

Financial services: Malta's main FDI driver

Financial and insurance activities contributed €149.0 billion or 97.9 percent to the total foreign direct investment position in Malta last year, according to official statistics published by the National Statistics Office (NSO).

The NSO data indicates that the position of foreign direct investment in Malta was estimated at €152.3 billion, an increase of €9.2 billion over the corresponding month in 2014.

In terms of flows, there was a net increase of €4.1 billion in FDI during 2015, compared to an increase of €8.4 billion in 2014. This increase in FDI flows was mainly driven by increases registered under other capital (Table 1). As for flows classified by economic activity, the largest increase of FDI was registered in financial and insurance activities by €3.7 billion in 2015.

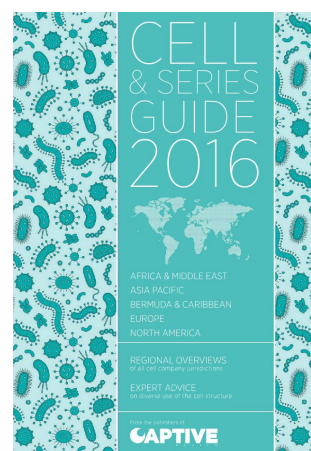
The NSO figures reflect an increase in activity across all regulated financial sectors, with an increase in licensing activity noted particularly in the electronic money and payment services sector, insurance cell companies, retirement schemes and investment intermediation. A remarkable expansion in business has also been registered in a number of areas, following increases of 34% in gross written insurance premiums, 36% in assets under management in the pensions sector and 5% in the net asset value of collective investment schemes reported in 2015.

The level of growth continues to be sustained by new legislation introduced in recent years, including changes in retirement pensions legislation, the extension of cell company legislation to new areas of the financial and insurance service activity, the introduction of the loan funds framework and changes in limited partnership legislation. The latest framework for Notified Alternative Investment Funds, launched in June this year, has also led to renewed interest in funds sector following the inclusion of the first scheme on the MFSA's Notified AIF List on 21 July.

Securitisation Cell Companies

Over the past years, the Malta Financial Services Authority (MFSA) constantly sought to keep pace with market developments and financial innovation through the introduction of sound and innovative legislation, resulting in new opportunities for more financial innovation. Malta has been at the forefront in opening up new areas of business while updating traditional ones. One such example is the development of a bespoke legislative framework for securitisation vehicles and securitisation cell companies (SCC).

The concept of cell companies was introduced by the MFSA in 2004 with the introduction of the Companies Act (Cell Companies Carrying on Business of Insurance) Regulations (Legal Notice 243 of 2010) for the insurance sector. The concept of a protected cell company was extended by the introduction of the Securitisation Cell Companies Regulations (Legal Notice 411 of 2014) which introduced a new protected cell company structure, called the securitisation cell company, to operate as a securitisation vehicle.



What's Inside:

**Financial services: Malta's main FDI driver | Securitisation Cell Companies | Conduct Supervision of Investment Services
Licence Holders | The Legal Entity Identifier ('LEI') | Review of the EU Macro-prudential Policy Framework | Fitch
upgrades Malta rating from Stable to Positive**

An SCC is a single legal entity that has two components, the core and its cells. Notwithstanding the creation of one or more cells by the SCC, the cells do not have a separate legal personality, and each cell transacts through the SCC. In fact, notwithstanding the innovative feature of the cell structure, the SCC is still one company with one board of directors, and constituted through its memorandum and articles of association.

The SCC Regulations provide an effective framework for the segregation of different sets of assets and risk instruments within a single special purpose vehicle, the SCC, thereby allowing for the launch of multiple securitisation transactions without incurring any risk of cross-contamination between the different sets of creditors and investors. This is the key difference between a cell company and the traditional non-cellular company. An SCC is able to limit its liability in respect of a particular transaction to a specified pool of assets rather than exposing all of the assets of the SCC, as would be the case with a non-cellular company. In fact, although the SCC and its cells together constitute a single legal entity, each cell constitute distinct and segregated patrimonies, which are ring-fenced from each other.

The SCC Regulations also provide that an SCC can be established solely for the purpose of either carrying on the business of a securitisation vehicle in accordance with the Securitisation Act (Cap. 484 of the Laws of Malta) or assuming risks as a reinsurance special purpose vehicle (RSPV) in accordance with the Reinsurance Special Purpose Vehicles Regulations (Legal Notice 452 of 2013) issued in terms of the Insurance Business Act.

Currently, there are 12 SCCs established in Malta. Of these 12, 11 intend carrying on business of securitisation vehicles with six cells being notified to the MFSA over the past few months. One SCC has been established to carry on business as an RSPV and has duly submitted an application for licensing, which is currently being considered by the MFSA.

Although these two types of SCC vehicles perform different activities, they both enjoy many commonalities as far as their setting up and operation are concerned. Nevertheless, they also possess a set of specific features, some of which have been identified below.

Securitisation Cell Companies carrying on business of Securitisation Vehicles

Under the laws of Malta, in accordance with Article 18 of the Securitisation Act and Regulation 22 of the SCC Regulations, the SCC is required to give notice to the MFSA prior to commencement of business as a securitisation vehicle, and also prior to commencing business in respect of any individual cell. In addition, an SCC which falls within the definition of a 'public securitisation vehicle' in terms of Article 19(1) (a) of the Securitisation Act requires authorisation, and cells may only be created with the prior approval of the MFSA acting as competent authority under the Securitisation Act. Furthermore, any approval or notification issued in respect of a cell is required to be registered with the Registrar of Companies.

The SCC may then enter into one or more securitisation transactions in respect of a cell. Article 2 of the Securitisation Act defines "securitisation" as a transaction or an arrangement whereby a securitisation vehicle, directly or indirectly (a) acquires securitisation assets from an originator by any means, (b) assumes any risks from an originator by any means, or (c) grants a secured loan or other secured facility or facilities to an originator, and finances any or all of the above, directly or indirectly, in whole or in part, through the issue of financial instruments, and includes any preparatory acts carried out in connection with the above.

The SCC may also enter into multiple securitisation transactions with multiple originators in respect of its cells, provided that the securitisation assets deriving from different originators are attributed to different cells. Therefore, in accordance with Regulation 25 of the SCC Regulations, an SCC may enter into one or more securitisation transactions in respect of a cell provided that the securitisation assets allocated to a cell originate from the same originator. This allows the securitisation assets in each cell to be protected in the sense that the SCC's assets and liabilities can be ring-fenced, or segregated, so as to be only available to the creditors and shareholders (where present) of each particular cell.

In compliance with Regulation 21 of the SCC Regulations a securitisation vehicle formed and constituted as a limited liability company may be converted into an SCC carrying on the business of a securitisation vehicle following the submission of a written notification to the MFSA on the appropriate form, accompanied by the documentation as prescribed in the SCC Regulations.

Securitisation Cell Companies carrying on business as RSPVs

The RSPV Regulations define a "reinsurance special purpose vehicle" as an undertaking, other than an existing insurance or reinsurance undertaking, which assumes risks from a ceding undertaking and which fully funds its exposure to such risks through the proceeds of a debt issuance or any other financing mechanism where the repayment right of the providers of such debt or financing mechanism are subordinated to the reinsurance obligations of such a vehicle.

The SCC Regulations provide that an SCC may only carry on business as an RSPV with the prior authorisation of the MFSa granted in terms of the RSPV Regulations. This also applies to the setting up of cells and any approval issued is required to be registered with the Registrar of Companies.

The SCC may then enter into one or more risk transfer arrangements in respect of a cell provided that all risk transfer arrangements attributable to an individual cell shall originate from a single ceding undertaking or from ceding undertakings belonging to the same group. The risk transfer arrangements attributable to each cell are protected by the provisions for ring-fencing of the assets and liabilities contained in the SCC Regulations.

Every cell of the SCC needs to be fully funded in its own right in view of the application of the relevant provisions of the RSPV Regulations directly to the individual cells of an SCC.

The development of a regulatory framework for securitisation vehicles and SCCs is another milestone in the progress of Malta's financial services sector. Against a backdrop of increasing financial innovation and constant changes affecting financial markets, the MFSa strives to adopt a flexible and proactive approach to market events whilst trying to find a balance between providing the necessary support to industry participants and the protection of investors, which balance undoubtedly has its challenges.

This article was penned by Michelle Mizzi Buontempo and Sephora Scerri and was first published in the international financial journal [Cell & Series Guide 2016](#), published by Captive Review.

Conduct Supervision of Investment Services Licence Holders

The Conduct Supervisory Unit was established within the MFSa with effect from 1st January 2015 with the objectives of (i) setting up a regulatory framework that secures appropriate consumer protection in financial services; (ii) having a pre-emptive supervisory regime which addresses potential or emerging risks for financial consumers; and (iii) setting up an operational regime to strengthen the responsibilities of regulated persons in treating customers fairly.

As advised in previous communications, the Conduct Supervisory Unit will supervise regulated entities on a cross sectorial basis and in this regard, the MFSa has decided to adopt a staggered approach to the transfer of conduct supervision from the various supervisory units to the Conduct Supervisory Unit. In this regard, the Conduct Supervisory Unit has been responsible for the supervision of trustees and company service providers since the 1st February 2015 and will as from the **1st September 2016**, assume responsibility for the supervision of the conduct of business of investment services licence holders excluding custodians but including Fund Managers, initially, pending necessary resourcing, only to the extent that these are selling investment products/instruments directly to retail clients.

In this context, as from the abovementioned date the Conduct Supervisory Unit will be responsible for the supervision of investment firms' conduct in the following areas: client disclosures and reporting (including investment advertisements); conflicts of interest and inducements; selling processes and practices; contractual agreements with retail clients; execution of clients' orders and governance of regulated persons – primarily to ensure that customers are treated fairly.

The legislative framework which the Conduct of Business will rely upon in effecting its supervisory duties remains the one currently in force, namely the Investment Services Act, 1994 and the Investment Services Rules for Investment Services Providers until such time as the proposed Conduct of Business Rulebook comes into force.

The Legal Entity Identifier ('LEI')

The LEI is a unique identifier consisting of a 20-character alpha-numeric code, which allows for the identification of legally independent entities across global financial markets. The Global LEI System was a G20 commitment towards "the creation of a global legal entity identifier which uniquely identifies parties to financial transactions". The Global LEI System is therefore an international initiative and is not just limited to the European Union.

LEIs are issued by Local Operating Units ('LOUs') of the Global LEI System. LOUs are the utilities endorsed by the Regulatory Oversight Committee ('ROC')¹, or accredited by the Global Legal Entity Identifier Foundation ('GLEIF') under ROC oversight, to provide LEI registrations to registrants and other services.

The establishment of a Global LEI System is critical to improving measurement and monitoring of systemic risk. Furthermore, establishing a uniform system for the identification of legal entities reduces costs not only for individual companies but for the global market.

Application of LEIs

The use of LEIs is already required or recommended under a number of European regulations such as: the European Market Infrastructure Regulation ('EMIR'), whereby counterparties falling within the scope of EMIR are required to report the details of their transactions and an LEI is required for the proper identification in this context; the Capital Requirements Regulation ('CRR'); and the Central Securities Depositories Regulation ('CSDR').

The LEI is also mentioned in the Technical Standards pertaining to the Alternative Investment Fund Managers Directive ('AIFMD'). Furthermore, the LEI will also be required under the Markets in Financial Instruments Directive and Regulation ('MiFID II' / 'MiFIR') framework.

It is appropriate to reiterate that this identifier is not limited to European legislation, but extends across the globe. For an overview of the current and proposed regulatory activities in every worldwide jurisdiction which require or request the use of the LEI please click the following [link](#).

Obtaining an LEI

One may apply for an LEI code through any of the LOUs which are endorsed by the ROC. More information on how to obtain an LEI code, as well as the list of endorsed LOUs can be found by clicking the following [link](#).

Considering the number of regulatory activities requiring the use of LEIs, the Authority strongly recommends that legal entities, who have not yet obtained an LEI code, apply for their LEI irrespective of or possibly in advance of any regulatory requirement. Obtaining an LEI would contribute to and facilitate many financial stability objectives, including enhanced supervisory convergence and high-quality, reliable and comparable data.

It is appropriate to note that failure to obtain an LEI code may result in non-compliance with regulatory requirements, possibly leading to a regulatory breach on the part of the respective legal entity.

For further queries, kindly contact the Securities and Markets Supervision Unit by email to: su@mfsa.com.mt.

¹ The Regulatory Oversight Committee is a group of over 70 public authorities from more than 40 countries established in January 2013 to coordinate and oversee a worldwide framework of legal entity identification, the Global LEI System.

Review of the EU Macro-prudential Policy Framework

The European Commission has on August 1, 2016 issued a public consultation document in preparation for the Review of the EU Macro-Prudential framework. The aim of the consultation is for the EU to gather feedback and evidence on the functioning of the different building blocks of the macro-prudential framework and to gather evidence and stakeholder feedback to analyse possible framework improvements.

The macro-prudential framework is to ensure the stability of the financial system as a whole and to allow the EU Member states to address specific financial stability risks. The current complex macro-prudential framework has evolved over recent years, and this piece-meal approach has created a number of weaknesses in the framework. There is currently an over-lapping toolset of macro-prudential instruments available under EU legislation. The framework is currently made up of 5 separate pieces of legislation namely:

- Two European Systemic Risk Board (ESRB) Regulations;
- The Capital Requirements Directive IV (CRD IV);
- The Capital Requirements Regulation (CRR) and; and
- The Single Supervisory Mechanism (SSM) Regulation.

The EU aims at addressing all the above five component parts in a comprehensive review to eliminate any possible inconsistencies. The EU will be reviewing not only the appropriateness of the design of the individual macro-prudential instruments and institutions but also taking into consideration how these different elements interact.

The consultation includes a broad range of questions on narrowing and refining the scope of existing macro-prudential instruments (such as capital buffers), making the rules more consistent with one another, as well as examining the role and organisational structure of the ESRB and its relationship with the European Central Bank.

The consultation is open to the public including members of the industry, banks, trade bodies, interested academics as well as consumer organisations. The consultation will run from August 1, 2016 and October 26, 2016.

Interested parties are to submit their responses through the online questionnaire on the EU website. Details of the consultation can be accessed from: <http://ec.europa.eu/finance/consultations/2016/macprudential-framework>

Respondents wishing to share their responses with the Authority are welcome to do so by sending responses by email to: communications@mfsa.com.mt

Fitch Upgrades Malta rating from Stable to Positive

Fitch Ratings has affirmed Malta's Long-Term Foreign and Local Currency Issuer Default Ratings at 'A' and revised the Outlook to Positive from Stable. The issue ratings on Malta's senior unsecured Foreign and Local Currency bonds have also been affirmed at 'A'

FitchRatings

The credit rating agency noted that the banking sector remains well capitalised, liquid and profitable despite moderate credit growth.

The report notes that economic growth continued to outperform the eurozone average and peers in at 5.2% in the first quarter of 2016. Fitch expects growth to remain buoyant although moderating over 2016-2018 at 3.6%, driven by strong domestic demand. Fitch also welcomes the improvement in the country's financial position, noting that the fiscal deficit is forecast to narrow to 0.9% of GDP in 2016 and to 0.8% in 2017, below the 'A' median, from 1.5% in 2015.

European Supervisory Authorities Announcements

European Banking Authority (EBA)

- 04/08/2016 - [EBA recommends introducing the Leverage Ratio in the EU](#)
- 04/08/2016 - [EBA publishes list of designated Resolution Authorities](#)
- 05/08/2016 - [EBA amends technical standards on benchmarking of internal approaches](#)
- 08/08/2016 - [EBA provides input based on the Single Rulebook Q&As to the European Commission's CRR-CRD review](#)
- 08/08/2016 - [EBA publishes indicators from 36 global systemically important institutions \(G-SIIs\)](#)
-

MFSA Circulars

- 01/08/2016 - [An update on MAR Technical Standards and MAR Q&A](#)
- 04/08/2016 - [Circular - EIOPA consults on the presentation format of the Insurance Product Information Document](#)
- 04/08/2016 - [Circular to the Financial Service Industry on Best Execution Visits carried out in 2016](#)
- 08/08/2016 - [Circular regarding an EU Consultation document on Review of Macro-Prudential Policy Framework](#)
- 09/08/2016 - [Circular to Credit Institutions on Annex 2B of Banking Rule BR/12](#)
- 09/08/2016 - [Circular to the Financial Services Industry on the Legal Entity Identifier \('LEI'\)](#)
- 18/08/2016 - [Circular addressed to MIFID firms and UCITS/AIFMD firms conducting MIFID services and activities](#)
- 19/08/2016 - [Circular on Offsite Supervision – Correspondence with the Funds Supervision Team](#)
-

MFSA Consultation Papers and Feedback Statements

- 09/08/2016 - [Feedback Statement issued further to Industry Responses to MFSA Consultation Document on Amendments to the Listing Rules Implementing Audit Committee Requirements](#)
- 11/08/2016 - [Feedback Statement Issued Further to Industry Responses to the MFSA Consultation Document on Audit Committee Requirements with respect to Credit Institutions](#)
- 26/08/2016 - [Consultation on Amendments to the Insurance Rules issued under the Insurance Business Act](#)
-

Warnings

Foreign warnings received by MFSA can be viewed on [MFSA Website / Announcements / Warnings](#)

MFSA Licences - July 2016

NEW LICENCES

Collective Investment Schemes

Professional Investor Funds targeting Qualifying Investors

- Collective Investment Scheme licence issued to **Mezzanine Capital Funds SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **Heka Funds SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **Audentia Capital SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **Audentia Capital SICAV II plc** in respect of one sub-fund.
- Collective Investment Scheme licences issued to **Pilatus SICAV plc** in respect of three sub-funds.

Professional Investor Funds targeting Extraordinary Investors

- Collective Investment Scheme licences issued to **Mezzanine Capital Funds SICAV plc** in respect of two sub-funds.

Alternative Investment Funds targeting Qualifying Investors

- Collective Investment Scheme licences issued to **Private Value Capital Opportunities SICAV plc** in respect of three sub-funds.

Notified Alternative Investment Funds targeting Qualifying Investors

- Collective Investment Scheme licence issued to **Ventura SICAV plc** in respect of one sub-fund.

UCITS

- Collective Investment Scheme licence issued to **Investedge SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **Libero International SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **Nobelium Fund SICAV plc** in respect of one sub-fund.

Pensions

Retirement Scheme

- Recognition certificate issued to **Harbour Retirement Scheme SICAV plc**.
- Recognition certificate issued to **The Bourse (US) Retirement Scheme (Malta)**.

Back office Administrator

- Recognition certificate issued to **STM Malta Trust and Company Management Limited**.

Company Service Providers

- Registration certificate issued to **AMMC – Acumum Corporate Services Limited**.
- Registration certificate issued to **Heritage International Fund Services (Malta) Limited**.

Securitisation Vehicles*Cells*

- Acknowledgement issued to **PV Securitisation Cell**.

Trustees and Fiduciaries

- Authorisation issued to **Acumum Trustees Limited** to provide trustee and other fiduciary services including acting as administrators of private foundations.

SURRENDERED LICENCES**Banking***Credit Institutions*

- Surrender of licence issued to **Deutsche Bank (Malta) Limited**.

Collective Investment Schemes*Professional Investor Funds targeting Qualifying Investors*

- Surrender of licence issued to **Swiss Investments Fund SICAV plc** in respect of one sub-fund.
- Surrender of licence issued to **Innocap Fund SICAV plc**.
- Surrender of licence issued to **NBCG Fund SICAV plc**.

Incorporated Cells

- Surrender of licence issued to **Lupum Global Micro Fund IC SICAV plc**.

EXTENDED AND REVISED LICENCES**Insurance***Insurance Undertakings*

- Extension of license issued to **Liberty Global Insurance Company Limited** to carry on business of reinsurance in one more class of the general business and in two classes of the long term business.

MERGED LICENCES**Insurance***Insurance Undertakings*

- Multi Risk Benefits Limited, a company authorised to carry on business of insurance in terms of the Insurance Business Act (Cap. 403, of the Laws of Malta) has merged into Multi Risk Indemnity Company Limited, a company which is also authorised to carry on business of insurance and reinsurance in terms of the Act. Consequently, Multi Risk Benefits Limited's authorisation ceased to be operative upon the effective date of the merger.

Registry of Companies - New Registrations – July 2016

Companies	Partnerships
430	6

Forthcoming Events

October 3-4 - [FERMA - European Risk Seminar](#)



Training by members of the ECC:

- [Malta International Training Centre](#)
- [Malta Institute of Accountants](#)
- [Institute of Financial Services](#)
- [Institute of Legal Studies](#)
- [Institute of Financial Services Practitioners](#)
- [Malta Institute of Management](#)
- [Castille Institute](#)
- [PricewaterhouseCoopers](#)
- [Malta College of Arts, Science and Technology \(MCAST\), Institute of Business & Commerce](#)
- [The Department of Banking & Finance, Faculty of Economics, Management & Accountancy, The University of Malta](#)

Communications to be addressed to:
The Secretary,
Educational Consultative Council,
MFSa,
Notabile Road,
Attard.



You can keep up-to-date on our news and regulatory developments by regularly visiting our [website](#) or by subscribing to our [RSS feeds](#).



Notabile Road, Attard BKR 3000, Malta

Phone: +356 21 44 11 55; Fax: +356 21 44 11 89

www.mfsa.com.mt registry.mfsa.com.mt mymoneybox.mfsa.com.mt www.careersinfinance.mfsa.com.mt