

Regulatory Compliance Update

Q2 2024

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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, Insurance, Credit Institutions and Company Service Providers.

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 Publication of the AIFMD II

On 19th April 2024, the MFSA issued a [circular](#) informing relevant stakeholders of the recent publication of the AIFMD II amending the previous Directive 2011/61/EU. This circular makes reference to the most salient amendments that this Directive makes, especially with regards to delegation, liquidity risk management, supervisory reporting, the provision of depositary and custody services, and loan origination by AIFs introduced by the Directive.

Additionally, the circular provides that the Directive created new requirements for authorisations of AIFs, whereby applicants are now required to provide further details about personnel effectively running the AIFM. Highlighting the main amendments made, the introduction of loan origination activities as part of the investment strategies available to AIFMs stands out as a significant change resulting from the AIFMD review. Furthermore, it creates a framework intended for further investor protection as it enables AIFMs to manage liquidity in a more cohesive manner.

Moreover, certain contents of the Directive effect also the UCITS Directive so as to strengthen the latter's proximity to the AIFMD. Should any queries remain, the authority advises that they are to be sent by email to isspolicy@mfsa.mt.

1.2 Circular on the Publication of Final Guidelines on the Group Capital Test by the European Banking Authority ("EBA")

On 23rd April, the MFSA issued a [circular](#) notifying investment firms of the newly published guidelines by the EBA. These specifically refer to the application of the group capital test that may be opted for by group structures which are deemed to be sufficiently simple. The authority advises affected parties to read the Guidelines in full. The changes are to take effect from January 1st, 2025.

1.3 Call for Evidence on the Review of the UCITS Eligible Assets Directive

On 17th May 2024, the MFSA issued a [circular](#) where it calls industry stakeholders relevant to Undertakings for Collective Investment in Transferable Securities (UCITS) funds, to give their input and feedback on any possible improvements on the current UCITS Eligible Assets Directive, following up from ESMA's call. Through this appeal, ESMA seeks to gather insights on potential discrepancies in interpretation one may find within the Directive.

Additionally, ESMA seeks to determine whether an exposure with UCITS to asset categories is advantageous or poses any serious risks. Lastly, the MFSA encourages all industry participants, including asset managers, service providers, and other relevant stakeholders, to actively engage in this consultation process by sending any submissions via isspolicy@mfsa.mt, with a deadline of 7th August 2024 being set.

1.4 Establishing and Classifying the Organisation Size of Investment Services Licence Holders (Excluding Funds)

On 3rd June 2024, the MFSA issued a [circular](#) in furtherance of the emergence of the EU Regulation on Digital Operational Resilience for the Financial Sector. Via this circular it seeks to collect information relative to the organisational size of applicants and existing Authorised Persons.

Hence, Investment Services Licence Holders (excluding funds) will be required to establish and classify their organization size as either Microenterprise, Small Enterprise, Medium-sized Enterprise or as a Non-SME. Following this classification, Licence Holders are obliged to keep up to date with material given out by the European Commission, namely the 'User Guide to the SME Definition' and the 'SME Self-Assessment Questionnaire'.

1.5 Submission of the List of Financial Instruments

On 3rd June 2024, the MFSA issued a [circular](#) informing the industry of the additional reporting data obligations made to the "List of Financial Instruments". The arrangements made to the list, which must be compiled and submitted to investment firms on a biannual basis, primarily deal with sustainable finance.

However, prior to submission, the authority will launch a revised survey template towards the end of the year, indicating that investment firms are not obliged to submit the list prior to said launch.

1.6 Publication of ESMA's Final Report on Guidelines on Funds' Names Using ESG or Sustainability-Related Terms

On 18th June 2024, the MFSA issued a [circular](#) which makes reference to the final report that ESMA published in relation to guidelines for funds using ESG terms in their names. The Guidelines issue parameters on the kinds of names that Funds may use to prevent the risk of greenwashing.

The purpose of the Guidelines is to specify the circumstances where the fund names using ESG, or sustainability-related terms are unfair, unclear, or misleading. Therefore, these guidelines set certain obligations for fund managers to comply with. The Guidelines will apply 3 months after their publication on ESMA's website. Additionally, the MFSA intends to incorporate these guidelines in the local legal framework.

1.7 ESMA issues Initial Guidance Emanating from MIFID II Requirements to Firms using Artificial Intelligence Technologies when Offering Retail Investment Services

On 19th June 2024, the MFSA issued a [circular](#) sharing the statement published by ESMA providing initial guidance to investment firms that already use or are planning to use AI, taking into consideration their main obligations under MIFID II while highlighting the related benefits and risks. Additionally, the client must be duly informed of how the firm uses AI for the provision of its services, exercising full transparency when carrying out such kinds of activities.

Moreover, the statement lists the different ways on how AI could be used

in a beneficial way within the investment services field. The areas it focuses on include, risk management, compliance, fraud detection and customer service. Furthermore, it also lays down the various kinds of usages which may trigger certain risks and challenges such as lack of transparency and data privacy breaches.

2.0 INSURANCE

2.1 Establishing and Classifying the Organisation Size of Insurance Licence Holders and Pensions Licence Holders

On 2nd May 2024, the MFSA released a [circular](#) to inform the market that it will collect data in relation to the organisation size classification of applicants and existing Authorised Persons. This is in light of recent European Legislation such as the [Digital Operational Resilience for the Financial Sector Regulation](#). Insurance Licence Holders and Pensions Licence Holders will be required to establish and classify their organization size as one of the following: 1. Microenterprise; 2. Small Enterprise; 3. Medium-sized Enterprise; 4. Non-SME. Applicants and authorised persons can make use of the material released by the European Commission such as the [User Guide to the SME Definition](#) and the [SME Self-Assessment Questionnaire](#).

By 31st May 2024, licence holders must select the correct classification within the SME field and must additionally fill and upload a [self-declaration form](#). It is important that the classification in the SME field and within the self-declaration form match.

3.0 CREDIT INSTITUTIONS

3.1 Submission of the Conduct Related Data Return for Credit Institutions

On 23rd April 2024, the MFSA issued a [circular](#) to update credit institutions about the revisions made to the Conduct-Related Data Return ('Return'). For purposes pertaining to supervision duties, the 'Return' covers further details of activities that credit institutions carry out, which are listed in the circular. Furthermore, when compiling the 'Return', credit institutions were advised to refer to the Guidelines contained on the MFSA website. The deadline for submission of the 'Return' was 31st May 2024.

3.2 Circular to Credit Institutions including Foreign Branches on the Supervisory Requirements – ITS v3.4

On 30th April 2024, the MFSA released a [circular](#) summarising the main amendments made to the Implementing Technical Standards (ITS) on Supervisory Reporting (Regulation EU 2021/451). In furtherance of this update, the MFSA would like to inform credit institutions and foreign branches about the amendments made to supervisory reporting obligations. This new version of the ITS framework, expected to apply from September 2024 onwards, introduces a new reporting on Interest Rate Risk in the Banking Book (IRRBB). This updated version also includes templates for all different sized institutions.

3.3 Circular to Credit Institutions on the Update to Banking Rule BR/07 on the Publication of Annual Report and Audited Financial Statements of Credit Institutions

On 27th May 2024, the MFSA issued a revamped 'Banking Rule' on the Publication of Annual Report and Audited Financial Statements of Credit Institutions authorised under the Banking Act (the 'Rule'). A list of rules which have been amended or added are exhaustively listed in the relative [circular](#), with their applicability initiating towards the end of 2024.

3.4 Circular to Credit Institutions including Foreign Branches on the Supervisory Reporting Requirements – ITS v3.4 and Upcoming Changes due to Transition to DPM 2.0 and XBRLCSV Format

Pursuant to the Implementing Technical Standards (ITS) on Supervisory Reporting, the authority issued a [circular](#) on 24th June 2024, communicating the updates issued on the new Data Point Model (DPM) 2.0 and the transition to the XBRL–CSV reporting format to credit institutions and foreign branches. The circular outlines that the MFSA's website section dedicated to supervisory reporting requirements has been updated, so as to incorporate the various changes made to the ITS, which are applicable from September 2024 onwards.

Moreover, following the publication of the new DPM data dictionary format in 2023, the EBA will implement the DPM 2.0 model in 2024 since, according to the authority, it offers enhanced integration. Lastly, the Authority will issue a detailed, separate communication regarding this initiative, outlining the local implementation plan, transitional arrangements (if any) and timeline later in the year.

CROSS-SECTORAL REGULATORY UPDATES

4.0 DIGITAL FINANCE

4.1 Establishing and Classifying the Organisation Size of Entities Within the Virtual Financial Assets Framework

On 1st April 2024, via a [circular](#), the MFSA said that due to incoming EU legislation, such as Regulation (EU) 2022/2554, it would collect data in relation to the organisation size classification of applicants and existing Authorised Persons. The classification of either Microenterprise, Small Enterprise, Medium-sized Enterprise and Non-SME, must be established by entities that fall within the Virtual Financial Assets (VFA) framework.

The classification process had to be inputted on the Corporate Profile on the Licence Holder Portal. The circular highlights the need for the classification selected within the SME field and the classification submitted within the self-declaration form to be the same. The deadline set for the mentioned entities, was 30th April 2024.

4.2 Circular in Relation to Amendments to the Virtual Financial Assets Act in Preparation for the Markets in Crypto-Assets Regulation

On 18th April 2024, the MFSA issued a [circular](#) where reference was made to the Markets in Crypto Assets (MiCA) Regulation. Whilst the regulation became enforceable in June 2023, it will start applying from 30th June 2024 onwards to issuers of asset referenced tokens (ARTs) and electronic money tokens (EMTs). Furthermore, from 30th

December 2024 onwards it will also apply to crypto-asset service providers.

The MiCA Regulation covers various requirements and obligations, however the circular points out, and briefly explains, a few additions that have been made to the Regulation. These include the removal of the role of the VFA agent from Malta's VFA Act.

4.3 Publication of Applications for Issuers of Asset-Referenced Token

On 26th June 2024, the MFSA issued a [circular](#) referencing the MiCA Regulation, informing all market participants on the establishment of a new application form to coincide with the commencement of enforceability of part of the MiCA Regulation as outlined in this [insight](#). All prospective applicants who wish to market and sell asset-referenced tokens to the public, are being advised to refer to the MFSA's Authorisations Process Service Charter. Further information on the MFSA's authorisation process may be found via this [link](#).

5.0 SUSTAINABLE FINANCE

5.1 EU Platform on Sustainable Finance Report

On 15th April 2024, the MFSA issued a [circular](#) referencing a report published by the EU Platform on Sustainable Finance (PSF) which focused on monitoring of capital flows to sustainable investments. The report's aim was to analyse the effectiveness of investments in light of the European Green Deal. The framework integrates data from the real economy (entities and activities), along with financial sector instruments available from both the primary and secondary markets. For a full review of the report, one may gain access [here](#).

6.0 ANTI-MONEY LAUNDERING LEGISLATION

6.1 The new EU AML Package

On 24th April 2024, the EU officially [endorsed](#) the anticipated Anti-Money Laundering Package following the provisional agreement reached between the Council and the EU Parliament on 18th January 2024. The package includes 4 legislative acts aimed at further modernising the industry, especially in light of recent EU Court cases scrutinizing certain provisions contained in the 5th EU AML Directive.

To this end, the package contains a revamped 6th AML/CFT Directive replacing the amended version of Directive 2015/849, a Regulation setting up an EU AML Authority, a new Regulation on AML/CFT containing directly applicable rules, and lastly a recast on the 2015 Regulation on Transfer of Funds. Problems relating to delays in implementation into national laws, by EU Member States, in addition to the lack of cooperation that existed between Financial Intelligence Units and national authorities of Member States, were the main problems stemming from the EU AML/CFT framework that have now been resolved by the reforms.

6.2 EBA issue report on virtual IBANS

On 31st May 2024, the FIAU issued a [circular](#) whereby it referred to the EBA (European Banking Authority) report on the issuing of IBANs. The report compiles the various interpretations, assessments and findings made by the EBA, highlighting the potential risks that may arise when using IBANs. Moreover, a more comprehensive understanding of the definition and categorisation of IBANs is made, closing off with suggested

recommended practices and policies that may mitigate the identified risks.

6.3 Optimising Subject Persons' Representations: Guidance on Best Practices for Subject Persons when Submitting Representations to the FIAU

On 19th June 2024, the FIAU issued a [circular](#) informing subject persons of its new publication relating to the right that subject persons have when submitting representations to the FIAU. The publication is titled, 'Optimising Subject Persons' Representations: Guidance on Best Practices for Subject Persons when Submitting Representations to the FIAU'.

The circular makes reference to the right that subject persons have to make representations whenever they have been accused of breaching their obligations set out under the Prevention of Money Laundering Act (PLMFTR). This publication fully explains the process for submission, offering guidelines on best practices to adopt when carrying out this exercise.

For further reference one may access the firm's [article](#) which briefly outlines the contents of the package in further detail.

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.

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