

18 December 2023

MFSA Launches Framework for Notified PIFs

Reference is made to the Consultation documents issued on the 22 December 2022 ([link](#)) and the 22 May 2023 ([link](#)) and the corresponding feedback statement published on the 1 September 2023 ([link](#)) in relation to the establishment of a framework for Notified Professional Investor Funds (NPIFs).

The Malta Financial Services Authority (MFSA) is today launching this framework which forms part of a number of strategic policy initiatives being undertaken by the Authority in relation to asset management.

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

- [Investment Services Act \(Notified CISs\) Regulations](#)
- [Investment Services Rules for NPIFs and related Due Diligence Service Providers and related annexes](#)
- [Guidance Note on Fitness and Propriety Standards for Due Diligence Service Providers of NPIFs](#)
- [Reporting Guidelines for Notified Professional Investor Funds](#)

Whilst further information on the framework being launched is available on the Authority's website, stakeholders should take note of the following:

1. Amendments to existing Rulebooks

The establishment of a framework for NPIFs requires amendments to existing funds' rulebooks as follows:

- an amendment to the definition of 'Professional Investor Fund' in the glossary to the fund rules, in order for the definition to encompass NPIFs. Professional Investor Funds will be defined as follows:

"A special class of collective investment scheme which falls within the provisions of the Act that is subject to the Investment Services Rules. Currently there are two types of Professional Investor Fund as follows:

- i. PIFs subject to the Investment Services Rules for Professional Investor Funds; and*
 - ii. PIFs subject to the Investment Services Rules for Notified Professional Investor Funds.”*
- amendments to various fund rulebooks allowing for conversions to and from NPIFs.

2. Reporting

In terms of Section 3 of Part B of the Notified PIF Rules, Notified PIFs are required to regularly report to the MFSA information with respect to their investment strategy and portfolio composition through the submission of a dedicated Annex. As outlined in Rule 3.03, whilst Notified PIFs managed by local *de minimis* AIFMs are exempt from such reporting requirement, NPIFs managed by EU small AIFMs and third-country managers shall submit the “Annex 2 – AIF – Specific Information to be reported (Article 3(3) and Article 24(1) AIFMD)” (‘Annex 2’). The Authority has issued a dedicated Guidance Note on reporting, and how the aforementioned annex is to be filled in.

3. Independence of Auditor

Following publication of the feedback statement, a stakeholder reached out expressing their concern on the generality of the statement “*The Authority considers it important for an appointed auditor not to be involved in the provision of other services in relation to the same fund, so as to ensure the required level of independence*”, as in their view, this could imply that the Auditor of a particular fund should be prohibited from providing any and all non-audit services to that fund for independence reasons.

The MFSA position in the feedback statement provided:

“The Authority considers it important for an appointed auditor not to be involved in the provision of other services in relation to the same fund, so as to ensure the required level of independence. In this regard, the Authority is of the view that entities (including when providing the service through a related entity) are not to act both as auditors and as a due diligence service provider, in relation to the same NPIF. On a general note, the Authority would like to highlight that any auditors being appointed in relation to a NPIF, would require the prior approval of the MFSA. The Rules have also been clarified further in this respect.”

The above has to be read in context of feedback provided (i.e. the stakeholder query as to whether an audit firm (or a related company) that has been appointed the Due Diligence Service Provider of the NPIF, would be considered not independent and as a

result be prohibited from taking on the role of auditor for that NPIF. It should not be interpreted as a blanket prohibition for auditors to provide services to funds.

4. Third Country Managers

Third country AIFMs which are authorised in a jurisdiction with whom the MFSA has signed a bilateral 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, will be allowed to manage NPIFs. In the event that there is no bilateral cooperation agreement/memorandum of understanding on securities in place, the Authority may also accept other forms of agreements/memoranda of understanding which it deems acceptable.

In this light, the Authority considers it crucial that clarity is provided on the criteria being considered to assess whether a third country regime is of an “equal or comparable level” to the local one. It should be noted that the MFSA is *inter alia* considering the following criteria in its assessment:

1. Issue of Authorisation;
2. Assessment of Internal Arrangements;
3. Fitness & Propriety Assessment;
4. Capital Requirements;
5. Ongoing Reporting; and
6. AML/CFT Arrangements.

The above-mentioned assessment has already been positively carried out with respect to selected fund managers’ regulatory frameworks in specific jurisdictions (i.e. Switzerland, the UK, Guernsey and Jersey), that are currently listed in the NPIF Notification Form. No further approval is necessary for fund managers authorised under the listed frameworks.

On the other hand, Applicants who want to appoint a manager who is authorised under a regulatory framework and/or jurisdiction not listed in the Notification Form are required to obtain relevant approval before the submission of the Form by approaching the Authority at ausecurities@mfsa.mt. Applicants will be required to provide details of the specific regulatory framework that needs to be assessed, as well as representations as to how such framework meets the criteria stipulated above. Each request will be considered on a case-by-case basis.

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.