

23 December 2020

Circular on the Recommendation of the European Systemic Risk Board of 15 December 2020 on Restriction of Distributions during the COVID-19 Pandemic

Introduction

This circular is being issued in order to adopt the [Recommendation of the European Systemic Risk Board of 15 December 2020 on restriction of distributions during the COVID-19 pandemic](#) ("the Recommendation") and in furtherance of the [MFSA Circular](#) issued on 28 July 2020 .

As a preventive measure for financial stability, in the light of the unprecedented repercussions brought about by COVID-19, the MFSA would like to bring to the attention of Systemically Important Investment Firms ("SIIFs") the fact that Recommendation ESRB/2020/7 by the European Systemic Risk Board (ESRB) has been extended and implemented by the MFSA from 1 January 2021 to 30 September 2021. The Recommendation concerns, inter alia, the restriction on distribution of dividends to ensure that SIIFs remain adequately capitalised.

Definitions

For the purposes of this circular a SIIF is a Category 2 or 3 Investment Services Licence Holder which is not also authorised under the Banking Act (Cap. 371 of the Laws of Malta) and which meets all of the following criteria:

- (i) Total Assets exceeding €100m;
- (ii) Number of clients exceeding 50,000;
- (iii) Holds and/ or controls clients' instruments for more than €3bn; *and*
- (iv) Holds and/ or controls clients' monies for more than €400m.

For the purposes of this circular and in line with the Recommendation, a 'material risk taker' means a member of a category of staff whose professional activities have a material impact on the risk profile of the SIIF, including the Board of Directors, persons who effectively run the SIIF or have other key functions and other categories of staff whose professional activities have a material impact on the SIIF's risk profile.

Restriction on distributions

A SIIF should at least until 30 September 2021 refrain from undertaking any of the following actions:

- (a) make a dividend distribution or give an irrevocable commitment to make a dividend distribution;
- (b) buy-back ordinary shares;
- (c) create an obligation to pay variable remuneration to a material risk taker,

which has the effect of reducing the quantity or quality of own funds, unless the SIIFs apply extreme caution in carrying out any of those actions and the resulting reduction does not exceed the

conservative threshold set by their competent authority. SIFs must engage in discussions with the MFSA and seek its prior written consent before taking either of the actions referred to in points (a) or (b). The SIF shall also notify the MFSA in the event of a potential obligation to pay variable remuneration to a material risk taker. The notification shall demonstrate to the MFSA that the proposed actions will not deplete the quality of the own funds of the SIF.

This Recommendation applies at the EU group level (or at the individual level where the SIF is not part of an EU group), and, where appropriate, at the sub-consolidated or individual level.

Conclusion

The full text of the Recommendation can be accessed [here](#). Any queries or requests for clarifications in respect of the above should be sent by email on investmentfirms@mfsa.mt.