

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

CONSULTATION DOCUMENT

CONSULTATION ON PROPOSED AMENDMENTS TO THE NOTIFIED INVESTMENT FUNDS REGIME [NAIFs]

[MFSA REF: 05-2017]

7TH AUGUST 2017

CLOSING DATE: 1ST SEPTEMBER 2017

Note: The documents circulated by the MFSA for the purpose of consultation are in draft form and consist of proposals. Accordingly, these proposals are not binding and are subject to changes and revisions following representations received from Licence Holders and other involved parties. It is important that persons involved in the consultation bear these considerations in mind.

1. Introduction

- 1.1 The Malta Financial Services Authority [MFSA] transposed Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Fund Manager (“the AIFMD”) in 2013.
- 1.2 The MFSA having regard to creating innovation structures in conformity with relevant Directives, in this case the AIFMD, and aiming to increase the attractiveness of Malta as a finance centre particularly in the ambit of investment services, launched on 1st April 2016, a framework for the establishment of Notified Alternative Investment Funds [NAIFs]. The framework was regulated by the Investment Services Act (List of Notified AIFs) Regulations and by ad hoc SLCs (“the NAIF Rules”) included in Part BIII of the Investment Services Rules for Investment Services Providers - Standard Licence Conditions Applicable to Investment Licence Holders which Qualify as AIFMs.
- 1.3 Following the publication of the regime regulating the NAIFs, the Authority committed itself to review the said regime within 12 months of publication to ensure that the framework for NAIFs kept developing within the framework of the AIFMD.
- 1.4 In view of this commitment, the MFSA is hereby in this consultation document publishing proposals to review and modify the NAIF Rules keeping present the regulatory obligations of the AIFM in terms of the AIFMD. The consultation seeks to outline the changes to the NAIF Rules.

2. Changes to the NAIF Rules

- 2.1. Reported hereunder are the proposed changes to the NAIF Rules. A tracked version of the applicable Rules is also being published for consultation for ease of reference.
- 2.2. SLC 11.04 is being reviewed to allow for the possibility of NAIFs to invest directly in immovable property or infrastructure. In this respect, the Authority has decided that the MFSA Property Funds Policy shall no longer be applicable to NAIFs and regulated AIFs. Therefore the Property Funds Policy will remain applicable solely and exclusively to Professional Investor Funds. Alternative Investment Funds targeting retail investors cannot be established as property funds.
- 2.3. The Authority is also seeking feedback from the industry on the possibility of extending the scope of the funds which can be established as NAIFs to those funds which invest in non-financial assets.
- 2.4. SLC 11.06 is being reviewed to further emphasise the independence requirement of the Board of Directors of the NAIF.
- 2.5. SLC 11.09 is being reviewed to formalise the requirement of the AIFM, to submit to the Authority a copy of the updated Terms of Reference and the Risk Management Policy (as applicable), following the listing of the NAIF. Furthermore, the AIFM is being required to ensure that the relevant Valuation Policy and Procedures are updated and to submit for the Authority’s consideration and approval any new valuation arrangements which it will be implementing in respect of the NAIF.

- 2.6. SLC 11.27 is being revised to further qualify who can be appointed as MLRO of the NAIF.
- 2.7. SLC 11.43 is being reviewed to clarify that any amendments to the Prospectus shall become effective once they are acknowledged and noted by the MFSA.

3. Additional changes being proposed

- 3.1. The Authority is proposing the following additional changes:
 - a) the Authority is currently reviewing the Continuation of Companies Regulations for the purpose of providing for the possibility of continuation of a scheme licenced in another jurisdiction as a NAIF upon completion of the re-domiciliation procedures. The Regulations on the Continuation of Companies [LN 344 of 2002] and the Guidelines published by the MFSA will be modified accordingly.
 - b) The following Regulations are also being reviewed:
 - Investment Services Act (Prospectus of Collective Investment Schemes) Regulations (SL.370.04); and
 - Investment Services Act (Performance Fees) Regulations (SL. 370.12).

4. Concluding remarks

These proposals are not binding and are subject to changes and revisions following receipt of feedback from the industry. The industry is also invited to submit, for the consideration of the Authority, any additional changes/ improvements to the Rules intended to ameliorate the NAIF Regime.

Interested parties are to send their comments in writing by not later than 01 September 2017. Any comments and feedback are to be addressed to communications@mfsa.com.mt.

07th August 2017
Communications Unit