

PANORAMIC

# **FINANCIAL SERVICES COMPLIANCE**

Malta



LEXOLOGY

# Financial Services Compliance

Contributing Editors

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## REGULATORY FRAMEWORK

### Regulatory authorities

#### What national authorities regulate the provision of financial products and services?

The Malta Financial Services Authority (MFSA) is the unified regulatory body overseeing the provision of financial products and services in Malta. Operating within the three traditional areas of financial services – banking, insurance and securities – the MFSA regulates financial activities that operate in or from Malta.

The MFSA's functions encompass regulatory, supervisory and investigative roles. Key responsibilities include:

- the regulation, monitoring and supervision of financial services within Malta;
- the promotion of financial market integrity; and
- collaboration with the Central Bank of Malta to ensure overall financial system stability.

The MFSA actively monitors trading and business practices related to financial services, upholds consumer protection through the enforcement of relevant laws and investigates allegations of practices detrimental to financial consumers. The MFSA also advises the government of Malta on the formulation of policies relating to the financial services industry.

Furthermore, the MFSA is entrusted with the promotion and safeguarding of the integrity of local regulated markets, instilling investor confidence, and holding all participants in these markets accountable for their decisions and actions. The MFSA is committed to applying measures in accordance with the principle of proportionality, ensuring that any imposed regulations are fair and commensurate with the circumstances.

To enhance the efficacy of its functions, the MFSA collaborates with both local and foreign authorities, international organisations, and entities involved in regulatory, supervisory, or licensing functions related to the financial services sector. This collaborative approach reinforces the MFSA's commitment to staying abreast of global financial developments and fostering a robust regulatory framework.

**Law stated - 31 January 2025**

### Regulatory authorities

#### What activities does each national financial services authority regulate?

In terms of Chapter 330 of the Laws of Malta (the Malta Financial Services Authority Act), one of the main functions of the MFSA is to regulate, monitor and supervise financial services in Malta, including:• credit and financial institutions;• insurance and the activities of insurance intermediaries;• investment services and collective investment schemes;• pensions and retirement funds;• capital markets and market infrastructure;• company service providers;• digital finance (eg, fintech);• financial stability;• sustainable finance;• trustees and fiduciaries;• cryptoassets and virtual financial assets;• certain elements of financial crime, information and communication technology, and cybersecurity; and• other areas of activity or services as

may be placed under the supervisory and regulatory competence of the MFSA by the relevant Minister or by any other law. The MFSA also has other roles, such as the management of the Maltese Depositor and Investor Compensation Schemes. The Board of Governors of the MFSA is also the resolution authority for the purposes of Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms, as amended. In this regard, the MFSA's Resolution Function also administers requirements emanating from the Single Resolution Mechanism, the Recovery and Resolution Regulations and the Intergovernmental Agreement on the transfer of contributions to the Single Resolution Fund.

**Law stated - 31 January 2025**

## Regulatory authorities

### What products does each national financial services authority regulate?

#### Transferable securities

Transferable securities are classes of securities that are negotiable on the capital market and include:

- shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depository receipts in respect of shares;
- bonds or other forms of securitised debt, including depository receipts in respect of such securities; and
- any other securities:
  - giving the right to acquire or sell any such transferable securities; or
  - giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities, or other indices or measures.

#### Money market instruments

Those classes of instruments which are normally dealt in on the money market, such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment.

#### Options, futures, swaps, forward rate agreements and other derivative contracts

Options, futures, swaps, forwards and any other derivative contracts relating to:

1. securities, currencies, interest rates or yields, emissions allowances or other derivative instruments, financial indices, or financial measures that may be settled physically or in cash;
2. commodities that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event;

3. commodities that can be physically settled provided that they are traded on a regulated market, within the meaning of Chapter 345 of the Laws of Malta (the Financial Markets Act) a multilateral trading facility or an organised trading facility, except for wholesale energy products traded on an organised trading facility that must be physically settled;
4. commodities that can be physically settled, are not for commercial purposes, are not included in point 3 and that have the characteristics of other derivative instruments; and
5. climatic variables, freight rates, inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event, as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned above, which have the characteristics of other derivative financial instruments having regard to whether, among other factors, they are traded on a regulated market, multilateral trading facility or an organised trading facility.

#### Other products

In addition to the above, the MFSA also regulates:

- units in collective investment schemes;
- derivative instruments for the transfer of credit risk;
- rights under a contract for differences or under any other contract, the purpose or intended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the value or price for property of any description, or in an index or other factor designated for that purpose in the contract;
- certificates or other instruments that confer property rights in respect of any instrument mentioned above;
- foreign exchange acquired or held for investment purposes;
- emissions allowances consisting of any units recognised for compliance with the requirements of Directive 2003/87/EC, which contains the Emissions Trading Scheme;
- electronic money; and
- virtual financial assets.

**Law stated - 31 January 2025**

#### **Authorisation regime**

What is the registration or authorisation regime applicable to financial services firms and authorised individuals associated with those firms?  
When is registration or authorisation necessary, and how is it effected?

The MFSA oversees the authorisation of individuals engaging in financial services activities. This pivotal function is integral to the overall supervisory framework.

Licensing is required for:

- financial and credit institutions;
- insurance and reinsurance undertakings;
- investment firms;
- collective investment schemes;
- trustees;
- company service providers;
- pensions; and
- cryptoasset service providers.

#### Authorisation process

The authorisation process for applicants and authorised persons falling within the MFSA's scope has been harmonised across all financial sectors to further ensure consistency in the MFSA's approach. However, the authorisation process nonetheless varies in terms of the applicable law, as well as by virtue of its nature, scale and complexity. It should be noted that the authorisation team for each supervisory function over financial services within the MFSA will be the first point of contact for prospective applicants.

The authorisation process will depend on the type of authorisation being sought by the applicant and consists of four stages, as follows:

- the intention stage;
- the pre-authorisation stage;
- the authorisation stage; and
- the post-authorisation stage.

During the intention stage, a detailed statement of intent is required to be submitted to the MFSA. Upon receipt of the statement, the MFSA may request the prospective applicant to provide further information or documentation, or both, and to attend a preliminary meeting. Although all the information requested at the intention stage will be captured in more detail within the applicable authorisation application forms and supporting documentation, the purpose of this stage is for the MFSA to guide the prospective applicant accordingly with respect to the requirements, and to identify any concerns that could impede the overall outcome and efficiency of the authorisation process. Once the complete application pack is submitted, the application process will start.

Applicants are invited to submit a comprehensive application pack, meeting all document requirements aligned with the applicable law. Each applicant must satisfy the relevant criteria specified in the legislation. During the authorisation process, the MFSA requests specified documentation outlined in the relevant application form corresponding to the specific licence category, which is accessible through the [authorisations catalogues](#) on the MFSA's website.



The application process is twofold and is carried out in parallel. One part of the application process relates to the analysis of the business model and strategy proposal, whereas the other part of the process deals with a fit-and-proper assessment of the parties involved in accordance with applicable legislation and rules. The applicant will be assessed on the basis of competence, reputation, conflicts of interest and independence of mind, and time commitment.

It should be noted that maintaining the fit-and-proper requirements, as established by the relevant regulations and guidance, is an ongoing obligation incumbent on the applicant, including post-approval. In certain instances, the entity may be subject to a reassessment of its suitability.

The application documentation submitted in support of the applicant's business model (as applicable, depending on the authorisation applied for) generally includes the following:

- a business plan;
- governance arrangements;
- financial projections;
- risk-management policies;
- investment policies; and
- outsourcing arrangements, if any.

Entities entering the financial services industry are required to undergo a comprehensive assessment as part of the MFSA's gatekeeper role. The objective is to ensure compliance with the criteria outlined in the applicable financial services legislation both at the authorisation stage and continuously thereafter. A feedback letter may be submitted in respect of the application regarding any clarifications and requests for further information. Once the applicant's replies are received, these can be followed by further engagement through correspondence or meetings as may be required until the criteria for authorisation are satisfied.

In parallel with the above, the due diligence process is also commenced in respect of all involved parties who are in a position to affect the direction of the applicant. These include key functionaries and direct and indirect shareholders, up to the ultimate beneficial owner. Such checks on the applicant's competence and integrity are carried out to ascertain that the applicant is capable of carrying out the proposed role to an expected high standard, within the ambit of the proposed business model.

Moreover, fit-and-proper checks involve:

- third-party verification of personal information;
- the applicant's regulatory history both in Malta and in foreign jurisdictions;
- exchanging information through close collaboration with foreign regulators; and
- intelligence reports from specialised sources.

Once both assessments have been satisfied, the MFSA will proceed to the pre-authorisation stage. At this stage and prior to formal authorisation, an applicant is first notified of an in-principle decision granted by the MFSA, coupled with a list of conditions to which the authorisation will be subject.

At this stage, the applicant will address matters such as:

- incorporation and capitalisation of the company; and
- confirmation that the company will be in a position to comply with the conditions of authorisation.

Once the pre-authorisation requirements have been fulfilled to the satisfaction of the MFSA, authorisation is granted by the MFSA through the issuance of an authorisation letter and a certificate of authorisation, which are issued in terms of the applicable regulatory framework administered by the MFSA.

At the post-authorisation stage, the MFSA will monitor whether the post-authorisation requirements are being satisfied, as well as initiate the applicable supervisory processes. Any changes to the initial authorisation granted by the MFSA are also handled during this stage and should be communicated to the MFSA as soon as possible.

Adherence to post-authorisation requirements and ongoing internal monitoring in relation to such requirements remains the primary responsibility of the authorised person. These requirements must be catered for within the authorised person's relevant processes, policies, procedures and compliance monitoring programme, where applicable. It is the responsibility of the authorised person to immediately report to the MFSA any difficulties encountered in implementing any of these requirements.

Furthermore, at any point in time during the authorisation process, in the event of failure by the applicant to respond within four months of the MFSA's communication, the MFSA shall inform the applicant providing for an additional, one-month time frame for such feedback to be received. In the absence of receipt of such feedback within the allotted time, the MFSA may elect to treat the application as withdrawn. When an application is considered as withdrawn and the applicant wishes to pursue the process, the applicant would need to re-initiate the process through, among others, the submission of a new intention statement and application documentation, and the payment of the prescribed application fee.

It is evident that the MFSA is dedicated to a clear, transparent authorisation process to ensure a robust assessment of regulatory standards.

**Law stated - 31 January 2025**

## **Legislation**

### **What statute or other legal basis is the source of each regulatory authority's jurisdiction?**

The Malta Financial Services Authority Act is the source of the MFSA's jurisdiction. However, other sector-specific laws also grant the MFSA certain powers. For example, Chapter 476 of the Laws of Malta (the Prevention of Financial Markets Abuse Act) grants the MFSA certain powers to investigate cases of market abuse.

**Law stated - 31 January 2025**

## Legislation

### What principal laws and financial service authority rules apply to the activities of financial services firms and their associated persons?

Financial services firms and their associated persons are obliged to comply with relevant domestic Maltese law (both primary and secondary) and all applicable EU legislation. Below is a non-exhaustive list of certain key sector-specific financial services laws:

- Chapter 371 of the Laws of Malta (the Banking Act);
- Chapter 376 of the Laws of Malta (the Financial Institutions Act);
- Chapter 403 of the Laws of Malta (the Insurance Business Act);
- Chapter 487 of the Laws of Malta (the Insurance Distribution Act);
- Chapter 370 of the Laws of Malta (the Investment Services Act);
- the Financial Markets Act;
- Chapter 514 of the Laws of Malta (the Retirement Pensions Act);
- Chapter 331 of the Laws of Malta (the Trusts and Trustees Act);
- Chapter 529 of the Laws of Malta (the Company Services Providers Act);
- Chapter 590 of the Laws of Malta (the Virtual Financial Assets Act); and
- Chapter 647 of the Laws of Malta (the Markets in Crypto-Assets Act).

Moreover, the MFSA has also issued its [Conduct of Business Rulebook](#), which essentially transposes the main EU directives that apply to the conduct of business; namely, Directive 2014/65/EU (the MiFID Directive) and Directive 2016/97/EU (the Insurance Distribution Directive), together with the respective implementing measures issued thereunder. We understand that the MFSA is also expected to issue new conduct of business rules that will apply to credit institutions generally.

In addition, the MFSA also publishes detailed sector-specific rules and standard licensing conditions that are binding on financial services firms and their associated persons.

Finally, Maltese financial services firms are required to adhere to any binding guidance issued by the MFSA as well as EU bodies such as the European Securities and Markets Authority, and the European Central Bank.

**Law stated - 31 January 2025**

## Scope of regulation

### What are the main areas of regulation for each type of regulated financial services provider and product?

Any person or body corporate wishing to provide financial services in or from Malta is required to adhere to regulatory criteria as well as be in possession of a valid licence. The criteria differ on the type of service one wishes to offer.

The central areas of regulation to be complied with by regulated entities are found both within the main legislative acts as well as the extensive rules issued by the MFSA. The main legislation for each financial service in Malta defines the parameters for a licensing regime.

The body of rules published by the MFSA sets out in detail the application procedure to be followed by applicants, as well as establishes requirements on governance, own funds, liquidity and internal organisation for licence holders.

As regards the licensing of the applicant entity, the MFSA will only grant a license if it is satisfied that the person is a fit and proper person, and is capable of providing the services envisaged by the applicant entity, while also ensuring compliance with the various regulations made under the relevant acts and rules. It is necessary that both the registered office and head office of the applicant entity be situated in Malta. There may also be additional location requirements when it comes to the personnel engaged by the entity to carry out its aims.

In terms of the management and control of the applicant entity, the MFSA must be satisfied that the members of the management body are of sufficiently good repute; possess sufficient knowledge, skills and experience; and shall commit sufficient time to perform their functions.

Additionally, in most cases, certain regulatory capital requirements must be met to satisfy the conditions for a licence from the MFSA. Typically, regulated firms are obliged to hold a minimum level of capital as specified in the relevant EU and domestic legislation. Capital requirement conditions may also vary in accordance with the type and extent of the services in which the applicant entity envisages that it will engage.

Furthermore, financial service providers must have clear and transparent corporate governance arrangements in place, which include internal independent control systems to ensure the proper management of business. These include an internal audit function, an effective and permanent compliance function responsible for day-to-day supervision of the applicant entity's business and a dedicated risk management function.

**Law stated - 31 January 2025**

### **Additional requirements**

**What additional requirements apply to financial services firms and authorised persons, such as those imposed by self-regulatory bodies, designated professional bodies or other financial services organisations?**

Financial services firms and authorised persons may also be subject to the rules and regulations of other professional or self-regulatory bodies. Whether firms are subject to any such rules or regulations, and the nature of those rules or regulations, will depend on the specific firms and bodies in question.

**Law stated - 31 January 2025**

## **ENFORCEMENT**

### **Investigatory powers**

**What powers do national financial services authorities have to examine and investigate compliance? What enforcement powers do they have**

## for compliance breaches? How is compliance examined and enforced in practice?

The Malta Financial Services Authority (MFSA) carries out two primary functions: an enforcement function and a due diligence function.

Empowered by Chapter 330 of the Laws of Malta (the Malta Financial Services Authority Act) and various pieces of sector-specific financial services legislation, the enforcement function is tasked with investigating potential breaches of financial services laws and regulations related to entities under the supervision of the MFSA.

Among its responsibilities, the enforcement function:

- reviews and investigates compliance failures, misconduct, market abuse or any other violations of laws administered by the MFSA (this includes actions against licence holders and individuals engaging in financial services activities without the requisite licence); and
- investigates suspicious or dubious schemes in order to take what it deems to be appropriate action.

In carrying out its functions, where necessary, the Enforcement Function conducts an investigation to detect breaches of anti-money laundering legislation, misappropriation or other misconduct. Upon completing investigations, the enforcement function communicates its findings to the decision-making body within the MFSA, providing recommendations for remedial action or enforcement measures. It typically grants the investigated party the opportunity to provide its representations in connection with the MFSA's findings, following which a final decision is communicated by the MFSA.

Post-decision, the enforcement function oversees the implementation and follow-up of enforcement decisions.

**Law stated - 31 January 2025**

### **Disciplinary powers**

**What are the powers of national financial services authorities to discipline or punish infractions? Which other bodies are responsible for criminal enforcement relating to compliance violations?**

In fulfilling its investigative responsibilities, the enforcement function of the MFSA may uncover evidence or suspicion of financial crimes, such as money laundering, fraud or misappropriation involving both authorised and unauthorised individuals. The MFSA promptly reports such findings to relevant law enforcement agencies, including the Financial Intelligence Analysis Unit or the Executive Police, or both.

The MFSA is authorised to impose administrative or disciplinary sanctions following such investigations, referred to as 'administrative measures', on the subjects under scrutiny. Article 16(8) of the Malta Financial Services Authority Act provides that:

any administrative or disciplinary sanction or measure, of whatever type, including reprimands or warnings, imposed or decided by the Authority under

any law for whose administration it is responsible, shall be published in such medium and in such manner and for such duration as may be deemed warranted by the circumstances and the nature and seriousness of the breach or wrongdoing.

The Board of Governors may from time to time establish policies and guidelines regarding the publication of administrative sanctions and disciplinary measures.

The duration of the public notice being present on the MFSA website regarding an imposed administrative measure is determined by the nature and severity of the breach or wrongdoing.

As a guiding principle, the MFSA believes that naming individuals, including licence holders, sanctioned for legal breaches enhances awareness of industry standards. However, there are exceptions, and the MFSA may opt for anonymous publication under specific circumstances such as:

- when the administrative measure relates to a non-material breach and the administrative penalty does not exceed €30,000; or
- exceptionally, in cases where publication could jeopardise market stability, ongoing investigations or cause disproportionate damage to the involved party (in such cases, if the administrative measure is for a non-material breach below €30,000, the MFSA automatically issues the public notice anonymously).

**Law stated - 31 January 2025**

## **Tribunals**

### **What tribunals adjudicate financial services criminal and civil infractions?**

The Financial Services Tribunal (the Tribunal), set up by article 21 of the Malta Financial Services Authority Act is a dedicated tribunal that tackles matters related to decisions of the competent authority in financial services.

The Tribunal is tasked to deal with appeals made by an appellant following a decision by the MFSA. The Tribunal has jurisdiction to determine:

- whether the competent authority has, in its decision, wrongly applied any of the provisions of the Malta Financial Services Authority Act or any regulations issued thereunder; and
- whether the MFSA's decision constitutes an abuse of discretion or is manifestly unfair.

The MFSA's discretion may not, provided that it has been exercised properly, be queried by the Tribunal.

An appeal under sector-specific financial services legislation before the Tribunal must be made in writing and provide clear grounds for the appeal. This is to be done by no later than 30 days from the date the decision or action in question determined by the MFSA has been notified to the aggrieved. Moreover, the MFSA has 30 days from the date when the appeal was served by the Tribunal to file its reply. Decisions imposing a penalty of not more than

€232.94 may not be appealed, nor may any reprimand, warning or other similar disciplinary sanction or measure.

The Tribunal is required proceed to deal with any matter before it with utmost urgency and shall give its decision without delay.

**Law stated - 31 January 2025**

## Penalties

### What are typical sanctions imposed against firms and individuals for violations? Are settlements common?

In terms of the Malta Financial Services Authority Act and various pieces of sector-specific financial services legislation, the MFSA has the authority to impose administrative penalties on licence holders for a breach of regulatory rules and regulations, as well as licence conditions. In determining the quantum of the penalty, the MFSA exercises discretion in respect of the effectiveness, proportionality and dissuasiveness of the fine. The penalties imposed must remain within the limits specified by the relevant legislation.

The MFSA has established a [methodology](#) for the setting of administrative penalties imposed on entities and individuals, under which the seriousness of a potential breach is assessed in five risk categories: very low, low, medium, high and very high. This classification, influenced by various factors, ensures that administrative penalties are proportionate and serve as effective deterrents. Throughout the penalty determination process, the MFSA considers the appropriateness of the penalty to prevent disproportionate financial distress to the licence holder.

The MFSA may impose a range of regulatory actions under the sector-specific financial services legislation applicable to entities or individuals authorised by the MFSA, as well as those potentially providing financial services without the required MFSA authorisations. These actions include:

- issuing a public reprimand on the MFSA's website or other platforms as deemed appropriate;
- imposing directives, which may involve measures such as ceasing new client onboarding, asset transfers, client transfers to other licence holders, or engaging a qualified or competent person;
- suspending a licence, either partially or fully;
- removing or restricting authorised individuals;
- imposing administrative penalties; and
- cancelling a licence.

## Settlements

The MFSA has recently introduced a settlement policy to facilitate the resolution of investigations through settlements. This policy guides the MFSA in negotiating settlement

agreements and establishes principles that must be adhered to during settlement discussions.

Law stated - 31 January 2025

## COMPLIANCE PROGRAMMES

### Programme requirements

What requirements exist concerning the nature and content of compliance and supervisory programmes for each type of regulated entity?

Supervisory risk-based approach

The Malta Financial Services Authority (MFSA) operates following a risk-based supervision model, which is grounded in three key principles: supervisory judgement, forward-looking assessments and a focus on key risk factors, with an overarching commitment towards proportionality in interventions. Anti-money laundering and counter-terrorist financing considerations are also integral to the MFSA's risk assessment framework.

Risk-based supervision is an ongoing procedure that encompasses planning, risk assessment, execution of a supervisory plan, and systematic monitoring and evaluation. The approach aims to enhance supervisory effectiveness and efficiency.

While the MFSA does not discriminate between larger and smaller or lower-risk firms in terms of oversight and scrutiny, efforts are typically concentrated on firms and instances that are most likely to impact financial stability or to jeopardise consumers of financial services.

Institutions that are deemed to pose a greater risk, particularly in respect of the offences of money laundering and the financing of terrorism, are subject to enhanced ongoing supervision, which includes, among others:

- on-site inspections that analyse the different risks, internal control systems, business models or governance of financial institutions in depth; and
- off-site supervision to continuously monitor the activities of financial institutions through the information that such institutions are required to submit in terms of their legal obligations (such as periodic regulatory returns, financial statements and other documentation).

The MFSA supplements its risk-based approach and risk assessments by reference to both quantitative and qualitative data, while also taking other relevant factors and characteristics of firms into consideration, including capital, the nature of the business activities, internal controls and the quality of licence holders' management. The risk-based approach applied by the MFSA is consistent with international standards of supervision.

In cases where thematic reviews are carried out, the MFSA also establishes best practices through circulars and guidance publications addressed to the applicable institutions, which the latter must follow when carrying on business and interacting with clients.

Law stated - 31 January 2025



## Gatekeepers

### How important are gatekeepers in the regulatory structure?

Gatekeepers, also referred to as 'internal control mechanisms', must be established within an authorised entity's business to identify, disclose, manage and understand risks with which the entity may face when carrying on its business. The MFSA, in its published rules and guidelines, encourages entities to base its internal mechanisms of corporate governance on the three lines model established by the Institute of Internal Auditors. This model provides for several methods by way of which:

- internal communications on risk management and control are enhanced;
- the effectiveness of internal risk management systems may be improved; and
- further clarity in respect of risks and controls is provided.

The board of directors of the authorised entity should, therefore, be able to establish the necessary measures and plans needed to deal with any foreseeable events that may arise.

#### Compliance

Authorised entities are required to maintain a permanent and effective compliance function, which operates independently from the entity's business and is ultimately responsible for ensuring that the entity complies with its legal and regulatory obligations. This function should also aim to establish measures to minimise financial crime compliance risks, taking into account the nature, scale and complexity of the entity's business.

The compliance function is typically headed by a compliance officer who possesses sufficient knowledge, skills and experience, and is responsible for both the compliance function as well as any compliance-related reporting.

#### Internal audit

Through its published rules and guidelines, the MFSA recommends that entities consider establishing an internal audit function where this is appropriate and proportionate in view of the nature, scale and complexity of each entity's business. Having an internal audit function is seen to improve and add value to the operations of the authorised entity.

This function provides independent and objective assurances to the board of directors through an internal audit function, which is afforded sufficient powers of supervision and oversight of the entity's financial reporting process.

The MFSA is supported in achieving its objectives through a disciplined and systematic approach taken on by the internal audit function. The internal audit function evaluates and improves the effectiveness of the internal risk management and governance processes.

The internal audit function further assists the MFSA to identify, respond, gather information on, analyse and monitor strategic risks that impact, or could potentially impact, the MFSA's ability to effectively achieve its objectives.

**Law stated - 31 January 2025**

## **Directors' duties and liability**

### **What are the duties of directors, and what standard of care applies to the boards of directors of financial services firms?**

Chapter 386 of the Laws of Malta (the Companies Act) establishes the responsibilities and duties of directors of Maltese companies. In particular, directors are responsible for the promotion of the company's wellbeing, and are required to act honestly and in good faith in the best interests of the company.

The Companies Act requires directors to exercise the degree of care, diligence and skill that would be exercised by a reasonably diligent person having both (1) the knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by or entrusted to that director in relation to the company, and (2) the knowledge, skill and experience that the director has. The Companies Act also imposes other general responsibilities on directors; namely:

- not make secret or personal profits from their position without the consent of the company, nor make personal gain from confidential company information;
- ensure that their personal interests do not conflict with the interests of the company;
- not use any property, information or opportunity of the company for their own or anyone else's benefit, nor obtain benefit in any other way in connection with the exercise of their powers, except with the consent of the company in general meeting or except as permitted by the company's memorandum or articles of association; and
- exercise the powers they have for the purposes for which the powers were conferred and shall not misuse such powers.

**Law stated - 31 January 2025**

## **Directors' duties and liability**

### **When are directors typically held individually accountable for the activities of financial services firms?**

Liability under the Companies Act

Directors' liability under the Companies Act may arise both in respect of breaches of general duties (eg, the duty to act in the best interests of the company) as well as in respect of breaches of specific duties (eg, the failure to make certain statutory filings). The Companies Act prescribes penalties in respect of certain specific breaches which penalties may be imposed on the company as well as on the directors personally.

In turn, the company and third parties may sue the directors personally for any damages caused as a result of the directors' breach of duty or negligence.

The personal liability of directors in damages for any breach of duty is joint and several; however, where a particular duty has been entrusted to one or more of the directors, only such director or directors shall be liable. Furthermore, a director shall not be liable for the acts of their co-directors if they prove:

- that they did not know of the breach of duty before or at the time of occurrence and that, on becoming aware of it, they signified their dissent in writing; or
- that, knowing that the co-directors intended to commit a breach of duty, they took all reasonable steps to prevent it.

#### Liability under specific legislation other than the Companies Act

Various administrative duties are also imposed on directors by a variety of laws other than the Companies Act. For instance, Chapter 371 of the Laws of Malta (the Banking Act) imposes personal liability on anybody (including directors) who is knowingly a party to, or procures or aids and abets the commission of, certain offences.

#### Criminal liability

Criminal liability of directors may be of two types: direct or vicarious liability. Direct criminal liability may arise where the director violates certain specific provisions of the law, a breach of which would constitute a criminal offence (eg, a breach of certain provisions of Chapter 318 of the Laws of Malta (the Social Security Act)). Vicarious criminal liability arises where a director is held criminally liable for an offence notionally committed by the company itself (eg, a breach of certain provisions of Chapter 452 of the Laws of Malta (the Employment and Industrial Relations Act)).

#### Liability in a company insolvency or a winding-up scenario

Directors may also incur liability in the context of a company insolvency or a winding-up scenario.

For example, the Companies Act provides that directors will be held liable for wrongful trading where:

- a director allows an insolvent company to continue trading or incurring debts when there was no reasonable prospect that the company would avoid being dissolved due to its insolvency; and
- fraudulent trading occurs in the event that a director carries on the business of the company in a fraudulent manner.

that they did not know of the breach of duty before or at the time of occurrence and that, on becoming aware of it, they signified their dissent in writing; or

that, knowing that the co-directors intended to commit a breach of duty, they took all reasonable steps to prevent it.

- a director allows an insolvent company to continue trading or incurring debts when there was no reasonable prospect that the company would avoid being dissolved due to its insolvency; and
- fraudulent trading occurs in the event that a director carries on the business of the company in a fraudulent manner.

## Private rights of action

### Do private rights of action apply to violations of national financial services authority rules and regulations?

The MFSA does not deal with consumer complaints; however, in the event that a customer feels aggrieved or is not satisfied with a product or service, regulated financial services providers must nonetheless have a procedure in place for resolving disputes with their customers (ie, a complaints handling policy).

There are three steps to be taken when filing for a complaint.

- Lodging a complaint with the financial services provider: all the facts and issue must be set out as clearly as possible, providing any relevant documentation to support the complaint. The financial services provider has 15 days from when the complaint is registered in writing within which to respond to the complaint.
- Submitting a complaint to the Arbiter for Financial Services: if the financial services provider does not reply or the consumer is not satisfied with the reply, a complaint can be referred to the Arbiter for Financial Services. The Office of the Arbiter for Financial Services in Malta is an alternative dispute resolution mechanism separate from that of the Courts of Malta with which it has concurrent and not exclusive jurisdiction over financial services consumer complaints. Therefore, the Arbiter for Financial Services does not have exclusive jurisdiction over consumer complaint or disputes. The decision taken by the Arbiter for Financial Services is binding and final on all parties; however, it is subject to appeal by either party. If a decision is appealed, the case is taken to court.
- Filing a lawsuit to be adjudged by the Courts of Malta: Maltese law does not distinguish direct causes of action arising from a breach of a rule or regulation issued by the MFSA and binding on the service provider. Therefore, a regulatory breach may give rise to a claim for damages. Consumers have the right to bring a complaint for contractual or tortious misconduct, as the case may be, and support their claim by alleging the breach of the applicable MFSA rules and regulations.

Law stated - 31 January 2025

## Standard of care for customers

### What is the standard of care that applies to each type of financial services firm and authorised person when dealing with retail customers?

In terms of the standard licence conditions and rules that the MFSA issues in respect of each financial services activity, regulated persons have a duty to act in the best interests of their clients. They must act honestly and fairly, and behave with the utmost good faith, integrity, due skill and care in respect of their clients. Moreover, the Conduct of Business Rulebook published by the MFSA tends to generally requires retail clients (ie, non-professional clients)

to be given a higher degree of care and protection when being offered or advised on investment services or matters.

**Law stated - 31 January 2025**

### **Standard of care for customers**

#### **Does the standard of care differ based on the sophistication of the customer or counterparty?**

Certain financial services firms, such as investment firms, are required to carry out a client classification and categorise their client as 'retail' or 'professional'. The Conduct of Business Rulebook published by the MFSA offers more protection to investors with less or no investment knowledge and experience, while investors with more investment knowledge and experience are afforded with a lesser degree of protection.

**Law stated - 31 January 2025**

### **Rule-making**

#### **How are rules that affect the financial services industry adopted? Is there a consultation process?**

##### Legislative acts

Prior to its publication and coming into force, each legislative act in Malta must go through a number of parliamentary procedures comprised of three readings.

The first reading begins with a motion presenting the bill's title at the office of the Clerk of the House (of Parliament), followed by a vote without debate three days later. Upon publication, the bill returns to the House's agenda for the second reading. During this stage, the motion is put to a vote after discussion.

The committee stage follows, where amendments can be proposed during the detailed examination of each clause and is followed by a vote. Progress is reported, indicating whether the bill is passed with or without amendments.

The third reading is then scheduled by the Minister in charge, and within this stage, the Speaker of the House declares the bill either as approved unanimously or carried. Finally, the bill is presented to the President for assent and published in the government's gazette, therefore officially becoming a parliamentary act.

##### Rules

The MFSA is empowered to issue and publish rules regulating the procedures and duties of persons licensed or authorised by it, or falling under its regulatory or supervisory functions. We are not aware of any procedure that the MFSA adopts in the implementation or promulgation of such rules.

##### Consultation process

Although not strictly necessary, a formal consultation process – for example, through the publication of a White Paper in the case of laws or a consultation document in the case of the MFSA's rules – is typically enacted in respect of laws or rules (or amendments) that will significantly affect the financial services industry.

**Law stated - 31 January 2025**

## CROSS-BORDER ISSUES

### Cross-border regulation

#### How do national financial services authorities approach cross-border issues?

Financial services firms that are licensed in Malta by the Malta Financial Services Authority (MFSA) may avail themselves of their passporting rights under the relevant passport regulations and the applicable law. In doing so, the firm can offer its services to persons in other EU member states. This right is facilitated by the freedom of establishment, which enables authorised entities to provide services on a cross-border basis without the need to establish a presence in other EU member states.

Regulated entities duly authorised by a regulator in another member state can benefit from this right and offer their services in Malta. In this case, the home state regulator will remain the competent authority. However, if services or activities are being performed from outside the European Union but in Malta, the determination of which regulatory requirements apply will be assessed on a case-by-case basis.

Regulatory cooperation on an international level is based on a network of memorandums of understanding (bilateral or multilateral) that is reached between the MFSA and other EU competent authorities. This, ultimately, also allows for enhanced cooperation between regulators through the exchange of information.

**Law stated - 31 January 2025**

### International standards

#### What role does international standard setting play in the rules and standards implemented in your jurisdiction?

Generally, Malta seeks to implement international standards. International regulatory policy and standards, and their implementation, supervision and enforcement in Malta are integral to the remit of the MFSA. The MFSA also engages with a wide range of European and international counterparts and stakeholders to enhance cooperation, share best practice and discuss issues of common interest.

**Law stated - 31 January 2025**

## UPDATE AND TRENDS

## Key developments of the past year

### Are there any other current developments or emerging trends that should be noted?

#### Sustainable finance

Sustainable finance remains one of the key priorities for the Malta Financial Services Authority (MFSA) going forward. A heightened focus on deregulation and simplification (as can be seen by the European Commission's proposal to streamline sustainability reporting by virtue of an 'omnibus regulation') and the outcome of the first reporting cycle of the EU Corporate Sustainability Reporting Directive, are among the things to look out for in 2025.

#### Money laundering

In terms of the MFSA's ongoing aim to assist in mitigating money laundering and funding of terrorism, the MFSA continues to undertake compliance examinations on supervised entities in order to determine their compliance with anti-money laundering and counter-terrorism financing requirements. The MFSA has also strengthened its controls when assessing whether a proposed money-laundering reporting officer is fit and proper to undertake such role. In light of the European Commission's adoption of the Digital Finance Package, the MFSA is actively engaging with financial entities to ensure a seamless and effective transition towards compliance with the obligations set out under Regulation (EU) 2022/2554. This Regulation, which entered into force in January 2023, introduces a robust framework aimed at enhancing the digital operational resilience of financial entities across the European Union. Its full applicability date was 17 January 2025. Over the past months, the MFSA has focused efforts by closely monitoring developments, providing regulatory guidance, and proactively liaising with in-scope entities to facilitate their adherence to the applicable requirements and supervisory expectations.

#### MiCA (cryptoassets)

In parallel, it is crucial to highlight that virtual financial asset service providers, previously licensed under the domestic cryptocurrency regulatory framework, have either transitioned or are actively in the process of restructuring their business models to ensure full alignment with the requirements of Regulation (EU) 2023/1114. This transition entails obtaining the necessary licensing under the new framework, which introduces a more harmonised and comprehensive regulatory regime across the European Union. Furthermore, it is important to emphasise that this Regulation is not limited to its primary provisions but is also supplemented by an extensive array of Level 2 and Level 3 measures, which will play a pivotal role in shaping the practical implementation and operational obligations of market participants.

#### Insurance

On 30 August 2024, a significant legislative update was published, namely the Companies Act (Cell Companies Carrying on Business of Insurance) (Amendment) Regulations 2024 (PCC Amendment Regulations). The PCC Amendment Regulations focus on three critical areas relative to the operation and oversight of PCCs within the insurance sector:

- non-recourse limitation: non-recourse is now limited to cells conducting affiliated insurance and meeting solvency requirements, with a grandfathering clause for existing agreements;
- asset transfers: amendments outline the procedures and conditions governing the transfer of cellular assets, ensuring that such transfers are conducted with transparency and accountability; and
- winding-up of cells: the Amendment Regulations address the processes related to the winding up of cells, providing a clear legal framework to facilitate orderly closures when necessary.

The Accountancy Profession (General Accounting Principles in respect of certain Eligible Entities) Regulations 2023 (GAPEE Regulations) were officially published on 22 December 2023. This important set of regulations delineates specific general accounting principles that will govern the financial reporting practices of various eligible entities within the insurance sector. Specifically, the GAPEE Regulations enable 'eligible entities', as defined in the Regulations, to opt out of International Financial Reporting Standard 17 and in lieu apply the general accounting principles set out in the schedule to the GAPEE Regulations. The 'eligible entities' are:

- captive (re)insurance undertakings;
- EU Solvency II Directive exempted insurance undertakings;
- specialised run-off undertakings;
- ancillary (re)insurance undertakings;
- protected cell companies (where core, if it carries on (re)insurance activities, and all the cells qualify as an eligible entity);
- cessation undertakings;
- redomiciled undertakings; and
- insurance and (or) reinsurance parent undertakings.

Informed by the above developments, the MFSA regularly publishes updates on its website on key changes.

**Law stated - 31 January 2025**