

# MFSA

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MALTA FINANCIAL SERVICES AUTHORITY

## CONSULTATION DOCUMENT

### CONSULTATION ON THE REGULATORY APPROACH APPLICABLE TO LICENSED PIFS AND AIFS

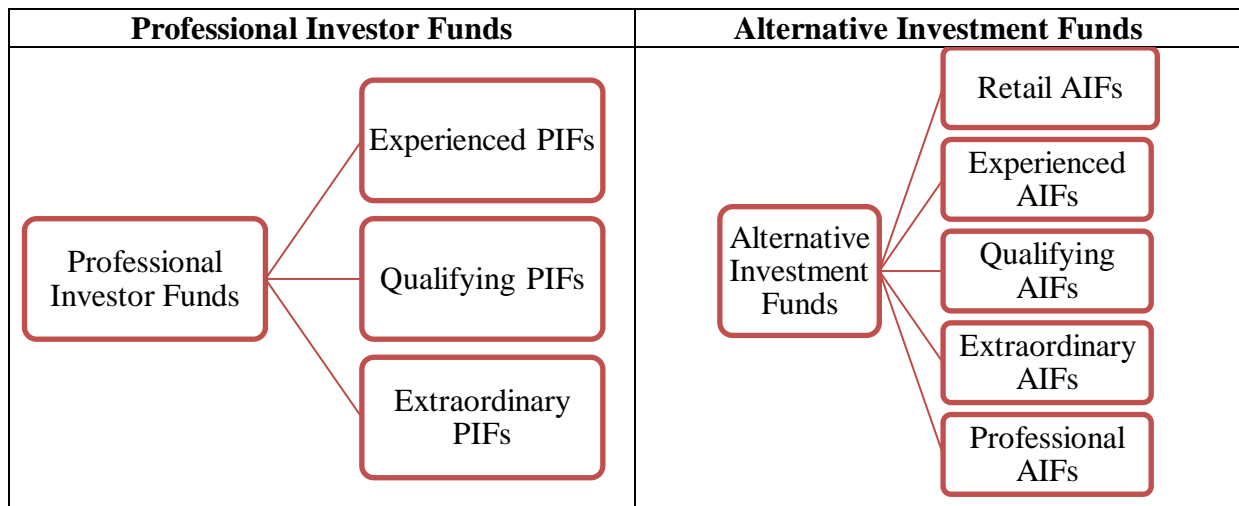
[MFSA REF.: 03-2015]

**10<sup>th</sup> March 2015**

**Closing Date: 30<sup>th</sup> March 2015**

## 1. Introduction

The current regulatory framework under the Investment Services Act provides for the licensing of the following alternative fund structures:



At the time of transposition of the Alternative Investment Fund Managers Directive (‘AIFMD’), the approach taken was intended to allow for a gradual phasing in of funds falling under the provisions of the Directive.

The following approach has been implemented:

- a) below threshold (de minimis) and non-EU AIFMs could establish Professional Investor Funds; while
- b) above-threshold (full) AIFMs could establish both Professional Investor Funds as well as Alternative Investment Funds.

This decision was further supported by the fact that the obligations ensuing from the AIFMD were incumbent primarily on the AIFM rather than on the fund given that it is not a product oriented Directive. For this reason it was decided to allow the continued use of the PIF framework provided the PIF managed by the AIFM is in full compliance with the AIFMD. Thus the fund manager had to determine the applicable requirements and compliance obligations under the Directive.

Further to the above the Authority also introduced a dedicated Appendix VI to Part B of the Investment Services Rules for Professional Investors Funds outlining the additional requirements to be fulfilled by fund managers in the course of their transition from *de minimis* to full AIFM.

## 2. Current State of Play

Towards the end of 2014, the Authority launched a consultation on proposed supplementary licence conditions to regulate the establishment and supervision of private equity funds<sup>1</sup>.

A common denominating factor transpiring from the feedback received was a request to the Authority to distinguish clearly between AIFs and PIFs and to keep the two regimes separate not solely in the application of supplementary SLCs to private equity funds but in general in the authorisation and supervision of funds which are not retail.

## 3. Proposed Course of Action

In order to provide clarity to the industry, the Authority has made an assessment of the framework applicable to PIFs and AIFs and is proposing two options as follows:

*Option 1: Allow full AIFMs to manage both PIFs and AIFs (retaining the current position)*

This option aims to provide the industry with the possibility to establish any type of fund. Therefore:

- ✓ An **EU AIFM** (above threshold) can establish a PIF or an AIF (provided the AIFM ensures that the PIF is AIFMD Compliant);
- ✓ An **EU de minimis AIFM** can only establish a PIF;
- ✓ An **EU self-managed fund** which is **above-threshold (full AIFM)** can only be established as an AIF;
- ✓ An **EU self-managed fund** which is **below-threshold (de minimis AIFM)** can be established as a PIF;
- ✓ A **non-EU AIFM** can establish a PIF or an AIF, subject to compliance with special provisions applicable to non-EU AIFMs managing EU AIFs.

Through this option, the PIF brand may be retained even for AIFMs that exceed the threshold. This would allow two different frameworks to serve as platforms for AIFMs irrespective of their size.

*Option 2: Allow full AIFMs to manage only AIFs*

Option 2 aims at introducing a clear distinction between the types of fund platforms that an EU AIFM can manage depending on its size and obligations under the Directive. It essentially entails a restructuring of the classifications by the Authority. Therefore:

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<sup>1</sup> <http://www.mfsa.com.mt/pages/announcement.aspx?id=6591>

- ✓ An **EU AIFM** (above-**threshold**) can only establish an AIF;
- ✓ A *de minimis* **EU AIFM** can establish a PIF;
- ✓ An EU **self-managed fund** which is **above-threshold** (**full AIFM**) can only be established as an AIF.
- ✓ An EU **self-managed fund** which is **below-threshold** (**de minimis AIFM**) can be established as a PIF;
- ✓ A **non-EU AIFM** can establish a PIF or an AIF, subject to compliance with special provisions applicable to non-EU AIFMs managing EU AIFs.

The Authority favours Option 2 for *inter alia* the following reasons:

- (a) Maintaining a clear distinction between the PIF and AIF regime provides for greater clarity and reduces possible misunderstandings regarding the applicable requirements;
- (b) Possible issues with regards to the applicability of the governance provisions. (To note that the Authority intends to revise the governance provisions found in Part B of the AIF Rulebook to clarify a number of aspects and realign the different CIS Rulebooks to achieve a consistent approach throughout as considered appropriate).

**The Authority invites feedback as to the preferred option and rationale. Following a clear assessment of the feedback received, the Authority will finalise its policy decision and establish a way forward.**

#### **4. Contacts**

Interested parties are to send their comments in writing by not later than 30<sup>th</sup> March 2015. Any comments and feedback are to be addressed to: [rdu@mfsa.com.mt](mailto:rdu@mfsa.com.mt)

**Communications Unit  
Malta Financial Services Authority  
MFSA Ref: 03-2015  
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