

INVESTMENT SERVICES RULES FOR NOTIFIED
ALTERNATIVE INVESTMENT FUNDS
PART A: THE NOTIFIED AIF FRAMEWORK

CONTENTS

1.	The Investment Services Act (List of Notified AIFs) Regulations	4
2.	NAIFs	4
3.	Eligible Investors in NAIFs	6
4.	Notification Process	6
5.	Governing Body of the NAIF	9
6.	Disclosure in the Prospectus of a NAIF	10
7.	Due Diligence Process undertaken by the AIFM prior to the submission of the Notification request in respect of a NAIF	11
8.	Founder Shares	11
9.	Compliance Function	12
10.	Anti-Money Laundering Obligations	12

REVISIONS LOG

VERSION	DATE ISSUED	DETAILS
1.00	24 June 2021	See: Circular on the Revisiting of the MFSA Notified AIF Regime

1. The Investment Services Act (List of Notified AIFs) Regulations

- 1.01 Collective Investment Schemes are regulated by the Act. The Act provides the statutory basis for regulating Collective Investment Schemes constituted in or operating in or from Malta.
- 1.02 NAIFs are a category of Collective Investment Schemes which are exempt from licensing in terms of the Act subject to inclusion in the List of NAIFs maintained by the MFSA in terms of the Investment Services Act (List of Notified AIFs) Regulations (the "Regulations").

2. NAIFs

- 2.01 A NAIF may be eligible for notification in terms of the Regulations if the following conditions are satisfied:
- i. the NAIF is promoted to Professional Investors and/or Qualifying Investors only;
 - ii. the NAIF is managed by a full-scope Alternative Investment Fund Manager ("AIFM"), authorised and regulated under the Directive 2011/61/EC on Alternative Investment Fund Managers ("AIFMD");
 - iii. the board of directors of a NAIF set up as a SICAV, INVCO, ICC or IC is to be composed of at least three members, one of whom must be resident in Malta;
 - iv. at least one of the directors of the NAIF (set up as a SICAV, INVCO, ICC or IC) is independent from the AIFM, the custodian, the promoter and all other service providers appointed by the NAIF and/or the AIFM;
 - v. the AIFM assumes responsibility for that NAIF.

Provided that the governing body of the NAIF shall endeavour to comply with the Corporate Governance Manual for Directors of Investment Companies and Collective Investment Schemes.

The process of notification of NAIFs will also be available in respect of collective investment schemes which are already in possession of a licence issued by the MFSA, in terms of the Investment Services Act. A notification falling within this framework shall be made by the AIFM of the relevant scheme.

Provided that, in case of conversions or mergers, any subscription fee in relation to existing investors of the AIF which are entering the NAIF shall be waived by the AIFM.

- 2.02 The notification process cannot be requested for the following collective investment schemes:
- i. Self-managed collective investment schemes;
 - ii. Collective investment schemes which are not marketed and sold exclusively to Professional Investors and/or Qualifying Investors.

- iii. Collective investment schemes which engage in 'Loan Origination', as defined in the ["Standard Licence Conditions Applicable to Collective Investment Schemes authorised to invest through loans"](#) ('Loan Fund Rules').

Provided that a loan-acquiring fund established as a NAIF may only acquire loans from and originated by authorised credit institutions or firms duly authorised and regulated to engage in the activity of lending in their respective jurisdiction of where they are domiciled.

2.03 NAIFs can be either open-ended or closed-ended as defined in Commission Delegated Regulation (EU) No 694/2014. A NAIF may be established as:

- i. an investment company with variable share capital (SICAV) under the Companies Act (Investment Companies with Variable Share Capital) Regulations;
- ii. an investment company with fixed share capital (INVCO) under the Companies Act (Investment Companies with Fixed Share Capital) Regulations;
- iii. an incorporated cell company (ICC) under the Companies Act (SICAV Incorporated Cell Company) Regulations;
- iv. an incorporated cell (IC) of a Recognised Incorporated Cell Company (RICC) under the Companies Act (Recognised Incorporated Cell Company) Regulations;
- v. a limited partnership under the Companies Act;
- vi. a unit trust under the Trust and Trustees Act; or
- vii. a contractual fund under the Investment Services Act (Contractual Funds) Regulations.

The MFSA will maintain an updated List of Notified AIFs on its website.

2.04 A NAIF shall be subject to the investment objectives, policies and restrictions outlined in its Prospectus and shall not be subject to any restrictions on the type of asset classes in which it may invest with the exception of the 'Loan Origination' activity as set out in Rule 2.02(iii) above.

Provided that, NAIFs which "invest through loans", as defined in the Loan Fund Rules, shall further comply with the requirements set out therein.

Provided that, NAIFs established as Money Market Funds investing in short-term assets and having distinct or cumulative objectives offering returns in line with money market rates or preserving the value of the investment shall further comply with the requirements of Regulation (EU) 2017/1131 on money market funds.

Provided further that in the case of SPVs, a look through approach will be applied in determining whether the AIF falls within the provisions set out in this Rule.

3. Eligible Investors in NAIFs

3.01 NAIFs may only be marketed to the following types of investors:

- A. Professional Investors, being investors which are considered to be professional clients or may, on request, be treated as professional clients within the meaning of Annex II to MiFID; and/or
- B. Qualifying Investors, being investors that fulfil the following criteria:
 - a. invest a minimum of EUR 100,000 or its currency equivalent in the NAIF which investment may not be reduced below this minimum amount at any time by way of a partial redemption; and
 - b. declare in writing to the AIFM and the NAIF that they are aware of and accept the risks associated with the proposed investment; and
 - c. satisfy at least one of the following:
 - i. a body corporate which has net assets in excess of EUR 750,000 or which is part of a group which has net assets in excess of EUR 750,000 or, in each case, the currency equivalent thereof;
 - ii. an unincorporated body of persons or association which has net assets in excess of EUR 750,000 or the currency equivalent;
 - iii. a trust where the net value of the trust's assets is in excess of EUR 750,000 or the currency equivalent;
 - iv. an individual whose net worth or joint net worth with that of the person's spouse, exceeds EUR 750,000 or the currency equivalent; or
 - v. a senior employee or director of the NAIF or of a service provider to the NAIF.

Provided that the marketing of a NAIF in EU Member States or EEA States other than Malta to investors other than Professional Investors as defined above is not automatic and may be allowed subject to national provisions applicable in the respective jurisdiction as prescribed in Article 43 of the AIFMD.

4. Notification Process

4.01 An AIFM shall submit a request to the MFSA for the inclusion of a NAIF or one or more sub-funds of a NAIF in the List of NAIFs in accordance with Regulation 6 of the Regulations.

4.02 The AIFM shall be:

- a. an AIFM:
 - i. which is in possession of an investment services licence issued in terms of the Investment Services Act to provide collective portfolio

- management services to collective investment schemes established in Malta;
- ii. which has satisfied all relevant business conditions imposed by the MFSA; and
- iii. whose Portfolio Manager(s) (and where applicable, in terms of SLC 1.18(i), Part BIII of the Investment Services Rules for Investment Services Providers applicable to AIFMs, also Investment Committee members), have been approved by the MFSA and the MFSA is satisfied with the competence assessment carried out.

Or

- b. an AIFM which is authorised to provide services to an AIF established in Malta in accordance with Article 33 of the AIFM Directive as transposed in regulations 6 and 7 of the Investment Services Act (Alternative Investment Fund Manager) (Passport) Regulations.

Third country AIFMs will be able to submit a request for notification of an AIF once the country where they have been established has been granted passport rights under the AIFMD.

4.03 The following documents shall accompany the notification request:

- i. a prospectus containing the minimum contents prescribed by Article 23 of the AIFMD. Pro-forma prospectuses are available as Annexes 1 to the Appendix to these Rules.
- ii. a resolution by the governing body of the NAIF, marked as Annex 'II' to the Appendix to these Rules, certifying that the prospectus has the minimum contents outlined above;
- iii. a self-certification by the AIFM that, having regard to any delegate manager(s) or advisers it has in place, it has the necessary competence and experience to manage the NAIF and monitor effectively any delegate. The self-certification is to be given in respect of the applicable investment strategy. Annex 'III' to the Appendix includes a specimen self-certification form;
- iv. a joint declaration by the AIFM and the governing body of the NAIF by which each undertakes responsibility for the proper operation of the NAIF, including, inter alia, obligations arising under the AIFMD. Annex 'IV' to the Appendix includes a specimen joint declaration by the AIFM and the governing body of the NAIF;
- v. a declaration by the AIFM confirming that it has carried out the necessary due diligence with regard to the service providers of the NAIF and the governing body of the AIF. This declaration must include a statement that the AIFM is

satisfied with the outcome of this due diligence exercise. Annex 'V' to the Appendix includes a specimen declaration by the AIFM.

Provided that in the case of AIFMs licensed by the MFSA:

- a. any changes to the valuation arrangements or to the investment management function of the AIFM, which are subject to the approval of the MFSA and do not require the submission of a Personal Questionnaire Form and related fitness and properness assessment by the Authority, shall be submitted for the consideration and approval of the Authority at least 3 weeks prior to the filing of the notification documents with the Authority for the entry of the NAIF in the List of Notified AIFs;
- b. any changes to the investment management function of the AIFM which are subject to the approval of the MFSA and require the submission of a Personal Questionnaire Form and related fitness and properness assessment by the Authority, shall be submitted for the consideration and approval of the Authority at least 2 months prior to the filing of the notification documents with the Authority for the entry of the NAIF in the List of Notified AIFs;
- c. where the AIFM does not deem that changes to the valuation arrangements or investment management function are necessary, the AIFM should provide a detailed outline of the basis on which the AIFM considers the relevant individuals/entities to be competent to carry out the investment management or valuation function of the AIFM in relation to the nature of the underlying assets of the NAIF, taking into consideration the competence criteria ordinarily adopted by the Authority. This information would need to be submitted together with the documentation outlined above.

4.04 The notification form together with the accompanying documentation referred to in Rule 4.03 must be submitted to the MFSA within 30 calendar days from the date of resolution of the governing body of the NAIF as referred to in paragraph (ii) of Rule 4.03 and prior to the effective date of the prospectus.

In the event that the above timeframe is not respected, the notification is considered as not valid and a new notification would need to be submitted.

4.05 The MFSA will proceed to include the AIF in the List of Notified AIFs within 10 working days from the date of filing of a duly completed notification pack in original including the assessment referred to in paragraph (b) of the proviso to Rule 4.03 above, and the notification fee. Thereafter the prospectus may be dated:

provided that, where, following (i) an assessment of the proposed valuation/ investment management arrangements provided pursuant to paragraphs (a) of Rule 4.03 above, or (ii) a review of the assessment provided to the Authority pursuant to paragraph (b) of the proviso to Rule 4.03 above, the Authority deems that the set-up of the AIFM is not satisfactory to manage the NAIF proposed, it shall communicate its decision to the AIFM and the notification process shall be halted until the satisfactory resolution of any outstanding matters.

- 4.06 The inclusion of an NAIF in the List of NAIFs will not imply that the AIF is authorised or licensed or in any way approved by the MFSA. Notified AIFs will not be subject to ongoing supervision. The MFSA may, however, remove an AIF from the List of NAIFs at any time.
- 4.07 The MFSA shall reject notifications which are incomplete and/or do not comply with the requirements prescribed in the Regulations and these Rules.
- 4.08 The procedure outlined in this section shall also apply to the notification of new sub-funds within an existing NAIF.

5. Governing Body of the NAIF

- 5.01 The members of the governing body shall act honestly and in good faith in what they consider to be the best interests of the AIF and its investors.
- 5.02 The members of the governing body shall exercise reasonable care, skill and diligence.
- 5.03 The members of the governing body have, both collectively and individually, an obligation to acquire and maintain sufficient knowledge and understanding of the NAIF's business to enable them to discharge their functions as members of the governing body.
- 5.04 The governing body shall continuously monitor the execution of the functions delegated to the service providers and shall be satisfied that they are performing their functions in accordance with their statutory and contractual obligations.
- 5.05 The members of the governing body shall hold regular meetings and shall ensure that detailed minutes are taken to record accurately the matters discussed and considered. The agenda should be well structured and prepared, giving sufficient time to allow for the input of all the notice parties and service providers before the meeting.
- 5.06 Minutes of the meetings of the governing body must be held in Malta at the registered office of the AIFM, the NAIF or at any other place as may be agreed with the MFSA.

6. Disclosure in the Prospectus of a NAIF

6.01 Upon inclusion in the List of Notified AIFS and at all relevant times thereafter, the Prospectus of a NAIF shall include all the information listed in Article 23 of the AIFMD as well as a disclaimer in the following form on the front page:

"XXXXX Fund is a Notified AIF under the Investment Services Act (List of Notified AIFs) Regulations. The Fund has been entered onto the List of Notified AIFs on the basis of a notification submitted by the AIFM confirming that:

- a. the AIFM is in possession of either:
 - i. a licence granted by the MFSA under the Investment Services Act; or
 - ii. a management passport under Article 33 of AIFMD; and
- b. the governing body of the Fund has approved the prospectus.

The entry of the xxxxxx Fund on the List of Notified AIFS is not an endorsement, guarantee or statement of approval by the MFSA nor is the MFSA responsible for the contents of this document or the selection or adequacy of its governing body or service providers.

The MFSA has made no assessment or value judgment of the soundness of the Fund or for the accuracy or completeness of statements made or opinions expressed with regard to it.

The MFSA has not reviewed or approved this document. Any person making statements to the contrary may be prosecuted under the Maltese Criminal Code [Chapter 9 – Laws of Malta]. Investors must rely solely upon their own and their advisors' due diligence in making any decision to invest."

6.02 The prospectus shall include, or the AIFM shall otherwise make available to investors, the information required pursuant to Appendix 13 of the Investment Services Rules for Investment Services Providers.

6.03 All necessary information for the sub-fund(s) and class(es) may be included (i) in the main prospectus, (ii) in a separate document that is distributed with and directly references the main prospectus, or (iii) in a prospectus which contains all relevant information for the Notified AIF and the relevant sub-fund and/or class(es) concerned and references the existence and brief terms of the other sub-fund(s) and/or class(es) including any material risks that such other sub-fund(s)/class(es) may pose to the sub-fund(s) and/or class(es) concerned.

7. Due Diligence Process undertaken by the AIFM prior to the submission of the Notification request in respect of a NAIF

7.01 Prior to submitting a request for inclusion of the AIF in the List of NAIFs, the AIFM shall carry out a due diligence exercise to ensure that the service providers, the governing body and any founder shareholders of the AIF satisfy at the time of notification and on an ongoing basis, the fitness and properness standards expected by the MFSA.

7.02 The AIFM shall undertake the “fit and proper” test in order to ensure that service providers, members of the NAIF’s governing body and any founder shareholders meet the following three criteria namely:

- i. Competence – which requires that the service providers, members of the NAIF’s governing body and founder shareholders have sufficient knowledge, skills and experience to fulfil the proposed role/s. The term competence covers both practical and professional experience gained through previous occupations and academic knowledge through education and training.
- ii. Reputation – which means that the service providers, members of the NAIF’s governing body and founder shareholders are of good repute to ensure the sound and prudent management of the Entity.
- iii. Conflicts of Interest and independence of mind – service providers, members of the NAIF’s governing body and founder shareholders are able to make sound, objective and independent decisions.
- iv. Time Commitment – service providers, members of the NAIF’s governing body and founder shareholders must be able to commit sufficient time to performing their functions.

An *ad-hoc* “[Guidance Notes on the Fitness and Properness Standards for AIFMs of Notified AIFs](#)” is available to provide clarity on the manner in which the MFSA expects AIFMs to carry out the due diligence exercise.

7.03 The AIFM shall carry out the necessary due diligence and keep records of all evidence and correspondence in this regard. The documentation related to the due diligence exercise carried out in relation to each founder shareholder, member of the governing body and each service provider shall be made available upon request for inspection by the MFSA.

8. Founder Shares

8.01 All rights (other than any rights to income or capital) of any founder or similar shares shall be retained by the holders of the founder shares upon inclusion of the AIF in the List of Notified AIFs, subject to compliance with the following conditions:

- a. the appointment of a new member of the governing body of the AIF shall be subject to the approval of the AIFM;

- b. any changes to the Memorandum & Articles of Association of the AIF shall be subject to the approval of the AIFM.

9. Compliance Function

- 9.01 The compliance function of the NAIF shall be carried out by the compliance officer of the AIFM.

Provided that alternative arrangements may be assessed and approved by the Authority on a case by case basis.

Provided further that the AIFM shall notify the MFSA of the appointment, resignation or removal of the compliance officer.

- 9.02 The AIFM shall be satisfied that the Compliance Officer of the NAIF is 'fit and proper', as referred to in Rule 7.02, Part A of these Rules.
- 9.03 In this regard, the AIFM shall ensure that a NAIF complies on an ongoing basis with the provisions of the Act, and any applicable rules or regulations issued thereunder, including the Regulations.
- 9.04 The AIFM shall also comply with any obligations in respect of the NAIF under the AIFMD and the relevant rules and regulations thereunder as well as any other applicable regulations in any jurisdiction where the NAIF is marketed.

10. Anti-Money Laundering Obligations

- 10.01 The NAIF shall have a MLRO to carry out the money laundering reporting function in relation to the NAIF at all times. Such MLRO shall be appointed by the governing body of the NAIF, in agreement with the AIFM.

Provided that the AIFM shall notify the MFSA of the appointment, resignation or removal of the money laundering reporting officer.

- 10.02 The AIFM shall be satisfied that the MLRO appointed by the NAIF is 'fit and proper', as referred to in Rule 7.02 above.
- 10.03 Without prejudice to its ongoing responsibilities under these Rules, the governing body of the NAIF in agreement with the AIFM may, in terms of the Implementing Procedures issued pursuant to the Prevention of Money Laundering and Fund of Terrorism Regulations [S.L. 373.01] delegate the money laundering reporting function of the NAIF to either one of the following:

- a. the administrator of the NAIF, provided that such administrator is a Recognised Fund Administrator in terms of Article 9A of the Act or is authorised in an EU Member State, or in a reputable jurisdiction; or
 - b. an officer of the NAIF who has sufficient seniority and command in accordance with the Implementing Procedures referred to above.
- 10.04 The outsourcing of the money laundering reporting function shall be made by means of a written agreement entered into between the MLRO, the AIFM, the NAIF and the fund administrator (as applicable).
- 10.05 Where the fund administrator is entrusted with the money laundering reporting function, it shall be responsible to carry out the reporting obligations of the NAIF.
- 10.06 The governing body of the NAIF will at all times remain responsible for compliance with its obligations as prescribed in the Prevention of Money Laundering and Funding of Terrorism Regulations and the Implementing Procedures issued thereunder and for the carrying out of the measures specifically assigned to the NAIF.
- 10.07 For the purpose of ensuring compliance with the customer due diligence requirements in relation to the anti-money laundering obligations, the money laundering reporting officer shall at least on a quarterly basis, submit to the governing body of the NAIF a periodic report which includes the following information:
- a. a complete list of unit-holders of the NAIF;
 - b. details of subscriptions and redemptions carried out by the unit-holders within that period of time to which the report relates; and
 - c. a description of the customer due diligence measures carried out by the NAIF or the administrator on the unit-holders.

The governing body of the NAIF will be responsible for reviewing the report. Where the report has been drafted by the administrator, a copy thereof shall be transmitted to the AIFM.

- 10.08 The governing body of the NAIF shall ensure that the customer due diligence measures being carried out by the administrator comply with the requirements prescribed in the Prevention of Money Laundering and Funding of Terrorism Regulations and the Implementing Procedures issued thereunder.
- 10.09 Where the implementation of the anti-money laundering or counter financing terrorism measures and procedures is outsourced to an administrator, the administrator shall be required to confirm to the AIFM and the governing body of the NAIF that the record-keeping, reporting, ongoing monitoring, risk management and any other measure

being conducted by the administrator are in line with the requirements of the Prevention of Money Laundering and Funding of Terrorism Regulations and the Implementing Procedures issued thereunder.

- 10.10 The governing body of the NAIF must ensure the taking of any action it may deem fit based on the conclusions and findings of the administrator's report or other anti-money laundering concerns that the governing body of the NAIF may become aware of at any time.
- 10.11 Notwithstanding that the reporting obligations have been outsourced to the administrator, should a suspicion of money laundering or financing of terrorism be identified by the governing body of the NAIF or the AIFM, it shall file a report with the Financial Intelligence Analysis Unit in accordance with the Prevention of Money Laundering and Funding of Terrorism Regulations and the Implementing Procedures issued thereunder.

