

Consultation Document on Extending the NPIF Framework to include Self- Managed NPIFs

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1. Introduction

On the 18 December 2023, the Malta Financial Services Authority launched a framework for Notified Professional Investor Funds ('NPIFs'). This is one of a number of policy initiatives being undertaken by the Authority in relation to asset management.

The NPIF framework, at present, does not allow for NPIFs to be self-managed and mandates the appointment of a third-party manager. By virtue of this consultation, the MFSA is seeking stakeholders' views on: [i] extending the NPIF framework to include Self-Managed NPIFs; and [ii] the general features which a framework which incorporates Self-Managed NPIF, may have.

2. Main Features of the Proposed framework for Self-Managed NPIF

It is being proposed that the framework for Self-Managed NPIFs is analogous to the existing NPIF framework, with the exception of the management function and certain features, as well as, requirements emanating from the AIFM Directive that would apply, in view of the internal managed nature of the scheme.

Accordingly, a Self-Managed NPIF would be subject to the same requirements applicable to third party managed NPIFs, with the exception of the following: -

- It would have initial paid-up share capital which is not less than €125,000 or its currency equivalent and the NAV of the scheme is expected to exceed this amount on an on-going basis. In this manner, the capital requirements for a Self-Managed NPIF would be equivalent to those for a licensed Self-Managed PIF; and
- It would be required to appoint at least 3 Investment Committee members (which includes at least one Portfolio Manager, who can also be a member of the Investment Committee and/ or member of the board).

Under the existing NPIF framework (third-party managed), the Due Diligence Service Provider ('DDSP') would evaluate whether the third-party manager is suitable/fit and proper for the role. Such manager is required to be authorised by the MFSA or an EU/EEA State, or by a third country which provides a comparable level of regulation as that in Malta. Under

the current NPIF framework, there is therefore a level of reliance on the manager's regulatory status.¹

In contrast, for Self-Managed NPIFs, the DDSP would be responsible for assessing the fitness and propriety (including competence for the role – based on qualifications and/or experience) of the Portfolio Manager and the members of the Investment Committee, rather than evaluating the third-party manager.

The provisions applicable for self-managed NPIFs are expected to be included in the existing NPIF Rulebook, by means of a dedicated section in the Rules.

3. Fitness & Propriety Assessment

It is being proposed that the framework for Self-Managed NPIFs follows the approach used for third-party managed NPIFs i.e. due diligence on key functionaries being undertaken by a DDSP. It is emphasised that due diligence is here being used in its wide sense and is akin to a 'fitness and propriety' assessment.

The Authority considers that subject to certain safeguards being in place for Self-Managed NPIFs, the MFSA would allow DDSPs to undertake fitness and propriety assessments (including competence) on the portfolio manager and Investment Committee members. Such safeguards will include new forms to be submitted, risk warnings included in offering documents, and additional detail to be included in the Guidance Notes.

4. Regulatory Changes Required

Provisions within the framework that currently prohibit a Notified PIF from being Self-Managed will undergo revision to allow the scheme to be internally managed.

A new section will be included in the NPIF Rules to provide **Supplementary Rules for Self-Managed NPIFs**. These would include requirements similar to those found in Appendix I to the Investment Services Rules - Supplementary Licence Conditions applicable to PIFs set up as Self-Managed Schemes, DDSPs seeking appointment to conduct fitness and propriety tests for Self-Managed NPIFs will be subject to additional competence checks vis-à-vis their

¹ In carrying out the necessary due diligence assessment of service providers which are regulated, the DDSP may place a degree of weighting on the entities' regulatory status in determining the extent of checks required; however, the DDSP would be expected to go beyond merely relying on the fact that the entities are regulated by a relevant authority in assessing their fitness and propriety.

capability of undertaking competency assessments on the portfolio manager/management function and the investment committee members.

In this respect, changes will also be made to the **Fitness & Properness Guidance Note**. The Guidance note on the Fitness and Properness standards for DDSPs of NPIFs provides comprehensive guidance for the assessments being undertaken by DDSPs.

To date, these guidelines do not cater for the assessment of the portfolio manager/management function and investment committee members, given that to date NPIFs can currently only be third-party managed. Supplementary Guidance for when the due diligence assessment is being undertaken in relation to a Self-Managed NPIF will therefore be introduced. DDSPs would need to follow these additional guidelines when conducting fitness and properness assessments in relation to Self-Managed NPIFs.

Further regulatory changes would include requirements for:

- certain additional documentation/confirmations to be submitted at notification stage. This could include the following:
 - o a confirmation (to be made through the Notification Form), that the NPIF has **initial paid-up share capital** which is not less than €125,000 or its currency equivalent;
 - o **a Competence Assessment Form** - DDSPs seeking appointment to conduct fitness and properness tests for Self-Managed NPIFs must submit the Competence Assessment Form and filling in a section applicable for DDSPs intending to service Self-Managed NPIFs. The Competence Assessment Form for DDSPs operating in the context of a Self-Managed NPIF seeks to provide additional checks vis-à-vis DDSPs' competence to conduct competency assessments of the portfolio manager/management function and investment committee members; and
 - o **a DDSP Attestation Form** - this form, which would need to be filled in by DDSPs when the NPIF is Self-Managed, should ensure that the DDSP furnishes information on the competence of the portfolio manager/management function and the investment committee members to the NPIF's governing body and that the competence assessment was satisfactorily concluded. The NPIF's governing body would, in turn, be required to endorse the form.

- the inclusion of certain risk warnings in the offering documentation, specific to the self-managed nature of the NPIFs;
- reporting - since an internally managed NPIF would be subject to the requirements emanating from Article 3(3) of the AIFM Directive, the submission of [Annex 1 – AIFM-Specific Information to be reported \(Article 3\(3\) AIFMD\)](#) and [Annex 2 – AIF- Specific Information to be reported \(Article 3\(3\) AIFMD\)](#) of the (PIF Rules) to the MFSA, in full. This is a departure from the existing NPIF framework, as NPIFs are currently required to submit an abridged return;
- Terms of Reference regulating the procedures of the Investment Committee;
- a confirmation from the Portfolio Manager that he/she:
 - (a) operates in accordance with the investment objective and policy described in the NPIF’s offering document in general and the investment guidelines issued by the Investment Committee in particular;
 - (b) reports to the Investment Committee on a regular basis any transactions effected on behalf of the Self-Managed NPIF; and
 - (c) provide the Investment Committee with any information as the Investment Committee may require from time to time;
- where the Portfolio Manager is based overseas, a confirmation from said Portfolio Manager that their activities carry no regulatory implications in the jurisdiction in which they are operating from;
- a confirmation from the Portfolio Manager that they have appropriate resources available to them to ensure on-going access to the market information which they would need to take account of in making investment management decisions; and
- an adapted version of Supplementary Licence Condition 4.8 of Section 4 of Appendix I to the Investment Services Rules - Supplementary Licence Conditions applicable to PIFs set up as self-managed Schemes. This should cater for Self-Managed NPIFs and include reference to the DDSP.

Revisions would also be required for:

- the **NPIF Notification Form**, to require the inclusion of the NPIF's investment strategy for Self-Managed NPIFs, in line with Art. 3(3)(c) of the AIFM Directive; and
- the **existing supplementary rules** to cater for Self-Managed NPIFs.

5. Way Forward

Any comments and feedback in relation to [i] extending the NPIF framework to include Self-Managed NPIFs; and [ii] the general features which a framework that incorporates Self-Managed NPIFs may have, are to be submitted to assetmanagementstrategy@mfsa.mt . Feedback is to reach the MFSA by not later than **12 July 2024**.

Once feedback is received, the MFSA will commence drafting the relevant changes required in relation to this proposed framework.

The proposals set out in this consultation document are not binding and are subject to changes and revisions following receipt of feedback from stakeholders.