

Feedback Statement on the Proposed Establishment of a Framework for Collective Investment Schemes Structured as Limited Partnerships without Legal Personality

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Table of Contents

1 Introduction	3
2 Feedback on the General Features of the Framework	4
2.1 Nomenclature	4
2.2 Disclosure of Beneficial Owner	4
2.3 Transparency	5
2.4 Possibility of having multi-class / multi-fund SLPFs	5
2.5 Maintaining a register of SLPFs	5
3 Feedback on the Proposed draft Legislation	6
3.1 Definitions	6
3.2 Contribution of the partners	6
3.3 Currency	7
3.4 Law governing the SLPF	7
3.5 Changes to the LPA	8
3.6 Provisions on Auditors	8
3.7 Provisions on Winding-up	8
3.8 Disapplying the Provisions of the Tenth Schedule to the Companies Act	9
3.9 General Drafting Suggestions	9
4 Feedback on the approach vis-à-vis Rules	9
5 Investor Eligibility	10
6 Conclusion	11

1 Introduction

On the 28 October 2021 the Malta Financial Services Authority ('MFSA' or 'the Authority') published a [Discussion Paper on its Asset Management Strategy](#). The initiatives proposed through this strategy were classified into four strategic pillars:

- i) Pillar I: MFSA Supervisory Lifecycle | Processes;
- ii) Pillar II: Revisiting Current Fund Manager and CIS Regulatory Frameworks;
- iii) Pillar III: Innovation through Regulation;
- iv) Pillar IV: Regulatory Outreach and Collaboration Efforts with Industry Stakeholders and Internationally.

Within Pillar II, Proposal 5 invited stakeholder feedback on the possible restructuring of the Limited Partnerships ('LPs') legal framework for Collective Investment Schemes ('CISs'). Respondents were in favour of enhancing the legal framework for CISs structured as LPs, particularly through the enactment of a framework which caters for the setup of unincorporated partnerships, stating that this would enhance the attractiveness of Malta as an asset management jurisdiction.

The overall structure of the Maltese regulatory framework for CISs structured as Limited Partnerships does not differ excessively from the ones of other jurisdictions; however, the lack of an option to set up a CIS as an LP without separate legal personality appears to be a gap in the local regulatory framework. Following careful consideration, the MFSA is seeking to introduce a framework for CISs structured as LPs without separate legal personality into Maltese law, whilst still retaining the currently available option of setting up a CIS structured as an LP with separate legal personality.

To this effect, on the 21 February 2024, the Authority published a [Consultation Document on the Proposed Establishment of a Framework for Collective Investment Schemes Structured as Limited Partnerships without Legal Personality](#) seeking stakeholders' views on:

- i) the general features of the framework;
- ii) the proposed draft legislative instrument seeking to enact such framework;
and
- iii) whether the Authority should promulgate a dedicated rulebook for CISs set up as LPs without legal personality; and
- iv) whether the framework should be limited to CISs for professional investors.

An [Outcome Report](#) was published on the 28 May 2024. This Feedback Statement highlights the key points of feedback received in relation to the aforementioned consultation and sets out the MFSA's response and position thereto in more detail.

The MFSA would like to thank respondents for their valid and detailed observations, all of which were noted and carefully considered. The Authority is pleased to note that the proposed framework was well received by stakeholders, who considered it as a positive development for the local fund industry.

2 Feedback on the General Features of the Framework

2.1 Nomenclature

Feedback received

A respondent highlighted that the nomenclature 'Limited Partnership Fund' ('LPF') is very similar to 'Limited Partnership' as used for CISs structured as LPs with legal personality, possibly leading to confusion. This respondent suggested using different terminology also in view that the abbreviation 'LPF' is currently used for public purpose foundations.

MFSA Position

The Authority has taken note that the abbreviation LPF is already used and that a clear distinction needs to be made between CISs structured as LPs with separate legal personality and those structured as LPs without separate legal personality. In this respect the Authority shall be using the term 'Special Limited Partnership Fund' or 'SLPF'. The proposed draft legislation will be amended as necessary.

2.2 Disclosure of Beneficial Owner

Feedback Received

A respondent queried whether the Authority has any plans vis-a-vis the disclosure of beneficial ownership of SLPFs.

MFSA Position

SLPFs would be considered to be an association of persons in terms of the Civil Code, albeit governed by special provisions established under the Investment Services Act. Their beneficial owners would therefore need to be disclosed with the Malta Business Registry (as with any other type of association), in terms of Regulation 3 of Civil Code (Second Schedule) (Register of Beneficial Owners - Associations) Regulations.

2.3 Transparency

Feedback Received

A respondent highlighted that there should be an element of transparency within the framework and that it should cater for information-sharing between authorities.

MFSA Position

It should be noted that the Regulations, as proposed, state that an SLPF may only be established as an SLPF if it is licenced or recognised by, or notified to, the competent authority. The provisions of the MFSA Act, the Investment Services Act as well as regulations and rules issued thereunder, including the provisions on transparency/sharing of information contained therein, would therefore apply.

2.4 Possibility of having multi-class / multi-fund SLPFs

Feedback Received

A stakeholder group pointed out that the framework does not cater for the possibility of creating multi-class/multi-fund SLPFs. They suggested that amendments are made to cater for the possibility of constituting SLPFs as multi-class funds and to also allow SLPFs the possibility of setting up separate sub-funds with segregation of liability between sub-funds.

MFSA Position

Following further consideration, the Authority is of the view that amending the framework to cater for multi-class/multi fund SLPFs would not be appropriate in the current context. Specifically with respect to the possibility of setting up separate sub-funds, the Authority considers it preferable to set up a new SLPF. The Authority considers that an SLPF would constitute a patrimony and does not consider it appropriate to propose legislation which leads to the creation of sub-patrimonies. Furthermore, in order to provide further clarity, the Authority shall be proposing that the Regulations state that: [i] where the same general partner acts as general partner for more than one SLPF, each SLPF shall be deemed to constitute a distinct patrimony, separate from the assets of any other SLPF and the general partners or limited partners; and [ii] where the general partner acts as general partner for more than one SLPF, the Limited Partnership Agreement ('LPA') should include provisions on how the patrimony of the SLPF is being kept distinct.

2.5 Maintaining a register of SLPFs

Feedback Received

A respondent asked whether the Authority would be keeping a register of SLPFs which is available to the public.

MFSA Position

The proposed framework will only allow a CIS to be established as an SLPF if it is licenced or recognised by, or notified to, the competent authority. Therefore, given their authorised status, CISs set up as SLPFs would feature under the MFSA financial services register which is available to the public.

3 Feedback on the Proposed draft Legislation

3.1 Definitions

Feedback received

A respondent highlighted that the definitions provided in the proposed regulations cannot contradict those found in the Companies Act. This respondent also suggested that certain terms, used both in the proposed regulations and the Companies Act (such as 'general partner' and 'limited partner'), could cause confusion as even though these are two different laws, the proposed structure (apart from the personality aspect) is almost identical to that found under the Companies Act.

MFSA Position

The MFSA acknowledges that the proposed framework for SLPFs, as per the proposed regulations, is similar to that for CISs structured as LPs with separate legal personality under the Companies Act. In this respect one should note that the empowering provisions under the Investment Services Act have been amended to provide the minister with the power to issue regulations to establish and regulate SLPFs (Article 12(1)(oa)). This empowering provision also provides that such structures are distinct from limited partnerships as set out within the provisions of the Companies Act. Furthermore, the Authority will be proposing that the regulations explicitly state that they will establish and regulate SLPFs and that such structures shall be distinct from limited partnerships as set out within the provisions of the Companies Act.

3.2 Contribution of the partners

Feedback Received

A stakeholder group suggested the inclusion of a new sub-regulation under Regulation 4, on the contribution of the partners, as follows:

"The contribution of the general partner or a limited partner may be satisfied by the provision of cash or other property capable of economic assessment but may not consist of future services or undertakings to perform work or supply services."

MFSA Position

The proposed regulations are silent on partners' contribution. Whilst there is no provision stating that contributions have to be necessarily in cash, the Authority will be proposing the introduction of a requirement stating that the LPA is to include the method of valuation of assets where the contribution of partners is satisfied by the provision of assets other than cash. This should clarify that the contribution can be satisfied by assets other than cash and should also provide an additional safeguard vis-à-vis the valuation of such assets.

3.3 Currency**Feedback Received**

Respondents also provided feedback vis-à-vis the currency of units issued, stating that: [i] Regulation 4 should also provide that the General Partner of an SLPF may issue units in the SLPF in different currencies; and [ii] Regulation 6 should require the LPA to specify the base currency of units issued vis-à-vis the SLPF as well as the accounting currency thereof.

MFSA Position

The Authority is of the view that the regulations should not be prescriptive in this regard, and it should be the LPA which regulates such matters. In this respect the authority is proposing that the regulations state that the LPA should specify: [i] the base currency of units issued in respect of the SLPF; and [ii] the accounting currency of the SLPF.

3.4 Law governing the SLPF

Regulation 6(4)(p), as proposed, stated that the LPA is to specify "*the law governing the Limited Partnership Fund which, for the avoidance of doubt, need not be Maltese law*".

Feedback Received

A respondent queried how the law governing the SLPF could not be Maltese law, given that the SLPF is required to be an MFSA regulated fund.

MFSA Position

The Authority is proposing that this provision is reworded to state that the LPA should specify "*...the law governing the Limited Partnership Agreement which, for the avoidance of doubt, need not be Maltese law.*" Whilst the SLPF is required to be a Malta-regulated fund, the LPA is a private agreement and need not be governed by Maltese law.

3.5 Changes to the LPA

Regulation 7(1) as proposed stated as follows: *“Unless otherwise provided in the Partnership Agreement, any alteration or addition to the Partnership Agreement may only be made with the unanimous consent of the partners.”*

Feedback Received

A respondent suggested that it should be made clear that a simple majority can also be applicable.

MFSA Position

The Authority is of the view that the provision is clear that the partners can opt for a simple majority if they contract for it within the LPA. In fact, the sub-regulation states *“unless otherwise provided in the LPA....”*.

3.6 Provisions on Auditors

Feedback Received

A stakeholder group pointed out that Chapter IX of the Companies Act caters for certain requirements, rights and obligations of auditors, including the appointment, removal and resignation of auditors, remuneration, the right to information and the right to attend meetings. They highlighted that these are not included in the proposed framework and suggested that similar provisions (tailored as necessary) ought to be included.

MFSA Position

The Authority shall be adapting certain provisions of Chapter IX of the Companies Act and will be proposing that these are included in the Regulations. Certain provisions which are procedural in nature will be included as a matter which would need to be stipulated in the LPA.

3.7 Provisions on Winding-up

Feedback Received

A stakeholder noted that for CISs structured as LPs with legal personality, the Tenth Schedule is very detailed on winding up and the way the assets are to be distributed upon dissolution and queried whether in the case of SLPFs this would be something addressed by the LPA.

MFSA Position

Regulation 6(4) of the proposed Regulations states that the LPA shall expressly contain provisions on the dissolution of the SLPF. In order to further clarify matters vis-à-vis the distribution of assets upon dissolution, the Authority shall be proposing

the inclusion of a provision that necessitates the LPA to stipulate the way assets are to be distributed upon an SLPF's dissolution. Specific provisions on dissolution of the SLPF by the court and distribution of assets upon dissolution will also be proposed for inclusion within the regulations.

3.8 Disapplying the Provisions of the Tenth Schedule to the Companies Act

Feedback Received

A respondent suggested that a provision disapplying the provisions of the Tenth Schedule of the Companies Act should be inserted within the proposed Regulations.

MFSA Position

The Authority does not consider the provisions of the Companies Act to apply to SLPFs. As stated in Section 3.1 above, the empowering provisions under the Investment Services Act have been amended to provide the minister with the power to issue regulations to establish and regulate SLPFs (Article 12(1)(oa)). This empowering provision also provides that such structures are distinct from limited partnerships as set out within the provisions of the Companies Act. Furthermore, the Authority will be proposing that the regulations explicitly state that they will establish and regulate SLPFs and that such structures shall be distinct from limited partnerships as set out within the provisions of the Companies Act.

3.9 General Drafting Suggestions

Some respondents made certain drafting suggestions seeking to provide additional clarity to the framework. In this respect, various proposed amendments have been onboarded. That being stated, certain proposed regulations replicate *verbatim* elements of the Tenth Schedule of the Companies Act. Whilst the Authority is cognisant that the proposed regulations are separate and distinct from the Companies Act, as much as possible, it is preferable for there to be alignment between the two pieces of legislation.

4 Feedback on the approach vis-à-vis Rules

Feedback received

A group of stakeholders proposed that the MFSA should issue supplementary Licence Conditions applicable to CISs set up SLPFs which would be applied in conjunction with the Fund Regime specific Rulebook (e.g. ISRs for PIFs, ISRs for NAIFs, ISRs for NPIFs and ISRs for AIFs). The respondents highlighted that this approach would facilitate the applicability of updates to this rulebook, as once these supplementary conditions are

revised, the respective Fund Regime specific Rulebook would be automatically updated.

MFSA Position

SLPFs are a type of fund structure and not a type of fund licence. The Authority does not usually issue rulebooks for structures but does so for specific fund types (e.g. ISRs for PIFs, ISRs for NPIFs etc). In this light, the Authority considers it more feasible to include rules specific to SLPFs in the various Fund Rulebooks. This approach is already adopted for Limited Partnerships with legal personality. By adopting the same approach for SLPFs, the Authority believes that it would be ensuring consistency, whilst also avoiding duplication.

5 Investor Eligibility

Feedback received

A group of respondents agreed that the framework is to be limited to professional investors only (and not extended to retail funds). Another group of respondents highlighted that the Regulations should not refer to Investor Eligibility as this is a matter which can be set out exclusively in the Fund Regime specific rulebook.

MFSA Position

In view of the risks inherent to CISs established as limited partnerships without legal personality, the Authority shall be limiting the framework to qualifying and professional investors. Therefore, retail CISs will not be allowed to set up as SLPFs. In this respect, AIFs, NAIFs, PIFs, and NPIFs, would be allowed to set up as SLPFs as per the table below:

Type of Funds	SLPFs
AIFs	Yes (excluding retail AIFs)
NAIFs ¹	Yes
PIFs	Yes
NPIFs	Yes
Retail CISs:	No
i. Maltese Non-UCITS Scheme	
ii. Maltese UCITS Schemes	No

¹ NAIFs are only offered to Professional Investors and/or Qualifying Investors, thus also excluding retail clients.

6 Conclusion

Having considered stakeholder feedback, the Authority will be making any necessary amendments in line with the above stated positions. The MFSA will shortly be liaising with the relevant public institutions with respect to amending the legislative framework, as required, to promulgate the framework for SLPFs.

The Authority will also be finalising the amendments required to existing frameworks to allow CISs to be set up as LPs without separate legal personality. The MFSA will therefore be working on amending existing rules, related annexes, supporting documents (e.g. authorisation forms) and other matters necessary for the implementation of the framework.

Any queries or requests for clarifications in respect of the above should be addressed by email on assetmanagementstrategy@mfsa.mt.