

Regulatory Compliance Update

Q4 2023

Issue N°: 07

31st January 2024



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 updates relating to: Company Service Providers & Trustees, Investment Services & Funds¹, Fintech, and Insurance; and the cross-sectoral regulatory updates relating to: anti-money laundering, sustainable finance, and other regulatory updates.

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.

Table of Contents

SECTOR-SPECIFIC REGULATORY UPDATES	3
1.0 COMPANY SERVICE PROVIDERS & TRUSTEES	3
2.0 INVESTMENT SERVICES & FUNDS	3
3.0 FINTECH	5
4.0 INSURANCE	5
CROSS-SECTORAL REGULATORY UPDATES	9
5.0 AML	9
6.0 SUSTAINABLE FINANCE	9
7.0 OTHER REGULATORY UPDATES	10

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

Regulatory Compliance Update Q4 2023

SECTOR-SPECIFIC REGULATORY UPDATES

1.0 COMPANY SERVICE PROVIDERS & TRUSTEES

1.1 Guidance Note on the Fulfilment of Post-Authorisation Requirements

On 4 October 2023, the Malta Financial Services Authority (“MFSA”) issued a [guidance note](#) with the aim to provide Corporate Services Providers (“CSPs”) with insight on the MFSA’s expectations in fulfilling post-authorisation requirements imposed. Through the amendments made to the CSPs Act (“Chapter 529” of the Laws of Malta), any person providing CSP services to third parties by way of business, as further defined in the amended CSP Rulebook, was required to submit an application for authorisation as a CSP, specifically bringing into scope certain service providers which were previously exempt from obtaining authorisation.

1.2 Submission of Notifications for Reclassification of Company Service Providers Class of Authorisation

On 16 October 2023, the MFSA issued a [guidance note](#) and introduced changes to the manner in which Authorised Persons are to submit notifications for requests for reclassification of their CSPs’ class of authorisation in terms of the CSPs Act. By means of these changes Authorised Persons should notify the Authority, by sending an email, indicating their intention and the rationale behind the request for re-classification. Subsequently, the Authority will guide

the Authorised Person on the required documentation for the purposes of processing such a request, which documentation is to be submitted through the Licence Holder (‘LH’) Portal.

1.3 CSPs’ adherence to AML obligations

On 14 December 2023, the Financial Intelligence Analysis Unit (“FIAU”) published a [communication](#) addressed to subject persons in relation to the thematic review on CSPs’ adherence to their obligations emanating from the Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR), more specifically Regulation 7(1)(c), which was carried out earlier this year.

2.0 INVESTMENT SERVICES & FUNDS

2.1 Circular on the Benchmarks Regulation (‘BMR’) – Update to the Information Gathered relating to the Use of Benchmarks

On 16 October 2023, the MFSA issued a [circular](#) addressed to users of benchmarks as defined under the Regulation (EU) 2016/1011 of the European Parliament. As part of MFSA’s continuing role of providing regular updates in relation to the use of benchmarks, said Authority requests all market participants, (except insurance intermediaries), to fill out a form highlighting details of their exposure to the critical benchmarks. This form, which can be accessed from the link included in the circular, must be sent to the Authority once finalised. Only entities making use of benchmarks as at 30 September 2023 are required to respond to this information gathering exercise, hence NIL returns are not required.

2.2 MFSA Launches Framework for Notified Professional Investor Funds (PIFs)

On 18 December 2023, the MFSA issued a [circular](#) in response to its launching of a framework for NPIFs. Whilst further information on said framework may be accessed from the MFSA website, this circular makes reference to a number of points which stakeholders should take note of. Firstly, amendments to existing funds rulebooks have been made, with particular reference to the definition of Professional Investor Fund.

Moreover, reporting obligations have been updated to ensure that NPIFs are obliged to regularly report to the Authority, via an established annex, with respect to their portfolio management and investment strategies. Whilst NPIFs managed by EU small AIFs and third country managers are subject to this requirement. It is to be noted that NPIFs managed by local *de minimis* AIFMs are not subject to this requirement.

Furthermore, following a feedback comment shared by a stakeholder, the MFSA clarified its position on the independence of the auditor, explaining, via the circular, that the auditor must not be involved in the provision of other services of the fund and must only carry out its primary function.

Lastly, the MFSA held that all third country AIF managers authorised in a jurisdiction with whom the Authority has signed a bilateral agreement of understanding on securities, will be allowed to manage NPIFs in Malta. However, in the event that no agreement on securities is found, the Authority may still grant authorisation if it deems any other form of agreement to be relevant.

The circular lays down the criteria to be met following an application sent by the Third country AIFM for the latter to gain authorisation.

2.3 Update on EU Developments and Publications Relevant to the Investment Services Sector

On 21st December 2023, the MFSA issued a [circular](#), bringing attention to the asset management industry on a few publications released by the European Commission and European Supervisory Authorities. The non-exhaustive list of publications disseminated by the Authority include a mixture of legislative proposals, consultations, updates to question and answer (Q&A) documents, and feedback reports by the ESAs to Commission mandates.

Firstly, the circular makes reference to the final review given by the EU Council on AIFMD II, which includes a number of items. Furthermore, it delves into an ESMA published final report following consultation, regarding the draft RTS for the ELTIF regulation. The circular lists several other ESMA published updates, including the concept of estimates across the EU Sustainable Finance framework. This document provides an overview of the 'Do No Significant Harm' principle that is present in several pieces of European Legislation dealing with Sustainable Finance.

Lastly, the circular brings to light joint ESA publications which include amendments to sustainability disclosures and Q&As on the PRIIPs Key Information Document (KID) issued on the 5th of December 2023.

2.4 MFSA update on the Corporate Governance Manual for Directors of Collective Investment Schemes

On the 30th of October 2023, the MFSA issued a [circular](#) about the [Corporate Governance Manual](#) it issued in relation to directors of Collective Investment Schemes (CIS). This Manual is an updated version from the one issued by the Authority on 22nd August 2023 and is based on a set of core principles which shall act as a foundation for good governance practices which the MFSA have recommended to directors, for them to apply to the best of their abilities, and in proportion to the fund's nature and size.

The Manual outlines numerous best practices for directors to apply. Focus is directed towards the obligations of the director when it comes towards managing risks and conflicts of interests whilst maintaining effective and strong governance measures, that is fostered around a compliance culture. Additionally, the Manual lists several practices which the board of directors must undertake in its board meetings. Moreover, the Manual sheds light on certain Environment Social Governance (ESG) recommended practices which directors of such schemes should apply, in addition to guidelines relating to compliance with internal controls and Anti Money-Laundering (AML) risks.

3.0 FINTECH

3.1 Circular to VFA Service Providers on Updates to Chapter 3 of the VFA Rulebook

On 7 December 2023, the MFSA issued a [circular](#) referencing the consultation on changes to Chapter 3 of the [Virtual](#)

[Financial Assets Rulebook](#) in order to stay consistent with the requirements applicable to VFA Service Providers requirements found under the Markets in crypto-assets ("MiCA") Regulation.

The new Chapter 3 shall become applicable in two stages, the first becoming applicable on 1 January 2024 and the second stage becoming applicable on 1 July 2024. The proposed transition periods should allow VFA Service Providers sufficient time to become compliant with the new requirements. Other important updates include an updated VFASP Return, the removal of the VFA Agent role, commencement of outreach by the MFSA to VFA service providers on discussing MiCA regulation, in addition to changes on MiCA regulation supplementary text.

4.0 INSURANCE

4.1 European Insurance Overview Report 2023

[The Annual European Insurance Overview](#) is an extension of EIOPA's statistical services providing an easy-to-use and accessible overview of the European (re)insurance sector. The report is based on annually reported Solvency II information. This ensures that the data has a high coverage in all countries and is reported in a consistent manner across the EEA. This report is based on annual reporting for 2022.

4.2 Report on the Impact of Inflation on the Insurance Sector

In light of recent developments, this [report](#) aims to analyse the impact of inflation on the insurance sector both retrospectively and prospectively,

considering its effects on capital position, profitability, and liquidity. The analysis encompasses theoretical considerations, macroeconomic trends, and changes in insurance assets and liabilities. It evaluates how higher inflation and rising interest rates affect insurers' sensitivity and resilience, particularly regarding their exposure to interest rate-sensitive assets, liability duration, and claims and expense inflation.

Market indicators and consumer surveys suggest persistent inflation expectations above 2%, with long-term expectations surpassing the Eurosystem target. Insurers have witnessed a shift in portfolio composition due to the transition from a low-yield environment to one marked by inflation and higher interest rates, resulting in asset valuation volatility. While inflation impacts technical provisions and profitability differently across life and non-life insurance segments, both face challenges in maintaining underwriting profitability amidst rising expenses and claims.

The report highlights how insurers must navigate liquidity risks increased by inflation and interest rate volatility, with potential impacts on cash flows and asset values. High inflation erodes consumers' savings, influencing their financial decisions and insurance purchasing behaviour. Increased premiums may prompt some consumers to reduce coverage or opt-out of policies, deepening the protection gap. Moreover, higher short-term interest rates could drive policyholders to surrender insurance contracts in favour of short-term investments which is non-optimal from a savings perspective.

4.3 2023 Joint ESAs Report on the Extent of Voluntary Disclosure of Principal Adverse Impacts under SFDR

On 28th September 2023, a [report](#) was published by ESMA, relating to a survey that was conducted to gather feedback from National Competent Authorities on the current state of entity-level voluntary principal adverse impacts (PAI) disclosures under the Sustainable Finance Disclosure Regulation (SFDR) which sets out sustainability disclosure requirements for FMPs and financial advisors to communicate sustainability information to investors.

Although there remains considerable variation in compliance levels with disclosure requirements among Financial Market Participants (FMPs) and across jurisdictions, the findings indicate a general enhancement in voluntary disclosure practices. Notably, compared to the previous year, disclosures seem more accessible and transparent on websites. However, the ESAs highlighted a need for improvement in explaining non-consideration of PAIs, as current explanations are often incomplete. Furthermore, disclosures regarding alignment with the Paris Agreement remain vaguely formulated when PAIs are taken into account.

4.4 Investments, Loans, Insurance or Pensions with a Sustainable Focus: What you need to know

This [fact sheet](#), issued by the EBA, EIOPA, and ESMA on 30th November 2023, answers consumers most frequently answered questions about sustainable finance. It offers guidance to individuals who are considering the purchase of financial products incorporating sustainability elements, encompassing loans, investments, insurance, and

pensions. The informational sheet provides insights and proposes actions consumers can undertake to understand the potential impact of their financial decisions on fostering a more sustainable tomorrow.

4.5 MFSA Calls for more clarity in Insurance Policy Wording

Via its [circular](#), published on 30th October 2023, the MFSA has urged insurance companies to simplify their policy wordings to benefit consumers and mitigate issues like coverage disputes. This advice stems from a thematic review on exclusions in policy wordings and product oversight and governance (POG) arrangements, involving 22 insurance companies operating locally and across Member States. The review covered 50 insurance products ranging from travel and health insurance to business interruption coverage. In response, the MFSA issued a "Dear CEO" letter outlining expectations and offering guidance on best practices, emphasizing the importance of regular product reviews and consideration of complexity levels. The MFSA discourages mid-policy term changes and advises maintaining a balance between limiting losses and meeting market needs. The review also identified positive market practices such as incorporating client and distribution research into the POG process and using practical examples to clarify policy provisions. Dr. Sarah Pulis, Head of Conduct Supervision at MFSA, emphasized the regulator's commitment to improving the insurance market, ensuring consumer protection, and fostering transparency and efficiency within Malta's insurance industry.

4.6 The EU Retail Investment Strategy Package Workshop for Insurance Companies and Intermediaries

The MFSA, following a circular published in August 2023, organised a [workshop](#) on the 30th of November 2023 for insurance market participants, to introduce the proposals of the EU Commission in relation to the new regulatory requirements proposed under the Retail Investment Strategy Package. The main areas discussed were Retail Investment Package Proposals including Disclosures, Inducements, Suitability Assessment, and Value for Money, Marketing Communications & Practices and PRIIPs Amending Regulation.

4.7 Circular on the Reporting Requirements of Insurance Undertakings Adopting IFRS 17

In a [Circular](#) dated 28th November 2023, the MFSA informed insurance undertakings about updated Quarterly National Specific Templates (QNSTs) and Annual National Specific Templates (ANSTs). These updates entail minor technical adjustments aimed at simplifying the uploading process onto the LH Portal, without altering the content. Henceforth, the revised QNSTs and ANSTs should be uploaded onto the LH Portal using the same naming convention:

LHCode_MMMYYYY_NSTQ_LEI for QNSTs and
LHCode_MMMYYYY_NSTA_LEI for ANSTs. Additionally, for any resubmissions required, the naming convention should follow the format of the initial submission, with the inclusion of 'rev01, rev02, etc.' as previously specified. Amendments to the Insurance Rules will be made accordingly to reflect the changes outlined in this Circular.

4.8 Circular on Amendments to Chapter 8 of The Insurance Rules to refer to New Implementing Regulations and New National Specific Templates

On the 5th of December 2023, the MFSA issued a [circular](#) to inform the market about amendments to Chapter 8 of the Insurance Rules due to two new Commission Implementing Regulation, Commission Implementing Regulations (EU) 2023/894 and 2023/985, which repeal Commission Implementing Regulations (EU) 2015/2450 and 2015/2452. The amendments will reflect the new regulations and will start applying as from 31st December 2023.

Chapter 8 of the Insurance Rules has also been amended to include reference to these two templates, Annex VI and VII. These will come into force on the date of publication of this Circular.

4.9 Submission of the Conduct-Related Data Return for Insurance Undertakings

On the 18th of December 2023, the MFSA issued [Circular](#) informing the industry about the revisions carried out on the Conduct-Related Data Return ('Return') for insurance undertakings. The Return has been updated to provide more comprehensive details regarding the activities of the Companies for supervisory purposes. The surveys for the calendar year 2023 encompass the following:

- Financial Innovation
- Complaints
- Insurance Policies Sales Data
- Claims Data
- Products
- Passporting
- Sustainable finance

Insurance undertakings are advised to consult the Guidelines document on the MFSA website for clarification on compiling the Return and refer to the latest version available online. The submission of the Return should be made via the LH Portal under the "Conduct Related Data Insurance" project, with step-by-step instructions provided in the Guidelines. Confirmation of information on the Cover Sheet must be endorsed by a director or the Compliance Officer of the Company. Individuals with access to the "Conduct Related Data Insurance" project on the LH Portal can upload the Return. Submission is required within 42 days after the year-end, as per R.4.1.26 of the Conduct of Business Rulebook.

4.10 Consultation on the Proposed Amendments to the Insurance Rules and the Insurance Distribution Rules

The MFSA issued a [Circular](#) on 7th December 2023, proposing to amend Chapters 4, 5, 8, 9, and 12 of the Insurance Rules and Chapters 1, 4, 6 and 7 of the Insurance Distribution Rules to address the issues which have been observed while conducting regulatory work as well as other from the market while carrying out their operations.

The proposed Amendments to Chapter 4 of the Insurance Rules include the Professional indemnity cover minimum adjusted to €1,600,000 to align with EIOPA's guidelines, the addition of new rules allowing approved auditors to obtain bank guarantees and the introduction of a requirement for MFSA approval before insurance undertakings declare or distribute dividends. Other amendments include the modification of excess clause requirements in line with Insurance Distribution rules where, if a policy is subject to an excess, this shall

be for a sum not exceeding 1 per centum of the limit of indemnity and subject to a maximum of €50,000, the inclusion of a new paragraph for group supervision and submission of Auditor's Management Letter in audited financial statements and the removal of conduct of business references to avoid duplication, with those aspects now covered in the Conduct of Business Rulebook.

The proposed Amendments to Insurance Distribution Rules include the adjustment of minimum indemnity limits to €1,600,000 and €2,350,000 respectively to comply with EIOPA's standards, the addition of a new category for own funds which is group guarantees, the modification of financial capacity requirements to €23,480, the inclusion of new sub-paragraphs on sustainability criteria knowledge and the removal of assessment requirements for CPD training courses conducted by external parties.

CROSS-SECTORAL REGULATORY UPDATES

5.0 AML

5.1 EBA Consultation Paper on the 'Travel Rule' Guidelines

On 5th December 2023, the FIAU published a [circular](#), informing banks, financial institutions, Virtual Asset Service Providers and any other interested subject persons that the European Banking Authority (EBA) has issued for public consultation new 'Guidelines on preventing the abuse of funds and certain crypto-assets transfers for money laundering and terrorist financing purposes. These subject persons are invited to provide any comments and feedback, to be sent directly to the EBA.

5.2 goAML XML Schema Updates

On 20 December 2023, the FIAU issued a [comprehensive guidance document](#) addressed to reporting entities, regarding the New Report Type on goAML: Suspicion of Cash Restriction Breach Report (SCRBR). It held that a significant change in reporting procedure is to be applied from January 1st onwards. In fact, when reporting entities find a breach in either cash restriction or Money Laundering/Financing of Terrorism, two separate reports must be submitted via goAML. Apart from that, it is imperative to include the respective report indicator Internal 09, on STR/SAR report type only. Lastly the FIAU encourages subject persons to review the updated Technical Package Schema relating to reporting obligations.

5.3 Compliance by Company Service Providers in relation to the provision of Company Formation Services – Thematic Review 2023

On 14th December 2023, the FIAU communicated via a [circular](#), the Thematic Review it conducted on CSPs adherence and application of their obligations found under the PMLFTR. The document highlights areas for improvement that CSPs should apply to achieve a better level of compliance.

6.0 SUSTAINABLE FINANCE

6.1 Sustainable Finance Disclosures Regulation (SFDR) – Reminder on the Implications of the SFDR Level 2 Provisions in the Area of Asset Management

The sustainable finance framework is continuously evolving, and the authority is making sure that the EU Commissions ongoing efforts to enhance the legal

provisions in this field, are communicated to all those applicable. In fact, the aim of the [circular](#) issued by the authority on 2nd October, is to elicit some salient aspects of the SFDR RTSs, which require further attention of the licence holders.

With that being said, the circular holds that the SFDR RTSs introduce extensive additional pre-contractual disclosure requirements which are to be disclosed in the offering documentation of investment funds, of which a couple of changes have been made. In terms of the MFSA's expectations, the Fund Managers are encouraged to prioritise compliance with already existing regulatory requirements by revisiting and updating, where necessary, the pre-contractual and website disclosures to ensure their appropriateness to the fund in question.

The Fund Managers are also reminded that information should be disclosed in a manner that is easily accessible, non-discriminatory, prominent, simple, concise, comprehensible, fair, clear, and not misleading.

6.2 ESMA Publishes its Common Supervisory Action (CSA) for 2024

On 19th October 2023, the authority issued a [circular](#) relating to the Common Supervisory Action published by ESMA, addressed to all investment firms and credit institutions. The scope of this CSA is to analyse investment service providers application of the essential finance sustainability requirements. The circular lays down the core aspects the CSA covers, also staying consistent with EU investor protection.

The MFSA would like to remind all investment services licence holders to ensure that both the suitability

assessment and all relevant policies and procedures are updated in line with the applicable Delegated Acts.

6.3 ESMA Explanatory notes in relation to the Sustainable Finance Framework

On 11 December 2023, the MFSA issued a [circular](#) in relation to ESMA's publication of 3 explanatory notes. The three notes cover: (i) definition of sustainable investments, (ii) application of "do no significant harm" requirements, and (iii) the use of estimates. These notes are aimed at ensuring that stakeholders are well informed on the Taxonomy Regulation and the Sustainable Finance Disclosures Regulation.

7.0 OTHER REGULATORY UPDATES

7.1 ESA's Report on the Landscape of ICT Third-Party Providers in the EU

On 19 September 2023, the European Supervisory Authorities (ESAs) issued a [report](#) on the landscape of ICT third-party service providers (TPPs) relating to EU financial entities. This analysis, based on voluntary information from a sample of financial entities across the EU, revealed around 15,000 ICT TPPs serving the financial sector directly. These providers support critical or important functions and offer a wide range of services, many of which are non-substitutable for ensuring service continuity. The results not only provided a comprehensive overview of the ICT TPP landscape but also contributed valuable insights to the ESAs' policy-making process, influencing discussions on delegated acts and consultation papers related to DORA implementation.

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

