

INVESTMENT SERVICES RULES FOR NOTIFIED
PROFESSIONAL INVESTOR FUNDS AND RELATED DUE
DILIGENCE SERVICE PROVIDERS

PART A: THE NOTIFIED PIF FRAMEWORK

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REVISIONS LOG

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1. The Investment Services Act (___) Regulations

- 1.01 Collective Investment Schemes are regulated by the Investment Services Act, Chapter 370 of the Laws of Malta (“the Act”). The Act provides the statutory basis for regulating Collective Investment Schemes constituted in or operating in or from Malta.
- 1.02 In terms of Regulation _ of S.L. 370.02 – the Investment Services Act (Exemption) Regulations, Notified Professional Investor Funds (“Notified PIFs” or “NPIFs”) are a category of Collective Investment Schemes which are exempt from licensing under the Act, subject to inclusion in the List of NPIFs maintained by the MFSA in terms of S.L. 370.__ - the Investment Services Act (___) Regulations (“the Regulations”).

2. NPIFs

- 2.01 A NPIF may be eligible for notification in terms of the Regulations, if the following conditions are satisfied:
- i. the NPIF is promoted to Qualifying Investors only;
 - ii. the NPIF is managed by a Fund Manager in terms of Section 6 of this part of this Rulebook;
 - iii. at least one of the members of the governing body of the NPIF is resident in Malta;
 - iv. the NPIF appoints a service provider in terms of Regulation __ of S.L. 370.__ – the Investment Services Act (___) Regulations;
 - v. the NPIF appoints a fund administrator in terms of Section 7 of this part of this Rulebook; and
 - vi. adequate safekeeping arrangements are in place, in terms of Section 8 of this part of this Rulebook.
- 2.02 The governing body of the NPIF is ultimately responsible for ensuring that the NPIF complies on an ongoing basis with the provisions of the Act, and any applicable regulations and rules issued thereunder.

The governing body of the NPIF shall endeavour to comply with any applicable corporate governance codes, guidelines, and, or, manuals which the Authority may publish from time to time.

- 2.03 The process of notification of NPIFs will also be available to collective investment schemes which are already in possession of a PIF licence issued by the MFSA, in terms of the Act:

Provided that, in cases of conversions, any subscription fee in relation to existing investors of the PIF which are entering the NPIF shall be waived by the fund manager of the NPIF.

- 2.04 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 Qualifying Investors;
 - iii. Collective investment schemes which engage in 'Lending' activity as defined in the 'Standard Licence Conditions Applicable to Collective Investment Schemes authorised to invest through loans' ('Loan Fund Rules').

2.05 A NPIF 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.

2.06 A NPIF shall be subject to the investment objectives, policies and restrictions outlined in its Offering Memorandum and shall not be subject to any restrictions on the type of asset classes in which it may invest, except for 'Lending' activities as by Rule 2.04(iii) above:

Provided further that in the case of SPVs, a look through approach shall be applied in determining whether the NPIF falls within the provisions set out in these Rules.

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

3. Eligible Investors in NPIFs

3.01 NPIFs may only be marketed to Qualifying Investors, being investors that fulfil the following criteria:

- a. invest a minimum of EUR 100,000 or its currency equivalent in the NPIF, 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 fund manager and the NPIF 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 EUR750,000 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 a service provider to the NPIF:

Provided that the marketing of a NPIF in EU Member States or EEA States other than Malta is not automatic and may be allowed subject to national provisions applicable in the respective jurisdiction.

4. The Notification Process

- 4.01 The governing body of the NPIF, or a person duly authorised by it to act on its behalf, shall submit a written request for a NPIF or for one or more sub-funds of a Notified PIF to be included in the List of Notified PIFs, in accordance with the provisions of the Regulations.
- 4.02 Prior to the submission of a written request for notification, the governing body of the PIF shall approve a resolution certifying that the Offering Memorandum of the NPIF satisfies the minimum criteria prescribed by the MFSA. A copy of the Offering Memorandum is to be kept at the principal office of the Notified PIF at all times and shall be made available to the MFSA upon request.
- 4.03 The MFSA shall reject notifications which do not comply with the requirements prescribed in the Regulations and these Rules.
- 4.04 Pursuant to Rule 4.01, the governing body of the NPIF, or a person duly authorised by it to act on its behalf shall submit the duly completed written notification request together with the accompanying documents to the competent authority within **thirty (30) calendar days** from the date of the resolution of the governing body of the NPIF approving the NPIF's Offering Memorandum in terms of Regulation __ of the Regulations and prior to the effective date of the Offering Memorandum:
Provided that the effective date of the Offering Memorandum shall be a date after the inclusion of the NPIF in the List of Notified PIFs:

Provided further that, in the event that this timeframe is not respected, the notification shall not be considered valid, and a new notification would need to be submitted.

4.05 The notification request shall be accompanied by the following:

- i. The notification form – Annex A to these Rules
- ii. The applicable notification fee in terms of S.L. 370.03 – the Investment Services Act (Fees) Regulations;
- iii. Pursuant to Rule 4.02 above, a resolution of the governing body of the NPIF, in terms of Annex C to these Rules; and
- iv. A declaration by the service provider appointed in terms of Regulation __ of S.L. 370.__ – the Investment Services Act (___) Regulations – confirming that it has carried out the necessary due diligence with regards to the functionaries and the governing body of the NPIF. This declaration must include a statement that the service provider (appointed in terms of Regulation __ of the Regulations) is satisfied with the outcome of this due diligence exercise. Annex D to these Rules includes a specimen declaration form.

4.06 The MFSA will proceed to include the NPIF in the List of Notified NPIFs within **ten (10) working days** from the date of filing of a duly completed notification request in original. The notification request shall not be considered as complete unless it is accompanied by the material listed in Rule 4.05 above. Thereafter the Offering Memorandum may be dated.

4.07 The inclusion of a NPIF in the List of NPIFs will not imply that the NPIF is licensed by the MFSA. Notified PIFs will only be subject to the supervisory conditions, as provided for in the Regulations and these Rules.

The MFSA may, at any time and at its discretion, remove a NPIF from the List of NPIFs.

4.08 The MFSA shall reject notifications which are incomplete and/or do not comply with the requirements prescribed in the Regulations and these Rules.

4.09 The procedure outlined in this section shall also apply to the notification of new sub-funds within an existing NPIF.

5. Governing Body

5.01 The members of the governing body shall:

- i. act honestly and in good faith in what they consider to be the best interests of the NPIF and its investors;
- ii. exercise reasonable care, skill, and diligence;
- iii. have, both collectively and individually, an obligation to acquire and maintain sufficient knowledge and understanding of the NPIF's business to enable them

- to discharge their functions;
 - iv. prior to submitting a request for notification of a PIF, appoint a service provider to carry out the necessary due diligence process to ensure that the governing body and functionaries of the NPIF satisfy, at the time of notification, the standards of fitness and properness specified by the MFSA, in terms of Regulation __ of the Regulations;
 - v. 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; and
 - vi. hold regular meetings and ensure that detailed minutes are taken to record accurately the matters discussed and considered.
- 5.02 Pursuant to Rule 5.01 (vi) meetings of the governing body shall have an agenda which is well structured and prepared, giving sufficient time to allow for the input of all the notified parties and service providers before the meeting. Minutes of the meetings must be held in Malta at the principal office of the NPIF or at any other place as may be agreed with the MFSA.
- 5.03 The governing body shall be required to submit to the Authority, on an annual basis, a Compliance Certificate in relation to the NPIF. Such certificate shall be drawn up and signed by the governing body and shall include confirmations regarding the NPIF's compliance with the Act, the Regulations issued thereunder, and these Rules as well as with other relevant legal and regulatory requirements, including AML/CFT requirements.
- 6. Fund Manager**
- 6.01 A Notified PIF shall be managed by:
- i. a *de minimis* AIFM in possession of an Investment Services Licence issued in terms of Article 6 of the Act and duly authorised by the MFSA to provide management services to collective investment schemes; or
 - ii. a *de minimis* AIFM which is authorised in an EU or EEA State, and which the Authority deems to be subject to regulation in an equal or comparable level to that it would have been subject to in Malta; or
 - iii. a third country AIFM which is authorised in a jurisdiction with whom the MFSA has signed a cooperation agreement/ memorandum of understanding on securities, and which the Authority deems to be subject to regulation in an equal or comparable level to that it would have been subject to in Malta.

7. Fund Administrator

- 7.01 Administrative services in relation to a Notified PIF shall be carried out by a fund

administrator that is established in Malta and in possession of a Fund Administration recognition certificate in terms of Article 9A of the Act.

8. Safekeeping

- 8.01 The assets of the NPIF shall be subject to adequate safekeeping arrangements.
- 8.02 A NPIF is not required to appoint a custodian in terms of the Investment Services Act (Custodians of Collective Investment Schemes) Regulations (S.L. 370.32).
- 8.03 Pursuant to Rule 8.02 above, the NPIF may entrust its assets to a Custodian or Prime Broker for safekeeping. In the absence of an appointed Custodian, the NPIF will be responsible for the establishment of proper arrangements for the safekeeping of its assets.
- 8.04 Where the NPIF does not appoint a custodian, responsibility for the establishment of proper arrangements for the safekeeping of the NPIF's assets remains with the governing body and the officers of the NPIF. The applicant will be required to outline as part of the notification process the arrangements that will be put in place to ensure adequate safekeeping of the assets of the NPIF. The arrangements for the safekeeping of assets are also to be outlined in the Offering Document and the MFSA should be notified of any changes thereto in advance of the change being affected.
- 8.05 Where the NPIF intends to appoint a custodian, such custodian shall be:
- i. an entity authorised in terms of the Act and which qualifies as a Depositary or Depositary Lite in terms of the Investment Services Rules; or
 - ii. an entity constituted in a Member State or EEA State and operating from a Member State or EEA State other than Malta, providing the services of Custodian or Prime Broker to collective investment schemes; or
 - iii. an entity constituted outside Malta and operating from outside Malta providing the services of a Custodian or Prime Broker to collective investment schemes where the MFSA is satisfied that such entity is of sufficient standing and repute and having the business organization, systems, experience, and expertise deemed necessary for it to act as a Custodian or Prime Broker.
- 8.06 Where appointed, the Custodian shall ensure compliance with the applicable provisions of the Investment Services Act (Custodians of Collective Investment Schemes) Regulations and any other applicable provisions within this Rulebook.

9. Disclosure in the Offering Memorandum of a NPIF

- 9.01 Upon inclusion in the list of Notified PIFs and at all relevant times thereafter, the

Offering Memorandum of a NPIF shall include all the information listed in Annex B to these Rules as well as a disclaimer in the following form on the front page:

“XXXXX Fund is a Notified PIF under the Investment Services Act (____) Regulations. Notified PIFs are not licensed by the MFSA and required to adhere to the supervisory conditions stipulated in the abovementioned Regulations and in the Investment Services Rules for Notified Professional Investor Funds and related Due Diligence Service Providers.

The content of any marketing or Offering Documentation has not been approved or reviewed by the MFSA and the ultimate responsibility on the content of this documentation lies on the Notified PIF.

Notified PIFs are non-retail schemes and available to investors qualifying as Qualifying Investors. NPIFs are riskier funds by nature in view of the less onerous regulatory requirements that apply and are subject to the minimum level of supervision for a fund in Malta. The MFSA may remove a NPIF from the Register of NPIFs at any time.

Investors in NPIFs are not protected by any statutory compensation arrangements in the events of the fund’s failure.

Investors’ attention is drawn to the risk disclosures section of this document”.

- 9.02 Pursuant to Rule 4.02, prior to the submission of a written request for notification, the governing body of the NPIF shall approve a resolution certifying that the Offering Memorandum of the NPIF satisfies the minimum criteria prescribed by the MFSA.
- 9.03 All necessary information for the sub-fund(s) and class(es) may be included (i) in the main Offering Memorandum , (ii) in a separate document that is distributed with and directly references the main Offering Memorandum , or (iii) in an Offering Memorandum which contains all relevant information for the Notified PIF 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.

10. Due Diligence

- 10.01 A third-party service provider shall be entrusted with conducting due diligence with respect to the NPIF, both at notification stage and on an ongoing basis.
- 10.02 At notification stage, prior to submitting a request for notification of a NPIF, the governing body shall identify and appoint a service provider, in terms of Regulation __ of the Regulations, to carry out the necessary due diligence process:

Provided that, the MFSA may, at any time, request the Notified PIF to change such service provider, should the Authority not be satisfied with the standard of due diligence carried out.

11. Duties of the Service Provider appointed in terms of Regulation __ of the Regulations

11.01 The appointed service provider shall carry out a due diligence exercise to ensure that other service providers and functionaries, the governing body, founder shareholders, and MLRO of the NPIF, satisfy at the time of notification and on an ongoing basis, the fitness and properness standards expected by the MFSA.

11.02 Pursuant to Rule 11.01, the appointed service provider shall undertake the “fit and proper” test in order to ensure that other service providers and functionaries, the governing body, founder shareholders and MLRO of the NPIF meet the following four criteria:

- i. Competence – which requires such persons to 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 such persons are of good repute to ensure the sound and prudent management of the Entity.
- iii. Conflicts of Interest and independence of mind – meaning that such persons are able to make sound, objective, and independent decisions.
- iv. Time Commitment – that such persons must be able to commit sufficient time to perform their functions.

11.03 The appointed service provider shall keep records of all evidence of, and correspondence regarding, the due diligence process carried out in relation to the functionaries and the members of the governing body of the NPIF.

11.04 A person may be eligible for appointment as a service provider in terms of Regulation __ of the Regulations if it has in place adequate processes and procedures, including appropriate record-keeping arrangements and relevant experience in performing such activity and, in the opinion of the MFSA, is competent to perform such a service in relation to a CIS and is either:

- i. a recognised fund administrator, in terms of the Investment Services Act; or
- ii. an authorised (full) AIFM, in terms of the Investment Services Act; or
- iii. a Company Service Provider, licensed under the Company Service Providers Act which are not under-threshold CSPs.

Provided that, prior to notification, the approval of such service provider by the MFSA is required.

12. Compliance with regulatory framework

12.01 Pursuant to Rule 2.02, the governing body of the NPIF is ultimately collectively

responsible for the NPIF's compliance with the applicable provisions of the Act, the Regulations issued thereunder, and these Rules as well as with other relevant legal and regulatory requirements.

12.02 In order to enable the compliance function to be properly carried out, the local member of the governing body shall be tasked with compliance duties and with any reporting relating to compliance as required by these Rules and as further detailed in Section 11 hereunder.

13. Duties of the local member of the NPIF's governing body

13.01 The local member of the governing body shall be responsible for:

- (i) acting as a point of liaison with the MFSA;
- (ii) leading matters relating to the compliance of the Notified PIF and being in charge of any reporting in relation thereto as required by these Rules;
- (iii) preparing a "Compliance Report" at least on a yearly basis, to be presented to the governing body of the NPIF, that should indicate any:
 - breaches to the Investment and Borrowing Restrictions;
 - complaints from unit holders in the fund and the manner in which these have been handled;
 - material valuation errors (higher than 0.5% NAV) and the manner these have been handled; and
 - material compliance issues during the period covered by the Compliance Report.

The Compliance Report should also include a confirmation that all the local Prevention of Money Laundering requirements have been satisfied. This confirmation should be obtained from the NPIF's Money Laundering Reporting Officer.

14. Anti-Money Laundering Obligations

14.01 The NPIF shall have an MLRO to carry out the money laundering reporting function in relation to the NPIF at all times. Such MLRO shall be appointed by the governing body of the NPIF:

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

14.02 The service provider, appointed in terms of Regulation ___ of the Regulations, shall be satisfied that the MLRO of the NPIF is 'fit and proper' pursuant to Section 7 of these Rules.

14.03 Without prejudice to its ongoing responsibilities under these Rules, the governing body

of the NPIF 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 NPIF to either one of the following:

- i. the administrator of the NPIF, 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
- ii. an officer of the NPIF who has sufficient seniority and command in accordance with the Implementing Procedures referred to above.

14.04 The outsourcing of the money laundering reporting function shall be made by means of a written agreement entered into between the MLRO, the fund manager, the NPIF and the fund administrator (as applicable).

14.05 Where the fund administrator is entrusted with the money laundering reporting function, it shall be responsible to carry out the reporting obligations of the NPIF.

14.06 The governing body of the NPIF 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 NPIF.

14.07 For the purpose of ensuring compliance with the customer due diligence requirements in relation to the anti-money laundering obligations, the MLRO shall at least on a quarterly basis, submit to the governing body of the NPIF a periodic report which includes the following information:

- i. a complete list of unit-holders of the NPIF;
- ii. details of subscriptions and redemptions carried out by the unit-holders within that period of time to which the report relates; and
- iii. a description of the customer due diligence measures carried out by the NPIF or the administrator on the unit-holders.

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

14.08 The governing body of the NPIF 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.

14.09 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 fund manager and the governing body of the NPIF that the recordkeeping, 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.

- 14.10 The governing body of the NPIF 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 NPIF may become aware of at any time.
- 14.11 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 NPIF or the fund manager, 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.

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