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Revised Financial Conglomerates Directive

Directive 2011/89/EU on the supplementary supervision of financial entities in a financial conglomerate was approved by the European Parliament on 16th November 2011 and came into force on 9th December 2011 following its publication in the [Official Journal of the European Union](#). The transposition deadline for Member States is 10th June 2013, with the exception of specific articles of the Directive which must be transposed by Member States by 22nd July 2013.

The original Financial Conglomerates Directive made provision for the application of supplementary supervision by national authorities in the case of financial conglomerates, in particular in the case of banking and insurance supervision. The aim was that of controlling group risks and the risk arising from double gearing, whereby a number of companies pool their overall risk by placing capital with each other.

On the other hand, Directive 2011/89/EU aims at ensuring appropriate supplementary supervision of financial entities in a financial conglomerate whilst also adapting financial supervision to the new European supervisory structure. The major changes being proposed are the following:

1. Inclusion of asset management companies in the threshold tests for identifying a conglomerate;
2. A waiver for smaller groups if the relevant supervisor assesses the group risks to be negligible;
3. Allowing for risk-based assessments, in addition to existing definitions relating to size, in identifying financial conglomerates;
4. Allowing for both sector-specific (banking and insurance) supervision and supplementary supervision of a conglomerate's parent entity, also if it concerns a holding company.

Directive 2011/89/EU also amends the Capital Requirements Directive and the Directive on Supplementary Supervision of Insurance Undertakings in Insurance Groups.

Local Scenario

In Malta, the Financial Conglomerates Regulations, 2004 [[Legal Notice 521 of 2004](#)] issued under the Malta Financial Services Authority Act, transposed and implemented the provisions of Directive 2002/87/EC. At present, the Authority is currently in the process of assessing the amendments required to these Regulations and eventually will be consulting with the financial services industry on the proposed implementation of the Directive.

Update on the Markets in Financial Instruments Directive

The Markets in Financial Instruments Directive ('MiFID') is one of the cornerstones of European financial regulation. The Directive establishes a regulatory framework for the provision of investment services by investment firms and credit institutions and for the operation of trading platforms in the form of regulated markets, multilateral trading facilities and systematic internalisers. The MiFID has three main objectives: the establishment of an internal market for investment firms and trading platforms; investor protection; and the transparency of European financial markets.

With the aim of addressing a number of regulatory concerns which came to light as a result of the financial crisis and in view of identified failures in the regulatory framework applicable to investment firms and trading platforms, on 20th October 2011 the European Commission issued a proposal for the revision of the MiFID. The proposal amending the MiFID, is divided into two: **[i]** a proposed EU Directive ('MiFID II') that partly recasts the MiFID; and **[ii]** a proposed EU Regulation ('MiFIR') which will replace part of the MiFID. The proposed split of the MiFID level I into a proposed Directive and a Regulation reflects the De Larosière agenda of creating a single rule book in certain areas, whilst allowing national specificities in other.

A number of changes to MiFID are being proposed with the aim of strengthening the investor protection requirements in the Directive. Other changes have the purpose of widening the European regulatory framework to capture new and emerging forms of trading platforms and to ensure that European financial markets become more efficient and transparent. The MiFID is also being amended to fulfil the G20 commitment of requiring OTC derivatives to be traded on exchange.

The European proposals are currently being debated at the level of the Council of the European Union and are also being considered by the European Parliament. A copy of the proposals may be retrieved from the European Commission's [web-page](#).

For any queries on MiFID II, please contact Mr Christopher P. Buttigieg, Deputy Director, Securities and Markets Supervision Unit on cbuttigieg@mfsa.com.mt or tel: 25485229.

IOSCO publishes principles on suspension of CIS redemptions

On the 19th January 2012, the International Organization of Securities Commissions ('IOSCO') published its final report on principles regarding the suspension of redemptions for open-ended collective investment schemes.

The principles reflect a common level of approach with regards to suspension of redemptions and provide standards against which both regulators and the industry can assess the quality of industry practices concerning suspensions of redemptions.

A copy of the IOSCO principles is available on the [web-site](#).

Most of the principles reflect current regulatory and industry practice in Malta. However, the MFSa encourages the local industry to consider and where relevant, strengthen their internal procedures with a view to implement fully the IOSCO principles.

For any queries on the IOSCO principles, please contact Mr Christopher P. Buttigieg, Deputy Director - SMSU on cbuttigieg@mfsa.com.mt or Mr Jonathan Sammut, Manager - SMSU (jsammut@mfsa.com.mt).

Guidelines by ESMA on Exchange Traded Funds and other UCITS issues

On 30th January 2012, ESMA issued a consultation document entitled "ESMA's Guidelines on ETFs and other UCITS issues" [ESMA/2012/43]. The consultation paper set out ESMA's proposals for guidelines on UCITS ETFs, index-tracking UCITS, efficient portfolio management techniques, total return swaps and strategy indices for UCITS.

This consultation document follows a Discussion Paper which ESMA had issued on the same matter way back in July 2011 and for which responses were encouraged by 22nd September 2011.

In drafting this proposal, ESMA took stock of all the feedback it received following the July 2011 discussion paper which by large generally acknowledged that the issues identified by ESMA should not only target UCITS ETFs but all UCITS that engage in the relevant activity or pursue the same type of investment policy.

For this reason, ESMA decided to widen the scope of its proposals and go beyond ETFs to cover such areas as the use of total return swaps by any UCITS. In this consultation document ESMA is also seeking responses on the requirements for securities lending and collateral management.

The consultation period runs till 30th March 2012 and the document can be downloaded from ESMA's [web-site](#).

The MFSa encourages the industry to consider the consultation document and submit comments to ESMA. The consultation closes on 30th March 2012. ESMA will take into account responses to this consultation paper in finalising the guidelines for adoption in Q2 2012.

For any queries on the ESMA document, please contact Mr Christopher P. Buttigieg, Deputy Director - SMSU (cbuttigieg@mfsa.com.mt) or Mr Jonathan Sammut, Manager - SMSU (jsammut@mfsa.com.mt).

Enforcement and Market Oversight Training Programme – Malta January 2012

MFSa
MALTA FINANCIAL SERVICES AUTHORITY



The MFSa in collaboration with the United States Securities and Exchange Commission (US-SEC), organised an enforcement and oversight training programme in Malta for delegates from regional foreign securities authorities, exchanges and self-regulatory organisations as well as from other financial regulatory and law enforcement authorities responsible for securities market oversight and enforcement.

The programme was focused on balanced, proven and pragmatic techniques for the oversight and inspection of market participants, on the conducting of investigations and bringing effective enforcement actions, with particular emphasis on broker dealers, investment advisors, investment companies, mutual funds, hedge funds, and private equity funds.

Delegates from fifteen foreign regional institutions attended the programme as well officials from the Malta Stock Exchange, the Financial Intelligence Analysis Unit and the MFSa.

Four highly qualified speakers from the US-SEC covered a wide range of topics during the intensive four day programme. These included issues on effective examination and enforcement programmes, compliance procedures and rules of conduct for investment advisors and broker dealers, investigations and prosecutions, remedies, penalties and other sanctions, off-market offering abuse, financial reporting fraud, money laundering and financing of terrorism, insider dealing, market manipulation, and international enforcement and co-operation.

Latest News from the European Supervision Authorities

European Banking Authority (EBA)

04 January 2012 - [The EBA publishes its Work Programme for 2012](#)

05 January 2012 - [The EBA has commented - to EF-](#)



[RAG and to the IASB - on the latter's Investment Entities ED.](#)

06 January 2012 - [EBA publishes Guidelines on AMA extensions and changes](#)

11 January 2012 - [Speech by Andrea Enria: Hearing at the Finance Committee of the Italian Chamber of Deputies](#)

20 January 2012 - [The EBA publishes responses to two consultations \(CP48 and CP49\)](#)

European Securities and Markets Authority (ESMA)

30 January 2012 - [ESMA outlines future regulatory framework for ETFs and other UCITS issues](#)

Consultation

Consultation Paper

- [Consultation Procedure on the Proposal for a Bill entitled the 'Various Financial Services Laws \(Amendment\) Act, 2012'](#) - MFSA Ref: 01-2012

Feedback Statement

- [Feedback Statement further to Industry Responses to MFSA Consultation document on the proposed amendments to Listing Rule 4.55 and the introduction of other Listing Rules regarding Advertisements dated 26th July 2011](#) - MFSA Ref: 07-2011

Licences - December 2011

New Licences issued

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 **The ARP Funds (SICAV) plc** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **NBCG Fund SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **FfM Mittelstand SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **Level E Capital SICAV plc** in respect of one sub-fund.

Banking

Financial Institutions

- Financial Institution licence issued to **EnterCash Ltd.**

Insurance

Insurance Companies

- Licence issued to **Highdome PCC Ltd** to carry on business of insurance and reinsurance in six classes of the general business.

- Licence issued to **ArgoGlobal SE** to carry on business of insurance in two classes of the general business.

Pensions

Retirement Schemes

- Certificate of Registration issued to **The Dominion EU Retirement (US Qualified) Plan.**

Licences Surrendered

Collective Investment Schemes

Professional Investor Funds targeting Qualifying Investors

- Collective Investment Scheme licence issued to **The ARP Absolute Return Funds (SICAV) plc** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **BC European Capital IX.**

Professional Investor Funds targeting Qualifying Investors

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

Investment Services

- Surrender of Category 2 licence issued to **Re-Invest Partners Limited.**
- Surrender of Category 2 licence issued to **CIE Management IXM Ltd.**
- Surrender of Category 2 licence issued to **Occam Investment Management (Malta) Limited.**

Licences Extended

Insurance Undertakings

- Extension of licence issued to **Montaldo Insurance Agency Ltd** to act as an insurance agent of Chartist Insurance UK Limited in all 18 classes of the General Business.

Registry of Companies - New Registrations for December 2011

Companies (Local)	Partnerships	Total
340	7	347

MFSA Notices - January 2012

05/01/2012 - Surrender of Licence by Meridon Funds SICAV plc



06/01/2012 - Surrender of Licence by HSBC Structured Funds SICAV plc

13/01/2012 - Surrender of Licences by NBCG Fund SICAV plc

13/01/2012 - Surrender of Licences by Innocap Fund SICAV plc

24/01/2012 - Notice to Financial Services Licence Holders - National Defence Authorization Act for Fiscal Year 2012 (USA)

24/01/2012 - Surrender of Warrant by Thor (Nominee) Ltd.

27/01/2012 - European Commission Guidelines on the application of Council Directive 2004/113/EC to insurance, in the light of the judgment of the Court of Justice of the European Union in Case C-236/09 (Test-Achats)

MFSa Media Releases - January 2012

05/01/2012 - Bank of Valletta plc fined for breaches arising from sale of preferred securities to investors

Circulars - January 2012

Securities and Markets Supervision - MiFID
18/01/2012 - [Circular addressed to the Investment Services Industry regarding the Consultation Papers on: Guidelines on certain aspects of the MiFID suitability requirements and Guidelines on certain aspects of the MiFID compliance function requirements](#)

Insurance and Pensions Supervision - Solvency II
18/01/2012 - [Guidance Paper on the System of Governance under Solvency II](#)

Foreign Warnings

Foreign warnings received by MFSa can be viewed on the Authority's Website www.mfsa.com.mt, under [Announcements/Foreign warnings](#) received.

Forthcoming Events

March 8-9, 2012 - Continuing Professional Development Course - Governance of Licensed Entities - Directors of Investment Companies and Investment Funds. For further information please contact Communications Unit on communications@mfsa.com.mt.

March 28-29, 2012 - Implications For Fund Services Under AIFM & UCITS IV Directive

May 24-25, 2012 - Malta International Risk & Insurance Congress 2012

Forthcoming Training Courses - Malta International Training Centre (MITC). Training programmes' details are available on the [MITC Website](#).

News

International News

Bloomberg Markets Magazine - [Malta Lures Hedge Funds With 300 Days of Sunshine](#) - Jeremy Kahn - January 10, 2012

"Due Diligence - "We do extensive due diligence," Bannister says. "No due diligence, no license.""

FT Financial Times - [Mediterranean revival](#) - Fred Redwood - January 13, 2012



"Malta is seeking safe passage through the EU crisis by encouraging new industries and wealthy property buyers"

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