

# Feedback Statement on the Proposed Extension of the NPIF Framework to include Self-Managed NPIFs

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## 1 Introduction

On the 18 December 2023, the Malta Financial Services Authority ('MFSA' or 'the Authority') introduced a framework for Notified Professional Investor Funds ('NPIFs' or 'Notified PIFs') - one of several policy initiatives the Authority is pursuing in the area of asset management.

Currently, funds structured as Notified PIFs must be externally managed, requiring the appointment of an external EEA or third-country manager (subject to certain limitations) responsible for the management of their assets.

Following the framework's introduction, the MFSA began exploring the possibility of allowing Notified PIFs to also operate as self-managed funds. On the 12 June 2024, a [consultation exercise](#) was launched to gather feedback from stakeholders on the concept and the features such a framework may have. This consultation period concluded on the 12 July 2024.

This Feedback Statement summarises the key contributions received in response to the consultation and outlines the MFSA's positions on the issues raised.

The MFSA extends its gratitude to stakeholders for their detailed feedback, all of which has been carefully reviewed. The Authority is pleased to note that the proposed amendments to the NPIF framework were generally well-received, with stakeholders viewing them as a positive development for the local fund industry.

## 2 Feedback on the Main Features of the Proposed Framework for NPIFs

### 2.1 Corporate Governance Requirements and Local Substance

In outlining the general features of the proposed extension of the NPIF framework to also allow for the establishment of Self-Managed NPIFs ('SM-NPIFs'), the consultation document states that the majority of the requirements currently outlined in the NPIF framework would also be applicable to SM-NPIFs, with the exception of additional requirements being introduced in relation to [i] the initial paid up capital; and [ii] the internal portfolio management function and the fitness and properness assessment thereof.

In particular, the Consultation Document states that SM-NPIFs will be required to set up an Investment Committee, made up of at least three members and at least one Portfolio Manager ('PM'). Both Investment Committee members and Portfolio Manager(s) can be members of the governing body of the NPIF.

The concept framework did not however provide additional details insofar as specific requirements applicable to the functioning of the Investment Committee.

#### Feedback Received

Some respondents put forward recommendations aimed at strengthening the framework from a corporate governance perspective, for instance by not allowing the Maltese resident member of the governing body of the SM-NPIF (who is responsible to ensure compliance of the fund with the relevant requirements of the framework) to undertake the role of portfolio manager. Another respondent went a step further, by proposing the need for IC members and portfolio manager(s) to be totally independent from the governing body of the fund.

The role and functioning of the Investment Committee has predictably gained focus in respondents' feedback, with various views insofar as its composition and functioning. Some respondents advocated for stronger local substance requirements, thereby requiring at least one Investment Committee member to be resident in Malta and the Rules requiring specifically for the majority of the Investment Committee meetings to be held in Malta, as it is currently the case for licensed Professional Investor Funds.

In relation to the role of the Portfolio Manager, respondents pointed out that when a PM is appointed, the framework should ensure that the official(s) follows portfolio management procedures that have been previously approved by the governing body of the fund. Divergent views were however expressed with respect to who can be appointed as a Portfolio Manager of a self-managed NPIF, with some respondents highlighting that the Rules should cater for instances in which this role is held by a company as opposed to an individual. On the other

hand, one respondent highlighted the need for the PM function to be held by natural person(s) only, and that a requirement for PMs to be based in Malta is also introduced.

## **MFSA Position**

The Authority has duly taken note of feedback received. With respect to the role of the Portfolio Manager, the MFSA will include a provision in the Rules stating that the local member of the governing body in charge of the fund's compliance duties cannot be actively involved in the asset management function and therefore, cannot hold the role of Investment Committee member nor that of Portfolio Manager in charge of the day-to-day management of the NPIF.

With particular reference to the role of the Portfolio Manager, the Authority would like to clarify that it will also be acceptable for the Investment Committee of the SM-NPIF to be collectively responsible for the day-to-day portfolio management of the fund without appointing a specific official as PM. It therefore follows that in the latter instance all considerations and requirements applicable to the Portfolio Manager are to be intended as directed towards the IC in its entirety.

Additionally, and coherently with the licensed PIF framework, a regulated entity duly authorised to perform discretionary portfolio management with respect to the assets envisaged by the NPIF's investment strategy is allowed to be appointed as PM of the fund, subject to the positive fit and proper assessment of the Due Diligence Service Provider ('DDSP'). The framework will be clarified in this respect.

Specifically with respect to the portfolio management procedures to be followed by a SM-NPIF, it is highlighted that as outlined in Rule 2.02, Part A of the NPIF Rulebook, the governing body of the Notified PIF is collectively responsible for the fund's compliance with all applicable requirements emanating from the NPIF regulatory framework. It is therefore expected that the governing body approves and is familiar with all policies and procedures of the fund, including those in relation to portfolio management.

Lastly, with respect to the introduction of additional local substance requirements specifically in relation to the portfolio management function, the Authority sees merit in the recommendation of requiring at least one Investment Committee member to be based in Malta, and will include a rule in this respect. It is further noted that the local IC member can also be appointed as Portfolio Manager of the fund and can be a member of the NPIF governing body, as long as different from the local member of the governing body responsible for compliance of the fund. A provision has also been included in the NPIF Rules to require that the majority of Investment Committee meetings are to be held in Malta.

## 2.2 Additional Regulatory Safeguards

Following the same approach of the NPIF framework and the overarching aim of promulgating a lightly regulated regime which would still fit within the AIFMD regulatory context, the concept for SM-NPIFs put forward for consultation did not envisage any regulatory approval vis-à-vis its officials, whose fitness and properness, including competence-related considerations, is to be assessed by the appointed DDSP.

### Feedback Received

The need for stronger scrutiny, by the Authority, of key officials of the SM-NPIF has been highlighted by some respondents. In particular, a respondent suggested that, given the importance of the IC member and Portfolio Manager roles, the competence assessment of these officials ought to be retained by the Authority, while the remaining fitness and properness assessments are carried out by the appointed DDSP.

Another respondent took a stricter approach, stating that in order to be appointed with respect to a SM-NPIF, the following officials should have already been approved by the MFSA for similar roles within licensed entities:

- At least one local member of the governing body of the fund (who, being responsible for the NPIF compliance duties, should also have been previously approved as a compliance officer in similar licensed entities);
- The MLRO of the NPIF;
- At least one Investment Committee member;
- The Portfolio Manager, who should be already approved by the MFSA with respect to PM-related duties within the context of a licensed *de minimis* AIFM or a MiFID Investment Firm.

### MFSA Position

In response to the feedback received, the Authority has carefully considered the views expressed regarding the regulatory scrutiny of key officials within the SM-NPIF framework. Whilst acknowledging the suggestions advocating for a more stringent regulatory approach, particularly the proposal to retain the competence assessment of investment committee members and portfolio managers under the Authority's direct oversight, the MFSA sees merit in the original proposal of entrusting the fitness and properness assessment of all NPIF officials, including those tasked with portfolio management duties, to the appointed DDSP, also with respect to the specific assessment of competence. The Authority considers that this arrangement strikes an appropriate balance given the lightly regulated nature of the NPIF framework, especially taking into consideration the additional safeguards outlined below.

As anticipated in Section 4 of the Consultation document, DDSPs who would want to be appointed with respect to SM-NPIFs, will be required to undergo an assessment and will require the approval of the Authority with respect to their competence to perform competency assessments of investment committee members and portfolio managers. Such approval will be requested through the submission of an enhanced version of what currently constitutes Annex E to the NPIF Notification Form - *Competence Assessment Form for CSPs seeking appointment as Due Diligence Service Providers*. In the case of DDSPs seeking approval to be appointed with respect to SM-NPIFs, both eligible CSPs and Recognised Fund Administrators will be required to submit such annex for the Authority's consideration. Further to the above, the Authority has worked on revising the Fitness & Propriety Guidance Note for DDSPs of NPIFs to include detailed guidelines on the MFSA's expectations with respect to the assessment to be performed by DDSPs on proposed Investment Committee members and Portfolio Managers specifically with respect to their competence.

Lastly, it is important to emphasize that the activities of DDSPs are subject to the Authority's scrutiny and potential regulatory action in case of shortcomings being identified, ensuring that they continue to meet the expected standards.

## 2.3 Capital Requirements and Ongoing NAV

The proposed extension of the NPIF framework to also allow for the establishment of SM-NPIFs envisages that the requirements applicable to the initial paid-up share capital would not differ from those currently applicable to self-managed licensed PIFs. Therefore, the structure would be subject to an initial paid-up capital of no less than €125,000 or its currency equivalent, and the Net Asset Value of the scheme is expected to exceed this amount on an on-going basis.

### Feedback Received

Respondents supported the proposed provision with respect to capital requirement but suggested that a higher threshold is adopted for the ongoing Net Asset Value (e.g. €1,500,000): should the NPIF's NAV fall below the specified threshold, a notification to the MFSA should be submitted to this effect. The proposal seeks to facilitate the role of the local member of the governing body who is also responsible for ensuring compliance of the fund with the respective regulatory requirements in the ongoing monitoring of the fund's operations.

### MFSA Position

The Authority has reviewed the suggestion to introduce a higher ongoing Net Asset Value threshold for SM-NPIFs, with a requirement for notification should the NAV fall below this threshold. The Authority is of the view that, in this respect, alignment with the existing

framework applicable to self-managed licensed PIFs (i.e. an initial paid-up capital of no less than €125,000, with an expectation that the NAV exceeds this amount on an ongoing basis) which does not include such a NAV threshold, is deemed sufficient to ensure the financial soundness and stability of NPIFs within the broader regulatory framework. The Authority believes that the ongoing NAV should be managed within the existing governance and compliance frameworks, without the need for additional thresholds. This approach also avoids placing an undue burden on the local governing body member responsible for compliance, allowing them to focus on broader regulatory obligations.

## 2.4 Conversion Options

The Consultation Documents states that SM-NPIFs would be subject to the same requirements applicable to third party managed NPIFs, save for the exceptions already outlined above with respect to paid-up initial share capital and the portfolio management function. Accordingly, the requirements in relation to conversions to and from Notified PIFs would apply to self-managed structures as well.

### Feedback Received

Respondents noted that Rules should clarify the possibility for a SM-NPIF to convert into a third-party managed NPIF, as well as outline the various possibilities for conversion to other regulated fund types, also in the event that the SM-NPIF exceeds the assets under management threshold specified in Article 3(2) AIFMD.

### MFSA Position

The Authority has taken note of the feedback received regarding the conversion possibilities for SM-NPIFs. It is highlighted that the introduction of the SM-NPIF is intended as an extension of the existing third-party managed NPIF framework. The existing provisions governing conversions within the current NPIF framework will therefore apply to both self-managed and third-party managed structures, without any need for explicit differentiation between the two.

In relation to the possibility of a SM-NPIF transitioning to a third-party managed NPIF, the Authority confirms that this will indeed be an available option and, to ensure clarity, the rules will explicitly allow for the transition between self-managed and third-party managed structures, and vice versa. This should ensure that the framework remains flexible and adaptable to the evolving needs of the fund whilst maintaining a consistent regulatory standard.



### 3 Conclusion and Next Steps

Having considered stakeholder feedback, the Authority is now making the necessary amendments in accordance with the positions outlined above. The MFSA will be coordinating with the relevant bodies to amend the regulatory framework, *inter alia* to remove the prohibition of setting up self-managed Notified PIFs as outlined in Regulation 15(2)(a) of the Investment Services Act (List of Notified CIS) Regulations and in Rule 2.04(i), Part A of the Notified PIF Rulebook.

The Authority is also finalising amendments to the related provisions of the NPIF rulebook, as well as the related annexes, supporting documentation, and any other matters necessary for the operationalisation of the framework. This includes an updated version of the NPIF Notification Form and an additional section of the Guidance Note on the fitness and propriety standards for NPIF DDSPs, specifically addressing the competence assessment of Investment Committee members and Portfolio Managers. The Authority is also preparing supplementary rules for SM-NPIFs.

Any queries or requests for clarifications in respect of the above should be addressed by email on [assetmanagementstrategy@mfsa.mt](mailto:assetmanagementstrategy@mfsa.mt).