

MFSA Newsletter

April 2014

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

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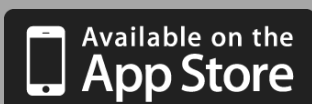
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Malta Open for Reinsurance Special Purpose Vehicles Business

Malta and its growing insurance industry featured extensively in the online edition of Commercial Risk Europe (CRE), a leading publication on Insurance and Risk Management issues. CRE provides an in-depth review of a recent seminar organised by the Institute of Financial Services Practitioners and supported by the MFSA at Bloomberg London's Offices.



Speakers at the SPV Seminar

"Becoming the first European member state to establish reinsurance special purpose vehicle (SPV) regulation and attract related investment is a key target for Malta." Coming late to the SPV party should work in Malta's favour, said Professor Joe Bannister, Chairman of the Malta Financial Services Authority (MFSA), as he outlined the country's reinsurance SPV working environment.

The Maltese regulator, together with its government, have developed a regulatory environment in which they believe reinsurance SPVs can flourish, but Professor Bannister stressed that Malta is not trying to compete with any other jurisdiction. The Chairman added that knowledge gained from the experience of others in the sector had informed Malta's decision-making process.

This should mean that setting up reinsurance SPV in Malta is easier and ultimately more successful as a result. According to the IFSP, reinsurance SPVs are designed to complement traditional (re)insurance arrangements and be a cost-effective mechanism to provide additional capital to (re)insurers while contributing to premium price competitiveness and smoothing against adverse insurance market cycles. Professor Bannister said the island has no specific targets in terms of numbers of reinsurance SPVs established but is determined to deliver in terms of quality and reputation. He added the jurisdiction has already gained considerable traction in this area since January.

IFSP's Neville Gatt said that the system in Malta was designed to be as straightforward as possible. From a taxation perspective, for example, the rules in Malta are clearer than other countries and are designed to be cost neutral for businesses bringing a RSPV to the island, he said. "We wanted to ensure there were no tax obstacles," he explained. Commercial Risk Europe further reports that Malta is to be the first European Union member state to offer an operating environment for reinsurance SPVs compliant with Solvency II. The EU Reinsurance Directive provides member states with an authorisation and regulatory framework that enables insurance or reinsurance undertakings to transfer risks to reinsurance SPVs.

The MFSA has been aligning the regulatory regime for reinsurance SPVs under the Insurance Business Act (Cap.403) to EIOPA Advice for Level 2 Implementing Measures on Solvency II: Special Purpose Vehicles. The Maltese Reinsurance SPV Regulations define such entities 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 instrument or any other financing mechanism where the repayment right of the providers of the particular debt or financing mechanism are subordinated to the reinsurance obligations of the RSPV'.

Source: Commercial risk Europe - <http://www.commercialriskeurope.com/>

Global Financial Stability Report: Moving from Liquidity- to Growth-Driven Markets

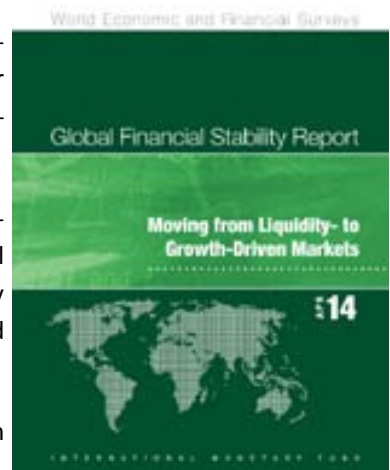
Following the great crisis of the past few years, the global financial system is currently recovering while going through a number of challenging transitions on the path to greater stability. The euro area is moving from fragmentation to a more robust framework for integration.

Through its Global Financial Stability Report (GFSR), the International Monetary Fund provides an in-depth analysis of key risks currently facing the global financial system. In normal times, the report seeks to play a role in preventing crises by highlighting policies that may mitigate systemic risks, thereby contributing to global financial stability and the sustained economic growth of the IMF's member countries.

The global financial system is currently undergoing a number of challenging transitions on the path to greater stability. These transitions are far from complete, and stability conditions are far from normal.

The Report notes that for advanced and emerging market economies alike, a successful shift from liquidity-driven to growth-driven markets requires a number of elements, including a normalization of monetary policy that avoids financial stability risks; financial rebalancing in emerging market economies amid tighter external financial conditions; further progress in the euro area's transition from fragmentation to robust integration; and the successful implementation of Abenomics in Japan to deliver sustained growth and stable inflation.

The report also looks into changes in the investor base and financial deepening affect the stability of portfolio flows and asset prices in emerging market economies. The findings suggest that changes in the composition of investors are likely to make portfolio flows to emerging market economies more sensitive to global financial conditions; however, strengthening local financial systems reduces the sensitivity of domestic financial asset prices to global financial shocks.



Amid these significant changes in the global environment, emerging market economies face their own transition challenges. However notable differences exist in different regional settings.

According to the IMF, Private and public balance sheets have become more leveraged since the beginning of the crisis and thus are more sensitive to changes in domestic and external conditions.

Macroeconomic imbalances have increased in a number of economies in the past few years, while the increased participation of foreign investors in domestic bond markets exposes some economies to an additional source of market volatility and pressure on capital flows.

Lastly, the report looks at the issue of institutions deemed too important to fail and provides new estimates of the implicit funding subsidy received by systemically important banks. The report finds that this subsidy is still sizeable and calls for a strengthening of financial reforms.

This particular edition of the GFSR draws in part on a series of discussions with banks, securities firms, asset management companies, hedge funds, standards setters, financial consultants, pension funds, central banks, national treasuries, and academic researchers.

The full report is available on: <http://goo.gl/bbn7ez>

Source: International Monetary Fund

Publication of Legal Notices on European Venture Capital Funds and European Social Entrepreneurship Funds

On 28 March 2014, the following Legal Notices were published:

- the Investment Services Act (European Venture Capital Funds) Regulations, 2014 (L.N. 105 of 2014); and
- the Investment Services Act (European Social Entrepreneurship Funds) Regulations, 2014 (L.N.106 of 2014).

These Regulations serve the purpose of designating the MFSa as the competent authority for the purposes of Regulation (EU) No 345/2013 of the European Parliament and of the Council on European Venture Capital Funds and Regulation (EU) No 346/2013 of the European Parliament and of the Council on European Social Entrepreneurship Funds (the “EU Regulations”), both dated 17 April 2013. They also provide the MFSa with certain administrative powers to be exercised in the pursuance of its role as the competent authority.

By way of background information, the EU Regulations provide a framework for the regulation of the managers of qualifying venture capital funds and of qualifying social entrepreneurship funds that wish to market such funds within the European Union under the designations “EuVECA” and “EuSEF” respectively. The EU Regulations require such fund managers to be registered with the competent authority of their home Member State and to be subject to the supervision thereof.

To this end, the EU Regulations prescribe the powers that may be exercised by the competent authority in relation both: (i) to the managers of qualifying funds established in the territory of its Member State and registered by it; and (ii) in relation to the managers of qualifying funds established and registered in another EU Member State or in an EEA State and marketing their funds in the territory of the competent authority’s Member State.

The MFSa is presently examining the provisions of the EU Regulations and may issue further industry guidance in due course.

The text of the Legal Notices may be found on the MFSa website at the following link:

<http://www.mfsa.com.mt/pages/viewcontent.aspx?id=246>

The Company Service Providers (CSP) Regulatory Regime

On the 24th December 2013, the Company Service Providers Act (Chapter 529 of the Laws of Malta) was published, implementing Article 36 of Directive 2005/60/EC of the European Parliament and of the Council of the 26th October 2005, on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

Article 3 of this Act, imposed the obligation of registration to the Authority on both legal and natural persons that provide any of the following services: (i) formation of companies or other legal entities; (ii) acting as or arranging for another person to act as director or secretary of a company, a partner in a partnership or in a similar position in relation to other legal entities; (iii) and the provision of a registered office, a business correspondence or administrative address and other related services for a company, a partnership or any other legal entity, by way of business to third parties as defined in Article 2 of the Act.

Companies and individuals that have already been operating as CSPs prior to the enactment of this legislation were required by the Act to apply to the MFSa for registration by the 24th March 2014. Any such providers that have not yet applied for registration are thus in breach of the provisions of this Act and are therefore to contact the Authority immediately in order to rectify their situation. As a transitional arrangement, until the applications for registration are processed and the applicants are registered, the applicants may carry on providing company services. However, those persons newly commencing a CSP business may not start so operating before duly applying for registration and being granted such registration by the Authority.

The Company Service Providers Act may be accessed through the following link <http://www.mfsa.com.mt/pages/viewcontent.aspx?id=518> while the Rules for Company Service Providers and the application form required for registration may be accessed through this link: <http://www.mfsa.com.mt/pages/viewcontent.aspx?id=520>

For any queries regarding the above, kindly contact Dr. Michelle Mizzi Buontempo, Deputy Director, Securities and Markets Supervision Unit on 25485112, mmizzibuontempo@mfsa.com.mt or Dr. Maria Carmen Farrugia on 25485384, mfarrugia@mfsa.com.mt

Industry Updates

Trusts and Trustees

The Trusts and Trustees Act (hereinafter referred to as 'the Act') came into force in 2004 and it provided a complete overhaul of the Trusts Act 1989 as well as introducing consequential amendments to eighteen other pieces of legislation. During 2009, the Malta Financial Services Authority initiated a process of review of the Act with a view to improving it by clarifying drafting errors and removing any ambiguity. Between 2010 and 2012 the Authority held regular meetings with representatives of the Institute of Financial Services Practitioners as well as other players in the industry to identify instances where the Act could be improved thus enhancing Malta's status as a trustee jurisdiction. A document outlining the proposed amendments to the Trusts and Trustees Act together with a revised TTA were issued for consultation on 14 December 2012 with the industry being given until 28th February 2013 to provide submissions. The Authority received various responses and reactions to the proposed amendments, some of which were in fact taken on board and reflected in the Trusts and Trustees (Amendment) Act, which was published on the 25th April 2014.

The main amendments being introduced in the Act are, *inter alia*, the following:

- (1) **Revision of Article 9** – Rights of beneficiaries: This amendment clarifies that an heir of a beneficiary cannot advance a claim with regard to a beneficial entitlement, unless expressly provided for in the terms of the trust. Furthermore, an additional amendment to this article clarifies the concept that when a beneficiary wishes to disclaim his/her entire interest in a trust, this can be done irrespective of whether the beneficiary has received any benefit or otherwise.
- (2) **Revision of Article 12** – Duration of Trusts: The perpetuity period applicable to a trust is being extended to 125 years.
- (3) **Introduction of Article 14A** – Settlor Reserved Powers: The introduction of Article 14A provides for specific circumstances wherein the settlor may reserve powers under the terms of the trust. The introduction of such a provision does not give rise to the possibility of the trust being considered a sham, despite to the settlor having retained control over the trust assets.
- (4) **Revision of Article 18** - This amendment aims at streamlining the processes which are applicable in the case of death or insolvency and winding up of a trustee respectively.
- (5) **Introduction of Article 24B and 24C** - Introduction of the office of 'Enforcer' – One of the main amendments to the Act is the introduction of the office of enforcers in the case of trusts set up for a charitable purpose. In a traditional trust, the beneficiaries usually enforce the trust. However in the case of trusts set up for a charitable purpose, where there are no beneficiaries, it will be the role of the enforcer to monitor the trustee and ensure that the latter carries out his obligations vis-à-vis the trust.
- (6) **Amendments to Article 43** – A number of amendments have been made to this article. The most significant are the following:
 - a. The introduction of a minimum capital requirement of €15,000 for both trustees and mandatories, whether individuals or body corporates;
 - b. The introduction of a requirement for both trustees and mandatories, whether individuals or body corporates, to maintain insurance cover at all times;
 - c. The introduction of specific provisions which set out the requirement for persons intending to act as mandatories, or to act as an administrator, trustee, director or similar functionary of a private foundation, to obtain authorisation, as well as the applicable conditions to obtain such authorisation;
 - d. The introduction of the possibility of fiduciaries other than trustees as well as notaries to act as "qualified persons";

- (7) **Amendment of Article 43A** – A number of amendments were made to this Article, mainly relating to the duties of notaries in the context of private trustees.
- (8) **Introduction of Article 43B** - This article introduces the concept of ‘Family Trusts’ and trustee companies set up to act as trustee only in relation to such family trusts. The introduction of this concept serves to align the TTA to international legislations on trusts and trustees, and to provide for a less stringent regulatory regime applicable to such trustee companies.
- (9) **Introduction of Article 43C** – This article introduces the duty of an auditor of a trustee to report to the Authority certain issues or facts which he may become aware of in his capacity of auditor, including any facts which could lead to a serious qualification in the auditor’s report or which constitutes a material breach of the legal and regulatory requirements applicable to trustees.
- (10) **Introduction of Article 46B** – Introduction of a power to the authority to protect the public interest, including the power of the Authority to appoint a person to assume control of the assets of the trustee.

It should be noted that transitory provisions have also been included in the amendments whereby authorised trustees and other fiduciary services providers shall have six months from the date of coming into force of these amendments to comply with the requirements related to insurance cover, the compliance officer requirement and auditor reporting requirements; and two years from the said date to comply with minimum capital requirements.

For any query on the above issues, kindly contact Dr Michelle Mizzi Buontempo on mmizzibuontempo@mfsa.com.mt or Dr Petra Camilleri on pcamilleri@mfsa.com.mt.

UCITS V

On the 15 April 2014, the European Parliament adopted in plenary session an amended Directive on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities as regards depositary functions, remuneration policies and sanctions (UCITS V).

The new rules will considerably strengthen the protection of investors vis-à-vis managers and depositaries of UCITS funds and will also ensure that managers who violate the law will be sanctioned appropriately.

Additional information on the EP text can be obtained from: http://europa.eu/rapid/press-release_STATEMENT-14-121_en.htm

MiFID II / MiFIR

On 23rd April 2014, the European Parliament has adopted in a plenary session updated rules for MiFID II. The Directive and the Regulation are expected to enter into force in June 2014.

Background

The new rules will be set as two pieces of legislation: [i] a directly applicable regulation (MiFIR) dealing inter alia with transparency and access to trading venues and [ii] a directive (MiFID II) governing authorisation and organisation of trading venues and investor protection.

[i] The Directive (MiFID II) amends specific requirements regarding the provision of investment services, the scope of exemptions from the current Directive (MiFID I), requirements for investment firms on their organisation and the conduct of their business, organisational requirements for trading venues, powers available to competent authorities, sanctions and rules applicable for third party firms.

[ii] The Regulation (MiFIR) sets out requirements in relation to the disclosure of trade transparency data to the public and transaction data to competent authorities, the authorisation and ongoing obligations applicable to providers of data services,

the mandatory trading of derivatives on organised venues, and specific supervisory actions regarding financial instruments and positions in derivatives.

Applicability

The new rules will apply to investment firms; market operators and services providing post-trade transparency information in the EU.

Key elements of the new legislation:

The key elements of the legislation are as follows:

1. MiFID II introduces a market structure framework which closes loopholes and ensures that trading, wherever appropriate, takes place on regulated platforms. To this end, it subjects shares and non-equity instruments to a trading obligation. It further ensures that investment firms operating an internal matching system which executes client orders in shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments on a multilateral basis have to be authorised as a Multilateral trading facility (MTF). It also introduces a new multilateral trading venue, the Organised Trading Facility (OTF), for non-equity instruments to trade on organised multilateral trading platforms;
2. MiFID II increases equity market transparency and for the first time establishes a principle of transparency for non-equity instruments such as bonds and derivatives. MiFID II also broadens the pre- and post-trade transparency regime to include non-equity instruments, although in view of the specificities of non-equity instruments, pre-trade transparency waivers are available for large orders, request for quote and voice trading. Post trade transparency is provided for all financial instruments with the possibility of deferred publication or volume masking as appropriate;
3. To meet the G20 commitments, MiFID II provides for strengthened supervisory powers and a harmonised position-limits regime for commodity derivatives to improve transparency, support orderly pricing and prevent market abuse. Under this system competent authorities will impose limits on positions in accordance with a methodology for calculation set by the European Securities and Markets Authority (ESMA). It also introduces a position-reporting obligation by category of trader. This will help regulators and market participants to have better information on the functioning of these markets;
4. A new framework will improve conditions for competition in the trading and clearing of financial instruments. This is essential for the integration of efficient and safe EU capital markets. For this purpose, MiFID II establishes a harmonised EU regime for non-discriminatory access to trading venues and central counterparties (CCPs). Smaller trading venues and newly established CCPs will benefit from optional transition periods. The non-discriminatory access regime will also apply to benchmarks for trading and clearing purposes. Transitional rules will ensure the smooth application of these provisions;
5. MiFID II will introduce trading controls for algorithmic trading activities which have dramatically increased the speed of trading and can cause systemic risks. These safeguards include the requirement for all algorithmic traders to be properly regulated and to provide liquidity when pursuing a market-making strategy. In addition, investment firms which provide direct electronic access to a trading venue will be required to have in place systems and risk controls to prevent trading that may contribute to a disorderly market or involve market abuse;
6. Stronger investor protection is achieved by introducing better organisational requirements, such as client asset protection or product governance, which also strengthen the role of management bodies. The new regime also provides for strengthened conduct rules such as an extended scope for the appropriateness tests and reinforced information to clients. Independent advice is clearly distinguished from non-independent advice and limitations are imposed on the receipt of commissions (inducements). MiFID II also introduces harmonised powers and conditions for ESMA to prohibit or restrict the marketing and distribution of certain financial instruments in well-defined circumstances and similar powers for the European Banking Authority (EBA) in the case of structured deposits;

7. A harmonised regime for granting access to EU markets for firms from third countries is based on an equivalence assessment of third-country jurisdictions by the Commission. The regime applies only to the cross-border provision of investment services and activities provided to professional and eligible counterparties. For a transitional period of three years and pending equivalence decisions by the Commission, national third-country regimes continue to apply;
8. Following the vote in the plenary, MiFID II must be formally adopted by the Council. The publication of the new rules in the Official Journal of the European Union is foreseen for the second quarter of 2014 with entry into application 30 months later. The MFSa will keep the industry updated on any further developments. FAQs on MiFID II can be accessed from the following link: [http://europa.eu/rapid/press-release MEMO-14-305_en.htm](http://europa.eu/rapid/press-release_MEMO-14-305_en.htm)

Contacts

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MiFID II and MiFIR

On 25th April ESMA received a mandate for technical advice on MiFID II / MiFIR from the European Commission. The mandate covers possible delegated acts and implementing acts to be adopted by the European Commission.

A copy of the mandate may be accessed:

http://ec.europa.eu/internal_market/securities/docs/isd/mifid/140423-esma-request_en.pdf

European Supervisory Authorities Press Releases issued during April 2014

European Central Bank



29/04/2014 - [ECB Press Release - SEPA for cards continues efforts to create a truly European payments area](#)

29/04/2014 - [ECB Press Release - ECB to give banks six to nine months to cover capital shortfalls following comprehensive assessment](#)

28/04/2014 - [ECB Press Release - Financial Integration Report](#)

25/04/2014 - [ECB Press Release - Publication of SSM Framework Regulation](#)

European Insurance and Occupational Pensions Authority (EIOPA)



15/04/2014 - [EIOPA and National Bank of Slovakia hold a Conference on Personal Pensions](#)

02/04/2014 - [EIOPA consults on operational functioning of colleges of supervisors](#)

01/04/2014 - [EIOPA issues a press release and an Opinion of EIOPA the Common Application Package for Internal Models](#)

01/04/2014 - [EIOPA consults on Set 1 of its Implementing Technical Standards for Solvency II](#)

MFSA Licences - March 2014

LICENCES ISSUED

Collective Investment Schemes

Professional Investor Funds targeting Qualifying Investors

- Collective Investment Scheme licence issued to **Innocap Fund SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **The Timeless US Growth Fund SICAV plc**.

Investment Services

- Category 2 licence issued to **Seia Capital Management Limited**.

Recognised Fund Administrators

- Certificate issued to **FCS Asset Management Limited**.

SURRENDERED LICENCES

Collective Investment Schemes

Professional Investor Funds targeting Qualifying Investors

- Surrender of licence issued to **CTH SICAV plc** in respect of one sub-fund.
- Surrender of licences issued to **Metatron Capital SICAV plc** in respect of two sub-funds.
- Surrender of licence issued to **Taliti Fund SICAV plc** in respect of one sub-fund.

Professional Investor Funds targeting Extraordinary Investors

- Surrender of licences issued to **AD Fontes Asia Fund (SICAV) plc** in respect of nine sub-funds.

Investment Services

- Surrender of licence issued to **HSBC Securities Services (Malta) Limited**.

Recognised Fund Administrators

- Surrender of licence issued to **HSBC Securities Services (Malta) Limited**.

Trustees, Fiduciaries and Nominees

Trustees

- Surrender of licence issued **La Vallette Fiduciaire Limited**.

Nominees

- Surrender of licence issued to **Finco Trust (Nominee) Limited**.

EXTENDED AND REVISED LICENCES*Collective Investment Schemes*

- Licence issued to **Hedge Invest Global Holdings SICAV plc** was revised from Professional Investor Fund targeting Qualifying Investors to a Professional Investor Fund targeting Experienced Investors.
- Licence issued to **Hedge Invest Specialist Selection SICAV plc** was revised from Professional Investor Fund targeting Qualifying Investors to a Professional Investor Fund targeting Experienced Investors.

Investment Schemes

- Revision of licence issued to **Aros Capital Management Limited** to act as a 'Maltese Management Company'.

Registry of Companies - New Registrations - March 2014

Companies	Partnerships	Total
390	8	398

MFSA Announcements



MFSA Circulars

- 29/04/2014** - [Circular addressed to Investment Firms and Market Operators regarding MiFID II and MiFIR - Industry Update – MiFID II / MIFIR](#)
- 25/04/2014** - [Circular addressed to Investment Firms and Market Operators regarding MiFID II and MiFIR - Industry Update – MiFID II / MIFIR](#)
- 23/04/2014** - [Amendment to Circular to credit institutions on the Draft Implementing Technical Standards \(ITS\) with regards to supervisory reporting, excluding reporting on Asset Encumbrance and Financial Information \(FINREP\) issued on 28 March 2014](#)
- 23/04/2014** - [Note for Information - Amendments to Insurance Business \(Assets and Liabilities\) Regulations, 2007](#)
- 14/04/2014** - [Notice to Financial Services Licence Holders - FIAU Annual Report 2013](#)
- 02/04/2014** - [Investment Services Rules for Collective Investment Schemes authorised to invest through loans](#)



Warnings

- 08/04/2014** - [FXDealer, FX Dealer, FX Direct Dealer or Fxdealer.us - http://www.fxdealer.us/ and Sky Forex or Sky Forex Europe – http://www.skyforex.org.uk/](#)
- 03/04/2014** - [Notice to the General Public](#)

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



MFSA Listing Authority Announcements

- 24/04/2014** - [Extension of period of Suspension of public offer - A25 Gold Producers Corp](#)
- 10/04/2014** - [Extension of period of Suspension of public offer - A25 Gold Producers Corp](#)



Forthcoming Events

15/05/2014 - [FinanceMalta Seventh Annual Conference](#)

12/06/2014 - [Insurance Europe Conference 2014](#)

6th International Conference

The challenge of change: global insurance trends

12 June 2014, St Julian's, Malta

#InsConf14



12-13/06/2014 - [Malta International Risk & Insurance Congress 2014](#)



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Training by members of the ECC:

- [Malta International Training Centre](#)
- [Malta Institute of Accountants](#)
- [Institute of Financial Services](#)



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