
CIRCULAR TO THE FINANCIAL SERVICES INDUSTRY ON THE CONSOLIDATION OF THE MALTESE FUND FRAMEWORKS

1. Introduction

On 1 April 2016, the Authority announced its intention to consolidate and reduce the number of fund frameworks which are currently available to fund promoters in terms of the Investment Services Act and the applicable Investment Services Rules. This process is the first phase of an exercise aimed at improving the fund frameworks.

This circular sets out the manner in which the fund frameworks will be consolidated and reduced as part of the first phase of this project.

2. Background information

There are currently twelve fund frameworks available to promoters in Malta and these can be divided into the following categories:

- ***Retail Schemes:***
These include UCITS, Non-UCITS Retail Schemes, Overseas Based Non-UCITS Retail Schemes and Retail AIFs.

- ***Professional Investor Funds ('PIFs'):***
These consist of three sub-categories namely:
 - PIFs promoted to Experienced Investors with a minimum investment requirement of EUR 10,000;
 - PIFs promoted to Qualifying Investors with a minimum investment requirement of EUR 75,000; and
 - PIFs promoted to Extraordinary Investors with a minimum investment requirement of EUR 750,000.

- ***Alternative Investment Funds ('AIFs'):***
AIFs can be further subdivided into four sub-categories (other than Retail AIFs) namely:
 - AIFs promoted to Experienced Investors with a minimum investment requirement of EUR 10,000;
 - AIFs promoted to Qualifying Investors with a minimum investment requirement of EUR 75,000;

- AIFs promoted to Extraordinary Investors with a minimum investment requirement of EUR 750,000; and
- AIFs promoted to Professional Investors with no minimum investment requirement.

By early June 2016, the fund frameworks will also include the Notified AIFs (hereinafter referred to as ‘NAIFs’) which will be introduced through the Investment Services Act (List of Notified AIFs) Regulations, 2016. NAIFs are alternative investment funds meeting the requirements prescribed in the Alternative Investment Fund Managers Directive¹ which will be established by way of a notification by the AIFM to the MFSA upon fulfilment of the conditions prescribed in the aforementioned regulations and the applicable Investment Services Rules.

3. Forthcoming changes to the Maltese fund frameworks

Following an assessment of the current frameworks, a number of fund frameworks will be discontinued and the following will remain:

➤ ***Retail Schemes:***

These will include UCITS and Retail AIFs. Non-UCITS retail schemes will be subject to the following considerations:

- Non-UCITS retail schemes will be gradually phased out. Whilst no new collective investment scheme licences will be issued under this category, the existing licence holders will be allowed to continue operating under the current regime as hitherto;
- Overseas-Based Non-UCITS retail schemes will be required to comply with the Maltese National Private Placement Regime. In this regard, the Authority will be communicating with the licence holders concerned/ the respective local representatives to ensure a smooth transition to the National Private Placement Regime. The Authority aims to completely phase out this regime by 31 December 2016.

➤ ***Professional Investor Funds:***

There will be one category of Professional Investor Funds namely PIFs promoted to Qualifying Investors. In this regard, the main change will consist of an increase in the minimum initial investment from EUR 75,000 to EUR 100,000. The revised definition of “Qualifying Investors” is reported in its entirety in Section 4 of this circular.

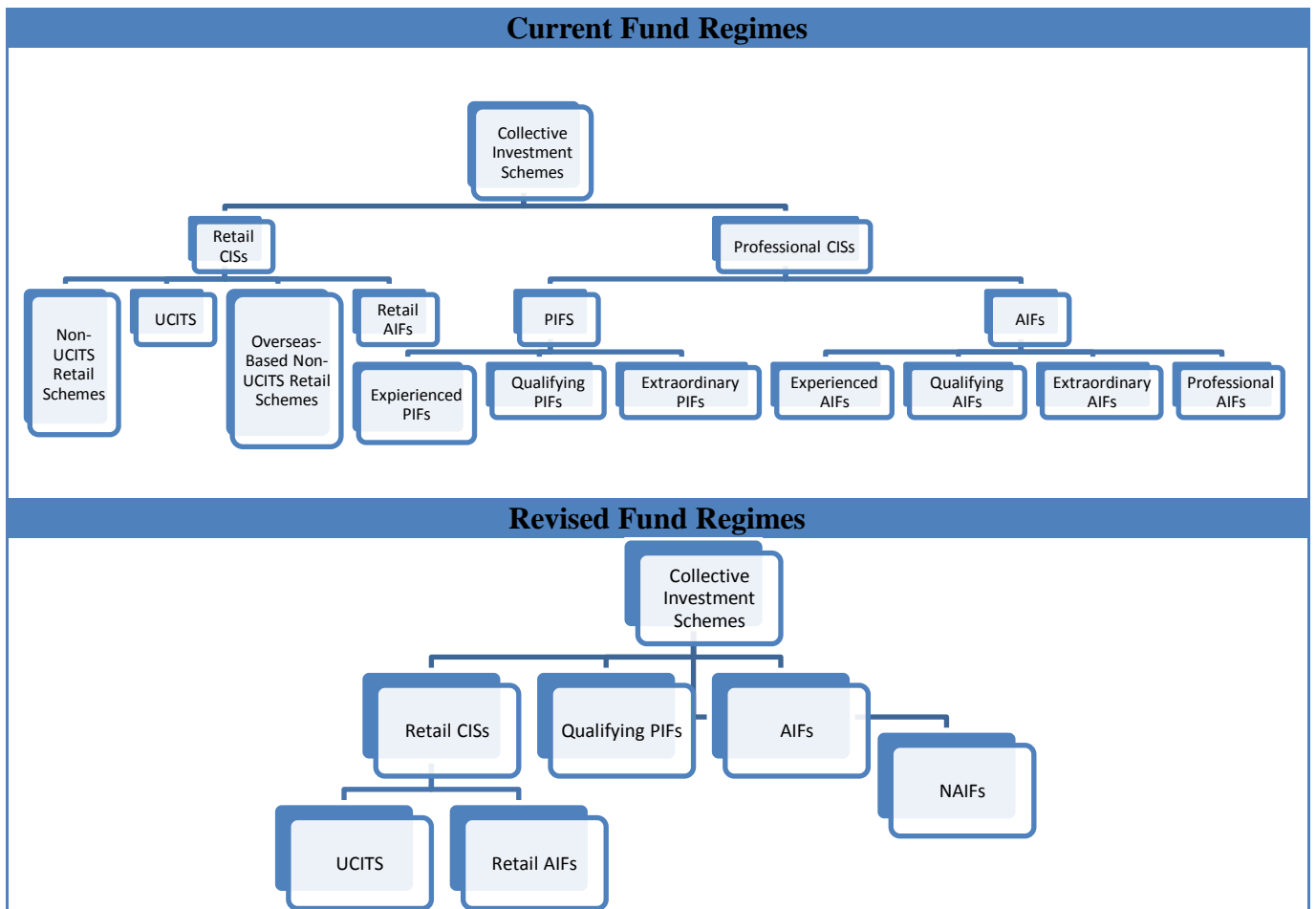
¹ Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers.

Existing PIFs for Experienced, Extraordinary and Qualifying Investors (the latter with a minimum initial investment limit of EUR 75,000) will continue to operate under their respective regulatory regime as hitherto.

➤ **Alternative Investment Funds:**

As indicated earlier on, AIFs will be either Retail AIFs or Professional AIFs. AIFs authorised in terms of the Investment Services Act can be marketed to Professional Investors as defined in MiFID² and/or to Qualifying Investors having a minimum investment requirement of EUR 100,000 as further defined in Section 4 of this circular.

The table below compares the current categories and sub-categories of funds with the forthcoming revision:



² Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments.

4. Definition of “Qualifying Investors”

The term “Qualifying Investors” will be used across the board for PIFs, AIFs and NAIFs. The minimum investment requirement has been increased from EUR 75,000 to EUR 100,000 and the eligibility criteria relating to Qualifying Investors have also been revised.

The table below indicates the changes which will be implemented in relation to the definition of “Qualifying Investors”:

Current Definition of “Qualifying Investor”	Proposed New Definition of “Qualifying Investor”
<p>A “Qualifying Investor”, is required to meet one or more of the following criteria:</p> <ol style="list-style-type: none"> 1. a body corporate which has net assets in excess of EUR750,000 or USD750,000 or which is part of a group which has net assets in excess of EUR750,000 or USD750,000; 2. an unincorporated body of persons or association which has net assets in excess of EUR750,000 or USD750,000; 3. a trust where the net value of the trust’s assets is in excess of EUR750,000 or USD750,000; 4. an individual, or in the case of a body corporate, the majority of its Board of Directors or in the case of a partnership its General Partner who has reasonable experience in the acquisition and/or disposal of :- <ol style="list-style-type: none"> 4.1. funds of a similar nature or risk profile; 4.2. property of the same kind as the property, or a substantial part of the property, to which the PIF in question relates; 5. an individual whose net worth or joint net worth with that person’s spouse or civil partner, exceeds EUR750,000 or USD750,000; 6. a senior employee or Director of Service Providers to the PIF; 7. a relation or close friend of the 	<p>A “Qualifying Investor”, is an investor which fulfils the following criteria:</p> <ol style="list-style-type: none"> 1. invests a minimum of EUR 100,000 or its currency equivalent in the PIF/AIF/NAIFs which investment may not be reduced below this minimum amount at any time by way of a partial redemption; and 2. declares in writing to the fund manager and the PIF/AIF/NAIF that it is aware of and accepts the risks associated with the proposed investment; and 3. satisfies at least one of the following: <ol style="list-style-type: none"> 3.1 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; 3.2 an unincorporated body of persons or association which has net assets in excess of EUR 750,000 or the currency equivalent; 3.3 a trust where the net value of the trust's assets is in excess of EUR 750,000 or the currency equivalent; 3.4 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

<p>promoters limited to a total of 10 persons per PIF;</p> <p>8. an entity with (or which are part of a group with) EUR3.75 million or USD3.75 million or more under discretionary management, investing on its own account;</p> <p>9. the investor qualifies as a PIF promoted to Qualifying or Extraordinary Investors;</p> <p>10. an entity whether body corporate or partnership wholly owned by persons or entities satisfying any of the criteria listed above which is used as an investment vehicle by such persons or entities.</p>	<p>3.5 a senior employee or director of a service provider to the PIF/AIF/NAIF.</p>
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5. Way forward

As advised on 1 April 2016, the financial services industry is to note the following:

- With effect from **3 June 2016**, the MFSA will not be accepting any applications for the licencing of the following collective investment schemes:
 - (a) Non-UCITS Retail Schemes,
 - (b) PIFs targeting Experienced Investors and Extraordinary Investors, and
 - (c) AIFs targeting Experienced Investors and Extraordinary Investors.
 The current definition of “Qualifying Investor” will be used until the new Rulebooks are published.

- The revised Investment Services Rules applicable to Retail Schemes, PIFs and AIFs will be published to reflect the consolidation of the fund regimes. Moreover the Authority will take the opportunity to revise certain provisions in the aforementioned Rulebooks and these will be issued for consultation.

6. Queries

Any queries or requests for clarifications on the contents of this circular should be addressed to Dr. Isabelle Agius by e-mail on iagius@mfsa.com.mt

Communications Unit
Malta Financial Services Authority
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