

MFSA AML / CFT STRATEGY – AN UPDATE

A STATUS UPDATE ON THE IMPLEMENTATION
OF THE 2019 MFSA AML / CFT STRATEGY

Contents

Foreword	3
Abbreviations.....	4
Purpose of the Document.....	5
Executive Summary.....	6
Chapter 1 - Introduction.....	8
Chapter 2 – Current State of Play.....	12
The 2019 AML/CFT Strategy.....	12
The Initiatives.....	12
Coordination and Alignment with NCC and FIAU.....	14
The Role of the Financial Crime Compliance Unit within the MFSA.....	15
Chapter 3 – AML/CFT Integration in Authorisations & Supervision.....	17
3.1 Authorisations	17
3.1.1 Fitness & Propriety.....	17
3.1.2 Ownership Structure	18
3.1.3 Enhancing the Authorisations Process.....	19
3.1.4 AML/CFT within the Authorisations Process	20
3.1.5 MLRO Competence.....	22
3.2 Supervision	24
3.2.1 Integration of AML/CFT into Prudential Supervision.....	24
3.2.2 Integrating AML/CFT into Sectoral Risk.....	26
Chapter 4 – VFA Supervision.....	27
Chapter 5 – Availability and Accuracy of Beneficial Ownership Information	30
TUBOR.....	30
Chapter 6 – Company Service Providers.....	32
Chapter 7 – Data & Technology.....	34
Conclusion.....	35

Foreword



Dr Christopher P. Buttigieg
Chief Executive Officer ad interim &
Chief Officer Supervision

The thorough and holistic review of the MFSA's supervisory and onboarding processes has been our number one priority for the past two years. It is critical for the MFSA and its national counterparts to keep up with existing and emerging criminal threats and vulnerabilities. It is our responsibility to ensure that market players implement a strong and effective compliance framework that deters and detects criminal infiltration.

The pace of change required to combat ML/TF threats effectively required us to continue building upon the strategy document published in 2019. This was necessary in pursuit of identified threats further to two sectoral risk assessments published by the NCC, newly identified risks and typologies by the FIAU and the MFSA, as well as in order to meet international obligations, including the implementation of the EU's 4th and 5th Anti-Money Laundering Directives, and our commitments to meet international standards.

Our significant investment in financial crime compliance is necessary and vital for the integrity of Malta's financial system.



Anthony Eddington
Head, Financial Crime Compliance

In under two years the MFSA has managed to build and train a team of twenty financial crime professionals and develop a framework around the assessment of risk and supervision. This is a radical improvement in the manner the MFSA, as a prudential supervisor, is involved in the supervision of AML/CFT compliance, in coordination and as agents of the primary financial crime regulators in Malta, the FIAU and the Sanctions Monitoring Board. The MFSA has managed to increase AML/CFT full-scope examination capacity from 25 in 2019, to 81 in 2020, however our measure of success is not just numbers but rather an improvement in the compliance culture of financial services operators in Malta.

The manner in which the MFSA is trying to achieve this is by focusing on areas which are known to have particular risks and vulnerabilities, and which the authorities wanted to improve industry standards on. For example, MLRO competence has been a main focus point for the MFSA, as well as beneficial ownership information held by trustees and company service providers. Supervisory priorities for the Financial Crime Compliance team are agreed upon and published in advance, depending on specific risk areas identified.

Whilst the authority will clamp down on bad practices and conduct intrusive examinations, its focus is also to educate, and ensure that the industry understands what is expected by the regulators and that there is a genuine commitment to achieve this. An effective AML/CFT compliance culture for the country is a process that both the regulators and regulated entities need to work together on to achieve the desired outcome.

Abbreviations

AML/CFT	Anti-Money Laundering and Counter Terrorist Financing
BI	Business Intelligence
BRA	Business Risk Assessment
CASPAR	Compliance and Supervision Platform for Assessing Risk
CBM	Central Bank of Malta
DNFBP	Designated Non-Financial Business and Professions
EBA	European Banking Authority
EC	European Commission
EIOPA	European Insurance and Occupational Pensions Authority
ESAs	European Supervisory Authorities
ESMA	European Securities and Markets Authority
FATF	Financial Action Task Force
FCC	Financial Crime Compliance
FIAU	Financial Intelligence Analysis Unit
FSAP	Financial Sector Assessment Programme
IMF	International Monetary Fund
ISRS	Integrated Sectoral Risk Score
KRI	Key Risk Indicator
MFSA	Malta Financial Services Authority
MiCA	Markets in Crypto-Assets Regulation
MLRO	Money Laundering Reporting Officer
MONEYVAL	Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism
MoU	Memorandum of Understanding
NCC	National Coordinating Committee on Combating Money Laundering and Funding of Terrorism
PEP	Politically Exposed Person
PMLFTR	Prevention of Money Laundering and Funding of Terrorism Regulations
S.L.	Subsidiary Legislation
SCMS	Supervisory Cycle Management System
SMB	Sanctions Monitoring Board
SRM	Sectoral Risk Model
STR	Suspicious Transaction Report
TCSP	Trustees and Company Service Providers
TUBOR	Trusts Ultimate Beneficial Owner
UBO	Ultimate Beneficial Owner
VASP	Virtual Asset Service Provider
VFA	Virtual Financial Asset

Purpose of the Document

The Purpose of this document is to provide information to the general public, including but not limited to practitioners in compliance, AML/CFT and financial services on the changes which the MFSA has carried out in order to strengthen its AML/CFT compliance framework. This document acts as a follow-up to the 2019 AML/CFT Strategy, and recounts action points and projects that have been completed, as well as those still in progress. This document also details how the MFSA is monitoring the effectiveness of actions taken.

Over the past few years, the Government of Malta has provided additional funding to the MFSA in order for the financial services regulator to have sufficient resources and expertise to implement the recommendations and expectations of MONEYVAL, the IMF and other international institutions. This document shows that over the past few years, the prevention of financial crime has been one of the foremost priorities for the MFSA.

Furthermore, this document details the methodology being implemented to achieve the objectives highlighted in the 2019 AML/CFT Strategy, and also highlights key areas for targeted action.

Executive Summary

Since 2019, following the publication of the AML/CFT Strategy¹, and the submission of recommendation following various peer reviews and international assessments in the area of AML/CFT, the MFSA has registered significant improvements in resources, systems, capabilities and effectiveness in its approach. These can be summarised in the below actions:

1. The creation of a dedicated Financial Crime Compliance team, which as of writing, is composed of 20 fully trained staff. The remit of the FCC team is four-fold:
 - a. to perform AML/CFT supervision in coordination with and as an agent of the FIAU and the SMB, subject to revised protocols and methodology;
 - b. to embed AML/CFT within prudential supervision and perform an analysis of the results (see (4)) below;
 - c. to act as a source of expertise and data on AML/CFT risk within the MFSA; and
 - d. to contribute expertise to AML/CFT compliance performed by the remainder of the supervisors within the MFSA, including at authorisations stage.
2. The creation of a separate Due Diligence Function within the Enforcement Directorate and which currently consists of six fully trained staff members. This Function stands independent of the Supervisory Functions' Authorisations teams, ensuring that there is consistency in application of due diligence procedures across all sectors regulated by the MFSA; in being a separate function, it adds an extra layer of checks and balances within the Authority's Authorisations and Supervisory Functions. The Due Diligence team is charged with performing criminal probity and integrity checks on directors, shareholders, management, key functions and all relevant legal and natural persons behind regulated entities. Individuals are subject to a risk rating, and based on the outcome of that risk, the appropriate checks are performed. The same checks are performed throughout the lifetime of a licence and include sanctions screening, PEP screening, and adverse media screening.²
3. End to end enhancement of the authorisation process for new applicants and supervisory processes for existing licence holders, by revising internal procedures (such as increased supervisory coverage of the governance framework, including key functions, internal controls and the business model of a firm); evaluating MLRO competence, and reviewing its policy in relation to acceptance of high-risk ownership and shareholding structures.³
4. The integration of an AML/CFT element in all prudential and conduct supervision, as well as within the authorisations process. All of the Supervisory Functions within the MFSA are now charged with an element of AML/CFT supervision which supplements and acts as a trigger for the main AML/CFT supervisory activities undertaken by the FIAU and the FCC on behalf of the FIAU. The FCC Function assists and coordinates the implementation of AML/CFT within prudential and conduct supervision. This process resulted in the creation of new operating procedures for all of the supervisory units at the MFSA. As part of this process, AML/CFT risk has been embedded into prudential risk scores, and prudential supervision is able to supplement AML/CFT risk with additional Key Risk Indicators.

¹ https://www.mfsa.mt/wp-content/uploads/2019/07/MFSA-AML_CFT-Strategy.pdf

² [MFSA guidance on the Fitness and Propriety Assessments](#)

³ <https://www.mfsa.mt/wp-content/uploads/2020/06/Shareholding-Policy-for-Credit-Institutions-and-Insurance-Companies.pdf>

5. The creation of a new Risk Function, composed of three employees, who assist the various functions and units in applying the risk-based approach, including the implementation of an AML/CFT element into the MFSA's main prudential risk rating tool.
6. The creation of an extensive training programme for all MFSA employees, which includes mandatory AML/CFT, Sanctions and Anti-Bribery and Corruption programmes.
7. Other key initiatives include:
 - a. The strengthening of the Enforcement Function with a staff complement of 10, in order to investigate potential breaches and act swiftly and dissuasively in cases of non-compliance. This is separate to the FIAU's Enforcement arm, but the parties cooperate and coordinate as necessary.
 - b. The increased supervisory focus on fitness and propriety, competence, and personal liability of senior management, including Directors, MLROs, Compliance Officers and other authorised persons.
 - c. The updating of the Trusts and Ultimate Beneficial Ownership Register (TUBOR) with beneficial ownership information of all trusts in Malta and provided direct access to all relevant supervisors and other authorities.
 - d. The revised the Company Service Providers regime, removing previous exemptions from authorisations and putting in place a process which would streamline the onboarding of hundreds of previously exempt CSPs.
 - e. The significant increase in outreach programmes and industry awareness.

Chapter 1 - Introduction

Over the past few years, the MFSA has embarked on an overhaul of its AML/CFT efforts and initiatives, within the context of its statutory role as the prudential and conduct regulator of financial services in Malta. In February 2019, the MFSA published its detailed strategic approach to AML/CFT. The purpose of this document is to provide an update on what has been achieved so far and how this is resulting in a more effective AML/CFT regime in Malta.

The Prevention of Money Laundering and Funding of Terrorism Regulations (S.L. 373.01) recognises the MFSA as a supervisory authority responsible for the financial services sector and therefore has onerous statutory duties to fulfil and is in fact fully responsible as the gateway for all financial services business in Malta, in support of the main AML/CFT regulator in Malta, the FIAU. When viewed in the context of the National Risk Assessment (which was last updated three years ago in 2018), the AML/CFT responsibilities of the MFSA become more central, with respect to the residual risk vulnerabilities displayed by the sectors, for which the MFSA is responsible, all of which are rated as Medium-High or High:

Figure 1 - 2018 NRA Risk Ratings

Sector	Inherent Vulnerability	Residual Vulnerability	Sub-sectors	Inherent Risk	Controls Risk	Residual Risk
Banking	High	Medium-High	Core Domestic Banks	High	Medium-Low	Medium-High
			Non-core domestic & international banks	High	Medium-Low	Medium-High
Securities	Medium-High	Medium-High	Collective Investment Schemes	Medium-High	Low	Medium-High
			Custodians	Medium-High	Low	Medium-High
			Foreign Exchange	Medium-High	Low	Medium-High
			Fund Administrators	Medium-High	Low	Medium-High
			Fund Managers	Medium-High	Low	Medium-High

			Stockbrokers	Medium	Low	Medium
Insurance	Medium	Medium	Insurance	Medium	Medium-Low	Medium
Other Financial Institutions	Medium-High	Medium-High	Payment services	High	Medium-Low	Medium-High
			Lending	Medium-Low	Medium-Low	Medium-Low
			Other activities	Medium	Low	Medium
DNFBPs	High	High	Company Service Providers	High	Low	High
			Trustees & fiduciaries	High	Low	High

In conjunction with its local counterparts, the MFSA, has been working to understand the risks that the regulated sectors face, and ensure that regulated firms understand the risk posed to their business, and take action to increase the effectiveness of the controls framework. The MFSA is delivering the desired outcomes by ensuring its structures apply the right focus to AML risks as part of the supervisory approach, which in turn pushes financial services firms to ensure appropriate awareness and controls exist within their sectors and businesses. This is being achieved through a number of initiatives, which include both internal restructuring, as well as industry-facing measures, as will be explored further on in this document.

A critical part of risk identification also exists with regards to new sectors, in particular, the Virtual Financial Asset sector, which, due to industry movement, quickly emerged as being potentially of high AML/CFT risk to Malta, as indicated in the National Risk Assessment (2018) and the Sectoral Risk Assessment on Virtual Financial Assets (2020). A specific section of this document is dedicated towards the MFSA’s initiatives with respect to the VFA sector, and how it is ensuring that operators in Malta are (a) fit and proper; and (b) implementing a strong AML/CFT compliance framework.

The MFSA’s efforts with respect to AML/CFT also need to be assessed in the context of the MFSA’s own risk appetite. The MFSA maintains a Risk Management Framework that ensures that there is an effective process to manage risk across the authority and decisions taken are required to be aligned with that same risk appetite.

As the single regulator for financial services in Malta, the MFSA examines ML/TF as a key risk area as part of the decision-making process to issue new licences, renew or extend existing licences, to approve changes in beneficial ownership and other key structures within already authorised entities, and performs ongoing checks to ensure that the same status is maintained throughout the duration of the licence term.

The MFSA uses its approach to authorisations to deliver the following key objectives:

- Excluding bad actors from the financial services industry to protect clients or investors and to ensure confidence in the wider financial system.
- Ensuring that persons who are not fit and proper are not able to infiltrate the local market through non-disclosure, false or misleading information being provided to the Authority.
- Excluding actors that, if authorised, present a risk of a negative systemic impact and/or threaten financial stability or the local financial industry's reputation.
- Upholding the Authority's and the local financial services industry's strong reputation and further developing that reputation.
- Mitigating the risk that Malta could be used for any form of financial crime.
- Ensuring that relationships with ESAs as well as other regulators in foreign jurisdictions are strengthened and meeting international obligations and commitments.

In the MFSA's Risk Appetite Statement published in January 2020, the Authority defined its risk appetite for authorisations as being largely low, with some exceptions in terms of medium risk.

Among other matters, the MFSA has a low-risk appetite for applicants with a poor understanding of regulatory expectations, who come from jurisdictions with weak or strategic AML/CFT deficiencies, applicants with opaque shareholding structures and a lack of strong internal controls, risk management and compliance frameworks. Strong AML/CFT control frameworks are also expected out of Fintech companies, whose risk exposure requires additional monitoring and understanding. Whilst a moderate risk appetite exists for Fintech companies, and for strategically important entities, initiatives such as the FinTech Regulatory Sandbox, enhanced monitoring and targeted inspections are in place to cater for this risk.

In terms of the MFSA's Supervision risk, that is, the risk that supervisory processes do not identify and mitigate risks, is also largely low for the MFSA. This would include proactively identifying emerging or systemic supervisory risks, not having a holistic supervisory approach, unclear supervisory expectations, and lack of resource expertise, and resource allocation.

The MFSA is also committed to ensure that it performs a timely implementation of EU regulations and directives relating to AML/CFT, its commitments with other international regulatory bodies (such as UN sanctions), and implementation of best practices. This includes a strong commitment to address the recommendations issued by international bodies including the International Monetary Fund, the European Commission, the European Supervisory Authorities, MONEYVAL and the Financial Action Task Force.

This means that the MFSA is highly committed to implementing recommendations emerging from the IMF's yearly Financial Sector Assessment Programme, which includes a number of AML/CFT recommendations last published in November 2019, as well as the MONEYVAL report published in July 2019. While both documents post-date the MFSA's AML/CFT Strategy, which was published in February

2019, the MFSA adjusted its action plan and work streams to factor in any recommendations from the IMF and MONEYVAL which were not originally envisaged.

Finally, the MFSA's efforts in upgrading its AML/CFT framework are also influenced by international developments. The MFSA prioritises horizon scanning across the different sectors it regulates, and ensures that as much as possible, it immediately identifies and takes preparatory action in relation to legislative developments, or other non-legislative requirements that are critical to an effective AML/CFT regulatory regime. Examples of this would include the updates performed to Recommendation 15 of the FATF Standards in relation to virtual asset activities and service providers, and the proposed implementation of the 'travel rule' to this sector, the FATF Guidance on Risk-Based Supervision, and the implementation of the 5th Anti-Money Laundering Directive, which required the MFSA to revamp its Trusts Ultimate Beneficial Ownership Register.

Chapter 2 – Current State of Play

The 2019 AML/CFT Strategy

The MFSA AML/CFT Strategy published in 2019 firmly established the MFSA as a constituent part of the national institutional framework for combatting financial crime, particularly as regards the synergies between its supervisory responsibilities and the FIAU's responsibilities for AML/CFT supervision.

The strategy sets out the MFSA's priorities and targets in order to better supervise the financial sector in relation to its AML/CFT obligations. The strategy highlights the MFSA's commitment in cooperating with the FIAU but also in its own proactive role, by integrating AML/CFT as a strong component in all of its conduct and prudential supervisory activity. The aim behind this is to understand, detect, and action deficiencies across all sectors, as frequently as possible, utilising a risk-based approach.

The key principles emerging from the strategy are the following:

1. Firms are expected to provide evidence of robust AML/CFT arrangements at authorisation stage, including assessing the business risk and documenting it in a business risk assessment, ensuring that the tools that are in place properly reflect the control measures mentioned in the business risk assessment. The application of the same standard is required throughout the lifetime of the authorisation.
2. Firms are expected to demonstrate that good governance structures are in place, and that senior management has the responsibility to establish a culture of AML/CFT compliance. Only individuals possessing the appropriate integrity and competence are allowed to be appointed, and to remain appointed within such key senior management positions. This applies to the MLRO, Compliance Officer, CEO, other senior management as well as the Board of Directors.
3. A strong reflection of AML/CFT criteria within the MFSA's prudential and conduct risk rating system.
4. Open communication with firms, in order to provide guidance, understand risk, and identify new risks.
5. Cooperation with domestic and international authorities by disseminating information relating to AML/CFT.

The Initiatives

Over the past two years, the MFSA has undergone a transformative process, including organisational restructuring, changes in senior management, a significant increase in staffing and in training provided to staff, investments in technological systems, an overhaul of most supervisory procedures, including a complete shift towards risk-based methodology, and an increased focus on AML/CFT.

Figure 2 - Increase in Employment at the MFSA

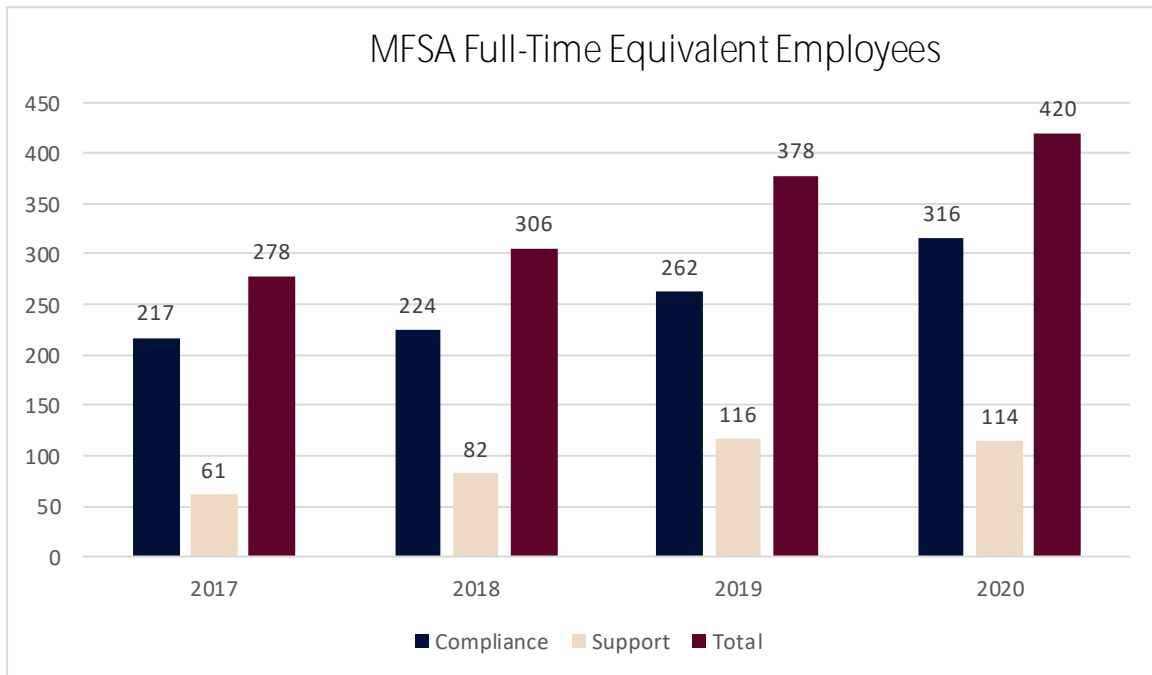


Figure 1 - Total Onsite Inspections by MFSA 2018-2020

MFSA Onsite Inspections	2018	2019	2020
Banking CI & FI Prudential/Conduct	8	17	69
Insurance & Pensions Prudential/Conduct	28	54	86
Securities and Markets Prudential/Conduct	99	97	114
Trustees & CSPs Prudential	33	34	49
Virtual Financial Assets Prudential/Conduct	0	0	12
Financial Crime Compliance	0	25	81
Cybersecurity	0	0	8
Total Onsite Inspections	168	227	419 ⁴

⁴ Some onsite inspections may be carried out by more than one unit. These joint inspections would have multiple objectives but administrative resources may be shared for efficiency purposes.

These measures were taken on board in parallel with reviews and subsequent recommendations submitted by MONEYVAL, the European Banking Authority (the 'EBA') and the International Monetary Fund ('IMF'), among others.

Coordination and Alignment with NCC and FIAU

The MFSA has strengthened the manner in which it coordinates activities with the main AML/CFT regulator in Malta, the FIAU, based on a revised MoU signed in 2018, and revised operating procedures.

The FIAU and the MFSA cooperate as follows:

1. The MFSA provides prudential data collected from annual licence holder reporting to the FIAU. This data is inputted into the FIAU's CASPAR risk management system. The data sources include data collected by the MFSA, MLRO interviews, the Business Risk Assessment and knowledge of the business model of the subject person.
2. The FIAU and the MFSA coordinate in preparing the annual Supervisory Plans for the financial sector, based on the CASPAR risk scores.
3. The MFSA's FCC team performs compliance inspections on licence holders using FIAU's supervisory methodologies based on the Supervisory Plan. FCC and FIAU hold weekly technical meetings.
4. The MFSA and the FIAU share red flags when conducting inspections, in order to coordinate where relevant. Joint inspections also take place.
5. The MFSA assesses the fitness and propriety as well as the competence of MLROs on licensed financial businesses and communicates the list of active and approved MLROs to the FIAU.
6. As part of the FIAU's sanctioning powers, it may recommend that the MFSA takes prudential action, such as licence withdrawals or suspensions.
7. The FIAU assists the MFSA in ongoing name screening and due diligence against any adverse information.
8. The MFSA assists the FIAU in communicating with subject persons within its supervisory remit.
9. The FIAU and the MFSA coordinate in the licensing of high-risk institutions, such as banks and VFA Service Providers. The process for this is laid down in a 2018 MoU signed between both entities, and the FIAU are involved at the early stages of the authorisation process. This includes a review of AML/CFT documentation, assessing risk and the suitability of staff involved, including mandatory interviews of MLROs.
10. The MFSA and the FIAU coordinate in performing outreach to the industry, as well as the

publication of guidelines.

The Role of the Financial Crime Compliance Unit within the MFSA

The focus of the FCC team within the MFSA is AML/CFT compliance. FCC has a headcount of 20 individuals (expanding to 23 in 2021), all of which possess subject matter expertise in their specialist field. This is a drastic increase in AML/CFT specialised staff at MFSA since 2018.

The FCC acts as an agent of the FIAU and the SMB in order to perform supervisory inspections on their behalf. The FIAU, in consultation with the MFSA, draws up a Supervisory Plan for each sector, and the FCC is allocated with its share of inspections. The Supervisory Plan is based on FIAU's AML/CFT risk management system, CASPAR. CASPAR sources data from multiple sources, including Risk Evaluation Questionnaires submitted annually by each subject person, as well as prudential data provided by the MFSA to the FIAU.

The MFSA and FIAU work in parallel, therefore increasing the total human resources available between both organisations to focus on AML/CFT supervision within the financial sector. In fact, for the cycle running from July 2019 to June 2020, FCC was tasked by the FIAU with performing 60 onsite AML/CFT inspections on behalf of the FIAU, increasing to 68 inspections for the 2020/2021 cycle. Over the past two years, there has been substantial increase in AML/CFT focused inspections, in view of the increased staffing of the FCC. Following a compliance visit, FCC drafts two reports (one is submitted to the FIAU and the other to the SMB), receives submissions from the entity under examination, and the final report is sent to the FIAU for any relevant enforcement or remedial action required.

FCC also assesses sanctions monitoring processes and systems. FCC maintains a communication line with the SMB with responsibility for enforcement of, among others, sanctions screening obligations. The MFSA maintains an MoU with the SMB, setting out procedures whereby reports of deficiencies from the MFSA are used by the SMB to investigate and take enforcement action, therefore further complementing the national priority to combat ML/FT.

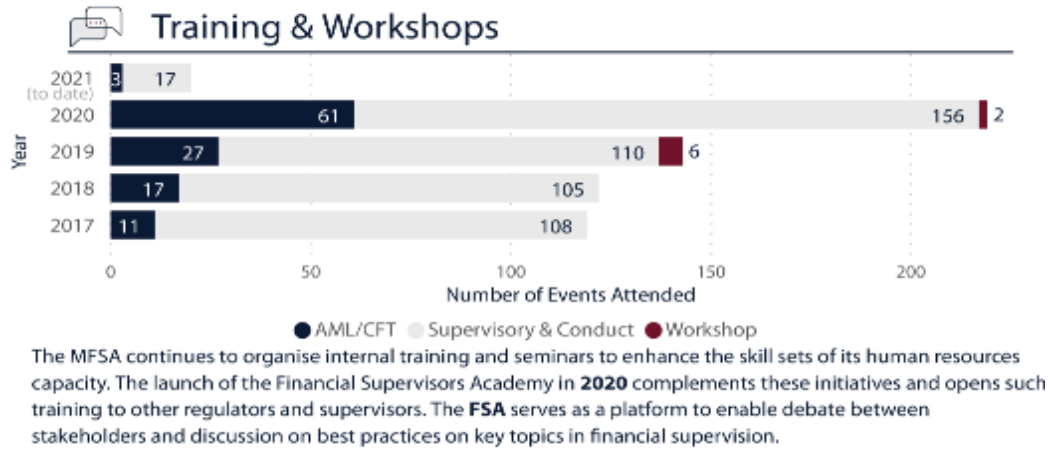
Apart from its role in liaising directly with the NCC, and acting for the FIAU and the SMB, FCC plays a central role in relation to AML/CFT compliance within the MFSA; the integration of AML/CFT supervision within authorisations, conduct and prudential supervisory activities of the MFSA.

A key example of the FCC driving the systematic implementation of AML/CFT checks across all MFSA supervisory work, is in relation to MLROs.

MLRO interviews are performed by the respective prudential financial supervisors (sometimes supported by FCC). The prudential supervisors follow procedures and a template drawn up by FCC. Following each MLRO interview, a report is generated and sent to FCC where it is assessed by reference to Key Risk Indicators (KRIs). The FCC and Prudential Supervisors work together to determine whether action needs to be taken with regards to a specific MLRO. At authorisations stage, this might mean that an MLRO's application for approval might be rejected, whilst at supervisory level, an MLRO who does not demonstrate sufficient understanding might be directed to resign and be replaced, undergo further training or be referred for other remedial or enforcement action.

FCC provide training to the rest of the supervisory functions at the MFSA, perform outreach, such as the publication of the MLRO Expectations Document issued in July 2020, and act as a repository of AML/CFT risks of firms regulated by the MFSA.

Figure 4 - AML/CFT Training to MFSA Staff



The collection of data regarding AML/CFT risks has further developed with the introduction of a system to compile KRIs for all licence holders. While FCC’s main source of risk information remains the FIAU’s CASPAR system, FCC also has other data sources such as questionnaires, reports submitted by the Authorisations Functions within the Supervisory Units encompassing ML/FT risk information from new applicants, as well as findings from prudential and conduct supervisory inspections, or MLRO interviews conducted.

Chapter 3 – AML/CFT Integration in Authorisations & Supervision

3.1 Authorisations

3.1.1 Fitness & Propriety

The MFSA has overhauled its fitness and propriety checks (including sanctions monitoring and adverse media screening).

The Due Diligence Function has been reconstituted completely and placed within the Enforcement Directorate. The primary reason for this move was to introduce an element of checks and balances beyond the Supervisory Directorate for any licence applications under consideration. The Due Diligence Function is therefore separate from the main application process and is able to perform its checks and considerations independently. Furthermore, the employees of the Due Diligence Function do not liaise with applicants.

The changes within the Due Diligence Function started in March 2020, and its entire structure, including risk-based modelling, is in place as of June 2020. The Due Diligence Function has six full-time employees and is responsible for performing criminal probity and integrity checks on all qualifying beneficial owners and key functionaries. This includes ongoing monitoring, sanctions screening, and adverse media screening.

The MFSA fit and proper process identifies three main pillars of the Due Diligence Function:

1. Onboarding Due Diligence;
2. Risk-based Ongoing Due Diligence;
3. Continuous Name Screening (including sanctions screening and adverse media).

The Due Diligence Function conducts fitness and propriety checks on all prospective and current licence holders. The function undertakes continuous sanction screening and adverse media screening on the applicant/licensed entity, beneficial owners, senior management, as well as holding companies.

The Due Diligence Function has various tools at its disposal, and regularly liaises with domestic and foreign authorities, third party intelligence databases, and automated screening tools.

The MFSA has acquired a new third-party tool to ensure continuous (24/7) adverse media monitoring and sanctions screening on all subject persons and linked associates and third parties. The tool automatically checks given names against sanctions and PEP lists on a regular basis and flags a change in status of an individual (from a non-PEP to a PEP) within minutes of being detected. Checks are also

made for adverse media using the same tool. This provides the MFSA with a continuous flow of information related to changes associated with stored individual names.

The Due Diligence Function employs a risk framework which focuses on both the sectoral (based on the risk of the sector in which an applicant/entity is involved) and individual risk scoring (personal indicators, such as geography and competence). The resulting risk scores determines the depth of analysis (standard or enhanced) as well as the frequency of ongoing checks.

Indicators within the risk-based framework which drive applicants towards an enhanced review include among others:

- PEP status;
- High-risk sector;
- High-risk jurisdiction;
- Adverse information;
- Level of control.

The Due Diligence Function also liaises with external stakeholders, such as referees, past employers, and where relevant, foreign regulators. Between January and July 2020, a total of 190 requests for information were sent to foreign regulators.

In high-risk scenarios, the Due Diligence Function is able to use a third party intelligence service provider to perform on-site intelligence checks.

3.1.2 Ownership Structure

As part of the overhaul of authorisations procedures across the board, a new Shareholding Policy for Credit Institutions and Insurance Companies⁵ was introduced in June 2020, repealing a previous document dating back to 2012. This public document sets the MFSA's risk appetite for shareholding structures in banks and insurance companies which are limited to a very small number of beneficial owners, and which therefore pose a high risk for ML/FT, and are likely to also adversely impact overall governance, financial soundness and resilience of the licence holder.

This Shareholding Policy, takes into account the following European Supervisory Authorities guidelines:

- Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector" issued by ESMA, EBA and EIOPA which became applicable as from 1st October 2017, which, inter-alia identify the criteria according to which the assessment

⁵ <https://www.mfsa.mt/wp-content/uploads/2020/06/Shareholding-Policy-for-Credit-Institutions-and-Insurance-Companies.pdf>

of any proposed qualifying shareholder shall be carried out;

- Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU⁶ (EBA/GL/2017/12, 26 September 2017), with respect to the fitness and propriety assessment of a proposed qualifying shareholder, on an individual as well as a collective basis; and
- European Banking Authority Guidelines on internal governance under Directive 2013/36/EU [EBA/GL/2017/11, 26 September 2017].

The shareholding policy informs the public that the MFSA will not accept applications from new or existing credit institutions or insurance companies which exposes the applicant to:

- Risk of dominance by a single beneficial owner/shareholder, both at board level as well as within the executive management of an institution.
- Dependence on one/few shareholder/s in case of any requirement for capital injections, which may increase the risk of not having sufficient funding being made available.

The same shareholding policy also describes the MFSA's fitness and propriety test into qualifying shareholding structures and overall governance, examining the reputation and experience of the qualifying shareholders, beneficial owners, other financiers and management structure, the financial soundness, the ability to comply and continue to comply with all obligations, and the intentions of the business, in particular to ensure that money laundering and terrorist financing will not be committed or facilitated.

3.1.3 Enhancing the Authorisations Process

Strengthening its authorisations process is one of the MFSA's key enhancements, following a look-back exercise. The sectoral authorisations teams (e.g. banking and financial institutions, insurance, and pensions, etc) have been merged with the respective Supervisory Functions. This merge ensures a streamlined and efficient approach throughout the lifecycle of each entity falling within the oversight of the MFSA. This allows for a more holistic build-up of knowledge and understanding of a regulated entity's business.

This approach, together with the implementation of AML/CFT controls as part of the licensing process, is aligned with the MFSA's revised risk appetite at licensing stage, and increased licence application rejections/withdrawals, largely based on:

- A deeper understanding of business models, related AML/CFT risk and a lower risk appetite;⁶
- A more thorough assessment at authorisations stage, including AML/CFT focus;

⁶ https://www.mfsa.mt/wp-content/uploads/2020/01/20200106_MFSAs-Risk-Appetite-Statement.pdf

- More stringent fitness and propriety tests on beneficial owners; and
- More detailed competence tests on senior management and MLROs.

Stricter standards have seen a reduction in new applications as the MFSA has communicated its risk appetite and industry expectations. The MFSA has started holding pre-application meetings to better understand applicants and their business model prior to the submission of a licence application. If at such an early stage, the MFSA identifies that a business model is too high a risk for the MFSA's risk appetite, this is communicated to deter an authorisation application which would otherwise take up significant resources to process and decision.

Figure 2 - MFSA Authorisations Licence Rejection Rate

Authorisations Outcomes	2014	2015	2016	2017	2018	2019	2020
Total Applications Processed	304	282	224	288	203	213	265
Approved	299	276	217	258	153	184	199
Withdrawn/Refused	6	6	7	30	50	29	66
% Withdrawn/Refused	2%	2%	3%	10%	25%	13%	25%

The above table illustrates a reduction in applicant rates due to higher fit and proper standards, as well as an increasingly higher rejection rate due to the MFSA's lower risk appetite.

3.1.4 AML/CFT within the Authorisations Process

Each Authorisations team closely collaborates with FCC and the Due Diligence Function.

Checks performed at authorisations stage, include:

- Identifying weaknesses in senior leadership;
- Governance;
- MLRO competence, knowledge and experience;
- Internal controls; and
- Business models.

New cross-sectoral authorisation procedures have been finalised, setting out the AML/CFT element within the authorisations process. An Authorisations Forum, which includes all Supervisory Functions, was set up with the involvement of FCC, with the aim of standardising authorisations processes, including those relating to AML/CFT. Accordingly, FCC is involved in the authorisations process for new entities from the initial discussions. FCC reviews relevant documentation and any AML/CFT red flags are highlighted. The FCC review looks into:

1. The background of the involved individuals;
2. The MLRO;
3. The business model; and
4. The operational model.

The Due Diligence function performs criminal probity screening and integrity checks into the Beneficial Owners and Directors, as well as any holding companies involved within the corporate structure and the background of the individuals such as the MLRO, the Compliance Officer and any other designated persons. The academic and professional background, experience, potential conflicts of interest and the expected number of hours allocated to the applicant, if the individual is not a full-time employee, are considered in conjunction with FCC.

The business model review assesses the products and services being offered and the target customer market and jurisdictions. The MFSA needs to be convinced that the proposed model falls within the MFSA's risk appetite.

A BRA needs to be provided by the applicant, reflecting the threats and vulnerabilities, the likelihood of impact of ML/FT risks, and the control measures in place to mitigate the inherent risks. The BRA needs to include the risk appetite in relation to targeted customers and products to be offered. Guidelines to the industry, jointly published by the FIAU and the MFSA in relation to the completion of the BRA have been released.⁷

The applicant's Customer Acceptance Policy is also reviewed, which includes the Risk Appetite Statement, the Customer Risk Assessment methodology and all the applicable documentation relating to the Risk Management and Controls framework.

Thirdly, the review of the operating model looks at the company structure, reporting lines, and in particular that relating to the compliance and anti-financial crime function. An assessment is made as to whether the applicant's staff complement and expertise of the AML/CFT personnel are commensurate to the size and nature of the business. In the case of new businesses, this is done via requesting estimated customer levels over a three-year period, and expected volume of transactions and revenue projections. Operating manuals in relation to customer onboarding, ongoing monitoring and transaction monitoring are also reviewed.

⁷ <https://www.mfsa.mt/wp-content/uploads/2019/04/ML-and-TF-Business-Risk-Assessment.pdf>

FCC is given the opportunity to object to the licensing of any applicant, or individual within an entity applying for a licence based on the above. Apart from objecting to a licence, FCC may also request the imposition of licence conditions, such as a requirement to undergo a follow-up interview, a restriction to any kind of higher risk business, further training etc.

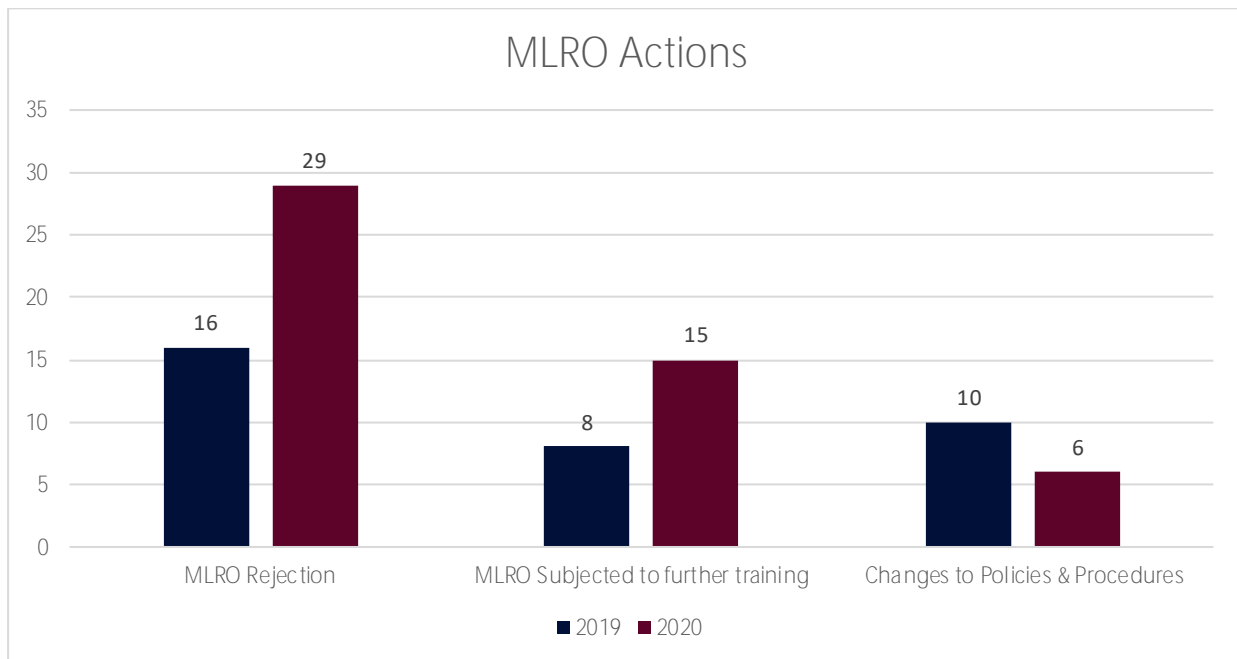
3.1.5 MLRO Competence

The competence and effectiveness of MLROs or other approved officials covering AML/CFT is one key area that is targeted via this new approach. The prospective MLROs of all licence applicants are subject to an interview conducted by the MFSA, in coordination with the FIAU.

The aim of these interviews is to identify the effectiveness of the MLRO function. The MLRO may be found to be unsuitable due to lack of knowledge, experience or insufficient time commitments, or failure to meet the fitness and propriety test. On the basis of the findings, the FCC may perform the following actions:

- Deem the MLRO to be fit and proper to perform their role;
- Request further information;
- Order the following follow-up actions:
 - Reject the proposed MLRO and the appointment of a better qualified and fit MLRO
 - Request MLRO to undertake further training
 - Request changes to policies
 - Request follow-up interviews;
- Inform the FIAU of a deficiency/red flag, update the risk score and/or file an STR.

Figure 3 - Actions with respect to applicant MLROs



As shown in the table above, the MFSA requested an MLRO substitution from 16 licence applicants throughout 2019, and that figure increased to 29 in 2020. In such cases, licence holders are obliged to seek out more qualified staff to undertake the role.

The MFSA also requested 15 MLROs in 2020 to undergo further training as part of the licence conditions. In such cases, the FCC would include such findings within their own KRI models, which would then feed into the risk model which, depending on the severity, could trigger an (a) end-to-end AML/CFT onsite inspection; (b) a prudential/conduct onsite with an element of AML/CFT; (c) a follow-up MLRO interview or (d) an offsite review to ensure adherence with licence conditions.

To assist MLROs in the performance of their function and to support prospective MLRO applications to the regulated sector, the MFSA has issued a Guidance paper titled, "What is the role of the Money Laundering Reporting Officer?"⁸

The Guidance paper assists prospective and current MLROs in understanding the level of commitment and engagement they must give in order to succeed in their role. Notably, the paper also clarifies the personal liability that a MLRO has in Malta, as strengthened in the PMLFTR.

⁸ <https://www.mfsa.mt/wp-content/uploads/2020/07/Guidance-Paper-on-What-is-a-Money-Laundering-Reporting-Officer.pdf>

3.2 Supervision

3.2.1 Integration of AML/CFT into Prudential Supervision

The main AML/CFT supervision of financial institutions is led by the FIAU. As the supervisory authority in charge of conducting AML/CFT examinations on the financial sector as an agent of the FIAU, the MFSA's role in AML/CFT supervision is defined by the PMLFTRs, and an MoU signed with the FIAU, whereby the MFSA's FCC function performs AML/CFT supervisory examinations, using the FIAU's risk-based methodology, as well as examination formats.

However, the MFSA's supervisory duties as a prudential and conduct regulator have been extended as a result of the implementation of the 2019 AML/CFT Strategy, which saw an element of AML/CFT being integrated into prudential supervision, over and above the MFSA's role as an agent of the FIAU.

These additional interactions have significantly driven up the coverage of AML/CFT supervision, and act as a trigger for more in-depth supervisory action. In this manner, prudential and conduct supervision helps in detecting potential AML/CFT deficiencies and therefore there is a holistic approach to supervision of financial institutions. Outcomes and knowledge from these inspections are logged by the FCC, and fed back into the FIAU's risk scoring system. Prudential supervisory interactions have become a tool to predict weaknesses and deficiencies on a more frequent basis, and also drives risk understanding due to the volumes of subject persons being visited, and the dissemination of information among regulators.

From March 2020, the MFSA's prudential and conduct on-site inspections include significant AML/CFT elements. Except where a dedicated AML/CFT examination has recently occurred, the MFSA's prudential and conduct onsite supervision includes standard checks inter alia:

- Interviews with MLRO/Designated Persons/Compliance Officer on knowledge of AML/CFT and of internal procedures, risks and controls;
- Interviews with the Board of Directors to ensure that governance structures cater for AML/CFT risks;
- The existence and implementation of risk-based methodology, including the implementation of the Business Risk Assessment, Customer Risk Assessment, and Customer Acceptance Policy;
- Sanctions monitoring;
- Transaction monitoring system;
- In certain thematic inspections, a review of client files to ascertain adequate implementation of risk, customer due diligence and record-keeping.

Based on annual returns submitted by each licensed entity, the MFSA undertakes business model analysis as well as business/client risk analysis as part of its offsite supervisory work. The findings from the review of the returns are included within the MFSA ISRS, which will be discussed below. Targeted prudential on-sites may focus on business model/client risk, followed by an assessment of the adequacy of the Business Risk Assessment, Customer Acceptance Policy, and the adequacy of controls in place and governance. Therefore, the size and complexity of a business, and the sector(s) in which it operates, combined with the size, experience and expertise, as well as the systems in place that make up the controls framework of a firm, drive the relevant supervisory interactions. These could include mandatory and frequent data reporting, an AML/CFT onsite inspection, a prudential onsite/offsite inspection with an element of AML/CFT, or work relating to a specific area (such as for example, beneficial ownership information in the context of record keeping obligations).

Whenever the MFSA or the FIAU performs an inspection, each party will inform the other immediately as soon as potential systemic issues of either an AML/CFT or a prudential nature are communicated by either supervisor, as opposed to waiting until the conclusion of the examination or the determination of an outcome. This process allows the MFSA and FIAU to:

- Share resources and findings whenever systemic issues are detected at the earliest possible stage; and
- Allow for quick, coordinated and immediate action to be taken by both authorities where necessary.

Should the MFSA detect deficiencies as part of its prudential inspections, it may impose remedial action such as:

- Requiring the entity to undergo specific remediation plans with regular reporting to the Authority;
- Requesting changes to documentation, including policies and procedures;
- Requesting an MLRO substitution or further training to the MLRO or senior management;
- Raising a red flag to the FIAU, leading to a change in risk rating of the entity, or following up with a specific AML/CFT inspection; and
- Directing the firm to limit or stop the operation of high-risk elements of the business, at least until the controls are adequately improved.

Following every onsite inspection, wrap-up meetings are held between the supervisory functions and the FCC to exchange information gathered promptly and to follow up with the FIAU if necessary.

3.2.2 Integrating AML/CFT into Sectoral Risk

Each of the MFSA Prudential units have their own SRMs that are used to rate the level of risk associated with each entity within the respective supervisory sector. These have been updated to include an AML/CFT risk element, to generate the MFSA ISRS. The ISRS is aligned to the NRA and the supplementary sectoral AML/CFT risk profile developed by the MFSA attributes a higher weighted score for AML/CFT to sectors such as Banking, TCSPs, Virtual Financial Assets and Financial Institutions.

The underlying AML/CFT element is based on FIAU CASPAR risk score. Apart from AML/CFT, the ISRS implements international standards by sector (for example, the European Banking Authority risk rating methodology is used for Credit and Financial Institutions) and includes prudential elements such as conduct risk; effectiveness of governance and risk management practices; cyber risk; adverse reputational impact from exposure to non-reputable jurisdictions, profitability, capital, credit and market risk, and criticality of services offered.

The FCC also uses a newly developed KRI Dashboard to log the following:

- ML/FT vulnerabilities detected from MFSA prudential/conduct supervisory work;
- Any information on regulated entities passed onto it by the FIAU;
- Outcomes from MLRO interviews; and
- Questionnaires distributed by FCC.

These ISRS and KRI outcomes are currently used to drive all MFSA prudential supervisory programmes. Licensed firms are subject to prudential/conduct supervisory inspections, and which include an AML/CFT component. Therefore, depth and frequency of a prudential/conduct visit with an AML/CFT component depends on the Integrated Risk Score, FCC's KRI Dashboard, and whether it has already been subject to an FIAU/FCC compliance visit. This has increased the scope and breadth of AML/CFT checks on licence holders.

As a result, once deficiencies are identified, these are communicated to the FCC and the FIAU, and actions may be triggered, such as a follow-up inspection by the FCC/FIAU, a supervisory meeting, or directives to replace or provide additional training to the MLRO.

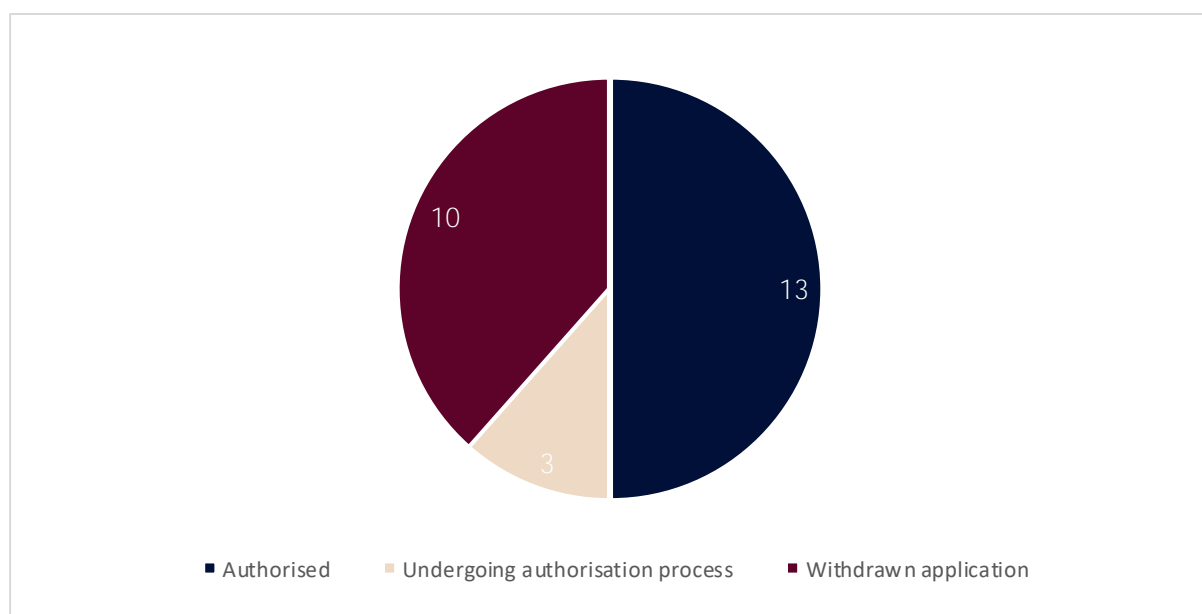
Chapter 4 – VFA Supervision

Malta has taken immediate action to introduce regulations in relation to new innovative sectors that are likely to pose significant ML/FT risks. In November 2018, a framework for the regulation of Virtual Asset Service Providers was introduced through the enactment of the Virtual Financial Assets Act (Cap. 590 of the Laws of Malta).⁹ This new framework regulates persons providing services in relation to virtual assets, including custodians, crypto exchanges (inclusive of VFA-to-VFA, fiat-to-VFA and VFA-to-fiat transactions), brokerage and portfolio management, and also covers issuers of VFAs during their initial offering. The law also created the concept of a VFA Agent, which acts as an introducer to virtual asset business into the country. Notably, issuers of virtual assets, service providers, as well as VFA Agents are considered subject persons, and therefore fully subject to AML/CFT obligations and supervision by the FIAU, as well as licencing and prudential supervision by the MFSA. This goes beyond the requirements of the 5th Anti-Money Laundering Directive, in order to ensure that this new, high risk business sector is subject to a high level of controls, both in terms of market entry, and in terms of supervision.

During the licensing stage, persons or entities in this sector are subject to enhanced fitness and propriety checks, as well as review of policies, procedures and systems in place, and ensuring the required levels of governance. The MFSA coordinates closely with the FIAU even during licensing stage, and the authorities conduct mandatory interviews of all MLROs to ensure their competency in the sector.

The strict standards imposed by the MFSA's regulatory regime for VFA Service Providers has proven to be effective in acting as a filter and ensuring that only serious market players with a strong compliance framework are actually present in Malta. VFA Service Provider applications currently account for a 35% rejection rate.

Figure 7 - VFA Landscape as at May 2021



⁹ <https://legislation.mt/eli/cap/590/eng/pdf>

The VFA Framework itself has embedded requirements that enhance the AML/CFT regime in Malta, such as the prohibition of services in relation to VFAs which have in-built anonymisation functions which prevent the licence holder from identifying the holder and the transaction history of VFAs. The MFSA has also procured blockchain analytical tools which allow it to monitor transactions undertaken by licence holders.

The results of a Sectoral Risk Assessment commissioned by the NCC have also been published,¹⁰ and communicated through outreach initiatives.

The MFSA has ensured that companies operating under the transitory regime were subject to supervision even during authorisation, with a risk rating exercise having been undertaken for all VFA Service Providers together with the FIAU. The risk rating exercise in this transitory phase considered six risk classes: governance, shareholding, the business scope, client category and services offered, the competence, integrity and fitness and propriety of beneficial owners, shareholders and senior management, client risk and activity levels as well as AML/CFT controls in place.

On-site inspections were performed on all high-risk entities. The results of these on-site inspections informed the MFSA on the ML/FT and prudential risks of these VASPs, and also contributed to the overall decision-making process for the licence application.

Figure 8 – VASP Risk Model and No. of Onsite Inspections

	VASPs	Onsite Inspections during Authorisation
High Risk	9	9
Medium Risk	13	/
Low Risk	1	/
TOTAL	23	9

Supervision of VASPs during the transitory period included the following checks:

- Firm's risk appetite;
- Business risk assessment;
- Restrictions imposed on high-risk clients;
- AML/CFT risk and internal controls;

¹⁰ <http://www.ncc.gov.mt/aml-cft-reports/>

- Suitability and competence of Directors, MLRO, Compliance Officer and Information Security Officer;
- Direct responsibility for reviewing client files;
- Details around the transaction monitoring system and officer responsibility;
- The financial crime risk arising in the target markets/jurisdictions of operation;
- Customer Risk Assessment, and whether this is automated;
- Deposit and withdrawal screening;
- Staff training;
- STR reporting;
- Documented AML/CFT procedures; and
- Plans on the implementation of the Travel Rule (once this comes into force).

The MFSA initiated an exercise in order to ascertain that all VFA Service Providers which had originally notified the Authority of their intention to operate within the transitory period, had either submitted a Letter of Intent, or otherwise submitted a notification with a declaration of their cessation of operations. Enforcement action was taken in order to ensure that unresponsive firms were no longer providing their services in or from within Malta, which would now be deemed to be illegal.

A document indicating the supervisory outcomes from VASP supervision, as well as the ongoing developments in regulation of the sector has been published. This document also mentions the ongoing priorities for 2021, including the implementation of the FATF Travel Rule and staying up to date with the proposal for a Regulation by the European Commission on Markets in Crypto-assets (MiCA).¹¹

Whilst throughout 2020 the focus was to ensure that operators under the transitory period acquire their full licence to operate, in 2021 the focus has shifted towards supervision, with 10 supervisory inspections planned, as well as offsite work which includes the issue and analysis of supervisory questionnaires, a review of rulebook deliverables, mandatory interviews of Compliance Officers and MLROs, and usage of the afore-mentioned blockchain analysis tool. In fact, between December 2020 and March 2021, the MFSA has already taken enforcement action in the form of restriction directives against two Class 4 Virtual Financial Asset prospective licensees, due to a belief by the MFSA of their inability to meet the requirements emerging from the rulebooks. The restriction directive prohibits the companies from onboarding new clients.

¹¹ <https://www.mfsa.mt/wp-content/uploads/2020/12/The-Nature-and-Art-of-Financial-Supervision-Volume-II-Virtual-Financial-Assets.pdf>

Chapter 5 – Availability and Accuracy of Beneficial Ownership Information

TUBOR

One of the main systems implemented by the MFSA to comply with the requirements of the 4th Anti-Money Laundering Directive, and as subsequently amended by the 5th Anti-Money Laundering Directive, is the creation and maintenance of the Trusts Ultimate Beneficial Ownership Register (TUBOR).

TUBOR is the national register for legal arrangements, and which complements the other two beneficial owner registers held by the Malta Business Registry, namely the beneficial ownership register for companies, and the beneficial ownership register for legal persons.

TUBOR was first put in place in June 2018, and was fully populated with all trusts which generated tax consequences (which numbered 300 in 2018), in line with the 4th Anti-Money Laundering Directive. However by February 2020, this was updated to include all trusts (numbering 3,558), including foreign law trusts administered by trustees in Malta, to come in line with the changes introduced by the 5th Anti-Money Laundering Directive. TUBOR is made available to all authorities in Malta, including the FIAU and the Police as well as subject persons in terms of the Prevention of Money Laundering and Financing of Terrorism Regulations, to the extent permitted by law, and access has also been further extended following the transposition of the 5th Anti-Money Laundering Directive. The beneficial ownership information of 3,558 trusts is now located in a centralised register, which information is verified, held and maintained by the MFSA.

The MFSA undertakes various methods to ensure that the data on the register is accurate and up to date and has also taken enforcement action for various breaches relating to reporting of beneficial ownership.

The Maltese authorities implement a multi-pronged approach to verifying beneficial ownership information, comprising the following:

- using the registry approach (i.e. beneficial ownership information accessible in a central register);
- the company approach (i.e. obtaining beneficial ownership information from the company itself); and
- the existing information approach (i.e. obtaining beneficial ownership information from subject persons [e.g. financial institutions, TCSPs etc] and other competent authorities).

Therefore, there has been a strengthening of the measures to ensure that competent authorities are able to access information on beneficial ownership through different sources. Through the verification of information, which is confirmed by cross-checking across the different sources, the accuracy has now

become highly reliable. Any discrepancies in the beneficial ownership which are identified in the registers are required to be reported.

The MFSA verifies the beneficial ownership information that it receives in relation to TUBOR, which includes details of the settlor, beneficiary and the protector and the trustee itself. The exercise includes data validation, verification of identity details and more in-depth checks are performed in the case of complex structures and/or where the trust is associated with high-risk jurisdictions.

Trustees are required to file annual declarations for nil changes, or immediate submission of any changes to the reported data.

The MFSA also performs thematic inspections on its trustees, targeted to verify UBO information held by the trustees. This is performed via a risk-based approach. The outcomes of inspections carried out in 2019 were published in a circular¹², and further inspections of this nature were carried out in 2020 and scheduled for 2021. Where breaches were significant, the MFSA has taken enforcement action against the trustees – two sanctions issued in 2020 against trustees amounted to a total of €30,000 in penalties. Up until 2020, the MFSA had performed supervision on trustees representing 69% of the entire sector in Malta, carrying out 7 on-site inspections in 2019, and an additional 21 in 2020.

Other Initiatives on Beneficial Owner Information

The MFSA has also undertaken additional initiatives which together result in more accurate beneficial ownership information held by TCSPs, both in relation to trusts as well as companies. These include:

- An amendment of the Company Services Providers Act, which sees the extension of the authorisation and supervision requirement to cover all Company Service Providers, and removal of exemptions applicable to lawyers and accountants, and small operators;
- Outreach to Trustees as well as to Competent Authorities and Subject Persons in relation to TUBOR;
- Outreach to Trustees and Company Service Providers on the result of a Sectoral Risk Assessment in relation to legal persons and legal arrangements;
- A significant increase in outreach on financial crime risk mitigation; and
- A new MoU with the Malta Business Registry signed in 2020 to cooperate in the regulation of TCSPs and maintenance of the beneficial ownership registers.

¹² <https://www.mfsamt/wp-content/uploads/2019/10/Circular-Thematic-TUBOR.pdf>

Chapter 6 – Company Service Providers

Since 2019, the MFSA has been working on a review of the regime regulating CSPs, starting with a consultation document¹³ published in October 2019, which set out various proposals as to how the regulatory framework could be updated to meet the applicable MONEYVAL recommendation on the same. Subsequently, a feedback statement¹⁴ was published, setting out the key results from the consultation.

The legislative changes were passed via an Act of Parliament on 13 November 2020, removing the previous exemptions and introducing a provisional authorisation regime intended to streamline the pace by which the MFSA would authorise hundreds of previously exempt CSPs, as well as different classes, and ‘under threshold’ classes intended to distinguish between smaller and larger set-ups in terms of the obligations imposed. The new regime came into force on 16 March 2021.

Essentially, the new framework covers lawyers, accountants and notaries who previously carried out CSP activities without requiring a CSP authorisation, as well as individuals previously exempt by virtue of the fact that they hold under ten directorships/company secretarial positions.

In conjunction with the new framework, the MFSA also published a new rulebook¹⁵ which sets out the regulations applicable from the authorisations stage, to ongoing monitoring, and inter alia, the following:

- Prior approval and reporting requirements;
- Financial resources requirements;
- Insurance requirements;
- Governance;
- Risk management;
- Compliance;
- Outsourcing;
- Conduct of Business; and
- Record keeping.

At the same time, the FIAU also published the Implementing Procedures Part II¹⁶, focusing solely on CSPs, and which complement the general provisions of Part I¹⁷. The Implementing Procedures are legally binding, and the new Part II applicable exclusively to CSPs not only provides rules which must be followed by CSPs in the manner in which they carry out customer due diligence, the risk-based approach, and ongoing monitoring, but also a number of typologies which CSPs can follow as examples.

Newly formalised cooperation with the Malta Business Registry also allows for continuous monitoring and exchange of information whenever unauthorised CSPs attempt to perform CSP activities without the requisite authorisation issued by the MFSA.

In order to inform the general public of the change in laws, the MFSA undertook a marketing campaign in order to educate the public, as well as industry stakeholders about the changes. Furthermore, the

¹³ https://www.mfsa.mt/wp-content/uploads/2019/10/20191017_CSPconsultation_final.pdf

¹⁴ <https://www.mfsa.mt/wp-content/uploads/2020/04/Feedback-Statement-on-Consultation-Document-regarding-Raising-the-Bar-for-Company-Service-Providers.pdf>

¹⁵ <https://www.mfsa.mt/wp-content/uploads/2021/03/Company-Service-Providers-Rulebook.pdf>

¹⁶ https://fiaumalta.org/wp-content/uploads/2020/12/FIAU_IPs-Part2-CSPs-FINAL-Version.pdf

¹⁷ https://fiaumalta.org/wp-content/uploads/2020/09/20200925_Implementing-Procedures-Part-I.pdf

MFSA organised two sessions of a half-day webinars, and both sessions were fully booked, with a recording available for everyone else to refer to. The MFSA also participated in a large number of third party organised online conferences and webinars, as well as television programmes. This broad and extensive industry outreach, together with detailed guidance notes and FAQs made available, ensured industry awareness.

Chapter 7 – Data & Technology

To further improve its supervisory effectiveness, the MFSA is undertaking a number of technology and data-related projects. A new Data Management and Business Intelligence Function has been established, recognising the importance of data management, data governance and enhancing data quality and business intelligence across the whole organisation to deliver data-driven supervision. New data management platforms and business intelligence tools will automate certain parts of the supervisory process and allow for advanced analytics.

Technology projects undertaken in 2019 include:

1. Interfacing with Government databases, including the MBR's Beneficial Ownership Register; and
2. Implementation of and interfacing with new third-party software for enhanced due diligence.

The MFSA's Strategic Plan¹⁸, published in September 2019, set out its plans for extensive technological investment through to 2021. The most important projects being managed by a dedicated project management and quality assurance team during the period between 2019 until 2021 are the following:

- The Supervisory Cycle Management System (SCMS);

The SCMS is being designed to replace the suite of internal systems currently in use by the MFSA. The SCMS is custom-built to the MFSA's specifications, which will consolidate all supervisory data, and coordinate all authorisations and supervisory workflows and enhancing workflow management. The timely implementation of the SCMS will include the execution and management of its risk-based approach to supervision, it will streamline authorisations processes, automate activity and facilitate online regulatory returns and reporting.

- An Enterprise Data Warehouse, Business Intelligence Layer and Records Management Architecture;

This complements the SCMS in that it will allow for a single repository of data which may be readily queried, allowing for enhanced analytics, increased data quality and integrity, operational intelligence, allowing MFSA staff to operate on the basis of readily available data in an efficient and effective system. The tool will be able to generate Management Information dashboards covering all supervised sectors.

Once implemented, these tools will help the MFSA execute its risk-based supervisory model more efficiently.

¹⁸ <https://www.mfsa.mt/wp-content/uploads/2019/09/MFSA-Strategic-Plan.pdf>

Conclusion

As is apparent from the measures outlined above, the MFSA is highly committed to developing and embedding best practices in deterring financial crime throughout the industry that it regulates and internally in its organisation. The importance that it places on effective measures to reduce the risk of AML/CTF in the jurisdiction are reflected at every stage of the supervisory life-cycle.

This commitment has become fully integrated in its supervisory policy and approach as it continues to identify areas where it can strengthen its practices through engagement with other supervisory authorities, through participation in the international community and through an ongoing process of organisational challenge and development.

The MFSA is determined to play its part to support the jurisdiction in achieving recognition as a responsible and respected member of the international community.

