



Mdina - Malta

A GUIDE TO ESTABLISHING AN ALTERNATIVE INVESTMENT FUND MANAGER IN MALTA

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

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1 INTRODUCTION

The Alternative Investment Fund Managers Directive (“AIFMD”)¹ is intended to create a harmonized framework for the management and marketing of non-UCITS funds within the context of a high level of investor protection. It prescribes rules for the authorisation, operating conditions and transparency obligations to be applied to alternative investment fund managers (“AIFMs”) and for the marketing of alternative investment funds (“AIFs”) to professional investors throughout the EU.

The remit of the AIFMD is particularly wide due to its all-encompassing definition of AIFs. In effect, “AIFs” are collective investment undertakings which:

- i. raise capital from a number of investors with a view to investing it in accordance with a defined investment strategy; and
- ii. do not require authorisation under the UCITS Directive².

Therefore, hedge funds, private equity funds, real estate funds, venture capital funds and others all fall within the scope of the AIFMD.

The transposition of the AIFMD in Malta has been effected under the Investment Services Act (Cap. 370 of the Laws of Malta), the subsidiary legislation and the Investment Services Rules issued thereunder.

2 INVESTMENT SERVICES IN MALTA³

The Investment Services Act (the “Act”) establishes the framework for two types of licences: Investment Services Licences and Collective Investment Schemes Licences. It also transposes the legislation issued by the EU in terms of investment services, including the Markets in Financial Instruments Directive (“MiFID”)⁴, the UCITS Directive and, most recently, the AIFMD.

The regulatory body responsible for investment services in Malta is the Malta Financial Services Authority (the “MFSA”). To this end, the MFSA licences, regulates and supervises investment services providers and collective investment schemes. It has also issued (and continues to issue as circumstances require) various sets of dedicated Investment Services Rules which lay down the requirements and conditions relative both to initial licensing and to licence holders’ on-going operations.

¹ Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010.

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

³ For further detail on investment services generally in Malta, reference may be made to the MFSA Guide entitled “[A Guide to Investment Services in Malta](#).”

⁴ Directive 2004.39/EC of the European Parliament and of the Council of 21 April 2004 on Markets in Financial Instruments

The four categories of licences that may be issued by the MFSA are the following:

- **Category 1a:** The holders of this licence are authorised to receive and transmit orders in relation to one or more instruments and/or to provide investment advice and/or place instruments without a firm commitment basis. However, they are not authorised to hold or control clients' money or customers' assets. This category does not include managers of collective investment schemes.
- **Category 1b:** Holders of this licence are authorised to receive and transmit orders and/or to provide investment advice in relation to one or more instruments and/or to place instruments without a firm commitment basis solely for professional clients and/or eligible counterparties. However, they are not authorised to hold or control clients' money or customers' assets. This category does not include managers of collective investment schemes.
- **Category 2:** Holders of this licence are authorised to provide any investment service and to hold or control clients' money or customers' assets. However, they are not authorised to operate a multilateral trading facility, to deal for their own account or to underwrite or place instruments on a firm commitment basis.
- **Category 3:** Holders of this licence are authorised to provide any investment service and to hold and control clients' money or customers' assets.
- **Category 4:** Holder of this licence are authorised to act as trustees or custodians of collective investment schemes.

In terms of the above, Maltese AIFMs are required to apply to the MFSA for a Category 2 Licence, the conditions for the issuance of which are described below.

3 AUTHORISATION

3.1 Authorisation of AIFMs

The AIFMD requires all EU AIFMs to be authorised by the regulatory authority of the Member State in which they are incorporated and, subsequently to authorisation, to comply with a number of on-going obligations. In Malta, the relevant regulatory and supervisory body is the MFSA.

An applicant seeking authorisation by the MFSA as an AIFM will be required to satisfy a number of conditions.

CONDITIONS FOR AUTHORISATION

- The MFSA is satisfied that the AIFM will continue to meet its legal obligations
- The AIFM has sufficient capital and own funds
- The AIFM's business is carried out by persons of experience and good repute
- The qualifying shareholders are suitable towards ensuring sound and prudent management
- The AIFM's head office is located in Malta

REQUIRED INFORMATION ON THE AIFM

- Information on the persons conducting the business of the AIFM;
- Information on the qualifying shareholders and on the amount of their holdings;
- The organisational structure of the AIFM
- Information on the AIFM's remuneration policies;
- Information on any arrangements made on delegation and sub-delegation.

The AIFM will also be required to submit certain information on both the AIFM itself and on the AIF/s it manages or intends to manage⁵.

REQUIRED INFORMATION ON EACH AIF

- Information on the AIF's investment strategies;
- Information on where the master AIF is established if the AIF is a feeder AIF;
- The rules or instruments of incorporation of the AIF;
- Information on the arrangements made for the appointment of the custodian;
- Additional information in relation to information to be disclosed to investors.

⁵ A full list of the documents required to be submitted in an application for authorisation as an AIFM is contained within [Schedule A2 to Part A of the Investment Services Rules for Investment Services Providers](#) and is also replicated in Appendix 1 to this Guide.

The MFSA will inform the applicant for an AIFM licence as to the outcome of its application within a maximum of 3 months from receipt of the application. A successful applicant will be entitled to begin to carry out the investment management and other functions authorised in terms of its licence immediately upon the issue of such licence. It will also be entered in a central register kept by the European Securities and Markets Authority (“ESMA”) and its authorisation would be valid in each Member State of the EU.

AIFM INVESTMENT MANAGEMENT FUNCTIONS

- Portfolio management
- Risk management

AIFM FUNCTIONS IN ADDITION TO INVESTMENT MANAGEMENT

- Administration (legal and fund management accounting services, customer inquiries, valuations and pricing [including tax returns], regulatory compliance monitoring, maintenance of unit-/shareholder register, distribution of income, unit/share issues and redemptions, contract settlements [including certificate dispatch], record-keeping)
- Marketing
- Activities related to the assets of AIFs (services necessary to meet the fiduciary duties of the AIFM, facilities management, real estate administration activities, advice to undertakings on capital structure, industrial strategy and related matters, advice and services relating to mergers and the purchase of undertakings and other services connected to the management of the AIF and the companies and other assets in which it has invested)

Any withdrawal of the authorisation granted to an AIFM is only possible within certain defined circumstances.

WITHDRAWAL OF AUTHORISATION

- The AIFM does not make use of its authorisation within 12 months, renounces its authorisation or ceases its activities for a period of 6 months
- Authorisation was obtained through false statements/other irregular means
- The conditions for authorisation are no longer met
- The AIFM no longer complies with the Capital Adequacy Directive (if authorised to carry out discretionary portfolio management)
- The AIFM is in breach of the laws applicable thereto

AUTHORISATION - EXTERNAL AND INTERNAL AIFMS

The AIFMD framework recognises the fact that AIFs may be managed either externally by an entity that is separate from the AIF (an external AIFM) or internally by the governing body or internal resource within the AIF itself (thereby rendering the AIF subject to AIFM obligations as far as management is concerned).

Whether an AIFM is internal or external exerts consequences on the authorisation of the AIFM and on the amount of capital and own funds required to be held by it.

Authorisation

The authorisation of a self-managed AIF will only allow it to engage in activities specifically related to the management of that particular AIF. On the other hand, an external AIFM may manage more than one fund, including UCITS where authorised under the UCITS Directive. External AIFMs may also be authorised to carry out discretionary portfolio management services and non-core services comprising investment advice, safe-keeping and administration in relation to the shares/units of collective investment schemes and the reception and transmission of orders in relation to financial instruments.

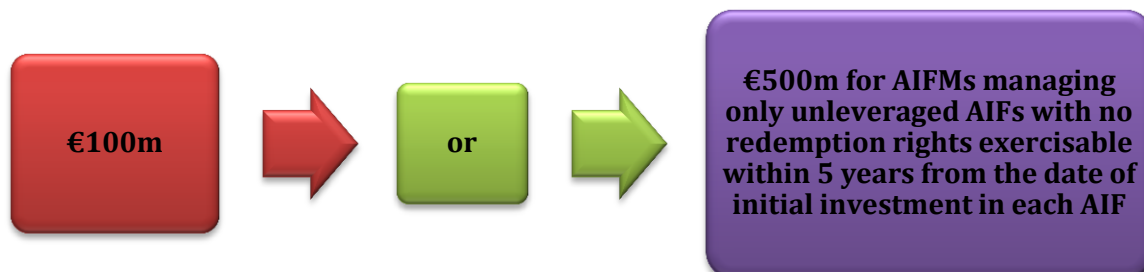
Initial Capital and Own Funds

The initial capital requirements differ as between external and internal AIFMs. An external AIFM must have initial capital amounting to at least €125,000 while the requirement for internal AIFMs is set at a minimum of €300,000. In either case, where the value of the portfolios of the AIFs under management exceeds €250m, the AIFM must also provide an additional amount of own funds equal to 0.02% of the amount by which the value of the portfolios of the AIFM exceeds the €250m threshold (though a cap of €10m is set for the total value of initial capital and own funds required to be held).

AIFMs must also maintain additional own funds to cover professional liability risk. Alternatively, it may hedge against this risk by holding adequate professional indemnity insurance

3.2 The *De Minimis* Regime

The AIFMD framework provides for a lighter or *de minimis* regime for small AIFMs. *De minimis* AIFMs are managers which, whether directly or indirectly, manage portfolios of AIFs whose assets under management collectively do not exceed the following amounts:



While the AIFMD allows Member States to choose merely to register rather than authorise *de minimis* AIFMs, the MFSA's policy in the interest of investors is to require *de minimis* AIFMs to seek authorisation as *de minimis* Category 2 Licence Holders.

Once authorised as such, a *de minimis* AIFM will be exempt from complying with the provisions of the AIFMD with the exception of certain reporting requirements towards the MFSA as regards:

- the investment strategies of the AIFs under management;
- the main instruments in which the AIFs under management are trading; and
- the principal exposures and most important concentrations of the AIFs under management.

Notwithstanding its right to be treated as a *de minimis* AIFM, any AIFM whose assets under management fall below the above thresholds may choose to **opt in** to the AIFMD framework. This would render it subject to all of the obligations applicable to full-scope AIFMs but would also enable it to make use of the EU passporting rights deriving from the AIFMD.

3.3 Entities outside the Scope of the AIFMD

Certain entities, such as holding companies and occupational retirement firms, are entirely excluded from the scope of the AIFMD. For a full list of exempted entities, reference should be made to the Investment Services (Exemption) Regulations.

4 OPERATING CONDITIONS

4.1 General and Specific Operating Conditions

In general terms, AIFMs are required to continue to meet the conditions for authorisation at all times thereafter. They are also required to comply with certain other general conditions similar to those imposed on UCITS fund managers.

GENERAL OPERATING CONDITIONS

- acting honestly, fairly and with due skill, care and diligence
- acting in the best interests of the AIFs under management, their investors and the integrity of the market
- effectively employing the resources and procedures necessary for the performance of the AIFM's business activities
- compliance with all regulatory requirements applicable to the conduct of the AIFM's business
- fair treatment of all investors

Apart from their general operating conditions, AIFMs are also subject to specific requirements in terms of:



4.2 Remuneration

AIFMs are required to set up staff remuneration policies that are consistent with and that promote sound and effective risk management. These policies should be made applicable to all staff members whose professional activities have a material impact on the risk profile of the AIFM or on that of the AIF/s under management. Examples of such staff would be those involved in senior management, risk takers, and control functions, as well as any other employees whose total remuneration falls within the same remuneration bracket as senior management and risk takers.

In determining their remuneration policies, AIFMs should have regard to the remuneration policies and guidelines contained in Appendix 12 of the Investment Services Rules for Investment Services Providers (the “ISP Rules”).

4.3 Conflicts of Interest

AIFMs must take all reasonable steps to avoid any conflicts of interest that may arise in the course of their management. To this effect, AIFMs are required to segregate those tasks and responsibilities which could be regarded as incompatible. Where conflicts of interest cannot be avoided, they should at least be identified, managed and monitored by the AIFM. Moreover, AIFMs should inform investors of the nature and sources of any conflicts of interest where their interests remain at risk of jeopardy despite the organisation arrangements made by the AIFM to the contrary.

Also in the context of conflicts of interest, it is essential that the terms of service of any prime broker used by the AIFM are incorporated in a written contract which, by the terms of the contract itself, must be notified to the custodian of the AIF/s concerned. Any possibility of the transfer and reuse of AIF assets must be provided for in this contract and must comply with the AIF rules or instruments of incorporation.

4.4 Risk Management

An AIFM is bound to implement a risk management system appropriate to identifying, measuring, managing and monitoring all of the risks relevant to the investment strategy of each AIF under management and to which each AIF may be exposed. The risk management function must be hierarchically separate from the AIFM's operating units and must be reviewed at least annually and adapted as necessary. The particular risks posed by the use of leverage - both at the level of the AIF and on the systemic level - must also be taken into consideration. In fact, the AIFM is bound to set a maximum limit to the measure of leverage that may be employed on behalf of each AIF under management.

RISK MANAGEMENT - MINIMUM REQUIREMENTS OF AIFM

- To implement an appropriate due diligence process;
- To ensure that risks can be identified, measured, managed and monitored on an ongoing basis (including through stress testing procedures);
- To ensure that the risk profile of each AIF is appropriate to its size, portfolio structure and investments strategies.

RISK MANAGEMENT - FACTORS TO BE TAKEN INTO ACCOUNT IN SETTING LEVERAGE LIMIT

- The type of AIF and its investment strategy;
- The AIF's sources of leverage;
- Any interlinkage/relevant relationships with other financial institutions;
- The need to limit exposure to any one counterparty;
- The extent to which the leverage is collateralised;
- The asset-liability ratio;
- The scale, nature and extent of the AIFM's activity on the market concerned.

4.5 Liquidity Management

For each unleveraged closed-ended AIF under management, an AIFM must employ an appropriate liquidity management system and must adopt procedures enabling it both to monitor the AIF's liquidity risk and to ensure that the liquidity profile of its investments complies with its underlying obligations. Stress tests should be conducted regularly, under both normal and exceptional liquidity conditions. Furthermore, AIFMs should ensure consistency between each AIF's investment strategy, its liquidity profile and its redemption policy.

5 DELEGATION OF AIFM DUTIES

An AIFM may delegate certain of its functions to a third party, provided that the MFSA is duly notified of the intention to delegate. However, the entire delegation structure must be objectively justified and must not be such as to render the AIFM a letter-box entity. The AIFM will therefore continue to be responsible for the proper performance of the delegated functions. It will also be required to fulfil certain other requirements, such as the ability to demonstrate that the delegate is qualified and capable of undertaking the functions in question, that it was selected with all due care and that the AIFM is in a position to effectively monitor the delegated activity, to give further instructions to the delegate and to withdraw the delegation with immediate effect when this is in the interest of investors.

6 THE CUSTODIAN

6.1 Appointment of a Custodian

An AIFM is required to appoint a single independent Custodian for each AIF under management. There is a defined list of entity categories that are eligible for appointment as Custodian (set out below).

However, in derogation of this, and in respect only of certain types of funds that do not feature any redemption rights during the period of 5 years from the date of initial investment, the MFSA may allow the appointment as Custodian of any registered professional providing sufficient guarantees.

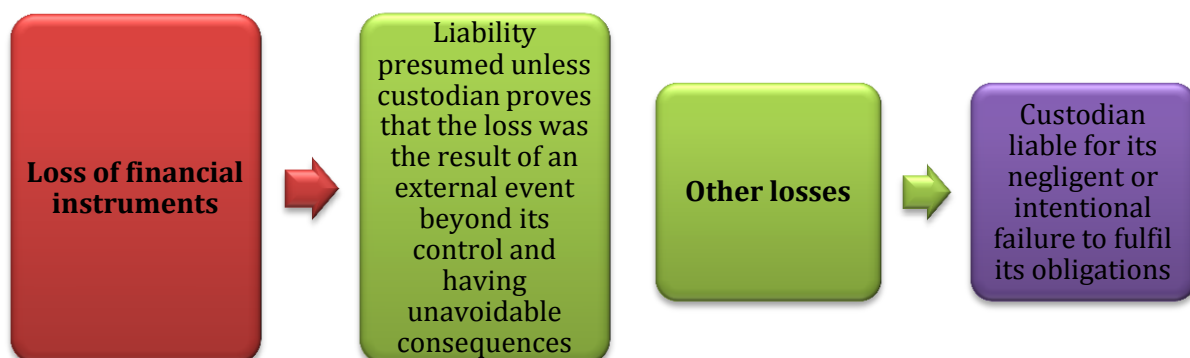
AIFMs and prime brokers are specifically prohibited from acting as Custodians. However, the prohibition is lifted in the case of prime brokers where measures have been taken to functionally and hierarchically separate the two functions and where no potential conflicts of interest arise.

Custodians - Eligible Entities

- a Maltese credit institution;
- a branch established in Malta of a credit institution authorised in an EU or EEA Member State;
- a branch in Malta of an overseas credit institution which is subject to prudential requirements at least equivalent to the requirements applicable to Maltese credit institutions;
- a Maltese company which is wholly owned by a credit institution (provided that the liabilities of such company are guaranteed either by a Maltese credit institution or by an overseas credit institution which is subject to prudential requirements at least equivalent to the requirements applicable to Maltese credit institutions);
- a Maltese company which is wholly owned by a Maltese or foreign institution or company which the MFSA deems to provide unit-holders with protection equivalent to that provided by the entities fulfilling the requirements listed above (provided that the liabilities of such company are guaranteed by the holding institution/company and provided that the holding institution/company has paid-up share capital of €5m or its equivalent in foreign currency);
- an investment firm in Malta or a branch of an investment firm established in another Member State or EEA State subject to capital adequacy requirements in accordance with the Capital Adequacy Directive⁶ and authorised under MiFID⁷ and which also provides the ancillary service of safe-keeping and administration of financial instruments for the account of clients in accordance with MiFID.

6.2 Liability of the Custodian

Custodians are under a strict duty of liability in respect of the losses suffered by the AIFM, the AIF and investors. However, a distinction is drawn between the loss of financial instruments held in custody and all other losses.



⁶ Directive 2006/49 EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions

⁷ Directive 2004/39 EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments

The duties to which a custodian is subject are essentially three:



6.3 Cash monitoring

The Custodian is under a duty to monitor the cash inflows and outflows of the AIF under custody. In particular, the Custodian must ensure that payments made by investors on the subscription of shares or units in an AIF have been received and that all cash belonging to the AIF is booked correctly on accounts opened in the name of the AIF in a central bank, a credit institution authorised under EU law, a bank authorised in a third country or any another entity of the same nature in the relevant market where cash accounts are required (provided such entity is subject to prudential regulation and supervision having the same effect as EU law and which is effectively enforced).

6.4 Oversight

The Custodian is subject to a duty of oversight in respect of the assets and transactions of the AIF under custody. In particular, the Custodian is bound to ensure:

- that the sale, issue, re-purchase, redemption and cancellation of the AIF units or shares are carried out in accordance with the provisions of the Investment Services Act and the AIF's constitutive documents;
- that the value of the units or shares of the AIF is calculated in accordance with the provisions of the Investment Services Act (the "Act"), the AIF's constitutive documents and the procedures laid down in the Investment Services Rules;
- that any instructions issued by the AIFM are carried out (unless in conflict with the Act, the Rules and Regulations issued thereunder or the AIF's constitutive documents);
- that any consideration due in transactions involving the AIF's assets is remitted to the AIF within the usual time limits;
- that the AIF's income is applied in accordance with the provisions of the Act, the Rules and Regulations issued thereunder and the AIF's constitutive documents.

6.5 Safe-keeping

The safe-keeping function of the Custodian will apply differently depending on the type of assets pertaining to the AIF. Where the assets are financial instruments that may be held in custody, the Custodian must ensure that such assets are registered in a financial instruments account opened in its books, to which account the financial instruments can be physically

delivered. The relevant accounts must be segregated and opened in the name of the AIF or of the AIFM acting on behalf of the AIF. As regards all other assets of the AIF (such as commodities, non-transferable securities and real estate), the Custodian's duty is to verify that ownership of those assets lies with AIF or with the AIFM acting on behalf of the AIF and to maintain a record of such assets once ownership is verified.

The safe-keeping function may be delegated to a third party. However, any delegation must be objectively justified and must meet certain other criteria, such as the condition that the Custodian has exercised due skill, care and diligence in the appointment of the delegate and that it will continue to exercise the same in its review and monitoring of the delegate.

7 TRANSPARENCY

For each AIF under management and for each those marketed in the EU, AIFMs must comply with certain transparency requirements as regards:

- i. the financial position of the AIFs under management, which must be described in an annual report; and
- ii. information to be provided to the investors of the AIFs under management and to the MFSA.

7.1 Annual Report

An AIFM must make an annual report available to the MFSA and, where applicable, to the EU regulatory authority of the home Member State of the AIF concerned within 6 months following the end of the AIF's financial year. This report should also be provided to investors on request. The information comprised in the report must be audited and the auditors' report drawn up in pursuance of such audit will be considered an integral part of the annual report.

7.2 Information to be provided to Investors and to the MFSA

An AIFM must ensure that certain information (described below) is available to investors prior to investment. Any material changes to information previously given in this respect must also be communicated to investors. Meanwhile, the AIFM is required to report to the MFSA on the principal markets and instruments in which it trades on behalf of the AIFs under management as well as on the principal exposures and most important concentrations of those AIFs.

In cases where an AIF is required to publish a prospectus, only such relevant information which is not included in the prospectus needs to be separately disclosed.

INFORMATION TO BE PROVIDED TO INVESTORS

- the investment strategy and objectives of the AIF and a description of the procedure by which the AIF may change such investment strategy;
- the types of asset in which the AIF may invest and any applicable investment restrictions
- details on the permitted use of leverage;
- a description of the main legal implications of the investment contract;
- the identity of the service providers to the AIF and a description of their duties and of the investors' rights;
- a description of the AIFM's arrangements as regards professional liability;
- description of any delegated management or safe-keeping function, including of any conflicts of interest that may arise therefrom;
- a description of the AIF's valuation procedure and pricing methodology;
- a description of the AIF's liquidity risk management, including the redemption rights;
- a description of all fees, charges and expenses and of the maximum amounts thereof borne by investors;
- a description of the manner in which the AIFM ensures fair treatment of investors and detail on the rationale behind any preferential treatment or right to preferential treatment;
- the latest annual report;
- the procedure and conditions for the issue and sale of units/shares;
- the AIF's latest net asset value or the latest market price of the its units/ shares;
- the historical performance of the AIF (where available);
- the identity of the prime broker and details regarding the material and contractual arrangements entered into between the AIFM and the prime broker;
- information on how and when information required to be periodically or regularly disclosed to investors will in fact be disclosed.

INFORMATION TO BE PROVIDED TO THE MFSA

- the percentage of AIF assets subject to special arrangements arising from their illiquid nature;
- any new arrangements for managing the liquidity of the AIF;
- the current risk profile of the AIF and the risk management systems employed to manage market risk, liquidity risk, counterparty risk and operational risk;
- information on the main categories of assets invested in by the AIF;
- the results of the stress tests carried out in respect of risk management and liquidity management.

Certain other documents may be requested of the AIFM by the MFSA on a periodic or *ad hoc* basis for the purpose of effective monitoring of systemic risk.

8 AIFMS MANAGING SPECIFIC TYPES OF AIFS

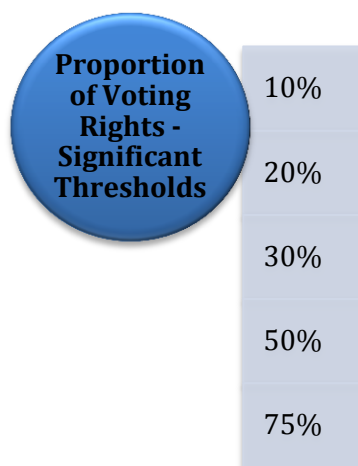
8.1 AIFMs managing leveraged AIFs

An AIFM must demonstrate to the MFSA that the leverage limits set by it for each AIF under management are reasonable and also that it complies with those limits at all times. The MFSA will assess the risks entailed in the AIFM's use of leverage and, where considered

necessary to ensuring the stability and integrity of the financial system, it will impose limits on the level of leverage permitted to such AIFM (or any other management restrictions intended to limit the build-up of systemic risk due to use of excessive leverage).

8.2 AIFs under Management that acquire Holdings and Control of Companies⁸

An AIFM that manages an AIF that acquires, disposes of or holds shares of a non-listed company is required to notify the MFSA of the proportion of voting rights held by the AIF where it, reaches, exceeds or falls below certain significant thresholds. Furthermore, an AIFM managing an AIF that has acquired control over a non-listed company must notify the MFSA, the company concerned and the company shareholders of the fact of the acquisition of control. This notification must include information on the resulting situation in terms of voting rights, the conditions subject to which control was acquired and the date on which control was acquired.



In the case of acquisition of control of a company, the AIFM must make the following further information available to the MFSA, to the company concerned and to any of the company's shareholders that may be contacted by the AIFM⁹.

- the identity of the AIFM managing the AIF that has acquired control
- the policy for preventing and managing any conflicts of interest
- the external and internal communication policies relating to the company, particularly as regards employees.

The AIFM should also inform the company and any of its shareholders that may be contacted by the AIFM about its intentions as regards the business future of the company and the likely repercussions on employment. Details on the financing of the acquisition of control must also be provided to the MFSA and to the AIF's investors.

8.3 Asset-Stripping

An AIFM managing an AIF that acquires control over a company (whether non-listed or otherwise) is subject to certain restrictions for a period of 24 months following the acquisition

⁸ The requirements described in this section do not apply where the companies concerned are small or medium-sized enterprises or special purpose vehicles used for the purposes of purchasing, holding or administering real estate.

⁹ This requirement also subsists in the case of AIFMs managing AIFs that acquire control over issuers as opposed to non-listed companies, with regards to those AIFs.

of control. In effect, the AIFM must not facilitate, support, instruct or vote in favour of certain distributions, capital reductions, share redemptions and/or acquisitions of shares by the company as are referred to in Standard Licencing Condition 9.19 of Part BIII of the Investment Services Rules. Indeed, it should use its best efforts to prevent such asset-stripping.

9 PASSPORTING AIFM SERVICES

The AIFMD provides a harmonized framework for the cross-border management and marketing of AIFs within the EU via an AIFM passport. It provides different sets of rules premised on the scenarios envisaged through the interplay of three factors: (i) the location of the AIFM (whether EU or third country); (ii) the place of establishment of the AIF (whether EU or third country); and (iii) the AIF's target market (whether EU or third country). These rules have been transposed in Malta by means of the [Investment Services Act \(Alternative Investment Fund Manager\) \(Passport\) Regulations, 2013](#) and the [Investment Services Act \(Alternative Investment Fund Manager\)\(Third Country\) Regulations, 2013](#).

For further detail on the AIFMD provisions relating to the marketing of AIFs, reference may be made to the MFSA Guide entitled "[Alternative Investment Fund Manager Directive – The Passporting and Third Country Framework](#)".

10 TRANSITIONAL PROVISIONS

The AIFMD framework features a transitional entry into force, both in general terms and as regards the specific aspects of the custodian and of certain closed-ended AIFs.

ENTRY INTO FORCE OF AIFMD REGIME
<ul style="list-style-type: none">•Managers who intend to commence their activities on or after 22 July 2013 will be required to apply for authorisation as from this date.•Managers having already commenced their management activities prior to 22 July 2013 will be allowed a one-year transitory period within which to be authorised as AIFMs. However, in order to be authorised by 22 July 2014, Licence Holders would be required to submit their relevant application by no later than 31 March 2014.•AIFMs having commenced their activities prior to 22 July 2013 will be expected to comply with the provisions of the Directive on a "best efforts" basis.

CUSTODIAN
<ul style="list-style-type: none">•Until July 2017, the entity appointed as Custodian of an AIF need not be a Maltese entity but may be an entity established in any other Member State.

CLOSED-ENDED AIFS

- A “grandfathering” regime is applicable to certain closed-ended funds: AIFMs having managed closed-ended AIFs prior to 22 July 2013 which do not make any additional investments after that date may continue to manage these AIFs without applying for authorisation, though they will still be required to adhere to the Part BIII of the Investment Services Rules on AIFMs. The same applies to AIFMs managing closed-ended AIFs whose subscription period closed prior to 22 July 2013 and which are constituted for a period of time expiring 3 years thereafter (at the latest), except that such AIFMs would still be subject to annual reporting requirements and to the obligations relative to asset stripping and to AIFMs with AIFs under management that acquire holdings and control of companies
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APPENDIX 1 – APPLICATION DOCUMENTS

Reported hereunder is an exhaustive list of the documents required to be submitted with an application for authorisation as an AIFM¹⁰.

1. A covering letter;
2. The appropriate application fee (this is non-refundable);
3. The auditor's confirmation;
4. Supporting board resolution (in draft or in final form duly signed);
5. Financial resources statement;
6. Projected profit and loss account and balance sheet for the three years after the licence is issued, notes to the financial projections outlining how projections were developed and assumptions made (the financial projections should specifically outline the AIFs managed/to be managed by the applicant for the first three years of operations (total assets under management));
7. Where applicable, copies of the applicant's last years' audited accounts;
8. Memorandum and Articles of Association or Partnership Agreement (draft or executed) of the applicant, as appropriate;
9. Detailed business plan including, as a minimum:
 - i. background details on the applicant and any affiliated entities, including their respective regulatory status and previous business history;
 - ii. target clients;
 - iii. a chart illustrating the internal operational structure of the applicant's business (showing names, reporting lines and roles);
 - iv. detailed description of the proposed operational set-up (personnel and internal controls, delegation arrangements, compliance function set-up, conflicts of interest etc.);
 - v. the location of the business;
 - vi. the applicant's anticipated level of business;

¹⁰ Reference should be made to [Schedule A2 to Part A of the Investment Services Rules for Investment Services Providers](#). It is to be noted that an AIFM having already submitted any of the requisite information in relation to an application for authorisation under the UCITS Directive will not be required to re-submit the same information to the MFSA in its application for an AIFM authorisation (unless substantial changes have been made to the information provided).

- vii. if the applicant forms part of a group, a diagram showing the relationships between the applicant and other members of that group; the “family tree” submitted should give details up to the ultimate beneficial owner(s), showing percentage sizes of holdings in each entity unless (a) the entity has one beneficial owner with a holding of over 50% of the voting rights or (b) there are no less than fifty ultimate beneficial owners who in the aggregate account for over 50% of the voting rights; if (a) or (b) apply, it will only be necessary to give details of the ultimate beneficial owners with holdings of 10% or more;
 - viii. the rationale for applying for a licence;
 - ix. the anticipated yearly development of the set-up for the first three years of operation;
 - x. the marketing plan;
 - xi. details on the governance of the company;
 - xii. details on the systems to be used;
 - xiii. the business strategy;
 - xiv. details on the outsourcing arrangements.
10. Specimen copies of the insurance policies and draft schedule/cover note (where applicable) and the “Insurance Checklist”;
11. Personal Questionnaire forms for each qualifying shareholder, director and senior officer of the applicant¹¹;
12. The Memorandum and Articles of Association of the immediate and ultimate corporate shareholders of the applicant and the audited accounts thereof;
13. A draft auditor engagement letter;
14. A detailed shareholding structure of the applicant, showing:
- i. the names of all shareholders;
 - ii. whether the respective shareholder/s are individuals or corporate;
 - iii. the respective shareholding and voting rights (including any rights regarding the appointment of directors) ;
 - iv. their respective regulatory statuses as applicable.
15. Evidence substantiating the competence of the proposed individual/s;
16. The IT Online Questionnaire (where applicable);

¹¹ Reference should be made to Schedule F to Part A of the Investment Services Rules for Investment Services Providers.

17. The risk management and portfolio management delegation agreements and all other outsourcing agreements;

18. The following declarations:

- i. Remuneration Policy: a declaration outlining that the AIFMs remuneration policy is in line with the provisions outlined in Annex II of the AIFMD;
 - ii. Conflict of Interest Policy – a declaration outlining that the AIFM’s conflict of interest policy is in line with the requirements stipulated in Article 14 of the AIFMD (and Article 31 of the Commission Delegated Regulation);
 - iii. Depositary – a declaration outlining that the contents of any depositary agreement reflects the requirements of Article 21 of the AIFMD and Chapter IV of the Commission Delegated Regulation;
 - iv. Transparency and Disclosure requirements –a declaration outlining that the prospectus/ offering document of the EU and non-EU AIFs under management are in line with the transparency and disclosure requirements in accordance with Article 22 and 23 of the AIFMD;
 - v. Valuation – a declaration that the valuation policies and procedures for each type of asset that the AIF may invest in are in line with Article 19 of the AIFMD and Articles 67 – 74 of the Commission Delegated Regulation whilst also confirming that the valuation policies:
 - a) ensure a fair, appropriate and transparent valuation methodology for each type of asset in accordance with applicable national law, with the AIF rules and with the instruments of incorporation;
 - b) provide for inputs, models and selection criteria for pricing and for market data sources;
 - c) provide that prices be obtained from independent sources;
 - d) address the competence and independence of personnel carrying out the valuation process;
 - e) identify the obligations, roles and responsibilities of all parties involved in the valuation process.
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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>