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**FEEDBACK STATEMENT FURTHER TO INDUSTRY RESPONSES TO
MFSA CONSULTATION DOCUMENT DATED 7TH AUGUST 2017 ON
PROPOSED REVISIONS TO THE NAIF REGIME**

1. Introduction

On 7th August 2017, the Authority launched a consultation on the proposed amendments to the NAIF regime. The consultation period ran till 1 September and the Authority received four submissions in reply to the Authority's proposals.

2. Feedback received

- *Broader scope of the NAIF regime*

The feedback received favoured the Authority's decision to widen the scope of this regime to immovable property and infrastructure projects. Furthermore, the Authority confirms that the provisions of the Property Funds Policy will not apply to AIFs targeting professional and qualifying investors. Retail AIFs cannot be established as property funds.

The Authority was further asked to consider the possibility of including within the scope of this regime funds investing directly in all kinds of alternative assets to the exclusion of loan funds.

The Authority will be widening the scope of the NAIF regime to include certain non-financial assets i.e. vintage cars, works of art, precious metals and antiques.

- *Reference to the Corporate Governance Manual for Directors of Investment Companies and Collective Investment Schemes*

The Authority proposed to revise SLC 11.06 to further emphasize the requirement of independent directors on the Board.

The Authority received feedback in relation to the proposed draft including drafting suggestions which it will be taking on board. SLC 11.06 will be revised to read as follows:

“When structuring the AIF as an investment company, the AIF shall at all times have one or more directors independent from the AIFM, the custodian, the promoter and all other service providers appointed by the AIF and/or the AIFM. Furthermore, the board of directors of the investment company shall be composed of at least three members, one of whom must be resident in Malta:

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Provided that the governing body of the AIF shall endeavour to comply with the Corporate Governance Manual for Directors of Investment Companies and Collective Investment Schemes.”

- *Proposed revisions to SLC 11.09*

The Authority proposed to revise SLC 11.09 to include the requirement for AIFMs to submit to the Authority updated copies of the Terms of Reference the Risk Management Policy.

The feedback submitted for the Authority’s consideration consisted of the following:

- (i) The updated terms of reference of the Investment Committee should only be submitted in the case where the composition of the IC changes. Nonetheless, the AIFM would need to confirm that the current composition of the IC as approved by the MFSA will be assuming responsibility for the management of the assets of the NAIF.
- (ii) In relation to the Risk Management Policy, should this be drafted in a sufficiently broad manner to cater for the NAIF’s investment strategy, this should not be resubmitted.

Should the AIFM need to resubmit revised documentation, this would have to be resubmitted ahead of the notification relating to the NAIF.

In this regard, the Authority has taken note of the feedback submitted and has revised SLC 11.09 and the Notification Form.

- *SLC 11.12*

The Authority received suggestions in relation to suggested changes to SLC 11.12.

In this regard, it was suggested that this SLC be revised to provide that anyone can hold the founder shares now condition that the Rules provide for the approval of the AIFM (a) where the holders of the founder shares wish to appoint a new Director or; (b) in case of proposed changes to the M&A of the NAIF. Therefore, such an arrangement would ensure that the promoter of the NAIF or any other third party can hold the Founder Shares and at the same time, the AIFM retains control over the changes to the composition of the Board of Directors and changes to the M&A of the NAIF.

Therefore SLC 11.12 will read as follows:

“All rights other than any rights to income or capital, of any founder or similar shares shall be retained by the holders of the founder shares upon inclusion of the AIF in the List of Notified AIFs subject to compliance with the following conditions:

- (a) the appointment of a new member to the governing body of the AIF shall be subject to the approval of the AIFM;
- (b) any changes to the Memorandum and Articles of Association of the AIF shall be subject to the approval of the AIFM.”

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Furthermore, SLC 11.21 will read as follows:

“In carrying out the necessary due diligence processes, the AIFM shall apply the “fit and proper” test in order to ensure that service providers, members of the NAIF’s governing body and the founder shareholders meet the following three criteria namely:

- (a) integrity which means that the service providers, members of the NAIF’s governing body and founder shareholders act honestly and in a trustworthy fashion;
- (b) competence which involves that the service providers, members of the AIF’s governing body and founder shareholders are able to demonstrate professional expertise and experience; and
- (c) solvency which involves ensuring proper financial controls and management of liquidity and capital where applicable.

The MFSA shall make available to AIFMs ad hoc Guidance on the manner in which it expects AIFMs to carry out the due diligence exercise.

- *Proposed revisions to SLC 11.27*

The Authority did not receive any comments in relation to the proposed amendments to SLC 11.27.

- *Proposed revisions to SLC 11.43*

The Authority received feedback in relation to the proposed draft including a drafting suggestion which it will be taking on board. SLC 11.43 will be retained as currently is. The procedure applicable to changes of Offering Documentation will be sent to the Authority as indicated in the Rules and the Authority will thereafter acknowledge receipt upon ascertaining that the requirements prescribed in the Rules have been fulfilled.

- *Discussions in relation to Continuation of Companies Regulations issued in terms of the Companies Act.*

The Authority received positive feedback in relation to this initiative. Furthermore the Authority was asked to consider whether regulated AIFS could convert to NAIFS but for the time being, this recommendation is not being pursued.

The Authority is currently reviewing the Continuation of Companies Regulations and the MFSA Guidelines to re-domiciliation of offshore funds to Malta with a view of allowing the continuation of funds as NAIFs.

Communications Unit
MFSA Ref: 03-2017
15th January 2018

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