

Regulatory Compliance Update

Q3 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 Circular on the Benchmarks Regulation ('BMR') – Update to the Information Gathered Relating to the Use of Benchmarks

On 15 July 2024, the MFSA issued a [circular](#) addressing market participants, particularly users of benchmarks, falling within the scope of Regulation (EU) 2016/1011. The circular makes reference to the various gathering information exercises the authority has carried out within the local industry over the last few years, explaining the importance of ensuring that benchmarks need to be representative of the underlying market or economic reality they intend to measure.

Accordingly, for further assessment purposes, the Authority requested all market participants, with the exception of insurance intermediaries, to complete and return a form, setting out details of their exposure to the critical benchmarks and any other benchmarks currently in use.

The Authority reiterated that this needed to be submitted via email, by not later than Friday, 20 September 2024. Those making use of benchmarks as of 31 August 2024 who did not submit said form, would be considered as non-users for regulatory purposes. Enquires should be sent to 'benchmarks@mfsa.mt'.

1.2 Investment Services Supervision Regulatory Briefing

On 16 July 2024, the MFSA, via the Investment Services Supervision (ISS) function, issued a [briefing](#), highlighting and summarising the key legislative and regulatory developments that took place throughout the year so far, in order to ensure that all licence holders under the Investment Services Act are made aware of these updates.

The briefing specifically focuses on key developments such as (i) MFSA updates, (ii) legislative proposals, (iii) consultations, to which the industry is invited to contribute, (iv) updates to question and answer (Q&A) documents and other convergence measures, and (v) feedback reports by the ESAs to Commission mandates, such as draft Regulatory Technical Standards (RTSs).

1.3 Central Bank of Malta Return Submitted by Investment Services Providers

On 8 August 2024, the MFSA issued a [circular](#) informing Investment Services Providers (ISPs) to stop submitting the Central Bank of Malta (CBM) Return for ISPs through the Licence Holder Portal "LH Portal" with effect from 28 August 2024. However, ISPs are still required to continue submitting the return to the Central Bank of Malta through the INFOSAT portal. Additionally, it stated that any queries on this matter are to be sent via email to 'Statistics@mfsa.mt'.

1.4 European Commission: Targeted Consultation Assessing the Adequacy of Macprudential Policies for Non-Bank Financial Intermediation (NBFI)

On 9 August 2024, the MFSA issued a [circular](#) referring to the [Consultation](#) document published by the European Commission on 22 May 2024. The Consultation targets the adequacy of macroprudential policies for non-bank financial intermediation (NBFIs).

The aim of this Consultation is to identify the vulnerabilities and risks of NBFIs, map the existing macroprudential framework, receive feedback on the current challenges to macroprudential supervision, and discuss potential enhancements. Essentially, the Consultation refers to 3 key highlighted issues;

- unmitigated liquidity mismatches;
- the build-up of excessive leverage;
- interconnectedness among NBFIs sectors and between NBFIs and banks.

1.5 Circular on the Publication of Frequently Asked Questions on the Notified PIF Framework and Related Updates to the NPIF Rulebook

On 5 September 2024, the MFSA released a [circular](#) summarising the Publication of a Guidance Note on the Notified PIF Framework issued by the Authority. This document is a compilation of answers to queries sent to the Authority in relation to the Notified Professional Investor Fund framework during its development and after its launch.

The FAQ document is divided into two sections as follows:

1. Questions regarding the NPIF Framework in general;
2. Questions relating to NPIFs' Service Providers.

Additionally, following the results gathered from the FAQ document, a few changes have also been made to the NPIF rules. Lastly it encourages those with queries to send any questions to this email; 'ausecurities@mfsa.mt'.

1.6 Circular on the Benchmarks Regulation ('BMR') – Notice of Update to the Benchmarks Return Template

On 11 September 2024, the MFSA issued a [circular](#) addressed to users of benchmarks, wherein reference is made to the circular issued on 15 July 2024. The Authority states that the template which was attached within the previous circular has been revised by amending the 'Exposure term to Maturity' dates as showcased in this circular.

Additionally, the Authority stipulates that the original deadline for market participants, with the exception of insurance intermediaries, to complete and return a form setting out the details of their exposure to the critical benchmarks and any other benchmarks currently in use is being extended to Monday, 07 October 2024. Once completed, the market participant must send it via email to 'benchmarks@mfsa.mt'.

1.7 Feedback Statement on the Proposed Extension of the NPIF Framework to Include Self-Managed NPIFs

On 26 September 2024, the MFSA issued a [Feedback Statement](#) on the proposal to include Self-Managed Notified Professional Investor Funds within the NPIF Framework. This Feedback Statement summarises the key contributions received in response to the consultation, and outlines the MFSA's

positions on the issues raised with having self-managed funds.

The Statement issues feedback on the main changes made to the NPIF framework, separating them into 4 features;

1. Corporate Governance Requirements and Local Substance
2. Additional Regulatory Safeguards
3. Capital Requirements and Ongoing NAV
4. Conversion Options

For all these above features, the Statement outlines an explanation of the proposed change, a summary of the feedback obtained from stakeholders and lastly, the Authority's position on the matter, following the consultation phase.

As a result, the MFSA will be coordinating with the relevant bodies to amend the regulatory framework, *inter alia* to remove the prohibition of setting up self-managed Notified PIFs as outlined in Regulation 15(2)(a) of the Investment Services Act (List of Notified CIS) Regulations and in Rule 2.04(i), Part A of the Notified PIF Rulebook.

Those having any queries or requests for clarifications on the above are being advised to forward their concerns via email to 'assetmanagementstrategy@mfsa.mt'.

2.0 INSURANCE

2.1 Circular Setting the MFSA's Expectations with Regards to Outsourcing Arrangements Including Delegation of Authority Provided by Authorised Undertakings

On 9 July 2024, the MFSA amended Chapter 6 of the Insurance Rules under the Insurance Business Act, and on 9 July 2024, it issued a [circular](#) clarifying requirements for outsourcing key functions. The MFSA now requires authorised undertakings to submit detailed information and documentation outlined in three new tables, in addition to the mandatory 60-day prior notification, before outsourcing key or critical activities. The submission includes the "Annex II – Assessment Form" and additional details on delegating authority and terminating agreements. These changes, effective 9 September 2024, aim to enhance the consistency and efficiency of the MFSA's outsourcing supervisory framework.

2.2 Publication of Revised Forms for the Official Notifications in Relation to the Cross-Border Activities Carried Out by (Re)Insurance Undertakings under Freedom of Service (FOS) and Freedom of Establishment (FOE) Regimes

On 12 July 2024, the MFSA issued a [circular](#) regarding the introduction of three new forms (application, changes, discontinuation) for (re)insurance undertakings operating under the passporting regime in EEA member states. These forms aim to improve supervision and align MFSA's requirements with the Cross-Border Notification Platform. All licensed entities must submit these forms with accurate information upon notification.

2.3 Circular on the Benchmarks Regulation ('BMR') – Update to the Information Gathered relating to the Use of Benchmarks

On 15 July 2024, the MFSA issued a [circular](#) requesting financial market participants to provide updated information on their use of benchmarks regulated by the EU Benchmarks Regulation. All licence holders must complete an information form detailing their use of critical and other benchmarks as of 31 August 2024 and submit it to benchmarks@mfsa.mt by 20 September 2024. Failure to comply will result in being considered a non-user of benchmarks for regulatory purposes. This applies to all MFSA licence holders, including credit institutions, investment funds, insurance undertakings, and market operators.

2.4 Publication of Revised and New Forms for Insurance Intermediaries.

On 12 August 2024, the MFSA, via its [circular](#), introduced revised and new forms for insurance intermediaries, including applications for enrolment, extensions of authorisation, and approvals of protected cells. New forms for cross-border activities under the Freedom of Services (FOS) and Freedom of Establishment (FOE) regimes have also been published. All submissions must be made on these updated forms from 16 August 2024 onwards, replacing previous versions. Applications submitted on the old forms after this date will not be accepted. Forms should be submitted via the LH Portal. For queries, contact auinsurancepensions@mfsa.mt.

3.0 CREDIT INSTITUTIONS

3.1 Circular on the Publication of the Credit Servicers and Credit Purchasers Act and Other Relevant Legal Instruments

On 1 August 2024, the MFSA issued a [circular](#) informing industry stakeholders of the recent additional legal instruments which have been transposed into local legislation Directive (EU) 2021/2167 on credit servicers and credit purchasers. The Directive (also known as 'NPL'), aims to reduce the risk of accumulation of loans on credit institutions. A harmonisation of rules allows for such risk prevention, whilst maintaining the development of a secondary market for non-performing loans.

The legal instruments that have been enacted from the implementation of the NPL Directive are as follows:

- Credit Servicers and Credit Purchasers Act
- Credit Servicers and Credit Purchasers Act (Passporting) Regulations
- Conduct of Business Rules on Credit Servicing and Borrower Protection
- Credit Servicers and Credit Purchasers Act (Fees) Regulations
- Credit Servicers Rule on Application Procedures and Requirements for the Authorisation of Credit Servicers.

3.2 Regulatory Update from Banking Supervision to Credit Institutions

On 30 August 2024, the MFSA released a [regulatory update](#) with attachments to new banking legal updates in addition to other ones which may affect the banking sector. Reference is first made to the recent EU Banking package which includes the final texts of the Capital Requirements Regulation 3 (the '[CRR3](#)') and the Capital Requirements Directive 6. With the publication of the banking package, the final Basel 3 reforms are implemented in the European Union (EU).

Additionally the update mentions the fact that the EBA has already initiated its work on several mandates within the banking package, as outlined in the [EBA roadmap on strengthening the prudential framework](#).

Moreover, updates on the FRTB Framework, Credit Services Directive and other banking rules are referred to in this legal notice, with an overview of the MFSA's work in this regard also being given. Additionally, reference is also made to other EU legal frameworks that impact credit institutions, emphasising that compliance with these set of laws, in so far as they mention financial entities, is obligatory. These are the Digital Operational Resilience Act, Markets in Crypto-Assets Regulation (MiCAR) and Sustainable Finance Disclosure Regulation' (the SFDR), in addition to the European Central Banking Authority's (EBA) report on Greenwashing Monitoring and Supervision.

CROSS-SECTORAL REGULATORY UPDATES

4.0 DIGITAL FINANCE

4.1 The Markets in Crypto-Assets Bill

On the 1 of July 2024, during the Maltese Parliament's plenary session, [Bill no. 107](#) was discussed. This Bill seeks to amend the Virtual Financial Asset (VFA) Act to ensure that it conforms to the EU Markets in Crypto Assets (MiCA) regulation. The VFA Act is already largely in compliance with the MiCA due to recent amendments to the Act, however the Bill guarantees additional compliance by creating a thorough framework that governs the issuance and trading of crypto-assets, detailing the

prerequisites for public offerings and the admission of various crypto-assets to trading including:

- Asset-Referenced Tokens (ARTs): tokens whose value is pegged to one or more assets like commodities or fiat currencies;
- Other Crypto-Assets: various forms of digital assets that do not fall into the previous categories but require regulation;
- E-Money Tokens (EMTs): tokens that represent fiat money and are used for payment transactions.

Apart from this, with respect to applications for authorisation submitted between 30 December 2024 and 1 July 2026 by persons who are licensed under the VFA Act to provide one or more VFA services, the MFSA will apply a simplified procedure. Moreover, persons who on 30 December 2024 are licensed under the VFA Act to provide, or hold themselves out to provide, one or more VFA services, may continue to provide their services until 1 July 2026 or until they are refused authorisation under the MiCAR.

5.0 SUSTAINABLE FINANCE

5.1 The Corporate Sustainability Reporting Directive (CSRD)

The [CSRD](#), which came into force in January 2023, replaces the Non-Financial Reporting Directive (NFRD) and is applicable to:

- large, medium-sized or small companies, including insurance companies;
- branches of third country undertakings with a net turnover of €40 million;
- listed companies;

- qualifying EU subsidiaries of non-EU companies generating over €150 million in the EU market, and large companies with over 250 employees and more than 40 million in net turnover or more than 20 million in total assets.

This Directive seeks to ensure that companies adopt a harmonised approach in their reporting. Apart from obliging companies to disclose information regarding the way their business activities affect the environment, the CRSD also expects companies to declare how their sustainability goals, measures and risks impact the financial health of the business.

Companies that were subjected to the NFRD must submit the report covering the financial year of 2024 in 2025. However, companies which were not subjected to the NFRD must submit their first report in 2026. In addition, SME's will have to comply with the CRSD in 2027.

Compliance with the Directive is of utmost importance, since non-compliance can result in penalties. Member states are given the discretion to determine which type of penalty will be imposed.

5.2 Update to the Consolidated Q&A on the Sustainable Finance Disclosure Regulation (SFDR)

On the 25 of July 2024, the European Supervisory Authorities (ESA's) published an [update](#) to the consolidated Q&As on the SFDR and its supplementing Delegated Act.

The following topics were addressed in the Update:

- **SFDR Product Level and firm-level website disclosures:** To comply with the SFDR website obligations, the ESAs expect registered AIFMs with assets below certain thresholds to make the firm-level disclosure available on a website. Only the template-based disclosures under Articles 8 or 9 and their respective template-based periodic disclosures are required.
- **Sustainable investments under SFDR:** Where funds invest in other financial products, the Update stresses that the underlying assets must be considered when conducting the sustainable investment test under the SFDR. This means that information from the investee companies of the target fund will be considered by the fund-of-funds manager. Moreover, in case of delegation of portfolio management, the delegating fund manager is still responsible for deciding what constitutes a sustainable investment in the respective fund.
- **Calculation of Specific Principal Adverse Impact (PAI) Indicators:** The Update clarified that the PAI Indicator on Exposure to companies active in the fossil fuel sector, works on a pass/ fail basis. The total amount of investments that meet these criteria must be disclosed under this PAI indicator as failing investments'.

6.0 ANTI-MONEY LAUNDERING LEGISLATION

6.1 FIAU Launches Consultation Exercise on Measures to Comply with Regulation (EU) 2023/1113 and Regulation (EU) 2023/1114

On 31 July 2024, the FIAU released a [circular](#) informing subject persons of the Agency's proposals on the necessary changes that need to be made to the Prevention of Money Laundering Act in order for the national framework to stay compliant with Regulation (EU) 2023/1113, which is to come into force as of 30 December 2024. This consultation exercise is aimed at engaging subject persons to give their insights and intentions on the proposals issued by the Agency. Feedback on these proposals needed to be sent to the FIAU on consultations@fiaumalta.org by not later than 31 August 2024.

6.2 The EBA Issues New 'Travel Rule Guidelines'

On 9 July 2024, the FIAU issued a [circular](#) informing subject persons, specifically those involved in the transfer of funds and crypto assets, about new guidelines on the 'travel rule'. These guidelines, issued by the European Banking Authority (EBA), outline the necessary information that must accompany a transfer of funds or crypto assets, and detail the steps that payment service providers (PSPs), intermediary PSPs (IPSPs), crypto-asset service providers (CASPs), and intermediary CASPs (ICASPs) should take to identify missing or incomplete information.

Moreover, they also specify how the said information is to be transmitted, the characteristics of the systems to be used to transmit said information and the

actions to be taken if a transfer of funds or crypto-assets is missing the required information. Consequently, the FIAU is set to adopt these guidelines as its own through the revision of existing documents, including the Implementing Procedures – Part II for the VFA Sector.

6.3 FIAU Launches the Annual Report for 2023

On 16 July 2024, the FIAU issued a [circular](#) referring subject persons to its launch of the Annual Report for 2023. It covers an in-depth overview of the organisation's work throughout the year 2023, shedding light on statistical insights, collaborative partnerships, and training and education initiatives.

6.4 Upcoming Training Session on Trade-Based Money Laundering for Credit Institutions, Financial Institutions, and Corporate Services Providers

On 13 September 2024, the FIAU issued a [circular](#) informing subject persons about its upcoming training session on Trade-Based Money Laundering (TBML) on 30 October 2024. The aim of the session is for the outlined subject persons to gain knowledge on TBML and its effects on the sector.

Additionally, it is hoped that through this training session, subject persons become better equipped to identify any kinds of suspicious TBML activity. Details of the session's venue are given in the circular.

6.5 Updates to the Guidance Note on AML/CFT Obligations in Relation to Payment Accounts with Basic Features

On 25 September 2024, the FIAU issued an [update](#) informing credit institutions of changes to its Guidance note on AML/CFT obligations in relation to payment accounts with basic features.

The updates include general references to updated sample documents that have been issued by the authority, the addition of red flags for ongoing monitoring processes, references to the EBA Guidelines on policies and controls for the effective management of ML/TF risks, in addition to other changes in relation to wording used.

Addressing credit institutions, the Agency concludes by stating that this updated Guidance Note replaces the previous one issued in 2018 with immediate effect.

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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