

Regulatory Compliance Update

Q2 2022

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Introduction

We are pleased to introduce the Mamo TCV Regulatory Compliance Quarterly Update.

Our quarterly update is intended to keep Maltese regulated entities informed of regulatory changes and developments taking place mainly in the local financial services space.

In this issue, we focus on the sector specific and cross-sectoral regulatory updates relating to Investment Services and Asset Management¹.

Mamo TCV's team of regulatory and compliance advisors supports authorised persons and their compliance functions to remain compliant with their obligations in the ever-evolving regulatory landscape.

Get in touch with us to learn more about how we can help you through this [link](#), or by reaching out to the lead partner **Katya Tua** directly.

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SECTOR SPECIFIC REGULATORY UPDATES

1.0 INVESTMENT SERVICES

1.1 ESMA Guidelines on Certain Aspects of the MiFID II Remuneration Requirements

On 13 April 2022, the MFSA issued a Circular to communicate the publication of the ESMA's final report on its [Guidelines](#) on certain aspects of the MiFID II Remuneration requirements ('Guidelines').

The purpose behind these guidelines is to enhance clarity on certain aspects of the MiFID II remuneration requirements, replacing the existing ESMA guidelines on the same topic, issued in 2013. ESMA has built on the text of the 2013 guidelines, clarifying, refining and supplementing where necessary. The guidelines have been reorganised into the following sections: (i) design of remuneration policies and practices, (ii) governance, and (iii) controlling risks that remuneration policies and practices create.

Effective date: These guidelines apply from six months of the date of publication of the guidelines on ESMA's website in all EU official languages. Investment firms are guided to start ensuring alignment of their policies and operations with these guidelines in early course.

1.2 MFSA Clarification Note addressed to MiFID II Investment Firms

On 11 May 2022, the MFSA issued a [Clarification Note](#) to Investment Firms in relation to the following:

¹ Asset Management shall refer to Funds, Fund Managers and their service providers.

- (i) Reporting inaccurate client figures under cross-border activity in the MiFID Firms Quarterly Reporting Return

Investment firms were guided to consider the habitual residence of the client, based on information collected as part of the Know-Your-Customer assessment during the client onboarding stage, for reporting purposes. Investment firms were also guided to conduct a reconciliation exercise against client data prior to the submission of the return to the MFSA. The MFSA reminded Compliance Officers of investment firms to ensure that the investment firm has the necessary authorisation to service EU and Non-EU clients prior to onboarding a client.

- (ii) Reverse solicitation

The MFSA emphasised that the 'reverse solicitation' exemption referred to in Article 42 of MiFID II applies in very limited circumstances. Investment firms are required to assess whether the request for service has been initiated exclusively by the client, on a case-by-case basis for each activity or service provided.

The MFSA reminded investment firms of [ESMA's Public Statement issued on 13 January 2021](#), which highlights that every communication means used, such as press releases, advertising on internet, brochures, phone calls or face-to-face meetings should be considered to determine if the client or potential client has been subject to any solicitation, promotion or advertising in the Union on the firm's investment services or activities or on financial instruments. ESMA also reminded firms that such a solicitation, promotion or advertising should be considered regardless of the person through whom it is issued: the third country firm itself, an entity acting on its behalf or having close links with such third

country firm or any other person acting on behalf of such entity.

1.3 Amendments to the Investment Services Rulebooks

On the 23 May 2022, the Malta Financial Services Authority (MFSA) issued a [Circular](#) to communicate several amendments that were made to the Investment Services Rulebooks. The amendments applicable to Investment Firms related to:

- (i) the implementation of the Commission Delegated Regulation (EU) 2021/1253 as regards the integration of sustainability factors, risks and preferences into certain organisational requirements and operating conditions for investment firms
- (ii) the correction of references to the repealed Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector; and
- (iii) inclusion of references to EBA Guidelines on internal governance and sound remuneration policies, applicable to investment firms.

Effective date: The revised rulebooks entered into force on the 24 May 2022. The changes relating to point (i) above will become effective on 2 August 2022. For further information in relation to these updates and their impact on the operations of investment firms, you may wish to refer to our article on the subject found through the following [link](#).

1.4 Circular to Credit Institutions, Investment Firms and Third-Country Branches on Requirements and Reporting related to the Establishment of the Intermediate EU Parent Undertaking

On 18 May 2022 the European Banking Authority ('EBA') adopted a [Decision](#) on supervisory reporting for Intermediate EU Parent Undertaking threshold monitoring for those entities belonging to third-country groups, including third-country branches.

On 25 May 2022, the MFSA issued a [Circular](#) *inter alia* addressed to Investment Firms on this topic. The MFSA further communicated that in terms of the [EBA Guidelines](#) that entered into force on 14 November 2021, EU parent institutions, stand-alone institutions and third-country branches belonging to third-country groups are required to submit to the MFSA relevant information relating to the IPU threshold monitoring. In this respect, the latter were requested to submit to the MFSA the dedicated [template](#) that was published with the above-mentioned Circular.

In-scope investment firms and third-country branches of investment firms were reminded submit the template to Investmentfirms@mfsa.mt. The information had to be compiled using 31 December 2021 as reference date and was expected to be received by the MFSA by Friday 17 June 2022.

2.0 ASSET MANAGEMENT

2.1 Online and Social Media Presence of UCITS Managers

On the 6 April 2022, the MFSA issued an updated template of the Appendix 2B Fund Manager Return to include two

additional questions in the Cover Sheet as follows:

UCITS Managers are required to (i) include up-to-date information on the websites used to provide information to clients/potential clients, (ii) list the links of all the website(s) available, indicating the target audience (e.g. specific category of clients) of the respective the websites, and (iii) indicate whether the website is intended for a specific jurisdiction.

Effective date: UCITS Managers are expected to use this new template for submissions due by 30 April 2022, onwards.

2.2 Amendments to the Investment Services Rulebooks to Transpose and Implement EU Directives, Regulations and EBA Guidelines

In the same Circular referenced under section 1.3 above, the MFSA communicated changes to the Investment Services Rulebooks related to the following:

- (i) transpose Commission Delegated Directive (EU) 2021/1270 amending Directive 2010/43/EU as regards the sustainability risks and sustainability factors to be taken into account for UCITS
- (ii) implement Commission Delegated Regulation (EU) 2021/1255 amending the AIFMR as regards the sustainability risks and sustainability factors to be taken into account by AIFMs
- (iii) transpose Directive (EU) 2021/2261 of the European Parliament and of the Council of 15 December 2021 amending Directive 2009/65/EC as regards the use of key information documents by management companies of undertakings for collective investment in transferable securities

Effective dates: The revised rulebooks entered into force on the 24 May 2022. The changes relating to point (i) and (ii) above will become effective on 1 August 2022. For further information in relation to these updates and their impact on the operations of UCITS ManCos & AIFMs, you may wish to refer to our article on the subject found through the following [link](#). The Delegated Directive under point (iii) is applicable as from 1 January 2023.

2.3 Revised Application Forms AIFs and UCITS schemes

During May 2022, the MFSA issued a [Circular](#) to communicate that it had revised the Application Forms for applicants seeking authorisation as Alternative Investment Funds (AIFs) and Undertakings for Collective Investment in Transferable Securities Schemes (UCITS schemes). The new application forms can be found as follows – AIFs: [Form AA35](#) and UCITS schemes: [Form AA37](#). For internally managed schemes, the relevant annexes have been updated as follows – AIFs: [Annex AX10](#) and UCITS: [Annex AX11](#).

Effective date: As from 6 June 2022, only Forms AA35 and AA37 will be accepted by the MFSA for applicants seeking authorisation either as an AIF or a UCITS scheme, respectively.

2.4 ESMA Reports on Supervision of Costs and Fees in Investment Funds

On 31 May 2022, ESMA issued a [Final Report](#) on the 2021 Common Supervisory Action (CSA) on costs and fees for investment funds.

The report sets out the relevant analysis and conclusions on the CSA exercise and presents ESMA's views on the various findings, including those relating to the process of the setting and reviewing of

fees, undue costs, related party transactions and Efficient Portfolio Management techniques, as well as the follow-up actions envisaged by NCAs and the main lessons learnt.

In its Circular dated 16 June 2022, the MFSA communicated how ESMA and the MFSA will keep monitoring to ensure that recommendations in ESMA's report have been implemented by all UCITS Managers. MFSA further communicated that enforcement action may be taken in the case of non-compliance with key cost related provisions in the UCITS framework.

UCITS Managers are expected to consider the contents of ESMA's Report and ensure compliance with the relevant obligations relating to costs and fees of the funds that they manage.

CROSS-SECTORAL REGULATORY UPDATES

1.0 MFSA FEEDBACK STATEMENTS ON THE PROPOSED SETTLEMENT PROCEDURE UNDER THE MALTA FINANCIAL SERVICES AUTHORITY ACT AND RELATED SETTLEMENT POLICY

The MFSA issued two separate Feedback Statements on the [Settlement Procedure](#) and the [Settlement Policy](#), on the 8 April 2022 and 1 June 2022, respectively.

The Feedback Statements related to a Consultation Document that was issued in late 2021 proposing to introduce changes to the MFSA Act to empower it to enter into settlement discussions and agreements. The MFSA outlined that the responses received were all in favour of the MFSA having the legislative power to enter into settlement discussions and agreements, and the respondents favoured resolving investigations by means of a settlement agreement given

that this would also benefit the person being investigated.

The MFSA communicated that following the analysis of the feedback, the Authority will be putting forward the legislative provision for Parliament approval, finalising the Settlement Policy and obtain the necessary approvals accordingly. The final Settlement Policy would then be uploaded on the MFSA's website and made available to the public.

2.0 SUSTAINABILITY-RELATED DISCLOSURE IN THE FINANCIAL SERVICES SECTOR

On 6 April 2022, the European Commission adopted a [Delegated Regulation](#) with regulatory technical standards (RTSs) specifying the details with respect to the content, presentation and, where applicable, methodologies, of the information in relation to sustainability indicators and adverse sustainability impacts, the promotion of environmental or social characteristics and sustainable investment objectives in pre-contractual documents, on websites and in periodic reports.

On 2 June 2022, the European Supervisory Authorities issued a joint statement providing clarifications on the draft RTSs under the Sustainable Finance Disclosure Regulation. Through this statement, the ESAs aimed to provide guidance on key areas of the final reports, including: (i) principal adverse impact (PAI) disclosures of investment decisions on sustainability factors, (ii) pre-contractual, periodic and taxonomy-related financial product disclosures, (iii) "do not significantly harm" (DNSH) disclosures, and (iv) disclosures for financial products with investment options.

Effective date: The rules will begin to apply on 1 January 2023. Regulated entities are encouraged to plan ahead to bring their relevant policies, procedures and

operations in line with the regulatory technical standards.

3.0 MFSA CORPORATE GOVERNANCE WEBINAR – EMBRACING NEW FRONTIERS

On 21 June 2022 the MFSA organised a webinar on Corporate Governance. During the webinar, the MFSA gave an update on the New MFSA Corporate Governance Code for Authorised Entities and Subsequent Sector-Specific Initiatives.

The MFSA is expected to issue its feedback statement on the latest [Consultation](#) on the topic in the coming weeks. During the webinar, the MFSA commented that there should not be any material changes from the positions set forth in the [Draft Code](#). The Draft Code provides a set of principles, which the MFSA proposes for regulated entities to implement on a 'best effort basis', organised into themes as follows: (i) the effectiveness of the management body; (ii) internal controls; (iii) stakeholder engagement and (iv) culture, corporate social responsibility (CSR) and environmental, social and governance goals (ESG).

OUR REGULATORY COMPLIANCE EVENTS

WEBINAR ON PRODUCT OVERSIGHT AND GOVERNANCE REQUIREMENTS HELD ON 15 JUNE 2022

One of the objectives of Product Oversight and Governance requirements is for manufacturers and distributors of an insurance or investment product to take into consideration the interests of customers when designing and/or distributing the relevant product.

This webinar covered:

- The main Product Oversight and Governance ('POG') requirements applicable to insurance undertakings and insurance intermediaries acting as manufacturer and/or distributor of insurance products;
- The main Product Governance Requirements applicable to MiFID Firms;
- Recommendations on how to comply with these requirements

The webinar was well attended by individuals working within the first and second line of defence at insurance undertakings, insurance intermediaries and MiFID firms.

Future updates and events

Should you be interested in receiving our Quarterly Regulatory Compliance Update in relation to regulatory developments and/or joining future events organised by Mamo TCV on regulatory & compliance matters, we invite you to subscribe to our dedicated mailing list through the following link: [subscribe here](#).

Our Regulatory Compliance Services

Having a strong compliance culture is crucial and our multidisciplinary regulatory compliance team assists our clients in having the required policies and procedures to remain compliant with the local regulatory framework, as well as providing advice with respect to any changes required to their business model to better comply with the relevant requirements. Our team also delivers tailor-made training sessions to staff of regulated entities.

You can learn more about our scope of services in this area through this [link](#).

Key Contacts

Do not hesitate to reach out to [Katya Tua](#), [Lara Falzon](#) or [Martha Chetcuti](#) should you wish to discuss the contents of this Regulatory Compliance Quarterly Update or any other matters relating to the Investment Services Act and its underlying regulatory framework.

This document does not purport to give legal, regulatory, financial or tax advice.

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