

April 2018

ICOs and Virtual Currencies: Financial Instrument Test

Following the MFSA's proposal to introduce a 'Financial Instrument Test' related to ICOs and Virtual Currencies in November 2017, the majority of the respondents have positively acknowledged this 'test' and have cited the need for clarity and legal certainty. The objective of the test will be that of determining whether a Distributed Ledger Technology ('DLT') asset 1, based on its specific features, falls within the ambit of either the traditional European and local financial services legislation or the proposed Virtual Financial Assets Act2 ('VFAA') or is otherwise exempt from regulation.

The MFSA is now considering the introduction of 'the Test' as a mandatory requirement under the VFAA, applicable both within the context of an Initial Coin Offering ('ICO') as well as during the intermediation of DLT assets, which may qualify as virtual financial assets.

ESMA MiFID II / MiFIR Investor Protection Q&As

The European Securities and Markets Authority (ESMA) has included seven (7) new or updated items in its Q&A document on the implementation of investor protection topics under the Market in Financial Instruments Directive and Regulation (MiFID II / MiFIR). The updated Q&As are on the topics of inducements and information on costs and charges. The other four Q&As are new and relate to the topics of inducements, post-sale reporting and other issues.

May 2018

Growth in Financial Services Operations and Supervision

The activity of the Malta Financial Services Authority continued to register growth in 2017 with the issuance of various licences and authorisations predominantly in the areas of insurance business, investment business, investment funds and trust. The Authority has given a snapshot of its activities through its Annual Report tabled in Parliament.

The MFSA today regulates over 2,180 licence holders, a significant increase of over 360 during the past three years. This increase was paralleled by a significant strengthening of supervision and compliance, with the latter being carried out through both off-site and on-site inspections.

“The MFSA is handling an ever growing number of licence holders, and invested significant resources to strengthen its due diligence processes, both prior and post licencing. This is being done to ensure that Malta delivers on the expectations placed on it as a respectable financial services jurisdiction.”

June 2018

ECB Supervisory Board

The Chair of the Supervisory Board of the European Central Bank, Ms Danièle Nouy met a number of officials from the Authority during a visit at the MFSA. The visit was part of a regular follow up on the implementation of the Single Supervisory Mechanism (SSM). The Board's mandate is to plan and carry out the ECB's supervisory tasks, undertake preparatory work, and propose complete draft decisions for adoption by the ECB's Governing Council. The aim of the visit is to address MFSA staff who would be directly or indirectly involved within the wider SSM processes and to develop a sense of unity and community of interest within the SSM.

Throughout the visit, a number of MFSA officials had the opportunity to discuss with Ms Nouy a number of issues related to the financial services industry, the developments in banking legislation and regulation, as well as recent developments taking place in the Eurozone and in the SSM.

Guidelines of the MiFID II Suitability Requirements

The European Securities and Markets Authority (ESMA) has published its Final Report on Guidelines on certain aspects of the MiFID II Suitability Requirements.

The assessment of suitability is one of the most important requirements for investor protection in the MiFID framework. It applies to the provision of any type of investment advice, whether independent or not, and portfolio management. Investment firms providing investment advice or portfolio management are required under Article 25 (2) of MiFID II and Articles 54 and 55 of the MiFID II Delegated Regulation, to provide suitable personal recommendations to their clients or to make suitable investment decisions on behalf of their clients.

The Guidelines in the Final Report on Guidelines on certain aspects of the MiFID II Suitability Requirements build on the text of ESMA's 2012 MiFID I guidelines on suitability, which have been largely confirmed and broadened in order to:

- Consider technological developments of the advisory market notably the increasing use of automated or semi-automated systems for the provision of investment advice or portfolio management (robo-advice);
- Build on NCA's supervisory experience on the application of suitability requirements;
- Take into account the outcome of studies in the area of behavioural finance; and
- Provide additional details on some aspects that were already covered under the 2012 guidelines.

The Guidelines, by supporting a consistent and harmonised application of the requirements in the area of suitability, will ensure that MiFID II's objectives are achieved.