

# MFSA Newsletter

April 2012 | Issue 4

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

## Inside this issue:

**Companies Act (Recognised Incorporated Cell Companies) Regulations and Investment Services Rules for Recognised Incorporated Cell Companies and Incorporated Cells**

**Capital Requirements Directive (CRD) and the Capital Requirements Regulations (CRR)**

**Depositor Compensation Scheme - Consultation on bank reporting and payout**

**ESMA Guidelines on Systems and controls in an automated trading environment for trading platforms, investment firms and competent authorities**

**EIOPA - Task Force on Insurance Guarantee Scheme Meeting April 2012**

**Commonwealth Secretariat Training Workshop on Banking and Finance in Small States**

**Job Exposure in Financial Services Programme: 2012**

**Press Releases issued by the European Supervisory Authorities**

**Licences & New Company Registrations**

**MFSA Announcements**

## Further information

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

## Companies Act (Recognised Incorporated Cell Companies) Regulations and Investment Services Rules for Recognised Incorporated Cell Companies and Incorporated Cells

L.N. 119 of 2012, cited as The Companies Act (Recognised Incorporated Cell Companies) Regulations, was issued in the Government Gazette on 17<sup>th</sup> April 2012. It provides promoters with a flexible ICC structure that may be used as a vehicle to achieve various objectives including the setting up of a fund platform.

The new Recognised Incorporated Cell Companies (RICCs) framework introduces a specific set of conditions which are separate from those applying to the ICC SICAV regime. Under the RICCs structure a limited liability company may be formed or constituted as a recognised incorporated cell company to establish incorporated cells and to provide such incorporated cells with administrative services. A Recognised Incorporated Cell Company (RICC) requires recognition by the competent authority in terms of article 9A of the Investment Services Act in order to provide incorporated cells with administrative services. An RICC may only provide services of an administrative nature for which it is issued with a Recognition Certificate in terms of article 9A of the Investment Service Act. The services that may be permitted are those listed in the Schedule to the Regulations. An RICC may not carry out any licensable activity. The RICC requires a memorandum of association restricted to the provision of administrative services to its incorporated cells.

An RICC may establish an incorporated cell by virtue of a resolution of its board of directors. An incorporated cell of an RICC is constituted as an investment company in its own right and requires a licence to operate as an investment fund in terms of article 4 the Investment Services Act from the MFSA. The relationship between the incorporated cell and the RICC is regulated by the Regulations and the relevant MFSA Rules. The RICC framework is also structured to allow incorporated cells to migrate in and out of the RICC they share with other incorporated cells and either relocate to another ICC or establish themselves as separate independent schemes. The RICC itself may also undergo transformations excluding a transformation into a SICAV.

The Regulations are supplemented by a set of MFSA Investment Services Rules. The new Investment Services Rules for Recognised Incorporated Cell Companies and Incorporated Cells have been incorporated within already existing frameworks as follows:

### Investment Services Rules for Recognised Persons:

- New Part AIII – Application Process for Recognised Incorporated Cell Companies (RICCs)
- New Schedule III – Application form for RICCs

- New Part BIII – On-going Recognition Requirements for RICCs including inter alia organisational requirements, conduct of business rules, compliance and outsourcing rules.

Investment Services Rules for Professional Investor Funds:

- New Section 6 to Appendix 1 of Part B relating to the Supplementary Standard Licence Conditions for PIFS providing supplementary conditions for Professional Investor Funds established as Incorporated Cells under a Recognised Incorporated Cell Company.

Investment Services Rules for Retail Collective Investment Schemes:

- New Section 17 to Part B I of these Rules which is applicable to Malta Based Non-UCITs Schemes and New Section 22 to Part BII of these Rules which is applicable to Maltese UCITS Schemes providing supplementary conditions for Non-UCITs and UCITS schemes established as Incorporated Cells under a Recognised Incorporated Cell Company.

A copy of the [RICC Regulations](#) and the supplementing [RICC Rules](#) is available on the MFSA website.

## Capital Requirements Directive (CRD) and the Capital Requirements Regulations (CRR)

### CRD/CRR

On the **20th July 2011**, the European Commission transmitted to the Council the following Commission proposals:

- Proposal for a **Directive** of the European Parliament and of the Council on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms and amending Directive 2002/87/EC ('new CRD')
- Proposal for a **Regulation** of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms ('CRR')

This legislative package on capital requirements and prudential supervision, will replace the current Capital Requirements Directives (Directive 2006/48/EC and Directive 2006/49/EC).

Since then the Working Party on Financial Services, which is the party under the ECOFIN Council responsible for negotiating financial market issues such as banking, securities, infrastructure, and insurance questions, has held various meetings and the current Danish Presidency has tabled several compromise proposals in order to make progress on the file.

### Way forward

Once agreement is reached on the general approach with regards to the proposed legislative package on capital requirements and prudential supervision, the Danish Presidency will be able to start negotiations with the European Parliament. The target is for political agreement to be reached during the **summer of 2012**.

The latest compromise text indicates that the CRR and the new CRD legislation shall come into force on the **1st January 2013**. However, full implementation will be phased in between 2013 and the beginning of 2019.

Given current time-lines this would leave **less than 6 months** for the MFSA and licensed institutions to prepare for the implementation of the legislative package.

### Objective

The objective of this legislative package is, *inter alia*, to ensure that the effectiveness of the regulation of credit institutions and investment firms in the EU is strengthened and that financial stability is enhanced. It addresses issues relating to the procyclicality of the financial system ensuring a higher level of protection of investors and depositors and for the benefit of the operators on these markets. These proposals also aim to transpose the agreements reached by the Basel Committee on Banking Supervision (i.e. the Basel III requirements), as endorsed by the G20 leaders. However, it is to be noted that there are **two reasons** why the Commission cannot simply copy/paste Basel III into its legislative proposal:

- Basel III does not have the force of law per se. It is the latest configuration of an evolving set of internationally agreed standards developed by supervisors and central banks applicable to internationally active banks. The proposed legislative package which is aligned with Basel III would have to go through a process of democratic control as it is transposed into EU

(and national) law insofar as the new CRD is concerned. It needs to fit with existing EU (and national) laws or arrangements.

- While as stated above, the Basel capital adequacy agreements apply to 'internationally active banks', in the EU the law mirroring the Basel initiatives was always applied to all banks (more than 8,300) as well as investment firms. This wide scope is necessary in the EU where banks authorised in one Member State can provide their services across the EU's single market and as such are more than likely to engage in cross-border business. Also, applying internationally agreed rules only to a subset of European banks would create competitive distortions and potential for regulatory arbitrage.

---

**“The objective of this legislative package is, inter alia, to ensure that the effectiveness of the regulation of credit institutions and investment firms in the EU ”**

---

The Commission has had to take these particular circumstances into account when transposing Basel III into EU law. Nevertheless, the proposed legislative package aims to deliver a faithful implementation of Basel III in EU law. This is important, as consistent implementation of Basel III across the globe is necessary in order to improve the resilience of the global financial system and ensure a level playing field.

### National Obligations

While Member States shall be required to transpose the ‘new CRD’ into national law, the ‘CRR’ shall be directly applicable, which means that it creates law that takes immediate effect in all Member States in the same way as a national instrument, without any further action on the part of the national authorities.

The legislative package will be a key instrument through which the Commission intends to introduce substantive parts of the new European supervisory architecture, including the development of the **Single Rule Book** for financial services. The objective driving the development of the Single Rule Book is to replace separately implementing rules within Member States, with a harmonised approach to implementation across the EU. The Commission aims to remove most of the national options and discretions found in the current Capital Requirements Directive, and achieving full harmonisation by allowing Member States to apply stricter requirements only where these are justified by national circumstances (e.g. real estate), needed on financial stability grounds or because of a bank's specific risk profile.

### Role of the European Banking Authority

Due to the legal constraints in providing detail in the Level 1 text, in a number of Articles, there are specific mandates for the European Banking Authority (EBA) to develop Binding Technical Standards (BTS) which shall provide the required detail.

Since the EBA is to submit some of the draft Technical Standards to the Commission by 1st January 2013, it is currently conducting consultation on various aspect and elements of the CRR/new CRD. Since the consultations cover Technical Standards based on the proposed legislative text for the CRR/new CRD, which may be subject to amendments in the legislative process, EBA will adapt its draft BTS accordingly to reflect any developments.

---

## Depositor Compensation Scheme - Consultation on bank reporting and payout

On the 30th March 2012, the Management Committee of the Depositor Compensation Schemes issued a consultation document to all stakeholders on measures and systems which the Scheme intends to implement over the next months. The main objective underlying this initiative is the creation of a framework for timely payout of compensation to eligible depositors in the event of a determination by the Competent Authority triggered by the failure of a credit institution. The framework will enable the Scheme to process compensation payments within the statutory compensation pay-out period, which is currently 20 working days from the date of determination.

As is amply explained in the consultation document, the Scheme plans to develop an internal electronic system which will serve as a hub for the collection of data on every depositor of a failed credit institution by means of standardised reporting criteria. To enable the Scheme to process payments, generate reporting and facilitate any administrative aspects relating to such payout, banks will be required to report depositor information to the Scheme in a standardised and unified format for each depositor – referred to as ‘Single Customer View’ (SCV) data. The Scheme’s system will also provide a channel for the secure transmission of data by allowing credit institutions to interface with the system and upload their data files onto the

Scheme's system with full respect for confidentiality. A failed credit institution will be obliged to transmit its SCV data into the system within three business days from the date of determination of failure.

To this end, every credit institution will be required to develop or modify its internal electronic systems to be able to generate the SCV data files as and when required. In order to facilitate the automation of the SCV system, credit institutions will be responsible to provide their electronic files in a standard format according to pre-defined rules and codes contained in data templates provided

by the Scheme. Specific account codes shall be applied to indicate whether an account is fit for straight-through pay-out (whereby payment will be made within the statutory payment period of 20 days) or requires more processing before the relevant compensation is paid (in regard to accounts held under nominee, for example). In addition, the SCV system will have automated verification processes to ensure that the SCV data is reliable enough to enable the correct processing of compensation payments.

Credit institutions will be obliged to participate in periodic testing of the system to verify their ability to comply on an on-going basis with the SCV information requirements. Rigorous testing of the SCV platform is also planned to ensure that the system is resilient and can manage the maximum volume of data required. Moreover, the SCV system should be flexible to allow any modifications in accordance with the changing environment.

The planned SCV system is foreseen to be part of a holistic project, which will incorporate other plans related to funding requirements, compensation payment methods and information provision to depositors. In view of the resources required, the Scheme intends to engage with third parties for the provision of the required services or resources. Therefore, the SCV system will be designed to facilitate the connection with any systems operated by third party service providers, such as payment services systems or call centres.

The consultation document may be downloaded from the Scheme's [website](#) or the MFSa's [website](#).



*The Depositor and Investor Compensation Schemes Website*

## ESMA Guidelines on Systems and controls in an automated trading environment for trading platforms, investment firms and competent authorities

On the 24th February, 2012, ESMA published a document titled: *Guidelines on Systems and controls in an automated trading environment for trading platforms, investment firms and competent authorities* (ESMA/2012/122(EN)).



A copy of ESMA's document is available through the following link: [http://www.esma.europa.eu/system/files/esma\\_2012\\_122\\_en.pdf](http://www.esma.europa.eu/system/files/esma_2012_122_en.pdf)

The Authority has undertaken a review of the Malta Stock Exchange's automated trading environment systems and controls currently in place in relation to the sections of the above guidelines applicable to trading platforms.

Investment services licence holders are invited to consider whether they fall within the scope of the ESMA guidelines. In the affirmative, investment services licence holders are requested to inform the Authority of the manner in which they have implemented the applicable systems and controls to comply with the ESMA's guidelines.

Queries regarding the above are to be referred to the MFSa Securities and Markets Supervision Unit, [su@mfsa.com.mt](mailto:su@mfsa.com.mt).

## EIOPA - Task Force on Insurance Guarantee Scheme Meeting April 2012

A meeting of the European Insurance and Occupational Pensions Authority (EIOPA)'s Task Force on Insurance Guarantee Scheme was held at the MFSa. Back in 2009, EIOPA had set up a Task Force to analyse thoroughly



the issue of Insurance Guarantee Schemes (“IGS”), following the financial crisis for the better protection of policyholders. In 2011, the Task Force on Insurance Guarantee Scheme was entrusted with a new mandate. As part of this new mandate on Insurance Guarantee Schemes, the Task Force is currently carrying out an exercise on the winding-up procedures of insolvent insurance undertakings. Since the setting up of insurance guarantee schemes is strongly linked with the winding-up procedures of insurance undertakings, the Task Force is looking into the role of insurance guarantee schemes in the winding up procedures of Member States.

## Commonwealth Secretariat Training Workshop on Banking and Finance in Small States

During April the MFSA also hosted a workshop on ‘Banking and Finance in Small States: Issues and Policies’ that was organised by the Island and Small States Institute of the University of Malta in collaboration with Maltese Ministry of Foreign Affairs and the Commonwealth Secretariat.

The workshop which formed part of the Third Country Training Programme being organised by the Commonwealth Secretariat, was attended by senior and middle management officials operating in banking and financial institutions and in the public sector of a number of Commonwealth countries including Cameroon, Cyprus, Kenya, Montserrat, Seychelles, St Lucia, Swaziland, Tuvalu and Zambia.



The aim of the workshop was to disseminate further knowledge and at the same time provide training on banking and finance issues. A variety of themes focused on small states were covered by presentations given by MFSA Officials. These included:

- The role and function of the MFSA
- SREP: Supervisory Review of the Risk Management Process
- Fostering Customer Care in the Banking Sector
- Implementation of Payment services in Malta
- Effective Risk Management for Central Banks

Furthermore the workshop also enabled the participants to benefit from the sharing of ideas and experiences during discussion sessions.

## Job Exposure in Financial Services Programme: 2012

The MFSA together with the Student Services Department within the Directorate for Educational Services, the Secretariat for Catholic Education, and the Independent Schools Association are once again working on a job exposure programme during which a number of form-four secondary school students within state, church and independent schools will have the opportunity to experience different work environments within the financial services sector.

This initiative is being undertaken to continue to promote a number of careers in finance. As in the previous three years, the programme will complement the exposure that has been already provided to the same category of students during a programme of familiarisation visits to the MFSA that has been concluded this month. Furthermore, the website [careersinfinance.mfsa.com.mt](http://careersinfinance.mfsa.com.mt), launched by the MFSA last year, is proving to be a valid tool that is increasing awareness on the subject. The programme for this year will involve two separate groups of students and will be held during the week starting 2<sup>nd</sup> July and the following one starting a week after on 9<sup>th</sup> July 2012.

In recognition of the value of this initiative, a number of employers involved in different areas within the local financial sector expressed their willingness to offer placements in the programme together with the MFSA. The salient features of the project will again be as follows:

- The students will actively observe a variety of jobs both of a technical and administrative nature that are typical of the sector.
- The students will be requested to log down their observations and exchange views both with their mentors and with the

school career counsellors who will be monitoring them during the programme.

- Students will be exposed to the 'soft skill' element related to the various jobs and will be assigned small related research projects as homework.
- Placements will not carry any remuneration and will be subject to all the rules and policies (including those related to health and safety and personal welfare) that are applied by the participating organisations.

---

## Press Releases issued by the European Supervisory Authorities

### European Banking Authority (EBA)



04 April 2012 - [Questionnaire on the identification of users/investors needs on credit institutions Pillar 3 disclosures](#)

04 April 2012 - [Report on the Basel III monitoring exercise](#)

04 April 2012 - [Consultation paper on Draft Regulatory Technical Standards on Own Funds](#)

11 April 2012 - [EBA, ESMA and EIOPA publish two reports on Money Laundering](#)

12 April 2012 - [Speech by Andrea Enria / 21st Annual Hyman P. Minsky Conference](#)

12 April 2012 - [Survey on the implementation of the Guidelines on remuneration policies and practices](#)

18 April 2012 - [Consultation on draft guidelines on the assessment of the suitability of members of the management body and key function holders](#)

27 April 2012 - [Speech by Andrea Enria - Stakeholder Conference "Financial Regulation - Thinking about the future"](#)

### European Securities and Markets Authority (ESMA)



18 April 2012 - [ESMA approves credit ratings from Argentina and Mexico for use in the EU](#)

26 April 2012 - [ESMA identifies divergence in Member States' use of sanctions under the Market Abuse Directive](#)

### European Insurance and Occupational Pensions Authority (EIOPA)



10 April 2012 - [EIOPA publishes a Report on good practices for disclosure and selling of variable annuities](#)

---

## Licences - March 2012

### LICENCES ISSUED

#### *Collective Investment Schemes*

##### *Professional Investor Funds targeting Qualifying Investors*

- Collective Investment Scheme licences issued to **Tuffieh Funds SICAV plc** in respect of two sub-funds.
- Collective Investment Scheme licence issued to **AtonRâ Umbrella Fund SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **Himalaya SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licences issued to **PerSYSTEMcy SICAV plc** in respect of three sub-funds.
- Collective Investment Scheme licence issued to **Renaissance Institutional Diversified Alpha Fund SICAV plc**.
- Collective Investment Scheme licences issued to **Innocap Fund SICAV plc** in respect of two sub-funds.
- Collective Investment Scheme licences issued to **NBCG Fund SICAV plc** in respect of six sub-funds.

##### *Professional Investor Funds targeting Experienced Investors*

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

#### *Trustees & Fiduciaries*

- Authorisation issued to **Plethora Management Services Limited** to provide fiduciary services which do not include acting as a trustee.

### LICENCES SURRENDERED

#### *Investment Services*

- Surrender of Category 2 licence issued to **Tell Investments CP**.
- Surrender of Category 2 licence issued to **Tell Capital Ltd**.

#### *Insurance Undertakings*

- **Grafton (Europe) Insurance Company Limited** ceased to carry on business of insurance in Malta.

### LICENCES EXTENDED

#### *Collective Investment Schemes*

- Licence issued to **JFP Investments SICAV plc - Jubilee Momentum Fund** was converted from PIF targeting Experienced Investors to PIF targeting Qualifying Investors.

#### *Insurance Agents*

- Extension of licence issued to **Allcare Insurance Agency Limited** to act as insurance agent on behalf of Citadel Insurance plc under the Insurance Intermediaries Act, 2006 in the additional general business class 17 – Legal expenses.
- Extension of licence issued to **MIB Insurance Agency Limited** to act as insurance agent on behalf of Citadel Insurance plc under the Insurance Intermediaries Act, 2006 in the additional general business class 17 – Legal expenses.
- Extension of licence issued to **Victoria Insurance Agency Limited** to act as insurance agent on behalf of Citadel Insurance plc under the Insurance Intermediaries Act, 2006 in the additional general business class 17 – Legal expenses.



**Insurance Undertakings**

- Extension of licence issued to **ArgoGlobal SE** to carry on business of reinsurance in two classes of the general business.
- Extension of licence issued to **HighDome PCC Ltd** to carry on business of insurance and reinsurance in two classes of the general business.

**Trustees & Fiduciaries**

- Extension of licence issued to **Grant Thornton Fiduciaire Limited** to include acting as an administrator of private foundations.

**Registry of Companies - New Company Registrations - March 2012**

Companies (Local)	Partnerships	Total
334	3	337

**MFSA Notices**

**03/04/2012** - Information about the proposed amendments to the Insurance Business (Assets and Liabilities) Regulations, 2007 (L.N. 286 of 2007) and Insurance Rule 1 of 2007 – Own Funds of Companies Carrying on Business of Insurance

**10/04/2012** - Termination of registration of The Dominion Malta Retirement Plan

**10/04/2012** - Notice to Financial Services Licence Holders - FIAU Guidance Note on High-Risk and Non-Cooperative Jurisdictions

**19/04/2012** - Surrender of Licence by SB Global Fund SICAV plc

**23/04/2012** - Notice to Financial Services Licence Holders - Revision of FIAU Implementing Procedures

**MFSA Circulars**

**17/04/2012** - [Circular to the financial services industry on the ESMA Guidelines on Systems and controls in an automated trading environment for trading platforms, investment firms and competent authorities.](#)

**23/04/2012** - [Circular to the financial services industry on the Companies Act \(Recognised Incorporated Cell Companies\) Regulations and Investment Services Rules for Recognised Incorporated Cell Companies and Incorporated Cells.](#)





## Warnings

MFSa warnings and Foreign warnings received by MFSa can be viewed on the [MFSa Website](#).



## Forthcoming Events

May 18, 2012 - [Finance Malta 5th Annual Conference](#)

May 24-25, 2012 - [Malta International Risk & Insurance Congress 2012](#)

### Forthcoming Training Courses

- [MITC - Tied Insurance Intermediaries Certificate: May – July 2012](#)
- [ifs Malta: Business Lending - Credit Techniques](#)
- [FIAU AML & CFT Training Programme](#)



Details of Malta International Training Centre (MITC) training programmes' are available on the [MITC Website](#).

Issued by the Communications Unit, Malta Financial Services Authority, e-mail: [communications@mfsa.com.mt](mailto:communications@mfsa.com.mt)

**MFSa**

MALTA FINANCIAL SERVICES AUTHORITY

Notabile Road, Attard BKR 3000, Malta

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

[www.mfsa.com.mt](http://www.mfsa.com.mt) [registry.mfsa.com.mt](http://registry.mfsa.com.mt) [mymoneybox.mfsa.com.mt](http://mymoneybox.mfsa.com.mt) [www.careersinfinance.mfsa.com.mt](http://www.careersinfinance.mfsa.com.mt)