

**MAMO TCV**  
ADVOCATES

# Regulatory Compliance Update

Q3 2022

Issue N°: 02

19<sup>th</sup> OCTOBER 2022



## Introduction

Our Mamo TCV Regulatory Compliance 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, Asset Management<sup>1</sup>, Credit & Financial Institutions, and Insurance.

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.

## Regulatory Compliance Update | Q3 2022

### SECTOR SPECIFIC REGULATORY UPDATES

#### 1.0 INVESTMENT SERVICES

##### 1.1 MFSa issues Circular to Investment Firms in relation to the EBA Remuneration Guidelines

On 12 July 2022, the Malta Financial Services Authority ('MFSa' or 'Authority') issued a [Circular](#) addressed to investment firms in relation to the European Banking Authority ('EBA') Final Report on guidelines on sound remuneration policies under the Investment Firms Directive (EU) 2019/2034. The remuneration guidelines apply to Class 2 investment firms and are applicable as from **30 April 2022**.

Investment firms have to decide whether staff have any material impact on the firm's risk profile or the assets under management. Furthermore, investment firms with on and off-balance sheet assets valued on average at more than EUR 100 million over the four-year period immediately preceding the given financial year is required to establish a remuneration committee.

In the Circular there is also a section on the Criteria to be taken into account when determining what is proportionate and in determining the required level of sophistication of the remuneration policies and risk measures approaches. Investment firms are to refer to Section 4 of the [EBA's Final report on Guidelines on sound remuneration policies under Directive \(EU\) 2019/2034](#).

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<sup>1</sup> Asset Management shall refer to Funds, Fund Managers, and their service providers.

## 1.2 MFSA Circular regarding the various amendments to the Investment Services Rulebooks

The MFSA issued a [Circular](#) on 27 July 2022, informing the industry of the amendments carried out to the Investment Services Rulebooks.

In respect of Part BI of the Investment Services Rules for Investment Services Providers, the Authority informed licence holders authorised to deal on own account that they are obliged to submit the original copy of the Recovery and Resolutions plan by **the 1<sup>st</sup> of June of each year**.

Investment firms were also informed that with respect to fees, amounts previously included within the rulebooks were removed. Authorised persons are now being asked to refer to the Investment Services Act (Fees) Regulations (Subsidiary Legislation 370.03 of the Laws of Malta) for the applicable amount.

Other updates to this rulebook related to miscellaneous changes and updates to cross references to correct inconsistencies.

*Effective date:* The revised Rulebooks entered into force **on 28 July 2022**.

## 1.3 MFSA Circular on the revisions to the MiFID Firms Quarterly Reporting

On 30 September 2022, the MFSA issued a [Circular](#) informing Investment firms of the changes carried out to the MiFID Firms Quarterly Reporting. The changes mainly relate to the following: **[1]** Validation Sheet; **[2]** Financial Innovation Survey (renamed to Innovation Survey); **[3]** Cross-Border Activity Sheet; **[4]** Retail Investor Trends; **[5]** removal of the Complex Products Survey; **[6]** Complaints; **[7]** Online & social media presence; **[8]** Branches.

Investment firms are required to submit the MiFID Quarterly Reporting within 42 days after the end of the applicable reporting period through the MFSA LH Portal.

## 2.0 ASSET MANAGEMENT

### 2.1 MFSA Circular regarding the various amendments to the Investment Services Rulebooks

The MFSA Circular mentioned under section 1.2 above, also introduced the below changes to the Investment Services Rulebooks:

**[1]** Inclusion of a definition of “Professional Investor Fund” to the glossaries of the Investment Services Rules applicable to Alternative Investment Funds (‘AIFs’), Notified Alternative Investment Funds (‘NAIFs’), and Professional Investor Funds (‘PIFs’); and

**[2]** Removal of all instances where figures of fees were included in Part A of the Investment Services Rules for AIFs, PIFs, and Retail Collective Investment Schemes. Similar to that reported above for investment firms, authorised persons are being asked to refer to the Investment Services Act (Fees) Regulations (Subsidiary Legislation 370.03 of the Laws of Malta) for the applicable fees.

*Effective date:* The revised Rulebooks entered into force **on 28 July 2022**.

## 3.0 INSURANCE

### 3.1 MFSA Circular on adopting the revised guidelines on the LEI Code

The MFSA issued a [Circular](#) on 8 August 2022, informing insurance intermediaries of the adoption of the European Insurance and Occupational Pensions Authority

(‘EIOPA’) [revised guidelines](#) on the Legal Entity Identifier (‘LEI’) Code.

The LEI is a 20-character, alpha-numeric code which is unique to each legal entity participating in financial transactions. Each LEI Code contains information about an entity’s ownership structure. These LEI Codes may be obtained from any endorsed pre-Local Operational Unit forming part of the Global Legal Entity Identifier Foundation.

The MFSA is in the process of amending Chapters 1 and 13 of the Insurance Rules, Chapters 1 and 2 of the Insurance Distribution Rules, and the Pension Rules for Occupational Retirement Schemes to adopt the new Revised Guidelines.

Insurance intermediaries are expected to use LEI Codes when fulfilling their reporting obligations to the MFSA, and any licence holder which does not already have a LEI Code should have informed the MFSA of the date on which they applied for the Code as well as the service provider with which they applied by 30 September 2022.

*Effective date:* this requirement came into force as from the **date of the Circular**.

For further information on the revised guidelines on the LEI Code, you may wish to refer to our website article on the subject found through this [link](#).

### **3.2 MFSA Circular on Commission Delegated Regulation 2021/1256 on the Integration of Sustainability Risks in the Governance of Insurance and Reinsurance Undertakings**

The MFSA issued a [Circular](#) on 9 June 2022, informing insurance undertakings of amendments made on the integration of sustainability risks in the governance of insurance and reinsurance undertakings.

Some of the main changes include:

- [1]** the introduction of new definitions of ‘sustainability risks’, ‘sustainability factors’ and ‘sustainability preferences’;
- [2]** the reflection of sustainability risks within risk management policies of re/insurance undertakings;
- [3]** the requirement that re/insurance undertakings assess and manage the risk of loss or adverse change in the values of re/insurance liabilities;
- [4]** the requirement that re/insurance undertakings integrate sustainability risks in their relevant policies; and
- [5]** the inclusion of a sustainability risks consideration in the opinion of the Actuarial Function with respect to the underwriting policy, amongst others.

*Effective date:* the amendments entered into force **on 2 August 2022**

### **3.3 EIOPA Consultation Paper on Governance Arrangements in Third Countries**

The MFSA issued a supervisory statement to licence holders informing insurance intermediaries of EIOPA’s [Consultation Paper](#) published on 29 July 2022 on the use of governance arrangements in third countries.

The primary goal of this supervisory statement is to improve the oversight and monitoring of undertakings and intermediaries’ compliance with relevant European Union (‘EU’) legislation regulating governance arrangements in third countries, particularly the expected level of corporate substance. The statement also covers the supervision of outsourced functions in third countries, as well as the expected oversight.

Feedback to EIOPA is encouraged to be copied to the MFSA Insurance and Pensions Supervision function’s email address ([ipsu@mfsa.mt](mailto:ipsu@mfsa.mt)) **by 31 October 2022**.

### 3.4 MFSA Circular on Amendments to Chapter 5 of the Insurance Rules, the Glossary of Terms, and the Insurance Business (Exemptions) Regulations

The MFSA issued a [Circular](#) on 5 August 2022, informing insurance undertakings of amendments made to the Glossary of Terms, Chapter 5 of the Insurance Rules, and to the Insurance Business (Exemptions) Regulations.

Chapter 5 of the Insurance Rules will be amended so as to reflect the revisions made to the EIOPA guidelines; mainly: the Revised Guidelines on the Valuation of Technical Provisions and the Revised Guidelines on Contract Boundaries published by EIOPA on 21 April 2022.

Among the changes made, the definition of 'large risks' under the Glossary of Terms has been amended and the absolute floor of the minimum capital requirement of an authorised undertaking has also been updated in line with the amendments made in the Solvency II Directive.

*Effective date:* The amendments to Chapter 5 of the Insurance Rules, the Glossary of Terms, the Insurance Business (Exemptions) Regulations will come into force **on 19 October 2022**. The amendments to paragraph 5.11.1(c) of Chapter 5 of the Insurance Rules will become applicable **on 1 January 2023**.

For further information, you may wish to refer to our website article on the subject found through this [link](#).

## 4.0 CREDIT AND FINANCIAL INSTITUTIONS

### 4.1 Update on the Imposition of Negative Interest Rates on Euro Denominated Deposits

On 11 July 2022, the MFSA issued a [Circular](#) informing credit institutions that, following consultation with the Central Bank of Malta and pursuant to the feedback received from the Industry, the threshold for 'excessively high liquid balances' in relation to which credit institutions may impose a maintenance fee has been revised. Credit institutions are also bound by the criteria set out in the Circulars issued on [18<sup>th</sup> September 2018](#) and [3<sup>rd</sup> January 2019](#) on the subject-matter.

The MFSA reaffirmed that credit institutions are prohibited from imposing negative interest rates on Euro denominated deposits held by their clients.

### 4.2 Introduction of New Banking Rule BR/25 on Financial Holding Companies and Mixed Financial Holding Companies under the Banking Act

On 28 July 2022, the MFSA issued a [Circular](#) informing the Industry of the introduction of [Banking Rule BR/25 on Financial Holding Companies and Mixed Financial Holding Companies under the Banking Act](#) ('BR/25') and respective Annexes.

BR/25 was issued pursuant to article 11B and article 29AA of the Banking Act (Chapter 371 of the Laws of Malta). The latter articles were introduced by virtue of Act LXXI of 2021 transposing article 21a of the CRDV. This relates to the introduction of the requirement relating to the approval or exemption of financial holding companies and mixed financial holding companies ('(M)FHCs'), as the case may be, which form part of a banking group.

BR/25 provides additional information in relation to the approval or exemption mechanism of (M)FHCs falling within the scope of article 11B of the Banking Act.

BR/25 contains two Annexes; Annex I lays down the information and documentation which (M)FHCs seeking approval or exemption as applicable, are to submit to the MFSA. Annex II lays out the 'Annual Compliance Declaration Form' which is to be submitted by (M)FHCs which have been approved or exempted by the MFSA pursuant to paragraph 36 of BR/25.

*Effective date:* BR/25 together with its Annexes came into effect as from **28 July 2022**.

#### **4.3. EBA's Consultation on the Revised Guidelines on Methods for Calculating Contributions to Deposit Guarantee Schemes**

On 29 July 2022, EBA issued a public consultation on its revised Guidelines on methods for calculating contributions to deposit guarantee schemes ('DGS') (the 'Guidelines') which were issued pursuant to Directive 2014/49/EU on deposit guarantee schemes. The revised Guidelines seek to enhance the proportionality between the risk of a credit institution and its contributions to the deposit guarantee schemes pursuant to the feedback provided by national competent authorities and DGSs in relation to the calculation methods used at national level. The EBA concluded that whilst the methodology under the Guidelines remains appropriate, the calculation method requires some enhancements as detailed in the consultation.

The public consultation remains open until 31 October 2022.

#### **4.4. Minor amendment to BR/14 on Outsourcing by Credit Institutions authorised under the Banking Act 1994**

On 9 August 2022, the MFSA issued a [Circular](#) informing the Industry of the minor amendment made to [Banking Rule BR/14 on Outsourcing by Credit Institutions authorised under the Banking Act 1994](#) ('BR/14'). The change to BR/14 consists of the introduction of paragraph 48A which introduces a requirement for credit institutions to inform the MFSA in a timely manner of any changes and/or severe events regarding their outsourcing arrangements that could have a material impact on the continuing provision of the credit institutions' business activities.

BR/14 is also applicable to financial institutions authorised under the Financial Institutions Act (Chapter 376 of the Laws of Malta); hence, financial institutions are also subject to the new requirement laid down under paragraph 48A.

*Effective date:* the amendment to BR/14 came into effect as from 9 August 2022.

#### **4.4. Removal of Temporary Capital and Liquidity Relief Measures related to the COVID Pandemic**

On 11 August 2022, the MFSA issued a [Circular](#) informing credit institutions of the removal of the temporary capital and liquidity relief measures in relation to the COVID pandemic as had been previously communicated by virtue of a [Circular](#) dated 13 March 2020. Furthermore, banks are expected to operate above their Pillar 2 Guidance as from 1 January 2023. Banks were also informed that with respect to the composition of Capital for Pillar 2 requirements, banks are expected to comply with article 104(a)(4) of the CRD and regulation 9A, sub-regulations 6 to 10 of the Banking Act (Supervisory Review) Regulations.

#### **4.5. Repeal of FIR/O4 on Security of Internet Payments of Credit, Payment and Electronic Money Institutions**

On 31 August 2022, the MFSA issued a [Circular](#) informing credit institutions and financial institutions of the repeal of FIR/O4 on Security of Internet Payment of Credit, Payment and Electronic Money Institutions ('FIR/O4').

FIR/O4 previously implemented the Guidelines on the security of internet payments as issued by the EBA under PSD1. On 14 October 2021, the EBA repealed the said guidelines which became obsolete pursuant to the implementation of PSD2 which was transposed locally by virtue of Act XXVI of 2019.

*Effective date: FIR/O4 was repealed with effect from 31 August 2022.*

### **CROSS-SECTORAL REGULATORY UPDATES**

#### **MFSA circular regarding the Sustainable Financial Disclosure Regulation**

The MFSA issued a [Circular](#) on 28 June 2022 informing the Industry of the statement issued by the European Supervisory Authorities (ESAs) providing clarifications on the content, methodologies and presentation of disclosures requirements of the SFDR. May we remind you that the applicability date of the requirements emanating from the technical standards is **1 January 2023**.

The MFSA also informed the Industry of the second set of Q&As related to SFDR and Taxonomy Regulation.

#### **Guidelines to the Submission of the Statement of Source of Wealth and Source of Funds**

The MFSA issued a [Circular](#) on 12 August 2022 informing the Industry of the publication of a template ('Annex AX26: Source of wealth and Source of funds self-declaration form') to be used for the submission of a statement of source of wealth and source of funds.

The aim of the template is to standardise the quantity and quality of the information provided in this regard and submission in this format is mandatory.

These requirements will apply to companies when assisting clients with licensing processes or change in control applications.

For further information on the Guidelines to the submission of the statement of source of wealth and source of funds, you may wish to refer to our website article on the subject found through this [link](#).

#### **MFSA Launches Corporate Governance Code for Authorised Entities**

The MFSA [Corporate Governance Code](#) ("CGC" or "Code") dated 5 August 2022 was issued following a consultation process through which feedback from stakeholders in the market was encouraged, received and onboarded.

The CGC is intended to enhance the governance, culture, and conduct of MFSA authorised entities and is intended to apply to all authorised entities, regardless of their size, apart from listed entities which fall within the scope of the Capital Markets rules.

Given the vast range of entities that will fall within the scope of the Code, the application will be based on a "best-

effort” basis and the principle of proportionality. The Code is organised in four main sections: **(i)** the effective Board; **(ii)** internal controls; **(iii)** stakeholder engagement; and **(iv)** corporate culture, corporate social responsibility and environmental, social and governance.

For further information on the Corporate Governance Code, you may wish to refer to our website article on the subject found through this [link](#).

## Digital Finance

During Q2 and Q3 2022, work on the European Commission’s Digital Finance Package adopted on 24 September 2020 continued to progress, as follows:

### ***Provisional Agreement Reached on the Digital Operational Resilience Act***

On 28 July 2022, the MFSA communicated that in May 2022, the European Council presidency and the European Parliament reached a provisional political agreement on the Digital Operational Resilience Act (‘DORA’). On 23 July 2022, a provisional agreement was reached and the Regulation is now expected to go through a process of voting and adoption. The provisional agreement text is available [here](#).

Once DORA is formally adopted, it will be passed into law by each EU member state. The European Supervisory Authorities (‘ESAs’) are then expected to develop technical standards for authorised persons across sectors to comply with. The respective national competent authorities, in our case MFSA, will take the role of supervisory oversight and enforcement. The MFSA highlighted that DORA is expected to come into force **in Q1 2023** and to be fully **applicable by Q1 2025** following a two-year implementation period.

*Background on DORA:* DORA introduces a harmonised regulatory framework on digital operational resilience whereby relevant authorised firms need to ensure that they can withstand, respond to, and recover from ICT-related disruptions and threats. The objective of DORA is to prevent and mitigate cyber threats.

### ***Provisional Agreement Reached on Markets in Crypto-Assets Regulation***

On 30 June 2022, the Council of the European Union announced that the Council presidency and the European Parliament reached a provisional agreement on the proposed markets in crypto-assets regulation (‘MiCA’). The aim behind the proposed regulatory framework is to bring legal and regulatory certainty for crypto-asset operators across the EU.

*Background on MiCA:* MiCA forms part of the Digital Finance Package proposed by the European Commission (‘EC’) to fulfil its Digital Finance Strategy, which aims at developing a holistic approach across the EU to foster innovation, whilst ensuring financial stability and consumer protection. The Digital Finance Strategy sets out to ensure “*same activity, same risks, same rules*”, and hence traditional financial services market players and FinTechs and BigTechs providing payment services, savings and investment products, and insurance, amongst others, should all be subjected to the same regulations and supervision.

Through the package, the EC aims to bridge the gap prevailing in existing EU legislation by ensuring on one side that the current frameworks do not hinder the development of digital finance and on the other side that emergent technologies and new products falling within the scope of financial regulation are regulated and supervised appropriately.



For information in relation to this update you may wish to refer to our website article on the subject found through this [link](#).

## Future updates and events

### Sustainable Finance Week

Mamo TCV is organising a Sustainable Finance Week being held between 24 October & 28 October 2022. During the week, we shall be organising a series of webinars spanning over one week to provide insights on sustainable finance and related regulatory compliance obligations. The scope of these webinars is to highlight how the sustainability-related requirements are impacting the financial services sector from a regulatory standpoint. During the week, we shall also be discussing employment and corporate social responsibility matters.

The **program of events** for the week is available [here](#). You can **register** for any of the Sustainable Finance Week webinars through this [link](#).

### Other Updates

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 cross-sectoral 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.

## Key Contacts

Do not hesitate to reach out to [Michael Psaila](#), [Katya Tua](#), [Edmond Zammit Laferla](#), or your usual contacts at Mamo TCV, should you wish to discuss the contents of this Regulatory Compliance Quarterly Update or any other financial services regulatory compliance matters.

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

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