

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

CONSULTATION DOCUMENT

CONSULTATION ON THE PROPOSED IMPLEMENTATION OF THE ALTERNATIVE INVESTMENT FUND MANAGERS DIRECTIVE

[MFSA REF.: 09/2013]

Closing Date: 6th June 2013

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

Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 also known as the [Alternative Investment Fund Managers Directive](#) ('AIFMD') was published in the Official Journal of the European Union on 1st July 2011.

The AIFMD regulates the activity of alternative investment fund managers and aims at creating a comprehensive and effective regulatory and supervisory framework for AIFM in the European Union. It introduces a harmonised regulatory and supervisory framework for AIFMs in the EU. By the 22nd July, 2013 Member States are required to adopt and publish the laws, regulations and administrative provisions necessary to comply with the provisions of the Directive.

2. Proposed Transposition of the AIFMD into Maltese Law

The Authority has to date, issued five consultation documents on the implementation of the Directive namely:

2.1 Consultation on the proposed amendments to the Investment Services Act and certain proposed draft regulations:

On 3rd September 2012, the Authority issued for consultation proposed amendments to the Investment Services Act together with the following draft regulations:

- Investment Services Act (Alternative Investment Fund Manager Passport) Regulations;
- Investment Services Act (Marketing of Alternative Investment Funds) Regulations;
- Investment Services Act (Alternative Investment Fund Manager Third Country) Regulations; and
- Investment Services Act (Alternative Investment Fund Managers) Regulations.

The consultation period ran till 30th September 2012. The Authority evaluated the feedback received from the industry and carried out changes to the proposed Regulations. Legal Notices 113, 114, 115 and 116 of 2013 have been published in the Government Gazette on 8th March 2013 and are available for download from the MFSA website.

2.2 Consultation on the proposed revisions to the Investment Services Rules for Investment Service Providers:

On 3rd December 2012, the Authority issued for consultation a significantly revised version of the Investment Services Rules for Investment Services Providers¹. The proposed amendments to the ISP Rulebook sought to consolidate the rules applicable to Investment

¹ Hereinafter referred to as 'ISP Rulebook'

Services Licence Holders with the aim of providing certainty as to which supervisory regime is applicable to each Category of Licence Holders. Therefore, Part B of the ISP Rulebook has been streamlined in four specific sections which are applicable to Investment Services Licence Holders depending on type of activity being undertaken.

The Authority received submissions from eight members of the financial services industry and is currently evaluating the feedback received. The Authority issued a feedback statement on 6th May 2013.

2.3 Issue of Questionnaire on Operational Arrangements of Fund Managers and Self-Managed Schemes

On 27th February 2013, the Authority circulated to the industry a “Questionnaire on the Operational Arrangements of Fund Managers and Self-Managed Schemes”. The aim of the questionnaire was to gather information on the existing operational arrangements adopted by investment fund managers and self-managed schemes licenced in terms of the Investment Services Act and which do not qualify for an exemption in terms of Article 3 of the AIFMD.

Investment Fund Managers and Self-Managed Schemes were requested to return the completed questionnaire by 4th March 2013. The Authority received feedback from the industry and is currently evaluating the replies received.

2.4 Consultation on the Rulebook applicable to De Minimis Licence Holders

On 22nd March 2013, the Authority issued for consultation the Rulebook applicable to de minimis Licence Holders. The Rulebook provides for the applicable general requirements, organisation requirements, conduct of business and financial resources requirements. The consultation period ran till 5th April 2013. The Authority received comments from six Licence Holders. The Authority has now finalised the Rules applicable to De Minimis Licence Holders and has issued the relative feedback statement recently.

2.5 Consultation on the Rulebook applicable to Alternative Investment Funds

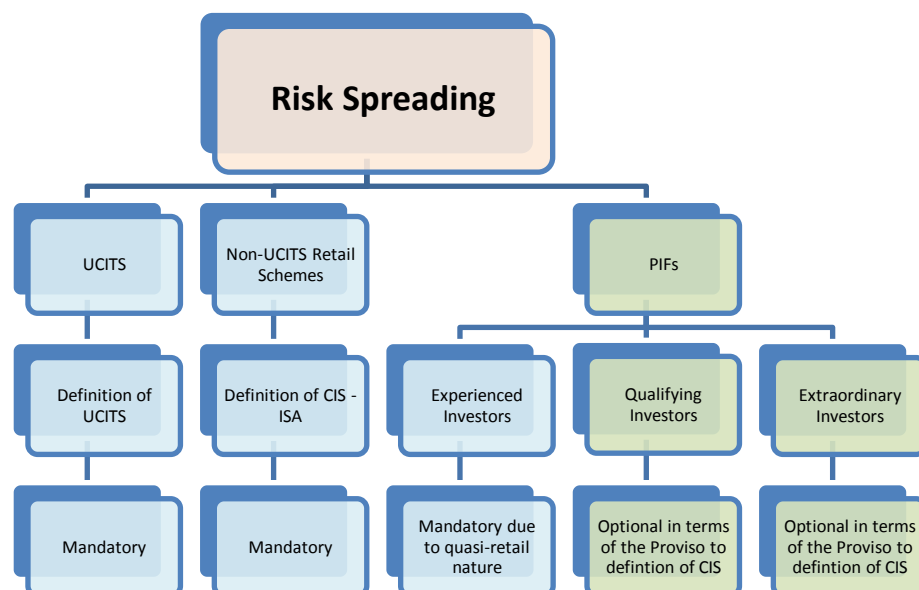
On 26th March 2013, the Authority issued for consultation the Investment Services Rulebook for Alternative Investment Funds. This new Rulebook proposes to provide Maltese/EU AIFMs with a simple regulatory framework which will allow them to establish AIFMD-ready funds for marketing to professional investors in Malta or across the EU. The Rule Book applies to AIFs whether these are externally managed or self-managed. The consultation period ran till 26th April 2013. The Authority is currently assessing all the feedback received and will be issuing a feedback statement in the coming weeks.

3. Proposed Changes to the Investment Services Rules for Professional Investor Funds

As part of the transposition process relating to the AIFMD, the Authority is proposing to revise the Investment Services Rules for Professional Investor Funds². The Authority has taken the decision to retain the PIF Regime for *de minimis* Licence Holders and third country managers wishing to set up a collective investment scheme in Malta since they are not required to comply with the requirements prescribed in the Directive in relation to AIFs. Furthermore, the PIF Rulebook will also be applicable to *de minimis* self-managed AIFs as outlined hereunder.

One of the most important changes which is being brought about by the transposition of the AIFMD relates to the alignment of the definition of Collective Investment Scheme in the Investment Services Act which enshrines the principle of risk spreading, with the definition of ‘AIF,’ which has no such requirement.

The table below illustrates the manner in which the Authority currently applies the principle of risk spreading to the different types of collective investment schemes which may be established in terms of the Act.



The Authority is proposing to introduce more certainty in the application of this principle primarily through the amendment of the definition of ‘collective investment scheme.’

While risk spreading will continue to be mandatory for UCITS, Non-UCITS Retail Schemes and Professional Investor Funds targeting Experienced Investors, risk spreading will be optional for the remaining types of CISs namely PIF targeting Qualifying and Extraordinary

² Hereinafter referred to as ‘PIF Rulebook’.

Investors and AIFs *which target professional investors* and the Authority shall have the discretion in future to disapply the principle of risk spreading in the Rules to certain Collective Investment Schemes as it deems appropriate.

3.1. Increase in the Experienced Investor threshold

In order to enhance consumer protection the Authority is proposing to revise the definition of ‘Experienced Investor’ in the PIF Rulebook by increasing the minimum investment requirement to € 100,000 and is clarifying the applicable investment requirements for joint holdings.

3.2. Effective dates for changes

PIFs set up after 22nd July 2013 will be subject to the revised rules incorporated in the PIF Rulebook. PIFs which are already licenced will be expected to comply with the revised rules incorporated in the PIF Rulebook in their dealings with new investors.

3.3. Summary

The Authority is proposing to revise the Investment Services Rules for Professional Investor Funds as follows:

[1] **Part A:** The Application Process

Part A is being revised as follows:

- [a] General updating of Part A in relation to the Legal Notices cited therein.
- [b] Updating of definition of ‘Collective Investment Scheme’ as explained above;
- [c] Revision of definition of ‘Experienced Investors’ and clarification on ‘joint holdings’;
- [d] Updating of Part A and Schedule A to include reference to *de minimis* Licence Holders;
- [e] Inclusion of reference to the Competency Form as an additional Form to be submitted with the application documents. This form will be required when Licence Holders are submitting a request for approval of the Compliance Officer, the Money Laundering Reporting Officer, the Portfolio Manager, the Investment Advisor and the Risk Manager. This Form shall be submitted together with the PQ which is habitually submitted with the application form.
- [f] Creation of a new Schedule D to Part A entitled ‘Competency Form.’

Part A of the PIF Rulebook will be circulated with the Consultation Document.

- [2] **Part B:** Standard Licence Conditions: Parts BI, BII and BIII of the PIF Rulebook are being revised as indicated hereunder. Given that the changes to Part B of the PIF

Rulebook are not extensive, the revised SLCs are being included hereunder together with the proposed revised version:

Part B		
Rationale	Old SLC	Revised SLC
<p>Part BI - SLC 1.5 Part BII – SLC 1.5 Part BIII – SLC 1.5 These SLCs are being revised to incorporate the concept of self-managed <i>de minimis</i> AIFs.</p>	<p>The Scheme may appoint a third party Manager approved by the MFSA with responsibility for the discretionary investment management of the assets of the Scheme. Where a third party Manager is not appointed, the supplementary conditions applicable to Self-Managed Schemes set out in Appendix I shall apply in lieu of the conditions 1.6 and 1.7 below.</p>	<p>The Scheme may appoint a third party Manager approved by the MFSA with responsibility for the discretionary investment management of the assets of the Scheme. Where a third party Manager is not appointed, the supplementary conditions applicable to Self-Managed Schemes set out in SLCs 4.2 to 4.15 of Appendix I shall apply in lieu of the SLCs 1.6 and 1.7 below.</p> <p>Provided that PIFs which are self-managed and which qualify for the <i>de minimis</i> exemption prescribed therein shall also be subject to SLC 4.1 of Appendix 1.</p>
<p>Part BI - SLC 1.23 Part BII – SLC 1.23 Part BIII – SLC 1.22 These SLCs are being revised to incorporate the requirement to submit a Competency Form in relation to the appointment of the Compliance Officer.</p>	<p>The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of a Compliance Officer at least twenty one business days in advance. The request for consent of the appointment or replacement of a Compliance Officer shall be accompanied by a Personal Questionnaire (“PQ”), in the form set out in Schedule C to Part A of these Rules duly completed by the person proposed. The MFSA reserves the right to object to the proposed appointment or replacement and to require such additional information it considers appropriate.</p>	<p>The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of a Compliance Officer at least twenty one business days in advance. The request for consent of the appointment or replacement of a Compliance Officer shall be accompanied by a Personal Questionnaire (“PQ”), in the form set out in Schedule C to Part A of these Rules and by a Competency Form, in the form set out in Schedule D to Part A of these Rules – duly completed by the person proposed. The MFSA reserves the right to object to the proposed appointment or replacement and to require such additional information it considers appropriate.</p>
<p>Part BI - SLC 1.29 Part BII – SLC 1.29 Part BIII – SLC 1.28</p>	<p>The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of a Money Laundering Reporting</p>	<p>The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of a Money Laundering Reporting Officer at least</p>

<p>These SLCs are being revised to incorporate the requirement to submit a Competency Form in relation to the appointment of the Money Laundering Reporting Officer.</p>	<p>Officer at least twenty one business days in advance. The request for consent of the appointment or replacement of a MLRO shall be accompanied by a Personal Questionnaire (“PQ”), in the form set out in Schedule C to Part A of these Rules – duly completed by the person proposed. The MFSA reserves the right to object to the proposed appointment or replacement and to require such additional information it considers appropriate.</p>	<p>twenty one business days in advance. The request for consent of the appointment or replacement of a MLRO shall be accompanied by a Personal Questionnaire (“PQ”), in the form set out in Schedule C to Part A of these Rules and by a Competency Form, in the form set out in Schedule D to Part A of these Rules – duly completed by the person proposed. The MFSA reserves the right to object to the proposed appointment or replacement and to require such additional information it considers appropriate.</p>
<p>Part BII – SLC 1.38 This SLC is being revised to incorporate the policy adopted by the Authority in relation to the principle of risk spreading.</p>	<p>The Scheme shall be subject to the investment objectives, policies and restrictions outlined in its Offering Document. In addition, where the Scheme intends effecting its investments through the use of Trading Companies or Special Purpose Vehicles, it shall also be subject to the supplementary conditions regarding the use of such vehicles set out in Appendix I. The Manager or the Scheme shall take all reasonable steps to comply with the investment policies and restrictions of the Scheme.</p>	<p>The Scheme shall be subject to the investment objectives, policies and restrictions outlined in its Offering Document. In addition, where the Scheme intends effecting its investments through the use of Trading Companies or Special Purpose Vehicles, it shall also be subject to the supplementary conditions regarding the use of such vehicles set out in Appendix I. The Manager or the Scheme shall take all reasonable steps to comply with the investment policies and restrictions of the Scheme. The Manager or the Scheme shall not be bound to comply with the principle of risk spreading.</p>
<p>Part BIII – SLC 1.38 This SLC is being revised to incorporate the policy adopted by the Authority in relation to the principle of risk spreading</p>	<p>The Scheme shall be subject to the investment objectives, policies and restrictions outlined in its Offering Document/ Marketing Document. The Manager or the Scheme shall take all reasonable steps to comply with the investment policies and restrictions of the Scheme.</p>	<p>The Scheme shall be subject to the investment objectives, policies and restrictions outlined in its Offering Document/ Marketing Document. The Manager or the Scheme shall take all reasonable steps to comply with the investment policies and restrictions of the Scheme. The Manager or the Scheme shall not be bound to comply with the principle of risk spreading.</p>

- [3] **Appendix 1:** Appendix 1 has been revised to incorporate reference to the provisions of Article 3 of the Directive in the section dealing with self-managed PIFs. Therefore the current SLC 4.1 dealing with Capital Requirements has been renumbered 4.2 and new SLCs 4.1 and 4.1A have been introduced.

For ease of reference Appendix 1 is being circulated with this consultation document.

- [4] **Appendix 3:** Appendix 3 has been aligned with the new definition of Experienced Investor.

For ease of reference Appendix 3 is being circulated with this consultation document.

- [5] **Appendix 5:** A new Appendix 5 is being introduced to implement the reporting requirements applicable to de minimis self-managed PIFs in terms of the AIFMD.

For ease of reference Appendix 5 is being circulated with this consultation document.

4. Contacts

Interested parties are to send their comments in writing by not later than 6th June 2013. Any comments and feedback are to be addressed to Dr. Isabelle Agius – Regulatory Development Unit by e-mail on iagius@mfsa.com.mt

Any queries or requests for clarifications in respect of the above should be addressed to: Dr. Isabelle Agius, Regulatory Development Unit, Tel: 25485359 or by e-mail on iagius@mfsa.com.mt, Dr. Monica Nally Hennessy, Securities and Markets Supervision Unit, by e-mail on MNallyHennessy@mfsa.com.mt or Mr. Jonathan Sammut, Securities and Markets Supervision Unit on Tel: 25485452 or by e-mail on jsammut@mfsa.com.mt

**Communications Unit
Malta Financial Services Authority
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