

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

CONSULTATION DOCUMENT

PROPOSED RULES FOR PRIVATE EQUITY FUNDS

[MFSA REF.: 08/2014]

19 November 2014

Closing Date: 19 December 2014

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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PROPOSED RULES FOR PRIVATE EQUITY FUNDS

1. Background and Purpose

On 2 June 2014, the Authority issued for consultation the proposed amendments to the Tenth Schedule of the Companies Act. The principal objective of these amendments was to review the regime applicable to partnerships *en commandite* established as collective investment schemes in terms of the Act. The ultimate aim of the proposed amendments was to ensure that the current provisions of the Tenth Schedule as well as the proposed amendments thereto would be workable for private equity funds. The consultation was concluded on 24 June 2014 and the Authority assessed all the feedback received. Currently the Legal Notice amending the Tenth Schedule to the Companies Act is awaiting ministerial approval.

The Authority is now proceeding with a second consultation relating to the issue of Investment Services Rules applicable to private equity funds (hereinafter referred to as ‘the Rules’). In terms of the Authority’s proposal, it will be possible for private equity funds to be structured either as Professional Investor Funds or as Alternative Investment Funds. The Authority did not opt for the preparation of an *ad hoc* rulebook. These Rules have therefore been drafted as Supplementary Licence Conditions applicable in addition to the Investment Services Rules for Alternative Investment Funds or the Investment Services Rules for Professional Investor Funds as the case may be.

3. Contents and the Authority’s Approach

The proposed Rules are divided into seven sections covering general requirements, service providers, investment objectives, policies and restrictions, disclosure to investors, reporting requirements, and supplementary conditions for self-managed schemes and are applicable to schemes whose objective is to generally invest in non-listed companies or issuers.

In addition to this Rulebook, the MFSA is also considering amending Appendix I to Part B of the Investment Services Rules for Professional Investor Funds and Appendix I to Part B of the Investment Services Rules for Alternative Investment Funds to clarify the manner in which a self-managed Limited Partnership as opposed to a third party managed Limited Partnership may be structured given the dual role often carried out by the General Partner as the governing body and fund manager. This is to continue to facilitate the structuring of private equity funds as limited partnerships.

The Authority has also considered whether to include in the supplementary licence conditions for PIFs the AIFMD asset stripping provisions (Articles 26 to 30). The Authority sees such measures as particularly relevant for private equity funds but has nevertheless not imposed these additional obligations on *de minimis* fund managers and third country AIFMs managing a PIF.

Q1. Do you agree with the Authority's approach as outlined above? If not, please explain the reasons.

Q2. Do you consider a limited partnership where the general partner undertakes the investment management activities as being an internally managed or an externally managed scheme?

Q3. Do you think that the AIFMD asset stripping provisions should be applied to private equity funds in the form of PIFs to make them consistent with AIFs?

4. Contacts

The Authority invites comments on all matters in this consultation together with the questions outlined above. Any comments and feedback are to be addressed to the Securities and Markets Supervision Unit by e-mail on su@mfsa.com.mt. Interested parties are to send their comments in writing by not later than **19 December 2014**.

**Communications Unit
Malta Financial Services Authority
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