1 April 2016

INTRODUCING MALTA’S NOTIFIED AIF REGIME

Peter Astleford
Our View:
REGULATION AFFECTING FUNDS IN EUROPE

REGULATION OF THE MANAGER

- Prudential – capital
- Conduct – suitability/fair treatment
- Systems – individuals/operational policies and procedures
- “Fit and Proper”

Etc…
REGULATION AFFECTING FUNDS IN EUROPE

REGULATION OF THE FUND

- Eligible assets/exposures
- Service provider requirements
- Transparency/reporting

Etc…
MANAGER & PRODUCT REGULATION POST AIFMD

- Regulated fund product

**Plus**

- Regulated manager

**Equals**

- Overlapping/inconsistent regulatory requirements affecting the fund

- Need for double lawyering if AIFM is in a different jurisdiction
MALTA’S NOTIFIED AIF REGIME - A SOLUTION

- Reliance on EEA AIFM’s regulated status
- Grounded in AIFMD requirements
- Declarations from AIF’s governing body
- No prudential regulation of the AIF by MFSA
- Quicker to market; more efficient operation
BASIS FOR THE NOTIFIED FUNDS REGIME

- New regulations under the Investment Services Act
- Investment Services Rules produced by the MFSA
WHO CAN MAKE USE OF THE REGIME?

- A Maltese/EEA passported full scope AIFM
- Of an unlicensed AIF
- Promoted to Professional Investors/Qualifying Investors
- Any form (open or closed ended)
WHO CAN NOTIFIED FUNDS BE SOLD TO?

- Professional Investors – professional clients under MiFID
PROFESSIONAL INVESTORS & QUALIFYING INVESTORS

- Qualifying Investor
  - invest a minimum EUR 100,000 (no reduction by way of a partial redemption);
  - declare in writing that they are aware of and accept the risks of the proposed investment; and
– satisfy at least one of the following:

- a body corporate or group with net assets over EUR 750,000;
- an unincorporated body with net assets over EUR 750,000;
- a trust with net assets over EUR 750,000;
- an individual (with any spouse) with over EUR 750,000; or
- a senior employee or director of a service provider to the Notified AIF.
WHO CANNOT MAKE USE OF THE REGIME?

- Funds which are not AIFs
- Self-Managed AIFs
- AIFs sold to “other” investors
- AIFs managed by third country AIFMs (pre passport)
- Loan Funds
- AIFs investing in non-financial assets
NOTIFICATION PROCESS

- AIF governing body approves prospectus
- AIFM submits *duly completed* notification to MFSA within 30 days
- AIF placed on Notified AIF List *within* 10 business days
- Prospectus can then be dated
DOCUMENTATION SUBMITTED

- Compliant prospectus
- Resolution of AIF governing body certifying compliant prospectus
- AIFM certification as to competence to manage/monitor
- Joint AIFM/AIF governing body declaration re continuing compliance with AIFMD
- AIFM declaration re AIF governing body/service provider due diligence
DOCUMENTATION SUBMITTED

PROSPECTUS

- Form requirement – pro forma prospectuses included in the Rules
- AIFMD pre sale disclosure requirements
- Mandated legend covering:
  - AIFs Notified AIF status
  ...absence of review, assessment or approval by MFSA
HEALTH WARNING

- XXXXX Fund is a Notified AIF under the Investment Services Act (List of Notified AIFs) Regulations. The Fund has been entered onto the List of Notified AIFs on the basis of a notification submitted by the AIFM confirming that:-
  - the AIFM is in possession of either:
    - a licence granted by the MFSA under the Investment Services Act; or
    - a management passport under Article 33 of AIFMD; and
  - the governing body of the Fund has approved the prospectus.

- The entry of the xxxxxx Fund on the List of Notified AIFS is not an endorsement, guarantee or statement of approval by the MFSA nor is the MFSA responsible for the contents of this document or the selection or adequacy of its governing body or service providers.

- The MFSA has made no assessment or value judgment of the soundness of the Fund or for the accuracy or completeness of statements made or opinions expressed with regard to it.

- The MFSA has not reviewed or approved the Fund’s investment objective, policy or investment universe. Any person making statements to the contrary may be prosecuted under the Maltese Criminal Code [Chapter 9 – Laws of Malta]. Investors must rely solely upon their own and their advisors’ due diligence in making any decision to invest.
PROSPECTUS AMENDMENTS

- Amended compliant prospectus must be submitted (clean and blackline)
- Resolution of governing body re:
  - Continuing compliance with prospectus requirements
  - Material changes
- Submitted within 30 days of resolution
- Acknowledgment within 10 business days; prospectus can then be dated
AIFM OBLIGATIONS

- Initial due diligence on AIF governing body/service providers
  - Fit and proper
- Update due diligence at least annually
- Rights over founder shares
- AML – appointment of MLRO/periodic reporting
- Compliance with AIFMD and marketing requirements
REMOVAL FROM THE NOTIFIED LIST

- By the MFSA in its discretion
- On request by AIFM

AIFM must request removal:
  - Termination or winding up
  - AIFM or custodian terminates or becomes insolvent
  - Service providers/governing body lack fitness/probity

AIF must then be wound down
## NOTIFIED AIF v RAIF

<table>
<thead>
<tr>
<th></th>
<th>NOTIFIED AIF</th>
<th>RAIF</th>
</tr>
</thead>
<tbody>
<tr>
<td>LICENSED AND SUPERVISED FUND</td>
<td>✗</td>
<td>✗</td>
</tr>
<tr>
<td>EXTERNAL EEA AIFM</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>VARIETY OF LEGAL STRUCTURES</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>DOMESTIC SERVICE PROVIDERS REQUIRED</td>
<td>Auditor (and local director?)</td>
<td>✓ (depo, admin services (may be in sourced), auditor)</td>
</tr>
<tr>
<td>SPECIFIC PROSPECTUS REQUIREMENTS</td>
<td>✓</td>
<td>✗</td>
</tr>
<tr>
<td>BROAD ASSET ELIGIBILITY</td>
<td>✓</td>
<td>✓</td>
</tr>
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## NOTIFIED AIF v RAIF

### NOTIFIED AIF V. RAIF REGISTRATION CHARACTERISTICS

<table>
<thead>
<tr>
<th>NOTIFIED AIF</th>
<th>RAIF</th>
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<tbody>
<tr>
<td>Notified to the MFSA</td>
<td>Not registered with the CSSF</td>
</tr>
<tr>
<td>Must register within 30 days of board approval of prospectus</td>
<td>Must register within 10 days of notarial attestation of constitution</td>
</tr>
<tr>
<td>Registration effective within 10 business days of filing</td>
<td>Effective immediately</td>
</tr>
<tr>
<td>Prospectus (form specified) and certain board and AIFM declarations to be filed</td>
<td>Notarial attestation to be filed</td>
</tr>
<tr>
<td>Prospectus updates to be filed with certain board declarations</td>
<td>No revised documentation required to be filed</td>
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## NOTIFIED AIF v QIAIF

<table>
<thead>
<tr>
<th>Feature</th>
<th>NOTIFIED AIF</th>
<th>QIAIF</th>
</tr>
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<tbody>
<tr>
<td>Licensed and supervised fund</td>
<td>✗</td>
<td>✔</td>
</tr>
<tr>
<td>External EEA AIFM required</td>
<td>✔</td>
<td>✗</td>
</tr>
<tr>
<td>Variety of legal structures</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>Domestic service providers required</td>
<td></td>
<td>✔</td>
</tr>
<tr>
<td>Specific prospectus requirements</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>Broad asset eligibility</td>
<td>✔</td>
<td>✔</td>
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# NOTIFIED AIF v QIAIF

## NOTIFIED AIF V QIAIF REGISTRATION CHARACTERISTICS

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<th>QIAIF</th>
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<tbody>
<tr>
<td><strong>NOTIFICATION EFFECTIVE</strong></td>
<td><strong>APPROVAL PERIOD</strong></td>
</tr>
<tr>
<td>• Within 10 business days of filing</td>
<td>• Within 24 hours of filing but...</td>
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</table>
Notified Fund Pros and Cons

- **Pros**
  - Quick and easy to use
  - Safety of AIFMD
  - Early mover advantage
  - A “winner”?  

- **Cons**
  - Not regulated (as a product)
  - New to market; need to sell (LUX has the same job)
  - No changing regime
Timetable

- Regulations to be submitted to Ministry in early April
- MFSA to issue Rules once Regulations approved
- Requests for Notified Funds to be accepted during Q2 2016
QUESTIONS
For further information, visit our website at dechert.com.

Dechert practices as a limited liability partnership or limited liability company other than in Dublin and Hong Kong.