MFSA MALTA FINANCIAL SERVICES AUTHORITY

Circular

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MFSA Extends the Notified PIF Framework to Cater for Self-Managed Structures

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'), allowing these structured to only be set up as third-party managed funds.

Subsequently, the MFSA started exploring the possibility of allowing the setting up of Notified PIFs as self-managed funds. To this effect, reference is made to the publication of the Consultation Document issued on the 12 June 2024 (link) and the corresponding Feedback Statement published on the 26 September 2024 (link).

The Malta Financial Services Authority is therefore amending the Notified PIF framework to allowing NPIFs to also be set-up as internally managed funds.

In this respect, reference should *inter alia* be made to the:

- Investment Services Act (List of Notified CISs) Regulations, as amended and
- Investment Services Rules for NPIFs and related Due Diligence Service Providers, and to the annexes thereto.

Stakeholders are invited to take note of the following:

1. Updates vis-à-vis the Positions Outlined in the Feedback Statement

Further to additional internal consideration and in view of proportionality concerns, the MFSA has eventually determined that the requirement to appoint a local member to the Investment Committee will not be included in the final framework.

The Notified PIF framework is intentionally designed to operate under lighter regulatory oversight compared to fully licensed funds, reflecting its non-retail nature and the inherent limits on assets under management emanating from the AIFMD to which the manager of such funds (or the fund itself, if self-managed) is subject to, which trigger full compliance with the aforementioned Directive requirements if exceeded.

The Authority has reassessed this position also in light of the local presence requirement already embedded in the NPIF framework, which prescribes that at least one member of the governing body – overseeing compliance of the fund - is resident in Malta. In view of the above, the inclusion of a separate local IC member was deemed misaligned with the nature and objectives of the framework.

2. Amendments to the Existing NPIF Rulebook

Extending the NPIF framework to also cater for self-managed structures required amendments to the existing Investment Services Rules for NPIFs and related Due Diligence Service Providers (the NPIF Rulebook), as follows:

- Part A of the NPIF Rulebook has been amended to allow NPIFs to be set up as internally managed funds, as well as to set out additional requirements for Due Diligence Service Providers of self-managed Notified PIFs (specific reference is made to Rule 11.06). Amendments to ensure consistency were also effected.

- Part B of the NPIF Rulebook has been amended to ensure consistency of the Rules with the added possibility of setting up internally managed Notified PIFs.

- The Supplementary Rules to the NPIF Rulebook have been updated with the addition of Section 6, setting out the Supplementary Rules applicable to NPIFs set up as self-managed Schemes.

3. Reporting

Stakeholders should note that the reporting requirements applicable to self-managed NPIFs are equivalent to those in place for self-managed licensed PIFs and, accordingly, as outlined in Rule 6.20, of the Supplementary Rules to the NPIF Rulebook, both 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) are to be reported to the MFSA, in full.

In light of the above, the exceptions outlined in the Reporting Guidelines for Notified Professional Investor Funds vis-à-vis the completion of Annex 2 being mentioned above are only applicable to regulatory returns of third-party managed NPIFs. In this respect, the title and introductory part of the Guidance Note have been clarified.

4. Due Diligence Service Providers of Self-Managed NPIFs

Unlike third-party managed Notified PIFs, where only eligible Company Service Providers (CSPs) require prior regulatory approval to act as Due Diligence Service Providers (DDSPs), for self-managed Notified PIFs, this requirement is extended to both Fund Administrators and eligible CSPs. Entities wishing to act as DDSPs for self-managed NPIFs must obtain prior approval from the MFSA by submitting AX43-Annex D, a declaration confirming the adequacy of their arrangements to perform the role, and AX44-Annex E, which outlines their competence assessment. Prospective DDSPs are advised that they can choose to seek such approval both at notification stage, or prior to the submission of a notification for the inclusion of a NPIF in the list of Notified PIFs, as outlined by Rule 11.06, Part A of the NPIF Rulebook.

Further updates and developments on the MFSA's strategic initiatives will be made public on the Authority's website. Should there be any queries in relation to the above, do not hesitate to contact us at assetmanagementstrategy@mfsa.mt.