defined.
APPENDIX III	15
APPENDIX IV	18

1. INTRODUCTION

The Investment Services Act (the “ISA”)¹ establishes the regulatory framework for investment services and for Collective Investment Schemes (“CIS”). The ISA provides for two types of licences - an Investment Services Licence and a Collective Investment Scheme Licence. The ISA provides an extensive definition of a CIS as outlined below.

DEFINITION

The ISA provides that a ‘collective investment scheme’ means 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 any of 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 re-purchased 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:*

Provided 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.

A CIS may be set up as a:

- SICAV (investment company with variable share capital (i.e. an open-ended fund));
- Investment company with fixed share capital (i.e. a closed-ended fund);
- Contractual Fund;
- Limited Partnership;
- Incorporated Cell Company; or
- Unit Trust.

CISs can be licenced as:

- *UCITS Schemes:* UCITS Schemes are open-ended Schemes licenced in accordance with the provisions of the Investment Services Act. In addition, they are also subject to the requirements prescribed by the Investment Services Act (Marketing of UCITS) Regulations, the Investment Services Act (UCITS Management Company Passport) Regulations and Part BII of the Investment Services Rules for Retail Collective Investment Schemes, which in part transpose the provisions of the UCITS IV Directive². Within this framework these Schemes benefit from passporting rights within the EU and can hence be marketed in other EU or EEA Member States. Thus, UCITS Schemes which fulfil the requirements prescribed by the Directive can, by virtue of the European passport, be freely marketed throughout the European Union.
- *Alternative Investment Funds:* This category of funds includes non-UCITS Retail Schemes and Professional Investor Funds (“PIFs”). Non-UCITS Retail Schemes are open-ended or closed-ended retail Schemes formed in accordance with the Laws of Malta and regulated under Part BI

¹ Cap. 370 of the Laws of Malta

² Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2001 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)

of the Investment Services Rules for Retail Collective Investment Schemes. On the other hand, PIFs are regulated under a separate framework which is particularly suited for funds sold internationally on a private placement basis³.

The transposition of the AIFMD also conducive to the establishment of the Alternative Investment Funds (AIFs) regime. AIFs are subject to the Investment Services Act (Marketing of Alternative Investment Funds) Regulations, the Investment Services Act (Alternative Investment Fund Manager) (Passport) Regulations, and the Investment Services Rules for Alternative Investment Funds, which in part transpose the AIFMD. As is the case for UCITS, the AIF framework allows these funds to benefit from the EU passport throughout the EU.

2. LICENCING AND AUTHORISATION

In terms of Section 4 of the ISA, a CIS established under the Laws of Malta as well as a CIS operating in or from Malta requires a licence under the ISA. Certain exemptions from the requirement to obtain a CIS licence have been granted in terms of Section 12 of the ISA⁴.

The MFSA may only grant a CIS licence if it is satisfied that the Scheme will comply in all respects with the provisions of the ISA and the relevant Regulations and Investment Services Rules issued thereunder. Furthermore, its directors and officers must be fit and proper persons to carry out the functions required of them in connection with the CIS.

Thus the MFSA will look into the experience and track record of all parties who will be involved with the Scheme. Such persons should be of good standing and should be competent. Although the Act provides for the licensing of many different kinds of Schemes, the MFSA applies the same standards relating to the “fit and proper” status of the Applicant and its service providers.

The “fit and proper” test is one which an Applicant and a licence holder must satisfy on a continuing basis. Each case is assessed on its own merits and on the basis of the relevant circumstances. In general terms, there are three criteria which must be met to satisfy the “fit and proper” test namely integrity, competence and solvency.

2.1. INVESTMENT SERVICES RULES

The Investment Services Rules (“the Rules”) describe the basic principles to which licence holders must adhere in the provision of investment services or in the operation of a CIS. In certain circumstances, the standard requirements can be tailored to meet specific circumstances. The Rules also include the necessary forms to be completed by applicants for a CIS licence.

Every licence is subject to Standard Licence Conditions (“SLCs”) - which are set out in full in the applicable Rules. The MFSA regards the Rules as a framework within which the SLCs can be tailored to meet the particular application being considered. If the promoters can justify why one or more derogation/s from the SLCs should be considered, the Authority will consider the proposals submitted. However, the Authority will not approve any change that detracts from its high standards of regulation. In summary, there is certain flexibility within firm regulatory principles.

³ See MFSA Guide to the Establishment of Professional Investor Funds.

⁴ The Investment Services Act (Exemption) Regulations, the Investment Services Act (Recognition of Private Collective Investment Schemes) Regulations, the Investment Services Act (Marketing of UCITS) Regulations and the Investment Services Act (Marketing of Alternative Investment Funds Regulations).

The following Rule Books are available:

- Investment Services Rules for Recognised Persons
- Investment Services Rules for Retail Collective Investment Schemes
- Investment Services Rules for Alternative Investment Funds
- Investment Services Rules for Professional Investor Funds

3. LEGAL FORMS

A CIS may be set up in any one of various legal forms including:

- an investment company with variable share capital (SICAV) in terms of the Companies Act⁵ and the Companies Act (SICAV Incorporated Cell Companies) Regulations;
- an investment company with fixed share capital (INVCO) in terms of the Companies Act;
- a limited partnership divided into shares in terms of the Companies Act and the Companies Act (Amendment of Tenth Schedule) Regulations;
- a unit trust in terms of the Trust and Trustees Act⁶;
- a contractual fund in terms of the Investment Services Act (Contractual Funds) Regulations; and
- an incorporated cell company in terms of the Companies Act (SICAV Incorporated Cell Company) Regulations.

4. THE APPLICATION PROCESS

A CIS organised under the Laws of Malta as well as a CIS organised in or from Malta operating in or from Malta requires a CIS licence under the ISA.

A CIS, whether local or based abroad, or each sub-fund in the case of an umbrella fund, seeking a listing - whether Primary or Secondary - must be licensed under the ISA before it can be listed. A primary listing is appropriate where the CIS is not already listed elsewhere whereas a secondary listing refers to a situation where a CIS is already listed elsewhere.

The application requirements and the ongoing requirements applicable to collective investment schemes are summarised below.⁷ There are three phases:

- Phase 1: Preparatory Phase
- Phase 2: Pre-Licencing Phase
- Phase 3: Post-Licencing/Pre-Commencement of Business

4.1. PREPARATORY PHASE

It is recommended that the promoters hold a preliminary meeting with the MFSA to outline their proposal. This meeting should be held in advance of submitting an application for a licence. It is essential that the applicant provides a comprehensive description of the proposed activity from the

⁵ Chapter 386 - Laws of Malta

⁶ Chapter 331 of the Laws of Malta

⁷ These requirements apply to all collective investment schemes, whether retail schemes (UCITS or non-UCITS retail), AIFs or PIFs. However, a additional requirement for an application for preliminary acceptability is applicable in the case of certain PIFs. For further detail on the rules relative to PIFs, refer to the MFSA publication "A Guide to the Establishment of a Professional Investor Fund".

very beginning, including full information on the manner in which it proposed to market the units of the scheme in Malta.

Following the preliminary discussions, the promoters should submit a draft Licence Application Form, together with the supporting documents as specified in the Application Form itself. The list of supporting documentation is reported in Appendix I to this Brochure. The list of supporting documentation is also extensively outlined in the Investment Services Rules for Retail Collective Investment Schemes and in the Investment Services Rules for Alternative Investment Funds. The application fee, which is not refundable, is due at this stage. All material submitted should be in English or, if in another language, should be accompanied by an English translation.

The draft application form(s) and the supporting documentation are reviewed by the MFSA and comments provided to the applicant, following which the applicant is invited to revert with his own comments. The Authority may ask for more information and may make such further enquiries as it considers necessary. The “fit and proper” checks begin at this stage. This entails following up all the information which has been provided in the application documents submitted. Where applicable, it also includes contacting regulators abroad.

At this stage, the MFSA will consider the nature of the proposed scheme and a decision will be made regarding which SLCs should apply. Some SLCs could be disappplied or amended (where the circumstances justify such treatment, as long as investors are adequately protected) and supplementary conditions may be applied.

These licence conditions are very important since they represent the ongoing requirements to which the Applicant will be subject, once licensed.

4.2. PRE-LICENCING PHASE

Once the review of the application and supporting documentation has been completed and the draft licence conditions have been agreed, the Authority will issue (all other things equal) its “in principle” approval for the issue of a licence. At this stage, the applicant will be required to finalise any outstanding matters. Submission of signed copies of the revised application form together with supporting documentation in their final format, and any other issues raised during the application process should be resolved. A licence will be issued as soon as all pre-licensing issues are resolved.

4.3. POST-LICENCING/PRE-COMMENCEMENT OF BUSINESS

The applicant may be required to satisfy a number of post-licensing matters prior to formal commencement of business.

5. SERVICE PROVIDERS

The Service Providers of a Maltese CIS are as a general rule required to be based in Malta and regulated by the MFSA. Service Providers generally include, amongst others, a *Manager*, a *Custodian*, an *Administrator* and an *Investment Adviser*. Service providers who benefit from EU Treaties are allowed to provide services to Malta-based schemes following notification under the applicable passporting legislation. Where permitted in terms of EU law, other foreign service providers, who may be accepted by the MFSA as service providers of Maltese Schemes, should be established and

regulated in a Recognised Jurisdiction⁸. Detailed information about Licencing and authorisation of the service providers is available in the Investment Services Rules for Investment Services Providers as well as in the Rulebooks specific to each type of fund (as referred to in Section 2.1 of this Brochure).

6. SCHEDULE OF FEES

An application fee is payable when the draft licence application is submitted (the application fee). A supervisory fee is payable on the day a licence is issued and on each subsequent anniversary thereafter. The fee payable is outlined in Appendix III to this Guide.

7. LISTING OF A COLLECTIVE INVESTMENT SCHEME

A Maltese CIS that has been granted or has applied for a CIS Licence may apply for admissibility to listing with the Listing Authority. A European Scheme may also apply for admissibility to listing with the Listing Authority.

Opting for a listing automatically translates into enhancing the international profile of the listed scheme. Secondly, some institutional investors may only acquire units in a CIS that is listed. Accordingly, a listing increases the “marketability” of the CIS. The applicable procedure is outlined in Appendix II to this Guide.

⁸ Recognised Jurisdictions include EU and EEA Members and other countries, to be approved on a case by case basis, that are considered as having EU equivalent rules.

APPENDIX I

SUPPORTING DOCUMENTATION

An applicant for a CIS licence in respect of a Maltese Collective Investment Scheme is ordinarily required to submit the following documents:

INVESTMENT COMPANIES

1. Application Form;
2. Draft version of the full Prospectus and if applicable the Key Investor Information Document of the Scheme;
3. Draft version of the Memorandum and Articles of Association of the Scheme;
4. Draft Management, Administration, Custody, Advisory agreements (as applicable)
5. Draft Board of Directors' resolution:
 - confirming the Directors' intention to apply for a CIS licence in favour of the Scheme;
 - identifying the person(s) responsible for signing the application documents;
 - identifying the person(s) responsible on behalf of the Board for the Compliance obligations of the Scheme;
 - identifying the person(s) responsible on behalf of the Board for the AML obligations of the Scheme; and
 - approving and assuming responsibility for the contents of the full and Key Investor Information Document.
6. Application Fee;
7. Marketing Plan;
8. Directors of the Scheme:
 - *where individuals*: personal questionnaires of the proposed Director(s);
 - *where Corporate, regulated in a recognised jurisdiction*: details of the regulatory status of the proposed Corporate Director(s) and name of the individual(s) that will represent the Corporate Director on the Board of Directors of the Scheme.
9. Founder shareholder(s) that hold all voting shares (where applicable):
 - *where individuals*: Personal Questionnaire of the proposed Founder Shareholder(s);
 - *where Corporate, regulated in a recognised jurisdiction*: details of the regulatory status of the proposed corporate founder
 - *where corporate, not regulated in a recognised jurisdiction*: Personal Questionnaire of the directors and of the qualifying beneficial owners of the proposed corporate Founder Shareholder and the audited financial statements of the proposed corporate founder shareholder for the previous three years;
10. Personal Questionnaire of the Portfolio Manager, Risk Manager, Compliance Officer, Money Laundering Reporting Officer, Investment Advisor; and
11. Competency Form for Portfolio Manager, Risk Manager, Compliance Officer, Money Laundering Reporting Office, Investment Advisor.

INCORPORATED CELL COMPANIES (ICCs) [INVESTMENT COMPANIES SET UP IN TERMS OF L.N. 559 OF 2010]

1. Application Form;
2. Draft version of the full Prospectus and if applicable the Key Investor Information Document;
3. Draft version of the Memorandum and Articles of Association of the Scheme;
4. Draft Management, Administration, Custody, Advisory agreements (as applicable)
5. Resolution of the Board of Directors':
 - confirming the Directors' intention to apply for a CIS licence in favour of the Scheme as an Incorporated Cell Company;
 - identifying the person(s) responsible for signing the application documents;
 - identifying the person(s) responsible on behalf of the Board for the Compliance obligations of the Scheme;
 - identifying the person(s) responsible on behalf of the Board for the AML obligations of the Scheme;
 - approving and assuming responsibility for the contents of the full and the Key Investor Information Document;
6. Application Fee;
7. Marketing Plan;
8. Directors of the Scheme
 - *where individuals*: personal questionnaires of the proposed Director(s);
 - *where Corporate, regulated in a recognised jurisdiction*: details of the regulatory status of the proposed Director(s) and name of the individual(s) that will represent the Directors.
9. Founder shareholder(s) that hold all voting shares (where applicable):
 - *where individuals*: Personal Questionnaire of the proposed Founder Shareholder(s);
 - *where Corporate, regulated in a recognised jurisdiction*: details of the regulatory status of the proposed corporate founder
 - *where corporate not regulated in a recognised jurisdiction*: Personal Questionnaire of the directors and of the qualifying beneficial owners of the proposed corporate Founder Shareholder and the audited financial statements of the proposed corporate founder shareholder for the previous three years;
10. Personal Questionnaire of the Portfolio Manager, Risk Manager, Compliance Officer, Money Laundering Reporting Officer, Investment Advisor; and
11. Competency Form for Portfolio Manager, Risk Manager, Compliance Officer, Money Laundering Reporting Office, Investment Advisor

INCORPORATED CELLS (ICs) [INVESTMENT COMPANIES SET UP IN TERMS OF L.N. 559 OF 2010]

1. Application Form;
2. Draft version of the full Prospectus and if applicable the Key Investor Information Document;
3. Copy of the agreement between the Incorporated Cell and the stated Incorporated Cell Company;

4. Draft version of the Memorandum and Articles of Association of the Scheme⁹;
5. Draft Management, Administration, Custody, Advisory agreements (as applicable)
6. Resolution of the Board of Directors' resolution:
 - confirming the Directors' intention to apply for a CIS licence in favour of the Scheme to operate as an Incorporated Cell of the Incorporated Cell Company;
 - identifying the person(s) responsible for signing the application documents;
 - identifying the person(s) responsible on behalf of the Board for the Compliance obligations of the Scheme;
 - identifying the person(s) responsible on behalf of the Board for the AML obligations of the Scheme;
 - approving and assuming responsibility for the contents of the full and the Key Investor Information Document;
7. Copy of the resolution of the Board of Directors of the Incorporated Cell Company 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.
8. Application Fee;
9. Marketing Plan;
10. Directors of the Scheme
 - where individuals: personal questionnaires of the proposed Director(s);
 - where Corporate, regulated in a recognised jurisdiction: details of the regulatory status of the proposed Director(s) and name of the individual(s) that will represent the Directors;
11. Founder shareholder(s) that hold more than 10% of the voting shares (where applicable):
 - where individuals: Personal Questionnaire of the proposed Founder Shareholder(s);
 - where corporate, regulated in a recognised jurisdiction: details of the regulatory status of the proposed corporate founder
 - where corporate, not regulated in a recognised jurisdiction: Personal Questionnaire of the directors and of the qualifying beneficial owners of the proposed corporate Founder Shareholder and the audited financial statements of the proposed corporate founder shareholder for the previous three years;
12. Personal Questionnaire of the Portfolio Manager, Risk Manager, Compliance Officer, Money Laundering Reporting Officer, Investment Advisor; and
13. Competency Form for Portfolio Manager, Risk Manager, Compliance Officer, Money Laundering Reporting Office, Investment Advisor.

LIMITED PARTNERSHIP

1. Application Form;
2. Draft version of the full Prospectus and if applicable the Key Investor Information Document of the Scheme;
3. Draft version of the Deed of Partnership;
4. Draft Management, Administration, Custody, Advisory agreements (as applicable)

⁹ The memorandum and articles of association of an incorporated cell must be entered into by the incorporated cell company, whether the incorporate cell company is subscribing to a share or shares in the incorporated cell or otherwise.

5. Resolution of the General Partner(s):
 - confirming its/their intention to apply for a CIS licence in favour of the Scheme;
 - identifying the person(s) responsible for signing the application documents;
 - identifying the person(s) responsible on behalf of the General Partner(s) for the Compliance obligations of the Scheme;
 - identifying the person(s) responsible on behalf of the General Partner(s) for the AML obligations of the Scheme;
 - approving and assuming responsibility for the contents of the full and Key Investor Information Document (if applicable)
6. Application Fee;
7. Marketing Plan;
8. General Partner(s) of the Scheme
 - *where individuals*: personal questionnaires of the proposed General Partner(s);
 - *where Corporate, regulated in a recognised jurisdiction*: details of the regulatory status of the proposed Corporate General Partner(s) and name of the individual(s) that will represent the Corporate General Partner(s).
 - *where 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);
 - Last three years audited financial statements of the proposed Corporate General Partner(s).
9. Founder shareholder(s) that hold more than 10% of the voting shares
 - *where individuals*: Personal Questionnaire of the proposed Founder Shareholder(s);
 - *where corporate, regulated in a recognised jurisdiction*: details of the regulatory status of the proposed corporate founder
 - *where corporate, not regulated in a recognised jurisdiction*: Personal Questionnaire of the directors and of the qualifying beneficial owners of the proposed corporate Founder Shareholder and the audited financial statements of the proposed corporate founder shareholder for the previous three years;
10. Personal Questionnaire of the Portfolio Manager, Risk Manager, Compliance Officer, Money Laundering Reporting Officer, Investment Advisor; and
11. Competency Form for Portfolio Manager, Risk Manager, Compliance Officer, Money Laundering Reporting Office, Investment Advisor.

UNIT TRUST/Common Contractual Fund

1. Application Form;
2. Draft version of the full Prospectus and if applicable the Key Investor Information Document of the Scheme;
3. Draft version of the Trust Deed/Deed of Incorporation;
4. Draft Management, Administration, Custody, Advisory agreements (as applicable)
5. Resolution of the proposed Manager:
 - confirming the Manager's intention to apply for a CIS licence in favour of the Scheme;
 - identifying the person(s) responsible for signing the application documents;

- identifying the person(s) responsible for acting as a point of liaison with the MFSA;
 - identifying the person(s) responsible on behalf of the Manager for the Compliance obligations of the Scheme;
 - identifying the person(s) responsible on behalf of the Manager for the AML obligations of the Scheme;
 - approving and assuming responsibility for the contents of the full and Key Investor Information Document (if applicable)
6. Application Fee;
 7. Marketing Plan;
 8. Details of the regulatory status of the proposed Trustee.
 9. Founder shareholder(s) that hold more than 10% of the voting shares
 - *where individuals*: Personal Questionnaire of the proposed Founder Shareholder(s);
 - *where corporate, regulated in a recognised jurisdiction*: details of the regulatory status of the proposed corporate founder
 - *where corporate, not regulated in a recognised jurisdiction*: Personal Questionnaire of the directors and of the qualifying beneficial owners of the proposed corporate Founder Shareholder and the audited financial statements of the proposed corporate founder shareholder for the previous three years;
 10. Personal Questionnaire of the Portfolio Manager, Risk Manager, Compliance Officer, Money Laundering Reporting Officer, Investment Advisor; and
 11. Competency Form for Portfolio Manager, Risk Manager, Compliance Officer, Money Laundering Reporting Office, Investment Advisor.

SUPPLEMENTARY APPLICATION DOCUMENTS – SELF-MANAGED SCHEME

1. Personal Questionnaire and detailed Curriculum Vitae of the members of the Investment Committee/Portfolio Manager;
2. Terms of reference regulating the procedures of the Investment Committee;
3. Confirmation from the Portfolio Managers (as applicable) that they will:
 - operate in accordance with the investment objective and policy described in the Scheme’s Prospectus in general and the investment guidelines issued by the Investment Committee in particular;
 - report to the Investment Committee on a regular basis any transactions effected on behalf of the Scheme; and
 - provide to the Investment Committee, any information as the Investment Committee may require from time to time.
4. Confirmation from the Portfolio Manager(s)/ Investment Committee 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. Risk Management Policy

SUPPLEMENTARY APPLICATION DOCUMENTS – SELF-MANAGED AIF

1. Personal Questionnaire and detailed CV of the members of the Investment Committee/ Portfolio Manager;

2. Terms of reference regulating the procedures of the Investment Committee;
3. Confirmation from the Portfolio Manager/s (as applicable) that he/she/they:
 - operate in accordance with the investment objectives and policy described in the AIF's Offering Document in general and the investment guidelines issued by the investment committee in particular;
 - report to the Investment Committee on a regular basis any transactions effected on behalf of the AIF; and
 - provide to the Investment Committee, any information as the Investment Committee may require from time to time.
4. Confirmation from the Portfolio Manager(s)/ Investment Committee 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. Portfolio and Risk Management Delegation Agreements (as applicable);
6. Risk Management Policy Document
7. If the AIF intends to cover potential professional liability risks by way of professional indemnity insurance, it shall provide a copy of the cover note to the insurance policy.

APPENDIX II

LISTING OF A CIS ON A REGULATED MARKET

In order to qualify for a listing, a scheme must be duly licensed by the MFSA pursuant to the provisions of the ISA; alternatively, it may be a UCITS or an AIF licensed by a regulatory Authority in a Member State or EEA State. In the case of new applications for authorisation, applicants are encouraged to contact the Listing Authority at the earliest opportunity prior to listing to seek informal guidance as to the authorisation for admissibility to listing of a particular scheme.

Chapter 8 of the Listing Rules distinguishes between:

- Application Procedures and Requirements for open-ended schemes seeking authorisation for admissibility for primary listing and secondary listing and continuing obligations¹⁰;
- Admissibility for primary listing of closed-ended collective investment schemes and continuing obligations¹¹.

APPLICATION PROCEDURES AND REQUIREMENTS FOR OPEN-ENDED SCHEMES SEEKING AUTHORISATION FOR ADMISSIBILITY FOR LISTING AND CONTINUING OBLIGATIONS

Open-ended schemes seeking authorisation for admissibility for **primary or secondary listing** must fulfil the following conditions:

- the Units offered by the Scheme shall be freely transferable.
- the number of Directors of a Scheme shall at least be one (1). In order to ensure the protection of investors at least one Director shall be independent of the Manager or of any Investment Adviser to the Scheme or of any affiliated entity.
- corporate Directors are not eligible, unless the Corporate Director is the Manager of the Scheme. The Corporate Director shall not be the sole director of the Scheme.
- a Scheme shall adopt rules governing dealings by Directors which will preclude them from dealing in the listed Units of the Scheme at a time when they are in possession of price-sensitive information.
- copies of the Directors' service contracts, if any, shall be made available to the general public for inspection at the time of the Annual General Meeting (AGM) of the Scheme.
- any other activity of the Directors, Manager or Investment Adviser should not result in the Scheme being disadvantaged in any way due to possible conflicts of interest between their obligations arising as a result of such activities and their obligations to the Scheme.

Directors and proposed Directors, and in the case of a Unit Trust, the Directors of the Manager, will be personally responsible for the information contained in the Prospectus. The Directors of the Scheme, and the Manager, shall acknowledge to the Listing Authority in writing that they accept full responsibility collectively and individually for the Scheme's compliance with all the Listing Authority's requirements and continuing obligations, whether in terms of these Listing Rules or otherwise.

A formal application for authorisation for Admissibility to Listing shall be lodged with the Listing Authority in accordance with the application form¹² at least 5 business days prior to the date of hearing

¹⁰ Sections I, II & III of Chapter 8 of the Listing Rules

¹¹ Sections IV & V of Chapter 8 of the Listing Rules

¹² Appendix 8.1 of the Listing Rules

of the application by the Listing Committee of the Listing Authority. The application for shall be duly completed and signed by a duly authorised representative of the Scheme and the Sponsor. Furthermore in the case of any other form of CIS, the form shall also be signed by a duly authorised officer for and on behalf of the Scheme and, if appropriate the management company.

The application should be accompanied by the following documents:

- (1) a copy of the Prospectus marked in the margin to indicate where the relevant requirements in Chapter 8 of the Listing Rules have been met;
- (2) CVs of the Directors of the Scheme;
- (3) Constitutional Documents of the Scheme; and
- (4) Audited accounts of the Scheme for the last three years where available¹³.

The Listing Authority shall communicate its decision to accept or refuse an application for admissibility to listing before the end of the period of 20 days beginning with the date on which the application is received or if within that period the Listing Authority has required the applicant to provide further information in connection with the application, before the end of the period of 20 days beginning with the date on which that information is provided. The Scheme shall comply at all times with the provisions of its constitutional documents, including its investment, borrowing and leverage restrictions (if any).

Once listed, every scheme is required to comply with the continuing obligations as set out in Sections II¹⁴ and III¹⁵ to Chapter 8 of the Listing Rules. The Listing Authority may be prepared to dispense with, vary or not require compliance with any of the continuing obligations to suit the circumstances of a particular case. Any such dispensation, variation or concession shall be signified to the applicant or issuer by the Listing Authority in writing.

ADMISSIBILITY OF CLOSED-ENDED COLLECTIVE INVESTMENT SCHEMES AND CONTINUING OBLIGATIONS

The scheme and its management bind themselves, either through the inclusion of relevant clauses in the Articles of Association, trust deed or equivalent document of constitution, or in such other manner as is acceptable to the Listing Authority, to ensure compliance with the following requirements throughout the period it is authorised as admissible to listing under Section IV to Chapter 8 of the Listing Rules:

- (1) that the scheme, either on its own or in conjunction with any connected person shall not take legal or effective management or control of any underlying investments in companies or other entities in which it invests;
- (2) that any custodian, management company, any of their connected persons and every director of any investment company and management company, is prohibited from voting at, or being part of a quorum for, any meeting to the extent that they have, or any of their associates has, a material interest in the business to be conducted; and

¹³ The CVs, constitutional documents and audited accounts of the Scheme need not be submitted in the case of schemes licenced by the Authority or which have applied for a licence apart from admissibility listing as well as in the case of schemes marketing their units in Malta in terms of the Investment Services Act (Undertakings for Collective Investment in Transferable Securities and Management Companies Regulations), 2004

¹⁴ In the case of open-ended schemes authorised as admissible for primary listing.

¹⁵ In the case of schemes authorised for admissibility for secondary listing.

- (3) that the scheme's auditors are independent of the scheme, any management company and any custodian and that the said auditors act in accordance with International Standards on Auditing as promulgated from time to time by the International Federation of Accountants; and
- (4) that unless authorised by the shareholders, a scheme will not issue further shares of the same class as existing shares for cash at a price below the net asset value per share of those shares unless they are first offered pro rata to existing holders of shares of that class.

Schemes being Property Companies will also be subject to the additional requirements laid out in Chapter 7.

A formal application for authorisation for admissibility to listing shall be lodged in accordance with the Application Form¹⁶ with the Listing Authority at least 5 business days prior to the date of hearing of the application by the Listing Committee of the Listing Authority. The following requirements shall also be satisfied:

- the application form shall be duly completed and signed by a duly authorised representative of the scheme and the sponsor; and
- in the case of any other form of closed ended collective investment scheme, the form shall also be signed by a duly authorised officer for and on behalf of the scheme and if appropriate the management company.

The application shall be accompanied by a copy of the prospectus¹⁷ and any other document or information which the Listing Authority may require.

The Listing Authority shall notify the applicant of its decision to approve or refuse an application for admissibility to listing including the approval or refusal of the prospectus before the end of the period of 10 days beginning with the date on which the application is received. This time limit shall be extended to 20 working days if the public offer involves units issued by a Scheme which does not have any units admitted to trading on a regulated market and which has not previously offered units to the public. If the Listing Authority finds, on reasonable grounds, that the documents submitted to it are incomplete or that supplementary information is needed, the time limits referred to shall apply only from the date on which such information is provided by the Applicant.

Once the scheme is authorised as admissible to listing and remains on a recognised list, the scheme shall be responsible for ensuring compliance with the continuing obligations of the Listing Rules at all times. The scheme shall also comply with the continuing obligation to provide information and if it fails to do so, the Listing Authority may itself publish any relevant information it may have in its possession after having heard the representation of the Scheme.

¹⁶ Appendix 8.1 to the Listing Rules

¹⁷ Marked in the margin to indicate where the relevant requirements of Chapter 8 have been met

APPENDIX III

SCHEDULE OF FEES¹⁸ - PAYABLE TO MFSA FOR AUTHORISATION AND LICENCING

- **Collective Investment Schemes which fall within the scope of Article 4 ISA and which are authorized as UCITS Schemes and non-UCITS Retail Schemes:**

	Application Fee	Supervisory Fee
	EUR	EUR
Scheme	2,500	3,000
Up to fifteen sub-funds (per sub-fund)	450	500
Sixteen sub-funds and over (per sub-fund)	450	<i>No annual supervisory fee will be payable from the 16th scheme sub-fund upwards</i>

- **Collective Investment Schemes which qualify as Professional Investor Funds and Alternative Investment Funds in terms of Investment Services Rules**

	Application Fee	Supervisory Fee
	EUR	EUR
Scheme	2,000	2,000
Per sub-fund	1,000	600

- **Tied agents registered by the competent authority in terms of regulation 5 of the Appointment of Tied Agents Regulations**

	Registration Fee	Supervisory Fee
	EUR	EUR
Individual	300	300
Non-Individual	350	350 and 250 per individual employed by such tied agent and who is directly involved in the provision of tied agent activities

- **Persons Providing administrative services in terms of Article 9A ISA**

	Application Fee	Supervisory Fee
	EUR	EUR
	3,000	1,500

¹⁸ The Fees are subject to alteration by Regulations.

- **Private Schemes recognised in terms of the Investment Services Act (Recognition of Private Collective Investment Schemes), Regulations**

	Application Fee	Supervisory Fee
	EUR	EUR
Scheme	2,000	750

- **European Investment Firms establishing a branch in Malta in terms of regulation 3 of the European Passport Rights for Investment Firms Regulations**

	Notification Fee	Supervisory Fee
	EUR	EUR
Authorised by their Home Member State or EEA State to receive and transmit orders in relation to one or more instruments, and, or provide investment advice and, or place instruments without a firm commitment basis in terms of the Directive but are not authorised to hold and control Clients Money or Customers' Assets	750	1200
Authorised by their Home Member State or EEA State to provide any investment services in terms of the Directive and to hold and control Clients' Money or Customers' Assets but not to operate a multilateral trading facility or to deal for their own account or underwrite or place instruments on a firm commitment basis	1,000	3,000
Authorised by their Home Member State or EEA State to provide any investment services in terms of the Directive and to hold and control Clients' Money or Customers' Assets	1,650	3,600

- **European Management Companies establishing a branch in Malta in terms of the Investment Services Act (UCITS Management Company Passport) Regulations**

	Notification Fee	Supervisory Fee
	EUR	EUR
European Management Companies	1,250	4,000

- **European UCITS marketing their units in Malta in terms of the Investment Services Act (Marketing of UCITS) Regulation**

	Notification Fee	Supervisory Fee
	EUR	EUR
European UCITS Scheme	2,500	3,000
Up to fifteen sub-funds (per sub-fund)	450	500

Sixteen sub-funds and over (per sub-fund)	450	<i>No annual supervisory fee will be payable from the 16th scheme sub-fund upwards</i>
-------------------------------------------	-----	---------------------------------------------------------------------------------------------------

- **European Alternative Investment Fund Managers establishing a branch in Malta in terms of regulation 7 of the Investment Services Act (Alternative Investment Fund Manager) (Passport) Regulations**

	Notification Fee	Supervisory Fee
	EUR	EUR
European Alternative Investment Fund Managers	1,250	4,000

- **European Alternative Investment Funds having their units marketed in Malta in terms of regulation 5 of the Investment Services Act (Marketing of Alternative Investment Funds) Regulations**

	Notification Fee	Supervisory Fee
	EUR	EUR
European Alternative Investment Funds	2,500	3,000
Up to fifteen sub-funds (per sub-fund);	450	500
Sixteen sub-funds and over (per sub-fund)	450	<i>No annual supervisory fee will be payable from the 16th scheme sub-fund upwards</i>

- **Marketing of units of an AIF (whether established in an EU/EEA Member State or in a third country) by an AIF Manager (whether established in an EU/EEA Member State or in a third country) pursuant to regulations 7 and 22 of the Investment Services Act (Alternative Fund Managers) (Third Country) Regulations**

	Notification Fee	Supervisory Fee
	EUR	EUR
Units of Alternative Investment Fund	2,500	3,000
Per AIF sub-fund (per sub-fund);	450	500

SCHEDULE OF FEES – PAYABLE TO THE LISTING AUTHORITY

The Application form must be accompanied by the payment of an Initial and a non-refundable Listing Fee as shown. The Initial Fee is payable to the MFSA as the Listing Authority.

	Application Fee
	EUR
Scheme	1,164.69
<i>If the CIS has a primary listing on an overseas exchange, the initial fees due shall be equivalent to 50%.</i>	

SCHEDULE OF FEES – PAYABLE TO THE MALTA STOCK EXCHANGE

Listed below are the annual admission fees payable to the Malta Stock Exchange. These are paid immediately upon admission, one year in advance and subsequently paid within one month of the anniversary of admission.

	Application Fee	Annual Fee
	EUR	EUR
Scheme	1,160	1,160
On the first five sub-funds	1,160 per sub-fund	1,160 per sub-fund
On the 6 th to the 10 th sub-funds	930 per sub-fund	930 per sub-fund
On the 11 th to the 15 th sub-funds	695 per sub-fund	695 per sub-fund
Thereafter	495 per sub-fund	495 per sub-fund

18% VAT is to be added to the amounts listed above.

Malta Financial Services Authority
Notabile Road,
Attard, BKR 3000

Telephone: (+356) 21441155
Fax: (+356) 21441189
E:Mail: communications@mfsa.com.mt
Website: <http://www.mfsa.com.mt>

MFSA

MALTA FINANCIAL SERVICES AUTHORITY