

# MFSA Newsletter

October 2012 | Issue 10

MFSA  
MALTA FINANCIAL SERVICES AUTHORITY

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## MFSA - EIOPA Seminar “System of Governance”

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During the first week of October, the Malta Financial Services Authority (MFSA) in collaboration with the European Insurance and Occupational Pensions Authority (EIOPA) organised a seminar to promote the development of the common EU supervisory culture through the provision of a forum of learning, discussion and exchange of information about supervisory practices. The seminar was open to directors of insurance companies licenced by the MFSA and insurance supervisors from EU jurisdictions.

The legal framework regulating licenced entities generally requires that a licenced entity is managed in the best interest of shareholders or clients as the case may be. The board of directors and the members of various offices and committees established for the proper conduct of business of licenced entities are ultimately responsible for the overall conduct of business since they have the duty to ensure that a licenced entity is being managed and operated in the best interest of its customers and stakeholders.

In his invitation letter to the industry, Professor Joe Bannister said that the governance of licenced entities is at the top of the EU agenda. Following the publication of the De Larosiere Group Report in 2009, the European Commission has published Governance Green Papers in 2010 and 2011. The 2010 Green Paper takes stock of the lessons to be learnt from the 2007-2009 financial crisis and considers a possible way forward to address the corporate governance issues which have been identified while the 2011 Green Paper attempts to address three issues:

- the composition and effectiveness of the Board of Directors;
- the involvement of shareholders;
- the effectiveness of the “comply or explain” approach.

The MFSA carries out a rigorous fit and proper exercise on persons proposed as members of the Board of Directors of license entities and of officers in key positions. Moreover, commitments by directors and/or officers of licenced entities are increasingly coming under scrutiny.

The seminar was mainly dedicated to the guidelines concerning the Own Risk and Solvency Assessment (ORSA). Participants were also able to put their learning into practice by taking part in two break-out sessions. A closed session for supervisors was held in the afternoon of day 2. Speakers at the seminar included Ms Yvonne Schmerfeld, Solvency II Senior Expert at EIOPA, Mr Renzo G. Avesani, Chief Risk Officer at Unipol Gruppo Finanziario, Mr Jeroen Klomp Bueters, Solvency II program manager at the Dutch Central Bank and Ms Sybille Schulz, senior advisor at BaFin. The break-out sessions were facilitated by Mr Clayton Balkind, Chief Actuary at MSV Life plc, Ms Sybille Schulz, Dr Marisa Attard, Director of the Insurance and Pensions Supervision Unit of the MFSA and Ms Tanya Causon, Senior Manager of the Insurance and Pensions Supervision Unit of the MFSA.



*MFSA Chairman Prof. J. V. Bannister addressing the participants*

### **Setting the scene/update on state of play in Brussels and Solvency II**

Ms Schmerfeld opened the first session explaining EIOPA's main tasks and responsibilities which are to support the stability of the financial system, transparency of markets and financial products as well as the protection of policyholders. She also gave an explanation about EIOPA's powers and the tools that are available for it to conduct its business. She then gave a brief overview of the state of play of the Solvency II Directive. She stated that there is still a considerable amount of work to be carried out. Currently triologue meetings are being held between the European Commission, the Council and the European Parliament on the draft Omnibus II Directive that will amend the Solvency II Directive. These discussions which mainly revolve around legal issues: delegated acts vs regulatory technical standards, the implementation of countercyclical and matching premium and reporting and proportionality were started in April 2012 and are still on-going. The implications of these discussions are that the implementation of Solvency II may be delayed. The speaker maintained that as things stand today, the implementation date of Solvency II is 1 January 2014.

### **Overview of the work conducted by EIOPA**

During this session, Ms Schmerfeld explained EIOPA's role in the Solvency II project. She explained that amongst other things, EIOPA gives advice to the European Commission on the principles for the Solvency II Directive and Implementing Measures, drafts technical standards to be endorsed by the European Commission, conducts impact assessments which are both qualitative and quantitative and provides support for the implementation of the Solvency II Directive. Work achieved on the preparation of the implementation of Solvency II included the report on QIS 5, Joint report on the calibration of risk factors in the standard formula, consultation and final report (published in July 2012) on guidelines on ORSA and consultation and final report on draft proposal on quantitative reporting templates. She explained that ORSA is a tool to improve the risk management of insurers. It promotes a better understanding of the company's overall solvency needs, regardless of whether the risks are included in the SCR calculation or whether they are quantifiable or not. It discloses sufficient and clear information on a company's risk profile and enhances board responsibility. ORSA is an integral part of the business strategy of the undertaking and needs to be performed at least annually. Whenever the risk profile changes significantly, it has to be documented and has to be reported internally and to the supervisor. There is no fixed recipe for an ORSA. ORSA is not an internal model, nor a capital add-on.

### **System of Governance and the ORSA - The industry perspective**

Mr Avesani gave a very detailed presentation on the system of governance and risk management system and own risk and solvency assessment of Unipol Group. He explained that the group has established centralized units for all control and governance functions: Risk Management, Internal Auditing and Compliance ensuring that there is uniformity and consistency in the Internal Control System at group level. The risk appetite of the group is set by the Board which is then communicated to senior management. The risk appetite is integrated within the business plan and the budgeting processes guaranteeing a link between risk preferences, risk tolerance and enterprises goals. Top management reporting has 3 main features: appropriate frequency, synthesis and efficiency. Operational reporting provides daily, weekly and monthly information necessary to any business lines to carry on their own operational function while respecting their operational limits. Through ORSA, Unipol Group

can produce a holistic evaluation of enterprise risk management and an evidence of group capital adequacy. ORSA provides both the board of directors and senior management with an effective tool to identify appropriate actions to influence the group risk profile and the economic capital requirement.

### Implementation of ORSA – the Dutch experience

Mr Klomp Bueters explained the process adopted by the Dutch Central Bank (“DNB”) to prepare their insurance companies for the ORSA process. He stated that the focus was on the process that needed to be undertaken and was not a compliance check on the results. There was an open dialogue with insurers and consultants. The DNB was open to learn from insurers, particularly on matters of proportionality, as much as insurers wanted to learn from the DNB. The exercise was conducted in collaboration with the Dutch Association of Insurers. A pilot project was initiated in 2011 where 10 insurers representative of the field took part. The project demonstrated the usefulness of ORSA for the undertakings because it added value to risk management. A second exercise was held in 2012. This exercise was open to all insurers on a voluntarily basis. 50% of the market participated in the exercise. For this exercise the DNB also held round table sessions with individual insurers. The market has requested a third exercise to be held in 2013. For this exercise, the DNB will be providing individual written feedback and will be publishing detailed guidance. The 2013 exercise will be compulsory on all undertakings.

### Introduction on System of Governance

Ms Schulz explained that undertakings are required to have in place an effective system of governance which provides for the sound and prudent management of the business which is proportionate to the nature, scale and complexity of the risks of the undertaking and which is regularly reviewed and properly documented. There are 4 explicit key functions namely the Risk Management Function, the Compliance Function, the Actuarial Function and the Internal Audit Function. While all of the functions should be operationally independent, the Audit Function should be fully independent. The risk management system is a document containing a set of strategies, processes and reporting procedures through which an undertaking will be able to identify, measure, monitor, manage and report its risks. The risk management system covers all risks the undertaking is or could be exposed to. She explained that the ORSA provides the connection between risk and capital management.

## Payment Services Directive and the Electronic Money Directive

### Payment Services Directive

The Directive on Payment Services (2007/64/EC) (the ‘PSD’) provides the legal foundation for the creation of an EU-wide single market for payments so as to make cross-border payments as easy, efficient and secure as ‘national’ payments within a Member State. The PSD also seeks to improve competition by opening up payment markets to new entrants, thus fostering greater efficiency and cost-reduction. At the same time, the Directive provides the necessary legal platform for the Single Euro Payments Area (SEPA). The PSD establishes a single licence for payment service providers – the *payment institution*.



The Directive was published in the Official Journal of the European Union on the 13<sup>th</sup> November 2007 and a transposition deadline for all member states was set for the 30<sup>th</sup> November 2009. This transposition exercise was locally conducted jointly by the Malta Financial Services Authority (the ‘MFSA’) and the Central Bank of Malta where the MFSA was responsible for the transposition of Titles I and II of the PSD relating to regulatory and supervisory provisions whereas the Central Bank of Malta transposed Titles III and IV relating to the provision and use of payment services.

In view of the existence of the Financial Institutions Act (Cap 376 of the Laws of Malta), which has, since 1994, regulated entities undertaking similar activities to those now falling under the PSD, the transposition exercise only required a ‘streamlining’ of the provisions of the Financial Institutions Act with the new requirements emanating from the PSD. Amendments to Financial Institutions Rules 1 and 2 to incorporate the technical provisions found under Title II of the PSD were also carried out.

### Electronic Money Directive

The second Electronic Money Directive (2009/110/EC) (the 'EMD II') repealing Directive 2000/46/EC came into force on 30<sup>th</sup> October 2009. The main aim of the Directive is that of (i) enabling the creation of new, innovative and secure electronic money services; (ii) providing market access to new companies and (iii) fostering real and effective competition between market participants. The Directive focuses on modernising EU rules on electronic money, especially bringing the prudential regime for electronic money in line with the requirements of payment institutions in the PSD. In this regard, initial capital and on-going funds requirements were substantially reduced while the scope of activities that may be undertaken by electronic money institutions were widened and may also include payment services.

A fundamental change in EMD II relates to the legal definition of electronic money which was amended to enhance legal certainty, and bring it in line with the definition of payment transactions set out in the PSD. The new definition of electronic money was intended to achieve technical neutrality between different forms of electronic money (e.g. cards, virtual (on-line/IT server based), vouchers, mobile phone, any new forms of untested e-money solutions).

In line with the spirit of EMD II, which advocates a lighter and more flexible regime for electronic money institutions, the MFSA felt that in line with the directive provided by EMD II itself, the regulation of such institutions should move from the Banking Act (Cap 371 of the Laws of Malta) to the Financial Institutions Act. This approach was also consistent with the approach taken on the implementation of the PSD into local legislation. The amendments to the Financial Institutions Act were further supplemented by the issue of a new Financial Institutions Rule FIR/03 which lays down all the regulatory and supervisory procedures the Authority will adopt in respect of electronic money institutions, with particular emphasis on specific prudential and compliance requirements.

### Review of Directives

Both Directives (the PSD and EMD II) require that by the 1<sup>st</sup> November 2012, the Commission presents to the European Parliament, the Council, the European Economic and Social Committee and the European Central Bank a report on the implementation and impact of the Directives. That said, it seems that after the said review, there is the possibility that both Directives may be merged into one common Directive – thereby ensuring consistent prudential treatment for payment and electronic money institutions.

### MFSA Licensing

The MFSA has to date authorised and supervises 15 payment institutions and four electronic money institutions. Three electronic money institutions are also authorised to undertake payment services not related to the issuance of electronic money.

## Reforming the structure of the EU Banking Sector

On 2<sup>nd</sup> October 2012, the European Commission received the Report compiled by the High Level Expert Group on Reforming the Structure of the EU Banking Sector. The High-level Expert Group, which was established in February 2012 by Commissioner Barnier, was requested to consider whether there is a need for structural reforms of the EU banking sector or not and to make any relevant proposals as appropriate, with the objective of establishing a stable and efficient banking system serving the needs of citizens, the economy and the internal market.



The Group recommends a set of five measures which supplement the set of regulatory reforms already enacted or proposed by the EU, the Basel Committee and national governments:

1. Mandatory separation of proprietary trading activities and other significant trading activities to separate legal entities if the activities amount to a significant share of the bank's business;
2. Additional separation of activities conditional on the recovery and resolution plan if this is deemed necessary to ensure resolvability and operational continuity of critical functions. In particular this recommendation stresses on the need of

the banks to draw up and maintain effective and realistic recover and resolution plans and proposed in the Bank Recover and Resolution Directive.

3. Possible amendments to the use of bail-in instruments as a resolution tool;
4. A review of capital requirements on trading assets and real estate related loans; and
5. A strengthening of the governance and control banks. Thus the High Level Expert Group considers that it is necessary to supplement existing corporate governance reforms by specific measures aimed at [i] strengthening boards and management; [ii] promoting the risk management function; [iii] reining in compensation for bank management and staff; [iv] improving risk disclosure and [v] strengthening sanctioning powers.

A copy of the report and the executive summary is available for download from the [Europa Website](#).

### The UCITS Brand and the Asian Dimension

The Asian markets and the UCITS Brand were among the topics of discussion during the last ALFI Global Distribution Conference which was held between 18<sup>th</sup> and 19<sup>th</sup> of September 2012 in Luxembourg.



In its inception the UCITS Brand was originally intended solely as a fund marketing tool within the European Union but nowadays it is recognised as a global distribution investment fund product. In fact a growing number of Asian countries have accepted UCITS as a well reputable investment product with significant levels of investor protection. In one of the presentations, entitled *The Asian Opportunity Where do we stand and what can we expect?* Justin Ong, Partner at PwC Luxembourg, described the way in which many Asian economies are growing and the huge opportunities available in their financial markets for European fund managers to tap in.

Asia is an attractive market for distribution of UCITS funds. The UCITS brand has evolved to become the most popular offshore fund product sold in Asia and represents a gold standard of regulation and investor protection. As of July 2011, there were nearly 7,000 UCITS funds and share classes registered for sale across Asia, the majority of them sold in three cross-border fund hubs: Hong Kong, Taiwan, and Singapore. Nonetheless, even in these fund hubs there are still a few restrictions on UCITS distribution: Taiwan, for instance, does not approve UCITS products using derivatives, and sometimes registration is delayed in response to the domestic fund market environment. Hong Kong regulators have recently imposed a requirement of investor characterizations prior to the sale of any product that uses derivatives.

Other Asian markets are even more complicated. UCITS registration in Japan is slow and expensive with immense local paperwork, leading international managers to work with domestic distributors via funds of funds platforms. In terms of Malaysia and Thailand, UCITS are required to be wrapped within locally registered investment vehicles. On the other end of the spectrum, some Asia-Pacific markets including China, India, Indonesia, and Australia do not recognize UCITS.

China holds great potential as it is expected to overtake the US as the largest economy by 2020. China does not permit distribution of UCITS directly but only through an investor programme. China's Qualified Domestic Institutional Investors (QDII) programme permits Chinese domiciled investors to invest in foreign securities markets via certain fund management institutions, insurance companies, securities companies, banks and other asset management institutions which have been approved by the CSRC as QDII's.

The Malta Financial Services Authority signed a Memorandum of Understanding (MoU) on 26th January 2010 with the China Securities Regulatory Commission (CSRC) and later on with the China Banking Regulatory Commission (CBRC) in order to facilitate distribution of UCITS into China. The signing of the MoU gives access to Chinese Qualified Domestic Institutional Investors (QDII) to invest on behalf of Chinese investors into Malta domiciled investment funds. Similarly, companies licensed by the MFSA can access Chinese Qualified Foreign Institutional Investors (QFII) status and invest directly in China.



There is consensus both at European and Country level that China and Asia generally hold great potential. At European level there is a regulatory review currently underway aiming to further strengthen the UCITS framework, so that the UCITS brand can secure its competitive positioning in the Asian region. Michael Ferguson, Partner and Asset Management Leader at Ernst and Young Luxembourg who moderated one of the panel sessions during the ALFI Conference was quoted in the *Luxembourg-forFinance* Newsletter [September 2012] as maintaining that *'these economies are growing significantly and there is obviously a growing middle class, and you can see that there is going to be a need to save for future pensions, health and education. We believe that the fund industry will be the basis for those future savings.'*

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## Press Releases issued by the European Supervisory Authorities

### European Banking Authority (EBA)



- 03 October 2012** - [EBA publishes final report on the recapitalisation of European banks and paves the way for the transition to the CRDIV framework](#)
- 04 October 2012** - [EBA's 2013 work programme](#)
- 12 October 2012** - [EBA publishes follow-up review of banks' transparency in their 2011 Pillar 3 reports](#)
- 22 October 2012** - [Report on the assessment of SME proposals for CRD IV/CRR](#)
- 24 October 2012** - [Joint Committee response to the call for Advice on the Fundamental Review of the Financial Conglomerates Directive](#)

### European Securities and Markets Authority (ESMA)



- 01 October 2012** - [ESMA approves Axesor S.A. as a credit rating agency](#)

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



- 09 October 2012** - [EIOPA Report on Industry Training Standards emphasises diversity of national knowledge and ability requirements](#)
  - 16 October 2012** - [EIOPA launches Quantitative Impact Study for occupational pensions](#)
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## Licences - September 2012

### LICENCES ISSUED

#### *Collective Investment Schemes*

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

- Collective Investment Scheme licence issued to **PMG Partners 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 licence issued to **Palladium Fund SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **Polaris Finance SICAV plc** in respect of one sub-fund.

##### *UCITS*

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

#### *Investment Services*

- Category 2 licence issued to **Gamma Capital Markets Limited**.

#### *Banking*

##### *Credit Institutions*

- Credit Institution licence issued to **Ferratum Bank (Malta) Limited**.

##### *Financial Institutions*

- Financial Institution licence issued to **Fraport Malta Business Services Ltd**.
- Financial Institution licence issued to **Insignia Cards Limited**.

### LICENCES SURRENDERED

#### *Collective Investment Schemes*

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

- Surrender of licence issued to **Active Investments SICAV plc** in respect of one sub-fund.

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

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

### LICENCES EXTENDED & REVISED

#### *Trustees & Fiduciaries*

- Extension of licence issued to **Equinox International Limited** to include acting as an administrator of private foundations.

## Registry of Companies - New Registrations - September 2012

Companies	Partnerships	Total
283	2	285



## MFSA Consultation Document

- 15/10/2012** – [Consultation procedure on the proposed Insurance Rule entitled “Complaints Handling by Authorised Companies”](#)
- 22/10/2012** – [Consultation Procedure on the proposed Companies Act \(Investment Companies with Variable Share Capital\) \(Amendment\) Regulations 2012 and accompanying amendments to the Investment Services Rules](#)
- 25/10/2012** – [Consultation Procedure on the proposed amendments to the Listing Policies relating to the creation of a sinking fund for bond issues offered to the retail investor](#)
- 29/10/2012** – [Consultation Procedure on the proposed Foreign Currency Lending Rules](#)



## MFSA Circulars

- 09/10/2012** - [Publication of Revised Investment Services Rules for Investment Services Providers and Investment Services Rules for Retail Collective Investment Schemes](#)
- 17/10/2012** - [Directive 2012/23/EU of the European Parliament and of the Council amending Directive 2009/138/EC \(Solvency II\) as regards the date for its transposition and the date of its application, and the date of repeal of certain Directives](#)
- 17/10/2012** - [Publication of a Legal Notice and Guidance Notes on Short Selling Regulation](#)
- 19/10/2012** - [Circular addressed to the investment services industry regarding amendments to the Investment Services Rules for Investment Services Providers, including UCITS Management Companies](#)
- 30/10/2012** - [Circular addressed to the investment services industry on proposed rules on cross sub-fund investments](#)
- 31/10/2012** - [Circular to the financial services industry on Regulation \(EU\) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties \(CCPs\) and trade repositories \(TRs\) \('EMIR'\)](#)



## MFSA Notices

- 03/10/2012** – [Surrender of Collective Investment Scheme Licence – Kerylos Malta SICAV plc](#)
- 04/10/2012** – [Note for Information - EIOPA publishes draft technical specifications for the QIS of its final advice on the IORP Directive review](#)
- 10/10/2012** – [Surrender of Licence by SwissFund SICAV plc](#)
- 18/10/2012** – [Surrender of Licence by Swiss Settlements Fund](#)
- 24/10/2012** – [Surrender of Licences by JFP Investments SICAV plc](#)
- 24/10/2012** – [Notice to Financial Services Licence Holders - International Sanctions](#)
- 24/10/2012** – [Notice to Financial Services Licence Holders - FATF identifies jurisdictions with strategic deficiencies](#)







## MFSa Listing Authority Announcements

09/10/2012 - [Termination of Suspension of Trading - Loqus Holdings Plc Ordinary shares €0.232937 \(MT00001 501 03\)](#)



## Warnings

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



## Forthcoming Events

- **21 November 2012** - [EIOPA 2nd Annual Conference](#)
- **3 December 2012** - [Information Seminar on Foreign Account Tax Compliance Act \(FATCA\)](#)

### MFSa Education Consultative Council (ECC)

Training by members of the ECC:

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



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

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)