Guidance Note on the Notified PIF Framework

Frequently Asked Questions

REVISIONS LOG

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Introduction

On the 18 December 2023, the MFSA issued a new regulatory framework for Notified Professional Investor Funds (‘NPIFs’). The framework provides an additional fund structure in Malta that benefits from an appropriately streamlined onboarding process and complements other existing fund frameworks.

The framework is governed by a set of proportionate and risk-based criteria. These funds must be serviced by specified regulated service providers and be offered only to eligible investors.

The regulatory framework for NPIFs includes both legislation (the Investment Services Act (Notified CISs) Regulations) and Rules (the NPIF Rulebook).

This document aims to: [i] publish answers to queries which the Authority has addressed whilst developing the framework and immediately following its launch, and [ii] provide guidance and further clarity on certain practical aspects of the framework to interested stakeholders[1]. This Guidance Note has been divided in two sections, as follows:

1. Questions regarding the NPIF Framework in general; and
2. Questions relating to NPIFs’ Service Providers.

This document should be read in conjunction with, and as supplementary guidance to, the applicable legislation, regulations, and rules. When referring to these FAQs, stakeholders should bear in mind that this document is intended to be a live document and the contents may be updated from time to time, as considered appropriate by the Authority.

It is emphasised that this document is intended to provide guidance and should neither be considered nor construed as advice or in any way, a commitment on the part of the MFSA. Should there be a conflict between this document and the applicable legislation, regulations and/or rules, the respective legislation, regulations and/or rules will prevail.

[1] These include potential applicants intending to opt for a Notified PIF structure as well as potential service providers interested in providing their services to NPIFs.

Section 1 The Notified PIF Framework

General

Q1.01 What is a Notified PIF?

A Notified Professional Investor Fund is a special type of non-retail collective investment scheme, which is notified to the Authority and solely available to Professional and/or Qualifying Investors as defined in Annex II to MiFID II and Rule 3.01, Part A of the Notified PIF Rulebook respectively.

An NPIF qualifies as an alternative investment fund ('AIF') in terms of the AIFM Directive[2] and it can be set up and managed by an EU/EEA de minimis AIFM or a third country AIFM.

Q1.02 Is the Notified PIF an unregulated fund framework?

No, the NPIF is not an unregulated structure. Notwithstanding the fact that it is not a licensed fund structure, and that the framework envisages less direct regulatory oversight by the Authority when compared to other fully regulated products (such as the licensed Professional Investor Fund), the NPIF is regulated by the MFSA through requirements which the fund needs to comply with at notification stage, and on an ongoing basis.

The Notification Process

Q1.03 Are Notified PIFs licensed by the Authority?

No, NPIFs are a category of Collective Investment Schemes which are exempt from undergoing the licensing process under the Investment Services Act; however, NPIFs are subject to a notification process which will result in the inclusion in the List of Notified PIFs maintained by the Authority.

Q1.04 How can the list of NPIFs maintained by the MFSA be accessed?

The updated List of Notified PIFs is available on the Financial Services Register held by the MFSA, and can be accessed through the following link: https://www.mfsa.mt/financial-services-register/.

Q1.05 What is the timeframe for submission of a written notification request?

The duly completed Notification Form, together with the accompanying documents, shall be submitted to the Authority by the prospective Notified PIF, or by a person duly authorised to act on its behalf, within thirty (30) days from the date of resolution of the governing body of the prospective Notified PIF approving the NPIF's Offering Memorandum.

[2] Unless it qualifies for a specific exemption in terms of the AIFM Directive for the structure not to be considered as an AIF

Q1.06 **What is the timeline for inclusion of a Notified PIF in the List of Notified NPIFs maintained by the Authority?**

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 (i.e. the Notification Form together with all applicable annexes, as outlined in Rule 4.06, Part A, of the Notified PIF Rulebook).

Legal Forms

Q1.07 **What legal forms are permissible for establishing a Notified PIF?**

A Notified PIF may be established as an investment company with variable share capital (SICAV); an investment company with fixed share capital (INVCO); an incorporated cell company (ICC); an incorporated cell (IC) of a Recognised Incorporated Cell Company (RICC); a limited partnership; a unit trust; or a contractual fund.

It should be noted that: [i] the incorporated cells set up under a Recognised Incorporated Cell Company may only be set up as an investment company with variable share capital (SICAV) or an investment company with fixed share capital (INVCO); and [ii] a Notified PIF that has invested in Distributed Ledger Technology (DLT) assets may only be established as an investment company, a limited partnership, or a unit trust.

Q1.08 **Is the prospective NPIF required to be incorporated when submitting the notification pack to the MFSA?**

Yes. All applicable submissions with the Malta Business Registry for the incorporation of a company should be finalised before the Notification Form is submitted to the MFSA with respect of a prospective Notified PIF that is intended to be established under one of the legal structures outlined in Q1.07.

Governing Body

Q1.09 **Are members of a Notified PIFs' governing body required to be resident in Malta?**

At least one of the members of the governing body is required to be resident in Malta.

Q1.10 **Are members of a Notified PIFs' governing body required to be independent?**

At least one of the members of the governing body is required to be independent from the Manager, Custodian (where appointed), Fund Administrator, Due Diligence Service Provider, and founder shareholder(s) of the NPIF.

Compliance

Q1.11 Who is responsible for the NPIFs compliance with the Regulatory framework?

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 the Rules, as well as, with other relevant legal and regulatory requirements.

Q1.12 Is a NPIF required to appoint a Compliance Officer?

No, however, 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 requirements relating to compliance.

Q1.13 Is a NPIF required to appoint a Money Laundering Reporting Officer (MLRO)?

Yes. The NPIF is a subject person and is required to appoint an MLRO. Such MLRO shall be appointed by the governing body of the NPIF provided that the governing body shall notify the MFSA of the appointment, resignation, or removal of the MLRO.

Q1.14 Who can be appointed as a Money Laundering Reporting Officer (MLRO)?

As outlined in Rule 14.03, Part A of the NPIF Rulebook, the role of the MLRO can be held by either:

(i) The MLRO of the fund administrator of the NPIF; or

(ii) An officer of the NPIF who has sufficient seniority and command. This person must be able to exercise sufficient influence on the NPIF's AML/CFT measures, policies, controls and procedures; and must be in a position to act independently in carrying out his/her responsibilities.

Target Investors and Marketing

Q1.15 Who is eligible to invest in a Notified PIF, and is there a minimum investment amount?

NPIFs may only be marketed to non-retail investors that satisfy the requirements of either one of the two investor categories below:

- *Qualifying Investors*, as defined in Rule 3.01, Part A of the Notified PIF Rulebook; or
- *Professional Investors*, within the meaning of Annex II to MiFID II.

Whilst Qualifying Investors, in order to qualify as such, have to *inter alia* invest a minimum of EUR100,000 (or its currency equivalent) in the NPIF, Rule 3.01

also subjects Professional Investors to the same minimum investment amount.

It should also be noted that Notified PIFs th units of which units are made available to Qualifying Investors (as defined in the Notified PIF Rulebook) must also ensure compliance with all applicable requirements laid down by the PRIIPs Regulation.

Once the minimum investment has been made, any additional amount may be invested but the total amount invested must not at any time be less than EUR100,000 or its currency equivalent unless this is the result of a fall in the net asset value due to market conditions.

Q1.16 Can a Notified PIF be promoted in jurisdictions outside Malta?

Notified PIFs do not benefit from passporting rights in terms of the AIFMD. Therefore, units of NPIFs can be promoted to professional or qualifying investors outside Malta only in the two instances below:

(i) under reverse solicitation; or
(ii) subject to the Private Placement Regime requirements of the relevant jurisdiction.

Provided that NPIFs may only be promoted in jurisdictions outside Malta if the relevant rules of such jurisdictions are satisfied.

NPIF Investment Strategy

Q1.17 Are there restrictions on the investment strategy Notified PIFs can undertake?

NPIFs are subject to one restriction when it comes to their investment strategy. NPIFs cannot engage in 'Lending' activities as defined by the MFSA Standard Licence Conditions Applicable to Collective Investment Schemes authorised to invest through loans, and therefore cannot (i) originate loans; (ii) acquire loans; and (iii) engage in factoring and/or forfaiting.

NPIFs shall be subject to the investment objectives, policies and restrictions outlined in its Offering Memorandum.

Q1.18 Can a Notified PIF use Trading Companies/Special Purpose Vehicles ('SPVs') for Investment Purposes?

Yes, provided that the following conditions are satisfied:

- The SPVs are established in Malta or in a jurisdiction which is not an FATF blacklisted country.
- The NPIF through its directors or general partner(s), shall at all times maintain the majority directorship of the SPV.
- The SPV shall be owned or controlled via a majority shareholding of the voting shares either directly or indirectly by the NPIF; and

- The NPIF shall ensure that the investments effected through the SPV are in accordance with the investment objectives, policies and restrictions of the NPIF.

Q1.19 **Can a Notified PIF be used as a co-investment vehicle and as a feeder fund into a master structure which may be domiciled in another jurisdiction?**

Yes, a Notified PIF may be used as a co-investment vehicle and also as a feeder fund.

Valuation Arrangements

Q1.20 **Are Notified PIFs subject to specific requirements vis-à-vis asset valuation?**

While the Notified PIF Rules are silent with respect to specific valuation arrangements to be put in place, Notified PIFs are nonetheless required to have in place proper valuation arrangements.

In particular, it is important to note that in the case of Notified PIFs investing in illiquid or hard to value assets, the Authority expects that the valuation of such assets is performed by an independent valuer, that should:

- Be independent of the NPIF, its officials or any other service provider to the NPIF;
- Be of good standing with recognized and relevant qualifications and an authorized member of a Recognised Professional Body in the jurisdiction of the assets;
- Be appointed by the governing body of the NPIF subject to the approval of the appointment by the auditors of the scheme; and
- Have the business organization, systems, experience and expertise necessary to conduct the required verification and valuation of the NPIF's investments.

Reporting Obligations

Q1.21 **What are the reporting obligations of a Notified PIF?**

The reporting obligations of a Notified PIF can be summarised as follows:

I. Annual Report: The NPIF shall publish its annual report and submit it to the Authority within six (6) months of the end of the period concerned.

II. Regulatory Reporting/ AIFMD reporting. The NPIF shall prepare and submit to the Authority:

   a. Information on the NPIF's investment strategies, the main instruments in which it is trading, the markets of which it is a

member or where it actively trades, as well as its principal exposures and most important concentrations.
Such information has to be reported by means of "Annex 2 – AIF – Specific Information to be reported (Article 3(3) and Article 24(1) AIFMD)" ('Annex 2'), to be submitted through the LH Portal.

NPIFs should note the following with respect to the submission of Annex 2:

- NPIFs managed by local *de minimis* AIFMs duly authorised by the MFSA **are exempt** from such reporting requirement, in view that the manager would itself be submitting the relevant information to the Authority in terms of the applicable Rules;
- In compiling the return, NPIFs managed by EEA *de minimis* AIFMs or approved third-country managers (as outlined in Q2.09) are invited to refer to the applicable Guidelines issued by the Authority specifically on NPIF reporting, since certain exceptions apply when completing Annex 2 with respect to a Notified PIF;
- the return has to be filled out and submitted with respect to each sub-fund of a NPIF, as applicable.

b. Any relevant statistical returns which may be required by the Central Bank of Malta to fulfil European and other relevant reporting obligations. Reference should be made to the Circular on the Submission of the CBM Investment Funds Statistical Return issued by the MFSA.

Conversions

Q1.22 Can CISs already established under different regulatory frameworks convert to become a Notified PIF?

Yes, the process of notification is also available to collective investment schemes which are already in possession of a PIF or AIF licence issued by the MFSA, or which have been included in the list of Notified AIFs maintained by the Authority. In the case of such conversion, however, any redemption fees in relation to investors wishing to exit the PIF, AIF or NAIF prior to the conversion shall be waived and no subscription fees will be levied on existing investors in the NPIF.

Further to the above, the Authority expects that in case of conversions:

- investors are notified at least 4 weeks in advance of the conversion; and
- changes in fees charged are to be highlighted accordingly.

In the event an existing PIF, AIF or NAIF wishes to convert to a Notified PIF, it shall inform the MFSA ahead of submission of the Notification Form and be guided accordingly by the provisions outlined in Section 8, Part B of the NPIF Rulebook.

Q1.23 Can a Notified PIF convert to a PIF, AIF or NAIF?

Yes, A Notified PIF can apply to convert into a PIF; an AIF or a Notified AIF, subject to obtaining written consent of the MFSA before applying for such conversion. The process to be followed for such conversions is outlined in Section 8, Part B of the NPIF Rulebook.

Further to the above, the Authority expects that in case of conversions:

- investors are notified at least 4 weeks in advance of the conversion; and
- changes in fees charged are to be highlighted accordingly.

Q1.24 When can a Notified PIF be removed from the list of NPIFs?

A Notified PIF (including any sub-fund thereof) may be removed from the list of NPIFs by the MFSA, at any time, at the Authority's discretion, following a notification to the governing body of the NPIF and where the MFSA deems this fit, in the interest of safeguarding investors, the integrity of markets, as well as the stability and reputation of the financial sector.

Also, the NPIF, or a person authorised to act on its behalf may submit a request to the Authority for removal from the List of Notified PIFs in the circumstances listed in Regulation 22(1) of the Investment Services Act (Notified CISs) Regulations.

Section 2 Notified PIFs Service Providers

Due Diligence Service Providers

Q2.01 **What is the role of a due diligence service provider?**

The Due Diligence Service Provider is required to carry out fitness and properness checks to ensure that the other service providers and functionaries, including the governing body, founder shareholder(s) and Money Laundering Reporting Officer (MLRO) of the NPIF satisfy, ***at the time of notification*** and ***on an ongoing basis***, the fitness and properness standards expected by the MFSA.

In carrying out the necessary due diligence assessment of other service providers which are also regulated, the DDSP may place a degree of weighting on the entities' regulatory status in determining the extent of checks required. However, the DDSP would be expected to go beyond merely relying on the fact that the entities are regulated by a relevant authority in assessing their fitness and properness, including the competency of the individuals providing the portfolio management function.

It is noteworthy that a Fund Administrator is exempt from the due diligence exercise carried out by the DDSP as outlined in Rule 11.01, Part A of the Notified PIF Rulebook.

Q2.02 **Who can act as a Due Diligence Service Provider for a Notified PIF?**

The Notified PIF Rulebook (Rule 11.04, Part A) allows for the following persons to be eligible to be appointed as Due Diligence Service Providers of a Notified PIF:

i. Fund Administrators, recognised in terms of the Investment Services Act; or
ii. Company Service Providers authorised under the Company Service Providers Act which:
   (a) are not under-threshold CSPs; and
   (b) are not individual CSPs

Q2.03 **Would an entity authorised as a trustee and fiduciary services, but also providing CSP services under the Company Service Providers (Exemptions) Regulations be eligible to act as a Due Diligence Service Provider for Notified PIFs?**

No, an entity providing CSPs services under the CSP (Exemption) Regulations is not allowed to act as a Due Diligence Service Provider for Notified PIFs.

Rule 11.04, Part A of the Investment Services Rules for NPIFs and related Due Diligence Service Providers explicitly refers to the authorised status of the CSP under the Company Services Providers Act, as follows:

> *"A person may be eligible for appointment as Due Diligence Service Provider if it is either:*
> *i. a recognised fund administrator, in terms of the Investment Services Act; or*
> *ii. a Company Service Provider, authorised under the Company Service Providers Act which is: (a) not authorised as under-threshold CSPs; and (b) not authorised as an individual CSP."*

Therefore, considering that a company providing CSP services by virtue of the Exemption Regulations is not required to seek authorisation under the CSP Act, it follows that it is not eligible to be appointed as Due Diligence Service Provider under the NPIF framework.

Q2.04 What process should MFSA Recognised Fund Administrators follow to be approved to act as Due Diligence Service Providers in relation to Notified PIFs?

While no further assessment will be conducted by the MFSA to determine the eligibility of an MFSA Recognised Fund Administrator as a Due Diligence Service Provider ('DDSP') for Notified PIFs, Rule 11.05(i), Part A of the NPIF Rulebook stipulates that eligibility hinges on the submission of a self-declaration (Annex D to the NPIF Rules). Through this self-declaration, the entity is to affirm that it has adequate and appropriate processes and procedures in place, to fulfil the responsibilities of a Due Diligence Service Provider for NPIFs, including appropriate record-keeping arrangements and possessing relevant experience.

Stakeholders should be aware that the Financial Services Register maintained by the MFSA also includes a list of entities approved to act as Due Diligence Service Providers for Notified PIFs under the Investment Services Section. Consequently, Recognised Fund Administrators seeking inclusion in this list should internally assess the adequacy of their arrangements and expertise related to prospective duties. Following a positive assessment outcome, they should submit the aforementioned Annex D to the Authority at the email address: ausecurities@mfsa.mt.

Q2.05 Can MFSA Recognised Fund Administrators seek to be included in the list of Due Diligence Service Providers before submission of a notification form for a Notified PIF?

Fund Administrators seeking to be included in the public list of Due Diligence Service Providers for NPIFs kept by the MFSA before a Notification Form with respect to a prospective NPIF is submitted can submit Annex D as a standalone declaration and therefore disregard, for the purposes of being included in the Financial Services Register, the field "*Name of the NPIF*".

A new declaration pursuant to Annex D shall however be submitted by the relevant Due Diligence Service Provider for each new NPIF notification (be it a new CIS or a new sub-fund of an existing NPIF), notwithstanding the entity in question has been already included in the Financial Services Register.

Q2.06 **What process should above-threshold Company Service Providers, which are not individuals and are authorised under the Company Service Providers Act follow, in order to request approval to act as a Due Diligence Service Provider for Notified PIFs?**

Company Service Providers that fall within the criteria stipulated in Rule 11.04(ii) and that wish to be approved as Due Diligence Service Providers with respect to a Notified PIF, are to undergo a competence assessment by the MFSA relating to their knowledge and expertise in the fund industry.

Accordingly, interested CSPs should approach the Authority *before* the submission of a NPIF Notification Form by duly filling out and submitting Annex E to the NPIF Rules at ausecurities@mfsa.mt.

Upon formal approval by the Authority of the CSP's eligibility to in principle serve as a Due Diligence Service Provider to a NPIF, the NPIF Notification Form for the inclusion of a fund in the List of Notified PIFs, along with the relevant Annexes as specified by the Rules, may be submitted.

Q2.07 **I am a CSP which has been approved by the Authority to act as a Due Diligence Service Provider for Notified PIFs following submission of Annex E, but my name has not yet been included within the approved DDSP in the MFSA Financial Services Register. Why?**

CSPs complying with Rule 11.04(ii) that want to provide Due Diligence Service Provider services to NPIFs, should take note of the fact that as outlined by Rule 11.05, eligibility to do so relies on both the positive outcome of the competence assessment that follows submission of Annex E, but also – as in the case of Recognised Fund Administrators – on the submission of Annex D, in which the entity attests to having implemented adequate processes and procedures to fulfill its responsibilities regarding a specific Notified PIF (please also see Answer to **Q2.04** above for more information in this respect). Therefore, the CSP will be automatically added to the list of "Approved persons authorised to act as Due Diligence Service Providers to Notified PIFs" upon inclusion in the List of Notified PIFs of the first NPIF to which it will be providing its services.

Further to the above, CSPs are also informed that should they wish to be included in the public list of Due Diligence Service Providers for NPIFs kept by the MFSA before a Notification Form with respect to a prospective NPIF is submitted, they can do so following formal approval by the Authority of the CSP's eligibility to in principle serve as a Due Diligence Service Provider, by submitting Annex D as a standalone declaration and therefore disregard, for the purposes of being included in the Financial Services Register, the field "*Name of the NPIF*".

Fund Manager

Q2.08 Who can manage a Notified PIF?

A Notified PIF can be managed by entities meeting specific criteria outlined in Rule 6.01 of Part A of the NPIF Rulebook. These are:

1. *de minimis* AIFMs licensed in terms of Article 6 of the Investment Services Act;
2. *de minimis* AIFMs (i.e. subthreshold AIFMs) authorised in an EEA/EU country. Similar to the licensed PIF framework, the NPIF framework allows for any sub-threshold manager in the EEA, whether merely registered in accordance with Art 3(3) AIFMD, or subject to a more onerous authorisation process, to take on a NPIF mandate;
3. Third country AIFMs, provided that the jurisdiction where the AIFM is established and the regulatory framework it is subject to have been previously approved by the MFSA. In order for such third-country frameworks to be approved, the below criteria are necessary:

    A. There needs to be a bilateral cooperation agreement/ memorandum of understanding on securities between the MFSA and the National Competent Authority regulating that manager. In its absence, the MFSA will assess, on a case-by-case basis, the acceptability of other forms of agreements between jurisdictions; and
    B. The third country AIFM must be subject to a regulatory framework which is deemed by the MFSA as comparable to that it would have been subject to in Malta.

The list of foreign regulators with which the MFSA has bilateral agreements can be accessed via this **link**.

Q2.09 How is the comparability or otherwise of a third country AIFM regulatory framework assessed by the MFSA?

Rule 6.01 of Part A of the NPIF Rulebook subjects eligibility of a third country AIFM to manage a NPIF to that regime being of an "equal or comparable level" to the local one. In the assessment of comparability or otherwise, it should be noted that the MFSA will *inter alia* consider the appropriateness of the framework with respect to following criteria:

- Issue of Authorisation;
- Assessment of Internal Arrangements by the respective regulator;
- Fitness & Properness Assessment;
- Capital Requirements;
- Ongoing Reporting requirements; and
- AML/CFT Arrangements.

The list of approved jurisdictions is reflected in the NPIF Notification Form, specifically in Section 3.3.2.8, and no further approval is necessary for fund managers authorised under the listed frameworks.

Q2.10 **A prospective NPIF would like to appoint an AIFM from a third country whose framework is not listed under Section 3.3.2.8 of the NPIF Notification Form. What is the process to seek approval of a relevant framework?**

Applicants who want to appoint a fund manager who is authorised under a regulatory framework and/or jurisdiction which is not listed in the Notification Form, are required to obtain relevant approval *before* the submission of the NPIF Notification Form, by approaching the Authority at ausecurities@mfsa.mt.

Applicants would 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 in **Q2.08** above. Each request will be considered on a case-by-case basis.

Following formal approval from the Authority, the Applicant would then be able to proceed to submit the Notification Form for the inclusion of the NPIF in the relevant list.

Q2.11 **Can a Notified PIF appoint distinct fund managers for different sub-funds?**

Yes, different sub-funds of a Notified PIF can be managed by different fund managers, provided that the managing entity meets the criteria outlined in Rule 6.01 of Part A of the NPIF Rulebook (see Q2.08). In this case, upon notification of the additional sub-fund, Section 3 of the Notification Form should include the details of the responsible fund manager at the level of the sub-fund.

Custodian

Q2.12 **What are the applicable custody arrangements for a Notified PIF?**

Whilst it is not mandatory for a NPIF to appoint a custodian, the NPIF needs to have in place proper arrangements to ensure adequate safekeeping of its assets and should outline such in the Offering Memorandum. The NPIF can have a single or multiple custodians (or none, with prime brokers or other entities carrying out safekeeping, depending on the type of assets of the NPIF).

Malta Financial Services Authority

Triq L-Imdina, Zone 1

Central Business District, Birkirkara, CBD 1010, Malta

communications@mfsa.mt

www.mfsa.mt