
FRAMEWORK APPLICABLE TO THE NOTIFICATION OF AIFS

1. Scope of application

The process of notification of funds shall apply to Alternative Investment Funds¹ [‘AIFs’] which are promoted to professional investors and/or qualifying investors as defined in Section 2².

AIFs falling within the scope of the notification process shall be managed by a full-scope Alternative Investment Fund Manager³ [‘AIFM’], authorised and regulated under Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers [‘AIFMD’].

The process of notification of AIFs will be available in respect of collective investment schemes which are not in possession of a licence issued by the MFSA, in terms of the Investment Services Act⁴. A notification falling within this framework shall be made by the AIFM of the relevant scheme. A collective investment scheme may not be converted into a Notified AIF.

By making a notification in respect of an AIF, the AIFM will undertake responsibility for that AIF and for the fulfilment of its obligations. An AIFM is required to comply with its ongoing obligations in respect of an AIF, its investors and its regulator under the AIFMD and relevant rules and regulations thereunder.

The notification process **cannot** be requested for the following collective investment schemes:

- i. AIFs which are self-managed;
- ii. AIFs which are not marketed and sold exclusively to professional and/or qualifying investors as defined in Section 2;
- iii. loan funds, whether third-party managed or self-managed, which fall to be authorised under the Investment Services Act and regulated by the Standard Licence Conditions Applicable to Collective Investment Schemes authorised to invest through loans;
- iv. AIFs that invest in instruments and assets other than financial instruments listed in Section C of Annex I of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments [‘MiFID’]; or
- v. AIFs whose main objective is investing in immovable property.

¹ “Alternative Investment Funds” or “AIFs” means any collective investment scheme, including the subfunds thereof, which raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors, and which does not qualify as a UCITS Scheme in terms of 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 (UCITS).

² The MFSA is assessing the Professional Investor Fund regime separately.

³ “Alternative Investment Fund Manager” or “AIFM” means a legal person whose regular business is the management of one or more AIFs.

⁴ Chapter 370 – Laws of Malta

AIFs established as private equity funds shall not be deemed to fall within the scope of paragraph (iv) above.

The AIF can be either open-ended or closed-ended as defined in Commission Delegated Regulation (EU) No 694/2014⁵.

A Notified AIF⁶ [‘NAIF’] may be established as:

- an investment company with variable share capital (SICAV) under the Companies Act (Investment Companies with Variable Share Capital) Regulations⁷;
- an investment company with fixed share capital (INVCO) under the Companies Act (Investment Companies with Fixed Share Capital) Regulations⁸;
- an incorporated cell company under the Companies Act (SICAV Incorporated Cell Company) Regulations⁹;
- an incorporated cell of a Recognised Incorporated Cell Company (RICC) under the Companies Act (Recognised Incorporated Cell Company) Regulations¹⁰;
- a limited partnership under the Companies Act¹¹;
- a unit trust under the Trust and Trustees Act¹²; or
- a contractual fund under the Investment Services Act (Contractual Funds) Regulations¹³.

The MFSA will maintain an updated List of Notified AIFs¹⁴ on its website.

2. Target Investor Base

NAIFs may be marketed to the following types of investors:

- professional investors, being investors which are considered to be professional clients or may, on request, be treated as professional clients within the meaning of Annex II to MiFID; and/or
- qualifying investors, being investors that fulfil the following criteria:
 - (a) invest a minimum of EUR 100,000 or its currency equivalent in the AIF which investment may not be reduced below this minimum amount at any time by way of a partial redemption;
 - (b) declare in writing to the AIFM and the AIF that they are aware of and accept the risks associated with the proposed investment; and
 - (c) satisfy at least one of the following:
 - (i) a body corporate which has net assets in excess of EUR 750,000 or which is part of a group which has net assets in excess of EUR 750,000 or, in each case, the currency equivalent thereof;

⁵ Commission Delegated Regulation (EU) No 694/2014 of 17 December 2013 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to regulatory technical standards determining types of alternative investment fund managers.

⁶ “Notified AIF” means an AIF which has been notified to the MFSA by the AIFM for inclusion in the List of Notified AIFs and is included in the List of Notified AIFs maintained by the competent authority in terms of the Investment Services (List of Notified AIFs) Regulations 2016.

⁷ S.L. 386.02

⁸ S.L. 386.04

⁹ S.L. 386.14

¹⁰ S.L. 386.15

¹¹ Chapter 386 - Laws of Malta

¹² Chapter 331 – Laws of Malta

¹³ S.L. 370.16

¹⁴ The term “List of Notified AIFs” shall be understood as referring to the List of Notified AIFs maintained by the MFSA in terms of the Investment Services Act (List of Notified AIFs) Regulations, 2016.

- (ii) an unincorporated body of persons or association which has net assets in excess of EUR 750,000 or the currency equivalent;
- (iii) a trust where the net value of the trust's assets is in excess of EUR 750,000 or the currency equivalent;
- (iv) an individual whose net worth or joint net worth with that of the person's spouse, exceeds EUR 750,000 or the currency equivalent; or
- (v) a senior employee or director of a service provider to the Notified AIF.

The AIFM shall also adhere to the promotional rules applicable in the jurisdiction(s) where the AIF is being marketed.

3. Procedure

This section outlines the procedure which shall be complied with by AIFMs during the notification process for AIFs.

- I. EU/EEA AIFMs may submit a notification request to the MFSA for an AIF to be included in the List of Notified AIFs. The AIFM shall either:
 - be in possession of a licence to provide fund management services to AIFs granted by the MFSA under the Investment Services Act; or
 - be in possession of a management passport under Article 33¹⁵ of the AIFMD.

Third country AIFMs will be able to submit a request for notification of an AIF once the country where they have been established has been granted passport rights under the AIFMD.

- II. The following documents shall accompany the notification request:
 - a prospectus containing the minimum contents prescribed in the Investment Services Rules for Investment Services Providers [the "Rules"] and duly compiled having regard to the appropriate pro-forma template provided;
 - a resolution by the governing body of the AIF¹⁶ certifying that the prospectus has the minimum contents outlined in the Rules and that it has been drafted in accordance therewith and the appropriate pro-forma template;
 - a self-certification by the AIFM that, having regard to any delegate manager(s) or advisers it has in place, it has the necessary competence and experience to manage the AIF and monitor effectively any delegate. The self-certification is to be given in respect of the applicable investment strategy;
 - a joint declaration by the AIFM and the governing body of the AIF by which each undertakes responsibility for the AIF, including, *inter alia*, the obligations arising under the AIFMD;
 - a declaration by the AIFM confirming that it has carried out the necessary due diligence with regard to the service providers of the AIF and the governing body of the AIF. This

¹⁵ Article 33 of the AIFMD is transposed in regulations 6 and 7 of the Investment Services Act (Alternative Investment Fund Manager)(Passport) Regulations.

¹⁶ "governing body of the AIF" means the body with ultimate decision making authority for the AIF comprising the supervisory and managerial functions.

declaration must include a statement that the AIFM is satisfied with the outcome of this due diligence exercise and there are no untoward features.

Specimens of all documents will be made available in the Rules.

Incomplete notifications will be rejected by the MFSA.

The notification form together with the accompanying documentation must be submitted to the MFSA within **30 calendar days** from the date of resolution of the governing body of the AIF approving the prospectus and prior to the effective date of the prospectus.

Within **10 working days** from the date of filing of a duly completed notification pack, the MFSA will proceed to include the AIF in the List of Notified AIFs.

The inclusion of an AIF in the List of Notified AIFs will not imply that the AIF is authorised or licensed or in any way approved by the MFSA. Notified AIFs will not be subject to ongoing supervision. The MFSA may, however, remove an AIF from the List of Notified AIFs at any time.

The same procedure applies to the notification of sub-funds.

III. Contents of the prospectus: The prospectus must be drafted having regard to the pro-forma template attached to the Rules and it must have the following minimum contents:

- (a) information concerning the NAIF;
- (b) the date of establishment of the NAIF and information on the duration of the NAIF;
- (c) sub-funds and/or NAIF's unit classes;
- (d) the NAIF's investment objectives, policies and restrictions and how these may be changed;
- (e) the manner in which the value of the NAIF's units (NAV) may be calculated;
- (f) a detailed description of the valuation methodology for the NAIF's assets particularly for hard to value assets;
- (g) where the NAIF is established as a SICAV, the amounts of authorised and paid up share capital;
- (h) the manner in which accounting records will be maintained and distributed;
- (i) information regarding the AIFM;
- (j) information on the depository and its responsibilities towards the NAIF;
- (k) identification of the NAIF's auditor;
- (l) identification of the NAIF's legal advisors in any relevant jurisdiction;
- (m) information regarding the NAIF's other service providers such as the administrator, prime brokers and investment advisors (as applicable);
- (n) a description of all entities involved in the implementation of the investment policy;
- (o) subscription and redemption procedures;
- (p) fees and expenses regime specifying which costs are borne by the AIF, the AIFM and the investors;
- (q) disclosures on conflicts of interest;
- (r) disclosures of side letters;

- (s) disclosure of any dealing commission arrangements;
- (t) risk warnings and a clear indication of the principal risks associated with investing in the NAIF;
- (u) any listing, where relevant;
- (v) the manner and content of periodic and regular investor reporting, including a description of the manner in which reporting will be provided to investors on a regular basis regarding the NAIF's performance and commission sharing arrangements; and
- (w) an explanation regarding the NAIF's winding up, liquidation or dissolution procedures.

The prospectus shall include, or the AIFM shall otherwise make available to investors, the information required pursuant to Article 23(1) and, where relevant, Article 23(2) of the AIFMD.

A disclaimer in the following form shall be included on the front page of the prospectus:

“XXXXXX Fund is a Notified AIF under the Investment Services Act (List of Notified AIFs) Regulations. The Fund has been entered onto the List of Notified AIFs on the basis of a notification submitted by the AIFM confirming that:-

- (a) the AIFM is in possession of either:**
 - (i) a licence granted by the MFSA under the Investment Services Act; or**
 - (ii) a management passport under Article 33 of AIFMD; and**
- (b) the governing body of the Fund has approved the prospectus.**

The entry of the xxxxxx Fund on the List of Notified AIFS is not an endorsement, guarantee or statement of approval by the MFSA nor is the MFSA responsible for the contents of this document or the selection or adequacy of its governing body or service providers.

The MFSA has made no assessment or value judgment of the soundness of the Fund or for the accuracy or completeness of statements made or opinions expressed with regard to it.

The MFSA has not reviewed or approved the Fund's investment objective, policy or investment universe. Any person making statements to the contrary may be prosecuted under the Maltese Criminal Code [Chapter 9 – Laws of Malta]. Investors must rely solely upon their own and their advisors' due diligence in making any decision to invest.”

4. Due Diligence Process

Prior to submitting a request for inclusion of the AIF in the List of Notified AIFs, the AIFM shall carry out the necessary due diligence exercise to ensure that the service providers and the governing body of the AIF are 'fit and proper'. In particular, at the outset, the AIFM shall not permit a person to hold the office of director of the AIF unless it is satisfied on reasonable grounds that the person complies, and will comply on an ongoing basis, with high standards of fitness and probity expected.

The AIFM shall carry out the necessary due diligence and keep records of all evidence and correspondence in this regard. The documentation related to the due diligence exercise carried out in relation to each member of the governing body and each service provider shall be made available upon request for inspection by the MFSA.

The AIFM shall update the relevant due diligence records and documents on an annual basis and shall document the updates carried out.

The MFSA will not carry out any due diligence but will be relying on the checks and controls carried out by the AIFM in this regard. The MFSA may carry out random checks on compliance with the provisions of the Investment Services Act (List of Notified AIFs) Regulations and the applicable Rules following inclusion of the AIF in the List of Notified AIFs. Any adverse findings by the MFSA in relation to any appointment may lead, inter alia, to the removal of the AIF from the List of Notified AIFs.

5. Founder Shares

All rights (other than any rights to income or capital) of any founder or similar shares must be transferred to and exercisable only by the AIFM upon inclusion of the AIF in the List of Notified AIFs.

6. Anti-Money Laundering Obligations

The AIFM shall appoint a money laundering reporting officer to carry out the money laundering reporting function in relation to the AIF. It shall be permissible for the duties of the Money Laundering Reporting Officer of the AIF to be carried out by the administrator of the NAIF in accordance with the outsourcing agreement entered into between the AIFM, the NAIF and the fund administrator. In such cases, the fund administrator will be responsible for carrying out the reporting obligations of the NAIF. Notwithstanding the outsourcing arrangement between the NAIF and the administrator, the NAIF will remain responsible for compliance with the requirements under the Prevention of Money Laundering and Funding of Terrorism Regulations¹⁷ and the Implementing Procedures and for the carrying out of the measures specifically assigned to the NAIF.

For the purpose of complying with its customer due diligence requirements, the AIFM, the fund administrator or the money laundering reporting officer shall submit to the governing body of the NAIF a periodic report, at least quarterly, which includes a complete list of unit-holders of the NAIF, details of subscriptions and redemptions carried out by the unit-holders within that period of time and a description of the customer due diligence measures carried out by the NAIF or its administrator on the unit-holders. The governing body of the NAIF will be responsible for reviewing the report. Where the report has been drafted by the administrator, a copy thereof must also be transmitted to the AIFM.

¹⁷ S.L. 373.01

The governing body of the NAIF is required to ensure that the customer due diligence measures being conducted by the fund administrator are in line with the requirements of the Prevention of Money Laundering and Funding of Terrorism Regulations and the Implementing Procedures.

Furthermore, the governing body of the NAIF must also ensure the taking of any action it may deem fit based on the outcome of the administrator's report or other anti-money laundering concerns that the governing body may become aware of at any given time.

Notwithstanding that the reporting obligations have been outsourced to the administrator, should a suspicion of money laundering or financing of terrorism be identified by the governing body of the NAIF or the AIFM, a report should be filed with the Maltese Financial Intelligence Analysis Unit ('FIAU') in accordance with the Prevention of Money Laundering and Funding of Terrorism Regulations and the Implementing Procedures.

Where the NAIF has outsourced the implementation of the anti-money laundering or counter financing terrorism measures and procedures to an administrator, such administrator will be required to confirm to the AIFM and the governing body of the NAIF that the record-keeping, reporting, ongoing monitoring, risk management and any other measures being conducted by the administrator are in line with the requirements of the Prevention of Money Laundering and Funding of Terrorism Regulations and the Implementing Procedures.

7. Amendments to the prospectus of a Notified AIF

Where the NAIF is included in the List of Notified AIFs, the AIFM will submit any amendments to the prospectus to the MFSA for acknowledgement provided that the following requirements are met:

- (i) the prospectus continues to have regard to the pro-forma template;
- (ii) the governing body of the NAIF certifies under its own responsibility that:
 - (a) the amendments are not contrary to the requirements prescribed in the Investment Services Act (List of Notified AIFs) Regulations;
 - (b) the prospectus, as amended, has the minimum contents required in terms of the Rules;
 - (c) the prospectus, as amended, is compliant with the appropriate pro-forma template; and

Changes to the investment objectives of the NAIF shall be notified to investors in advance of the change. The notice period should be sufficiently long to allow for redemption requests to be submitted by investors and processed prior to the change being effected. The change in the investment objectives should only become effective after all pending redemptions linked to the change in the investment objectives have been satisfied. Any applicable redemption fees would also need to be waived accordingly.

Within **30 calendar days** from the resolution of the governing body of the Notified AIF approving the amendments to the prospectus, the AIFM shall file with the MFSA:

- (a) a resolution of the governing body of the NAIF certifying that the amendments to the prospectus comply with the standards prescribed in these Rules and with the templates available;
- (b) if changes to the investment objectives, policies and restrictions are being made, the governing body of the NAIF should also confirm that the NAIF currently operates in line with the

investment objectives, policies and restrictions as set out in the prospectus and that the NAIF and its sub-fund(s) are not in breach of either the provisions set out in the prospectus and Constitutional Documents;

- (c) confirmation from the governing body of the NAIF confirming that changes to the prospectus have been undertaken in accordance with the provisions of the Constitutional Documents and in line with the relevant Rules; and
- (d) the NAIF's prospectus as amended, both a clean version and a version showing the amendments made for records purposes only.

Within **10 working days** from the filing with the MFSA of the aforementioned documents, the amendments of the prospectus will be acknowledged by the MFSA. The updated prospectus will not be effective until it has been acknowledged by the MFSA.

8. Notification of Sub-Funds

The procedure used for the notification of NAIFs shall also be used for the notification of additional sub-funds.

All necessary information for the sub-fund(s) and class(es) may be included (i) in the main prospectus, (ii) in a separate document that is distributed with and directly references the main prospectus, or (iii) in a prospectus which contains all relevant information for the NAIF and the relevant sub-fund and/or class(es) concerned and references the existence and brief terms of the other sub-fund(s) and/or class(es) including any material risks that such other sub-fund(s)/class(es) may pose to the sub-fund(s) and/or class(es) concerned.

9. Removal of the AIF from the List of Notified AIFs

The MFSA may remove a NAIF, including any sub-fund, from the List of Notified AIFs at any time at its sole discretion on notice to the AIFM.

The AIFM may also request that a NAIF or any sub-fund be removed from the List of Notified AIFs at any time and is required to make such a request in the circumstances provided in the Investment Services Act (List of Notified AIFs) Regulations and the Rules.

Upon removal from the List of Notified AIFs, the AIF must cease trading other than for the purpose of winding down the operations of the AIF or sub-fund and the AIF or sub-fund must then be liquidated or otherwise terminated in accordance with the requirements of Maltese law.