



Notified AIFs

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On the 11 February 2016 the Malta Financial Services Authority (“MFSA”) announced the launch of a new framework applicable for notification of Alternative Investment Funds (the Notified AIF or NAIF) which may be promoted to qualifying or professional investors. AIFs falling within scope of the notification process are required to be managed by a full-scope AIFM.

Notified AIF means an AIF which has been notified to the competent authority by an AIFM in terms of the investment services act (List of Notified AIFs) Regulations, 2016. The Notified AIF is not licensed, authorised or in any way approved by the MFSA. In addition, Notified AIFs will not be subject to ongoing supervision. The AIFM, of course, will continue to be subjected to ongoing supervision by its regulator. The MFSA shall make available and maintain on its website an updated List of Notified AIFs in good standing.

The AIFM assumes full responsibility for a Notified AIF and for the fulfilment of the obligations of a Notified AIF. EU/EEA AIFMs may submit a notification to the MFSA for an AIF to be included on the List of Notified AIFs. Third country AIFMs will be able to submit a request for notification of an AIF once the country where these AIFMs have been established has been granted passporting rights pursuant to the AIFMD.

Regulation 7 of the Investment Services Act (List of Notified AIFs) Regulations requires the AIFM to ensure that each service provider and member of the governing body of the NAIF satisfy, both initially and on a continuing basis, the fitness and properness standards expected by the MFSA. This fitness and properness test will be established on the basis of 3 main criteria being:

- Integrity;
- Competency; and
- Solvency.

Notification process

The request for notification of an AIF shall be made in the form and manner required by the MFSA and shall contain such information as the authority prescribes. The request for notification shall be accompanied by the applicable fee. The AIFM shall submit the duly completed written notification together with the accompanying documents to the competent authority within 30 days from the date of the resolution of the governing body of the AIF approving the NAIF’s prospectus. The competent authority shall, within 10 working days from the date of filing of the duly completed notification request together with the accompanying documents, include the AIF in the list of Notified AIFs.

NAIFs

A NAIF can be either open-ended or closed-ended collective investment scheme. A notified AIF may be established as:

- An investment company with a variable share capital (SICAV)
- An investment company with a fixed share capital (INVCO)
- An incorporated cell company
- An incorporated cell of recognised Incorporated Cell company (RICC)
- A limited partnership
- A unit trust
- A contractual fund.

Target investor base



Notified AIFs may only be marketed to professional investors, as defined under MIFID II, and/or qualifying investors being investors who invest a minimum of €100 000 or its currency equivalent in the NAIF at all times. Qualifying investors must declare in writing to the AIFM and the NAIF that they are aware of and accept the risks associated with the proposed investment, and that they may be deemed to be qualifying investors.

Structure of an AIF



When structuring the NAIF as an investment company, the NAIF shall at all times have one or more directors, independent from the AIFM and the custodian. Moreover, the board of directors of the investment company shall be composed of at least 3 members, one of whom must be resident in Malta.

Compliance function



The compliance function of the NAIF shall be carried out by the compliance officer of the AIFM. 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. The AIFM shall also comply with any obligations in respect of the NAIF and its investors under the AIFMD and the relevant rules and regulations as well as other applicable regulations in any jurisdiction where the NAIF is marketed.

Anti-Money Laundering Obligation



The AIFM shall appoint a money laundering reporting officer to carry out the money laundering reporting function in relation to the Notified AIF. Moreover the AIFM shall notify the MFSA of the appointment, resignation or removal of the money laundering reporting officer.

Reporting obligations and amendments to the prospectus



The AIFM shall make the annual report of the NAIF available to the MFSA and where applicable to the European Regulatory Authority of the home member state of the AIFM. The NAIF's annual report shall be published and provided to all investors in the AIF and submitted to the MFSA within 6 months of the end of the financial period concerned.

Changes to the investment objectives of the NAIF, shall be notified to the investors in advance, and the notice period should provide sufficient time to allow redemption requests to be submitted by the investors and effected prior to the change being implemented.

Removal from the list of notified AIFs



The MFSA may remove a NAIF, including any sub-funds, from the list at any time at its sole discretion following notification to the AIFM. Moreover the AIFM may submit a request to the MFSA for the removal of a NAIF from the list of Notified AIFs. In particular such request may be made upon expiration of the duration of the NAIF, its winding up, where the custodian has given notice of termination, in liquidation, upon bankruptcy, or upon the suspension or cancellation of its license.

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