

WEF confirms Malta amongst top financial jurisdictions



The Global Competitiveness Report 2017-2018, published annually by the World Economic Forum, has once again placed Malta amongst the top jurisdictions in terms of provision of the financial services. Once again, Malta performed remarkably in key areas such as soundness of banks, the strength of auditing and reporting standards, with top 20 classifications.

Overall, in terms of competitiveness Malta now ranks 37th out of 137 countries, an improvement on the 40th place attained in the previous edition. This publication assesses each country on 12 main pillars. Malta excelled particularly well in the areas of higher education and training (30th), labour market efficiency (29th), business sophistication (31st), and innovation (38th).

The World Economic Forum's report provides a detailed overview of the competitiveness performance of 138 economies, and provides a highly detailed analysis of their economic, financial and social performance. It contains a detailed summary for each of the economies included in the study, as well as an extensive section of data tables with global rankings covering over 100 indicators.

Switzerland retained first place as the most competitive economy, followed by the United States and Singapore. Other nations making the top 10 positions were the Netherlands in fourth place, followed by Germany, Hong Kong, Sweden, the United Kingdom, Japan and Finland.

In the introduction to the report, the WEF notes that the "Global Competitiveness Report 2017-2018 comes out at a time when the global economy has started to show signs of recovery and yet policymakers and business leaders are concerned about the prospects for future economic growth. Governments, businesses, and individuals are experiencing high levels of uncertainty as technology and geopolitical forces reshape the economic and political order that has underpinned international relations and economic policy for the past 25 years. At the same time, the perception that current economic approaches do not serve people and societies well enough is gaining ground, prompting calls for new models of human-centric economic progress."

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ESMA Peer Review on Guidelines on Enforcement of Financial Information

The Malta Financial Services Authority ('MFSA') has, earlier on this year, been selected for the purpose of an on-site visit carried out by ESMA as part of the peer review on Guidelines on Enforcement of Financial Information.

The findings of such review have necessitated MFSA to adopt changes to its processes when it comes to enforcement of financial information including the way the MFSA communicates with issuers and auditors, the focus of the examinations and the type of enforcement action to be taken. The purpose of this letter is to prepare issuers to this change in approach and tackles in detail the Peer Review process and the changes that are expected to be adopted by MFSA going forward.

1.0 ESMA Peer Review

The ESMA Work Programme 2016 set out that a peer review is carried out to assess the compliance by National Competent Authorities ('NCAs') with certain of the ESMA Guidelines on Enforcement of Financial Information (ESMA/2014/1293) ('EFI Guidelines').

This peer review was conducted in accordance with Article 30 of Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 ('ESMA Regulation') and the revised ESMA Peer Review Methodology (ESMA/2013/1709) ('Methodology').

The peer review was carried out by an Assessment Group ('AG'), which reported its findings to the ESMA Board of Supervisors for approval.

The peer review was restricted to guidelines 2, 5 and 6 of the EFI Guidelines. The objectives of the peer review were:

a) *In the context of Guideline 2:* to assess the sufficiency of human and financial resources of National Competent Authorities taking into account the number and characteristics of issuers subject to enforcement of financial information and to assess the adequacy of the professional experience and background of enforcers considering the nature of the issues that need to be dealt with under the applicable rules.

b) *In the context of Guideline 5:* to assess whether selection methods in place within an NCA are based on a mixed approach whereby a risk based approach is combined with a sampling and/or rotation approach; to assess whether the risk based approach considers the combination of the probability of infringements by an issuer and its potential impact on the financial markets.

c) *In the context of Guideline 6:* to assess whether the examination procedures in place within an NCA ensure that the enforcement of financial information performed either by unlimited scope examinations, or a combination of unlimited scope and focused examinations, is effective; notably, whether the examinations carried out by enforcers ensured that material errors were likely identified.

On 18 July 2017, ESMA issued a report which gives details of the peer reviews carried out at seven (7) National Competent Authorities ('NCA') including the MFSA, during the first quarter of this year. Details of this report can be obtained through the following link:

https://www.esma.europa.eu/sites/default/files/library/esma42-111-4138_peer_review_report.pdf

2.0 Changes that are expected to be adopted by the MFSA

The MFSA will be enhancing the current supervisory approach in place when carrying out the enforcement of financial information in accordance with the EFI Guidelines as follows:

1. Selection Method

The MFSA is in the process of concluding a Risk Model which will be the basis on which issuers will be selected for future examinations. This approach will consider issuers with a higher probability of infringements and their potential impact on the financial markets. This approach will be combined with a sampling and/or rotation approach with the objective to cover an adequate number of issuers.

Furthermore, the Authority is planning to increase the number of examinations carried out in each calendar year.

2. Focus of examinations

As of to date, the MFSA has mainly carried out full scope examinations usually with more focus on the disclosure aspect of the financials. Going forward the MFSA will be focusing more on the measurement and recognition of specific items disclosed in the primary statements. Accordingly, issuers may expect that in future MFSA will probe into the measurement and recognition basis of specific items including deferred tax assets and liabilities, valuations of tangible and intangible assets and provisions, amongst others.

3. Communications with the issuers and/or auditors

As of to date, the MFSA has addressed all its communication on enforcement of financial information to the Company Secretary of the issuers. In the future the MFSA intends to communicate, where necessary, directly with the auditors of the issuer. Also, the MFSA does not exclude instances where it may communicate directly with the audit committee of the issuer.

Amongst others, additional measures include improved visibility of the work undertaken by the Authority in the local domestic market. Going forward, the Authority is planning to hold meetings with issuers and auditors in order to share main findings following an examination. In this regard, meetings with auditors are particularly relevant as the Authority will be in a position of discussing certain matters directly with audit teams with the objective of improving financial reporting on a wider context.

In accordance with the EFI Guidelines, examples of examination procedures of an issuer's financial information include the following:

- a) Asking questions to the issuer, usually in writing, in order to better understand: the areas of the issuer involving significant risks, the significant accounting issues which arose in the year under review, how the issuer treated the significant accounting issues, and how the issuer's chosen accounting treatment complies with the relevant reporting framework;
- b) Posing questions to or having meetings with the auditors of the issuer to discuss complex issues or issues of interest, depending on the needs of the examination process;
- c) Referring matters to the respective boards/committees bodies for the audit and/or approval of financial information, such as a supervisory board or audit committee; and
- d) Engaging in on-site inspections.

4. Type of Enforcement Action

In accordance with the EFI Guidelines, whenever a material misstatement is detected, the MFSA should in a timely manner take at least one of the following actions:

- a) Require a reissuance of the financial statements;
- b) Require a corrective note; or
- c) Require a correction in future financial statements with restatement of comparatives, where relevant.

The principles in the EFI Guidelines emphasise the importance of the use of corrective notes and/or corrections in the financial statements. When infringements encountered are material, the Authority intends to enforce the use of corrective notes more often even when dealing with disclosures.

For any queries regarding the above please do not hesitate to contact:

Ms Lorraine Vella, Senior Manager, Securities and Markets Supervision Unit by e-mail on lvella@mfsa.com.mt or to Ms Stephanie Buhagiar Camilleri, Analyst, by email on scamilleri@mfsa.com.mt.

MFSA advises on Critical Supervision and resulting Administrative Measures

In recent years the Authority has been managing a number of cases which required critical and close supervision in view of breaches of regulatory requirements. To this end, the Authority has brought to the attention of the industry the most common deficiencies so as to serve as a learning experience to all licence holders. Below is a summary of some of the major deficiencies which were identified in collective investment schemes, fund managers, custodian and/or fund administrators.

In its communication, the Authority indicate what it expects as minimum standards in respect to the various regulatory obligations, such as governance, risk management, compliance, capital requirements and financial reporting, as well as investment management and conflicts of interest management. Please note that the above mentioned shortcomings are not exhaustive.

The industry is advised that in certain instances the identified deficiencies were serious and as a result enforcement action was taken by the Authority. Accordingly, licence holders are urged to review their processes and procedures to ensure that any failures, as those indicated above, are addressed and sound governance and compliance culture is established and retained across all levels of licence holders.

Any queries or requests for clarifications in relation to this circular are to be addressed to Mr Joseph J Agius - Deputy Director, Securities & Markets Supervision Unit, on +356 2548 5535 or jagius@mfsa.com.mt, or Ms Jeanelle Newell – Analyst, Securities & Markets Supervision Unit, on +356 2548 5526 or jnewell@mfsa.com.mt.

The full Circular is available to download by clicking [here](#)

The European Deposit Insurance Scheme: a myth or a fact?

The global financial crisis of the last two decades not only challenged the regulatory and operative framework of the financial services regulation and supervision, but also highlighted the importance of financial consumer protection. The banking system has evidenced the most failures and this for various reasons since the Great Depression of over eighty years ago. It is estimated that the support given to banks by EU in recent years was equivalent to a third of its economic output.

The article briefly outlines the development of the deposit guarantee schemes (“DGS”), particularly analysing the initiatives taken by the EU and governments to enhance the depositor guarantee schemes to counteract bank runs or systemic financial crisis.

In recent years, a number of changes have been introduced as DGSs are trying to find an answer to the rapid changes in the financial environment, which include trends in globalisation and conglomeration of the financial system and the blurring of distinctions between financial products. The trend of globalisation requires a level playing field in order to promote financial efficiency and prevent regulatory arbitrage. In the EU, this is reflected in the harmonisation directives on DGSs. The changes are taking place and that are under consideration such as the EDIS are to be seen as a response to developments in the theoretical approach to financial regulation, such as the increased awareness of the role of moral hazard and the importance of incentive mechanism in regulation in general. The importance of the subject of deposit insurance in the EU is reflected not only by the EU directives on the matter but also by the establishment of the European Forum of Deposit Insurers.

The focus of the article is the launch a single deposit guarantee in Europe which is now being recognised as one of the three main pillars, together with the Single Supervisory and Resolution Mechanisms (“SSRM”), in reinforcing financial stability in the EU through a Banking Union. Reference is also made to the EU legislative proposal on 24 November 2015 introducing a European Deposit Insurance Scheme (“EDIS”) which will enhance depositors’ protection across the EU. EDIS forms an important milestone of the Banking Union to strengthen further financial stability and depositors’ trust whilst reducing the dependency of the financial institutions on national governments in times of crisis as has happened in recent years.

The setting up of a European deposit guarantee system could address the problems for large cross-border exposures through branches and subsidiaries. This would help to remove competitive distortions, deal with administrative burdens, avoid branch/subsidiaries’ consumers confusion and most importantly preserve the internal market for retail banking. Given the premise of Banking Union, breaking the vicious circle between the sovereigns and the banks, a common system should be an important element. Maintaining different contribution levels and forms of financing would maintain the vicious circle. However, the level of funds kept in all EU deposit insurance systems today remains very limited, and totals about €18.6 billion (2011), less than one-half the level that will be required to have when the new directive is fully implemented.”¹ CEBS, (2014) “The agreement reached in early 2014 on a further harmonisation of deposit guarantee schemes is often overlooked in the policy debates. It is indeed the case that no single deposit guarantee system was created, but an agreement was reached on a far-reaching harmonisation and update of the previous directives containing rules of pre-funding, the maximum pay-out deadlines and the functioning across border. Again, none of this existed before, even considering the limited changes that were agreed upon in the early days of the financial crisis.”

The European Deposit Insurance System will be rolled out in three stages, deployed gradually through to its full implementation in 2024:

¹ Presentation by Konrad Szelag, DG Market, European Commission, to the Task Force, 17 October 2014.

- **Reinsurance stage (from 2017 to 2020):** national deposit guarantee funds will only be able to access European funds when they have used up their own funds. Funds requested must be justified and in response to a possible moral risk. Additionally, the deployment of the funds will be closely monitored.
- **Co-insurance stage (2020 to 2024):** during this stage, the national funds will not be obliged to exhaust their own resources before accessing European system funds. The European system will be responsible for part of the costs from the moment that money has to be returned to deposit holders. The contribution rate will start at 20% and increase gradually over the following four years.
- **Full insurance (2024 onwards):** the participation rate in the European Deposit Insurance System is expected to reach 100% at this date, after which the single resolution fund will have been fully established.

There is German sensitivity on the establishment of the EDIS; the reason could be that post-war Germany has built an elaborate system of private and public institutional protections. In contrast to most other euro area countries such as Austria, Cyprus, Greece, Ireland, Italy, Netherlands, Portugal, Slovenia and Spain, numerous banks have failed in Germany during the 2007 financial crisis but not a single bank depositor has lost money on their claims.

According to the Deutsche Bundesbank Monthly Report for December 2015 “a key precondition for a common insurance scheme is de-risking at bank. In addition to the supervisory rules that have already been adopted, abolishing the preferential supervisory treatment of sovereign exposures could also make a significant contribution in this regard, as it would help make the economic situation of banks less dependent on the situation of their respective home country. Otherwise, were the home country to default, there would be a danger of the direct economic fallout being communitised under EDIS via the direct effects on national banks. Ultimately, there would be a danger that the deposit guarantee scheme would, indirectly via this contagion channel, be made liable for the sovereign debt of other countries.”

In addition, the introduction of EDIS also raises questions about moral hazard among the banks in the EU. If banks will be backed by an EU wide system guaranteeing them instead of just relying on the limited national deposit guarantee schemes, there is the possibility that banks will opt for more risk in their investment. This can eventually lead to the banks’ collapse during financial shocks and also when depositors request withdrawal of their money.

The EDIS may also create another possible issue on the banks’ contributions during the transition period from re-insurance. According to the 2014 Directive, a DGS should guarantee 0.8% of the deposits of banks that fall under that DGS, getting to that level over a period of 10 years. This means that by 2024, the start of EDIS, national DGS should have reached that significant level. If a DGS fails to reach this threshold, then it loses the EDIS support. In order to reach the specific amount of protection of deposits set by EU-law, the participating banks should make ex-ante contributions which are linked to the amount of deposits the bank is holding and determined according to their risk profile.

Once EDIS will go into effect, banks will be compared based on deposits and risks profile to other banks EU- wide. The situation can occur that a bank then will have to pay more under EDIS than it did under the DGS. This can lead to more discussions and the slowdown of a smooth implementation of EDIS.

However, there are still political controversies and debatable questions on the creation of a common EU DGS. A number of possible alternative options have been mentioned such as:

1. a full replacement of the existing system by a single European Deposit Insurance Scheme;
2. the creation of a complementary ‘top-up’ euro area Deposit Insurance Scheme (a ‘20th DGS’ regime);

3. a reinsurance mechanism to the existing euro area Deposit Guarantee Schemes;
4. and a system of inter-Member State (E(DGS) cross-lending.

The future prospects for DGS look positive as it is anticipated that there will be:

- more consumer focus rather than depositor focus;
- mandate of loss minimizer with resolution powers rather than pay-box mandate;
- full receivership powers instead of no independent recovery powers;
- legally mandated and supported coordination set-up rather than no powers for international co-ordination; and
- empowerment to enter into cross-border co-ordination arrangements.

"When fully in place, the resolution and deposit insurance schemes framework should provide a substantial buffer to cope with future banking crisis, and a relief for the ECB at a time when it is taking over banking supervision". ECB (Future Challenges, p.57).

The EDIS dossier is politically very sensitive and only time will prove if the proposals are a reality or a myth.

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Malta's outlook raised to positive – Standard and Poor's

STANDARD & POOR'S

In its latest analysis of the prospects of the Maltese economy, international credit rating agency Standard & Poor's has maintained Malta's sovereign credit rating at A-. However, it has improved Malta's outlook from stable to positive.

S&P noted that the outlook on Malta was revised to positive on strong economic growth prospects. It explained that the outlook revision reflects their expectation that Malta's economy will continue its strong cyclical expansion.

"The positive outlook reflects that we could raise ratings on Malta over next 24 months if economic growth remains in line with our expectations," S&P said, while adding that the Malta ratings are supported by strong growth performance and a general improvement in the country's finances.

MFSA Circulars

- 04/09/2017 - [Circular - Packaged Retail and Insurance - Based Investment Products \(“PRIIPs”\) Regulation - Guidelines issued by the European Commission](#)
- 04/09/2017 - [Circular - Insurance Distribution Directive \(“IDD”\) Regulation - Delegated Regulation on the Insurance Product Information Document \(“IPID”\)](#)
- 18/09/2017 - [Circular – Critical Supervision and resulting Administrative Measures](#)
- 25/09/2017 - [Solvency II Circular for Insurance and Reinsurance Undertakings](#)
- 29/09/2017 - [Market Abuse Regulation – Q&A Document](#)
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MFSA Warnings

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

MFSA Media Releases

- 18/09/2017 - [MFSA promotes opportunities within financial services](#)
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European Supervisory Authorities’ Announcements

- 22/09/2017 - [Consultation on guides concerning the assessment of licence applications and fintech credit institution licence applications](#)
- 25/09/2017 - [ESAs provide guidance to prevent terrorist financing and money laundering in electronic fund transfers](#)
- 25/09/2017 - [EBA consults on amendments to technical standards on supervisory disclosure](#)
- 25/09/2017 - [Consultation on amending ITS on Supervisory Disclosure](#)
- 26/09/2017 - [EBA publishes guidance to further harmonise EU banks internal governance](#)
- 29/09/2017 - [EBA publishes Opinion on the design of a new prudential framework for investment firms](#)
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MFSA Licences – September 2017

NEW LICENCES

Collective Investment Schemes

Professional Investor Funds targeting Qualifying Investors

- Collective Investment Scheme licence issued to **Audentia Capital SICAV II plc** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **HFH SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **E2A Capital SICAV plc** in respect of one sub-fund.

Alternative Investment Funds targeting Professional & Qualifying Investors

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

UCITS

- Collective Investment Scheme licence issued to **Solutions Capital Management SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **Waterfront SICAV plc** in respect of one sub-fund.

Investment Services

- Category 2 licence issued to **SDP Capital Management (Malta) Limited**.
- Category 2 licence issued to **Alanda Capital Management (Malta) Limited**.

Trustees and Fiduciaries

- Authorisation issued to **HLB Fiduciaries Malta Limited** to receive property under trusts and to act as a trustee or co-trustee and to provide other fiduciary services including acting as an administrator of private foundations in terms of Article 43 of the Trusts and Trustees Act.

Company Service Providers

- Registration certificate issued to **Delimara Management Limited**.

SURRENDERED LICENCES

Collective Investment Schemes

Professional Investor Funds targeting Qualifying Investors

- Surrender of licence issued to **Theorema Fund SICAV plc**.

Alternative Investment Funds targeting Qualifying Investors

- Surrender of licences issued to **Cygnus SICAV plc** in respect of two sub-funds.
- Surrender of licence issued to **Cygnus Master SICAV Limited**.

UCITS

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

Investment Services

- Surrender of Category 2 licence issued to **W1 Capital Management Limited**.
- Surrender of Category 2 licence issued to **Pamplona FOF Investments Malta Limited**.
- Surrender of Category 1B licence issued to **Utility Capital Management Limited**.

EXTENDED AND REVISED LICENCES**Investment Services**

- Revision of Category 2 Investment Services Licence issued to **Auriga Asset Management Limited** to act as a De-Minimis Licence Holder on the basis that it qualifies for the De Minimis exemption pursuant to Article 3(2) of the AIFMD.

Registry of Companies - New Registrations – September 2017

Companies	Partnerships
355	7

Forthcoming Events



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](#)
- [Malta College of Arts, Science and Technology \(MCAST\), Institute of Business & Commerce](#)
- [The Department of Banking & Finance, Faculty of Economics, Management & Accountancy, The University of Malta](#)

Communications to be addressed to:

The Secretary, Educational Consultative Council, MFSA, Notabile Road, Attard.



A portal of financial information from the regulator about financial products and services.



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