

Consultation Document on the Proposed Establishment of a Framework for Collective Investment Schemes Structured as Limited Partnerships without Legal Personality

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NOTE: The documents circulated by the MFSA for the purpose of consultation are in draft form and consist of proposals. Accordingly, these proposals are not binding and are subject to changes and revisions following representations received from Licence Holders and other involved parties. It is important that persons involved in the consultation bear these considerations in mind.

1. Introduction

The popularity and relevance of the Limited Partnership ('LP') as a fund vehicle lies in its key features and in the added flexibility that it provides. In this respect the addition of a new framework is guided by the intention of reaching an outcome which is practically viable for fund promoters whilst retaining a sound regulatory basis.

The MFSA is seeking to introduce a framework for CISs structured as LPs without separate legal personality into Maltese law, whilst still retaining the currently available option of setting up a CIS structured as an LP with separate legal personality.

To avoid confusion with the already-existing LP framework, the proposed framework for Collective Investment Schemes ('CISs') set up as LPs without legal personality will be referred as the Limited Partnership Funds ('LPF') framework.

The overall structure of the Maltese regulatory framework for CISs structured as Limited Partnerships does not differ excessively from the ones of other jurisdictions; however, the lack of an option to set up a CIS as an LP without separate legal personality ('LPF') appears to be a gap in the local regulatory framework.

By virtue of this consultation document, the MFSA is seeking stakeholders' views on: [i] the general features of the framework; [ii] the proposed draft legislative instrument seeking to promulgate such framework; and [iii] the views sought in relation to the rulebook and investor eligibility in sections 4 and 5.

2. Subsidiary Legislative Instrument under the Investment Services Act ('ISA')

It is being proposed that the new framework for CISs structured as LPFs will fall entirely within the MFSA's remit and will not involve other entities such as the Malta Business Registry (the corporate vehicle for a CIS structured, for example, as a company would need to be registered with the MBR). The MFSA is proposing the enactment of a new subsidiary legislative instrument – the 'Investment Services Act (Limited Partnership Funds) Regulations', to regulate CISs set up as LPFs.

Whilst the proposed framework for LPFs will be administered by the MFSA in its entirety, the *status quo* will be retained vis-à-vis CISs structured as LPs with separate legal personality. These will continue to feature under the Tenth Schedule of the Companies Act.

The proposed Legal Notice, which is being attached to this Consultation Document, provides for various matters which inter alia include: [i] the formation and constitution of the fund; [ii]

the LPF's name; [iii] the partnership agreement; [iv] changes in partnership agreements and notification thereof; [v] administration and representation of the LPF; [vi] General Partner; [vii] Limited Partner; [viii] Persons holding themselves out to be a general partner; [ix] When a limited partner ceases to be a partner; [x] When a general partner ceases to be a partner; [xi] Indemnification by the general partners; [xii] The return of limited partner's contribution; [xiii] Distributions by the LPF; [xiv] Acts in fraud of creditors; [xv] The use of Special Purpose Vehicles ('SPVs'); [xvi] The application of rules and regulations to LPFs and their service providers; [xvii] Record keeping; [xviii] Accounting requirements; [xix] The dissolution of an LPF; [xx] Administrative penalties; and [xxi] the disapplication of other legislative instruments.

3. Main Features of the Proposed Limited Partnerships without Legal Personality Framework

The main features of the proposed LPF Framework are being listed hereunder:

i. Formation of the LPF – As aforesaid, the formation process of the Limited Partnership Fund will be governed by a new regulation issued under the Investment Services Act. Under the proposed framework, as any LP, the LPF would be created by means of a partnership deed between the general partner/s and one or more investors who participate as limited partner/s. The partnership deed would be registered with the Authority, with registration being the first step of the Fund's authorisation process. The framework will be solely available to CISs which have been licensed or recognised by, or notified to, the MFSA.

ii. Legal Personality - As previously stated, LPFs will not be afforded legal personality.

iii. LPF partners and liability - In accordance with the nature of an LP, the general partner ('GP') would be responsible for the management of the partnership's business and liable for its debts and obligations. Any person may be a general partner and as is the case with LPs having legal personality being used as vehicles for licensed funds, the GP is to be subject to the MFSA's fitness and properness assessment. In the absence of a separate legal personality, any general partner would have the ability to enter into contracts on behalf of the partnership. In the event that a party wishes to take legal action against the partnership, such party would need to sue the general partner(s) individually and in order to satisfy the claims with respect to the partnership, the GP would have recourse first to the pool of assets administered as assets of the LPF, and then, once those are depleted and having regard to the unlimited liability status of the GP, to his personal assets.

Further to the above and as an additional safeguard for investors, it is proposed that the regulations promulgating the LPF framework specifically include provisions regarding: [i] segregation of assets; and [ii] disclosures.

For limited partners, analogous provisions to those currently emanating from the Tenth Schedule are being proposed: their liability would not exceed the amount of their capital contribution or commitment to the LPF. That being stated, limited partners who take part in the management of an LP may lose their limitation of

liability and will be liable as if they were a general partner in respect of all debts incurred as a result of their so acting. The proposed framework will also include a list of safe harbour activities which is similar to that currently featuring in the Companies Act.

iv. Limitation of Object - the proposed framework will require any LPF to expressly limit its object to the collective investment of its funds in securities and in other movable and immovable property, or in any of them in its partnership deed.

v. Accounting and Reporting - Since the LPF is conceived as a legal vehicle available exclusively to regulated CIS, funds structured as LPFs would also be subject to the reporting requirements featuring in the applicable Rulebook. The nature of the LPF should ensure that any income, gains or losses which arise at the level of the investment limited partnership should be treated (in proportion to how income, gains and losses are shared under the terms of the limited partnership agreement) as arising at the hands of each partner of the LPF without passing through the additional layer of the limited partnership.

4. Rulebook

The concept of an LPF is structural. To this effect, the Authority considers it potentially more feasible to include rules specific to LPFs in the various Rulebooks for CISs. This approach is already adopted for Limited Partnerships with legal personality. By adopting the same approach for LPFs, the Authority believes that it would be ensuring consistency, whilst also avoiding duplication.

Stakeholders' views in this respect, including reference to the relevant perceived benefits or otherwise of having a dedicated Rulebook, would be appreciated.

5. Investor Eligibility

The Authority is currently undertaking an assessment on the type of investors which will be allowed to invest in schemes set up as LPFs, particularly on whether the framework should be limited to professional investors. Stakeholders' views on this matter would also be appreciated.

6. Way Forward

Any comments and feedback in relation to: [i] the general features of the framework; [ii] the proposed Legal Notice attached to this Consultation Document; and [iii] the views sought in sections 4 and 5 above are to be submitted on the Government Portal. Feedback should be submitted by not later than **21 March 2024**.

The proposals set out in this consultation document and attached supporting documentation are not binding and are subject to changes and revisions following receipt of feedback from stakeholders.