

Consultation on the Proposed Establishment of a Framework for Notified Professional Investor Funds

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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.

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1. Introduction

- 1.1 On the 28 October 2021, the Malta Financial Services Authority (MFSA) published a [Discussion Paper on its Asset Management Strategy](#). Pillar III thereof proposed policy initiatives and new regulatory frameworks that could further enhance the attractiveness of Malta's asset management sector.
- 1.2 Proposal 9 of the Discussion Paper invited stakeholder feedback on the possible introduction of a regulatory framework for Notified Professional Investor Funds (NPIFs). This proposal was well received by respondents, highlighting that this may contribute towards Malta's attractiveness as a fund jurisdiction and would address the needs of a specific segment of the market.
- 1.3 The NPIF proposal seeks to provide an additional fund structure which complements existing fund frameworks, entailing potentially lower associated setup and other operational/regulatory costs currently experienced in operating a fully licensed fund. It also takes a more proportionate and risk-based approach to the onboarding process given the regulated status of the funds' service providers and the qualified status of the target investors.
- 1.4 In its assessment leading to the proposed regime, the Authority has also taken into consideration the inclusion of specific features derived from both the existing Notified AIF and licensed Professional Investor Fund (PIF) regimes. The new framework would moreover require amendments to legislation and a dedicated rulebook.
- 1.5 By virtue of this Consultation document, the MFSA is seeking stakeholders' views on the main features of the proposed framework and its first draft of the dedicated rulebook for the envisaged NPIF framework.

2. Legislative Amendments

- 2.1 As stated in paragraph 1.4 above, while the details of the framework are included in the proposed rulebook, the promulgation of the framework will also require changes to the legislative framework. Legislative proposals in this regard will be the subject of a separate consultation exercise in the near future.

3. Rulebook

- 3.1 The Authority is proposing a dedicated rulebook for the promulgation of this framework – ‘Rules for Notified PIFs and related Due Diligence Service Providers’. It is being proposed that this is composed of two parts, A and B. Alongside this rulebook, amendments are also being proposed to Part A of the Investment Services Rules for Professional Investor Funds.
- 3.2 Part A of the Rules for Notified PIFs and related Due Diligence Service Providers sets out the main characteristics of the proposed framework, describing the applicable framework and outlining, *inter alia*, the role of the governing body of the NPIF, due diligence requirements, the duties of the Service Provider, anti-money laundering obligations, safekeeping arrangements and the roles of the fund administrator and of the fund manager.
- 3.3 Part B of the Rules for Notified PIFs and related Due Diligence Service Providers focuses on the applicable ongoing requirements, *inter alia* including, ongoing due diligence requirements, reporting matters and other regulatory obligations.
- 3.4 Amendments to Part A of the Investment Services Rules for PIFs are also being proposed. These mainly cater for the eventuality of a conversion of a licensed PIF to a Notified PIF. Furthermore, the Glossary of the PIF Rules is also being revised to amend the definition of a PIF.
- 3.5 The proposed drafts of the Rules are attached to this Consultation document for stakeholders’ feedback.

4. Main Features of the Proposed NPIF Framework

- 4.1 NPIFs will be subject to a notification process and will therefore not be licensed by the MFSA. Such funds and their service providers will be required to adhere to the relevant supervisory conditions, as stipulated in the proposed framework.
- 4.2 The content of any marketing or offering documentation will not be subject to a regulatory review and approval by the MFSA and the ultimate responsibility on the content of this documentation will lie with the NPIF, which would need to be in compliance with the Checklist/ Guidance to be included as part of this framework.
- 4.3 NPIFs will be non-retail schemes and only available to investors qualifying as Qualifying Investors. NPIFs are riskier funds by nature in view of the less onerous regulatory requirements that will apply and will be subject to the minimum level of supervision for a

collective investment scheme under Maltese law. The NPIF will be required to provide the appropriate risk disclosures to any prospective investor accordingly.

- 4.4 NPIFs would not be allowed to be structured as self-managed funds but would be required to be set up as third-party managed funds.
- 4.5 NPIFs would only be allowed to be managed by: [i] locally licensed de minimis AIFMs; [ii] EU de minimis AIFMs which have been authorised in an EU or EEA State and which the Authority deems to be subject to regulation in an equal or comparable level to that it would have been subject to in Malta; and [iii] third country AIFMs which are authorised in a jurisdiction with whom the MFSA has signed a cooperation agreement/ memorandum of understanding on securities, and which the Authority deems to be subject to regulation in an equal or comparable level to that it would have been subject to in Malta.
- 4.6 A core feature of the proposed framework is that a third-party service provider is to be entrusted with conducting due diligence with respect to the NPIF, both at notification stage and on an ongoing basis. It is being proposed that only persons who are competent and having resources to perform such a service and who are either: [i] recognised fund administrators duly authorised by the MFSA; or [ii] authorised (full) AIFMs; or [iii] Corporate Company Service Providers, licensed under the Company Service Providers Act which are not under-threshold CSPs; are to be considered as eligible to carry out this role.
- 4.7 The NPIF is to have an MLRO to carry out the money laundering reporting function in relation to the NPIF, at all times. The governing body of the NPIF may, in terms of the Implementing Procedures issued pursuant to the Prevention of Money Laundering and Fund of Terrorism Regulations delegate the money laundering reporting function of the NPIF to either one of the following: [i] the administrator of the NPIF, provided that such administrator is a Recognised Fund Administrator in terms of Article 9A of the Act or is authorised in an EU Member State, or in a reputable jurisdiction; or [ii] an officer of the NPIF who has sufficient seniority and command in accordance with the Implementing Procedures referred to above.
- 4.8 At least one of the members of the governing body of the NPIF is to be resident in Malta.
- 4.9 Whilst the governing body of the NPIF would be ultimately collectively responsible for the NPIF's compliance with the applicable provisions of the Act, the Regulations issued thereunder, and the Rules as well as with other relevant legal and regulatory requirements, the local member of the governing body shall be responsible for leading matters relating to the compliance of the NPIF and is to be in charge of any reporting in relation thereto.
- 4.10 The governing body shall be required to submit to the Authority, on an annual basis, a Compliance Certificate in relation to the NPIF.

- 4.11 NPIFs would be allowed to engage in any investment strategy, with the exception of 'Lending' activity, as defined in the MFSA Loan Fund Rules.
- 4.12 The assets of the NPIF shall be subject to adequate safekeeping arrangements – these are: [i] to be outlined as part of the notification process; and [ii] detailed in the offering memorandum of the NPIF.
- 4.13 Fund administration services in relation to a NPIF are to be carried out by a fund administrator that is established in Malta and in possession of a Fund Administration recognition certificate in terms of the Act.
- 4.14 The MFSA may remove a NPIF, including any sub-fund, from the List of NPIFs at any time at its sole discretion, following notification thereof to the governing body of the NPIF.

5. Concluding Remarks

- 5.1 Stakeholders are invited to submit, for the consideration of the Authority, any comments they may have on: [i] the main features of the proposed framework detailed in section 4 above; as well as [ii] the draft rulebook attached which is being attached to this Consultation document.
- 5.2 Stakeholders are to note that as part of the proposed Rulebook, the Authority also intends to include, in due course, a dedicated application form, together with other appendices/checklists relating to confirmations that would need to be provided periodically to the MFSA and the content of the offering memorandum. In addition, as part of this framework, the Authority also intends to issue dedicated Guidance Notes with regards to the fitness and properness assessment to be conducted by the appointed third-party service provider conducting the due diligence assessment.
- 5.3 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.
- 5.4 Interested parties are to send their comments in writing by not later than **31 January 2023**. Any comments and feedback are to be addressed to assetmanagementstrategy@mfsa.mt.