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Fintech Supervision, MFSA

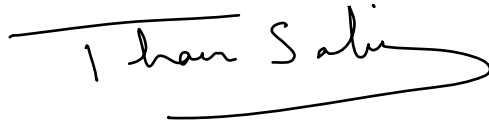
Triq I-Imdina,
Zone I Central Business District,
Birkirkara
CBD 1010
By email: fintechpolicy@mfsa.mt

Re: MFSA Consultation Document on Chapter 3 of the Financial Institutions Rulebook

The EMA is the EU trade body representing electronic money issuers and alternative payment service providers. Our members include leading payments and e-commerce businesses worldwide, providing online payments, card-based products, electronic vouchers, and mobile payment instruments. Most members operate across the EU, most frequently on a cross-border basis. A list of current EMA members is provided at the end of this document.

I would be grateful for your consideration of our comments and proposals.

Yours sincerely,



Dr Thaer Sabri
 Chief Executive Officer
 Electronic Money Association

EMA comments:

The draft guidance is helpful and provides more detail on the existing compliance obligations in a structured manner, which is welcome.

Additional comment on how governance provisions contained in the current guidance align with the MFSA Corporate Governance Code, would be welcome.

Subject	Provision	EMA comments
Board of Directors	R3-2.8.8 The Board of Directors shall: <ul style="list-style-type: none"> i. be composed of at least three (3) members; ii. include at least one (1) Independent Non-Executive Director; iii. have a balance of executive and non-executive directors; and iv. have at least one (1) member which is resident in Malta. 	At least 3 members is viewed a reasonable requirement, particularly as it includes independent NEDs, who do not have operational roles. However, there is no definition of what the MFSA considers to be an “independent” NED compared to a NED – this should be made clearer.

<p>MFSA prior approval</p>	<p>R3-2.3 Matters requiring Prior Approval The Licence Holder shall obtain the written consent of the MFSA before:</p> <ul style="list-style-type: none"> i. making a change to its registered name, business or trade name, as applicable. ii. implementing material changes to its business at least one month before the change is to take effect, notwithstanding whether the proposed material change/s require authorisation or otherwise. iii. agreeing to sell or dispose of its business or any significant part thereof, merge with any other company, undergo any reconstructions or vary its nominal or issued share capital, or effect any material change in the voting rights of its immediate qualifying shareholder. 	<p>Additional clarity would be welcome regarding why there is a specific timeframe for prior approval for implementation of material changes to the business vs other notification requirements including within this section.</p> <p>The provision would benefit from further clarification around the process. For example, can PSPs implement changes if they receive no response to their notification from the MFSA within a certain timeframe, or must they wait for formal approval before they proceed. What are the timescales within which the MFSA must provide a decision? This is particularly important with respect to changes to the business model, as firms in this sector often need to make changes quickly in order to continue to compete.</p>
<p>Approval and Departure Process for Appointed Persons</p>	<p>R3-2.4.3 Proposed persons shall adhere to the MFSA’s Guidelines to the Personal Questionnaire and submit any documentation to the Authority through the chat box function within the Authority’s LH Portal. Any documentation requested in original should be submitted to the Authority in writing.</p>	<p>We request the MFSA to revise the Guidelines to the Personal Questionnaire in order to bring it into alignment with the LH Portal.</p> <p>Further clarification would be welcome on the form of the original document, e.g. whether documents with a qualifying electronic signature (eIDAs) would be considered “original” by the MFSA, or whether hard copies of the documents should be submitted.</p>

Personal Questionnaire	R3-2.4.6 The Licence Holder shall submit to the Authority, as part of the fitness and properness assessment on the proposed person, the Personal Questionnaire and Entity Assessment Form as applicable.	It should be made clear that Personal Questionnaires are submitted by applicants themselves and not the by Licence Holder to avoid confusion.
Conflict of interest	<p>Various provisions through the guidance, including in context of:</p> <ul style="list-style-type: none"> - Board of Directors; - Outsourcing; - Maintaining an up-to-date conflict of interest policy developed by the Board; the guidance provides for the minimum considerations [R3-2.8.18 - R3-2.8.23]; - Maintain an up-to-date record of the situations / service in which a conflict of interest entailing a risk of damage to the interests of one or more Clients has arisen or, in the case of an ongoing service, may arise; report to the Board of Directors on a frequent basis, and at least annually on such situations. [R3-2.8.23] 	We would welcome clarification whether the MFSA would support a best endeavours approach where firms work to manage COI as far as they are able.
Business Continuity	R3-2.8.45 The business continuity management shall consist of: <ul style="list-style-type: none"> i. a Business Impact Analysis ('BIA') ii. a Business Continuity Plan ('BCP'); iii. a Disaster Recovery Plan ('DRP'); 	The contents specified in the guidance appear to be of a reasonable standard and therefore helpful. These are standard documents, in terms of their scope and objective.
Annual Compliance Report	<p>R3-2.8.37 The Licence Holder shall submit to the MFSA on an annual basis, together with the annual audited financial statements pursuant to R3-2.16.3, a Compliance Report drawn up by its Compliance Officer, which shall include:</p> <ul style="list-style-type: none"> - the Compliance Officer's Compliance Monitoring Plan as approved by the Board of Directors and the outcome of such plan, - a list of breaches identified and their status; and 	It would be helpful to amend the sign off - to have the report signed off <i>after</i> approval by the <u>Board</u> .

	<ul style="list-style-type: none">- a confirmation that all the local AML/CFT requirements have been satisfied, which confirmation should be obtained from the Licence Holder's MLRO. <p>R3-2.8.38 The Licence Holder shall ensure that the Compliance Report is signed by at least one Executive Director and may be countersigned by the Compliance Officer.</p>	
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Our members as of 21 June 2024:

Airbnb Inc
Airwallex (UK) Limited
Amazon
Ambr
American Express
ArcaPay UAB
Banked
Bitstamp
BlaBla Connect UK Ltd
Blackhawk Network EMEA Limited
Boku Inc
Booking Holdings Financial Services International Limited
BVNK
CashFlows
Circle
Coinbase
Contis
Crypto.com
Currenxie Technologies Limited
Decta Limited
eBay Sarl
ECOMMPAY Limited
Em@ney Plc
emerchantpay Group Ltd

MuchBetter
myPOS Payments Ltd
Navro Group Limited
Nuvei Financial Services Ltd
OFX
OKG Payment Services Ltd
OKTO
One Money Mail Ltd
OpenPayd
Own.Solutions
Park Card Services Limited
Payhawk Financial Services Limited
Paymentsense Limited
Paynt
Payoneer Europe Limited
PayPal
Paysafe Group
Paysend EU DAC
PayU
Plaid
PPRO Financial Ltd
PPS
Push Labs Limited
Ramp Swaps Ltd

EPG Financial Services Limited
eToro Money
Etsy Ireland UC
Euronet Worldwide Inc
Facebook Payments International Ltd
Financial House Limited
First Rate Exchange Services
Flywire
Gemini
Globepay Limited
GoCardless Ltd
Google Payment Ltd
IDT Financial Services Limited
iFAST Global Bank Limited
Imagor SA
Ixaris Systems Ltd
J. P. Morgan Mobility Payments Solutions S. A.
Lightspark Group, Inc.
Modulr Finance B.V.
MONAVATE
MONETLEY LTD
Moneyhub Financial Technology Ltd
Moorwand Ltd

Remitly
Revolut
Ripple
Securiclick Limited
Segpay
Soldo Financial Services Ireland DAC
Square
Stripe
SumUp Limited
Syspay Ltd
Transact Payments Limited
TransferGo Ltd
TransferMate Global Payments
TrueLayer Limited
Uber BV
VallettaPay
Vitesse PSP Ltd
Viva Payments SA
Weavr Limited
WEX Europe UK Limited
Wise
WorldFirst
Worldpay
Yapily Ltd