

INVESTMENT SERVICES RULES FOR RECOGNISED PERSONS

Part B.II: ONGOING REQUIREMENTS FOR RECOGNISED PRIVATE COLLECTIVE INVESTMENT SCHEMES

1. Introduction

In addition to the requirements included in this Part, the Scheme shall comply with the provisions of the relevant Regulations issued under the Investment Services Act, 1994, as may be amended or supplemented at any time, including the Investment Services Act (Recognition of Private Collective Investment Schemes) Regulations, 2002.

2. General Requirements

- 2.1 The Scheme shall organise and control its affairs in a responsible manner and shall have adequate operational, administrative and financial procedures and controls to ensure compliance with all regulatory requirements.
- 2.2 The Scheme shall co-operate fully with any inspection or other enquiry carried out by, or on behalf of, the MFSA and inform it promptly of any relevant information. The Scheme shall supply the MFSA with such information as the MFSA may require.
- 2.3 Where a requirement demands that the Scheme notifies the MFSA of an event, such notification shall be made to the MFSA formally, in a durable medium. The request to notify the MFSA of an event shall not be satisfied merely by the fact that the information which ought to be notified to the MFSA is included in a standard regulatory return.
- 2.4 The Scheme shall obtain the approval of the MFSA before any of the following documents are amended:
 - i. Constitutional Documents;
 - ii. Scheme rules (if not contained in (i));
 - iii. any other document affecting the rights of participants in the Scheme;
- 2.5 The Scheme shall promptly notify the MFSA in writing of any change in the details of the premises from where it is managed.
- 2.6 The MFSA may, whenever it deems it necessary or expedient, undertake compliance visits to these premises from where the Recognised Private Scheme is managed/operates. For this purpose, the Recognised Private Scheme shall ensure

that proper accounting and other records are at all times retained at its premises to show and explain the transactions it carries out and the nature of its activity and to make such records available to the MFSA, upon request.

- 2.7 The MFSA shall be informed of any material information concerning the Scheme, its management or its operation, as soon as the Scheme becomes aware of that information. This shall include notifying the MFSA in writing of:
- i. any evidence of fraud or dishonesty by an official of the Scheme;
 - ii. any actual or intended legal proceedings of a material nature by or against the Scheme; and
 - iii. any other material information concerning the Scheme, its business or its officials in Malta or abroad;
- immediately upon becoming aware of the matter.
- 2.8 The Scheme shall pay promptly all amounts due to the MFSA. In particular, the Supervisory Fee shall be payable by the Scheme on the day the Recognition Certificate is first issued, and thereafter annually within one week from the anniversary of that date.
- 2.9 The MFSA shall be notified of any breach of these Conditions or of any of the provisions of the Constitutional Documents as soon as the Scheme becomes aware of the breach.
- 2.10 No Units in the Scheme may be transferred from a Unit holder to any other party, which is not an existing Unit Holder without the advance permission of the MFSA.
- 2.11 The MFSA shall be entitled to be satisfied, on a continuing basis, of the fitness and properness of the Directors and Shareholders of the Scheme.
- 2.12 The Scheme shall obtain the written consent of the MFSA before the appointment of a Director or before issuing shares to any prospective new Unit Holder. The request for consent shall reach the MFSA prior to the proposed date of appointment or replacement or prior to the proposed issue of shares.
- 2.13 The request for consent of the appointment or replacement of an individual as Director or for the consent in respect of the proposed issue of shares to a new shareholder shall be accompanied by a Personal Questionnaire in the form set out in Schedule II to Part AI of these Rules duly completed by the person proposed. In the case of a Corporate Director or Corporate Shareholders, the request for consent shall include details of the proposed Directors or Shareholder. The MFSA reserves the right to object to the proposed appointment or replacement or to the proposed issue of shares and to require such additional information it considers appropriate.

- 2.14 The Scheme shall notify the MFSA in writing of the departure of a Director within 14 days of the departure. The Scheme shall also request the Director to confirm to MFSA that his departure had no regulatory implications or to provide relevant details, as appropriate. A copy of such request shall be provided to MFSA together with the Scheme's notification of departure.
- 2.15 Minutes of the meetings of the Board of Directors shall be held in Malta at the registered office of the Scheme or at any other place as may be agreed with the MFSA.
- 2.16 The Scheme shall, taking into account the size, nature, scale and complexity of the said undertaking and on a best effort basis, refer to the [Guidance on Technology Arrangements, ICT and Security Risk Management, and Outsourcing Arrangements](#).

3. Financial Reporting and Auditing Requirement

- 3.1 The Scheme shall submit its annual Audited Financial Statements to the MFSA and such other information, returns and reports as the MFSA may from time to time request. The accounting information provided in the Annual Financial Statements shall be audited by a qualified auditor. The auditor's report, including any qualifications thereto shall be produced in full in the annual report. The annual audited financial statements shall be published and submitted to the MFSA within six months of the end of the period concerned.

The Annual Audited Financial Statements shall be accompanied by a report from the auditor of the Scheme to the MFSA, confirming whether in its opinion and further to the information available during the course of its audit, the Scheme has satisfied the criteria for Private Schemes during the relevant accounting period.

4. Variation, Cancellation or Suspension of a Recognition Certificate by the MFSA

- 4.1 The MFSA has the right, from time to time, and following advance notification to the Scheme, to vary or revoke any Condition or impose any new conditions.
- 4.2 The MFSA may by notice in writing, cancel or suspend the recognition certificate issued in favour of the Scheme:
- i. if it considers that the Scheme does not fulfil the requirements of any of the provisions of the Act, relevant Regulations and these Rules; or
 - ii. if it considers that the Scheme has failed to comply with any of these Rules;
or

- iii. if it considers that the Scheme has given information which is false, misleading or inaccurate; or
- iv. if it considers that the Scheme or any persons connected thereto, in particular its Directors and Qualifying Shareholders, are not fit and proper persons; or
- v. if it considers it desirable to cancel or suspend recognition for the protection of investors and the general public and the reputation of Malta, taking into account Malta's International commitments; or
- vi. at the request of the Scheme, subject to appropriate notification to all participants of the Scheme.