

Regulatory Compliance Update

Q3 2023

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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 Management¹ 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.

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

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SECTOR-SPECIFIC REGULATORY UPDATES

1.0 INVESTMENT SERVICES

1.1 Update on the Developments in the Collection, Transmission and Validation of Supervisory Reporting Submissions

On 28 July 2023, the MFSA issued a [circular](#) to bring to the attention of all licensed investment firms, the need to generate the EBA XBRL file with the latest taxonomy version 3.2.1 and EBA XBRLA filing rules version 5.2 as per the developments issued by the authority on 16 December 2022.

In this regard, the Reporting Framework field, being the framework name defined by the DPM/XBRL taxonomy in upper case followed by the taxonomy version in six digits, will change from IFO10100 to IFO10200, as from reference date June 2023.

1.2 Request for Submission of the Internal Capital Adequacy and Risk-Assessment (“ICARA”)

On 22 August 2023, the MFSA issued a [circular](#) to inform licence holders of its consideration towards amending R3-3.1.1.1 of Part BI of the Investment Services Rules applicable to Investment Services Licence Holders which qualify as MiFID Firms. This amendment would add a requirement for Class 2 and 3 Investment Firms, where applicable, to start requesting the submission of the ICARA document as part of the audited annual

reporting requirements in addition, where applicable, to the Internal Liquidity Adequacy Assessment Process.

Furthermore, the revised requirement is intended to become applicable for the reporting period ending 31 December 2023 with a submission deadline of 30 April 2024 and a four-month submission deadline from the end of the reporting period thereafter.

1.3 Various Amendments to the Investment Services Rulebooks.

On 4 September 2023, the MFSA issued a [circular](#) by referring to various regulatory amendments that have been made in the Investment Services Rulebooks. The amendments have been generically outlined in the circular, however, the full version of the updated rules was published in 3 different annexes found in an attachment to the circular.

These numerous rule amendments are outlined as follows:

- New Rules to transpose the marketing requirements stemming from the Cross-Border Distribution of Funds Directive.
- Revisions to the ‘Investment Services Rulebook for Retail Collective Investment Schemes’, to consolidate the number of fund frameworks available to fund promoters.
- New rules on key information documents for packaged retail and insurance-based related products (PRIIPs).
- The deletion of Schedule D of Investment Services Rules for Retail Collective Investment Schemes.
- The introduction of new rules stemming from Regulation (EU) 2023/606 of the European Parliament regarding the requirements pertaining to the

investment policies and operating conditions of European long-term investment funds and the scope of eligible investment assets, the portfolio composition and diversification requirements and the borrowing of cash and other fund rules.

Moreover, specifically, two new subsections have been introduced to Section 5 of the AIFs regime to transpose articles 30a and 32a of the AIFMD as introduced by the Cross-Border Distribution of Funds Directive (“CBDFD”) on pre-marketing arrangements for AIFs and the de-notification arrangements to be in place when an AIF decides to cease marketing its units. All material changes are outlined in [Annex A](#).

Additionally, as expanded on in [Annex B](#), amendments have been made to the ‘Investment Services Rules for Retail Collective Investment Schemes’. The Section ‘Categories of Retail Collective Investment Schemes’ of the ‘Investment Services Rules for Retail Collective Investment Schemes Part A’ has been amended to reflect the decision taken by the Authority in 2016 to consolidate and reduce the number of fund frameworks available to fund promoters.

Furthermore, a new ‘Section 6’ dealing with the exercise of passport rights by European retail AIFs has been introduced. There have also been slight additions to the requirements of Retail AIF in an effort to ensure a level playing field and better investor protection by including some of the CBDFD and UCITS requirements.

The attached annexes [C](#) and [D](#) to the circular provide further details on the remaining rulebook amendments.

2.0 ASSET MANAGEMENT

2.1 ESMA launches a CSA on Sustainability related disclosures

On 10 July 2023, the MFSA issued a [circular](#) in relation to the European and Securities Markets’ (ESMA) launch of a Common Supervisory Action (CSA) on the integration of sustainability risks and disclosures of UCITS and Alternative Investment Funds. This was done in correspondence with the EU and EEA National Competent Authorities with the aim of sharing knowledge and experiences on how to foster convergence when supervising sustainability related disclosures.

Additionally, the circular provided that the Investment Services Supervision function within the MFSA will eventually be contacting Fund Managers with the aim to gather information and obtain supporting documents in relation to their sustainability practices and controls.

2.2 MFSA publishes Feedback Statement on the Proposed Establishment of a Framework for Notified Professional Investor Fund

On 1 September 2023, the MFSA published its [feedback statement](#) on the proposed establishment of the legal regime for Notified Professional Investor Funds (“NPIF”). Having considered stakeholder feedback, the MFSA has made the necessary amendments and will now be liaising with the relevant bodies/institutions with a view to amending the legislative framework, as required to promulgate the NPIF framework. The Authority has also finalised the amendments to the proposed rulebook in line with the above stated positions. The Authority will now be working on finalising the annexes,

supporting documentation and other matters necessary for the implementation of the framework, including a dedicated application form and Guidance Notes with regards to the fitness and properness assessment to be conducted by the appointed third-party service provider.

3.0 INSURANCE

3.1 MFSA issues a circular appending to the Feedback following consultation to the approved Insurance Distribution Rules

The MFSA issued a [circular](#) and subsequent [feedback](#) statement on 8 August 2023 on the [Consultation Document](#) published in January 2023. The Consultation Document proposed changes to the Distribution Rules based on regulatory and market observations. Further to the Consultation Document, the MFSA issued a Feedback Statement on the comments received from interested parties in relation to the consultation.

3.2 MFSA issues a Consultation Document on a New Chapter 17 to the Insurance Rules entitled “Cell Companies carrying on Business of Insurance” and amendments to Chapter 5 to the Insurance Rules.

The MFSA issued a [Consultation document](#) introducing a new chapter to the Insurance Rules. The new chapter aims to establish clear procedures for transferring, ceasing, servicing or the winding up of a cell of a cell company in the insurance business. This new chapter seeks to find a balance between protecting creditors and streamlining complex processes. The MFSA plans to outline detailed procedures for various

scenarios that may arise in these situations.

The MFSA is also suggesting a new addition, provision 5.5.95, to Chapter 5 of the Insurance Rules regarding Risk Mitigation Techniques for authorized insurance companies. This provision will enforce the rule that insurance companies cannot use risk mitigation clauses or techniques to significantly reduce the counterparty default risk when calculating the Solvency Capital Requirement for claims in cases of reinsurance undertaking defaults. The Consultation ended on 13 October 2023.

3.3 MFSA issues Circular on the Financial Reporting of Service Providers, Retirement Schemes and Retirement Funds

[The Circular](#) was addressed to Pension Service Providers who are required to submit financial returns as stipulated under Part B of the Pension Rules for Service Providers, Personal and Occupational Retirement Schemes and Retirement Funds issued in terms of the Retirement Pensions Act, 2011. The aim of the Circular was to communicate the modification in the file naming convention of certain financial returns.

CROSS-SECTORAL REGULATORY UPDATES

4.0 DIGITAL FINANCE

4.1 Consultation Document on the Changes to Chapter 3 of the Virtual Financial Assets Rulebook

On 18 September 2023, the MFSA issued a [consultation document](#) in relation to the authority’s draft updated chapter 3 of the VFA Framework, applicable to VFA

Service Providers, in order to align said framework to the Markets in Crypto-Assets Regulation (MiCAR). The changes that have been made were in relation to title of chapter 3 in addition to title 3 of chapter 3.

Additionally, the MFSA said that it had initially planned that the new rulebook will become applicable on the date of its publication. Nevertheless, an additional 3-month transitional period will apply to the requirements pertaining to the (i) orderly wind-down plan; (ii) service-specific requirements (supplementary conditions) and (iii) whitepaper disclosure requirements. An open invite was issued to all stakeholders, to consult the rulebook and provide feedback on whether they agree with the changes in addition to whether they comply with the proposed transitional measures. The expiry date for expressing feedback was on 29 September 2023.

5.0 SUSTAINABLE FINANCE

5.1 EU Commission Consultation on Sustainable Finance Disclosures

On 20 September 2023, the MFSA issued a [circular](#) on the EU Commission's targeted and public consultation on the Sustainable Finance Disclosure Regulation. This consultation lasts till 15 December 2023 and its aim is to address potential shortcomings of the regulation. Whilst the public consultation is shorter than the targeted consultation and is aimed at the general public, the targeted consultation is aimed at experts in the field such as financial market participants, investors, NGO's, relevant authorities, etc.

In addition to including the questions found in the public consultation, the targeted one explores potential changes

to disclosures and the possible creation of a product categorisation system. All interested parties are being encouraged to participate.

6.0 REGULATORY

6.1 EU Commission's proposals on payment services

On 4 July 2023, the MFSA issued a [circular](#), in order to inform interested parties on the EU Commission's proposals towards changes to payment services, so as to ensure that the EU financial services sector is up to date with the ongoing digital transformation.

The proposal will amend and modernise the current Payment Services Directive (PSD2) and establish it as a regulation. This proposal ensures consumers can continue to make electronic payments and transactions safely and securely in the EU, domestically or cross-border, in euro and non-euro, in addition to providing greater choice of payment service provider.

It consists of a package of measures which combat and mitigate payment fraud, improve consumer rights, level the playing field between banks and non-banks, improve their functioning whilst also improving the availability of cash in shops and via ATMs. Lastly, there are also proposals that will establish clear rights and obligations to manage customer data sharing in the financial sector beyond payment accounts.

6.2 ESMA Publishes the Main Findings from the Common Supervisory Action

On 25 September 2023, the MFSA issued a [circular](#), sharing ESMA's main findings from its Common Supervisory Action ("CSA") of MiFID II costs and charges. It

was addressed towards all investment firms and credit institutions that provide investment services activities which are subject to MiFID II. This CSA was complemented by a mystery shopping exercise to understand better arising risks and issues. The goal of this exercise was to get a better picture of how the ex-ante MiFID II requirements are perceived by the investor and to a lesser extent assess whether firms comply with the applicable requirements.

The main findings of this exercise resulted in an establishment of the following aspects:

- Costs are not always shown as percentage;
- Cost allocation between service and product costs varies;
- Differing inducements practices and sometimes lack of disclosure;
- Implicit costs are not always shown;
- Differing and lack of compliant practices in the cumulative effect of costs on return;
- Format and context of ex-post disclosures differ widely.

ESMA also noted that licence holders are not disclosing in an adequate manner whether the investment advice was independent or not.

Following the publication of the main findings, ESMA shall focus its supervisory convergence efforts on the following:

- Developing a limited number of Questions and Answers;
- Additional preparatory work on the provision of information about costs and charges to clients in a more standardised EU format.

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 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.

MAMO TCV

ADVOCATES

Mamo TCV Advocates
Palazzo Pietro Stiges 103,
Strait Street Valletta, VLT 1436

T. +356 2540 3000
F. +356 2540 3300

info@mamotcv.com
mamotcv.com

