Apex Compliance Solutions

Q2 Update – Malta

Issue 5, July 2023

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If you would like a copy of our previous updates, please let us know.

1. MFSA's 2022 Annual Report

In June 2023, the Malta Financial Services Authority ("MFSA") published its Annual Report and Financial Statements for the year ended 31 December 2022. The Annual Report looks back at a year of continued resilience in the face of global challenges and shows that the financial industry in Malta has demonstrated positive momentum contributing to €1.178 Billion in Gross Value Added to the economy paired with a significant rise in employment within the industry.

The MFSA has also seen a significant increase in the number of applications received across all sectors during 2022 whilst continuing to enhance its supervisory interactions through a combination of onsite and offsite reviews, with unwavering focus on AML/CFT.

In the year under review, the MFSA also successfully completed a complex IT infrastructure architecture redesign and upgrade project to significantly improve future scalability, operational resilience and disaster recovery response times, whilst investing in its cybersecurity posture to protect its services, systems and data.

Furthermore, ahead of the coming into force of the Markets in Crypto-Assets (MiCA), the MFSA has also secured participation in the EU Supervisory Digital Finance Academy and has established a sustainable finance policy team to guide the industry on the requirements set by EU Sustainable Finance regulations.

Overall, the Annual report is proof of the MFSA's commitment to being an enabler of sustainable, technology-enabled financial innovation within the financial industry.

For further information in this regard, reference should be made to the MFSA Annual Report 2022.

2. New Notified Professional Investment Fund Framework

In May 2023, the MFSA launched a consultation seeking feedback from stakeholders on the proposed legislative amendments related to the establishment of a new Framework for Notified Professional Investor Funds (NPIFs).

The proposed framework is part of a number of key regulatory and policy initiatives being undertaken by the MFSA in relation to asset management and is aimed at further improving the regulatory platform for PIFs by means of streamlined, pragmatic and risk-based policymaking.

The NPIF proposal seeks to provide an additional fund structure which complements existing fund frameworks. This new fund structure entails potentially lower associated setup and other operational and regulatory costs than those which are currently experienced in operating a fully licensed fund. It also seeks to take a more proportionate and risk-based approach to the onboarding process, given the regulated status of the funds' service providers and the qualified status of the target investors.

NPIFs will be retail schemes made available only to Qualifying Investors and will be subject to risk disclosure requirements to any prospective investor. For further information in this regard, reference should be made to the MFSA's press release: MFSA Seeks Feedback on Regulatory Changes for New Notified Professional Investment Funds Framework - MFSA

3. Initial study on Sustainability-related website disclosures in terms of the SFDR

Following the implementation of the Sustainable Finance Disclosure Regulation ("SFDR"), the MFSA has carried out a supervisory analysis to assess the extent to which website disclosures of certain licence holders including, inter alia, investment firms carrying out investment advice and/or portfolio management and fund managers, comply with the SFDR requirements. On 12 April 2023, the MFSA published the 7th volume of its series of publications titled 'The Nature and Art of Financial Supervision' wherein the following was noted:

Whilst the website disclosures of some Financial Market Participants ("FMP's") and Financial Advisors ("FAs") referred to policies on the integration of sustainability risks in their investment decisions-making processes or in their investment advice, it was observed that policies disclosed in terms of risk management and Principle Adverse Impact ("PAI") considerations were used interchangeably and that claims that such entities integrated sustainability risks in their investment decisions were quite generic and did not identify the source of the ESG risks. In this regard, the Authority also provides a list of Good & Undesirable practices;

FMPs and FAs should ensure that they publish and maintain on their website's information on the PAI considerations set out in the SFDR. Reasons for the non-compliance with the said disclosures should be outlined together with information as to whether and when they plan to consider such adverse impacts.

From an analysis of website disclosures it was observed that some entities fail to make specific reference to PAIs and/or do not provide a clear explanation as to the said PAIs. In this regard, such entities are required to ensure that their main SFDR website disclosures on PAIs also links to their own policies incorporating ESG or sustainability-related elements and provides details on the approach and methodology adopted in the website disclosure itself and where they do not consider PAIs as part of their investment decisions on sustainability factors, they should provide clear reasons why and whether and when they intend on doing so.

For further information, reference should be made to the publication available on the MFSA's website; https://www.mfsa.mt/wp-content/uploads/2023/04/The-Nature-and-Art-of-Financial-Supervision-Initial-Study-on-Sustainability%E2%80%90Related-Website-Disclosures-in-Terms-of-the-Sustainable-Finance-Disclosure-Regulation.pdf

4. The Virtual Financial Assets Framework: Non-Fungible Tokens Guidelines

Further to the emergence of Non-Fungible Tokens ("NFTs") in the crypto-asset market, the MFSA has issued a Consultation relating to NFTs with a view to clarifying the regulatory treatment of these types of DLT-based tokens in the context of the Virtual Financial Assets ('VFA') Framework.

The Guidelines aim to clarify the regulatory treatment of these assets in terms of whether they qualify as a Distributed Ledger Technology (DLT) Asset. In general, NFTs should be considered unique and not fungible where the NFT is unique and not fungible with other assets and the underlying assets, rights and/or utilities represented by the NFT are also unique and not fungible.

Generally, NFTs which have been determined not to qualify as DLT Assets following these Guidelines will not be subject to the VFA Act.

The guidelines are intended to be updated periodically in order to reflect developments in the MiCA Regulation.

For further information, reference should be made to the Guidelines available on the MFSA's website; https://www.mfsa.mt/wp-content/uploads/2023/06/The-Virtual-Financial-Assets-Framework-Non-Fungible-Tokens-Guidelines.pdf

5. How Apex Group Can Help

(1) Compliance and AML solutions

(2) Internal Audits

(3) Risk Management

(4) Advisory solutions

6. Staying Ahead

If you think any of your colleagues would also find this information useful, they can subscribe to our updates here.

Apex Group has also created an interactive hub that allows you to easily keep track of the regulatory and compliance updates that matter, both past and present. You can access our Global Regulations Tracker here.

For further information about our compliance services, please contact the team here.

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Contact us

Malcolm Vella Bray – malcolm.vellabray@apexgroup.com

Apex Group Malta Compliance - compliance-malta@apexgroup.com

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