

# Newsletter



MFSA

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MALTA FINANCIAL SERVICES AUTHORITY



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## EBA PRELIMINARY ENQUIRY **MFSA NOT IN BREACH OF UNION LAW**

THE EUROPEAN BANKING AUTHORITY (“EBA”) FOUND NO BREACH OF UNION LAW BY THE MALTA FINANCIAL SERVICES AUTHORITY (“MFSA”). AS A RESULT, THE EBA DECIDED TO CLOSE THE PRELIMINARY ENQUIRY INTO A POTENTIAL BREACH OF UNION LAW BY THE MFSA.

While the MFSA welcomes the recommendations from the EBA to further improve supervision of Malta’s financial services industry, it is pleased that its supervisory actions with respect to Pilatus Bank have been recognised, as well as its ongoing commitment to improve its overall supervisory practices especially on anti-money laundering (“AML”) supervision. The MFSA looks forward to future collaboration with the EBA, as well as other supervisory bodies in the EU, to improve AML supervision and ensure a strong AML environment within Malta and across the EU. Money laundering in Europe is a reality which cannot be dismissed and the increased sophistication of financial crime requires ongoing improvement in supervisory practices and approaches across Europe. Joseph Cuschieri, CEO of the MFSA said: “The MFSA welcomes the recommendations made by the EBA which are in line with our strategy to strengthen the Authority’s supervisory capabilities through, amongst other actions, business process re-engineering, cutting edge regulatory technology and investment in supervisory capacity. We are committed to ongoing collaboration with the EBA and other authorities to deliver a supervisory environment which enhances trust in the MFSA and Malta as a jurisdiction. It is clear that there were lessons to be learnt from the Pilatus Bank case, but it is also clear, and recognised by the EBA, that there has been an uncompromising commitment to identify and address these issues by the MFSA.”





“Our long term view of the MFSA and the strategic initiatives we are implementing should strengthen the Authority and minimise the risk of financial crime infiltration...”

**Joseph Cuschieri**  
Chief Executive Officer, MFSA

The MFSA has already started to implement a number of key strategic initiatives aimed at strengthening the Authority’s supervisory capacity and regulatory performance. These include:

- Reviewing and improving internal authorisation procedures to strengthen the engagement between the Financial Intelligence Analysis Unit (FIAU) and the MFSA’s anti-money laundering (“AML”) team;
- Reviewing and improving protocols for cooperation with the FIAU for conducting supervision of credit institutions both during authorisation and on an on-going basis;
- Process Improvement and digitisation of procedures and knowledge management for conducting due diligence and fit and proper checks both during authorisation and throughout the licensee’s lifecycle;
- Integrating AML and Combating the Financing of Terrorism (“AML/CFT”) risks in the risk assessment framework and in the business model analysis of banking supervision at the MFSA;
- Reviewing the organisation of financial supervision to further integrate AML/CFT risks into prudential supervision;
- Major investment in cutting edge knowledge management tools, business intelligence, regulatory and supervisory technology tools;
- A Business process re-engineering programme aimed at improving the efficacy and efficiency of the Authority’s supervisory processes and procedures which includes automation;
- Increase in Human Resources to “right size” the Authority;
- Launching an extensive AML training programme.

Joseph Cuschieri continued: “Our long term view of the MFSA and the strategic initiatives we are implementing should strengthen the Authority and minimise the risk of financial crime infiltration. Having said this, it is crucial that AML/CFT supervision is re-thought and discussed in more depth at an EU level to ensure that AML supervision across EU member states is streamlined and strengthened both at a technical and policy level. Ongoing collaboration and exchange of information between member states is key to stronger AML/CFT in Europe and the MFSA is ready and willing to play its part in this process”.

# MFSA continues developing the regulatory framework underlying the VFA Act

Following the adoption by Parliament, earlier this year, of the legislative framework for Blockchain and virtual financial assets, the MFSA has continued developing the regulatory framework complementing and underlying the Virtual Financial Assets Act.

Throughout the month in review, the MFSA has also continued its consultation process with the industry through the publication of two consultation documents concerning: **[i] the Virtual Financial Assets Rules for VFA Service Providers; and [ii] raising the bar for VFA Agents.**

## Consultation Paper on the Virtual Financial Assets Rules for VFA Service Providers

The scope of this Consultation was twofold: to obtain industry feedback in relation to **[i] Chapter 3 of the Virtual Financial Assets Rulebook, which is annexed to this paper; and [ii] the Authority's interpretation of the transitory provision provided under Article 62(1)(c) of the Act.** Chapter 3 of the Virtual Financial Assets Rulebook shall apply to VFA Services Providers licenced in terms of the Virtual Financial Assets Act ('the Act') and Applicants seeking Licencing as VFA Service Providers

under the Act, as applicable. It is being proposed that this Chapter is sub-divided into four titles which respectively set out: **[i] the high level principles which should guide VFA Service Providers in the provision of their VFA activity in or from within Malta; [ii] the licensing requirements and the respective licensing process for VFA Service Providers; [iii] the ongoing obligations which VFA Service Providers must adhere to; and [iv] enforcement and sanctions in the event of misconduct by VFA Service Providers.**

## Consultation Paper on raising the bar for VFA Agents

The VFA Agent within the VFA framework is crucial for market integrity. The agent is considered by the Authority as gatekeeper, having the role of preventing persons who are not fit and proper from entering the financial system. The Authority wants to ensure that only persons with the right competences who are appropriately resourced will be eligible for registration as VFA Agents. It has also become evident that certain industry players are not sufficiently prepared to register as VFA Agents, and the Authority has identified the need to

address an existing expectations gap, particularly in view of the inherent risks of this sector. By virtue of this consultation paper, the Authority proposed: **[i] increasing the initial and on-going capital requirements for VFA Agents; [ii] introducing a rigorous competence assessment; [iii] introducing a mandatory requirement for Continuous Professional Education; and [iv] increasing regulatory fees.** The scope of this Consultation was to obtain industry feedback in relation to the Authority's proposals.

**Moreover, the MFSA has also issued a Circular to persons involved in DLT Asset Activity and Services. The Authority has issued a form for the purpose of: [i] a Data Collection Exercise in relation to DLT asset activity and services in or from within Malta and [ii] Notification for the purposes of Article 62 of the Virtual Financial Assets Act. The form includes questions covering the type of activity undertaken, or service provided, as well as supplementary information pertaining to such activity or service.**

Interested parties are encouraged to follow the Authority's social media feeds as well as the web link [www.mfsa.com.mt/vfa](http://www.mfsa.com.mt/vfa) for further updates.

# MFSA revises Conduct of Business Rulebook

Following the publication in late 2017 of the Conduct of Business Rulebook, the Authority has published an updated version of the Rulebook which can be found on the Authority's website and accessed [here](#).

The main changes to the Rulebook, which affect all regulated persons, are as follows:

## [i] Rulebook as Applicable to the Insurance Sector

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Further to the implementation of the Directive (EU) 2016/97 ('Insurance Distribution Directive'), the Rulebook will apply to insurance undertakings and insurance intermediaries as from 1st October 2018. Industry participants are encouraged to contact the Conduct Supervisory Unit with any difficulties they may encounter in implementing the requirements. The Conduct Supervisory Unit will be reviewing such queries and will provide a 'Frequently Asked Questions' document to address the most common queries raised.

Pursuant to the feedback received from the insurance sector, as part of the consultation process, the Authority would

like to inform industry participants that the draft Rules relating to insurance undertakings and intermediaries published on 20th December 2017, have been revised as follows:

### Disclosures to be made Before Certain Insurance Contracts are Concluded

In relation to the distribution of non-life insurance products, insurance undertakings and insurance intermediaries are required to provide a standardised product information document which can be provided in either English or Maltese or in another language agreed to by the client and the distributor. The Authority has reconsidered its position and Rule

1.4.101 has been amended to the effect that notwithstanding the requirements of R.1.1.2 and R.1.4.16 (b), the product information document may be provided in English.

### Inducement Requirements

Rules relating to inducements provided in Chapter 3 of the Rulebook which apply to insurance undertakings and intermediaries were separated from those applying to investment firms so as to ensure that insurance undertakings and insurance intermediaries are subject to the requirements of the Insurance Distribution Directive and relevant implementing Regulation.

## [ii] Amendments to the Rulebook Applicable to the Securities Sector

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**Following additional feedback received following the issue of the Rulebook on 20th December 2017,** the Authority has made a number of amendments, as indicated further below, taking into consideration the feedback received from industry participants. In order to assist the industry, the Authority is also issuing a 'Frequently Asked Questions' document which is available on the Authority's website and can be accessed [here](#).

### Requirement to Provide a Suitability Statement

Rule 4.4.36 requires investment firms to provide clients with a suitability report when providing both investment advice and portfolio management services. In this regard, the Authority has considered that it has interpreted the MIFID II requirements too restrictively and has now reconsidered its position such that a suitability statement is only required when advisory services (not portfolio management services) are provided.

Accordingly, Rule 4.4.36 has been amended to reflect the above.

### Reporting of Information on the Top Five Execution Venues and Quality of Execution Obtained

Rule 1.3.14 requires an investment firm who executes client orders to make public on an annual basis, for each class of financial instruments, the top five execution venues in terms of trading volumes where such investment firm has executed client orders in the preceding year and information on the quality of the execution obtained. This Rule has been amended to the effect that investment firms should refer to the requirements of Commission Delegated Regulation (EU) 2017/576 for guidance on the content, format and the manner in which the information should be published.

## [iii] Additional Amendments Made to the Rulebook Applicable to all Regulated Persons

### Inclusion of Regulatory Disclosure Requirement in Advertisements

The Authority noted that the requirement of Rule 1.2.13 is not consistent with the guidance provided in relation to those circumstances where the regulatory disclosure statement is not required. The regulatory disclosure statement required in terms of Rule 1.2.13 for advertisements issued by Regulated Persons does not apply where the advert approved, disseminated or information provided consists of only one or more of the following:

- (i) the name of the Regulated Person;
- (ii) a logo or other image associated with the Regulated Person;
- (iii) a contact point;
- (iv) a reference to the services provided by the Regulated Person;
- (v) reference to the fees or commissions charged by the Regulated Person.

Therefore, Rule 1.2.13 has been amended to the effect to amend the inconsistency and to clarify further this position.

### Issuing and Approval of Advertisements

Rule 1.2.10 provides that where a Regulated Person appoints tied insurance intermediaries or tied agents, the Regulated Person shall approve all advertisements relating to the business carried on by such Regulated Person and which are issued by such tied insurance intermediaries or tied agents. The Authority has inserted a guidance note to Rule 1.2.10 explaining that, whilst retaining responsibility for compliance with applicable legal and regulatory requirements for all advertisements that are issued by the indicated intermediaries, Regulated Persons may consider issuing specific requirements to be adhered by their tied insurance intermediaries or tied agents when these issue advertisements on social media. The Regulated Person may decide to indicate that advertisements issued by such intermediaries abiding by the requirements issued for such purpose would also carry its deemed approval. However, the Regulated Person is required to carry out ex-post monitoring of the advertisements issued by such intermediaries.

### Personal Visits and Contact with Clients

In its Feedback Statement, the Authority provided that Regulated Persons will not be allowed to cold call potential clients with a view of setting up appointments for home visits to sell products or provide services. The Authority would like to clarify its position that rather than not being permitted, Regulated Persons should as much as possible avoid making unsolicited or unarranged calls unless otherwise requested by a client. In this respect, Rule 4.1.15 has been amended to clarify this position.

### **Contacts**

Any queries or requests for clarifications on the contents of this Circular should be addressed to the Conduct Supervisory Unit.





## Guidance to licence holders and applicants proposing individuals for an Approved Position

The MFSA has issued a circular intended to provide guidance on the suitability assessment expected to be undertaken by Licence Holders and applicants for a licence before submitting a proposal for any position which requires the Authority's prior approval.

The Authority expects all Licence Holders and Applicants to carry out their own due diligence and suitability assessment prior to proposing an individual for an Approved Position and on an ongoing basis.

The assessment should specify how the individual's knowledge, skills and experience fit in with the risk profile and business model of the Licence Holder or Applicant concerned.

The suitability criteria on which the assessment shall be based are competence, reputation, conflict of interest / independence of mind and time commitment.

**Every request for the appointment of an individual to an Approved Position is to be accompanied by a copy of the suitability assessment carried out by Licence Holder or Applicant.**

A suitability assessment submitted pursuant to a proposed appointment shall inter alia:

- (i) evaluate the competence (qualifications and work experience) of the proposed individual and how this is relevant to the duties assigned to the proposed role, taking into account the nature, scale, and complexity of the Licence Holder/Applicant's business model and any specific risks associated with its licensable activities;
- (ii) evaluate the character of the proposed individual ensuring his/her good repute;
- (iii) identify potential conflicts of interest and explain how these will be managed;
- (iv) indicate the time commitment which shall be dedicated to the proposed role;
- (v) provide details of any support arrangements that will be put in place to support the proposed individual in the execution of his duties; and outline how the proposed individual will complement the Licence Holder / Applicant's collective suitability.

Any queries or requests for clarifications in respect of the above should be sent by email to the Authorisation Unit on [au@mfsa.com.mt](mailto:au@mfsa.com.mt).





# Malta featured in The Banker

*“the EU’s Payment Services Directive 2 (PSD2) has encouraged the growth in electronic money and payment services providers.”*

**Joseph Cuschieri**  
Chief Executive Officer, MFSA

Leading financial publication The Banker has published an in depth review of the financial services sector in Malta. Describing the banking sector as “Traditionally mature”, The Bank delves into the “rapid expansion of fintech-oriented electronic money issuers and payment service providers.

The publication also quotes MFSA Chief Executive Officer Joseph Cuschieri, who remarked that “the EU’s Payment Services Directive 2 (PSD2) has encouraged the growth in electronic money and payment services providers.”

The CEO added that “furthermore, we have seen significant strides in financial innovation, complemented by the European Commission’s issuance of its FinTech Action Plan and the European Central Bank’s guidance on the licensing of fintech credit institutions. The report notes that earlier this year, Malta’s parliament passed three acts creating what in effect is the first legal framework for blockchain and cryptocurrencies, as Malta positions itself as ‘Blockchain Island’. The report also notes the efforts of the Maltese Government and the MFSA to ensure that the regulatory framework covers three important principles market stability, market integrity and consumer protection.”



## Standard and Poor's affirms Malta's rating and positive outlook

***Credit Rating agency Standard and Poor's has affirmed Malta's A-/A-2' ratings with a positive outlook.***

The report states that the positive rating reflects Malta's strong growth performance, the recurring current account surpluses driven by Malta's large services exports, and the improving general government budgetary position and fiscal management. Looking at the financial services industry, the agency positively reports that domestic banks are highly liquid and possess a low loan-to-deposit ratio.

In explaining its position, Standard and Poor's acknowledges the improvement in the government's financial position, reduced general government debt relative to GDP, and undertaken several structural reforms, notably those that have increased female participation in the labour market and reduced the country's energy bill.

Standard and Poor's notes that significant investments in energy and logistics were important contributors to growth in 2014 to 2016, while growth in the exports of services such as tourism, logistics, and e-gaming are expected to continue fuel growth in the coming years. In 2019, it expects growth to moderate but to exceed that of peers at similar income levels and stages of development.

The report notes that the implementation of recommendations from spending reviews, the fast pace of growth of new economic sectors, and increases in government revenues have allowed the consolidation of public finances. It further projects that, with recurrent fiscal surpluses, the debt-to-GDP ratio will decline to under 40 per cent in 2021 from a projected 47 per cent in 2018.

Standard and Poor's acknowledges that macroeconomic policymaking will remain geared toward further fiscal consolidation. Indeed, it notes that efforts to further reform state-owned enterprises, reduce skill mismatches, and improve the long-term sustainability of public finances will be implemented gradually, alongside increased public investment to plug infrastructure gaps.

## **MFSA Circulars**

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|-------------------|---|
| <b>05/09/2018</b> | <a href="#"><u>Circular on the outcome of Compliance Inspections held at Fund Managers and Collective Investment Schemes</u></a>                |
| <b>07/09/2018</b> | <a href="#"><u>Circular addressed to Credit Institutions operating in Malta - Mystery shopping exercise on the opening of bank accounts</u></a> |
| <b>07/09/2018</b> | <a href="#"><u>EMIR - Onsite Compliance Visits Findings</u></a>   |
| <b>10/09/2018</b> | <a href="#"><u>Circular on Revisions made to the Conduct of Business Rulebook</u></a>   |
| <b>14/09/2018</b> | <a href="#"><u>Circular to Licence Holders and Applicants for a Licence proposing individuals for an Approved Position</u></a>                  |
| <b>18/09/2018</b> | <a href="#"><u>Circular addressed to Credit Institutions - Imposition of Negative Interest Rates on Euro Denominated Deposits</u></a>           |
| <b>28/09/2018</b> | <a href="#"><u>ESMA Q&amp;As on Product Intervention Measures</u></a>   |
| <b>28/09/2018</b> | <a href="#"><u>ESMA to renew restriction on CFDs for a further three months</u></a>   |

## **MFSA Media Releases**

|                   |   |
|-------------------|---|
| <b>18/09/2018</b> | <a href="#"><u>MFSA - Seminar On Due Diligence and Cybersecurity in Relation to DLT</u></a> |
| <b>25/09/2018</b> | <a href="#"><u>EBA Preliminary Enquiry - MFSA not in breach of Union Law</u></a>            |

## **Consultations and Feedback Statements**

|                   |   |
|-------------------|---|
| <b>04/09/2018</b> | <a href="#"><u>Consultation Paper on raising the bar for VFA Agents</u></a> |
|-------------------|---|

## MFSA Licences – September 2018

### **New Licences**

#### **Collective Investment Schemes**

##### ***Alternative Investor Fund***

Collective Investment Scheme licence issued to **Aquaeductus IC SICAV plc** (“the Scheme”).

Collective Investment Scheme licence issued to **The Frilsham SICAV plc** (“the Scheme”) in respect to one sub-fund.

##### ***Professional Investor Fund targeting Qualifying Investors***

Collective Investment Scheme licence issued to **Altruid Hybrid Fund SICAV plc** (“the Scheme”).

Collective Investment Scheme licence issued to **Heka Funds SICAV plc** (“the Scheme”) in respect to one sub-fund.

Collective Investment Scheme licence issued to **Kylin Prime SICAV plc** (“the Scheme”) in respect to one sub-fund.

##### ***UCITS***

Collective Investment Scheme licence issued to **Eiger SICAV plc** (“the Scheme”) in respect to two sub-funds.

#### **Company Service Provider**

Registration certificate issued to **Willis Towers Watson Management (Malta) Limited**.

Registration certificate issued to **Denitza Dimitrova**.

#### **Trustees and Fiduciaries**

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

Authorisation issued to **Roman PTC Limited** to act as a Trustee of a family trust in terms of Article 43B of the Trusts and Trustees Act.

### **Surrender of Licences**

#### **Collective Investment Schemes**

##### ***Professional Investor Funds***

Surrender of licence issued to **Grosvenor Square Portfolio SICAV plc** (“the Scheme”) in respect to one sub-fund.

Surrender of licence issued to **Alpha Value Fund SICAV plc** (“the Scheme”) in respect to one sub-fund.

##### ***Alternative Investor Fund***

Surrender of licence issued to **Pentagon High Conviction Bond Fund IC SICAV plc** (“the Scheme”).

Surrender of licence issued to **FMG Funds SICAV plc** (“the Scheme”) in respect to one sub-fund.

##### ***Incorporated Cells***

Surrender of licence issued to **Abel Absolute Return IC SICAV plc** (“the Scheme”).

Surrender of licence issued to **Kalliste Biotech Fund IC SICAV plc** (“the Scheme”).

### **Extended and Revised Licences**

#### **Insurance**

Extension of authorisation issued to **Bastion Insurance Company Limited** to carry on business in two classes of the general business.

#### **Collective Investment Schemes**

Revision of licence issued to **Metatron Capital SICAV plc** (“the Scheme”) in respect of the **Metatron Long-Short Equity Fund, Metatron Long-Term Equity Fund**, and the **Metatron Global Macro Fund** (“the Sub-Funds”) so as to reflect the conversion of the Scheme and its Sub-Funds from a Professional Investor Fund to an Alternative Investment Fund.

#### **Company Service Providers**

Extension of the registration certificate issued to **Capricorn International Ltd** (“the Company”) to include arranging for another person to act as a director/secretary of a company.

#### **Trusts and Trustees**

Extension of the authorisation issued to **Dominion Fiduciary Services (Malta) Limited** (“the Company”) to act as an administrator of private foundations.

### **Registry of Companies - New Registrations - September 2018**

|                     |     |
|---------------------|-----|
| <b>Companies</b>    | 346 |
| <b>Partnerships</b> | 8   |
| <b>Total</b>        | 354 |





## Forthcoming Events

**3-5 October 2018**

Delta Summit  
Programme and Further Information

<http://delta-summit.com/>

### Training by members of the ECC:

- [Malta International Training Centre](#)
- [Malta Institute of Accountants](#)
- [Malta Stock Exchange Institute \(MSEI\)](#)
- [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.



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





**MFSA**

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