



# MALTA FUND STRUCTURES



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## INTRODUCTION

AS A JURISDICTION, MALTA HAS ESTABLISHED ITSELF AS THE HOME OF VARIOUS PROFESSIONAL FUNDS, FUND MANAGERS AND OTHER ASSET SERVICING PROVIDERS, OFFERING A VERSATILE RANGE OF INVESTMENT STRUCTURES AND FUND PRODUCTS THAT CAN BE TAILORED ACCORDINGLY TO MEET THE DIFFERENT NEEDS OF MANY FUND PROMOTERS, ASSET MANAGERS AND INVESTORS.

There are a variety of reasons why asset managers, fund promoters and investors turn to Malta to set up or redomicile their funds, including EU passporting rights, a variety of fund structures and regimes, and cost-effective solutions, among others.

## KEY BENEFITS

- > A versatile range of professional fund products, including Alternative Investment Funds (**AIFs**), Notified Alternative Investment Funds (**NAIFs**), Professional Investor Funds (**PIFs**) and Notified Professional Investor Funds (**NPIFs**)
- > A variety of legal structures: including investment companies with variable share capital (**SICAV**), being the most common, and can be structured to include master-feeder funds and umbrella funds with segregated sub-funds, as well as Incorporated Cell Companies (**ICCs**) and Recognised Incorporated Cell Companies (**RICCs**), **Unit Trusts, Limited Partnerships, Contractual Funds**, and investment company with fixed capital (**INVCO**)
- > Asset servicing expertise: where experienced professionals are available to provide fund administration, reporting, regulatory services, management, and other services to funds setting up or redomiciling to Malta
- > Asset management hub: where asset managers wishing to access both the retail and the institutional marketplace in the European Union can benefit from flexible structures, including Alternative Investment Fund Managers (AIFMs) and UCITS management companies, which allow fund managers to manage and market funds across the EU
- > Flexibility in service providers: as funds are allowed to either appoint a third-party fund manager or opt for the self-managed route

## AIF – MAIN FEATURES

### REGULATION

In terms of the Investment Services Act, AIFs are generally defined as collective investment undertakings (including sub-funds thereof) which raise capital from a number of investors with a view to investing it in accordance with a defined investment strategy for the benefit of those investors; and do not require authorisation under the UCITS Directive.

### GOVERNING BODY

The governing body of the AIF shall be composed of at least three members, one of whom must be resident in Malta, and shall at all times have one or more members independent from the AIFM, the Custodian and other service providers.

### FUND MANAGER

The AIF may appoint an external Alternative Investment Fund Manager (AIFM) to manage it, or otherwise opt to be self-managed. Should an AIFM be appointed, it will be responsible for portfolio management and risk management of the AIF, and other permitted services. The AIFM shall be duly authorised in terms of the AIFM Directive (AIFMD).

If an AIF opts to be self-managed, it will be subject to additional rules applicable to self-managed AIFs.

### SERVICE PROVIDERS

Other than the AIFM (if not self-managed), the AIF is obliged to appoint a Custodian, an Auditor, a Compliance Officer and a Money Laundering Reporting Officer (MLRO). AIFs generally also appoint an Administrator, unless the AIFM opts to retain responsibility of the Administration function (subject to the AIFM being authorised to undertake Administration activities).

### INVESTMENT STRATEGIES

All investment strategies are allowed, however the AIF must respect the investment limits set out in the applicable regulations, as well as in its offering documents.

### ELIGIBLE INVESTORS

The AIF is open for both professional and retail investors, however more stringent rules will apply if the AIF is sold to retail investors.

### REGULATORY FEES

	<b>Application Fee</b>	<b>Annual Supervisory Fee</b>
AIF	€2,000	€2,000
Sub-Funds (per sub-fund)	€1,000	€600

### PASSPORTING

The AIFMD confers an EU-wide marketing passport to full-scope AIFMs to market any AIFs under their management to professional investors across the EU.

## AIF – LICENSING PROCESS

### PHASE ONE – THE PREPARATORY PHASE

- > The application form is to be submitted to the MFSA along with the required supporting documentation.
- > The MFSA carries out the necessary due diligence checks and asks for further information as it deems necessary.

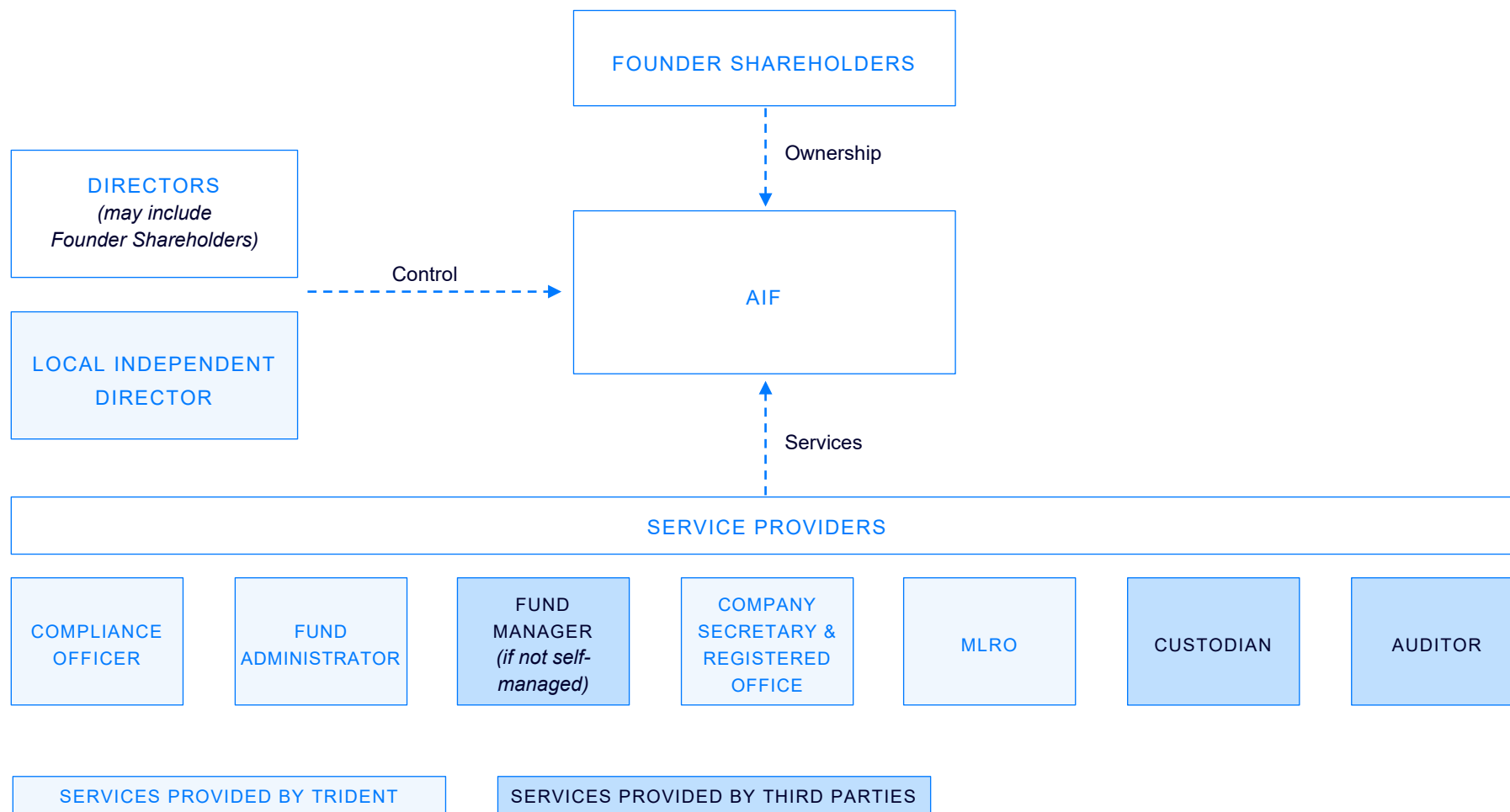
### PHASE TWO – PRE-LICENSING

- > Once the MFSA concludes the review of the application and supporting documents, it will issue its 'in principle' approval for the issue of a licence. The 'in principle' approval is valid for a period of three months during which, the applicant will be required to finalise any outstanding matters.
- > Once any outstanding matters have been finalised, the application form and the supporting documentation are endorsed by the members of the governing body of the AIF and resubmitted to the MFSA, which will, in turn, proceed with the issue of the licence.

### PHASE THREE – PRE-COMMENCEMENT OF BUSINESS

Depending on any pending matters, the AIF may be required to satisfy a number of post-licensing requirements prior to the formal commencement of business.

## AIF – SAMPLE STRUCTURE





## NAIF – MAIN FEATURES

### REGULATION

The NAIF is not subject to a licensing process like the AIF, but it is to be notified to the MFSA by the AIFM, which will have the onus to carry out the due diligence requirements and ongoing supervision on the NAIF and its service providers. In terms of the Investment Services Act and the relevant Rules, a fund may generally be eligible for notification as a NAIF if the below conditions are satisfied.

### GOVERNING BODY

The governing body of the NAIF shall be composed of at least three members, one of whom must be resident in Malta, and shall at all times have one or more members independent from the AIFM, the Custodian, the promoter and other service providers.

### FUND MANAGER

Unlike the AIF, the NAIF cannot be self-managed, and must be managed by a full-scope AIFM authorised and licensed in terms of the Investment Services Act or by an EU AIFM being in possession of a management passport under the AIFMD. The Fund Manager assumes full responsibility for the NAIF.

### SERVICE PROVIDERS

The Fund Manager is responsible for selecting the NAIF's service providers and must ensure that each service provider is fit and proper for the role, as well as for the ongoing monitoring on the selected service providers. As a minimum, the Fund Manager must appoint for the NAIF, an Administrator, a Depositary, an Auditor, and an MLRO.

### INVESTMENT STRATEGIES

All investment strategies are allowed, except for 'loan origination'. 'Loan acquisition' is also allowed, however subject to further requirements.

### ELIGIBLE INVESTORS

The NAIF is available only to Professional and/or Qualifying investors.

### REGULATORY FEES

	<b>Application Fee</b>	<b>Annual Supervisory Fee</b>
NAIF	€2,000	€2,000
Sub-Funds (per sub-fund)	€1,000	€600

### PASSPORTING

Marketing of a NAIF in EU Member States or EEA States other than Malta to investors other than Professional investors may be allowed subject to national provisions applicable in the respective jurisdiction.

## NAIF – NOTIFICATION PROCESS

### SUBMISSION OF NOTIFICATION

- > An AIFM shall submit a request to the MFSA for the inclusion of a NAIF or one or more sub-funds of a NAIF in the List of NAIFs.
- > The notification form together with the accompanying documentation referred below must be submitted to the MFSA within 30 calendar days from the date of resolution of the governing body of the NAIF, as referred below, and prior to the effective date of the prospectus.

### ACCOMPANYING DOCUMENTS

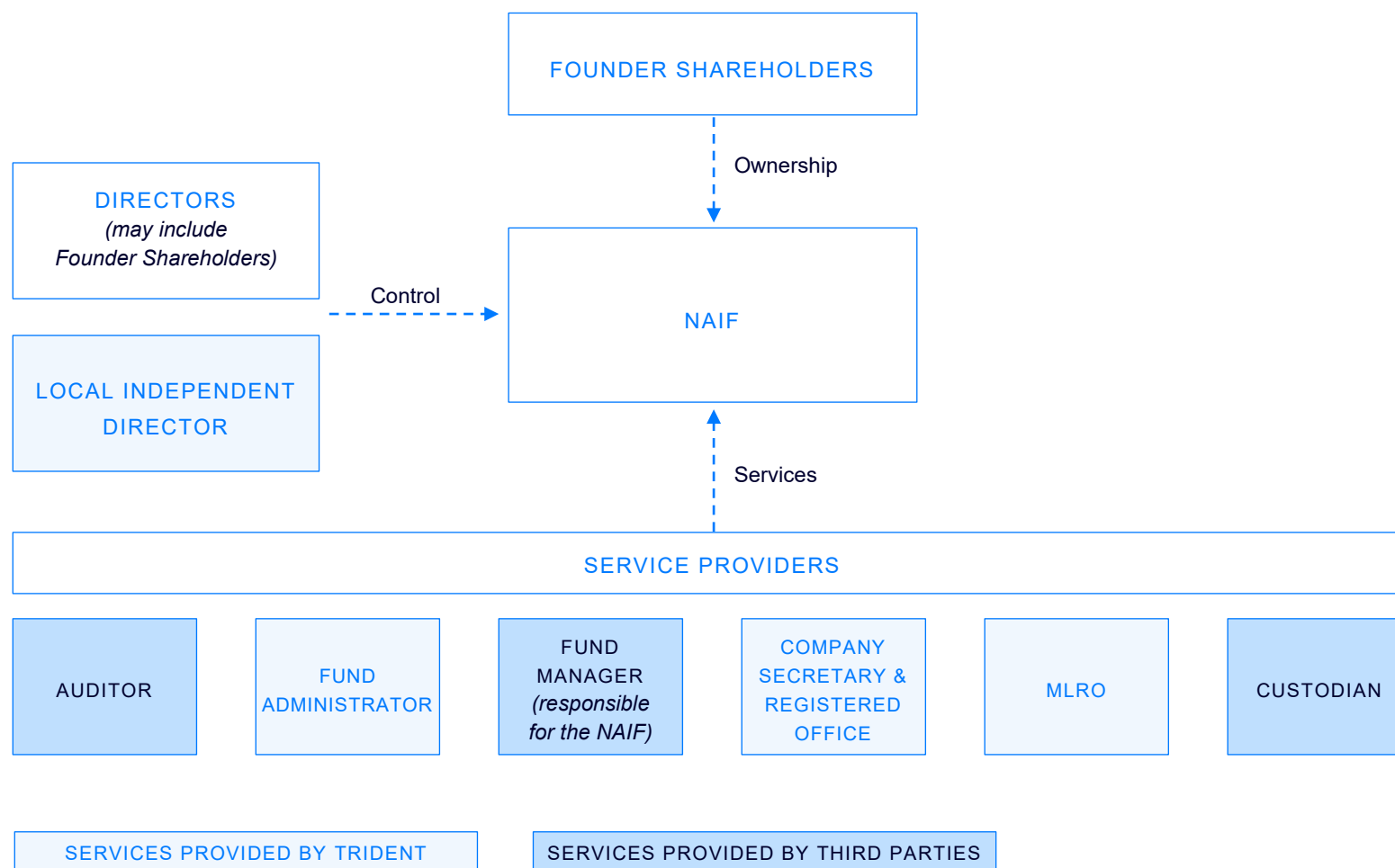
- > A prospectus containing the minimum contents prescribed by the AIFMD, along with a resolution from the governing body of the NAIF certifying this.
- > A self-certification by the AIFM that, having regard to any delegate manager(s) or advisers it has in place, it has the necessary competence and experience to manage the NAIF and effectively monitor any delegate.
- > A joint declaration by the AIFM and the governing body of the NAIF, by which, each undertakes responsibility for the proper operation of the NAIF, including obligations arising under the AIFMD.
- > A declaration by the AIFM confirming that it has carried out the necessary due diligence with regard to the service providers and the governing body of the NAIF, along with a statement that it is satisfied with the outcome of this due diligence exercise.

### INCLUSION IN THE LIST OF NAIFS

The MFSA will proceed to include the NAIF in the List of Notified AIFs within 10 working days from the date of filing of a duly completed notification pack and the notification fee.



## NAIF – SAMPLE STRUCTURE



## PIF – MAIN FEATURES

### REGULATION

The PIF regime is a local regime governed by the Investment Services Act and the Rules issued thereunder. PIFs are a class on non-retail schemes, subject to a lighter regulation than AIFs, but limited to an AUM of less than €100 million, or €500 million when unleveraged and having a lock-in period of not less than 5 years.

### GOVERNING BODY

The governing body of the PIF shall be composed of at least three members, one of whom must be resident in Malta.

### FUND MANAGER

The PIF may appoint an external Fund Manager to manage it, or otherwise opt to be self-managed. Should a third-party manager be appointed, it must either be: i) a deminimis AIFM duly licensed by the MFSA; or ii) a deminimis AIFM duly licensed by an EEA or EU Member State; or iii) a third-country AIFM which is authorised in a third country with whom the MFSA has signed a co-operation agreement in terms of the AIFMD (listed in Annex 1).

If a PIF opts to be self-managed, it will be subject to additional rules applicable to self-managed PIFs.

### SERVICE PROVIDERS

Other than the Fund Manager (if not self-managed), the PIF is obliged to appoint an Auditor, a Compliance Officer and a Money Laundering Reporting Officer ("MLRO"). PIFs generally also appoint an Administrator, unless the Fund Manager opts to retain responsibility of the Administration function (subject to it being authorised to undertake Administration activities), and a Custodian, unless it wishes to retain the responsibility for the establishment of proper arrangements for the safekeeping of the PIF's assets.

### INVESTMENT STRATEGIES

All investment strategies are allowed, however the PIF must respect the investment limits set out in its offering documents.

### ELIGIBLE INVESTORS

The PIF is open only to Qualifying investors, who must invest a minimum of €100,000 or its currency equivalent in the PIF, which investment may not be reduced below this minimum amount at any time by way of a partial redemption.

### REGULATORY FEES

	<b>Application Fee</b>	<b>Annual Supervisory Fee</b>
PIF	€2,000	€2,000
Sub-Funds (per sub-fund)	€1,000	€600

### PASSPORTING

PIFs do not benefit from the passport rights within the EU/EEA as carried by the AIFM and UCITS Directives respectively. Therefore, the PIF is subject to private placement.

## PIF – LICENSING PROCESS

### PHASE ONE – THE PREPARATORY PHASE

- > The application form is to be submitted to the MFSA along with the required supporting documentation. If the PIF is intended to invest in virtual currencies, then a meeting with officials of the MFSA is to be set up prior to submitting the application documents.
- > The MFSA carries out the necessary due diligence checks and asks for further information as it deems necessary.

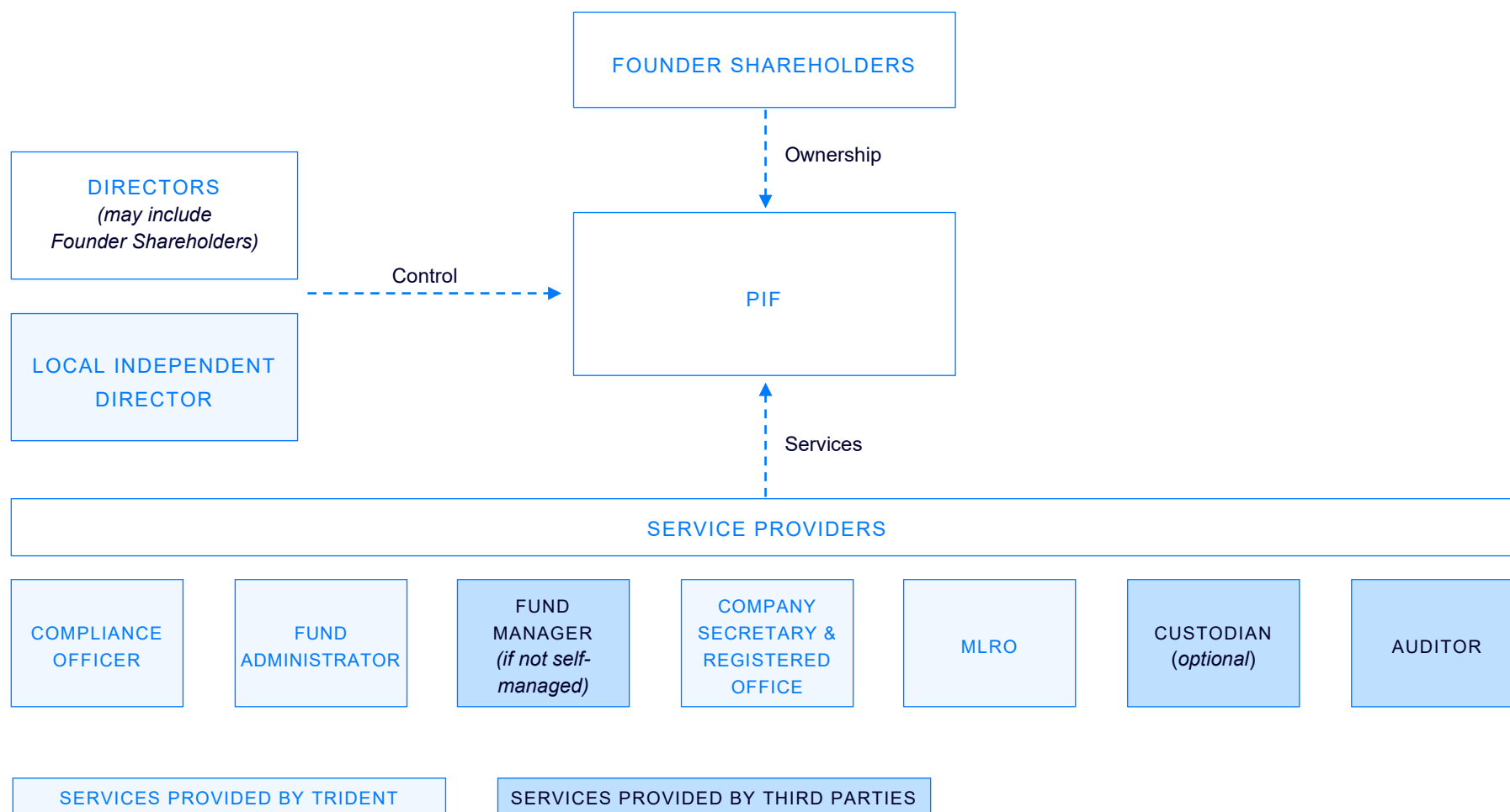
### PHASE TWO – PRE-LICENSING

- > Once the MFSA concludes the review of the application and supporting documents, it will issue its 'in principle' approval for the issue of a licence. The 'in principle' approval is valid for a period of three months during which, the applicant will be required to finalise any outstanding matters.
- > Once any outstanding matters have been finalised, the application form and the supporting documentation are endorsed by the members of the governing body of the PIF and resubmitted to the MFSA, which will, in turn, proceed with the issue of the licence.

### PHASE THREE – PRE-COMMENCEMENT OF BUSINESS

Depending on any pending matters, the PIF may be required to satisfy a number of post-licensing requirements prior to the formal commencement of business.

## PIF – SAMPLE STRUCTURE



## NPIF – MAIN FEATURES

### REGULATION

The NPIF is not subject to a licensing process like the PIF, but it is to be notified to the MFSA by the Due Diligence Service Provider (“DDSP”), which will have the onus to carry out the due diligence requirements and ongoing supervision on the NPIF and its service providers. In terms of the Investment Services Act and the relevant Rules, a fund may generally be eligible for notification as a NPIF if the below conditions are satisfied.

### GOVERNING BODY

The governing body of the NPIF shall be composed of at least three members, one of whom must be resident in Malta, and shall at all times have one or more members independent from the Fund Manager, the Custodian, the Administrator, the DDSP and the founder shareholders of the NPIF.

### FUND MANAGER

Unlike the PIF, the NPIF cannot be self-managed, and must be managed by a i) a deminimis AIFM duly licensed by the MFSA; or ii) a deminimis AIFM duly licensed by an EEA or EU Member State; or iii) a third-country AIFM which is authorised in a third country with whom the MFSA has signed a co-operation agreement (listed in Annex 1).

### SERVICE PROVIDERS

The DDSP is the most important service provider for the NPIF and is responsible for the initial due diligence and ongoing monitoring of all other service providers. Apart from the DDSP, the NPIF must appoint a Fund Manager, an Administrator, an Auditor, and an MLRO. The appointment of a Custodian is optional as the governing body of the NPIF may decide to use other safekeeping arrangements.

### INVESTMENT STRATEGIES

All investment strategies are allowed, except for ‘lending’ activity, in which NPIFs are not allowed to engage.

### ELIGIBLE INVESTORS

The NPIF is available only to Professional and/or Qualifying investors. All investors must invest a minimum of €100,000, or its currency equivalent, in the NPIF, which investment may not be reduced below this minimum amount at any time by way of a partial redemption.

### REGULATORY FEES

	<b>Application Fee</b>	<b>Annual Supervisory Fee</b>
NPIF	€2,000	€2,000
Sub-Funds (per sub-fund)	€1,000	€600

### PASSPORTING

The marketing of a NPIF in EU Member States or EEA States other than Malta is not automatic and may be allowed subject to national provisions applicable in the respective jurisdiction.

## NPIF – NOTIFICATION PROCESS

### SUBMISSION OF NOTIFICATION

- > The DDSP shall submit a request to the MFSA for the inclusion of a NPIF or one or more sub-funds of a NPIF in the List of NPIFs.
- > The notification form together with the accompanying documentation referred below must be submitted to the MFSA within 30 calendar days from the date of resolution of the governing body of the NPIF, as referred below, and prior to the effective date of the prospectus.

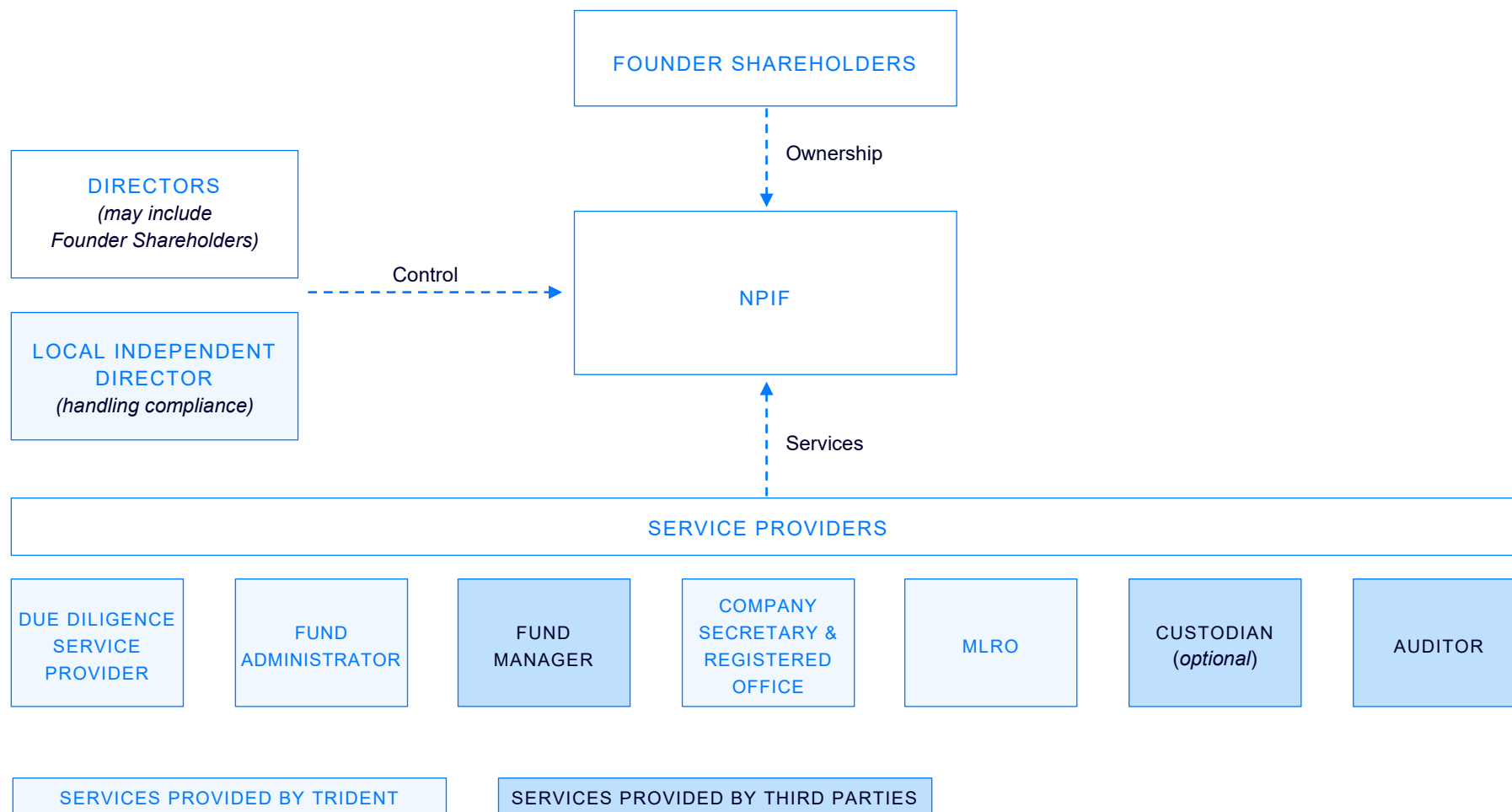
### ACCOMPANYING DOCUMENTS

- > A resolution of the governing body of the NPIF certifying that the Offering Memorandum of the NPIF satisfies the minimum criteria prescribed by the MFSA.
- > A declaration by the DDSP confirming that it has carried out the necessary due diligence, and is satisfied with the outcome, with regards to the functionaries and the governing body of the NPIF.

### INCLUSION IN THE LIST OF NPIFS

The MFSA will proceed to include the NPIF in the List of Notified PIFs within 10 working days from the date of filing of a duly completed notification pack and the notification fee.

## NPIF – SAMPLE STRUCTURE





## CONTACT

IF YOU'RE INTERESTED AND WANT TO KNOW MORE, DO NOT HESITATE TO GET IN TOUCH WITH ONE OF THE BELOW.



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## ANNEX 1

### LIST OF JURISDICTIONS WITH WHOM THE MFSA HAS SIGNED A BILATERAL COOPERATION AGREEMENT/ MEMORANDUM OF UNDERSTANDING ON SECURITIES (AS OF JANUARY 2024).

- |                          |                        |
|--------------------------|------------------------|
| > Abu Dhabi              | > Labuan               |
| > Albania                | > Malaysia             |
| > Australia              | > Maldives             |
| > Bahamas                | > Mauritius            |
| > Bahrain                | > Mexico               |
| > Bermuda                | > Montenegro           |
| > Brasil                 | > Morocco              |
| > British Virgin Islands | > New Zealand          |
| > Canada                 | > North Macedonia      |
| > Cayman                 | > Pakistan             |
| > Dubai                  | > Qatar                |
| > Egypt                  | > Singapore            |
| > Guernsey               | > Switzerland          |
| > Hong Kong              | > South Africa         |
| > India                  | > Tanzania             |
| > Isle of Man            | > Thailand             |
| > Israel                 | > Turkey               |
| > Japan                  | > United Arab Emirates |
| > Jersey                 | > United Kingdom       |
| > Kazakhstan             | > United States        |
| > Korea                  | > Vietnam              |