MFSA Newsletter

March 2015

MFSA
Malta Financial Services Authority

Inside this issue:

Regulatory efficiency and accessibility deemed as key selling points for Malta as a financial services jurisdiction

Malta featured in the March edition of Mondo Alternative, a leading Italian financial services journal. In its dossier, it describes the growth experienced in the past few years as mainly driven by the accessibility of its regulator and competitive cost structures. It highlights the efficiency in regulation, describing Malta as a sophisticated and safe platform to do business not solely in the European continent but around the globe.

Mondo Alternative reports that prudential supervision is solid, with Malta topping EU charts in terms of implementation of legislative and regulatory developments. The dossier tackles recent and upcoming changes in legislation, particularly the implementation of the AIFM Directive and Solvency II. It also looks at the increase and expansion of emerging sectors, particularly alternative funds, over 100 of which were launched last year alone, with a total value exceeding 400 million euro, taking the total net asset value to over 10 billion euro distributed over 600 funds.

The dossier also dedicates a specific section to the Retirement Pensions Act, which entered into force in 2015, creating an attractive regulatory system for the setting up and administration of pension schemes. It also highlights the applicable regulations related to cross border pension funds based in Malta, which have led many operators in the pensions sector to use Malta as a hub for their schemes. The efficiency and opportunities offered by this regulation are supported by a stable economy, and an extensive network of over 65 double tax avoidance treaty and relatively low administrative costs. Full article may be viewed on: www.mondoalternative.com

IMF, Fitch, give positive assessment of financial sector

The International Monetary Fund's annual Article IV report on Malta confirmed the stability of Malta as a financial services jurisdiction. The Fund observed that the financial sector remains stable and welcomed the progress in strengthening the regulatory and supervisory frameworks.

While noting the successful performance of Maltese banks at the ECB's recent Comprehensive Assessment, the Fund called on the authorities to implement the action plans resulting from the same Assessment Continuing to aim for high standards in the AML/CFT framework will be important as well. Directors supported the authorities' intention to request an update of the Financial Sector Assessment Program.

In general terms, the IMF noted that Malta's economic outlook is stronger than that of the euro area as a whole. Real GDP growth exceeded the EU performance, and the external position remained strong. This reflects a relatively diversified economy and a stable banking sector, which withstood well the economic slowdown and shocks from international financial markets. The stronger than expected growth pushed the fiscal deficit in 2013 below 3 percent of GDP.

A similar assessment was made by credit rating agency Fitch. The agency also highlighted the importance of the comprehensive assessment results, remarking that no capital shortfalls under the baseline and adverse scenario of the stress tests were found. The adjustments required as a result of the Asset Quality Review were limited.

Fitch pointed out that the core domestic banks reported a loan/deposit ratio of only around 66% and have not been drawing significantly on ECB liquidity facilities. Their Tier 1 capital ratio stood at 11.08% in June 2014, well above the regulatory minimum threshold (8%). The ratio for the whole banking sector (including non-core domestic and international banks) was 25.8% in June 2014. The government has not had to provide capital or liquidity.

The agency noted that the Maltese economy is outperforming its eurozone peers. Fitch estimates real GDP grew by 3.4% in 2014, better than in 2013 (2.5%) and higher than both the eurozone average (0.9%) and the 'A' median of 3.1% over five years. Fitch expects potential growth to average 3% in 2015-16, continuing above the eurozone average. The agency expects domestic demand to be the main engine of growth.

Malta Insurance Management Association Annual Conference

On the 27 March 2015, the Malta Insurance Management Association (MIMA) held its annual conference at the Hilton (Malta). This year's event focused on Insurance-Linked Securities.

MFSA Chairman addressing participants

MFSA Chairman, Prof Joe V. Bannister delivered the opening remarks, while Ms Angele Galea St John, Director within the Authorisation Unit, delivered a presentation on the MFSA authorisation process. Other speakers during the conference included Mr. Robert Cannon, Special Counsel at Cadwalader, Wickersham & Taft LLP., Mr. Quentin Perrot, Vice President at Willis Capital Markets & Advisory, Dr. Matthew Mizzi, Associate from GANADO Advocates and Mr. Shawn Falzon, Executive Director Assurance at EY Malta. Dr. Matthew Bianchi, Partner, from GANADO Advocates acted as a moderator for the panel discussion.

The topics covered insurance linked securities ,Malta's legal and tax insights and the issue of making the right choice from an arranger's perspective.

The MFSA acted also as one of the sponsors for this event.

Cell Company Framework

Cell Company Framework for Asset-backed Securitisation and Insurance-Linked Securities

The concept of cell companies was introduced by the Malta Financial Services Authority in 2004 with the introduction of Protected Cell Companies [PCC] for the insurance sector [S.L.386.10].

The Securitisation Cell Companies Regulations introduced by Legal Notice 411 of 2014 extend this PCC concept by introducing a new protected cell company structure, called the Securitisation Cell Company, or SCC, to operate as a securitisation vehicle.

The Regulations therefore provide an effective and legally entrenched framework for segregation of different sets of assets and risk instruments within a single special purpose vehicle, the Securitisation Cell Company, thereby allowing for the launch of multiple securitisation transactions or insurance-linked securities without incurring any risk of cross-contamination between the different sets of creditors and investors.

Application of the Cell Company Concept

Similarly to a PCC, an SCC is a single legal entity that is structured in two parts, the core and an unlimited number of cells. It is one company with one board of directors, and one set of memorandum articles of incorporation. The key differentiating element between a cell company and the traditional non- cellular company is that the former provides a flexible corporate vehicle within which assets and liabilities can be ring- fenced, or segregated, so as to be only available to the creditors and shareholders (where present) of each particular cell.

Therefore an SCC is able to limit its liability in respect of a particular transaction to a specified pool of assets rather than exposing all of the assets of the SCC, as would be the case with a non-cellular company. A cell of an SCC does not have a separate legal personality, and each cell transacts through the SCC. When an SCC enters into a contract, the directors must specify in the contract which particular pool of assets is to be bound by the obligations under the agreed contract.

An SCC can take one of two forms, either:

(i) An SCC that carries on business as a securitisation vehicle in compliance with the Securitisation Act; or

(ii) An SCC that carries on business as an RSPV in compliance with the Reinsurance Special Purpose Vehicles Regulations, 2013.

The two categories of SCC vehicles referred to above perform different activities; however, they both enjoy many commonalities as far as their setting up and operation are concerned. These are:

- **Creation of a cell:** an SCC may create cells by means of a resolution of its board of directors. A new cell will be created for the purpose of entering into either securitisation transactions or activities of an RSPV.
  Each cell of a securitisation cell company must have its own distinct name or designation which shall include the word 'cell'.

- **Issuance of financial instrument linked to a cell:** an SCC may issue financial instruments in one or more tranches, in respect of any of its cells, and the proceeds of the issue are comprised in the cellular assets attributable to the cell in respect of which the financial instruments were issued. Financial instruments issued in respect of a cell may be denominated in different currencies.

- **Cell shares:** an SCC may, in respect of any of its cells, create and issue cell shares the proceeds of the issue of which ("cell share capital") are comprised in the cellular assets attributable to the cell in respect of which the cell shares were issued.

- **No activities at the core:** an SCC may not carry securitisation transactions or activities of an RSPV through its non-cellular assets. Asset-based and risk- based securitisation transactions may therefore only be carried out in respect of specific cells and securitisation assets have to be allocated to a particular cell.

- **Duties of Directors:** the directors of an SCC have the duty to keep:
  (a) cellular assets separate and separately identifiable from non-cellular assets;
  (b) cellular assets attributable to each cell separate and separately identifiable from cellular assets attributable to other cells; and
  (c) separate records, accounts, statements and other documents as may be necessary to evidence the assets and liabilities of each cell as distinct and separate from the assets and liabilities of other cells in the same company, and as distinct and separate from the non- cellular assets and liabilities of the SCC.

- **Choice of cell currency:** the directors of an SCC may choose the base currency of a cell which may be different from the currency of the non-cellular share capital.

- **Annual accounts:** an SCC shall draw up its annual accounts in either the currency of its non-cellular share capital or the base currency of one of its cells.

- **Position of creditors:** a creditor of a cell has rights to the assets of that particular cell only and has no recourse to the assets of other cells or the non-cellular assets. Apportionments may be made out of the assets attributable to the individual cells towards the costs of the day-to-day administration of the SCC.

- **Winding up of individual cells:** the SCC Regulations provide for the winding up of individual cells separately from the SCC itself as a whole. The winding up proceedings prescribed under the Companies Act (Cap.386) apply *mutatis mutandis* to a cell as though it were a distinct legal entity.
- **Listing on EWSM:** an SCC may list its securities on the European Wholesale Securities Market (EWSM), an EU regulated market dedicated to the needs of arrangers and issuers of wholesale debt products. The EWSM Listing Rules regulate the admissibility to listing on the EWSM.

The specific features of SCCs carrying on business as securitisation vehicles include the following:

- **Notice/licencing/approvals:** the SCC is required to give notice in accordance with article 18 of the Securitisation Act prior to commencement of business as a securitisation vehicle, and also prior to commencing business in respect of any individual cell. An SCC which falls within the definition of a 'public securitisation vehicle' in terms of article 19 (1)(a) of the Act requires authorisation, and cells may only be created with the prior approval of the Competent Authority. Any approval or notification issued in respect of a cell is required to be registered with the Registrar of Companies.

- **Activities:** the SCC may enter into one or more securitisation transactions in respect of a cell.

- **Use by multiple originators:** the SCC may enter into multiple securitisation transactions with multiple originators in respect of its cells, provided that the securitisation assets deriving from different originators are attributed to different cells. Securitisation assets in each cell are protected by the provisions for ring-fencing of assets and liabilities contained in the SCC Regulations.

- **Conversions:** a securitisation vehicle previously set up as a limited liability company may convert into an SCC carrying on the business of a securitisation vehicle following the submission of a written notification to the Competent Authority on the appropriate form, accompanied by the documentation as prescribed in the SCC Regulations.

The specific features of SCC carrying on business as RSPVs include the following:

- **Licencing/approvals:** the SCC may only carry on business as an RSPV with the prior authorisation of the Competent Authority. This also applies to the setting up of cells. Any approval issued is required to be registered with the Registrar of Companies.
- **Activities:** the SCC may enter into one or more risk transfer arrangements in respect of a cell.
- **Use by multiple ceding undertakings:** the SCC may enter into multiple risk transfer arrangements with multiple ceding undertakings in respect of its cells, provided that all risk transfer arrangements attributable to an individual cell shall originate from a single ceding undertaking or from ceding undertakings belonging to the same group. The risk transfer arrangements attributable to each cell are protected by the provisions for ring-fencing of the assets and liabilities contained in the SCC Regulations.
- Every cell of the SCC needs to be **fully funded** in its own right in view of the application of the relevant provisions of the RSPV Regulations directly to the individual cells of an SCC.

This article is intended assist persons considering setting up securitisation cell companies. It does not purport to provide legal advice thereon. More information about securitisation cell companies or on any related topic are invited to make contact with the MFSA or visit the MFSA website: www.mfsa.com.mt.

ROC website to offer new features

The Registry of Companies Online System is currently being upgraded. One of the new features of the system will be the possibility of issuing automated electronic reminders to all registered companies concerning the due dates and deadlines regarding the filing of the annual returns and annual accounts. For this purpose the Registry of Companies should be provided with one or more valid e-mail address/es where such reminders will be sent.

MFSA
REGISTRY OF COMPANIES

A company may provide its own corporate e-mail address, and/or other e-mail addresses where the officers of the company would prefer to receive these reminders, such as the e-mail address of its accountant or legal practitioner. It is important that the e-mail address/es provided is/are functional and regularly used so that the reminders will be read in time. Companies are being urged to furnish the Registry with the electronic mail address/es at the earliest opportunity so that they may benefit from this service as soon as it is up and running. This automated reminder service should help companies not to overlook filing deadlines.

Companies may inform the Registry of Companies by an e-mail addressed to systemsupport@rocmalta.com.mt of the e-mail addresses they choose to use for this service indicating also the name of the company and its registration number.

EBA Consultation Paper on Draft EBA Guidelines on limits on exposures to shadow banking entities which carry out banking activities outside a regulated framework

On 19th March 2014, the EBA issued a consultation paper entitled "Draft EBA Guidelines on limits on exposures to shadow banking entities which carry out banking activities outside a regulated framework under Article 395 para. 2 Regulation (EU) No. 575/2013" [EBA/CP/2015/06].

The draft Guidelines aim at laying down the requirements which credit institutions and investment firms must fulfil to set limits to their individual exposures to shadow banking entities and to the shadow banking sector in its entirety.

The consultation runs until 19th June 2015. Contributions can be submitted online by clicking on the 'send your comments' button on the consultation page within the EBA's website: http://goo.gl/hNmNF6

European Supervisory Authorities Press Releases issued during March 2015

European Securities and Markets Authority (ESMA)

26/03/2015 - ESMA publishes updates to Q&As on the AIFMD application

26/03/2015 - ESMA publishes updates to Q&As on the KIID

24/03/2015 - ESMA consults on complex debt instruments and structured deposits in MiFID II

11/03/2015 - ESMA publishes responses received to consultation on MiFID II/MiFIR

10/03/2015 - ESMA clarifies its interest rate swaps clearing standards

09/03/2015 - ESMA and MAS conclude MoU on CCPs

06/03/2015 - EBA, EIOPA and ESMA consult on draft technical standards on the credit quality steps for ECAIs credit assessments

02/03/2015 - ESMA publishes an update regarding the MiFID II Consultation Period

02/03/2015 - ESMA publishes Overview of all Guidelines and Technical Standards

European Banking Authority (EBA)

17/03/2015 - EBA updates its risk dashboard for EU banking sector

12/03/2015 - EBA issues revised list of ITS validation rules

11/03/2015 - EBA defines requirements for business reorganisation plans

05/03/2015 - Consultation on Guidelines on sound remuneration policies

05/03/2015 - EBA reviews guidelines on remuneration policies

04/03/2015 - EBA publishes results of the Basel III monitoring exercise as of 30 June 2014

03/03/2015 - EBA updates on future EU-wide stress tests

European Insurance and Occupational Pensions Authority (EIOPA)

12/03/2015 - EIOPA publishes the Final Reports on full equivalence assessments of Bermuda, Japan and Switzerland

MFSA Licences - February 2015

NEW LICENCES

Collective Investment Schemes

Professional Investor Funds targeting Qualifying Investors

- Collective Investment Scheme licences issued to **The Ethika Fund SICAV plc** in respect of three sub-funds.
- Collective Investment Scheme licence issued to **The Nascent Fund SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **Aurelius SICAV plc** in respect of one sub-fund.

Alternative Investor Funds targeting Qualifying Investors

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

Recognised Private Collective Investment Schemes

- Recognition certificate issued to **MLB Investment Funds SICAV plc.**
- Recognition certificate issued to **Miko Investment Funds SICAV plc.**
- Recognition certificate issued to **EB Global Investment Funds SICAV plc.**

Investment Services

AIFMs

- Category 2 licence issued to **GWM Group Investment Management (Malta) Limited.**

De Minimis AIFM

- Category 2 licence issued to **Medina Asset Management Limited.**

Company Service Providers

- Registration certificate issued to **W.J Parnis England Limited**.
- Registration certificate issued to **WDM Lex Advisory Limited.**
- Registration certificate issued to **Fintel Limited.**
- Registration certificate issued to **Amicorp Services Limited.**
- Registration certificate issued to **Juanafil Corporate Services Limited.**
- Registration certificate issued to **STA Corporate Services Limited.**
- Registration certificate issued to **Combined Maritime Services Limited.**

SURRENDERED LICENCES

Collective Investment Schemes

Professional Investor Funds targeting Qualifying Investors

- Surrender of licences issued to **Accuris Fund SICAV plc** in respect of two sub-funds.
- Surrender of license issued to **Palladium Fund SICAV plc** in respect of one sub-fund.
- Surrender of licence issued to **Bulkara Capital SICAV plc**.

Investment Services

Surrender of Category 3 licence issued to **Swissquote Financial Services (Malta) Limited.**

EXTENDED AND REVISED LICENCES

Collective Investment Schemes

- Licence issued to **Concorde SICAV plc** was converted from Professional Investor Fund to Alternative Investment Fund.
- Licence issued to **Aros Paradigm Fund SICAV plc** was converted from Professional Investor Fund to Alternative Investment Fund.
- Licence issued to **Aros Paradigm Master Fund SICAV plc** was converted from Professional Investor Fund to Alternative Investment Fund.
- Licence issued to **Aros Bond Strategies SICAV IC plc** was converted from Professional Investor Fund to Alternative Investment Fund.
- Licence issued to **RohFund Global SICAV plc** was converted from Professional Investor Fund to Alternative Investment Fund.
- Licence issued to **The ARP Funds (SICAV) plc** was converted from Professional Investor Fund to Alternative Investment Fund.
- Licence issued to **The Timeless US Growth Fund SICAV plc** was revised from Professional Investor Fund targeting Qualifying Investors to a Professional Investor Fund targeting Experienced Investors.

Investment Services

AIFMs

- Revision of licence issued to **Aros Capital Management Limited** to act as a full Alternative Investment Fund Manager.

De Minimis AIFM

- Revision of licence issued to **GWM Asset Management (Malta) Limited** to act as De Minimis AIFM.

Registry of Companies - New Registrations - February 2015

Companies	Partnerships	Total
404	7	411

MFSA Announcements

MFSA Circulars

26/03/2015 - Circular addressed to Investment Services Licence Holders - Educational Clinic for Investment Firms on the CRD IV Package and Other Supervisory Matters

25/03/2015 - Note for Information - New web portal for use by Insurance and Reinsurance Undertakings

25/03/2015 - Note for Information - Reporting requirements covered by the Business of Insurance Statements ("BoIS") under Insurance Rule 12 of 2007 during the Solvency II Preparatory Period

12/03/2015 - Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast) [Unofficial Consolidated Version]

09/03/2015 - Quantitative reporting requirements under Solvency II

06/03/2015 - Circular on the coming into force of various Regulations under the Trusts and Trustees Act

06/03/2015 - Notice to Financial Services Licence Holders - FATF identifies jurisdictions with strategic deficiencies

02/03/2015 - Notice to Financial Services Licence Holders - Revision of FIAU Implementing Procedures

02/03/2015 - Guidance on the coming into force of the capital conservation buffer

MFSA Consultation

Consultation Papers and Documents

10/03/2015 - MFSA Consultation on the regulatory approach applicable to licensed PIFs and AIFs

09/03/2015 - Quantitative reporting requirements under Solvency II

Consultation Feedback Statements

12/02/2015 - Feedback Statement to MFSA Consultation Document On The Proposed Regulation on use of Trusts for Persons

MFSA Warnings

Foreign warnings received by MFSA can be viewed on MFSA Website / Announcements / Warnings

Forthcoming Events

MALTA INTERNATIONAL RISK CONGRESS 2015

1-2 JUNE, 2015
HILTON, MALTA

4-7 October 2015 - FERMA Risk Management Forum 2015 (Venice)

MFSA
ECC
Education Consultative Council

Training by members of the ECC:

- Malta International Training Centre
- Malta Institute of Accountants
- Institute of Financial Services
- Institute of Legal Studies
- Institute of Financial Services Practitioners
- Malta Institute of Management
- Castille Institute
- PricewaterhouseCoopers

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