



De Minimis AIFMs

Asset management and funds

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The Legal 500

INTRODUCTORY REMARKS

The *de minimis* regime, outlined in Article 3 of the Alternative Investment Fund Managers Directive (the “AIFMD”), allows Alternative Investment Fund Managers (“AIFMs”) having assets under management (“AuM”) below certain thresholds to opt for a lighter regime rather than the full AIFM regime. This is available to AIFMs which:

- a) Either directly or indirectly, through a company with which the AIFM is linked by common management or control, or by a substantive direct or indirect holding, manage portfolios of Alternative Investment Funds (“AIFs”) whose AuM, including any assets acquired through use of leverage, in total do not exceed a threshold of EUR 100 million; or
- b) Either directly or indirectly, through a company with which the AIFM is linked by common management or control, or by a substantive direct or indirect holding, manage portfolios of AIFs whose AuM in total do not exceed a threshold of EUR 500 million when the portfolios of AIFs consist of AIFs that are unleveraged and have no redemption rights exercisable during a period of 5 years following the date of initial investment in each AIF.

This delineation is necessary to ensure that small-scale AIFMs are not disproportionately regulated. In fact, once authorised as such, a *de minimis* AIFM will be exempt from complying with the provisions of the AIFMD and will be able to avail itself of the current local Professional Investor Fund (“PIF”) Regime, with the exception of certain reporting requirements towards the Malta Financial Services Authority (the “MFSA”) as regards:

- i. the investment strategies of the AIFs under management;
- ii. the main instruments in which the AIFs under management are trading; and
- iii. the principal exposures and most important concentrations of the AIFs under management.

Notwithstanding its right to be treated as a *de minimis* AIFM, any AIFM whose assets under management fall below the above thresholds may choose to opt in to the AIFMD framework. This would render it subject to all of the obligations applicable to full-scope AIFMs but would also enable it to make use of the EU passporting rights deriving from the AIFMD.

In veering from the minimum registration requirement imposed by the AIFMD, the MFSA has opted to apply a minimum licencing regime for *de minimis* AIFMs, as it considers that it is in the best interest of AIFMs to be licensed when dealing with potential investors.

CALCULATION OF AUM

The total value of AuM is key in determining whether an AIFM falls within the remit of the AIFMD. In computing the total value of AuM:

- AIFs managed by AIFM for which the AIFM has delegated functions shall be included in the calculation, whilst portfolios of AIFs that the AIFM is managing under delegation shall be excluded;
- Each derivative instrument position, including any derivative embedded in transferable securities shall be converted into its equivalent position in the underlying assets of that derivative and shall not be valued at its mark-to-market value;
- Investments in other AIFs managed by the same externally appointed AIFM, as well as any UCITS managed by the AIFM may be excluded from the calculation of the AIFM’s AuM; and
- Where one compartment within an internally or externally managed AIF invests in another compartment of that AIF, that investment may be excluded from the calculation.

MONITORING OF AUM

De minimis AIFMs shall establish, implement and apply procedures to monitor on an ongoing basis the total value of AuM. Where the total value of AuM exceeds the above prescribed thresholds and the AIFM considers that the situation is not of a temporary nature, it shall apply for an extension to its *de minimis* Category 2 Licence to a full AIFM Category 2 Licence. This application shall be made within 30 days from the date of notification to the MFSA.

ORGANISATIONAL REQUIREMENTS

Delegation

In the event that the *de minimis* Licence Holder wishes to delegate functions to third parties, it shall first notify the MFSA. Such notification shall include details of the nature of functions to be delegated and of the entity or entities to which such functions are to be delegated. Outsourcing of important operational functions may not be undertaken in such a way as to materially impair the quality of the AIFMs internal control and the ability of the MFSA to monitor its compliance with all obligations. When the *de minimis* AIFM outsources critical or important operational functions, it shall not absolve the *de minimis* AIFM from responsibility.

Risk Management

The *de minimis* Licence Holder shall establish, implement and maintain adequate risk management policies and procedures in respect of the schemes under management. It shall also adopt effective arrangements, processes and mechanisms to manage the risks relating to the schemes’ activities, processes and systems.

CONDUCT OF BUSINESS – CONFLICTS OF INTEREST

The *de minimis* AIFM shall ensure that all information, including marketing communications addressed to investors or potential investors is accurate, fair, clear and not misleading. It shall also maintain effective organisational arrangements with a view to preventing conflicts of interest from adversely affecting the interests of investors in the schemes under its management.

LIAISON WITH THE MFSA

The de minimis AIFM must inter alia inform the MFSA of:

- A change in (i) its business name, (ii) address or (iii) information communicated to the MFSA for initial authorisation;
- The departure of a Director or Senior Manager;
- Any evidence of fraud, dishonesty or irregular behaviour by a member of the Licence Holder's staff;
- The ultimate beneficial ownership of any party directly or indirectly controlling 10 per cent or more of the AIFM's share capital on becoming aware of the situation;
- A decision to make a material claim on any insurance policy and/or the initiation of any legal proceedings of a material nature by or against the AIFM; and
- The establishment of a branch abroad or the application to an overseas Regulator to undertake any form of licensable activity outside Malta.

Matters which require the prior approval of the MFSA:

- Any change to share capital or the rights of shareholders;
- The acquisition of 10% or more of the voting share capital of another company;
- The taking of any steps to cease investment services business;
- The agreement to sell or merge the whole or any part of its undertaking;
- The appointment of a Director, Senior Manager, Compliance Officer, Money Laundering Reporting Officer and any persons engaged in portfolio management, risk management or investment advice; and
- The change in the responsibilities of a Director or Senior Manager.

FINANCIAL RESOURCES

The *de minimis* AIFM shall maintain financial resources sufficient for the proper performance of its functions and shall have adequate funds to enable it to conduct its business effectively and to meet its liabilities. Without prejudice to the foregoing, the *de minimis* AIFM shall have an initial capital of €125,000 which shall be maintained on an on-going basis.

DE MINIMIS LICENCE HOLDERS MARKETING AIFS IN MALTA TO RETAIL INVESTORS

Where an AIF is to be marketed to retail investors in Malta, the AIF or the *de minimis* AIFM (on its behalf) shall submit an application to the MFSA requesting authorisation therefrom. The application shall be accompanied by: (i) A prospectus of the AIF; and (ii) A declaration by the directors of the *de minimis* AIFM that the AIF is not a complex financial instrument in terms of MiFID. The licence holder shall ensure that any marketing communication which is received by retail investors or potential retail investors is fair, clear and not misleading and satisfies the conditions listed in SLCs 46-58 of Part BIII of the Investment Services Rules for Investment Services Providers.



MALTA

- Robust legal system, based on UK and EU law and in tune with the business world
- Member of the EU: easy access to 28 member states through the EU marketing passport
- Reputable regulator while being easily accessible and sensitive to the particular requirements of applicants
- Tax efficiency: favourable tax regime and extensive double tax treaty network
- Skilled and highly qualified workforce and service providers
- English is an official language
- Currency is the Euro

For more information, please contact :



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