

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

FEEDBACK STATEMENT FURTHER TO INDUSTRY RESPONSES TO

MFSA CONSULTATION DOCUMENT DATED 26TH MARCH 2013 ON

THE RULEBOOK APPLICABLE TO ALTERNATIVE INVESTMENT FUNDS

1. INTRODUCTION

On 27th March 2013, the MFSA issued a consultation document regarding the proposed transposition of certain requirements of the Alternative Investment Fund Managers Directive ['AIFMD']. Licence holders were circulated with the Rulebook applicable to Alternative Investment Funds.

The deadline for the submission of comments with respect to the Consultation document was 26th April 2013 and the Authority received comments from three members of Malta's financial services industry.

The Authority has assessed all the feedback received and after careful consideration has incorporated most of the drafting suggestions which were proposed by the industry.

The Authority also took cognisance of the wide array of issues which were raised by the industry in response to this consultation exercise. The Authority's position has been determined after a careful and thorough consideration of the submissions received.

2. FEEDBACK RECEIVED IN RELATION TO INVESTMENT SERVICES RULES FOR ALTERNATIVE INVESTMENT FUNDS¹

2.1. APPLICABILITY OF MINIMUM INVESTMENT THRESHOLDS IN AIFs

Q1) *The Authority was requested to clarify whether it intends applying a minimum investment threshold for AIFs since the AIF Rulebook will be replacing the Investment Services Rules for Professional Investor Funds².*

A1) The AIF Regime will not be replacing the PIF Regime but rather the two regimes will be available simultaneously. Given that the Directive is silent on the setting of a minimum investment threshold, the Authority has decided not to impose one. AIFs are primarily intended for a professional investor market and therefore the Authority will accept the setting of a minimum investment amount provided it is disclosed in the Offering Document of the Fund.

On the other hand, in the case where the AIFM wishes to target the retail market, the AIF Rulebook provides for additional Standard Licence Conditions prescribing investment restrictions and objectives. Furthermore, the AIF Rulebook also provides for additional Standard Licence Conditions dealing with promotion and marketing which must be complied with by the AIFM.

The absence of a Standard Licence Conditions prescribing the minimum investment threshold applicable should not prejudice the passport of the AIFM intending to market the AIF in another Member State or EEA State.

¹ Hereinafter referred to 'AIF Rulebook'

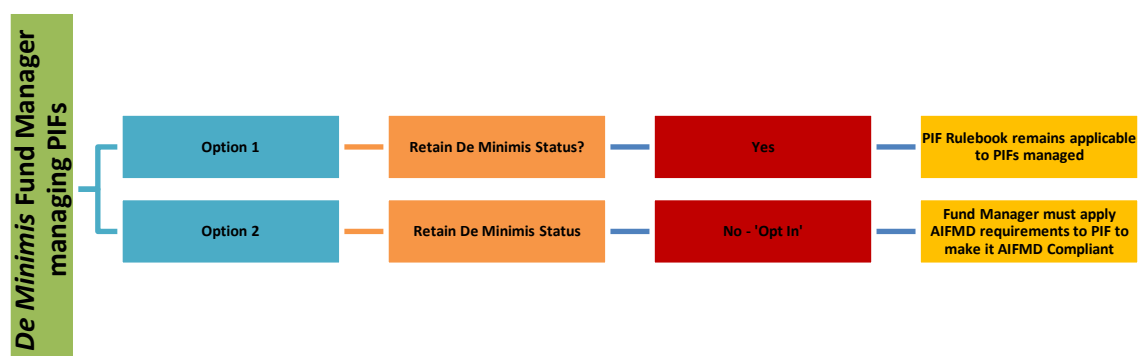
² Hereinafter referred to as 'PIF Rulebook'

Q2) *The Authority was also requested to clarify which rulebook will apply in relation to current PIFs which are managed by de minimis licence holders.*

A2) The *de minimis* fund managers which currently manage PIFs can avail themselves of one of two options depending on whether they chose to retain their status as *de minimis* fund manager or whether they ‘opt in’ under the AIFMD.

In the former case, the PIFs managed by *de minimis* fund manager fall within the remit of the PIF Rulebook.

In the case where the *de minimis* fund manager chooses to ‘opt in’, the PIF would have to be AIFMD compliant. Therefore the AIFM would have to comply with the requirements prescribed in the AIF Rulebook with respect to the Fund. Minimum investment thresholds which were originally applicable to the PIF may still be retained as long as disclosed in the Offering Document.



2.2. COMPETENCY FORM

Q3) *The Authority was queried whether both the Competency Form and the Personal Questionnaire need to be submitted as well as the rationale behind the submission of this additional document which requires duplication of information and renders the completion of the application documentation to be more time consuming.*

A3) The Competency Form is a new form which is being proposed by the Authority following a review it undertook of the process for the approval of prospective Compliance Officers, Money Laundering Reporting Officers, Portfolio Managers, Risk Managers and Investment Advisors with existing Investment Service Providers. These appointments, amongst others, require MFSA’s prior approval in terms of the Investment Services Rules for Investment Services Providers³. Currently the approval process entails the submission of a notification by the Licence Holder to the MFSA together with a Personal Questionnaire duly completed by the individual in question. However, often such submissions are not as comprehensive and in the form required by the Authority thus leading to a lengthening of the approval process unnecessarily.

The Authority is proposing to introduce the Competency Form which is to be used by new applicants and by existing Licence Holders when submitting a request for the

³ Hereinafter referred to as ‘ISP Rulebook’

approval of a prospective Compliance Officer or Money Laundering Reporting Officer or Risk Manager or Portfolio Manager or Investment Advisor. The Form should be completed and submitted together with the Personal Questionnaire duly completed by the individual in question.

	Personal Questionnaire	Competency Form
Risk Manager	√	√
Portfolio Manager	√	√
Money Laundering Reporting Officer	√	√
Compliance Officer	√	√
Investment Adviser ⁴		√

2.3. TIMEFRAMES FOR PROCESSING OF APPLICATIONS

Q4) *The Authority was asked whether it would be providing an indication of the time frames for the processing of licence applications not only for self-managed AIFs but also for externally managed AIFs in the interest of providing a competitive jurisdiction.*

A4) The Investment Services Act provides for a six-month time frame for the processing of applications. However the MFSA aims at processing applications as speedily as possible and tries to work to the time frames agreed with promoters. In most cases delays are caused as a result of a promoter supplying incomplete or inaccurate information.

2.4. RETENTION OF NON-UCITS RETAIL SCHEMES REGIME AND PIF REGIME

Q5) *The Authority was asked to provide guidance whether it will allow marketing to retail investors in terms of Article 43 AIFMD and whether the non-UCITS Retail Scheme regime will be abolished.*

A5) The Authority is taking the option provided in Article 43 to allow marketing to retail investors and this has been transposed in Legal Notices 114, 115 and 116 of 2013. This option is further supplemented by the marketing rules prescribed in Section 10 of Part BIII of the ISP Rulebook. The same rules were also incorporated in the Standard Licence Conditions applicable to *de minimis* AIFs.

With regards to non-UCITS Retail Schemes, the Authority refers to the definition of ‘AIF’ provided in the Directive, which states that an AIF is a ‘collective investment undertaking, including investment compartments thereof, which:

- (i) raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and
- (ii) does not require authorisation pursuant to Article 5 of Directive 2009/65/EC (the UCITS Directive).

⁴ A PQ will not be required unless the Investment Advisor holds a senior position with the licence holder reporting directly to the Board of Directors.

By definition, any fund which is not a UCITS Scheme automatically falls within the classification of an AIF. This would include non-UCITS Retail Schemes and PIFs.

Since non-UCITS Retail Schemes fall within the definition of AIFs, the fund manager will be treated as an AIFM for the purposes of the Directive and therefore will be bound to comply with the Part BIII of the ISP Rules applicable to *de minimis* fund managers and AIFMs.

Q6) *The Authority was asked to clarify whether the distinction between the three types of PIFs will be retained.*

A6) The PIF Regime will not be abolished and the distinction between the three types of PIFs will be retained. The Authority is currently working on amendments to the PIF Rulebook as part of the transposition and implementation process of the AIFMD. The consultation exercise in relation to the proposed amendments to the PIF Rulebook has been launched on 24th May 2013.

2.5. EXTENSION OF THE DE MINIMIS REGIME TO SELF-MANAGED AIFs.

Q7) *The Authority was requested to clarify whether it would be extending the de minimis regime to self-managed AIFs.*

A7) Yes, the *de minimis* regime will be extended to self-managed AIFs. *De Minimis* self-managed AIFs will be regulated by the PIF Rulebook with particular reference to the section providing for Supplementary Licence Conditions for self-managed PIFs.

2.6. ACTIVITIES OF THE AIFM

Q8) *The Authority was requested to clarify what are the criteria for allowing a self-managed fund to carry out the administration function itself?*

A8) There is no hard and fast rule. If the Fund intends to carry out the administration function itself, it must prove that it has the resources in place to carry out the administration function.

2.7. INVESTMENT SERVICES ACT (PERFORMANCE FEES) REGULATIONS

Q9) *The Authority was requested to clarify whether the Investment Services Act (Performance Fees) Regulations will apply to AIFs?*

A9) The Authority confirms that the Investment Services Act (Performance Fees) Regulations are currently being amended. The current Regulations provide that the Regulations shall not apply to schemes licenced as professional investor funds. The revised Regulations will provide that the Performance Fees Regulations will not apply to schemes licenced as professional investor funds and schemes licenced as alternative investment funds which are to be marketed to professional investors as defined in the Regulations.

3. CONTACTS

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

Communications Unit
Malta Financial Services Authority
MFSA Ref: 07-2013
17th June 2013