

MFSA Newsletter

January 2015

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

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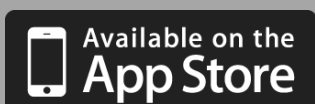
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Appointment of Malta Financial Services Authority Board

The Malta Financial Services Authority announces the appointment, of its Board of Governors. This appointment was made by the Prime Minister in virtue of article 6 of The Malta Financial Services Authority Act (Cap.330). The Board of Governors, presided by the Chairman, sets out policy and general direction and is assisted by the Legal and International Affairs Unit. The new board, effective as from 1st January 2015 will be composed as follows:

Chairman

Prof. Joe V. Bannister B.Sc, M.Sc, D.Phil (Oxon)

Members

Prof. Josef Bonnici is the Governor of the Central Bank of Malta. He served as Member of the European Court of Auditors, with responsibility for the institution's Statement of Assurance. He is a former Professor of Economics at the University of Malta, and served as Parliamentary Secretary of Finance and Minister for Economic Services.

Dr. Joseph Brincat Graduate in Economics, Arts and Laws, and a Civil Servant during his studies. After graduating in Law, he has practiced law in the Courts of Malta since 1970, as well as in the Human Rights Court in Strasbourg. He served as a Member of Parliament for more than 30 years, some of which as a Minister for Justice. He was a representative of Malta in the Council of Europe for 17 years.

Mr. Frans Camilleri has spent 36 years at Air Malta, with responsibilities ranging from market research, through fleet planning, strategic planning, aircraft procurement and leasing, insurance and fuel management to corporate affairs. He has previously held positions on numerous companies boards, ranging from Airline boards, to a large commercial bank, hotels, insurers, and a leasing company. He possesses an academic background in Economics, having studied at Oxford and East Anglia Universities. He is a past President of Skål International Malta. Mr Camilleri currently also occupies the position of Chief of Staff in the Office of the Deputy Prime Minister.

Dr. John Consiglio teaches Banking Regulation and International Banking Law in the Department of Banking and Finance in the University of Malta, and related subjects in other University Institutes. His experience includes working with financial institutions in Malta and overseas such as Barclays, Mid-Med, and HSBC banks, judiciary appointments in Malta's Fiscal Tribunals, and public enterprise secondments as Chairman and Managing Director.

Ms. Lauren Ellul is a Certified Public Accountant and holds a Practising Certificate in Auditing. Ms Ellul has experience working within an advisory function of a leading accounting firm for a number of years, and held the position of Senior Manager within the Corporate Finance Team. She is also a full-time lecturer at the University of Malta in financial management and in cost and financial accounting. She holds an Executive Masters in Business Administration, accredited by the University of Edinburgh in association with École Nationale des Ponts et Chaussées (ENPC) School of International Management, Paris, and KPMG. She completed her Executive MBA in 2002 and placed first in the final year of the programme. She is currently reading for a PhD in Accounting and Finance at the University of Birmingham. Ms Ellul is also a Fellow Member of the Malta Institute of Accountants.

Mr. Herbert Zammit Laferla possesses experience in the financial services sector spanning across 40 years at the Central Bank of Malta, during which he served as the Director responsible for Banking Supervision and Director responsible for the Financial Stability Division of the Bank. During this period Mr Zammit Laferla also served as the Deputy Chairman and Acting Chairman of the Financial Intelligence Analysis Unit. He also acted as an advisor to the Council of Europe monitoring Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL Committee).

Appointment of Conduct Supervisory Unit Director

The Board of Governors has appointed Dr. Michelle Mizzi Buontempo as Director – Conduct Supervisory Unit. Dr. Mizzi Buontempo read law at the University of Malta and was also awarded an M.A. in Financial Services from the same University. She regularly lectures on corporate governance at the Malta International Training Centre. Dr. Mizzi Buontempo has over sixteen years of experience in the regulation and supervision of financial services, including supervision of investment firms and trustees. She represents the MFSA at various Standing Committees of the European Securities and Markets Authority. Dr. Mizzi Buontempo was also responsible for the establishment and development of a new regulatory framework for trustees and company service providers. Prior to joining the MFSA, Dr. Mizzi Buontempo headed the corporate division of a leading audit firm.



The Conduct Supervisory Unit currently being set up within the Authority shall be responsible for securing appropriate consumer protection in financial services through a supervisory regime seeking to address potential or emerging risks for financial services consumers. The Unit shall also endeavor to strengthen the responsibilities of regulated persons in treating customers fairly.

The Authority is currently drafting a Conduct of Business Rulebook which will be adopting a staggered approach. The Rules will initially be addressed to persons providing investment services and persons carrying on insurance activities. The Conduct Supervisory Unit is still not operational, with the resources and structures being identified and set up. Accordingly, until such time as the Unit is functional, the supervision of Investment Services Licence Holders, insurance undertakings and insurance intermediaries under the current regime shall continue to remain under the responsibility of the Securities and Markets Supervision Unit and the Insurance and Pensions Supervision Unit respectively. The Authority will be communicating further with the industry in due course.

2014 in Review:

A year of continued dynamism and growth

Changes in EU regulation and further consolidation across the financial services sector have continued to drive growth in financial services during 2014 as total number of licences topped the 800 mark.

Investment services registered high levels of growth particularly with the issue of 17 new Category 2 licences, an indication of the strong expansion taking place in the asset management industry. During the year, 22 managers were issued with new or revised licences to operate in full compliance with the Alternative Investment Fund Managers Directive. A number of others had their licences converted to operate under the *de minimis* provisions of the Directive. Six licences were issued in other categories, including the first licence to a Category 4b depositary under the new Rules. Nine licences across all categories were surrendered.

A total of 39 new Collective Investment Schemes were licensed during the year. The total number of new sub-funds within new and existing schemes was 118. Of these 106 funds were approved either as Professional Investor Funds or Alternative Investor Funds, 11 as UCITS funds and one as a recognised Private Scheme. Meanwhile the ongoing market volatility also led to a high level of sub-fund licences being surrendered as a number of existing schemes restructured and adapted to new investment strategies.

Significant new business was registered in banking and related sectors. Three new credit institutions were licensed during the year while two others had their licenses extended to cover new areas of banking activity. Five new financial institutions were licensed under the Financial Institutions Act to carry out various activities, ranging from payment and electronic money services to lending and financial leasing. Two credit institutions and one financial institution voluntarily surrendered their licences during the year.

Overall performance in the insurance sector was also characterised by steady growth. Three new insurance undertakings, including one Protected Cell Company (PCCs) carrying out affiliated insurance business and two general insurance companies, were authorised under the Insurance Business Act. Six companies were granted an extension of licence to cover new classes of insurance. Business also continued to expand within the PCC segment as six new cells were approved bringing the total number of cells within PCCs to 27. Three insurance companies and one cell ceased to be authorised by the Authority. The total

number of licences in the insurance intermediation sector remained fairly static with just one cell added to an insurance brokerage PCC. Four enrolled insurance agents had their authorisations extended to cover a number of new appointments.

The number of retirement schemes rose to 35 with three new certificates of registration issued by the end of the year. Two new retirement scheme administrators and five new asset managers were registered in the pensions sector during the year.

2014 also saw a small increase in the number of trustees and fiduciaries as well as the first registrations under the Company Services Providers Act published earlier in the year. Over 5,000 new companies were also registered in the Registry of Companies.

The full end of year statistics for 2014 are published on the MFSA website and may be accessed through the following link:

<http://goo.gl/MuUcCx>

New Pensions Legislation

By Dr. Abigail Attard (Analyst, Insurance and Pensions Supervision Unit)

The Retirement Pensions Act (Chapter 514 of the Laws of Malta) which was published by means of Act No. XVI of 2011 in the Government Gazette on the 5th August 2011 came into force on the 1st January 2015. This Act repeals and replaces the Special Funds (Regulation) Act (Chapter 450 of the Laws of Malta), regulations and directives issued thereunder.

The Retirement Pensions Act provides the legal framework for the licensing and regulation of retirement schemes, whether personal or occupational, retirement funds and service providers related thereto, as well as the requirement of recognition for persons carrying on back-office administrative activities.

The scope of the Act is similar to that of the Special Funds (Regulation) Act, that is, it provides for a regulatory framework for occupational retirement schemes, retirement funds, and service providers but specifically makes reference to schemes setup as personal retirement schemes.

The Legal Notices issued under the Retirement Pension Act have been published in the Government Gazette No. 19,364 on 6 January 2015. In addition, the Pension Rules for Occupational Retirement Schemes, Personal Retirement Schemes, Retirement Funds and Service Providers, were issued by the MFSA under the Retirement Pensions Act.

The Regulations and Pension Rules were issued following a consultation process with the industry and a feedback statement was issued by the MFSA and is accessible on the MFSA website.

The purpose of the Regulations and Pension Rules is to supplement the legal framework for the licensing and regulation of retirement schemes, retirement funds and service providers related thereto, as well as for the requirement of recognition for persons carrying on back-office administrative activities and includes more detailed regulatory requirements by which persons licensed or recognised under the Act are required to comply.

The Retirement Pensions Act, secondary legislation and Pension Rules also transpose the provisions of Directive 2003/41/EC of the European Parliament and of the Council of the 3rd June 2003 on the activities and supervision of the institutions for occupational retirement provision (the IORP Directive). The IORP Directive had already been transposed in the Special Funds (Regulation) Act and secondary legislation issued under such Act.

Persons currently registered under the Special Funds (Regulation) Act have until the 31st December 2015 to comply with the new Act. Until such time as a licence is granted by the Authority under the Act, the Retirement Pensions (Transitional Provisions) Regulations, 2014 provide that such persons will continue to be governed by the provisions of the Special Funds (Regulation) Act.

Disclosure and Transparency under the AIFMD - A new standard?

By Joseph Agius (Deputy Director, Securities and Markets Supervision Unit) and Jonathan Sammut (Analyst, Securities and Markets Supervision Unit)

The Alternative Investment Fund Manager Directive ('AIFMD')¹ and the Commission Delegated Regulation (EU) No 231/2013 ('the Delegated Regulation')² introduce new rules for Alternative Investment Funds ('AIFs') (including hedge funds, private equity and real estate funds). This should bring about change in a scenario where previously these structures were not regulated through pan-European initiatives, but were largely subject to national regimes and codes of conduct issued by industry associations.

As two facets of the same coin, provisions on disclosure and transparency focus on a new minimum standard of information with the aim of ensuring enhanced investor protection as part of the G20 response to the financial crisis. This commentary examines these provisions and makes some key considerations of their impact from a regulatory point of view.

Investor Transparency

Article 23 of the AIFMD sets the stage for investor transparency requirements by requiring pre-investment³ and ongoing⁴ disclosures to be provided to investors and potential investors.

In terms of this article, all EU AIFMs and non-EU AIFMs must make available to investors, prior to committing to invest, key information regarding the fund, including details on the investment strategy, periodic disclosure of the percentage of the fund's assets that are subject to special arrangements due to their illiquidity (e.g. gates or side pockets), any new liquidity management arrangements, valuation procedures, the latest net asset value and regular disclosures of the level of fund leverage. Any material change to this information must also be made available prior to investment.

The AIFMD does not specify the manner in which this information ought to be provided. Although not mandatory it is customary to include this information in the offering document or prospectus. In fact, where the information is likely to change (e.g. in the case of the net asset value figures) it is most provided elsewhere such as in a fact sheet or in another document provided to the prospective investor prior to the execution of the subscription.

In terms of information to be regularly provided to investors following their investment, Articles 23(4) and 23(5) of the AIFMD supplemented by Articles 108 and 109 of the Delegated Regulation set out periodic and regular disclosure.

AIFMs are required to **periodically** disclose the following information to investors:

- the percentage of assets that are subject to special arrangements arising from their illiquid nature;
- any new liquidity management arrangements;
- the current risk management profile of the AIF; and
- the corresponding risk management systems of the AIFM.

On the other hand, **regular** disclosure is required in relation to the total amount of leverage employed by the AIF together with any changes to:

- the maximum level of leverage which the AIFM may employ on behalf of the AIF;
- any right to the reuse of collateral; or
- any guarantee granted under a leveraging arrangement.

The "periodic" and "regular" information is wide in scope and there seems to be no clear distinguishing factor between the two. The AIFMD does not provide much guidance on the frequency with which this information is to be provided to investors. Some of the periodic and regular disclosure is to be made available "as required by the AIF's rules or instruments of incorporation", or "at the same time as the offering memorandum and at a minimum at the same time as the annual report is made available".

On the other hand certain periodic disclosure is to be made available "immediately" while certain regular reporting is to be made available "without undue delay".

There is a degree of flexibility on the medium used to provide this information to investors. This includes letters to investors, newsletters, use of websites and emails as well as supplements to the offering document.

It is up to the AIFM and the AIF to determine the appropriate mode of communicating the relevant information, at a time frame which is compliant with the AIFMD requirements, and using a method which is most appropriate to the needs of the investors.

Regulator Transparency

Articles 22 and 24 of the AIFMD provide for the disclosures to be made to the national competent authorities of the AIFM.

The most straight forward requirement is the preparation of an annual report to be made available to existing (and prospective) investors within 6 months of the end of the financial year. This annual report must follow the requirements prescribed in Article 22 of the AIFMD and include disclosure on the amount and type of remuneration for certain categories of staff. This report must be made available by the AIFM for each EU AIF it manages and for each AIF it markets into the EEA. Additional disclosure in the annual report applies where the AIF acquires control of a unlisted company.⁵ The AIFM is also required to provide a detailed list of all AIFs it manages.

Moreover, the AIFMD requires a comprehensive set of systemic risk reporting covering both the AIFM and the AIF it manages or markets. The risk reporting includes:

- the breakdown of investment strategies of AIFs
- the principal markets/ instruments in which an AIF trades;
- total value of assets under management of each AIF managed;
- turnover of the AIFs; and
- principal exposures and most important portfolio concentration of the AIFs

Additional information on leverage is also required for AIFMs employing leverage on a substantial basis.⁶

Implications for AIFMs and Regulators

In a sector that historically has been either subjected to a light regulatory regime or no regulation, various industry players and commentators take the view that transparency requirements are too onerous and have been drafted without taking into consideration the exigencies of particular types of AIFs. Another argument put forward is that typical professional investors in AIFs do not require such a high level of protection. Without going into the merits of these arguments, it is clear that the AIFMD has created a minimum set of uniform standards which are aimed to bolster investor protection and ensure investors receive regular and comprehensive information on the AIF they invest in. Moreover, it provides regulators with a wealth of information that can be analysed and evaluated so that timely action can be taken to mitigate systemic risk.

Standards have certainly been raised for the fund managers that are in scope of reporting obligations. Fund managers of a modest size and slim back-office operation/ support have had to adjust their business models and either invest in new reporting systems or otherwise outsource the regulatory reporting obligations to third parties.

From a regulatory viewpoint, regulators are being faced with a number of queries notably relating to AIFMs' reporting obligations under the AIFMD. The obligations are far reaching and a number of regulators (including ESMA) have issued Q&A documents with a view to providing further clarity. Regulators are also investing in technology with a view to enhance their ability to process this information in an effective and efficient manner.

During the past year, the Malta Financial Services Authority ('MFSA') has been preparing for the significant change in the regulatory environment brought about by AIFMD. The Authority has set up an AIFMD reporting project management team with responsibilities for the delivery of the AIFMD systemic reporting solution. This team is in the final stages of implementing an IT platform which aims to facilitate centralisation of reported data and ensure that the Authority has flexible systems to maximise the use of this data for prudential supervision purposes.

As AIFMD reporting is progressively coming fully on stream it is of utmost importance that AIFMs who are not adequately prepared, increase their efforts to be able to meet these challenges. Reporting entities should be aware that data required for reporting may not be in their possession and hence they may need to source it from third parties.

In conclusion, any AIFM that has not yet assessed the impact of new reporting and transparency requirements on their organization it should start considering the changes the new regulatory regime will bring about. AIFMs should also devise and implement the necessary changes on a technical, operational and resourcing level in order to be able to meet regulatory requirements in a timely manner.

This article was first published in Fund Formation, Domiciling and Distribution 2015, published by Clear Path Analysis – January 2015

¹ Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 [2011] OJ L174/1

² Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision

³ AIFMD Art. 23(1)

⁴ AIFMD Art.23(4) and Art. 23(5)

⁵ AIFMD Article 29

⁶ AIFMD Article 24(4)

Standard & Poor's confirms Malta's stable outlook and strength of banking sector

In one of the first reviews of the Maltese economy and financial system this year, credit rating agency Standard and Poor's has confirmed its present rating and stable outlook. Looking at Malta's financial sector, S&P highlighted the importance of the results of the European Central Bank's (ECB's) comprehensive review of Europe's largest banks, including the European Banking Authority's EU-wide stress test, released in October 2014, which had shown that Malta's banks to be substantially well-capitalized.

**STANDARD
& POOR'S**

The report commented positively that at end-October 2014, the deposit-to-loan ratio in the banking sector was 151%, remarking that Malta's banking system has been historically deposit funded, and as such, remarks no specific risks in the financial sector.

Commenting on the general economy, the report noted that Malta's economic growth prospects remain strong relative to the Eurozone, with the ratings being supported by the agency's view of Malta's fairly strong institutions, its resilient economy, and its expectation of further fiscal consolidation. "We estimate general government gross debt at 71% of GDP in 2014. We estimate the 2014 general government deficit at 2.1% of GDP, versus 2.7% in 2013, reflecting higher tax receipts and supportive nominal GDP growth. We forecast that general government accounts will improve slowly through 2018, primarily owing to GDP growth. We project that spending will be at about 43% of GDP on average over our forecast horizon, higher than the 2008 peak at 42.6% of GDP, noted the report.

European Supervisory Authorities Press Releases issued during January 2015

European Securities and Markets Authority (ESMA)



09/01/2015 - [ESMA publishes updates to Q&As on the AIFMD and the guidelines on ETFs and other UCITS issues](#)

MFSA Licences - December 2014

NEW LICENCES

Insurance

Cells

- Approval of **Crystal Cell** as a cell of **Lime Street Insurance PCC Limited** to write business of reinsurance in six classes of the general business.
- Approval of **Amplifon Cell** as a cell of **Atlas Insurance PCC Limited** to write business of reinsurance in two classes of the general business.

Collective Investment Schemes

Professional Investor Funds targeting Qualifying Investors

- Collective Investment Scheme licence issued to **Audentia Capital SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **Strategica Funds SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **HFH SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **Alpha Value Fund SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **Top Selection Fund SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licences issued to **E2A Capital SICAV plc** in respect of three sub-funds.

Alternative Investor Funds targeting Qualifying Investors

- Collective Investment Scheme license issued to **CAM Fund Series SICAV plc** in respect of one sub-fund.

Alternative Investor Funds targeting Extraordinary Investors

- Collective Investment Scheme license issued to **Sandberg Investment Fund SICAV plc** in respect of one sub-fund.

Alternative Investor Funds targeting Professional Investors

- Collective Investment Scheme license issued to **Primary European Fund SICAV plc** in respect of one sub-fund.

Incorporated Cells

- Collective Investment Scheme license issue to **Avenue Fund IC SICAV plc**.

Investment Services

AIFMs

- Category 2 licence issued to **Melidon Asset Management Limited**.
- Category 2 licence issued to **Frere Hall Capital Management (Malta) Limited**.

Company Service Providers

- Registration certificate issued to **Teos Management and Advisory Services (Malta) Limited** to act as a company service provider.

SURRENDERED LICENCES**Banking***Credit Institutions*

- Surrender of licence issued to **Investkredit International Bank plc**.

Financial Institutions

- Surrender of licence issued to **Britannia Financial Services Limited**.

Collective Investment Schemes*Professional Investor Funds targeting Qualifying Investors*

- Surrender of licences issued to **The Nascent Fund SICAV plc** in respect of one sub-fund.

Non - UCITS

- Surrender of licence issued to **LaValette Funds SICAV** in respect of one sub-fund.

UCITS

- Surrender of license issue to **Valletta European Event SICAV plc**.

Investment Services

- Surrender of Category 2 licence issued to **Elgin (Europe) Limited**.
- Surrender of Category 2 licence issued to **Vertigo Management Services Limited**.
- Surrender of Category 2 licence issued to **Z Investment Partners Malta Ltd**.
- Surrender of Category 2 licence issued to **ML Capital Asset Management Limited**.

Recognised Fund Administrators

- Surrender of licence issued to **Helvetic Fund Administration (Malta) Limited**.

Trustees and Fiduciaries

- Surrender of licence issued to **Fiduciaire Limited**.

EXTENDED AND REVISED LICENCES**Collective Investment Schemes***AIFs*

- Licence issued to **CAM Fund Series SICAV plc** was converted from PIF to AIF scheme.

Insurance*Insurance Agents*

- Extension of licence issued to **MIB Insurance Agency Limited** to act as an insurance agent of Lloyd's Syndicate SJC 2003 – Catlin in respect of home building insurance business.

Investment Services*AIFMs*

- Revision of licence issued to **Temple Asset Management Limited** to act as a full Alternative Investment Fund Manager.
- Revision of licence issued to **Numen Investments Limited** to act as a full Alternative Investment Fund Manager.

Admissibility to listing on MSE and EWSM*Listing on the Malta Stock Exchange*

- Approval for admissibility to listing granted in respect of an issue of €6,000,000 Unsecured Bond Issuance Programme by Central Business Centres p.l.c.

Listing on the European Wholesale Securities Market

- Approval for admissibility to listing granted in respect of an issue of up to €50,000,000 (Asset Backed) Exchange Traded Instruments issued by Delta1 Securities plc.

Registry of Companies - New Registrations - December 2014

Companies	Partnerships	Total
529	15	544

MFSA Announcements

MFSA Circulars

- 20/01/2015** - [Circular to the financial services industry on the publication of Guidelines on the Reporting Obligations Applicable to Alternative Investment Fund Managers](#)
- 21/01/2015** - [Circular to the financial services industry on changes regarding the Swiss Franc exchange rate](#)
- 21/01/2015** - [Circular to the financial services industry on the latest ESMA publications in relation to investment management](#)
- 23/01/2015** - [Circular to Credit Institutions and Financial Institutions Licensed in terms of Schedule 2 and 3 of the Financial Institutions Act on the EBA Guidelines on the Security of Internet Payments](#)
- 27/01/2015** - [Circular to Credit Institutions on Banking Rule BR15](#)

MFSA Consultation

Consultation Feedback Statements


- 07/01/2015** - [Feedback Statement issued further to the Industry Responses on the Regulations and Pension Rules issued under The Retirement Pensions Act](#)

Warnings

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

Forthcoming Events

16-17/02/2015 - [Continuing Professional Development Course for Directors of Investment Companies and Investment Funds](#)

MFSa MALTA FINANCIAL SERVICES AUTHORITY	in conjunction with	 Directors Chambers
Continuing Professional Development Course for Directors of Investment Companies and Investment Funds		
February 16 and 17, 2015 - Hilton Hotel, St Julian's		



Training by members of the ECC:

- [Malta International Training Centre](#) - [Diploma in Risk Management in Financial Services](#)
- [Malta Institute of Accountants](#)
- [Institute of Financial Services](#)



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