

# Consultation Document on Pillar III of the MFSA Capital Markets Strategy

## Strengthening the Sponsors' Regime

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## 1 Introduction

In anticipation of an application for admissibility to listing of securities on a regulated market, a significant amount of preparatory work is required to be undertaken to ensure that the securities in question are eligible for listing, that the issuer complies with the relevant regulatory requirements and meets certain minimum standards in three main areas - financial soundness, corporate governance and transparency. In this respect, sponsors are key players as they generally act as the appointed experts on the listing regime, tasked with advising and guiding issuers on the listing process.

The Malta Financial Services Authority ('MFSA' or 'the Authority') attaches particular importance to the sponsors' role as they are very often one of the first port of call for prospective issuers and are considered to be the first line of defence in preventing persons who are not fit and proper from accessing the Maltese capital markets. The MFSA envisages that adequately clarifying its expectations vis-à-vis the sponsors' responsibilities could enhance the quality of submissions made by sponsors to the MFSA, and subsequently the time to market of applications for admissibility to listing.

## 2 Concept

As stated in its Capital Markets Strategy, more specifically in Pillar III thereof, the MFSA is considering strengthening the current regulatory framework for sponsors. The ultimate objectives of this initiative are to introduce more focused requirements for firms seeking to act as sponsors on the local regulated market and to clarify the MFSA's expectations in this regard. The initiative would *inter alia* seek to:

- Ensure that sponsors have the necessary competence, experience and resources to guide issuers seeking authorisation for admissibility to listing, to encourage the entry of quality issuers and/or proposals into the market whilst mitigating the risks which could undermine market confidence and investor trust;
- Clarify expectations on internal governance structures and ascertaining that the persons acting as sponsors are independent of both the issuer and any other regulated activity carried out by the firm; and

- Introduce a light-touch registration framework, including transitory provisions, for prospective and existing sponsors, and possibly a more streamlined registration process for license holders already authorised in the investment services sector.

It is emphasised that the initiative to strengthen the sponsors' regime is part of the MFSA's comprehensive five-pillar strategy to foster growth and innovation within the local capital markets, whilst protecting investors and financial market integrity and stability. The proposals put forward in this consultation are therefore not binding and are subject to changes and suggestions following representations received from stakeholders. It is important that persons involved in the consultation bear these considerations in mind.

### 3 Current Requirements

The current framework for sponsors, the local regime applicable to the main regulated market, is provided in Chapter 2 of the MFSA's Capital Markets Rules. These Rules require that a sponsor is to be appointed where an applicant is applying for a primary listing of its securities and the production of a prospectus or equivalent document is required. The same chapter also contains the general eligibility requirements relating to sponsors, together with their responsibilities to both the issuer and the MFSA.

In terms of eligibility criteria, the sponsor appointed under Chapter 2 must be independent of the issuer and must be in possession of a Category II or III licence in terms of the Investment Services Act ('ISA'), exempt from authorisation in terms of regulations issued under the ISA or authorised to provide investment services under Directive 2004/39/EC (MiFID)<sup>1</sup>.

Under the current framework, any provisions on the characteristics and responsibilities of sponsors are limitedly contained in the aforementioned Chapter 2 of the Capital Markets Rules. It should be noted that the MFSA does not formally approve sponsors, nor does it maintain a list thereof.

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<sup>1</sup> It should be noted that the licensing categories under the ISA have changed as a consequence of the transposition/implementation of the Investment Firms Regulation and Directive; and MiFID has been superseded by MiFID II.

## 4 A Proposal for Strengthening the Sponsors' Regime

### 4.1 Background

The proposal put forward by the MFSA in this consultation document aims to strengthen the role of sponsors within the local context, given their pivotal role in maintaining a high reputation of the local regulated market. The sponsors' regime is intended to help ensure that prospective issuers are adequately supported during the listing process and that they receive unbiased expert advice in preparation for this process.

In formulating the proposal, the MFSA has considered the specificities of the local capital market, the objectives which the MFSA aims to achieve through the initiative as well as the approach adopted in other jurisdictions, both within and outside of the European Union ('EU').

### 4.2 Main Features

The cornerstone of this initiative is essentially the introduction of a registration framework for sponsors, to raise the standards of these market players based on increased accountability and clearer responsibilities, whilst ensuring a level playing field through a calibrated and competitive compliance framework formulated on good practices.

The following have therefore been identified as the main features of the proposed sponsors' regime on which the formulation and implementation of the initiative shall primarily be based.

#### 4.2.1 Eligible Candidates

Cognisant of the fact that such firms are already subject to certain prudential and product governance requirements, it is being proposed to retain the present requirement that eligible candidates wishing to provide sponsors services must be authorised to provide investment services in terms of the ISA and/or MiFID II<sup>2</sup>. The MFSA considers that, in addition to already possessing a licence to provide related regulated services, such firms are also well-placed in providing the right mix of market insight and investor protection considerations.

This notwithstanding, the MFSA is also considering extending the pool of eligible candidates to other regulated entities - going beyond those authorised to provide investment services

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<sup>2</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

– to the extent permitted by law. Should this possibility be pursued, the MFSA will subject such candidates to additional criteria, by embedding certain MiFID requirements into the sponsors' framework to further strengthen the role of the sponsor and mitigate any investor protection concerns.

#### **4.2.2 Role Definition**

Given the importance of their function and the divergent practices observed amongst sponsors over the years, it is essential that the sponsors' role and responsibilities are clearly defined and that sponsors are provided with sufficient guidance on how to meet the MFSA's expectations. It is therefore proposed that these features of the regime are duly elaborated on, to clarify the assessment that sponsors are expected to carry out prior to submitting any applications or documentation to the MFSA. This is *inter alia* envisaged to include more focused guidance on the checks that are expected to be undertaken on the three pillars of transparency, corporate governance and financial soundness to attain greater consistency in the quality of submissions being made and determine accountability when certain standards are not adequately met.

In this respect, the MFSA is considering retaining and potentially extending the declarations currently submitted by sponsors as a mechanism for assessing compliance, whilst also possibly empowering sponsors to probe issuers and their respective advisors (where deemed appropriate) to enable them to make such declarations.

The initiative is also expected to be designed in such a manner that sponsors will not be held accountable for the ongoing actions of issuers beyond the assurances provided to the MFSA regarding the compliance status of the issuer at listing stage.

#### **4.2.3 Organisation and Governance**

The sponsor should be structured in a manner which allows it to provide sponsor services with due care and skill. This essentially means that sponsors are expected to meet certain competence and independence criteria to ensure the efficient and professional delivery of their services. The proposal seeks to lay down minimum expectations and criteria governing these two aspects.

Firstly, sponsors shall be expected to possess adequate knowledge and experience in relation to at least the Capital Markets Rules, the MFSA Listing Policies and the Prospectus

Regulation<sup>3</sup>, including any related delegated regulations and European Securities and Markets Authority ('ESMA') publications issued thereunder. In order to satisfy this condition and to mitigate key person risk, the proposal seeks to introduce a staffing requirement for sponsors, to require a minimum number of personnel focussed on sponsor services for the duration of its service offering. Such personnel should be able to demonstrate adequate knowledge and experience in the aforementioned areas, either individually or on a holistic basis.

Sponsors are also expected to have adequate procedures and controls in place to ensure that any conflicts of interest affecting: [i] the sponsor's ability to provide sponsor services; and/or [ii] market confidence in sponsors; are effectively identified and managed. In an effort to further mitigate this risk, the proposal seeks to ensure that the personnel providing sponsor services are independent from the issuer, as well as any other regulated or unregulated services offered by the sponsor firm, including the distribution of financial instruments offered by issuers to whom they are providing advice as sponsor.

## 5 Implementation

### 5.1 Options Considered

The MFSA has identified three possible options as to how the initiative could potentially be implemented.

#### **Option 1: Bolster the current chapter in the Capital Markets Rules by including better defined requirements and more specific expectations.**

This first option proposes that the Capital Markets Rules are updated to reflect better defined requirements with regards to the competency, structure and independence of those persons acting as sponsors, complemented with detailed expectations on the overall quality of applications submitted to the MFSA. This could potentially be achieved by providing high-level guidance on what is expected from sponsors and the documentation they submit on behalf of issuers.

As part of the existing declarations which are already required to be submitted by the sponsor, an additional self-declaration could be requested whereby once a letter of

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<sup>3</sup> Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC.

engagement with a prospective issuer has been signed, the sponsor should immediately notify the MFSA and concurrently submit a self-assessment confirming that they meet all the relevant eligibility criteria to be appointed as sponsor on an application.

The rules could be further refined to grant the MFSA the possibility of requesting documentation to corroborate this assessment, and to request the removal of the sponsor from an application should it deem that the criteria have not been sufficiently satisfied.

## **Option 2: Enacting a standalone regime for sponsors.**

The second option contemplates the possibility of formulating a standalone sponsors' regime by way of a new and separate framework which will supersede the present requirements and will instead necessitate that sponsors obtain registration with the MFSA prior to providing any sponsor services. This option envisages the promulgation of a separate rulebook (and subsidiary legislative instrument) for sponsors.

Should a standalone sponsors framework be created, the MFSA would evaluate a predetermined set of documentation to ensure that the firm seeking registration has met all the relevant criteria. If, following its assessment, the MFSA deems that all relevant criteria have been satisfactorily met, then registration would be granted, and the sponsor would be included on a list of sponsors maintained and published by the MFSA.

As part of its registration application, it is proposed that the sponsor would submit to the MFSA a predetermined set of documentation and declarations setting out how it deems itself able to meet the requirements and eligibility criteria of the revamped sponsors' regime. Registered sponsors will be subject to the MFSA's supervision, to ensure that the relevant obligations are met on an ongoing basis and that the expected standards are upheld. Furthermore, the new regime would also need to consider the ongoing obligations which sponsor firms are already subject to, under other existing and applicable regulatory frameworks relative to their licence, so as to avoid any unnecessary burdens and duplication of effort on all fronts.

## **Option 3: A hybrid approach consolidating the most pertinent elements of Options 1 & 2.**

A possible third option which could be considered is a hybrid approach of the two options detailed above. The intention of this third approach would be to consolidate the most valid and practical aspects of the first two options, in an effort to formulate a compromise between the two distinct approaches which are ultimately both seeking to achieve the same outcome.



This would *inter alia* involve the incorporation of the aforementioned registration framework in the existing Capital Markets Rules as opposed to formulating an entirely new standalone rulebook from scratch and would also require a number of regulatory changes including changes to the existing chapter within the Capital Markets Rules and possibly a subsidiary legislative instrument.

## 5.2 Preferred Option

Whilst presenting all three options to stakeholders for feedback, the MFSA considers Option 3 as the preferred option in attaining the objectives outlined in Section 1, given the flexibility afforded to tailor the sponsors' regime to the needs of the local market.

In line with the MFSA's vision to enhance stakeholder engagement, draft versions of any proposed rules and/or legislative instruments shall be issued for public consultation in due course.

## 6 Conclusion

Prior to proceeding with detailed proposals on the implementation of the initiative presented in this document, the MFSA is seeking feedback on [i] the proposed main features of sponsors and [ii] the options identified for its implementation.

The consultation is open to the public for a period of one month, until **2 August 2024**. Industry participants and interested parties (including issuers, investment firms and legal, audit, corporate finance or regulatory advisors) are invited to send their responses via email to [sponsorsconsultation@mfsa.mt](mailto:sponsorsconsultation@mfsa.mt).