

# Consultation on the Proposed Legislative Amendments to Promulgate 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.

## Contents

1. Introduction .....	3
2. Legislative Amendments .....	3
3. Rulebook .....	5
4. Concluding Remarks .....	5

## 1. Introduction

- 1.1 On 22 December 2022, the Authority published a [Consultation Document on the Proposed Establishment of a Framework for Notified Professional Investor Funds](#) seeking stakeholders' views on the main features of the proposed framework and its first draft of the dedicated rulebook for the envisaged NPIF framework.
- 1.2 As stated in the aforementioned Consultation Document, while the details of the framework are to be included in the proposed rulebook, the promulgation of the framework will also require changes to the legislative framework.
- 1.3 By virtue of this Consultation Document, the MFSA is accordingly seeking stakeholders' views on the proposed legislative amendments being envisaged to promulgate a framework for NPIFs, including the applicable fees.

## 2. Legislative Amendments

- 2.1 The MFSA has assessed the current regulatory framework in order to identify the required amendments to promulgate the framework for NPIFs. As a result of such assessment, the MFSA is proposing amendments to the Regulations listed hereunder:
  - i. S.L. 370.34 – Investment Services Act (List of Notified AIFs) Regulations
  - ii. S.L. 370.02 – Investment Services Act (Exemption) Regulations
  - iii. S.L. 370.03 – Investment Services Act (Fees) Regulations
  - iv. S.L. 331.02 – Trusts and Trustees (Exemption) Regulations
  - v. S.L. 386.02 – Companies Act (Investment Companies with Variable Share Capital) Regulations
- 2.2 Whilst drafts of these proposals are being attached to this consultation document, an overview is being provided in paragraphs 2.2.1 to 2.2.5 hereunder.
  - 2.2.1 **Proposed amendments to the 'Investment Services Act (List of Notified AIFs) Regulations' (S.L. 370.34)** - The NAIF framework is established by means of these Regulations. As a result, amendments are being proposed to the said Regulations in order to cater for NPIFs as well. The amendments being proposed reflect the general features of the Proposed NPIF Framework as outlined in the previous consultation dated 22 December 2022.

- 2.2.2 **Proposed amendments to the 'Investment Services Act (Exemption) Regulations' (S.L. 370.02)** - NPIFs will be subject to a notification process and will therefore not be licensed by the MFSA. As a result, the MFSA is proposing that amendments are made to these Regulations in order to exempt NPIFs from the licencing requirement under the Investment Services Act ('ISA'). Moreover, these proposed amendments would exempt NPIFs from operating in accordance with the principle of risk spreading. It is worth noting that amendments are also being proposed in relation to NPIF custodians and managers residing outside of Malta.
- 2.2.3 **Proposed amendments to the 'Investment Services Act (Fees) Regulations' (S.L. 370.03)** - By means of the amendments being proposed to these Regulations, the MFSA is seeking to introduce: [i] a notification fee for NPIFs; and [ii] a renewal of notification fee, which is to be paid annually. The proposed quantum of the fees is the same as that for Notified AIFs.
- 2.2.4 **Proposed amendments to the 'Trusts and Trustees (Exemption) Regulations' (S.L. 331.02)** - These Regulations list certain classes of persons that are exempt from the requirements of article 43 of the Trusts and Trustees Act (Chapter 331 of the Laws of Malta), which inter alia include: [i] persons residing outside of Malta where such persons in Malta are acting as trustees of units in a collective investment scheme which is licensed or recognised in terms of the ISA, provided that such persons are established in an approved jurisdiction and do not act in Malta as trustees on a regular and habitual basis or hold themselves out as trustees (regulation 3(1)(c) of the Regulations); and [ii] persons residing outside of Malta acting as trustees in terms of paragraph 5(c) of the First Schedule to the ISA, in relation to a collective investment scheme licensed under the said Act and qualifying as a Professional Investor Fund in terms of the Investment Services Rules, provided that such persons are of sufficient standing and repute (regulation 3(1)(d) of the Regulations). These exemptions apply in the context of PIFs. In this regard, it is to be noted that the proposed amendments put forward similar exemptions in the context of NPIFs.
- 2.2.5 **Proposed amendments to the 'Companies Act (Investment Companies with Variable Share Capital) Regulations' (S.L. 386.02)** - It is to be noted that the amendments being proposed to these Regulations specifically target regulations 10 and 15 thereof. In fact, these proposed amendments seek to align the proposed NPIF framework with the existent NAIF and licensed PIF frameworks.

### 3. Rulebook

3.1 As stated in paragraph 1.1 above, the main features of the proposed framework and the MFSA's first draft of the dedicated rulebook for the envisaged NPIF framework were the subject of a separate consultation document published on 22 December 2022. The consultation period closed on 17 February 2023 and the feedback received was positive. The Authority plans to publish one holistic Feedback Statement covering both rules and legislative amendments, therefore covering both consultation documents.

### 4. Concluding Remarks

- 4.1 Stakeholders are invited to submit any comments they may have on the proposed legislative amendments, which are being attached to this Consultation document, for the consideration of the Authority.
- 4.2 The proposals set out in this Consultation Document and attached supporting documentation are not binding and are subject to changes or revisions following receipt of feedback from stakeholders.
- 4.3 Interested parties are to send their comments in writing by not later than **22 June 2023**. Any comments and feedback are to be addressed to [assetmanagementstrategy@mfsa.mt](mailto:assetmanagementstrategy@mfsa.mt).