

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

CONSULTATION DOCUMENT

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

[MFSA REF.: 11/2013]

Closing Date: 1st July 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.

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 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.

¹ Hereinafter referred to as 'ISP Rulebook'

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. The Authority is also planning to issue Guidance to the industry on delegation arrangements and the requirements which must be complied with in terms of the AIFMD.

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 consultation period ran till 5th April 2013. The Authority received comments from six Licence Holders and has issued the feedback statement on 21st May 2013.

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 applies to AIFs whether these are externally managed or self-managed. The consultation period ran till 26th April 2013. The Authority will be issuing a feedback statement in the coming weeks.

2.6 Consultation on the proposed changes to the Investment Services Rules for Professional Investor Funds

On 24th May 2013, the Authority issued for consultation the proposed amendments to the Investment Services Rules for Professional Investor Funds². The consultation process ran till 6th June 2013 and the Authority will be issuing a feedback statement in the coming weeks.

3. Proposed Changes to the Investment Services Rules for Retail Collective Investment Schemes

As part of the transposition process relating to the AIFMD, the Authority is proposing to revise the Investment Services Rules for Retail Collective Investment Schemes³. By

² Hereinafter referred to as ‘PIF Rulebook’.

³ Hereinafter referred to as ‘CIS Rulebook’

definition, Non-UCITS Retail Schemes fall within the definition of AIFs. The Authority is proposing to revise the CIS Rulebook as follows:

3.1. 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 amended in view of the transposition process of the AIFMD and inclusion of the definition of AIF;
- [c] Section 4: The Authority is proposing to revise Section 4 as follows:
 - I. Section 4.1 – Non-UCITS Schemes: The Authority is proposing to update this section with regards to the custodian and the applicability of the waiver prescribed in Article 61(5) AIFMD and the possibility to appoint an administrator.
 - II. Section 4.3 – Overseas Based Non-UCITS Schemes: At present overseas based Non-UCITS Schemes which would like to market/promote their units in Malta are required to hold a CIS Licence prior to marketing/promoting their units in Malta. Certain licensing eligibility criteria currently apply to such Schemes – primarily that the Scheme and its principal Service Providers are to be based and regulated in a Recognized Jurisdiction. Such a Scheme may appoint multiple distributors.

In view of the transposition process of the AIFMD, the Authority is currently proposing to replace this process with the processes prescribed in Articles 36 and 42 AIFMD. Accordingly Schedule B to Part A will also be deleted.
- [d] Section 7 – Service Providers: The Authority is proposing to revise Section 7.1 dealing with the Service Providers which may be appointed by Non-UCITS Retail Schemes.
- [e] Section 8 – Applications for a Collective Investment Scheme Licence: The Authority is proposing to revise this section to discontinue the application process currently in force for Overseas Based Non-UCITS Retail Schemes.
- [f] Section 9 – Application Documents: The Authority is proposing to revise this section to align it with the requirements applicable exclusively to UCITS and Non-UCITS Retail Schemes.
- [g] Sections 10 and 11 – Applications for the Licensing of Additional Sub-Funds of an Existing Scheme and Application for the Approval of Additional Classes of Shares/Units of an Existing Scheme respectively: The Authority is proposing to revise this section to align it with the requirements applicable exclusively to UCITS and Non-UCITS Retail Schemes.

- [h] Section 12: Exercise of Passport Rights: The Authority is proposing to revise Section 12 in accordance with the provisions of the Investment Services Act (Marketing of Alternative Investment Funds) Regulations, 2013.
- [i] Updating of Schedule A to include reference to *de minimis* Licence Holders;
- [j] Creation of a new Schedule F to Part A entitled ‘Competency Form’.

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

3.2. Part B: Standard Licence Conditions: Part BI

The Authority is proposing to amend Part BI so as to align it with the requirements of the AIFMD. Furthermore, Part BI is further being amended to transpose the provisions relating to Article 3 AIFMD in relation to the *de minimis* self-managed Schemes. Part BI is being further supplemented by Appendix 9 dealing with the specific information which must be reported on the AIF.

Part BI and Appendix 9 of the CIS Rulebook will be circulated with the Consultation Document.

4. Contacts

Interested parties are to send their comments in writing by not later than 1st July 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

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