

24 June 2021

Circular on the Revisiting of the MFSA Notified AIF Regime

1. Purpose

The Authority is today publishing a revised version of the Notified Alternative Investment Fund ('NAIF') Rules, reflecting the amendments of the MFSA NAIF regime.

The purpose of this Circular is to inform the industry about the key changes being implemented in respect of this framework and to present the revised NAIF Rules.

2. Background to the revised framework

The MFSA NAIF regime was introduced on [11 February 2016](#), with the aim of offering Alternative Investment Fund Managers ('AIFMs') a straightforward and better time-to-market for establishing AIFs in Malta. Following the issue of a [Consultation Document](#) and related Feedback, this regime was partially revised [in 2018](#) to *inter alia* broaden its scope to a limited extent.

The MFSA has undertaken a holistic review of the NAIF regulatory framework, in order to identify areas that require regulatory updates, as well as to further enhance the effectiveness of this fund structure.

The dedicated MFSA NAIF Rulebook that is being issued, addresses a regulatory gap that existed in relation to the applicability of the Rules (previously included in Part BIII of the Investment Services Rules for Investment Services Providers) for overseas AIFMs managing local NAIFs, in terms of Article 33 of the AIFM Directive. Furthermore, it also revisits the permissible investment scope of the regime and reflects a number of key changes, as further detailed below, which:

- i) ensure that AML/CFT provisions in the Rulebook are aligned with the updated FIAU Implementing Procedures;
- ii) reflect the MFSA's revised approach which is aimed at achieving a more efficient authorisation process in terms of the documentation required at notification stage, as well as reflecting the revised position with reference to the regulatory approval of investment committee members (as [communicated in 2020](#)); and
- iii) revise certain timings applicable to requirements needing MFSA approval as part of the NAIF registration process.

The revisions being effected to the NAIF regime also required an amendment to the Regulations which set out the legal basis of the NAIF regulatory framework. The [Investment Services Act \(List of Notified AIFs\) \(Amendment\) Regulations](#) were issued on 11 June.

Following the amendment of the NAIF Regulations, a [separate set of Investment Services Rules applicable to Notified Alternative Investment Funds \('the NAIF Rules'\)](#) are accordingly [being issued](#).

As a result, Section 11 to Part BIII of the Investment Services Rules for Investment Service Providers is no longer applicable as of the date of this Circular onwards and the new Rules apply.

3. Comparative Table

The new Notified AIF Rules are attached as Appendix 1 to this Circular and will be available on the MFSA website together with the related Appendices and Guidance documents. For ease of reference, the table below provides an overview of the main differences between the current framework and the revised one.

| FEATURE | CURRENT FRAMEWORK | REVISED FRAMEWORK |
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| MFSA PROCESSING TIMEFRAMES | <p><u>NAIF application</u></p> <p>A NAIF application is registered within 10 working days of receipt of the <u>complete pack</u> (including payment).</p> <p><u>Changes requiring notification to MFSA</u></p> <p>Changes to the prospectus must be acknowledged by the MFSA within ten (10) working days from the notification of change;</p> <p><u>Changes requiring approval of MFSA</u></p> <p>Changes to the investment management function and/or valuation arrangements of an MFSA-licensed AIFM shall be submitted at least 2 months prior to the filing of the notification documents.</p> <p>Changes to the risk management policy of an MFSA-licensed AIFM shall be submitted at least 2 months prior to the filing of the notification documents.</p> | <p><u>NAIF application</u></p> <p>No change.</p> <p><u>Changes requiring notification to MFSA</u></p> <p>Changes to the prospectus must be acknowledged by the MFSA within five (5) working days from the notification of change;</p> <p><u>Changes requiring approval of MFSA</u></p> <p>Changes to the investment management function and/or valuation arrangements of an MFSA-licensed AIFM which do not require the submission of a PQ shall be submitted at least 3 weeks prior to the filing of the notification documents.</p> <p>Changes to the investment management function and/or valuation arrangements of an MFSA-licensed AIFM which do require the submission of a PQ shall be submitted at least 2 months prior to the filing of the notification documents.</p> |

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| | | AIFMs are no longer required to submit the risk management policy with the notification pack. |
| SCOPE OF APPLICATION | <p>The Notified AIF regime is only available to full-scope AIFMs which are authorized and regulated under the AIFMD. The full scope AIFM must be licensed by the MFSA as an AIFM or be in possession of a management passport under Article 33 of the AIFMD.</p> <p>The regime is <u>not available</u> to the following collective investment schemes:</p> <ol style="list-style-type: none"> i. Collective Investment Schemes ('CISs') which are already authorised; ii. CISs which are not managed by an EEA AIFM; iii. Self-managed CISs; iv. CISs which are not marketed and sold exclusively to professional and/or qualifying investors; v. CISs established as Loan Funds in terms of the "Standard Licence Conditions Applicable to Collective Investment Schemes authorised to invest through loans" ('Loan Fund Rules'). | <p>No change.</p> <p>The regime is <u>not available</u> to the following collective investment schemes:</p> <ol style="list-style-type: none"> i. CISs which are not managed by an EEA AIFM; ii. Self-managed CISs; iii. CISs which are not marketed and sold exclusively to professional and/or qualifying investors; iv. CISs which engage in 'Loan Origination', as defined in the Loan Fund Rules. <p>As a result:</p> <ul style="list-style-type: none"> - It is now possible to request the conversion of a licensed collective investment scheme into a NAIF; - It is possible for a NAIF to acquire (but not originate) loans, subject to further requirements as set out in the NAIF Rules. |
| TARGET INVESTORS | The Notified AIF regime is available for marketing exclusively to professional investors as defined under Annex II of MiFID and/or Qualifying Investors. | No change. |
| OBLIGATIONS OF THE AIFM | The AIFM assumes full responsibility for the NAIF and retains control over the changes to the composition of the Board of Directors and to the M&A of the NAIF. In addition to the responsibility to ensure AIFMD compliance, the AIFM is required to undertake a due diligence process on the service providers, the governing body of the fund and the founder shareholders | No change. |

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| <p>INVESTMENT POLICIES AND RESTRICTIONS</p> | <p>NAIFs cannot invest in instruments and assets other than financial instruments listed in Section C of Annex I of MiFID II. However, NAIFs established as private equity funds, or funds which invest in immovable property, infrastructure or certain non-financial assets such as vintage cars, works of art, precious metals and antiques still fall within the framework.</p> <p>The NAIF Rules also set out that the list of permissible instruments can be extended a deemed fit by the Authority.</p> | <p>A NAIF shall not be subject to any restrictions on the type of asset classes in which it may invest, with the exception of 'Loan Origination', which remains restricted, whilst 'Loan Acquisition' is subject to certain requirements, as further detailed in the Rules.</p> |
| <p>GOVERNANCE AND COMPLIANCE REQUIREMENTS</p> | <p><u>Board of Directors</u></p> <p>Board of Directors ('BOD') should be composed of at least 3 members one of whom should be resident in Malta;</p> <p>The NAIF shall at all times have one or more directors independent from the AIFM, the custodian, the promoter and all other service providers appointed by the NAIF or the AIFM;</p> <p>The BOD of the NAIF shall endeavour to comply with the MFSA Corporate Governance Manual.</p> <p><u>Compliance Function</u></p> <p>The Compliance Function of the NAIF shall be carried out by the compliance officer of the AIFM.</p> <p><u>Anti-Money Laundering Function</u></p> <p>The Anti-Money Laundering obligations in respect of the NAIF may be delegated to the following:</p> | <p><u>Board of Directors</u></p> <p>No change.</p> <p><u>Compliance Function</u></p> <p>No change. Provided however that alternative arrangements may be assessed and approved by the Authority on a case-by-case basis.</p> <p><u>Anti-Money Laundering Function</u></p> <p>The Anti-Money Laundering obligations in respect of the NAIF may be delegated to the following:</p> |

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| | <ul style="list-style-type: none"> i. The MLRO of the Administrator of the NAIF (provided that such Administrator holds a recognition certificate by the MFSA or is authorised in an EU Member State or in a reputable jurisdiction); ii. A senior officer of the NAIF, resident in Malta; or iii. The MLRO of the AIFM. | <ul style="list-style-type: none"> i. The MLRO of the Administrator of the NAIF (provided that such Administrator holds a recognition certificate by the MFSA or is authorised in an EU Member State or in a reputable jurisdiction); or ii. A senior officer of the NAIF, resident in Malta. <p>It is <u>no longer allowed for the MLRO of the AIFM to also act as the MLRO of the NAIF</u>, since this arrangement conflicts with the requirements emanating from the FIAU Implementing Procedures, Part I, Chapter 5.</p> |
| PASSPORTING | The NAIF benefits from the marketing passport under the AIFMD, to professional investors only. | No change. |

4. Applicability of the revised NAIF Rules and way forward for already registered NAIFs

The revised Notified AIF Rules shall be applicable to current and prospective Notified AIFs as from the date of this Circular onwards.

Licence Holders are also notified that the regulatory framework applicable to NAIFs has been entirely consolidated in the revised NAIF Rules available on the MFSA website, and therefore, any other guidance note document previously published by the MFSA in this regard, will no longer be applicable.

AIFMs intending to submit a notification for the inclusion of a Notified AIF in the List of NAIFs held by the MFSA, are required to make use of the revised Notification Form and related Annexes, which have been also published as of the date of this Circular, on the dedicated MFSA webpage.

Further to the above, AIFMs of existing Notified AIFs are expected to undertake an impact assessment of the revised Rules against their current operations. Any potential issues arising as a result of the revised NAIF Rules which requires action by the scheme, needs to be addressed by no later than 31 December 2021.

5. Contact

Any queries regarding the above should be directed, as applicable, to the Authorisation team (e-mail: ausecurities@mfsa.mt) or to the Funds Supervision team (e-mail: funds@mfsa.mt) within the Securities and Market Supervision function.