

## **Consultation Procedure**

### **Proposals for Legal Notices / Ministerial Regulations and for new laws and amendments to existing laws**

#### ***Explanatory 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 not only from licence-holders and other involved parties, but also following the necessary review and vetting by the Office of the Attorney General and the relevant Minister to whom the MFSA is required by law to provide advice on financial services matters. It is important that persons involved in the consultation bear these considerations in mind.

In the case of primary legislation in particular, Bills may and do undergo revisions during the Parliamentary stages.

This consultation is also being exercised at the request and on behalf of the Ministry of Finance.

## **Note for Consultation**

### **COMPANIES ACT (TENTH SCHEDULE) REGULATIONS, 2010**

These amendments are being proposed to align to the extent possible, the Tenth Schedule of the Companies Act with the SICAV Regulations - LN 241 of 2006 as amended. In 2008 a number of amendments were carried out to the SICAV regulations. These amendments included the distinction between multi class and multi fund companies, segregation of assets of multi fund companies and others. Since point 25 of the Tenth Schedule of the Companies Act was based on the original version of the SICAV Regulations we are now in a position where this part of the Tenth Schedule requires alignment with the new version.

This alignment was considered necessary so as to bring SICAVS and Limited Partnerships on a level playing field. Currently SICAVS are in an advantageous position as they have more options available regarding form and structure. Moreover, certain provisions of the Companies Act were made non-applicable by means of the SICAV regulations or were made applicable subject to specific variations. Following the coming into force of these amendments both SICAVS and Limited Partnerships will benefit from a similar legislative framework. Accordingly, it will be possible for Limited Partnerships to be formed either as a multi class partnership or as a multi fund partnership. In the latter case the multi fund partnership may also elect for the segregation of assets and liabilities of each separate fund.

The proposed amendments reflect changes that were incorporated in regulations 2 - 16 of the SICAV Regulations. These include the applicability of article 73 of the Companies Act to Limited Partnerships, the non-applicability of articles 186 and 187(1) of the Companies Act and the non-applicability of articles 120 and 122 of the Companies Act. Since article 73, 120 and 122 of the Companies Act are provisions relating to shares and in terms of article 66 (2) of the Companies Act provisions relating to shares apply, proposed amendments provide for their non-applicability or in the case of article 73 to its application subject to specific conditions and variations. Similarly articles 186 and 187 (1) of the Companies Act apply to Limited Partnerships since in terms of article 66 (2) of the Companies Act Chapters IX and X of Part V apply. The proposed amendments make them non-applicable as well.

Other proposed amendments refer to the power of the competent authority to issue Investment Services Rules, the issue of shares at a discount and transitional arrangements.

Interested parties are kindly asked to submit any comments which they may have in relation to this draft legislation, in writing, to the Director – Securities and Markets Supervision Unit, by e-mail on [su@mfsa.com.mt](mailto:su@mfsa.com.mt) by not later than 15<sup>th</sup> July 2010.

**Securities and Markets Supervision Unit**

**16<sup>th</sup> June 2010**