

THIS EXPLANATORY MEMORANDUM IS IMPORTANT AND REQUIRES IMMEDIATE ATTENTION.

It should be read in its entirety before making a decision on how to vote on the Extraordinary Resolution.

This Explanatory Memorandum sets out the changes proposed to be made to the existing Memorandum and Articles of Association of APS Funds SICAV plc (the “Company”), as contained in the amended Memorandum and Articles of Association uploaded on the Company’s website and referred to in the notice of the Twelfth Annual General Meeting of the Company to be held on **1st October 2020 at 11:00 am at APS Centre, Tower Street, Birkirkara BKR4012**, which amended Memorandum and Articles of Association is being proposed to replace the existing Memorandum and Articles of Association by way of Extraordinary Resolution (special business) to be considered and, if deemed fit, approved and passed at such Annual General Meeting.

Where deemed pertinent, a brief explanation of the most relevant proposed amendments and the effect thereof is provided herein.

PURPOSE OF THIS EXPLANATORY MEMORANDUM

This Explanatory Memorandum is being sent to all Members entitled to participate and vote at the Annual General Meeting so as to assist them to make a properly informed decision about the extraordinary resolution being put to the vote.

IN THE EVENT THAT MEMBERS RECEIVING THIS DOCUMENT ARE IN ANY DOUBT AS TO THE IMPORT OF THIS DOCUMENT OR AS TO ANY ACTION REQUIRED OF THEM IN CONNECTION THERE WITH, THEY ARE URGED TO CONSULT THEIR INDEPENDENT PROFESSIONAL ADVISORS.

If you have sold or transferred any or all of your shares in the Fund, you should at once hand this Explanatory Memorandum and the accompanying documents to the purchaser or transferee or to the person through whom the sale or transfer was affected for onward transmission to the purchaser or transferee of the shares.

PROPOSED AMENDMENTS TO THE EXISTING MEMORANDUM OF ASSOCIATION

(i). Clause 5.3 (b) and (c) of the Memorandum of Association of the Company is proposed to be deleted and replaced by one paragraph (b) reading as follows:

(b). *“several Investor Shares issued in respect of the various distinct sub-funds of the Company.”*

Explanation: Since the number of distinct sub-funds of the Company is increasing and/or changing from time to time, it is important to refer to such sub-funds generally rather than to specific sub-funds by name.

(ii). The reference to “APS Bank Limited” in Clause 6 of the Memorandum of Association is to be replaced by “APS Bank plc” to reflect the change of status of the Company from a private limited liability company to a public limited company which occurred since the date of adoption of the existing Memorandum of Association.

(iii). Clause 8.2 of the Memorandum of Association of the Company is to be deleted and replaced by the following:

- *“8.2 The Directors of the Company are:*
 - *Mr Tony Mejlaq (Maltese ID Card No. 276454M) 215, ‘Solitaire’
Triq il-Parilja
Sta Venera
Malta*
 - *Mr. Etienne Borg Cardona (Maltese ID Card No. 235562M) ‘Mistral’,
Triq Esprit Barthelet,
Madliena,
Swieqi
Malta*
 - *Mr. Joseph Portelli (Maltese ID Card No. 18805L) The Royal Lady, St. Anthony Street,
Għajnsielem GSM 9026,
Gozo, Malta.”*

Explanation: The purpose of the change is to reflect the changes to the composition of the Board of Directors occurring since the date of adoption of the existing Memorandum of Association.

(iv). Clause 10.1 of the Memorandum of Association of the Company is to be deleted and replaced by the following:

- “10.1 The Secretary of the Company is:*
- *BOV Fund Services Limited (Co. Reg. No. C39623)
58 Zachary Street,
Valletta VLT1130
Malta”*

Explanation: The purpose of the change is to reflect the change of name and registered office of the company secretary since the date of adoption of the existing Memorandum of Association. For clarity, there has not been any change in the Secretary.

PROPOSED AMENDMENTS TO THE EXISTING ARTICLES OF ASSOCIATION

(i). Article 1.1 is proposed to be amended as follows:

The definition of “Accounting Period” is to be substituted in its entirety by the following:

- *““Accounting Period” means, unless otherwise determined by the Directors, a financial period of the Company commencing on 1 January in each year and ending on 31 December in the same year.”*

Explanation: This is a non-substantial change, intended merely to remove outdated information therefrom.

Immediately following the definition of “Fractional Shares” It is proposed to introduce a new definition as follows:

- *““General Meeting Record Date” means close of business on the day falling forty (40) days immediately preceding the date set for the general meeting of the Company to which it relates.”*

Explanation: The purpose of this amendment is to set a specific record date before a general meeting by reference to which one can determine which Members shall be entitled to receive notice of, participate in and vote at the relevant general meeting, namely those persons entered as Members on the Register on such General Meeting Record Date.

The definition of “Ordinary Resolution” is to be substituted in its entirety by the following:

- *““Ordinary Resolution” means a resolution of the Company or of any class of Shares as appropriate, in general meeting passed by an Eligible Member or Members having the right to attend and vote holding in the aggregate Shares entitling the holder or holders thereof to more than fifty per cent of the voting rights attached to Shares represented and entitled to vote at the meeting.”*

Explanation: The purpose of this change is to ensure that the definition of an “Ordinary Resolution” in the Articles of Association reflects more accurately and is streamlined with the requirements of Article 135 of the Companies Act (Chapter 386 of the Laws of Malta).

The first unnumbered paragraph of Article 4.1 is proposed to be substituted in its entirety by the following:

- *“4.1 The Company has, as at the date of submission of these Articles, constituted a number of Sub-Funds.”*

Explanation: Since the number of distinct sub-funds of the Company is increasing and/or changing from time to time, it is important to refer to such sub-funds generally rather than to specific sub-funds by name.

Article 5.5 of the Articles of Association is proposed to be substituted in its entirety by the following:

- *“5.5 In the event of the Custodian or the Investment Manager, where one has been appointed, desiring to retire or being removed from office, the Company shall use its best endeavours to find a person willing to act, as the case may be, as Custodian or Investment Manager (in each case who must be approved by the MFSA) and upon so doing the Company shall appoint such person to be Custodian or Investment Manager in place of the former Custodian or Investment Manager, respectively, on or before the date on which such retirement or removal is to take effect. Subject to Article 5.6 below, the Company will use its reasonable endeavours to conclude a Custody Agreement with provisions delineating that where the Custodian may not retire nor may the Company give notice to the Custodian terminating its appointment from office until such time as it appoints a replacement, and in all cases the Custodian shall not retire before such replacement if so directed by the MFSA in terms of applicable laws. The Investment Manager may not retire nor may the Company give notice to the Investment Manager terminating its appointment from office until such time as it: (a) appoints a replacement; or (b) obtains the MFSA’s approval to act as a ‘self-managed scheme’, whichever is the later.”*

Explanation: This Article has been slightly modified to reflect the reality of the contractual freedom of the parties to service provider agreements concluded by the Company with service providers and that whilst the Company will use its reasonable endeavours to conclude agreements containing particular provisions it may not always and invariable be successful in such quest.

(iv) It is proposed to delete the words “or from the date on which the Custodian ceases to be approved by the MFSA” from Article 5.6 of the Articles of Association.

Explanation: This change is being proposed because the delated words give the impression that a custodian will remain custodian even after it ceases to be approved by the MFSA, which is not the case.

(iv) The reference to “APS Bank Limited” in Article 5.8 of the Articles of Association is to be replaced by “APS Bank plc”.

(vi) It is proposed to replace the words “only person” in the fourth line of Article 19.1 with the words “person/s”.

(vii) It is proposed to add the following new sentence at the end of Article 21.1 of the Articles of Association:

- *“21.1 A general meeting (whether annual or extraordinary) may also be held by electronic means or virtually, as permitted and subject to any requirements as may be prescribed by applicable laws and/or Regulations and/or by the Listing Rules.”*

Explanation: Following the experience of the Covid-19 pandemic it is felt necessary to expressly provide for alternative methods of holding general meetings.

It is proposed to delete the proviso to the first sentence as well as the second sentence of Article 21.2 such that Article 21.2 should now read:

- *“21.2 The lapse of time between the date of one annual general meeting of the Company and that of the next shall not exceed that stipulated in the Act.”*

Explanation: The proviso to the first sentence, which regulated the first annual general meeting of the Company, has now become outdated information. As regards the second sentence which is proposed to be deleted from Article 21.2, the self-imposed restriction of holding the annual general meeting within 6 months after the financial year end is felt to unnecessarily limit the operational flexibility of the Company. This is obviously without prejudice to the Company’s obligations to abide by statutory time-limits for publishing financial statements and also for holding annual general meetings.

Article 22.1 of the Articles of Association is proposed to be substituted in its entirety by the following:

- *“22.1 At least fourteen (14) Clear Days’ notice specifying the place, the day and the hour of the meeting, and in the case of special business the general nature of such business (and in the case of an extraordinary general meeting specifying the meeting as such) shall be given in the manner hereinafter mentioned to Eligible Members who are registered as Members on the General Meeting Record Date. A person shall be entitled to receive notice of, participate in and vote at a general meeting if such person is entered as a Member on the Register on the General Meeting Record Date, and any change to an entry on the said Register after the General Meeting Record Date shall be disregarded in determining the right of any person to attend and vote at the meeting.”*

Explanation: The purpose of this amendment is once again to specify that only those persons entered as Members on the Register of the Company on the General Meeting Record Date applicable in respect of a particular general meeting are entitled to receive notice of, participate in and vote at such general meeting.

- (x) It is proposed to add the words *“or pursuant to any applicable regulatory or legislative provisions”* at the end of Article 22.2 of the Articles of Association which deals with the calling of general meetings at shorter notice than the prescribed notice period.

Article 24.1 of the Articles of Association is proposed to be substituted in its entirety by the following:

- *“24.1 On a show of hands, every Eligible Member who is present in person or by proxy shall be entitled to one vote, independently of the number of shares held or represented. On a poll every Eligible Member who is present in person or by proxy shall be entitled to such number of votes as shall be produced by dividing the aggregate Net Asset Value of that Eligible Member’s shareholding of Shares holding voting rights (expressed or converted into Euro and calculated as of the relevant General Meeting Record Date) by one. For the purposes of this Article 24.1: (a) Fractional Shares shall not have any voting rights, (b) fractions shall be ignored, and (c) Founder Shares shall, solely for the purposes of this Article, be deemed to entitle the holder to one (1) vote per Founder Share held.”*

Explanation: The main purpose of this proposed amendment is to expressly provide (as per standard practice) that on a show of hands every Eligible Member is entitled to one vote, irrespective of the number of shares held; this is always without prejudice to the right to demand a vote by poll (where voting is representative of the shareholding).

It is proposed to add the following new proviso at the end of Article 25.1 of the Articles of Association: *“Provided that, notwithstanding what is contained in the following provisions of this Article 25, at the Company’s discretion, an Eligible Member shall also be entitled to:*

- (a) *Appoint a proxy by electronic means, as to an address specified by the Company;*
- (b) *Have the electronic notification of such appointment accepted by the Company; and*
- (c) *Have at least one effective method of notification of a proxy by electronic means offered to it by the Company.”*

Explanation: Following the experience of the Covid-19 pandemic it is felt important to expressly provide for the appointment and notification of appointment of a proxy by a Member by electronic means.

- (xiii) The words *“twenty-four (24) before”* in Article 25.3 are to be substituted by the words *“twenty-four (24) hours”*.

- (xiv) The words *“except at an adjourned meeting or an adjourned meeting”* in Article 25.6 are to be substituted by the words *“except at an adjourned meeting or a meeting to take a poll”*.

- (xv) The following changes are proposed to be made to Article 26 of the Articles of Association:

- Article 26.2 is proposed to be substituted in its entirety by the following:

“All Directors shall retire at every annual general meeting, but shall be eligible for re-election. In case of re-election of any Director at the annual general meeting at which he or she retires, no renewed approval from the MFSA shall be required and no prior nomination in terms of Articles 26.6 or 26.7 shall be required for the re-election of such Director. Apart from the retirement of Directors at the Company’s annual general meeting as provided above, the Company may also at any time remove any Director or Directors at a general meeting in accordance with Article 140 of the Act.”

- In Article 26.3 it is proposed to include the following words immediately after *“duly nominated in terms of Articles 26.6 or 26.7 below”*:

“(except in case of re-election of a Director retiring at such general meeting, in which case no such prior nomination shall be required),”

- In Article 26.4 the words “A vacancy” at the beginning of the second sentence shall be substituted by the words:

“For the purposes of this Article, a”

- In Article 26.5 it is proposed to include the following words immediately after “duly nominated in terms of Articles 26.6 or 26.7 below”:

“(except in case of re-election of a Director retiring at such general meeting, in which case no such prior nomination shall be required),”

It is proposed to substitute Article 26.6 in its entirety by the following:

- *“26.6 By not later than sixty (60) days prior to the date of the meeting at which an election of Directors is to take place, the Company shall give at least fourteen (14) days’ notice (the “Nomination Notice Period”) on its website to its Eligible Members, inviting Eligible Members to propose nominations of candidates of persons who are fit and proper for the election of Directors (except those which are to retire at the said meeting). Notice by an Eligible Member to the Company proposing a person for election as a Director, as well as the latter’s acceptance to be nominated as Director shall, on pain of disqualification, be made on the form to be prescribed by the Board of Directors from time to time. The completed prescribed form shall reach the office of the Company Secretary not later than the expiration of the Nomination Notice Period. For the purposes of this Article, the Eligible Member or Eligible Members submitting their nomination as aforesaid shall hold in the aggregate Investor Shares representing not less than 2.5% of the Net Asset Value of the Company on the Dealing Day preceding the date of nomination.*

Provided that no such notice inviting nominations need be given by the Company where the relevant meeting at which an election of the Directors is to take place is the annual general meeting of the Company and (i) the Company has obtained confirmation from the existing directors that they do not object to their re-election as Directors at such meeting and (ii) the Company does not intend increasing the existing number of Directors composing the Board.

Provided further that if the Members present at a general meeting unanimously consent, the chairman of such meeting may waive the said notices as aforesaid and submit to the meeting the name of any person nominated at such meeting or otherwise nominated without following the notice procedures referred to above, provided such person confirms in writing his willingness to be appointed.”

- In Article 26.7 it is proposed to include the following words after the words at the end “the next following general meeting”:

“following the same procedure provided in Article 26.6”

- It is proposed to include the following new proviso at the end of Article 26.8:

“The election of such person as Director shall in all cases be subject to the approval of the MFSA.”

Explanation: The purpose of these changes to Article 26 is mainly clarificatory, so as to clarify certain matters arising under the provisions relating to the appointment of Directors. It is also intended to streamline the procedure for nomination of Directors (other than those retiring at the relevant general meeting) and to make this more sensible particularly in terms of the prescribed timelines, taking also into account the realities of time taken to carry proper due diligence on newly proposed directors and to get these approved by the Malta Financial Services Authority.

- In Article 41.5 it is proposed to include the following words immediately after “whether physically or by electronic means including electronic mail”:

“or published on its website (provided the Members entitled to receive the same have been duly given notice of the respective general meeting and have been informed that the Annual Report is available through electronic means as aforesaid)”

Explanation: Following the experience of the Covid-19 pandemic it is felt necessary to expressly provide for publication on the Company’s website as an alternative method of communicating the Annual Report to Members in advance of the general meeting at which they are to be laid for approval, reflecting also the recent changes made to Article 180(2) of the Companies Act (Chapter 386 of the Laws of Malta).

- (xvi) In Article 41.8 it is proposed to include the following words immediately after “by electronic means including electronic mail”:

“or published on its website”

- (xvii) It is proposed to substitute the words “fifteen (15) Clear Days” in Article 42.5 with “fourteen (14) Clear Days”.