

INVESTMENT SERVICES RULES FOR RETAIL  
COLLECTIVE INVESTMENT SCHEMES  
PART A: THE APPLICATION PROCESS

# CONTENTS

1	Investment Services Act, 1994 (“The Act”).....	4
1.1	Regulation of Retail Collective Investment Schemes (“Retail CIS”).....	4
1.2	Definition of a Collective Investment Scheme .....	4
2	Requirement for a Collective Investment Scheme Licence .....	5
3	Criteria which MFSA will apply in considering an application for a Licence.....	6
4	Categories of Retail Collective Investment Schemes.....	8
4.1	Maltese Non-UCITS Schemes.....	8
4.2	Maltese UCITS Schemes.....	9
4.3	Overseas based Non-UCITS Schemes .....	10
4.4	European UCITS Schemes.....	11
5	Standard Licence Conditions / Ongoing Regulatory Requirements.....	13
6	Listing on the Malta Stock Exchange .....	13
7	Service Providers .....	14
7.1	Maltese Non-UCITS Retail Schemes .....	14
7.2	Maltese UCITS Schemes .....	15
8	Applications for a Collective Investment Scheme Licence .....	17
8.1	The Application Process – Maltese Non-UCITS Schemes and Maltese UCITS Schemes ....	17
8.2	The Application Process – Overseas based Non-UCITS Schemes .....	18
9	Applications Documents.....	20
9.1	Maltese Non-UCITS Schemes and Maltese UCITS Schemes .....	20
9.2	Overseas based Non-UCITS Schemes .....	24
10	Applications for the Licensing of Additional Sub-Funds of an Existing Scheme.....	25
10.1	Maltese Non-UCITS Schemes and Maltese UCITS Schemes .....	25
10.2	Overseas based Non-UCITS Schemes .....	25
11	Applications for the Approval of Additional Classes of Shares/ Units of an Existing Scheme..	26
11.1	Maltese Non-UCITS Schemes and Maltese UCITS Schemes .....	26
11.2	Overseas based Non-UCITS Schemes .....	26
12	Exercise of Passport Rights by European UCITS Schemes .....	27
12.1	Notification Procedure.....	27
12.2	Notification Requirements.....	28
12.3	Cross-Border Marketing Rights.....	28
12.4	On-Going Requirements.....	28
13	Surrender of Collective Investment Scheme Licence.....	30

## REVISIONS LOG

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## 1 **Investment Services Act, 1994 (“The Act”)**

### 1.1 **Regulation of Retail Collective Investment Schemes (“Retail CIS”)**

Retail CISs are Collective Investment Schemes that are available to the general public.

The Investment Services Act, 1994 (“the Act”) provides the statutory basis for regulating Collective Investment Schemes constituted in or operating in or from Malta. The following sections make reference to various parts of the Act but do not attempt to reproduce it, and therefore should not be treated as a substitute for reading the Act itself.

### 1.2 Definition of a Collective Investment Scheme

The Act defines “Collective Investment Schemes” 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.

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

## 2 Requirement for a Collective Investment Scheme Licence

Article 4 of the Act states:

- (1) *Subject to the provisions of subarticle (3), no Collective Investment Scheme shall issue or create any units or carry on any activity in or from within Malta unless there is in respect of it a valid Collective Investment Scheme licence.*
- (2) *Subject to the provisions of subarticle (3), no Collective Investment Scheme formed in accordance with or existing under the laws of Malta shall issue or create any units or carry on any activity in or from within a country, territory or other place outside Malta unless there is in respect of it a valid Collective Investment Scheme licence.*
- (3) *No Collective Investment Scheme shall be precluded by the provisions of subarticle (1) from issuing or creating such units or from taking such steps as may be necessary for the incorporation or, as the case may be, the establishment of the Scheme or from taking such steps as may be necessary for securing the authorisation of the Scheme by the competent authority."*

Subarticle 4(1) makes it illegal for any collective investment scheme to operate in or from Malta without having a licence.

Subarticle 4(2) makes it illegal for a collective investment scheme to use Malta as a base without having a licence.

Subarticle 4(3) permits the initial steps in establishing a collective investment scheme to be taken before a Licence has been obtained but the collective investment scheme may not deal with investors before it is licensed.

Under Article 12(1)(i) of the Act, certain exemptions have been granted from the requirement to obtain a Collective Investment Scheme Licence. For further details, reference should be made to the Investment Services Act (Exemption) Regulations, the Investment Services Act (Recognition of Private Collective Investment Schemes) Regulations and the Investment Services Act (Marketing of UCITS) Regulations.

### 3 Criteria which MFSA will apply in considering an application for a Licence

The MFSA may only grant a Collective Investment Scheme licence to a Retail CIS if it is satisfied to the extent that it can be, that the Scheme will comply in all respects with the provisions of the Act, the relevant Regulations and these Rules and that its Directors and officers, or in the case of a unit trust or limited partnership, its Trustee(s) or General Partner(s) respectively, are fit and proper persons to carry out the functions required of them in connection with the Retail CIS.

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.

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. The MFSA has the right to refuse a Licence if it does not approve a party involved with the Retail CIS.

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. The onus of proving that it meets the required standards on an on-going basis is on the Applicant and/or licensed Retail CIS as the case may be. It is not the task of the MFSA to prove that an applicant is fit and proper either on licensing or thereafter. The MFSA's approach is cumulative. It may decide that a Retail CIS has failed the test on the basis of considering various circumstances, each of which on its own may or would not lead to that conclusion. An open and honest relationship with the MFSA is essential. When arriving at its decision as to whether an Applicant has met the required standards, the MFSA will take account both of what is said and of what is not said (for example in respect of a person's criminal record) that ought to have been disclosed. It should be noted that it is an offence to provide inaccurate, false or misleading information to the MFSA.

In general terms, there are three criteria which must be met, to satisfy the "fit and proper" test:

- a. integrity;
- b. competence; and
- c. solvency.

Integrity involves the Retail CIS and its officers and its service providers acting honestly and in a trustworthy fashion.

Competence means that the persons responsible for running the Retail CIS 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.

Solvency means ensuring that proper financial controls and management of liquidity and capital is applied.

## 4 Categories of Retail Collective Investment Schemes

The MFSA's regulatory regime for Retail CISs caters for four principal categories:

- i. Maltese Non-UCITS Schemes;
- ii. Maltese UCITS Schemes;
- iii. Overseas based Non-UCITS Schemes; and
- iv. European UCITS Schemes.

Unless otherwise indicated, all references to Retail CISs throughout these Rules capture Maltese UCITS Schemes, Maltese Non-UCITS Schemes, European UCITS Schemes and Overseas based Non-UCITS Schemes.

### 4.1 Maltese Non-UCITS Schemes

A Maltese Non-UCITS Scheme is an open ended or closed ended retail Scheme formed in accordance with or existing under the Laws of Malta. Such Schemes are subject to the requirements outlined in Part B I of these Rules.

A Maltese Non-UCITS Scheme may be set up in various legal forms including:

- an investment company with variable share capital (SICAV) in terms of the Companies Act (Chapter 386 of the Laws of Malta);
- an incorporated cell company in terms of the Companies Act (SICAV Incorporated Cell Company) Regulations, 2010;
- an investment company with fixed share capital (INVCO) in terms of the Companies Act (Chapter 386 of the Laws of Malta);
- a limited partnership divided into shares in terms of the Companies Act (Chapter 386 of the Laws of Malta);
- a unit trust in terms of the Trust and Trustees Act (Chapter 331 of the Laws of Malta); and
- a common contractual fund in terms of the Investment Services Act (Contractual Funds) Regulations, 2011.

A Maltese Non-UCITS Scheme is required to appoint an Investment Manager unless it is set up as a self-managed Maltese Non-UCITS Scheme.

The Custodian or depositary of a Maltese Non-UCITS Scheme should be based in Malta and in possession of a Category 4 Investment Services Licence issued by the MFSA in terms of the Investment Services Act, 1994. The Custodian of a Maltese Non-UCITS Scheme is required to keep under custody the assets of the Scheme and to carry out a monitoring function over the activities of the Investment Manager, or over the management functions of the Scheme in the case of a self-managed Scheme.

The Administrator of a Maltese Non-UCITS Scheme should be based in Malta.

A Maltese Non-UCITS Scheme may market its units to the general public in Malta. It may also market its units to the general public in any other State provided that it satisfies the regulatory requirements applicable in that State. It is the obligation of the Maltese Non-UCITS Scheme to



ensure compliance with the requirements of the foreign State in which it intends marketing its units.

A Maltese Non-UCITS Scheme is required to draw up a Prospectus which includes the information outlined in Appendix 1 to Part B of these Rules. Such Schemes are also required to comply with the requirements outlined in the Investment Services Act (Prospectus of Collective Investment Schemes) Regulations, 2005. A Maltese closed ended Non-UCITS Scheme which makes an offer of securities to the public is required to draw up a Prospectus which complies with the requirements of the Prospectus Directive (Directive 2001/34/EC) and may accordingly avail itself of the passport under the said Directive.

#### 4.2 Maltese UCITS Schemes

A Maltese UCITS Scheme is an open ended Scheme formed in accordance with or existing under the laws of Malta and is subject to the requirements applicable to Maltese UCITS Schemes outlined in Part BII of these Rules and the Investment Services Act (Marketing of UCITS) Regulations, 2011 which transpose the UCITS Directive.

A Maltese UCITS Scheme may be set up as:

- an investment company with variable share capital (SICAV) in terms of the Companies Act (Chapter 386 of the Laws of Malta);
- a limited partnership whose share capital is divided into shares in terms of the Companies Act (Chapter 386 of the Laws of Malta); a unit trust in terms of the Trust and Trustees Act (Chapter 331 of the Laws of Malta); or
- a common contractual fund in terms of the Investment Services Act (Contractual Funds) Regulations, 2011.

A Maltese UCITS shall receive authorisation to be set up as a common fund only if the MFSA has approved the application of the Maltese or European Management Company to manage the fund, the fund rules and the choice of the custodian.

A Maltese UCITS shall receive authorisation to be set up as an investment company only if the MFSA has approved both its instruments of incorporation and the choice of the custodian, and where relevant the application of the designated management company to manage the investment company.

In the case where the Maltese UCITS appoints a European Management Company, the MFSA shall decide on the application of the European Management Company to manage the Maltese UCITS pursuant to Regulation 6 of the Investment Services Act (UCITS Management Company Passport) Regulations, 2011. Furthermore, such authorisation shall not be subject either to a requirement that the UCITS be managed by a Maltese Management Company or that the management company pursues or delegates any of its activities in Malta.

Subject to the overarching conditions of the UCITS Directive and the Investment Services Act (Marketing of UCITS) Regulations, 2011, a Maltese UCITS Scheme may also be set up as an Incorporated Cell Company (ICC) in terms of the Companies Act (SICAV Incorporated Cell Company) Regulations, 2010.

A Maltese UCITS Scheme is required to appoint a management company, unless it is set up as a self-managed Maltese UCITS Scheme. In the latter case, the Maltese UCITS Scheme should be constituted in the form of an investment company with variable share capital and shall comply with the provisions applicable to self-managed Maltese UCITS prescribed in Section 16 of Part BII of these Rules and in Appendix VIII of these Rules.

The management company or the self-managed Maltese UCITS may delegate the administrative function to an administrator.

The Custodian or depositary of a Maltese UCITS Scheme should be based in Malta and in possession of a Category 4 Investment Services Licence issued by the MFSA in terms of the Investment Services Act, 1994. The Custodian of a Maltese UCITS Scheme is required to keep under custody the asset of the Scheme and to carry out a monitoring function over the activities of the Investment Manager or the management function of a self-managed Scheme.

A Maltese UCITS Scheme may market its units to the general public in Malta. It may also market its units to the general public in any Member State or EEA State (other than Malta) provided that it follows the notification procedure stipulated in the Investment Services Act (Marketing of UCITS) Regulations, 2011.

A Maltese UCITS Scheme is required to draw up a Prospectus and a Key Investor Information Document. In drawing up the Prospectus, the Maltese UCITS shall comply with the Investment Services Act (Prospectus of Collective Investment Schemes) Regulations, 2005 and the information outlined in Appendix I to Part B of these Rules. With regards to the drafting of the Key Investor Information Document, the Maltese UCITS Scheme shall comply with the requirements prescribed in Section 6.2. of Part BII of these Rules.

Without prejudice to the generality of Article 6(6) of the Act, the Management Company or in the case where the scheme is a self-managed scheme, the investment company, shall be informed within two months of the submission of a complete application, whether or not authorisation of the UCITS has been granted.

The MFSA shall not authorise a Maltese UCITS if the UCITS is legally prevented for example through a provision in the fund rules or instruments of incorporation) from marketing its units in Malta.

#### 4.3 Overseas based Non-UCITS Schemes

An overseas based Non-UCITS Scheme is an open ended or closed ended Scheme formed in accordance with or existing under the laws of a jurisdiction other than Malta and is subject to tailored requirements agreed with the MFSA.

Overseas based Non-UCITS Schemes which would like to actively market/ promote their units in Malta – either directly or through intermediaries (e.g. by means of seminars, mailshots etc.) – are deemed to be “*carrying on an activity in Malta*” in terms of Article 4 of the Investment Services Act and are required to hold a Collective Investment Scheme Licence prior to marketing/ promoting their units in Malta. Reference should be made to Section 12 of this Part for an indication of the scenarios that would constitute marketing/ promotion in Malta.

Certain licensing eligibility criteria will apply to such Schemes – primarily that the Scheme and its principal Service Providers are to be based and regulated in a Recognized Jurisdiction. Such Scheme may appoint multiple distributors.

Whenever an Overseas based Non-UCITS Scheme is sold exclusively on a one to one basis to persons in Malta, by Investment Services Licence Holders/ European investment firms passporting into Malta, the Overseas based Non-UCITS Scheme is not deemed to be “*carrying on an activity in Malta*” provided there is no “*marketing/ promotion*” in Malta as described in Section 12 of this Part. Likewise whenever an investor in Malta requests and is provided with information (including marketing material) on an Overseas based Non-UCITS Scheme, the Overseas based Non-UCITS Scheme is not deemed to be “*carrying on an activity in Malta*” on the basis that the communication was initiated by the investor.

An Overseas based Non-UCITS Scheme that is not marketed in Malta in its own right but is available for linking to unit linked policies which are themselves marketed in Malta is not deemed to be “*marketing*” in Malta and will accordingly not be deemed to be “*carrying on an activity in Malta*” in terms of the Investment Services Act. Such Scheme will not be required to hold a Collective Investment Scheme Licence.

An Overseas based Non-UCITS Scheme is required amongst other to ensure that it has a local point of contact both for investors as well as for MFSA (for regulatory/ compliance purposes). This requirement may be satisfied as follows:

- through the appointment of an Investment Services Licence Holder as Local Representative; or
- through the appointment of an EEA investment firm providing services in Malta through the establishment of a branch as Local Representative; or
- directly by the Scheme itself through the opening of an office in Malta to be manned by officials / employees of the Scheme (in this case however, the activity undertaken is to be limited to promotion and execution-only sales of the Scheme’s units without the provision of investment advice which would need to be provided by an Investment Services Licence Holder or appropriately authorized European investment firm passporting into Malta).

#### 4.4 European UCITS Schemes

A European UCITS Scheme is a UCITS constituted as a unit trust, common contractual fund or investment company, harmonised in accordance with the UCITS Directive and authorised by a European regulatory authority of an EU Member State or EEA State.

European UCITS Schemes which would like to actively market/ promote their units in Malta either directly or through intermediaries (e.g. by means of seminars, mailshots etc.) are deemed to be “*carrying on an activity in Malta*” in terms of Article 4 of the Act. However, such schemes may exercise a passport right in terms of the UCITS Directive. Accordingly such schemes are exempt from the requirement to hold a Collective Investment Scheme Licence provided that they follow the notification procedure stipulated in Regulation 8 of the Investment Services Act (Marketing of UCITS) Regulations, 2011 as further expanded in Section 12 of this Part which provides an indication of the scenarios that would constitute marketing/ promotion in Malta.

Whenever a European UCITS Scheme is sold exclusively on a one-to-one basis to persons in Malta, by Investment Services Licence Holders or European investment firms/ European Management companies passporting into Malta, the European UCITS Scheme is not deemed to be “marketing/ promoting” its units in Malta as described in Section 12 of this Part and is accordingly not required to follow the notification procedure referred to above.

Likewise whenever an investor in Malta requests and is provided with information (including marketing material) on a European UCITS Scheme, the European UCITS Scheme is not required to follow the notification procedure referred to above on the basis that there is no “marketing/ promotion” in Malta as the communication was initiated by the investor.

A European UCITS Scheme that is not marketed in Malta in its own right but is available for linking to unit linked policies which are themselves marketed in Malta is not deemed to be “marketing” in Malta and will accordingly not be required to follow the notification procedure.

In terms of Regulation 9(5) of the Investment Services Act (Marketing of UCITS) Regulations, 2011, a European UCITS Scheme is required to satisfy the MFSA that adequate measures have been taken to ensure that facilities are available in Malta for making payments to unit holders, repurchasing or redeeming units and making available the information which European UCITS Schemes are obliged to provide.

This requirement may be satisfied by:

- a. the appointment of at least one of the following entities to carry out the above-mentioned services:
  - i. an Investment Services Licence Holder; or
  - ii. a local branch of a European Investment Firm passporting into Malta in terms of Regulation 3 of the European Passport Rights for Investment Firms Regulations, 2004 as amended; or
  - iii. a local branch of a European management company passporting into Malta in terms of Regulation 9 of Investment Services Act (UCITS Management Company Passport) Regulations, 2011;

OR

- b. other arrangements entered into by the European UCITS Scheme subject to the approval of the MFSA following submission of relevant details to the MFSA.

## 5 Standard Licence Conditions / Ongoing Regulatory Requirements

The MFSA aims to provide a regulatory framework which is both robust and simultaneously adaptable to allow managers and promoters to innovate and to develop new products to meet the changing needs of the market. The Standard Licence Conditions for Maltese Non-UCITS Schemes are set out in Part BI of these Rules, and in Part BII as regards Maltese UCITS Schemes. Overseas based Non-UCITS Schemes are subject to tailored licence conditions as may be agreed with the MFSA. The licence conditions will be specific to such Schemes and depend on the extent of supervision exercised by the competent authority of the home State of such Schemes.

Section 12 of this Part includes the ongoing regulatory requirements applicable to European UCITS Schemes which market their units in Malta in terms of the UCITS Directive.

## 6 Listing on the Malta Stock Exchange

A Maltese UCITS Scheme, a Maltese Non-UCITS Scheme or an Overseas based Non-UCITS Scheme that has been granted or has applied for a Collective Investment Scheme Licence may apply for admissibility to listing with the Listing Authority (the MFSA is the Listing Authority in terms of the Financial Market Act, 1990).

A European UCITS Scheme may also apply for admissibility to listing with the Listing Authority.

## 7 Service Providers

### 7.1 Maltese Non-UCITS Retail Schemes

The MFSA ordinarily expects all Service Providers of a Maltese Non-UCITS Scheme 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.

#### *Manager*

Where a Maltese Non-UCITS Scheme proposes to appoint a third party Manager and the proposed Manager is established in Malta, it should be in possession of a Category 2 Investment Services Licence issued in terms of article 6 of the Investment Services Act, 1994 and authorised to provide fund management services.

Where the proposed Manager has appointed a Sub-Manager with limited or full discretion in respect of the management of the assets of the Scheme, the Sub-Manager is also subject to MFSA's approval. Notwithstanding MFSA's approval requirement, the MFSA expects the Manager to exercise care and diligence in the selection of a Sub-Manager and to assume responsibility for the acts of the Sub-Manager.

Maltese Non-UCITS Schemes which do not appoint a third party manager, should refer to the relevant supplementary conditions applicable to self-managed funds included in Part BI of these Rules.

#### *Fund Administrator*

Administrative services in relation to a Maltese Non-UCITS Scheme may either be carried out by an appointed third party Administrator or undertaken by the appointed Manager.

Where the proposed provider of fund administration services is established in Malta, it should be in possession of a Fund Administration recognition certificate issued in terms of article 9A of the Investment Services Act, 1994.

#### *Custodian*

A Maltese Non-UCITS Scheme is required to appoint a Custodian responsible for the safe custody of the assets of the Scheme and for monitoring the activities of the Scheme's Manager.

In the case of a Maltese Non-UCITS Scheme, the Custodian should be based in Malta and in possession of a Category 4a Investment Services Licence issued by the MFSA in terms of the Investment Services Act, 1994. The Custodian of a Non-UCITS Retail Scheme shall refer to the Investment Services Act (Custodians of Collective Investment Schemes) Regulations.

#### *Investment Adviser*

The Investment Adviser is a person responsible for the provision of investment advice to the Scheme or its Manager with respect to amongst others the investment and re-investment of

the assets of the Scheme. 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 Scheme.

Maltese Non-UCITS Schemes are generally not required to appoint a third party Investment Adviser. Moreover, the proposed Investment Adviser need not be established and regulated in Malta.

Where the Investment Adviser is appointed by the Manager, rather than by the Scheme such Investment Adviser is also subject to MFSA's approval. Where the proposal includes the appointment of an Investment Adviser that is established in Malta, the Adviser should be in possession of a Category 1A, 1B, 2 or 3 Investment Services Licence issued in terms of article 6 of the Investment Services Act, 1994 and should be duly authorised by the MFSA to provide investment advice to collective investment schemes.

## 7.2 Maltese UCITS Schemes

The MFSA ordinarily expects a Maltese UCITS Scheme to appoint Service Providers such as a manager, a Custodian, an Administrator and an Investment Adviser.

### *Manager*

A Maltese UCITS Scheme which is not a self-managed Maltese UCITS shall appoint a Maltese or European management company. A Maltese management company shall be licenced in terms of the Investment Services Act and shall be expected to comply with the SLCs prescribed in Part BII of the Investment Services Rules for Investment Services Providers.

A European management company may be appointed as long as it complies with Regulations 9 and 10 respectively of the Investment Services Act (UCITS Management Company Passport) Regulations, 2011 and Part CII of the Investment Services Rules for Investment Service Providers.

Where the Maltese management company wishes to delegate to a Sub-Manager for the purpose of a more efficient conduct of its business, the carrying out of some of its functions, it shall submit to the MFSA the details of such delegation. Furthermore, this delegation of functions shall not prevent the effectiveness of supervision over the Maltese management company and in particular shall not prevent the Maltese management company from acting in the best interests of the investors.

Maltese UCITS Schemes which do not appoint a management company should refer to the relevant supplementary conditions applicable to self-managed schemes included in Part BII and Appendix VIII of these Rules.

### *Fund Administrator*

Administrative services in relation to a Maltese UCITS may be carried out by the management company or a delegated third party Administrator in terms of the rules on delegation prescribed in the Investment Services Rules for Investment Services Providers. A fund administrator may be appointed directly by the Maltese UCITS.

Where the proposed provider of fund administration services is established in Malta, it should be in possession of a Fund Administration recognition certificate issued in terms of Article 9A of the Investment Services Act, 1994.

### *Custodian*

A Maltese UCITS Scheme is required to appoint a Custodian responsible for the monitoring, safe custody and oversight of the assets of the Scheme and for monitoring the activities of the Scheme's Manager. In the case of a Maltese UCITS Scheme, the Custodian should be based in Malta and in possession of a Category 4a Investment Services Licence issued by the MFSA in terms of the Investment Services Act, 1994. The directors of the custodian must be of sufficiently good repute and must be sufficiently experienced in relation to the type of UCITS to be managed. A custodian of a Maltese UCITS shall *inter alia* be expected to comply with the supplementary conditions applicable to custodians of Maltese UCITS prescribed in Part BI of the Investment Services Rules for Investment Services Providers. The Custodian of a UCITS Scheme shall refer to the Investment Services Act (Custodians of Collective Investment Schemes) Regulations.

### *Investment Adviser*

The Investment Adviser is a person responsible for the provision of investment advice to the Scheme or its management company with respect to amongst others the investment and re-investment of the assets of the Scheme. 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 Scheme.

Maltese UCITS Schemes are generally not required to appoint a third party Investment Adviser. Moreover, the proposed Investment Adviser need not be established and regulated in Malta.

Where the Investment Adviser is appointed by the management company, rather than by the Scheme, such Investment Adviser is also subject to MFSA's approval. Where the proposal includes the appointment of an Investment Adviser that is established in Malta, the Adviser should be in possession of a Category 1A, 1B, 2 or 3 Investment Services Licence issued in terms of Article 6 of the Investment Services Act, 1994 and should be duly authorised by the MFSA to provide investment advice to collective investment schemes.



## 8 Applications for a Collective Investment Scheme Licence

### 8.1 The Application Process – Maltese Non-UCITS Schemes and Maltese UCITS Schemes

When submitting an application for a Collective Investment Scheme licence under the Act, the promoter should ensure that the appropriate Application Form (Schedule A to this Part refers) is completed.

The application requirements which must be satisfied by Maltese Non-UCITS Schemes and Maltese UCITS Schemes, are summarised below.

There are three phases as follows:-

#### *Phase One – Preparatory*

- a. MFSA recommends that the promoters arrange to meet representatives of the MFSA to describe their proposal. This preliminary meeting should take place in advance of submitting an Application for a licence. Although guidance will be given on the relevant regulatory requirements and on the completion of the Application documents, responsibility for the formulation of the proposal and the completion of the Application documents will remain with the Applicant. It is essential that the Applicant provides a comprehensive description of the proposed activity at the beginning of Phase One.
- b. After preliminary discussions, the promoters should submit a draft (rather than a Final) Application Form, together with supporting documents as specified in the Application Form itself.
- c. The draft Application Form and the supporting documentation will be reviewed and comments provided to the Applicant generally within three weeks from submission of the application documents.
- d. The MFSA may ask for more information and may make such further enquiries as it considers necessary. The 'fit and proper' checks – which entail following up the information which has been provided in the Application documents begin at this stage.
- e. The MFSA will consider the nature of the proposed Scheme and a decision will be made regarding which "Standard Licence Conditions" (SLCs) should apply. Some of these conditions may be disapplied or amended (where the circumstances justify such treatment, as long as investors are adequately protected) and supplementary conditions (if any) may be applied. The Licence Conditions are very important since they represent the ongoing requirements to which the Applicant will be subject, if and when licensed.

The Standard Licence Conditions for Maltese Non-UCITS Schemes are set out in Part BI of these Rules and in Part BII as regards Maltese UCITS Schemes.

### Phase Two – Pre-Licensing

- f. Once the review of the draft Application and supporting documents has been completed, the Authority will issue (all other things equal) its 'in principle' approval for the issue of a licence.
- g. 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 documents in their final format, and any other issues raised during the Application process, should be resolved as part of Phase Two.
- h. A licence will be issued as soon as all pre-licensing issues are resolved.

### Phase Three – Post-Licensing/Pre-Commencement of Business

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

## 8.2 The Application Process – Overseas based Non-UCITS Schemes

When submitting an application for a Collective Investment Scheme licence under the Act, the promoter should ensure that the appropriate Application Form (Schedule B to this Part refers) is completed.

The application requirements which must be satisfied by an Overseas based Non-UCITS Scheme, are summarised below.

There are three phases as follows:

### Phase One - Preparatory

- a. MFSA recommends that the promoters arrange to meet representatives of the MFSA to describe their proposal. This preliminary meeting should take place in advance of submitting an Application for a licence. Although guidance will be given on the relevant regulatory requirements and on the completion of the Application documents, responsibility for the formulation of the proposal and the completion of the Application documents will remain with the Applicant. It is essential that the Applicant provides a comprehensive description of the proposed activity and in particular on the manner in which the applicant proposes to market the units of the Scheme in Malta.
- b. After preliminary discussions, the promoters should submit a draft (rather than a Final) Application Form, together with supporting documents as specified in the Application Form itself.
- c. The draft Application and the supporting documentation will be reviewed and comments provided to the Applicant generally within three weeks from submission of the application documents.

- d. The MFSA may ask for more information and may make such further enquiries as it considers necessary. The 'fit and proper' checks – which entail following up the information which has been provided in the Application documents begin at this stage.
- e. The MFSA will consider the nature of the proposed Scheme and a decision will be made regarding which licence conditions should apply. These licence conditions will be specific to such Scheme and depend on the extent of supervision exercised by the competent authority of the home State of such Scheme. The Licence Conditions are very important since they represent the ongoing requirements to which the Applicant will be subject, if and when licensed.

#### Phase Two – Pre-Licensing

- f. Once the review of the draft Application and supporting documents has been completed, the Authority will issue (all other things equal) its 'in principle' approval for the issue of a licence.
- g. 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 documents in their final format, and any other issues raised during the Application process, should be resolved as part of Phase Two.
- h. A licence will be issued as soon as all pre-licensing issues are resolved.

#### Phase Three – Post-Licensing/Pre-Commencement of Business

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

## 9 Applications Documents

### 9.1 Maltese Non-UCITS Schemes and Maltese UCITS Schemes

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

#### Investment Companies

- i. Application Form (Schedule A to this Part);
- ii. Draft version of the Prospectus and if applicable the Key Investor Information Document of the Scheme;
- iii. Draft version of the Memorandum & Articles of Association of the Scheme;
- iv. Draft Management, Administration, Custody, Advisory agreements (as applicable);
- v. Draft Board of Directors' resolution:
  - confirming the Directors' intention to apply for a Collective Investment Scheme 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;
  - approving and assuming responsibility for the contents of the Prospectus and the Key Investor Information Document (if applicable);
- vi. Application Fee;
- vii. Marketing Plan;
- viii. 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);
- name of the individual(s) that will represent the Corporate Director on the Board of Directors of the Scheme.

#### Incorporated Cell Companies (ICCs)

- i. Application Form (Schedule A to this Part);
- ii. Draft version of the Prospectus and the Key Investor Information Document (KII) (if applicable);
- iii. Draft version of the Memorandum & Articles of Association of the Scheme;
- iv. Draft Management, Administration, Custody, Advisory agreements (as applicable);
- v. Draft Board of Directors' resolution:
  - confirming the Directors' intention to apply for a Collective Investment Scheme 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 prospectus and KII (if applicable);
- vi. Application Fees;
- vii. Marketing Plan;
- viii. 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);
- name of the individual(s) that will represent the Corporate Director on the Board of Directors of the Scheme.

Incorporated Cells (ICs)

- i. Application Form (Schedule A to this Part);
- ii. Draft version of the Prospectus and the Key Investor Information Document (if applicable);  
Copy of the agreement between the Incorporated Cell and the stated ICC;  
Draft version of the Memorandum & Articles of Association of the Scheme<sup>1</sup>;
- iii. Draft Management, Administration, Custody, Advisory agreements (as applicable);
- iv. Draft Board of Directors' resolution:
  - confirming the Directors' intention to apply for a Collective Investment Scheme licence in favour of the Scheme to operate as an Incorporated Cell of the stated 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 Prospectus and Key Investor Information Document (if applicable);
- v. 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.

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<sup>1</sup> The memorandum and articles of association of an incorporated cell must be entered into by the incorporated cell company, whether the incorporated cell company is subscribing to a share or shares in the incorporated cell or otherwise.

- vi. Application Fee;
- vii. Marketing Plan;
- viii. 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);
- name of the individual(s) that will represent the Corporate Director on the Board of Directors of the Scheme.

Limited Partnership

- i. Application Form (Schedule A to this Part);
- ii. Draft version of the Prospectus and if applicable the Key Investor Information Document of the Scheme;
- iii. Draft version of the Deed of Partnership;
- iv. Draft Management, Administration, Custody, Advisory agreements (as applicable);
- v. Resolution of the General Partner(s):
  - confirming the its/ their intention to apply for a Collective Investment Scheme 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 Partners(s) for the Compliance obligations of the Scheme;
  - identifying the person(s) responsible on behalf of the General Partners(s) for the AML obligations of the Scheme; andapproving and assuming responsibility for the contents of the Prospectus and Key Investor Information Document (if applicable);
- vi. Application Fee;
- vii. Marketing Plan;
- viii. General Partner(s) of the Scheme:

where Individuals

- Personal Questionnaire 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);
- the name of the individual(s) who 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); and

- Last three years audited financial statements of the proposed Corporate General Partner(s).

Unit Trust/Common Contractual Fund

- i. Application Form (Schedule A to this Part);
- ii. Draft version of the Prospectus and if applicable the Key Investor Information Document of the Scheme;
- iii. Draft version of the Trust Deed/ Deed of Constitution (either by public deed or private writing);
- iv. Draft Management, Administration, Custody, Advisory agreements (as applicable);
- v. A resolution of the proposed Manager:
  - confirming the Manager's intention to apply for a Collective Investment Scheme 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 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; and
  - approving and assuming responsibility for the contents of the Prospectus and Key Investor Information Document (if applicable);
- vi. Marketing Plan;
- vii. Details of the regulatory status of the proposed Trustee.

Supplementary Application Documents – Self-Managed Scheme

- i. Personal Questionnaire of the Portfolio Manager(s) and, where appointed, of the risk manager. For the purposes of the above and (ii) 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) 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
- 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;

v. Risk Management Policy

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

## 9.2 Overseas based Non-UCITS Schemes

- i. Application Form (Schedule B to this Part);
- ii. Latest approved version of the Prospectus;
- iii. Instrument of Incorporation or Constitutional Documents;
- iv. Management, Administration, Custody, Advisory agreements (as applicable);
- v. Resolution from the Board of Directors/ General Partner(s)/ Manager:
  - confirming the his/ her/ their intention to apply for a Collective Investment Scheme 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;
- vi. Application Fee;
- vii. Marketing Plan;
- viii. Draft Information Sheet for Investors in Malta;
- ix. An outline of the regulatory status of the Scheme and ongoing regulatory requirements applicable to the Scheme.

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



## 10 Applications for the Licensing of Additional Sub-Funds of an Existing Scheme

### 10.1 Maltese Non-UCITS Schemes and Maltese UCITS Schemes

A Maltese Non-UCITS Scheme or a Maltese UCITS Scheme constituted in the form of an umbrella fund (i.e. with sub-funds) 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(s);
- ii. a confirmation from the Directors, General Partner or the Manager as applicable signifying their intention to apply for a licence in favour of the sub-fund(s);
- iii. a final draft of the revised Prospectus/ Key Investor Information Document (as applicable);
- iv. the appropriate application fee; and
- v. a draft copy of the approval by the Scheme's Directors, General Partner(s) or the Manager (as applicable) of the revised Prospectus/ Key Investor Information Document (as applicable).

### 10.2 Overseas based Non-UCITS Schemes

An Overseas based Non-UCITS Scheme constituted in the form of an umbrella fund (i.e. with sub-funds) wishing to market in Malta, the units of 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 Directors, General Partner or the Manager as applicable signifying their intention to apply for a licence in favour of the sub-fund;
- iii. latest approved version of the revised Prospectus (as applicable);
- iv. the appropriate application fee; and
- v. a confirmation from the Directors, General Partner(s) or the Manager (as applicable) signifying their intention to market the shares/ units of the sub-fund(s) in Malta.

## 11 Applications for the Approval of Additional Classes of Shares/ Units of an Existing Scheme

### 11.1 Maltese Non-UCITS Schemes and Maltese UCITS Schemes

A Maltese Non-UCITS Scheme or Maltese UCITS Scheme 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 (which shall not constitute a distinct sub-fund of the Scheme) is ordinarily required to submit the following documents:

- i. formal notification to the MFSA of its intention to issue additional classes of shares/ units;
- ii. a final draft of the revised Prospectus/ Key Investor Information Document (as applicable);
- iii. a draft copy of the approval of the Scheme's proposed Directors, General Partner(s) or the Manager – as applicable – of the Prospectus/ Key Investor Information Document (as applicable); and
- iv. a confirmation from the Directors, General Partner(s) or the Manager (as applicable) signifying their intention to issue additional classes of shares/ units.

### 11.2 Overseas based Non-UCITS Schemes

An Overseas based Non-UCITS Scheme 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 (which shall not constitute a distinct sub-fund of the Scheme) is ordinarily required to submit the following documents:

- i. formal notification to the MFSA of its intention to market additional classes of shares/ units in Malta;
- ii. updated Prospectus (as applicable);
- iii. a confirmation from the Directors, General Partner(s) or the Manager (as applicable) signifying their intention to market additional classes of shares/ units in Malta.

## 12 Exercise of Passport Rights by European UCITS Schemes

This section should be read in conjunction with the Investment Services Act (Marketing of UCITS) Regulations, 2011 and Commission Regulation (EU) No 584/2010.

This section provides an overview of the requirements applicable to European UCITS Schemes wishing to market their units in Malta in terms of the UCITS Directive.

### 12.1 Notification Procedure

European UCITS Schemes may market their units in Malta without the need to hold a collective investment scheme licence in terms of the Investment Services Act, 1994 – provided that the European UCITS Scheme has satisfactorily completed the notification procedure outlined in Regulation 8 of the Investment Services Act (Marketing of UCITS) Regulations, 2011 as further described below.

The term “marketing” is to be interpreted as capturing at least the following scenarios:

Scenario 1: an investment advertisement (as defined by Article 2 of the Investment Services Act, 1994) is issued in Malta marketing/ promoting the European UCITS Scheme;

Scenario 2: seminars or other meetings are organized in Malta aimed at the general public or at a class or classes of investors with a view to promote the European UCITS Scheme;

Scenario 3: a circular/mail-shot or other medium of communication is used with a view to promote the European UCITS Scheme to persons in Malta;

Scenario 4: the placing of brochures/ documentation pertaining to the European UCITS Scheme in a location accessible to the public or the uploading of the UCITS’ documents or other information regarding the UCITS on a local distributor’s internet site – which targets mainly investors in Malta (being clients of the distributor); and

Scenario 5: direct or indirect promotion of the European UCITS Scheme by means of press releases.

The scenarios included above are not exhaustive and do not necessarily capture all possible scenarios where a European UCITS Scheme may market its units in Malta. The term “at least” implies that the term “marketing” should not be interpreted so narrowly to include only the scenarios described. European UCITS Schemes may consult MFSA should they be in doubt whether a particular scenario involves “marketing”.

For the avoidance of doubt:

a European UCITS Scheme that is sold exclusively to persons in Malta on a one to one basis need not follow the notification procedure provided there is no “marketing” in Malta as described above.

whenever an investor in Malta requests and is provided with information (including marketing material) on a European UCITS Scheme, the European UCITS Scheme is not

deemed to be “marketing” in Malta on the basis that the communication was initiated by the investor.

a European UCITS Scheme that is not marketed in Malta in its own right but is available for linking to unit linked policies which are themselves marketed in Malta, is not deemed to be “marketing” in Malta and will accordingly not be required to follow the notification procedure.

## 12.2 Notification Requirements

A European UCITS Scheme may market its units in Malta, provided that prior to commencement to market in Malta, the MFSA has received from the European regulatory authority of the EU Member State or EEA State a notification letter made in the form and manner prescribed in Regulation 8 of the Investment Services Act (Authorisation and Passporting of UCITS) Regulations, 2011. The notification letter shall include the following information:

- a. information on the arrangements made for marketing by the European UCITS of its units in Malta, including where relevant in respect of share classes;
- b. an indication that the units of the European UCITS will be marketed by the management company that manages the European UCITS;
- c. the latest version of its fund rules or its instruments of incorporation and its prospectus in Maltese or English;
- d. where appropriate, the latest annual report and any subsequent half-yearly report in Maltese or English;
- e. the Key Investor Information Document translated in Maltese or English; and
- f. an attestation that the European UCITS fulfils the conditions of the UCITS Directive in the manner and form prescribed by Commission Regulation 584/2010.

The notifying European UCITS Scheme shall take the measures necessary to ensure that facilities are available in Malta for making payments to unit holders, repurchasing or redeeming units and making available the information which European UCITS Schemes are obliged to provide by *inter alia* making the arrangements outlined in Section 4.4 of this Part.

The MFSA will not request additional documents, certification or information other than those provided above.

## 12.3 Cross-Border Marketing Rights

The European UCITS will be able to access the Maltese market as from the date of notification by the European regulatory authority of the UCITS home Member State or EEA State.

## 12.4 On-Going Requirements

European UCITS Schemes that have been authorised by the European regulatory authority of the UCITS home Member State to market their units in Malta in terms of the UCITS Directive are required to keep the documentation referred to above and the translations thereof updated. Furthermore, the European UCITS shall notify any amendments to the

aforementioned documents to the MFSA and shall indicate where such documents can be obtained electronically.

European UCITS Schemes should also ensure that their marketing arrangements comply with the requirements outlined in Schedule D to Part A of these Rules. Any investment advertisements issued by a notified European UCITS Scheme should be drawn up in compliance with these requirements.

## 13 Surrender of Collective Investment Scheme Licence

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 Collective Investment Scheme Licence, or to wind-up such business in accordance with conditions imposed by the MFSA, in order to protect the interests of unit holders.

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.

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:

- a) a formal request to the MFSA asking for its approval to surrender the Collective Investment Scheme Licence;
- b) a Directors'/ Manager's/ General Partner's (as applicable) resolution:
  - i. confirming the Scheme's intention to surrender its Licence, subject to the MFSA's approval and once the necessary formalities are finalised;
  - ii. confirming that the Scheme has informed its auditor, custodian and relevant service providers of its intention to surrender its Licence;
- c) a Shareholders' resolution confirming their approval of the proposed closure of the Scheme (where applicable);
- d) the Scheme must give due notice to its unit holders of its intention to surrender its Licence (once the necessary formalities are finalised). A confirmation to this effect should be submitted to the MFSA;

Subsequently the Scheme shall also submit:

- a) a confirmation from the Scheme's administrator that there are no investors in the Scheme;
- b) 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;
- c) a confirmation from the Scheme's administrator that the accruals and liabilities of the Scheme have been cleared;
- d) a confirmation from the custodian (where applicable) or administrator that the disbursement of the assets of the Scheme has been completed in order; and
- e) the original licence/s granted to it by the MFSA.

An internal process will be set in motion for approval of the surrender of the Collective Investment Scheme Licence as soon as all the requirements listed above are satisfied, the respective supervisory fees are settled, the Scheme is delisted from any regulated market and passporting notifications have been withdrawn (as applicable).

The MFSA will convey its final decision to the Scheme and will issue a public notice regarding the surrender of the Scheme's Licence.

Where the Scheme consists of different sub-funds, and on the Licence which had been granted to the sub-fund is being surrendered, this Section will nonetheless apply and references throughout to 'the Scheme' shall be deemed to refer to 'the sub-fund'.

