



Notified
Investor Funds

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Brief Outline

On 22 December 2022, by virtue of the publication of a consultation document, the Malta Financial Services Authority (“MFSA”) invited interested parties to submit comments on the main features of the proposed framework for Notified Professional Investor Funds (“NPIFs”) in Malta. The NPIFs framework proposal seeks to introduce a new fund structure, complementing the already existing fund frameworks in Malta. The new regime should allow for lower barriers to entry for professional investor funds through a risk-based and proportionate approach.

The NPIFs regime acknowledges timing to market pressures experienced within the fund industry allowing fund promoters to launch their investment vehicle in only 10 working days, i.e. the period required by the competent authority to include the AIF in the List of Notified AIFs. However, such period is subject to the competent authority receiving all the required documentation.

While lending¹ activities are excluded, NPIFs will be allowed to engage in any investment strategy. Another core feature of the proposed framework is that the due diligence exercise will not be undertaken by the MFSA, but rather to competent service providers such as fund administrators recognised by the MFSA, such as full-scope AIFMs and certain CSPs authorised under the Company Service Providers Act in Malta.

The new NPIFs regime has been welcomed by various stakeholders and should be rolled out in Malta in the coming months.

¹ ‘Lending’ activity as defined under the MFSA’s Loan Funds Rules.

Key Points of the **Proposed Framework**

- ☑ NPIFs would be subject to a notification process and hence will not be licensed by the MFSA. Promoters may therefore benefit from lower setup and other operational/regulatory costs, which fully licensed funds currently experience.
- ☑ Offering documentation and marketing material will not be reviewed or approved by the MFSA.
- ☑ As with fully licensed Professional Investor Funds, Notified PIFs will only be available to investors meeting the Qualifying Investors criteria.
- ☑ NPIFs will be subject to a minimum level of supervision and therefore adequate risk disclosures are to be made to any prospective investors accordingly.
- ☑ NPIFs would need to be set-up as third party managed funds and can only be managed by (i) locally licensed de minimis AIFMs; (ii) EU licensed de minimis AIFMs; and (iii) third-country AIFMs from reputable jurisdictions recognised by the MFSA.
- ☑ A third-party service provider of the NPIF shall be tasked with conducting due diligence on the NPIF at the notification stage and on an ongoing basis. Such a third-party service provider may only be an MFSA (i) recognised fund administrator, (ii) authorised full-scope AIFM, or (iii) authorised above-threshold Corporate Service Provider.
- ☑ The appointed third-party service provider shall carry out a due diligence exercise to ensure that other service providers and functionaries, the governing body, founder shareholders, and Money Laundering Reporting Officer ('MLRO') of the NPIFs, satisfy at the time of notification and on an ongoing basis, the fitness and propriety standards expected by the MFSA.

- ☑ NPIFs shall have a MLRO appointed at all times. Such function may be delegated to:
(i) the fund administrator of the NPIFs, or (ii) an officer of the NPIFs who has sufficient authority to fulfil the duties of the MLRO.
 - ☑ One of the members of the governing body of the NPIFs shall be resident in Malta and shall be responsible for compliance with regulatory obligations and reporting.
 - ☑ The governing body shall be required to submit an annual compliance certificate to the MFSA.
 - ☑ NPIFs are not required to appoint a custodian but shall ensure that its assets are subject to adequate safekeeping arrangements at all times. Such arrangements shall be outlined in the notification process and detailed in the offering documents of NPIFs.
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Next Steps

The NPIFs framework would require amendments to the 'Investment Services Act (List of Notified AIFs) Regulations' (S.L. 370.34) since it is established by means of these Regulations. As a result, amendments are being proposed to the said Regulations in order to cater for NPIFs as well. The amendments being proposed reflect the general features of the proposed NPIFs framework as outlined in the consultation document dated 22 December 2022, as referred to above. Stakeholders are invited to submit any comments to the MFSA that they may have on the proposed legislative amendments by not later than 22 June 2023.

Our Investment Funds and Asset Management Practice Area

Our team has sound experience in the structuring and licensing of collective investment schemes, alternative investment funds, professional investor funds and Notified Alternative Investment Funds (NAIFS). We have dealt with a variety of structures and we have also provided assistance on the development of alternative investment policies and strategies.

Disclaimer: This document does not purport to give financial, legal, regulatory or tax advice. Should you require further information or assistance, please do not hesitate to contact us at info@promethean.mt



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