

CIRCULAR TO THE FINANCIAL SERVICES INDUSTRY

1. Background Information

The Authority refers to the Consultation Exercise on the regulatory approach applicable to licenced PIFs and AIFs which ran from 10th March 2015 to 30th March 2015.

In this regard, the Authority received submissions from eight representatives of the financial services industry.

In the said consultation, the Authority posed two options to the industry namely:

Option 1: Allows AIFMs to manage any type of collective investment scheme whether PIF or AIF

Essentially Option 1 aims at providing the industry with all the flexibility necessary and not posing obstacles to the establishment of any type of fund. Therefore:

- [i] An **EU AIFM** can establish an AIF or a PIF (provided that the AIFM ensures that the PIF is AIFMD-compliant);
- [ii] An EU *de minimis* **AIFM** can only establish a PIF;
- [iii] A **third country fund manager** can establish a PIF or an AIF, subject to compliance with special provisions applicable to non-EU AIFMs managing EU AIFs;
- [iv] A **self-managed de minimis fund** can only be established as a PIF;
- [v] A **self-managed fund** which is above threshold can only be established as an AIF.

OR

Option 2: Allows AIFMs to manage only AIFs

Essentially Option 2 aims at ensuring that EU AIFMs would only be able to act as managers for AIFs. Therefore:

- [i] An **EU AIFM** can establish an AIF;

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- [ii] A *de minimis* EU AIFM can only establish a PIF; however if the fund manager transitions to an EU AIFM, the fund will have to be converted to an AIF.
- [iii] A **third country fund manager** can establish a PIF or an AIF, subject to compliance with special provisions applicable to non-EU AIFMs managing EU AIFs;
- [iv] A **self-managed *de minimis* fund** can only be established as a PIF;
- [v] A **self-managed fund** which is above threshold can only be established as an AIF.

2. Conclusion

In the light of the submissions received, the Authority is hereby informing the industry that with effect from **1 June 2015**, the scenarios envisaged for Option 2 will apply. The Authority based its decision on the feedback received from the industry indicating a preference for Option 2 on the basis that it provides greater clarity in relation to the applicable responsibilities and obligations and reduces possible misunderstandings regarding the applicable requirements.

In view of the above, any applications submitted for the licencing of PIFs or AIFs should be streamlined as outlined in Option 2.

Furthermore, existent PIFs which have been established by AIFMs have a **one-year transitional period** within which to comply with Option 2.

The Authority also wishes to notify the industry that it has also received technical feedback in relation to possible amendments to the Rulebooks and to some Regulations issued in terms of the Investment Services Act. In this regard, this feedback is being carefully assessed and any changes to the Rules or Regulations will be notified by circular to the industry.

Communications Unit
Malta Financial Services Authority
19th May 2015