

CHAPTER 3 OF THE FINANCIAL INSTITUTIONS RULEBOOK - FIR/03

**RULES APPLICABLE TO FINANCIAL INSTITUTIONS ISSUING
ELECTRONIC MONEY OR PROVIDING PAYMENT SERVICES IN
TERMS OF THE FINANCIAL INSTITUTIONS ACT**

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REVISIONS LOG

VERSION	DATE ISSUED	DETAILS
1.00	OCT 2024	FIR/03 APPLICABLE TO ELECTRONIC MONEY ISSUERS AND PAYMENT INSTITUTIONS ISSUED
1.01	OCT 2024	Update to R3-2.13.2 and R3-2.13.7

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Title 1 **General**

R3-1.1 **Scope & Application**

R3-1.1.1 This Chapter contains ongoing requirements applicable to Financial Institutions licensed in terms of the Financial Institutions Act ('the Act') and authorised to:

- i. provide payment services listed in paragraphs 2(a) to 2(g) of the Second Schedule to the Act; and
- ii. issue electronic money as defined in the third schedule to the Act.

R3-1.1.2 Persons providing the payment services listed under paragraph 2(h) of the Second Schedule of the Act (i.e. Account Information Service Providers) shall comply with the requirements set out in Chapter 4 of the Financial Institutions Rulebook (FIR/04).

R3-1.1.3 This Chapter is being issued pursuant to Article 5(4)(b) of the Act and is modelled on the requisites of Directive (EU) 2015/2366 and Directive 2009/110/EC as may be amended from time to time.

R3-1.1.4 This Chapter is not intended to provide a complete summary of the Act, regulations or rules issued thereunder. Therefore, it must not be construed as being a substitute for a reading of the applicable regulatory framework. Licence Holders shall refer to the Act, the regulations issued thereunder, applicable rules issued by the Authority and any other relevant legal and regulatory requirements.

The Licence Holder is also expected to take due account and, where applicable, comply with any relevant local and EU Regulations and Directives, Commission Delegated Regulations and Directives, Regulatory Technical Standards and Implementing Technical Standards, as well as any Guidelines which may be issued by the EBA and as may be amended from time to time. These include but are not limited to:

- i. Central Bank of Malta [Directives](#);
- ii. the [Prevention of Money Laundering Act](#) and subsidiary legislation;
- iii. the [Companies Act](#) (Cap. 386 of the Laws of Malta) and subsidiary legislation emanating therefrom;
- iv. the [Civil Code](#) (Cap. 16 of the Laws of Malta);
- v. the Payment Accounts Directive as transposed in the Credit Institutions and Financial Institutions (Payment Accounts) Regulations (S.L.371.18)

- vi. the SEPA Regulation;
- vii. the Cross-Border Payments Regulation;
- viii. the Instant Payment Regulation
- ix. the Settlement Finality Directive as transposed in Directive 2 of the Central Bank of Malta;
- x. the DORA Regulation.

- R3-1.1.5 This Chapter shall also be read in conjunction with Chapter 1 of the Financial Institutions Rulebook (FIR/01) which sets out the authorisation process for financial institutions.
- R3-1.1.6 Title 2 of this Chapter outlines the ongoing requirements applicable to all Licence Holders.
- R3-1.1.7 Title 3 of this Chapter outlines supplementary requirements applicable to specific services and activities.
- R3-1.1.8 Title 4 of this Chapter provides for enforcement and sanctions in the event of misconduct by Licence Holders.

R3-1.2 Definitions

For the purposes of this Chapter, the definitions set out below shall apply.

In the event that any of the definitions contained herein conflict with a definition under the Act or any other law administered by the Authority for the time being in force in Malta, the definitions set out in the Act shall prevail, unless otherwise specified herein.

Average daily outstanding electronic money means the average amount of financial liabilities related to the electronic money in issue for the last six (6) calendar months which is to be calculated as follows:

- i. the daily average amount of financial liabilities related to the electronic money in issue for each of the last six (6) calendar months is to be multiplied by the number of calendar days in each of those months;
- ii. the amounts resulting from the calculation set out in paragraph (i) shall be added up; and
- iii. the total amount resulting from the calculation set out in paragraph (i) shall be divided by the total number of calendar days forming the six (6) calendar months referred to in paragraph (i):

Provided that the daily average amount of financial liabilities related to the electronic money in issue for a calendar month shall be calculated as follows:

- i. the amount of financial liabilities related to the electronic money in issue at the end of each calendar day of the preceding six (6) calendar months shall be added up; and
- ii. the amount resulting from the calculation set out in point (i) shall be divided by the total number of calendar days forming the calendar months referred to in the said paragraph.

Banking Act means the [Banking Act](#), Chapter 371 of the Laws of Malta.

Central Bank of Malta (CBM) shall have the meaning as assigned to it under Article 2(1) of the Act.

Cross-border Payments Regulation means Regulation (EU) 2021/1230 of the European Parliament and of the Council of 14 July 2021 on cross border payments in the Union.

Clients	means payment service users and/or electronic money holders.
Directive 2009/110/EC (EMD)	shall have the meaning as assigned to it under Article 2(1) of the Act.
Directive 2013/36/EU (CRD)	shall have the meaning as assigned to it under Article 2(1) of the Act.
Directive (EU) 2015/2366 (PSD)	shall have the meaning as assigned to it under Article 2(1) of the Act.
European Banking Authority (EBA)	shall have the meaning as assigned to it under Article 2(1) of the Act.
Electronic Money	shall have the meaning as assigned to it under Article 2(1) of the Act.
Electronic Money Institution or 'EMI'	shall have the meaning as assigned to it under Article 2(1) of the Act.
Electronic Money Token	shall have the meaning as assigned to it under Article 3(1)(7) of Regulation 2023/1114 (MiCA Regulation).
Executive Director	means a Director who is contractually engaged to undertake the day-to-day executive management and decision making process of the entity.
Financial Intelligence Analysis Unit (FIAU)	means the Financial Intelligence Analysis Unit as established by the Prevention of Money Laundering Act (Cap. 373 of the Laws of Malta).
Financial Institutions Act or 'the Act'	means the Financial Institutions Act , Chapter 376 of the Laws of Malta.
Financial Institutions Act (Fees) Regulations	means the Financial Institutions (Fees) Regulations , Subsidiary Legislation 376.03 of the Laws of Malta.
Financial Institutions Act (Safeguarding of Funds) Regulations	means the Financial Institutions Act (Safeguarding of Funds) Regulations , Subsidiary Legislation 376.04 of the Laws of Malta.
Funds	shall have the meaning as assigned to it under Article 2(1) of the Act.

FIR/01 means Chapter 1 of the Financial Institutions Rulebook.

Independent Non-Executive Director means a Non-Executive Director who is free from any present and past business, family, or other relationship of any nature – with the entity, its controlling shareholder/s or the management of either – that could influence the Director’s objective and balanced judgment and reduce the member’s ability to take decisions independently.

Instant Payments Regulation means Regulation (EU) 2024/886 of the European Parliament and of the Council of 13 March 2024 amending Regulations (EU) No 260/2012 and (EU) 2021/1230 and Directives 98/26/EC and (EU) 2015/2366 as regards instant credit transfers in euro.

Key Function Holder means persons who have significant influence over the direction of the Licence Holder but who are not directors sitting on the board and are not the CEO. They include the heads of internal control functions and the CFO, where they are not directors sitting on the board, and, where identified on a risk-based approach by the Authority, other key function holders. Other key function holders might include heads of significant business lines, the Compliance Officer and the MLRO.

Licence Holder shall mean a Financial Institution licensed in terms of the [Act](#) and authorised to:

- i. provide payment services listed in paragraphs 2(a) to 2(g) of the Second Schedule to the Act; and/or
- ii. issue electronic money as defined in the third schedule to the Act.

MFSA or ‘the Authority’ means the Malta Financial Services Authority as established by the [Malta Financial Services Authority Act](#), Chapter 330 of the Laws of Malta

Non-Executive Director means a director who is not engaged in the daily management of the entity.

Outsourcing shall have the meaning as assigned to it under Article 2(1) of the Act.

Outsourcing Service Provider	shall have the meaning as assigned to it under Article 2(1) of the Act.
Payment Accounts Directive	shall have the meaning as assigned under Article 2(1) of the Act.
Payment Institution	shall have the meaning as assigned under Article 2(1) of the Act.
Payment Services	shall have the meaning as assigned under Article 2(1) of the Act.
Payment Services Provider (PSP)	shall have the meaning as assigned under Article 2(1) of the Act.
Regulated Activities	refers to the activities set out in the Second Schedule and the Third Schedule of the Act .
Regulation (EU) No 575/2013 (CRR)	means Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.
Regulation (EU) 2016/679 (GDPR)	means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).
Regulation (EU) No 260/2012 (SEPA Regulation)	means Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro
Regulation (EU) 2022/2554 (DORA Regulation)	means Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014, (EU) No 909/2014 and (EU) 2016/1011.
Regulation (EU) 2023/1114 (MiCA Regulation)	means Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No

1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937

Senior Management shall refer to those natural persons who exercise executive functions within the Licence Holder and who are responsible and accountable to the Board for the day-to-day management of the Licence Holder.

Supervisory Consolidations Regulations means the [Supervisory Consolidation \(Credit Institutions\) Regulations](#), Legal Notice 494 of 2021.

R3-1.3 **High Level Principles**

R3-1.3.1 Licence Holders shall act in an ethical manner taking into consideration the best interests of their clients and the integrity of Malta's financial system.

R3-1.3.2 Licence Holders shall act honestly, fairly and professionally and shall comply with the relevant provisions of the Act and any applicable regulations and rules issued thereunder, as well as with other relevant legal and regulatory requirements.

R3-1.3.3 Licence Holders shall co-operate with the MFSA in an open and honest manner and shall provide the Authority with any information, documentation and/ or returns it may require.

R3-1.3.4 Without prejudice to Article 22 of the Act, Licence Holders and their representatives shall:

- i. make reference to, and where applicable comply with, the applicable Maltese laws, regulations and rules issued thereunder as well as any guidelines which may be issued by the MFSA or other relevant body to assist the said persons in complying with their legal and regulatory obligations;
- ii. cooperate in an open and honest manner with the MFSA and any other relevant regulatory authorities, including the FIAU, the CBM and the EBA; and
- iii. take due account and, where applicable, comply with any relevant EU legislation as well as any guidelines/statements/ industry best practices which may be issued by international standard setting bodies including any guidelines or guidance notes issued by the EBA and the FIAU.

R3-1.3.5 Where documentation is required to be submitted to the Authority and such documentation is signed using a valid qualified signature in accordance with the [circular](#) issued by the MFSA on the use of electronic signatures dated 15 November 2022, the Licence Holder is not required to submit such documentation in original.

Title 2 Ongoing Requirements applicable to all Licence Holders

R3-2.1 Activities which are prohibited

R3-2.1.1 Licence holders shall not take deposits or other repayable funds from the public as per Article 2A of the Banking Act.

R3-2.1.2 Licence holders shall be prohibited from undertaking transactions referred to in Article 10 of the Act.

R3-2.2 Matters requiring Notification

R3-2.2.1 The Licence Holder shall notify the MFSA in writing, immediately upon becoming aware, of:

- i. without prejudice to the approval and departure process set out in R3-2.4, any changes in Senior Managers and/or Key Function Holders of the Licence Holder;
- ii. any evidence of significant fraud or dishonesty by a member of the Licence Holder's staff either committed against one of its customers or impinging on the integrity of a staff member;

Provided that significance shall be determined by:

- a. the aggregate size of the monetary loss or potential monetary loss to the Licence Holder or its customers;
 - b. the risk of reputational loss to the firm;
 - c. whether the incident or a pattern of incidents reflects a weakness in the Licence Holder's internal controls.
- iii. a decision to make a claim on its professional indemnity insurance or on any other insurance policy held in relation to its business where applicable. The notification should be provided as soon as the decision is taken.
 - iv. a change to the amount of PII coverage pursuant to R3-3.4.4.
 - v. any actual or intended legal or judicial proceedings of a material nature by or against the Licence Holder and/or the ultimate beneficial owners, immediately after the decision has been taken or on becoming aware of the matter.

- vi. any other material information concerning the Licence Holder, its business or its staff in Malta or abroad – immediately upon becoming aware of the matter.

Provided that information would be considered material where:

- a. there is a financial impact on the Licence Holder and/or its clients;
 - b. there is a reputational impact to the Licence Holder.
- vii. any breach of the Act, regulations and rules issued thereunder, as soon as the Licence Holder becomes aware of the breach.
 - viii. any changes to its safeguarding arrangements, including changes to the Licence Holder's safeguarding methodology or third-parties involved in the safeguarding of funds pursuant to R3-2.9.12.
 - ix. any change to important operational outsourcing arrangements including any changes to the activities which are outsourced and changes in outsourcing service providers pursuant to R3-2.8.11 and R3-2.8.12.
 - x. Any changes to the information notified in terms of R3-2.6 relating to passporting, agents and distributors.
 - xi. any change in the responsibilities of an appointed person as defined in R3-2.4.1.
 - xii. a decision to open a branch in Malta.

R3-2.3 Matters requiring Prior Approval

R3-2.3.1 The Licence Holder shall obtain the written consent of the MFSA before:

- i. making a change to its name (including commercial and trade names) and/or address.
- 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, including any decision to undertake additional activities pursuant to Article 5(6) of the Act or to make material changes to the Board of Directors of the Licence Holder.
- 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.

- iv. the appointment of persons referred to in R3-2.4.
- v. any decision to open a branch, outside Malta, prior to opening said branch, pursuant to Article 8(2) of the Act.
- vi. any decision to acquire or set up a subsidiary in or outside Malta, pursuant to Article 8(2B) of the Act.
- vii. any decision to provide services in a third country through an agent pursuant to Article 8A(7) of the Act.
- viii. any decision to provide services through an agent or distributor, following the process outlined in R3-2.6.
- ix. the proposed change in the participation in control of the Licence Holder pursuant to Article 9 of the Act in line with the approval processes set out in FIR/01 and R3-2.4 as applicable.

- R3-2.3.2 Pursuant to R3-2.3.1 point (ii), in requesting the Authority's written consent, the Licence Holder shall submit:
- a. a transition plan for the proposed Board; and
 - b. an updated business plan.

R3-2.4 Approval and Departure Process for Appointed Persons

- R3-2.4.1 The Licence Holder shall ensure that Appointed Persons follow the approval and departure requirements set out in this section.

For the purposes of this Chapter:

- i. Appointed Persons shall refer to any person who has submitted a Personal Questionnaire and who has been approved by the Authority to hold a specific role/s with the Licence Holder; and
- ii. Proposed Persons shall refer to any person who has been proposed to hold the role of an Appointed Person with the Licence Holder.

Without prejudice to the generality of the foregoing, the following listed persons are required to obtain the Authority's approval prior to commencing their involvement with the Licence Holder:

- ultimate beneficial owners;
- qualifying shareholders;
- directors;

- key function holders.

R3-2.4.2 There are two processes relating to appointed persons, namely (i) the approval process and (ii) the departure process.

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.

R3-2.4.4 The MFSA shall use all the information provided by the proposed person, and any other information that ought to have been disclosed by the said person for the purposes of the processes referred to in this section. The MFSA shall not be liable in damages for any acts or omissions on the part of the proposed person.

The Approval Process

R3-2.4.5 Proposed persons appointed or designated in relation to Licence Holders, shall inform and apply for approval from the Authority prior to engaging in their proposed role.

R3-2.4.6 The Licence Holder shall ensure that proposed persons submit to the Authority, as part of the fitness and properness assessment on the proposed person, the Personal Questionnaire and any forms which may be requested. The Authority shall initiate the fitness and properness assessment upon submission of the complete form and supporting documentation as stipulated therein.

Such assessment will be undertaken in line with the [Guidance on the fitness and properness assessment applied by the Authority](#), which shall include an assessment of the following criteria:

- competence;
- reputation;
- conflicts of interest; and
- time commitment, where applicable.

R3-2.4.7 The Authority may also require further information from the Licence Holder or the proposed person. For purposes of this rule, the MFSA may *inter alia* conduct interviews and request any supporting documentation it may deem necessary.

R3-2.4.8 Where the proposed person is deemed to be fit and proper, the Authority shall issue its 'in-principle' approval in writing to the appointment or designation of the person within the Licence Holder.

Provided that the Authority may also require the appointed person to fulfil certain conditions within set timeframes. These conditions shall be indicated in the approval letter.

Provided further that the appointed person may only commence their involvement with the Licence Holder upon satisfaction of the conditions set out in the approval letter.

The Departure Process

R3-2.4.9 The Licence Holder shall notify the Authority of the resignation or removal of any Appointed Person by not later than five working days from the effective resignation or departure date. The Licence Holder shall also provide to the Authority together with this notification, a written statement noting the reason/s for departure and the remedial measures being taken to satisfy the licensing conditions as applicable. The notification should be submitted to the Authority through the chat box function of the [LH Portal](#). Any documentation requested in writing should be submitted to the Authority in original.

R3-2.4.10 The Licence Holder shall request the person referred to in R3-2.4.9, to provide to the Authority:

- i. the reason for their departure; and
- ii. a written confirmation that such departure was not a consequence of any regulatory implications or to provide relevant details of any such regulatory implications, as appropriate; and

Provided that the Authority may at its discretion, request that an exit interview is held with the person referred to in R3-2.4.9.

R3-2.5 Fees

R3-2.5.1 The Licence Holder shall promptly pay all amounts due to the MFSA, in line with the [Financial Institutions \(Fees\) Regulations \(S.L. 376.03\)](#).

R3-2.5.2 Licence Holders, upon authorisation, shall be required to pay the initial supervisory fee for the first year of operation upon receipt of the Licence. The fee payable shall be proportionate to the period remaining between the date of granting of the Licence and the end of that calendar year.

R3-2.5.3 The Annual Supervisory Fee subsequent to the initial supervisory fee shall be payable by the Licence Holder, on the 1st of January of each year based on the supervisory fee paid the previous year.

Any resulting difference being equivalent to the balance of the annual supervisory fee due in terms of R3-2.5.2 shall be paid on the 1st of July of each year.

R3-2.5.4 The annual supervisory fee payable shall amount to the higher of:

- i. Total Assets x 0.0002; or
- ii. EUR 2,500

Provided that Total Assets shall be as reported in the statutory schedules under Banking Rule BR/06 in the year immediately preceding the year when the fee is payable.

R3-2.6 **Passporting, Agents and Distributors**

R3-2.6.1 Licence Holders shall comply with the [European Passport Rights for Financial Institutions Regulations](#) (S.L. 376.07).

Notifications

R3-2.6.2 Pursuant to R3-2.6.1, a Licence Holder wishing to establish a branch in another Member State in exercise of the right of establishment, shall:

- i. populate and submit Annex II of [Commission Delegated Regulation \(EU\) 2017/2055](#); and
- ii. submit Personal Questionnaires in relation to (i) the persons responsible for the management of the proposed branch and (ii) the proposed Money Laundering Reporting Officer.

R3-2.6.3 Pursuant to R3-2.6.1, a Licence Holder wishing to undertake payment services in another Member State through an agent shall populate and submit Annex III of [Commission Delegated Regulation \(EU\) 2017/2055](#).

R3-2.6.4 Pursuant to R3-2.6.1, a Licence Holder wishing to distribute electronic money in another Member State through a distributor shall populate and submit Annex IV of [Commission Delegated Regulation \(EU\) 2017/2055](#).

R3-2.6.5 Pursuant to R3-2.6.1, a Licence Holder wishing to undertake regulated activities in exercise of the freedom to provide services (without the use of an agent or branch) shall populate and submit Annex V of [Commission Delegated Regulation \(EU\) 2017/2055](#).

R3-2.6.6 A Licence Holder wishing to appoint an agent or distributor locally (i.e. no passporting) shall notify the following information to the Authority:

- i. name and address of the agent or distributor;
- ii. a description of the internal control mechanisms that will be used by the agent or distributor in order to comply with the obligations in relation to AML/CFT requirements;
- iii. the identity of directors and persons responsible for the management of the agent to be used in the provision of the activities referred to in the Schedules to the Act, and for agents other than payment service providers, evidence that they are fit and proper persons;
- iv. the regulated activities to be undertaken by the agent or distributor; and

R3-2.6.7 Without prejudice to R3-2.6.2 to R3-2.6.6, Licence Holders shall submit any additional information which may be requested by the MFSA.

R3-2.6.8 Licence Holders shall not commence the undertaking of regulated activities pursuant to R3-2.6.2 to R3-2.6.6 prior to their entry in the register pursuant to Article 8A (4A) of the Act.

Provided that the MFSA may subject any person, who will be appointed as an agent of the Licence Holder to any of the obligations imposed on Licence Holders in terms of the Act and these rules.

Ongoing obligations

R3-2.6.9 The Licence Holder shall notify the MFSA of any changes to the information provided in terms of R3-2.6.2 to R3-2.6.4 immediately upon becoming aware.

R3-2.6.10 The Licence Holder shall ensure that agents or distributors notified in terms of R3-2.6.2, R3-2.6.3 or R3-2.6.6 inform their customers and potential customers that they are acting as agents or distributors, as the case may be, on behalf of the Licence Holder.

R3-2.6.11 Where the Licence Holder wishes to establish a branch or otherwise undertake regulated activities in a third country, R3-2.6.2 to R3-2.6.4 shall apply mutatis mutandis.

R3-2.7 Requirements relating to sound & prudent management

General Governance Arrangements

R3-2.7.1 In complying with the rules in this section, Licence Holders shall be guided by the following guidelines & publications as may be amended from time to time:

- i. the MFSA's [Corporate Governance Code](#);
- ii. the EBA's Guidelines on Internal Governance ([EBA/GL/2021/05](#)); and
- iii. the Joint ESMA and EBA Guidelines on the assessment of suitability of members of the management body ([EBA/GL/2017/12](#)).

R3-2.7.2 The Licence Holder's business shall be effectively directed from Malta by at least two individuals in their role as either an Executive Director and/or Senior Management.

Provided that the Authority may at its discretion require that the Licence Holder's business shall be effectively directed by a larger number of individuals from Malta depending on the nature, scale and complexity of the business.

R3-2.7.3 The directors and other key function holders shall be of sufficiently good repute, possess sufficient knowledge and experience, commit sufficient time to perform their functions and be sufficiently experienced so as to ensure the sound and prudent management of the Licence Holder on an ongoing basis.

R3-2.7.4 The Licence Holder shall take reasonable steps to ensure continuity and regularity in the performance of its activities. To this end, the Licence Holder shall employ appropriate and proportionate systems, resources and procedures.

R3-2.7.5 The Licence Holder shall:

- i. ensure that its personnel are aware of the procedures which must be followed for the proper discharge of their responsibilities;
- ii. employ personnel with the skills, knowledge and expertise necessary for the discharge of responsibilities allocated to them;
- iii. maintain adequate and orderly records of its business and internal organisation;

- iv. ensure that the performance of multiple functions by its relevant persons does not, and is not likely to, prevent those persons from discharging any particular function soundly, honestly and professionally; and
- v. establish a code of conduct/ ethics framework which promotes an ethical and professional culture.

For these purposes, the Licence Holder shall take into account the nature, scale and complexity of its business, and the nature and range of activities undertaken in the course of that business.

R3-2.7.6 Without prejudice to R3-2.7.5, the Licence Holder shall establish, implement and maintain:

- i. an adequate and effective internal governance and internal control framework that includes a clear organisational structure and well-functioning independent internal audit and compliance functions that have sufficient authority, stature and resources to perform their functions and comply with the applicable regulatory framework;
- ii. effective procedures to identify, manage, monitor and report the risks to which it is or might be exposed, including operational and security risks relating to services which may be provided by the Licence Holder;
- iii. decision-making procedures and an organisational structure with well-defined, transparent and consistent lines of responsibility;
- iv. effective internal reporting and communication of information at all relevant levels of the Licence Holder;
- v. systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question;
- vi. adequate internal control mechanisms, including sound administrative and accounting procedures, designed to secure compliance with decisions and procedures at all levels of the Licence Holder including procedures that enable it to deliver in a timely manner to the MFSA upon request, financial reports which reflect a true and fair view of its financial position and which comply with all applicable accounting standards and rules;

- vii. sufficient records to be able to demonstrate compliance with the conditions of its Licence as required;
- viii. adequate business continuity arrangements in terms of R3-2.7.43. The business continuity arrangements shall be aimed at ensuring, in the case of an interruption to its systems and procedures, the preservation of essential data and functions and the maintenance of its services, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of its services;
- ix. adequate security arrangements including *inter alia* in relation to cyber security; and
- x. sound security mechanisms in place to guarantee the security and authentication of the means of transfer of information, minimise the risk of data corruption and unauthorised access and to prevent information leakage maintaining confidentiality of data at all times. For purposes of this Rule 'security' shall also include cyber security.

Responsibility of the Board of Directors

R3-2.7.7 Licence Holders shall ensure that each member of its Board of Directors shall act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of the senior management where necessary and to effectively oversee and monitor management decision-making.

R3-2.7.8 Without prejudice to R3-2.7.2 the Board of Directors shall:

- 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.

Provided that the Authority may exercise its discretion and require a larger number of directors and/or a different composition of executive directors, non-executive directors and independent non-executive directors depending on the nature, scale and complexity of the Licence Holder's business and its shareholding structure.

R3-2.7.9 The Board of Directors of the Licence Holder shall be vested with the responsibility to abide by all requirements under the Act and any regulations made and rules issued thereunder.

- R3-2.7.10 The Board of Directors shall meet regularly on at least a quarterly basis.
- R3-2.7.11 The Chairperson of the board shall meet the following conditions:
- i. the Chairperson of the Board of Directors shall be an independent non-executive member.
 - ii. the Chairperson of the Board of Directors shall lead the Board of Directors, shall contribute to an efficient flow of information within the Board of Directors and between the Board of Directors and the committees thereof, where established, and shall be responsible for its effective overall functioning.
 - iii. the Chairperson shall set meeting agendas and ensure that strategic issues are discussed with priority.
 - iv. the Chairperson shall ensure that decisions of the Board of Directors are taken on a sound and well-informed basis and that documents and information are received in enough time before the meeting.

Provided that the Authority may provide a temporary derogation from the requirement set out in R3-2.7.11(i). Any such derogation will be provided in writing following a reasonably justified request by a Licence Holder.

- R3-2.7.12 The Licence Holder shall:
- i. ensure board packs are circulated in good time prior to board meetings;
 - ii. retain adequate records of board meetings, including board packs and duly approved board minutes which are well documented and allow the reader to understand the rationale underlying any decisions taken, including any specific concerns raised by Directors.
- R3-2.7.13 Directors sitting on the Board shall constructively challenge and critically review propositions, explanations and information received when exercising judgement and taking decisions.
- R3-2.7.14 Licence Holders shall ensure that the Board of Directors define, approve and oversee:
- i. the overall business strategy and key policies of the Licence Holder taking into account the Licence Holder's long-term financial interest and solvency;
 - ii. adequate and effective internal governance and internal control framework that includes a clear organisational structure and well-functioning independent internal risk management, compliance

and audit functions that have sufficient authority, stature and resources to perform their functions;

- iii. the organisation of the Licence Holder for the provision of services and/or activities, including the skills, knowledge and expertise required by personnel, including key function holders, the resources, the procedures and the arrangements for the provision of services, taking into account the nature, scale and complexity of its business and all the requirements the firm has to comply with;
- iv. the implementation of the governance arrangements that ensure sound and prudent management of the Licence Holder, including the segregation of duties in the organisation and the prevention of conflicts of interest;
- v. targets for the liquidity management of the Licence Holder;
- vi. arrangements aimed at ensuring the internal functioning of each committee of the Board of Directors, when established, detailing the:
 - a. role, composition and tasks of each of them;
 - b. appropriate information flow, including the documentation of recommendations and conclusions, and reporting lines between each committee and the Board of Directors, the Authority and other parties;
- vii. a conflict of interest policy at institutional level in line with R3-2.7.21;
- viii. formal and transparent procedures for the determination of the remuneration of the directors and executive staff in line with R3-2.7.24;
- ix. procedures for the regular assessment and evaluation of the collective performance of the Board of Directors and its committees; and
- x. a selection and suitability assessment process for the Board of Directors, CEO and key function holders.

R3-2.7.15 The Licence Holder shall ensure that:

- i. members of the Board of Directors have adequate access to information and documents which are needed to oversee and monitor management decision-making;

- ii. individuals responsible for internal control functions are able to act independently and raise concerns directly with the non-executive directors sitting on the board where necessary, when adverse risk developments affect or may affect the Licence Holder

R3-2.7.16 The governance arrangements referred to in this section shall comply with the following principles:

- i. the Board of Directors shall have the overall responsibility for the Licence Holder and approve and oversee the implementation of the Licence Holder's strategic objectives, risk strategy and internal governance;
- ii. the Board of Directors shall monitor and periodically assess the adequacy and implementation of the Licence Holder's strategic objectives in the provision of services, the effectiveness of the Licence Holder's governance arrangements and the adequacy of the policies relating to the provision of services to clients and take appropriate steps to address any deficiencies;
- iii. the Board of Directors shall assess whether and how material changes to the business or organisational structure of the Licence Holder may impact the soundness of the Licence Holder;
- iv. the Board of Directors shall ensure the integrity of the accounting and financial reporting systems, including financial and operational controls and compliance with the law and relevant standards;
- v. the Board of Directors shall oversee the process of disclosure and communications;
- vi. the Board of Directors shall be responsible for providing effective oversight of senior management;
- vii. the chairman of the Board of Directors of the Licence Holder shall not exercise simultaneously the functions of a chief executive officer within the same Licence Holder, unless justified by the Licence Holder and authorised by the MFSA;
- viii. where committees are established, these are composed of at least 3 individuals, including an independent non-executive director;

- ix. the Board of Directors shall monitor and periodically assess the effectiveness of the Licence Holder's governance arrangements and take appropriate steps to address any deficiencies; and
- x. the Board of Directors shall ensure adequate systems and controls from an Information Technology point of view, including *inter alia* with respect to cyber-security.

Responsibility of Senior Management

- R3-2.7.17 When allocating functions internally, the Licence Holder shall ensure that senior management are responsible for ensuring that the Licence Holder complies with its obligations under these Rules.
- R3-2.7.18 In particular, senior management and where appropriate, the Board shall be required to assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the obligations under these Rules and to take appropriate measures to address any deficiencies.

Conflicts of Interest

- R3-2.7.19 A Licence Holder shall establish, implement and maintain effective organisational and administrative arrangements to identify, manage and prevent conflicts of interest as set out in this section. Such arrangements shall be appropriate to the size and organisation of the Licence Holder and the nature, scale and complexity of its business, to prevent conflicts of interest from adversely affecting the interests of its clients.
- R3-2.7.20 Licence Holders shall adopt appropriate and transparent reporting lines within its organisation in order to ensure that issues involving risks of non-compliance with conflicts of interest rules are given the necessary priority.
- R3-2.7.21 A Licence Holder shall establish a conflicts of interest policy which shall include the following:
- i. The identification of, with reference to the specific distribution activities, specific services, activities and ancillary services carried out by or on behalf of the Licence Holder, the circumstances which constitute or may give rise to a conflict of interest entailing a risk of damage to the interests of one or more clients; and
 - ii. Procedures to be followed and measures to be adopted in order to manage such conflicts and to prevent such conflicts from damaging the interests of clients.

R3-2.7.22 The Licence Holder shall assess and periodically review the conflict of interest policy established in accordance with these Rules and shall take all appropriate measures to address any deficiencies.

R3-2.7.23 The circumstances which should be treated as giving rise to a conflict of interest should cover cases where there is a conflict between the interests of the Licence Holder or certain persons connected to the Licence Holder including employees, or the group of which the Licence Holder forms part, or from the performance of services and activities, and the duty the Licence Holder owes to a client; or between the differing interests of two or more of its clients, to whom the Licence Holder owes in each case a duty.

At least the following situations that could create actual or potential conflicts of interest should be considered:

- i. economic interests (including shares, other ownership rights and memberships, holdings and other economic interests in commercial customers, intellectual property rights, loans granted by the institution to a company owned by members of the Board of Directors);
- ii. personal or professional relationships with the owners of qualifying holdings in the Licence Holder;
- iii. personal or professional relationships with the staff of the licence Holder or related entities;
- iv. other employments and previous employments within the recent past (ex. 5 years);
- v. personal or professional relationships with relevant external stakeholders;
- vi. membership in a body or ownership of a body or entity with conflicting interested;
- vii. political influence or political relationships.

Remuneration Policy

R3-2.7.24 A Licence Holder shall define and implement remuneration policies and practices under appropriate internal procedures taking into account the interests of all its clients. The remuneration policy should be periodically reviewed.

R3-2.7.25 In defining its remuneration policies, a Licence Holder shall ensure that:

- i. clients are treated fairly and their interests are not impaired by the remuneration practices adopted by the Licence Holder in the short, medium or long term; and
- ii. remuneration policies and practices do not create a conflict of interest or incentive that may lead relevant persons to favour their

own interests or the Licence Holder's interest to the potential detriment of its clients.

R3-2.7.26 The Licence Holder's Board of Directors shall approve the remuneration policy, after taking advice from the compliance function. Senior management of the Licence Holder shall be responsible for the day-to-day implementation of the remuneration policy and the monitoring of compliance risks related to the said policy.

Risk Consideration

R3-2.7.27 The Board of Directors shall approve and periodically review the strategies and policies for taking up, managing, monitoring and mitigating the risks the Licence Holder is or might be exposed to, including those posed by the macroeconomic environment in which it operates in relation to the status of the business cycle.

R3-2.7.28 The Board of Directors shall devote sufficient time to consideration of risk issues. The Board of Directors shall be actively involved in and ensure that adequate resources are allocated to the management of all material risks. The Licence Holder shall establish reporting lines to the Board of Directors that cover all material risks and risk management policies and changes thereof.

R3-2.7.29 The Board of Directors and, where a risk committee has been established, the Risk Committee shall have adequate access to information on the risk situation of the Licence Holder and, if necessary and appropriate, to the risk management function and to external expert advice.

R3-2.7.30 The Board of Directors in its supervisory function and, where one has been established, the Risk Committee shall determine the nature, the amount, the format, and the frequency of the information on risk which it is to receive.

R3-2.7.31 The Licence Holder shall have in place adequate risk management processes and internal control mechanisms, including sound reporting and accounting procedures in order to identify, measure, monitor and control transactions with companies within their group appropriately. The Licence Holder shall report to the MFSA any significant transactions with those entities.

Compliance

R3-2.7.32 The Licence Holder shall establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the Licence Holder to comply with its obligations under the Act, the Regulations issued thereunder and these Rules, as well as with its obligations under other applicable legislation, as well as to detect the associated risks, and shall put in place adequate measures and procedures designed to minimize such risk and to enable the MFSA to exercise its powers effectively.

The Licence Holder shall, for this purpose, take into account the nature, scale and complexity of its business and the nature and range of services undertaken in the course of that business.

R3-2.7.33 The Licence Holder shall establish and maintain a permanent and effective compliance function which operates independently, and which has the following responsibilities:

- i. to monitor and, on a regular basis, to assess the adequacy and effectiveness of the measures and procedures put in place in accordance with the requirements of R3-2.7.32, and the actions taken to address any deficiencies in the Licence Holder's compliance with its obligations;
- ii. to draw up and implement a compliance monitoring plan;
- iii. to advise and assist the relevant persons responsible for carrying out services to comply with the Licence Holder's legal and regulatory obligations, and
- iv. providing prompt feedback to the Authority with respect to any enquiries raised by the Authority

R3-2.7.34 In order to enable the compliance function to discharge its responsibilities properly, the Licence Holder shall ensure that the following conditions are satisfied:

- i. the compliance function shall have the necessary authority, resources, expertise and access to all relevant information;
- ii. a Compliance Officer shall be appointed and shall be responsible for the compliance function and for any reporting as to compliance required by these Rules;

- iii. the relevant persons involved in the compliance function shall not be involved in the performance of services or activities which they monitor; and
- iv. the method of determining the remuneration of the relevant persons involved in the compliance function shall not compromise their objectivity and shall not be likely to do so.

Annual Compliance Report

- R3-2.7.35 The Licence Holder shall submit to the MFSA on an annual basis, together with the annual audited financial statements pursuant to R3-2.13.2, a Compliance Report drawn up by its Compliance Officer, which shall include:
- i. the Compliance Officer's Annual Compliance Monitoring Plan as approved by the Board of Directors and the outcome of such plan; and
 - ii. a list of regulatory breaches identified and their status.

- R3-2.7.36 The Licence Holder shall ensure that the Compliance Report is signed by at least one Director and may be countersigned by the Compliance Officer.

Money Laundering Reporting Officer

- R3-2.7.37 The Licence Holder shall appoint and have at all times in place a MLRO. The role of the MLRO is an onerous one and the Licence Holder shall ensure that it is only accepted by individuals who fully understand the extent of responsibilities attached to the role.
- R3-2.7.38 When appointing an MLRO, the Licence Holder shall ensure compliance with the applicable provisions of Part I of the [Implementing Procedures](#) as well as any sector-specific Implementing Procedures issued by the FIAU in terms of the provisions of the Prevention of Money Laundering and Funding of Terrorism Regulations.

Internal Audit

- R3-2.7.39 The Licence Holder shall establish and maintain an internal audit function which is separate and independent from the other functions and activities of the Licence Holder and which has the following responsibilities:

- i. to establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the Licence Holder's systems, internal control mechanisms and arrangements;
- ii. to issue recommendations based on the result of work carried out in accordance with point (i) of this Rule;
- iii. to verify compliance with those recommendations; and
- iv. to report in relation to internal audit matters.

R3-2.7.40 The internal audit function shall, in particular, assess:

- i. the appropriateness of the Licence Holder's governance framework;
- ii. whether existing policies and procedures remain adequate and comply with legal and regulatory requirements;
- iii. whether procedures are correctly and effectively implemented; and
- iv. the adequacy, quality and effectiveness of the controls performed and reporting undertaken by other internal control functions.

R3-2.7.41 The Authority may provide a temporary derogation from the requirement for the internal audit function to be separate and independent as set out in R3-4.7.39. Any such derogation will be provided in writing following a reasonable justified request by a Licence Holder.

R3-2.7.42 Where the Licence Holder outsources the internal audit function, the Licence Holder shall appoint a director who shall be responsible for the oversight of this function.

Business Continuity Arrangements

R3-2.7.43 The Licence Holder shall establish business continuity arrangements which shall include a clear identification of the critical operations, effective and well-documented contingency, business continuity and recovery plans and a procedure to regularly review the adequacy of such plans.

R3-2.7.44 The business continuity management shall consist of:

- i. a Business Impact Analysis ('BIA')
- ii. a Business Continuity Plan ('BCP');
- iii. a Disaster Recovery Plan ('DRP');

- R3-2.7.45 The BIA shall include an analysis of the Licence Holder's exposure to severe business disruptions and assess their potential impacts (including on confidentiality, integrity and availability) quantitatively and qualitatively, using internal and/or external data (e.g. third party provider data relevant to a business process or publicly available data that may be relevant to the BIA) and scenario analysis. The BIA should also consider the criticality of the identified and classified business functions, supporting processes, third parties and information assets, and their interdependencies.
- R3-2.7.46 The BCP shall be based on the BIA and shall specifically consider the risks that could adversely impact the Licence Holder's systems and ensure that the Licence Holder is able to react appropriately to potential failures scenarios and recover the operations of its critical business activities after disruptions.
- R3-2.7.47 The DRP shall define the resources (hardware, software, communications, data as well as human resources), actions and tasks required to ensure the availability, continuity and recovery of the infrastructure needed to support the Licence Holder's business functions. This document may form part of the BCP.
- R3-2.7.48 The Licence Holder shall test its BCP and DRP on an annual basis and update the BCP and DRP based on testing results, current threat intelligence and lessons learned from previous events.

R3-2.8 Outsourcing Requirements

General

- R3-2.8.1 In complying with this section, Licence Holders shall be guided by the EBA Guidelines on Outsourcing Arrangements EBA/GL/2019/02 (hereafter 'EBA Guidelines on Outsourcing') as may be amended from time to time.
- R3-2.8.2 The rules in this section are without prejudice to the requirements of the DORA Regulation insofar as they relate to contractual arrangements on the use of Information and Communication Technology (ICT) services provided by ICT Third Party Providers (TPPs), in line with, and as define by, the DORA Regulation. In case of any conflict between these outsourcing requirements and the requirements emanating from the DORA Regulation on contractual arrangements on the use of ICT services provided by TPPs, the requirements of the DORA Regulation shall prevail.

R3-2.8.3 Pursuant to Article 8B(3) of the Act, the rules below outline the general principles regulating the conduct of outsourcing of functions undertaken by Licence Holders, which includes the outsourcing of important operational functions including IT systems.

R3-2.8.4 Licence Holders shall, when complying with the Outsourcing Requirements, have regard to the principle of proportionality. Licence Holders are to apply these Requirements in a manner that is appropriate, taking into account, in particular:

- i. their size and internal organisation; the nature, scope and complexity of their activities; the complexity of the outsourced functions;
- ii. the risks arising from the outsourcing arrangement;
- iii. the criticality or importance of the outsourced function; and
- iv. the potential impact of the outsourcing on the continuity of their activities.

R3-2.8.5 It is acknowledged that Licence Holders while undertaking their business activities may enter into outsourcing arrangements with third parties in order to be able to provide their services. Where:

- i. the Authority identifies concerns that lead to the conclusion that a Licence Holder no longer has robust governance arrangements in place; or
- ii. does not comply with regulatory requirements, including with regards to these rules established under this section in relation to outsourcing arrangements, or
- iii. the outsourcing arrangement hinders the Authority's ability to effectively supervise the Licence Holder;

the Authority may take appropriate measures, including but not limited to, limiting or restricting the scope of the outsourced functions or requiring the Licence Holder to exit from an outsourcing arrangement and, or if necessary, for the outsourcing arrangement to be cancelled.

Assessment of What Constitutes Outsourcing

R3-2.8.6 The Licence Holder shall, on an ongoing basis, establish which of its arrangements with third parties fall under the definition of outsourcing as defined under the Act.

R3-2.8.7 Pursuant to R3-2.8.6, in assessing which of the arrangements with third parties fall under the definition of outsourcing as defined under the Act, the Licence Holder shall give due consideration to:

- i. whether the function (or a part thereof) that is outsourced to a service provider is performed on a recurrent or an ongoing basis by the service provider; and
- ii. whether this function (or part thereof) would normally fall within the scope of functions that would or could realistically be performed by the Licence Holder, even if the Licence Holder has not performed this function in the past itself.

R3-2.8.8 The Licence Holder shall on an ongoing basis also identify which of their outsourcing arrangements are deemed to be critical or important.

Critical or Important Functions

R3-2.8.9 Pursuant to R3-2.8.8 the Licence Holder shall always consider a function as critical or important in the following situations:

- a) where a defect or failure in its performance would materially impair:
 - a. the Licence Holder's continuing compliance with the conditions of its authorisation or other obligations under the Financial Institutions Act and, or the Regulations and, or the Rules issued thereunder, and the Licence Holder's regulatory obligations;
 - b. the Licence Holder's financial performance; or
 - c. the Licence Holder's soundness or continuity of its payment and, or electronic money services and activities;
- b) when operational tasks of internal control functions are outsourced, unless the assessment establishes that a failure to provide the outsourced function or the inappropriate provision of the outsourced function would not have an adverse impact on the effectiveness and quality of the internal control function;
- c) when they intend to outsource functions of payment and, or electronic money services to an extent that would require authorisation by a competent authority in a Member State or in a third country.

R3-2.8.10 When assessing whether an outsourcing arrangement relates to a function that is critical or important, the Licence Holder shall take into account at least the following factors:

- a) whether the outsourcing arrangement is directly connected to the provision of payment and, or electronic money services for which they are authorised;

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- b) the potential impact of any disruption to the outsourced function or failure of the service provider to provide the service at the agreed service levels on a continuous basis on their:
 - i. short and long-term financial resilience and viability, including, if applicable, its assets, capital, costs, funding, liquidity, profits and losses;
 - ii. business continuity and operational resilience;
 - iii. operational risk, including conduct, information and communication technology (ICT) and legal risks;
 - iv. reputational risks;
 - c) the potential impact of the outsourcing arrangement on their ability to:
 - i. identify, monitor and manage all risks;
 - ii. comply with all legal and regulatory requirements;
 - iii. conduct appropriate audits regarding the outsourced function;
 - d) the potential impact on the services provided to its clients;
 - e) all outsourcing arrangements, the Licence Holder's aggregated exposure to the same service provider and the potential cumulative impact of outsourcing arrangements in the same business area;
 - f) the size and complexity of any business area affected;
 - g) the possibility that the proposed outsourcing arrangement might be scaled up without replacing or revising the underlying agreement;
 - h) the ability to transfer the proposed outsourcing arrangement to another service provider, if necessary or desirable, both contractually and in practice, including the estimated risks, impediments to business continuity, costs and time frame for doing so ('substitutability');
 - i) the ability to reintegrate the outsourced function into the Licence Holder, if necessary or desirable;
 - j) the protection of data and the potential impact of a confidentiality breach or failure to ensure data availability and integrity on the Licence Holder and its clients, including but not limited to compliance with Regulation (EU) 2016/679 (GDPR);

- k) the outcome of the risk assessment undertaken in terms of R3-2.8.4.

Notification Requirements in respect of Outsourcing of Operational Functions relating to the provision of payment services or electronic money services

R3-2.8.11 The Licence Holder shall, prior to outsourcing any operational function relating to the provision of payment services or electronic money services, provide the Authority with the following information:

- i. the name, registered address and relevant contact details of the outsourcing service provider; and
- ii. a description of the operational function to be outsourced;
- iii. a confirmation that the outsourced function is not critical or important;

Provided that where the Licence Holder outsources a critical or important function it shall notify the Authority in terms of R3-2.8.12.

R3-2.8.12 Where a Licence Holder intends to outsource a critical or important operational function relating to the provision of payment services or electronic money services, it shall prior to outsourcing any critical or important operational function, provide the Authority with the following information:

- i. a description of the critical or important operational function to be outsourced, including the data that shall be outsourced and whether or not personal data shall be transferred or if their processing shall be outsourced;
- ii. the name of the service provider, the corporate registration number, the legal entity identifier (where available), the registered address and other relevant contact details;
- iii. the country or countries where the critical or important operational function is to be performed, including the location (i.e. country or regions) of the data;
- iv. a detailed risk analysis of the outsourcing arrangement;

- v. whether the service provider has a business continuity plan that is suitable for the critical or important operational function that shall be provided to the Licence Holder;
- vi. in case of outsourcing to a cloud service provider, the cloud service and deployment models, i.e. public/private/hybrid/community, and the specific nature of the data to be held and the locations (i.e. countries or regions) where such data will be stored;
- vii. where applicable, the names of any sub-contractors to which material parts of the critical or important operational function shall be sub-outsourced, including the country where the sub-contractors are registered, where the critical or important operational function will be performed and, if applicable, the location (i.e. country or region) where the data will be stored;
- viii. the exit strategy that shall be used if the outsourcing arrangement is terminated by either party or if there is a disruption to the provision of the critical or important operational function;
- ix. an outcome of the assessment of the service provider's substitutability (as easy, difficult or impossible), the possibility of reintegrating the critical or important operational function into the Licence Holder or the impact of discontinuing the critical or important operational function;
- x. the identification of alternative service providers in line with point (ix); and
- xi. whether the critical or important operational function that shall be outsourced will be supporting any business operations that are time-critical.

Such information shall be notified through the FIR03_Outsourcing Notification Form which may be downloaded from <https://www.mfsa.mt/our-work/financial-institutions/>.

- R3-2.8.13 The Licence Holder shall notify the Authority of any changes to any of the information notified pursuant to R3-2.8.11 and R3-2.8.12 without undue delay and shall make available on request all information necessary to enable the Authority to effectively supervise the compliance of the Licence Holder with the Outsourcing Requirements as established under these rules.

Provided that where changes relate to the outsourcing of important or critical functions, the Licence Holder shall submit an updated FIR03_Outourcing Notification Form clearly indicating the updated information.

Sound Governance Arrangements and Third-Party Risk

R3-2.8.14 As part of its Risk Management Framework, the Licence Holder shall identify, assess, monitor and manage all the risks resulting from arrangements with third parties to which it is or might be exposed to, regardless of whether or not those arrangements constitute outsourcing arrangements. The risks, in particular the operational risks, of all arrangements with third parties, whether or not constituting outsourcing, are to be assessed in accordance with the *'Risk Assessment of Outsourcing Arrangements'* as referred to in the EBA Guidelines on Outsourcing.

Sound Governance Arrangements and Outsourcing

R3-2.8.15 Outsourcing shall not result in the delegation by the senior management of its responsibility. Within this context, the Board of Directors of the Licence Holder shall at all times remain fully responsible and accountable for at least:

- i. ensuring that the Licence Holder meets on an ongoing basis the conditions with which it must comply to remain authorised, including any conditions which may be imposed by the Authority;
- ii. the internal organisation of the Licence Holder;
- iii. the identification, assessment and management of conflicts of interest;
- iv. the setting of the Licence Holder's strategies and policies (e.g. the business model, the risk appetite, the risk management framework)
- v. overseeing day-to-day management of the Licence Holder including the management of all risks associated with outsourcing; and
- vi. the oversight role of Non-Executive Directors, including overseeing and monitoring management decision-making.

R3-2.8.16 Outsourcing shall not lower the suitability requirements applied to the members of the Board of Directors and key function holders. The Licence Holder shall have adequate competence and sufficient and appropriately skilled resources to ensure appropriate management and oversight of the outsourcing arrangements.

R3-2.8.17 The Licence Holder shall:

- i. clearly assign the responsibilities for the documentation, management and control of outsourcing arrangements;
- ii. allocate sufficient resources to ensure the documentation and monitoring of all outsourcing arrangements;
- iii. designate a key function holder or an Executive Director who shall be responsible for managing and overseeing the risks of outsourcing arrangements as part of the Licence Holder's internal control framework and overseeing the documentation of outsourcing arrangements and who shall report and be directly accountable to the Board of Directors;
- iv. maintain at all times sufficient substance and not become 'empty shells' or 'letter-box entities' and to this end the Licence Holder shall:
 - a. meet all the conditions of its authorisation at all times, including the Board of Directors effectively carrying out their responsibilities as set out in this Chapter;
 - b. retain a clear and transparent organisational framework and structure that enables it to ensure compliance with legal and regulatory requirements;
 - c. where operational tasks of internal control functions are outsourced, exercise appropriate oversight and be able to manage the risks that are generated by the outsourcing of critical or important functions; and
 - d. have sufficient resources and capacities to ensure compliance with points (a) to (c).
- v. ensure that it can take and implement decisions related to its business activities and critical or important functions, including with regard to those that have been outsourced;
- vi. ensure that it maintains the orderliness of the conduct of its business and the regulated activities it undertakes;

- vii. ensure that the risks related to current and planned outsourcing arrangements are adequately identified, assessed, managed and mitigated, including risks related to ICT and financial technology;
- viii. ensure appropriate confidentiality arrangements are in place regarding data and other information;
- ix. ensure that an appropriate flow of relevant information with service providers is maintained; and
- x. ensure that where personal data are processed by outsourcing service providers, appropriate measures are implemented, and data is processed in accordance with Regulation (EU) 2016/679 (GDPR).

R3-2.8.18 The Licence Holder shall ensure that when outsourcing important or critical functions, it is able to undertake at least one of the following actions within an appropriate time frame:

- i. transfer the function to alternative service providers;
- ii. reintegrate the function; or
- iii. discontinue the business activities that are dependent on that function.

Outsourcing Policy

R3-2.8.19 The Licence Holder shall approve and regularly review and update an outsourcing policy.

R3-2.8.20 The outsourcing policy shall:

- i. consider the impact of outsourcing on the Licence Holder's business and the risks it faces;
- ii. define the principles, responsibilities and processes in relation to outsourcing;
- iii. include the reporting and monitoring arrangements to be implemented throughout the life-cycle of outsourcing arrangements, including contractual stages and exit stages;
- iv. ensure that outsourcing arrangements do not hinder effective on-site or off-site supervision of the Licence Holder; and

- v. also cover intra-group outsourcing arrangements and take into account any specific group circumstances.

R3-2.8.21 The outsourcing policy shall cover at least:

- i. the responsibility of the Board of Directors pursuant to R3-2.8.15, including its involvement, as appropriate, in the decision-making on outsourcing of critical or important functions;
- ii. the involvement of business lines, internal control functions and other individuals in respect of outsourcing arrangements;
- iii. the planning of outsourcing arrangements, including:
 - a. the definition of business requirements regarding outsourcing arrangements;
 - b. the criteria and process for identifying critical or important functions pursuant to R3-2.8.8 and R3-2.8.9;
 - c. risk identification, assessment and management vis-à-vis outsourcing arrangements;
 - d. due diligence checks on prospective outsourcing service providers;
 - e. procedures for the identification, assessment, management and mitigation of potential conflicts of interest;
 - f. business continuity planning; and
 - g. the approval process of new outsourcing arrangements.
- iv. the implementation, monitoring and management of outsourcing arrangements, including:
 - a. the ongoing assessment of the outsourcing service provider's performance;
 - b. the procedure for being notified and responding to changes to an outsourcing arrangement or service provider;
 - c. the independent review and audit of compliance with legal and regulatory requirements; and
 - d. the renewal process;
- v. the documentation and record-keeping relating to outsourcing arrangements; and
- vi. the exit strategies and termination processes, including a requirement for a documented exit plan for critical or important function to be outsourced where such an exit is

considered possible taking into account possible service interruptions or unexpected termination of an outsourcing agreement.

R3-2.8.22 Pursuant to R3-2.8.20, the outsourcing policy shall differentiate between the following:

- i. outsourcing of critical or important functions and other outsourcing arrangements;
- ii. outsourcing to service providers that are authorised to provide financial services in the EU and those that are not;
- iii. intragroup outsourcing arrangements and outsourcing to entities outside the group; and
- iv. outsourcing to service providers located in the EU and those located in third countries.

R3-2.8.23 The Licence Holder shall ensure that the outsourcing policy covers the identification of the following potential effects of critical or important outsourcing arrangements and that these are taken into account in the decision-making process:

- a. the Licence Holder's risk profile;
- b. the ability to oversee the service provider and to manage the risks;
- c. the business continuity measures; and
- d. the performance of the business activities.

Conflicts of Interest

R3-2.8.24 The Licence Holder shall identify, assess and manage conflicts of interests in relation to its outsourcing arrangements and where the outsourcing arrangements create material conflicts of interest, including between entities within the same group, the Licence Holder shall take appropriate measures to manage those conflicts of interest.

Business Continuity Plans

R3-2.8.25 The Licence Holder shall have in place, maintain and periodically test appropriate business continuity plans with regards to outsourced critical or important functions.

Internal Audit Function

R3-2.8.26 The Licence Holder's internal audit function activities shall cover, following a risk-based approach, the independent review of outsourced activities. The audit plan and programme should include, in particular, the outsourcing arrangements of critical or important functions.

R3-2.8.27 With regard to the outsourcing process, the Licence Holder's internal audit function should at least ascertain:

- a. that the Licence Holder's framework for outsourcing, including the outsourcing policy, is correctly and effectively implemented and is in line with the applicable laws and regulation, the risk strategy and the decisions of the Board of Directors;
- b. the adequacy, quality and effectiveness of the assessment of the criticality or importance of functions;
- c. the adequacy, quality and effectiveness of the risk assessment for outsourcing arrangements and that the risks remain in line with the Licence Holder's risk strategy;
- d. the appropriate involvement of governance bodies; and
- e. the appropriate monitoring and management of outsourcing arrangements.

Documentation Requirements

R3-2.8.28 The Licence Holder shall establish and maintain a register of all of the Licence Holder's current outsourcing arrangements, distinguishing between the outsourcing of critical or important functions and other outsourcing arrangements.

The Licence Holder shall consult the EBA Guidelines on Outsourcing for the purposes of this register.

- R3-2.8.29 The MFSA may require the Licence Holder to specify further information within the outsourcing register taking into account the criticality and importance of outsourced functions.
- R3-2.8.30 The Licence Holder shall, upon request, make available to the Authority either the full register of all existing outsourcing arrangements or sections specified thereof as determined by the Authority.
- R3-2.8.31 The Licence Holder shall, upon request, make available to the Authority all information necessary, including a copy of the outsourcing agreement, to enable the Authority to execute the effective supervision of the Licence Holder.
- R3-2.8.32 The Licence Holder shall refer to the provisions on '*Documentation Requirements*' as explained in the EBA Guidelines on Outsourcing and shall ensure compliance therewith.

The Outsourcing Process

Pre-outsourcing analysis

- R3-2.8.33 Prior to entering into any outsourcing arrangement, the Licence Holder shall:
- i. assess if the outsourcing arrangement concerns a critical or important function;
 - ii. ensure that where regulated activities are outsourced, the outsourcing service provider is duly authorised to undertake such regulated activities;
 - iii. identify and assess all relevant risks of the outsourcing arrangement;
 - iv. undertake appropriate due diligence on the prospective service provider; and
 - v. identify and assess conflicts of interest that the outsourcing may cause.

Supervisory Conditions for Outsourcing

R3-2.8.34 The Licence Holder shall ensure that the outsourcing of functions of payment services and, or electronic money services, to an extent that the performance of that function requires authorisation or registration by the Authority, to a service provider located in the same, another Member State or third country takes place only if the conditions referred to under the '*Supervisory Conditions for Outsourcing*' in the EBA Guidelines on Outsourcing are met.

Risk assessment of Outsourcing Arrangements

R3-2.8.35 The Licence Holder shall assess the potential impact of outsourcing arrangements on their operational risk, shall take into account the assessment results when deciding if the function should be outsourced to a service provider and shall take appropriate steps to avoid undue additional operational risks before entering into outsourcing arrangements.

R3-2.8.36 The Licence Holder shall refer to the provisions on '*Risk assessment of Outsourcing Arrangements*' as explained in the EBA Guidelines on Outsourcing and shall ensure compliance therewith.

Due Diligence

R3-2.8.37 Before entering into an outsourcing arrangement and considering the operational risks related to the function to be outsourced, the Licence Holder shall ensure in their selection and assessment process that the service provider is suitable.

R3-2.8.38 With regards to critical and important functions, the Licence Holder shall ensure that the service provider has the business reputation, appropriate and sufficient abilities, the expertise, the capacity, the resources (e.g. human, IT, financial), the organisational structure and, if applicable, the required regulatory authorisation(s) or registration(s) to perform the critical or important function in a reliable and professional manner to meet its obligations over the duration of the draft contract.

R3-2.8.39 The Licence Holder shall refer to the provisions on '*Due Diligence*' as explained in the EBA Guidelines on Outsourcing and shall ensure compliance therewith.

Contractual Phase

- R3-2.8.40 The Licence Holder shall ensure that any outsourcing arrangement is based on a formal, clear, written agreement which establishes the respective rights and obligations of the Licence Holder and of the service provider.
- R3-2.8.41 The outsourcing agreement for critical or important functions shall set out at least:
- i. a clear description of the outsourced function to be provided;
 - ii. the start date and end date, where applicable, of the agreement and the notice periods for the service provider and the Licence Holder;
 - iii. the governing law of the agreement;
 - iv. the parties' financial obligations;
 - v. whether the sub-outsourcing of a critical or important function, or material parts thereof, is permitted and, if so, the conditions that the sub-outsourcing is subject to;
 - vi. the location(s) (i.e. regions or countries) where the critical or important function will be provided and/or where relevant data will be kept and processed, including the possible storage location, and the conditions to be met, including a requirement to notify the Licence Holder if the service provider proposes to change the location(s);
 - vii. where relevant, provisions regarding the accessibility, availability, integrity, privacy and safety of relevant data;
 - viii. the right of the Licence Holder to monitor the service provider's performance on an ongoing basis;
 - ix. the agreed service levels, which should include precise quantitative and qualitative performance targets for the outsourced function to allow for timely monitoring so that appropriate corrective action can be taken without undue delay if the agreed service levels are not met;
 - x. the reporting obligations of the service provider to the Licence Holder, including the communication by the service provider of

any development that may have a material impact on the service provider's ability to effectively carry out the critical or important function in line with the agreed service levels and in compliance with applicable laws and regulatory requirements and, as appropriate, the obligations to submit reports of the internal audit function of the service provider;

- xi. whether the service provider should take mandatory insurance against certain risks and, if applicable, the level of insurance cover requested;
- xii. the requirements to implement and test business contingency plans;
- xiii. provisions that ensure that the data that are owned by the Licence Holder can be accessed in the case of the insolvency, resolution or discontinuation of business operations of the service provider;
- xiv. the obligation of the service provider to cooperate with the MFSA, including other persons appointed by it;
- xv. the unrestricted right of Licence Holders and competent authorities to inspect and audit the service provider with regard to, in particular, the critical or important outsourced function; and
- xvi. termination rights.

Sub-Outsourcing of Critical or Important Functions

- R3-2.8.42 The Licence Holder shall ensure that the outsourcing agreement specifies whether or not sub-outsourcing of critical or important functions, or material parts thereof, is permitted.
- R3-2.8.43 Where sub-outsourcing of critical or important functions is permitted, the Licence Holder shall determine whether the part of the function to be sub-outsourced is, as such, critical or important (i.e. a material part of the critical or important function) and, if so, record it in the register.
- R3-2.8.44 Where sub-outsourcing of critical or important functions is permitted, the Licence Holder shall refer to the provisions on '*Sub-outsourcing of critical or important functions*' as explained in the EBA Guidelines on Outsourcing and shall ensure compliance therewith.

Security of Data and Systems

- R3-2.8.45 The Licence Holder shall ensure that service providers, where relevant, comply with appropriate IT security standards. In this context, the Licence Holder shall refer to the provisions on '*Security of Data and Systems*' as explained in the EBA Guidelines on Outsourcing and shall ensure compliance therewith.

Access, Information and Audit rights

- R3-2.8.46 The Licence Holder shall ensure within the written outsourcing arrangement that its internal audit function is able to review the outsourced function using a risk-based approach.

Regardless of the criticality or importance of the outsourced function, the written outsourcing arrangements between the Licence Holder and service providers shall refer to the information gathering and investigatory powers of the Authority with regard to service providers located in a Member State and should also ensure those rights with regard to service providers located in third countries.

- R3-2.8.47 With regard to the outsourcing of critical or important functions, the Licence Holder shall ensure within the written outsourcing arrangement that the service provider grants them and the Authority, and any other person appointed by them or by the Authority, the following:

- a. full access to all relevant business premises (e.g. head offices and operation centres), including the full range of relevant devices, systems, networks, information and data used for providing the outsourced function, including related financial information, personnel and the service provider's external auditors ('access and information rights'); and
- b. unrestricted rights of inspection and auditing related to the outsourcing arrangement ('audit rights'), to enable them to monitor the outsourcing arrangement and to ensure compliance with all applicable regulatory and contractual requirements.

- R3-2.8.48 The Licence Holder shall refer to the provisions on '*Access, Information and Audit Rights*' as explained in the EBA Guidelines on Outsourcing and shall ensure compliance therewith.

Termination Rights

R3-2.8.49 The outsourcing arrangement shall expressly allow the possibility for the Licence Holder to terminate the arrangement in accordance with applicable law and the arrangement shall also facilitate the transfer of the outsourced function to another service provider or its re-incorporation into the Licence Holder.

Within the above context, the Licence Holder is to refer to the provisions on '*Termination Rights*' as explained in the EBA Guidelines on Outsourcing and shall ensure compliance therewith.

Oversight of Outsourced Functions

R3-2.8.50 The Licence Holder shall monitor, on an ongoing basis, the performance of the service providers with regard to all outsourcing arrangements on a risk-based approach and with the main focus being on the outsourcing of critical or important functions, including that the availability, integrity and security of data and information is ensured. Where the risk, nature or scale of an outsourced function has materially changed, the Licence Holder should reassess the criticality or importance of that function.

The Licence Holder shall apply due skill, care and diligence when monitoring and managing outsourcing arrangements.

R3-2.8.51 The Licence Holder shall regularly update its risk assessment with respect to outsourcing arrangements and periodically report to the Board of Directors on the risks identified in respect of the outsourcing of important or critical functions.

The Licence Holder shall monitor and manage its internal concentration risks caused by outsourcing arrangements as part of its risk assessment on outsourcing arrangements.

R3-2.8.52 The Licence Holder shall ensure, on an ongoing basis, that outsourcing arrangements, particularly relating to critical or important functions, meet appropriate performance and quality standards by:

- i. ensuring that they receive appropriate reports from outsourcing service providers;
- ii. evaluating the performance of outsourcing service providers; and

- iii. reviewing all other relevant information received from outsourcing service providers, including reports on business continuity and testing.

R3-2.8.53 The Licence Holder shall take appropriate measures if it identifies shortcomings in the provision of the outsourced function. In particular, the Licence Holder shall follow up on any indications that service providers may not be carrying out the outsourced critical or important function effectively or in compliance with applicable laws and regulatory requirements. If shortcomings are identified, the Licence Holder shall take appropriate corrective or remedial actions, which may include terminating the outsourcing agreement, with immediate effect, if necessary.

R3-2.9 Safeguarding of Clients' Funds

R3-2.9.1 The Licence Holder shall comply with the [Financial Institutions Act \(Safeguarding of Funds\) Regulations](#) (hereinafter 'Safeguarding Regulations').

R3-2.9.2 In complying with the Safeguarding Regulations, the Licence Holder shall also comply with the rules in this section.

R3-2.9.3 Where a Licence Holder receives funds from clients that include both funds which are required to be safeguarded (hereinafter 'client funds') and funds which constitute fees owed to the Licence Holder, the Licence Holder is expected to transfer such other funds into segregated accounts as frequently as practicable throughout the day.

In the same way, where a customer incurs fees and the Licence Holder has a valid right to deduct the fees from the client funds it holds for that customer, any fees so deducted should be removed from the segregated account as frequently as practicable throughout the day.

R3-2.9.4 Pursuant to Article 7(1)(a) of the Safeguarding Regulations, where the Licence Holder intends to safeguard funds by depositing these in a separate account in a credit institution, such credit institution shall be:

- i. a credit institution authorised in a Member State; or
- ii. a Malta branch of a third country credit institution.

R3-2.9.5 The Licence Holder shall remain fully responsible for safeguarding all funds which have been received in the Safeguarding Account. The Safeguarding Account shall be opened directly by the Licence Holder, in the name of the Licence Holder. The Licence Holder shall not use

intermediaries (such as electronic money institutions or payment institutions) in complying with its safeguarding requirements.

- R3-2.9.6 Pursuant to Article 7(1)(a) of the Safeguarding Regulations, where the Licence Holder intends to safeguard funds utilising the investment method, liquid low risk assets shall be held with a custodian or depositary which is authorised in the EU.
- R3-2.9.7 For the purposes Article 7(1A) of the Safeguarding Regulations, a secure, low risk asset shall be deemed to be liquid if it falls within one of the categories listed hereunder:
- i. listed debt securities issued by EU government or central banks;
 - ii. other assets equivalent to the quality and liquidity of the above assets as may be approved by the Authority upon request in writing by the Licence Holder.
- R3-2.9.8 For the purposes of Article 7(1)(b) of the Safeguarding Regulations, the Licence Holder shall ensure that the insurance policy or comparable guarantee is obtained from an insurance company or credit institution authorised in the EU. The Licence Holder shall ensure that the proceeds of the insurance policy or comparable guarantee are paid into a separate account held with an authorised credit institution, insulated in the interest of clients, against claims of other creditors of the Licence Holder, in particular in the event of insolvency.
- R3-2.9.9 Where a Licence Holder receives funds through an agent or a distributor acting on its behalf, such funds are deemed to be received by the Licence Holder as soon as they are received by the agent/ distributor and the safeguarding requirements shall apply to such funds.
- R3-2.9.10 Licence Holders shall:
- i. identify the funds received from clients which shall be subject to the safeguarding requirement ('client funds');
 - ii. identify when the safeguarding requirement starts to apply and ceases to apply; and
 - iii. employ due skill, care and diligence when selecting, appointing and periodically reviewing third parties involved in the Licence Holder's safeguarding arrangements.

Safeguarding Account

- R3-2.9.11 The Licence Holder shall ensure that any accounts utilised for the safeguarding of clients' funds meet the following conditions:

- i. they are designated in such a way so as to show that it is an account held for the purposes of safeguarding of clients' funds or assets. Preferably, the account title should therefore include terms such as 'safeguarding' or 'client';
- ii. the safeguarding account must not be used to hold any other funds or assets other than client funds or assets;
- iii. the safeguarding account is accessible only to the Licence Holder and its designated staff.

R3-2.9.12 The Licence Holder shall notify the MFSA in advance of any changes to its safeguarding arrangements, including changes to the Licence Holder's safeguarding methodology or third-parties involved in the safeguarding of funds.

Safeguarding Acknowledgment letter

R3-2.9.13 The Licence Holder shall obtain a Safeguarding Acknowledgment Letter from each credit institution and/or custodian with which it holds safeguarding accounts which confirms that the Safeguarding Account complies with the conditions set out in the [Safeguarding Regulations](#). The documentation shall, in particular, evidence that:

- i. funds/ assets held in the Safeguarding Account are insulated and held solely for and on behalf of and in the interest of clients of the Licence Holder;
- ii. clients of the Licence Holder enjoy a right of ownership over the funds held in the safeguarding account;
- iii. no other person, including the Licence Holder and the credit institution or depositary, has any claim or right of action on or against the funds/ assets held in the safeguarding account.

Provided that where the Licence Holder is unable to obtain a Safeguarding Acknowledgment Letter from the credit institution or custodian, it shall provide evidence to the Authority's satisfaction that the Safeguarding Account complies with the conditions set out in points (i) to (iii) above.

Systems and Controls

R3-2.9.14 The Licence Holder shall employ adequate internal control mechanisms to minimise the risk of loss of relevant funds through fraud, misuse or negligence when safeguarding clients' funds.

R3-2.9.15 The Licence Holder shall maintain adequate and accurate records enabling it to demonstrate compliance with the safeguarding requirements.

Such records shall enable to Licence Holder to distinguish funds or assets held:

- for one client from those held for any another client; and
- for one client from its own funds.

R3-2.9.16 The Licence Holder shall identify an individual who shall have the following responsibilities:

- i. to monitor and, on a regular basis, to assess the adequacy of the Licence Holder's safeguarding policy and procedures;
- ii. to ensure compliance with the Licence Holder's safeguarding requirements;
- iii. to draw up periodic reports to the Board on compliance by the Licence Holder with its obligations regarding the safeguarding of clients' funds on at least an annual basis and where there are changes to the Licence Holder's safeguarding arrangements.

Safeguarding Policy

R3-2.9.17 The Licence Holder shall define and implement a safeguarding policy which is periodically reviewed and approved by the Board of Directors.

R3-2.9.18 The safeguarding policy referred to in R3-2.9.17 shall demonstrate the Licence Holder's compliance with all safeguarding requirements and shall include information on the:

- i. methodology for the safeguarding of clients' funds;
- ii. governance arrangements relating to safeguarding arrangements;
- iii. assessment of third parties used in safeguarding;
- iv. reconciliation process and escalation process in case of discrepancies.

R3-2.9.19 The Licence Holder shall periodically review the third parties with which it safeguards clients' funds, having particular regard to:

- i. the need for diversification of risk;
- ii. the capital and credit rating of the credit institution, custodian or insurer;
- iii. the amount of safeguarded funds or assets as a proportion of the credit institution, custodian or insurer's capital or deposits;

- iv. the level of risk of the activities undertaken by the credit institution, custodian or insurer; and
- v. the regulatory status and history of the third parties.

Reconciliations

R3-2.9.20 The Licence Holder shall establish a reconciliations procedure which enables it to achieve compliance with the requirements set out in R3-2.9.21 to R3-2.9.24.

R3-2.9.21 The Licence Holder shall periodically carry out reconciliations between the balance of clients' funds as recorded by the Licence Holder in its internal systems and records, and the actual balance held in the safeguarding account with a third party.

Frequency of reconciliations shall take into account:

- i. The risks faced by the Licence Holder;
- ii. The size and complexity of the Licence Holder's business; and
- iii. The results of the periodic review undertaken in terms of R3-2.9.19.

Provided that where the Licence Holder's safeguarding arrangements are more likely to give rise to discrepancies, the Licence Holder shall carry out reconciliations more frequently.

R3-2.9.22 For the purposes of R3-2.9.21, the following safeguarding arrangements are considered more likely to give rise to discrepancies:

- i. where the client funds are invested in secure, liquid low-risk assets;
- ii. where the client funds are held in a currency other than the currency of the payment transaction;
- iii. where clients do not pay sums for the execution of payment transactions directly into a safeguarding account, out of which payment transactions are then executed, but rather the institution ensures that a net amount equivalent to client funds is segregated and held in a safeguarding account.

R3-2.9.23 The Licence Holder shall ensure that:

- i. the four-eyes principle is applied for the performance of reconciliations (i.e. compiler and reviewer involved in reconciliations);
- ii. reconciliations are documented, dated and signed for record and audit purposes.

R3-2.9.24 The Licence Holder shall ensure that any discrepancies identified in the course of the reconciliation carried out in terms of R3-2.9.21 are corrected by paying in any shortfall or withdrawing any excess funds as soon as practicable and by no later than the same business day.

Audit

R3-2.9.25 The Licence Holder shall ensure that its safeguarding arrangements are subject to an annual audit carried out by an auditor who has the necessary skills, knowledge and experience to carry out the said audit.

Provided that the Authority may require an independent third-party auditor to undertake such audit.

R3-2.9.26 The auditor referred to in R3-2.9.25 above shall provide reasonable assurance on whether:

- i. the Licence Holder has adequate systems, controls and reconciliations in place taking into account the nature and scale of the Licence Holder's business;
- ii. the Licence Holder has complied with the safeguarding requirements throughout the audit period.

Provided that the auditor shall promptly inform the Authority upon becoming aware that there may be or may have been a breach of any of the safeguarding requirements.

R3-2.10 ICT and Cybersecurity Risk

R3-2.10.1 The Licence Holder shall comply with Regulation (EU) 2022/2554 (the DORA Regulation).

R3-2.11 Prudential Requirements

Initial Capital Requirement

R3-2.11.1 The Licence Holder shall be subject to initial capital requirements as set out below:

- i. Where the Licence Holder is authorised to issue electronic money, it shall comply with the initial capital requirements set out in R3-2.11.2.

- ii. Where the Licence Holder is authorised to provide payment services, it shall comply with the initial capital requirement set out in R3-2.11.3.

Provided that the MFSA may set a higher level of initial capital requirement where the Licence Holder provides services from multiple Schedules of the Act.

R3-2.11.2 Licence Holders authorised to issue electronic money shall be required to hold, at the time of authorisation, initial capital amounting to not less than EUR 350,000.

R3-2.11.3 Licence Holders authorised to provide payment services listed in the Second Schedule of the Act shall be required to hold, at the time of authorisation, initial capital as indicated in **Table R3-2.11.3**.

TABLE R3-2.11.3: INITIAL CAPITAL REQUIREMENTS FIR/03

Payment Service	Initial Capital Requirement (EUR)
Payment Service listed in paragraph 2(a)-(e) of the second schedule of the Act	125,000
Payment Service listed in paragraph 2(f) of the second schedule of the Act	20,000
Payment Service listed in paragraph 2(g) of the second schedule of the Act	50,000

Own Funds

- R3-2.11.4 Licence Holders **authorised to issue electronic money** shall be required to hold own funds amounting to the higher of:
- i. The initial capital requirement set out in R3-2.11.2,
 - OR
 - ii. 2% of the average daily outstanding electronic money.

R3-2.11.5 For the purposes of R3-2.11.4:

- i. where the amount of outstanding electronic money is not known in advance, the Licence Holder shall calculate its own funds requirement on the basis of a representative portion assumed to be used for the issuance of electronic money, provided that such a representative portion can be reasonably estimated on the basis of historical data and to the satisfaction of the Authority.
- ii. where the Licence Holder has not completed a sufficient period of business, its own funds requirement shall be calculated on the basis of projected outstanding electronic money evidenced by its business plan, subject to any adjustment to the plan having been required by the Authority.

R3-2.11.6 Licence Holders **authorised to provide payment services** shall be required to hold own funds the higher of:

- i. the initial capital requirement set out in R3-2.11.3
- OR
- ii. the amount of own funds calculated in accordance with Method B as set out in R3-2.11.8 below.

Provided that the Authority may determine that the calculation referred to in R3-2.11.6(ii) should be done utilising one of the methods as set out in R3-2.11.7 and R3-2.11.9.

R3-2.11.7 *Method A*

The Licence Holder's own funds shall amount to at least 10% of its fixed overhead of the preceding year.

Provided that where the Licence Holder has not completed a full year's business as at the date of calculation, its own funds shall amount to at least 10% of the corresponding fixed overheads as projected in its business plan.

Provided further that the Authority may require adjustment to the projected fixed overheads.

R3-2.11.8 *Method B*

The Licence Holder's own funds shall amount to the sum of the following elements multiplied by the scaling factor k defined in R3-2.11.10, where the payment volume (PV) represents one twelfth of the total amount of payment transactions executed by the Licence Holder in the preceding year:

- 4.0% of the slice of PV up to EUR 5 million
- +
- 2.5% of the slice of PV above EUR 5 million up to EUR 10 million
- +
- 1% of the slice of PV above EUR 10 million up to EUR 100 million
- +
- 0.5% of the slice of PV above EUR 100 million up to EUR 250 million
- +
- 0.25% of the slice of PV above EUR 250 million

R3-2.11.9 *Method C*

The Licence Holder's own funds shall amount to at least the relevant indicator defined in point I, multiplied by the multiplication factor defined in point II, and by the scaling for k defined in R3-2.11.10:

- I. The relevant indicator is the sum of:
 - Interest income;
 - Interest expenses;
 - Commissions and fees received; and
 - Other operating income.

For the purposes of the above, each element shall be included in the sum with its positive or negative sign. Income from extraordinary or irregular items shall not be used in the calculation of the relevant indicator. Expenditure on the outsourcing of services rendered by third parties may reduce the relevant indicator if the expenditure is incurred from an undertaking subject to supervision under this Rule.

The relevant indicator is calculated on the basis of twelve-monthly observation at the end of the previous financial year. The relevant indicator shall be calculated over the previous financial year. Nevertheless, own funds calculated according to Method C shall not fall below 80% of the average of the previous three financial years for the relevant indicator. When audited figures are not available, business estimates may be used.

The multiplication factor shall be:

- 10% of the slice of relevant indicator up to EUR 2.5 million
- +
- 8% of the slice of relevant indicator from EUR 2.5 million up to EUR 5 million
- +
- 6% of the slice of relevant indicator from EUR 5 million up to EUR 25 million
- +
- 3% of the slice of relevant indicator from EUR 25 million up to EUR 50 million
- +
- 1.5% of the slice of relevant indicator above EUR 50 million.

R3-2.11.10 The scaling factor k used in Methods B and C shall be:

- 0.5, where the Licence Holder provides only the payment service referred to in paragraph 2(f) of the Second Schedule of the Act
- 1, where the Licence Holder provides any of the payment services listed in paragraphs 2(a) to (e) of the Second Schedule of the Act.

R3-2.11.11 The own funds referred to in R3-2.11.4 and R3-2.11.6 shall be composed of:

- i. at least 75% Common Equity Tier 1 capital as referred to in Article 50 of Regulation (EU) No 575/2013; and
- ii. no more than 25% Tier 2 items as referred to in Article 71 of Regulation (EU) No 575/2013.

R3-2.11.12 The Authority may require a Licence Holder to hold an amount of own funds up to 20% higher or lower than the amount indicated in R3-2.11.4 or R3-2.11.6 based on an evaluation by the Authority of the Licence Holder's risk-management processes, risk loss databases and internal control mechanisms.

R3-2.11.13 Where a Licence Holder undertakes any activities of the Second Schedule of the Act which are not linked to the issuance of electronic money, the Licence Holder shall hold own funds equivalent to the sum of own funds computed in terms of R3-2.11.4 and R3-2.11.6.

R3-2.11.14 Where a Licence Holder is authorised to issue electronic money and belongs to the same group as another electronic money institution, credit

institution, financial institution undertaking payment services, investment firm, asset management company or insurance undertaking, it may not make use of multiple elements eligible for own funds. This shall also apply where the Licence Holder has a hybrid character and carries out activities other than the issuance of electronic money.

R3-2.12 Accounting and Statutory Audit Requirements

R3-2.12.1 The Licence Holder shall comply with the applicable provisions of the Act.

R3-2.13 Reporting Requirements

R3-2.13.1 The Licence Holder shall comply with the requirements set out in Directive 5 of the Central Bank of Malta.

Audited Annual Reporting Requirements

R3-2.13.2 Without prejudice to R3-1.3.5, the Licence Holder shall be required to submit to the MFSA, within four (4) months of the accounting reference date, the soft and hard copies of the following:

- i. the Audited Annual Financial Institutions (FI) Return, including the signed Representations Sheet;
- ii. an original copy of the audited annual financial statements or consolidated financial statements, as applicable, prepared in accordance with the Companies Act and generally accepted accounting principles and practice;
- iii. a copy of the Auditor's management letter;
- iv. an original copy of the Auditor's report to the MFSA on the annual financial statements or consolidated financial statements, as applicable, as specified in R3-2.13.8.

R3-2.13.3 Pursuant to point (i) of Rule R3-2.13.2, the Licence Holder should ensure that the Annual Audited FI Return is signed by:

- i. at least two Directors; or
- ii. any other persons authorised to sign by way of a Board Resolution, a certified true copy of which is expected to be provided by the Licence Holder to the MFSA; and

- iii. the External Independent Auditor.

Provided that signing the Representations Sheet, the External Independent Auditor shall confirm that in the Auditor's opinion, the Audited Annual FI Return has been completed in accordance with the MFSA's guidelines and is consistent with the audited financial statements.

- R3-2.13.4 Pursuant to point (ii) of R3-2.13.2, the Licence Holder shall also require its Auditor to prepare a management letter in accordance with International Standards on Auditing.
- R3-2.13.5 Furthermore, pursuant to point (ii) of R3-2.13.2, the Licence Holder is required to include in the Directors' Report or by way of a separate confirmation signed by the Directors, as applicable under the generally accepted accounting principles and practices, a statement regarding breaches of the Rules or other regulatory requirements which occurred during the reporting period, and which were subject to an administrative penalty or other regulatory sanction.
- R3-2.13.6 The Directors' Report or the confirmation signed by the Directors, as applicable, shall contain a summary of the breach/breaches committed and regulatory sanction/s imposed, if any. Where there have been no breaches, it shall contain a statement to that effect.
- R3-2.13.7 Pursuant to point (iii) of R3-2.13.2, the Licence Holder in receipt of a management letter from its Auditor which contains recommendations to remedy any weaknesses identified during the course of the audit, is required to submit to the MFSA by not later than four months from the end of the financial period to which the management letter relates, a statement setting out in detail the manner in which the Auditor's recommendations have been/ are being implemented. In the instance where the Licence Holder has not taken / is not taking any action in respect of any one or more recommendations in the Auditor's management letter, the reasons are to be included.
- R3-2.13.8 Pursuant to point (iv) of R3-2.13.2, the Auditor must also include a confirmation that the audit has been conducted in accordance with International Standards on Auditing and whether, in the Auditor's opinion:
 - i. the Annual Audited FI Return has been prepared in accordance with the MFSA's requirements as set out in the Guidelines to the FI Return and is consistent with the audited financial statements; and

- ii. proper accounting records have been kept, and adequate systems for their control have been maintained, as required by the MFSA, during the period covered by the Annual FI Return;
- iii. all information and explanations necessary for the purpose of the audit have been obtained.

R3-2.13.9 Where, in the Auditor's opinion, one or more of the requirements have not been met, the Auditor shall be required to include in his report a statement specifying the relevant requirements and the respects in which they have not been met. Where the Auditor is unable to form an opinion as to whether the requirements have been met, the Auditor shall be required to specify the relevant requirements and the reasons why he has been unable to form an opinion.

Annual FI Return

R3-2.13.10 The Licence Holder shall each year prepare and submit the soft copy of the automated Annual FI Return to the MFSA within one (1) month from the accounting reference date.

R3-2.13.11 The Licence Holder shall also submit the original Representations Sheet of the Annual FI Return.

Provided that where the Representations Sheet is signed using a valid qualified signature in accordance with the circular issued by the MFSA on the use of electronic signatures dated 15 November 2022, this may be submitted to the Authority electronically.

R3-2.13.12 The Licence Holder should ensure that the Annual FI Return is signed by:

- i. at least two Directors; or
- ii. any other persons authorised to sign by way of a Board Resolution, a certified true copy of which is expected to be provided by the Licence Holder to the MFSA.

R3-2.13.13 Where the Annual FI Return has been submitted before the relevant audited annual financial statements have been produced, it shall be updated to reflect the information in the audited financial statements and submitted to the MFSA together with the audited annual financial statements.

Interim FI Returns

- R3-2.13.14 The Licence Holder shall prepare an Interim FI Return (“IFR”), at dates three, six and nine months after the accounting reference date. The first IFR should cover the three months immediately following the accounting reference date, the second IFR should cover the six months immediately following the accounting reference date and the third IFR should cover the nine months immediately following the accounting reference date. In the event of a change to the accounting reference date, the dates for the preparation of the IFRs shall be agreed with the MFSA.
- R3-2.13.15 The soft copy of the IFR shall be submitted to the MFSA within one (1) month from the date up to which it has been prepared.
- R3-2.13.16 The Licence Holder shall also submit the original Representations Sheet of the Interim FI Return.
- R3-2.13.17 The Licence Holder should ensure that the Interim FI Return is signed by:
- i. by at least two Directors; or
 - ii. any other persons authorised to sign by way of a Board Resolution, a certified true copy of which is expected to be provided by the Licence Holder to the MFSA.

R3-2.14 Record Keeping

- R3-2.14.1 The Licence Holder shall arrange for Records to be kept of all services and transactions undertaken by it which shall be sufficient to enable MFSA to monitor compliance with the requirements under these Rules, and in particular to ascertain that the Licence Holder has complied with all obligations with respect to clients or potential clients.

Provided that the requirements set out in this Section shall be without prejudice to:

- i. any other record keeping obligations that the Licence Holder may have in terms of any other law, rules or regulation; and
 - ii. the right of any other authority, in terms of applicable law, to access the documents, data or information covered by this Section.
- R3-2.14.2 The records referred to in R3-2.14.1 shall be retained for a period of at least 5 years.

R3-2.14.3 The Records shall be retained in a medium that allows the storage of information in a way accessible for future reference by the MFSA and in such a form and manner that the following conditions are met:

- i. the MFSA must be able to access them readily in a legible format and to reconstitute each key stage of the processing of each transaction; and
- ii. it must not be possible for the records otherwise to be manipulated or altered.

R3-2.14.4 The Licence Holder shall ensure that its IT infrastructure ensures:

- i. the integrity and security of any data stored therein;
- ii. availability, traceability and accessibility of data; and
- iii. privacy and confidentiality.

R3-2.14.5 The Licence Holder shall ensure that its IT infrastructure is located in Malta, and/or any other EEA member state.

Title 3 Service-Specific Requirements

Section 1 *Scope & Application*

R3-3.1.1 This section sets out supplementary conditions for particular types of Licence Holders.

R3-3.1.2 Licence Holders authorised to issue electronic money shall comply with:

- i. The prohibition of interest requirements under R3-3.2;
- ii. The issuance and redeemability requirements under R3-3.3.

R3-3.1.3 Licence Holders authorised to provide payment services shall comply with the requirements set out in R3-3.4.1 to R3-3.4.3.

R3-3.1.4 Licence Holders authorised to provide the payment service listed under paragraph 2(h) of the Second Schedule of the Act shall comply with R3-3.4.4.

R3-3.2 Prohibition of Interest

R3-3.2.1 Licence holders authorised to issue electronic money shall not be allowed to grant interest or any other benefit unless such benefits are not related to the length during which the electronic money is held.

In this respect, offering rewards to customers such as anniversary gifts are not permissible whereas the offering of discount vouchers for use when purchasing particular products for customers who for instance hold electronic money above a particular minimum threshold or who undertake a set number of transactions, is allowable.

R3-3.3 Issuance and Redeemability of Electronic Money

Issuance

R3-3.3.1 The Licence Holder shall issue electronic money at par value on receipt of funds.

R3-3.3.2 The Licence Holder shall exchange any funds received from clients for electronic money without undue delay.

Redemption

- R3-3.3.3 The Licence Holder shall ensure that at any moment, upon request by the electronic money holder, it is in a position to redeem the monetary value of the electronic money held, at par value and without delay.
- R3-3.3.4 The Licence Holder shall enter into a contract with its client.
- R3-3.3.5 The contract referred to in R3-3.3.4 shall clearly and prominently state the conditions of redemption, including any fees relating thereto, and the client shall be informed of those conditions prior to being bound by the contract.
- Provided that redemption may be subject to a fee which is proportionate and commensurate to the actual costs incurred by the Licence Holder, only if stated in the contract referred to in R3-3.3.4 and only in any of the following cases:
- i. where redemption is requested before the termination of the contract; or
 - ii. where the contract provides for a termination date and the electronic money holder terminates the contract before that date; or
 - iii. where redemption is requested more than one year after the date of termination of the contract.
- R3-3.3.6 Where redemption is requested before the termination of the contract, the client may request redemption of the electronic money in whole or in part.
- R3-3.3.7 Where redemption is requested by the client on or up to one year after the date of the termination of the contract:
- i. the total monetary value of the electronic money held shall be redeemed; or
 - ii. where the Licence Holder carries out one or more business activities falling within scope of this Chapter and it is unknown in advance what portion of the funds is to be used as electronic money, all funds requested by the client shall be redeemed.
- R3-3.3.8 Without prejudice to R3-3.3.5 to R3-3.3.7, redemption rights of a person, other than a consumer who accepts electronic money, shall be subject to the contractual agreement between the Licence Holder and that person.

Issuance and redeemability of electronic money tokens.

R3-3.3.9 By way of derogation from the requirements in this section, Licence Holders authorised to issue electronic money tokens shall comply with the applicable provisions of Title IV the MiCA Regulation.

R3-3.4 Payment Services***Payment Services Directive***

R3-3.4.1 The Licence Holder shall comply with the requirements set out in [Directive 1](#) of the Central Bank of Malta.

Granting of credit

R3-3.4.2 Licence Holders authorised to undertake the activities under paragraphs 2(d) and 2(e) of the Second Schedule of the Act may grant credit relating to those activities only if the following requirements are met:

- i. the credit is ancillary and granted exclusively in connection with the execution of a transaction;
- ii. notwithstanding national rules on providing credit by credit cards, the credit granted in connection with a payment and executed with the act shall be repaid within a short period which shall in no case exceed twelve months;
- iii. such credit is not granted from the funds received or held for the purpose of executing a payment transaction; and
- iv. the own funds of the Licence Holder are at all times and, to the satisfaction of the competent authority, appropriate in view of the overall amount of credit granted.

R3-3.4.3 Licence Holder shall not grant credit from the funds received in exchange of electronic money and held in accordance with the prescribed safeguarding requirements.

Payment Initiation Services

R3-3.4.4 Licence Holders providing the payment services listed in paragraph 2(g) of the Second Schedule shall maintain Professional Indemnity Insurance cover or another comparable guarantee as set out in FIR/01 on an ongoing basis.

Title 4 Administrative penalties, other administrative measures and sanctions

Section 1 Scope and Application

R3-4.1.1 This Title provides detail with regards to administrative penalties and sanctions. It *inter alia* provides the principles which guide the MFSA when imposing an administrative penalty and provides for aggravating and mitigating circumstances in case of misconduct by any person who fails to comply with a provision of the Financial Institutions Act (the 'Act') appearing in the first column of the Second Schedule of the Fines and Penalties for Offences Regulations, Subsidiary Legislation 376.02.

Section 2 Administrative penalties, other administrative measures and sanctions

R3-4.2.1 The Licence Holder shall at all times observe the Rules which are applicable to it, as well as all the relative requirements which emanate from the Act and, or the corresponding Rules and, or Regulations issued thereunder. In terms of the Act, the MFSA has various sanctioning powers which may be used against a Licence Holder which does not comply with its regulatory obligations. Such powers include the power to impose any administrative penalties and other administrative measures.

R3-4.2.2 Where a Licence Holder breaches or infringes a Rule, the MFSA may, by virtue of the authority granted to it under Article 23 of the Act, impose administrative penalties and other administrative measures.

R3-4.2.3 In determining whether to impose an administrative penalty or other administrative measure, and in determining the appropriate penalty or sanction, the MFSA shall be guided by the principle of proportionality. The MFSA shall, where relevant, take into consideration the circumstances of the specific case, which may *inter alia* include:

- i. the repetition, frequency, gravity or duration of the infringement by the Licence Holder;
- ii. the degree of responsibility of the person responsible for the infringement;
- iii. the financial strength of the Licence Holder;

- iv. the profits gained or losses avoided by the Licence Holder by reason of the infringement, insofar as they can be determined;
- v. the losses for third parties caused by the infringement, insofar as they can be determined;
- vi. the level of cooperation of the Licence Holder with the Authority;
- vii. previous infringements by the Licence Holder and prior sanctions imposed by the MFSA or other regulatory authorities on the same Licence Holder;
- viii. the good faith, the degree of openness and diligence of the Licence Holder in the fulfilment of his obligations under the Act and, or the corresponding Rules and, or Regulations issued thereunder, and, or Licence Conditions or of decisions of the competent authority in this regard;
- ix. any evidence of wilful deceit on the part of the Licence Holder or its officers; and
- x. any potential systemic consequences of the infringement.

R3-4.2.4 These Rules stipulate various requirements for the submission of Documents within set time-frames. Late or non-submission of statutory documents may give rise to the imposition of an initial administrative penalty and any additional daily penalty. If the circumstances so warrant the Authority reserves the right to take any further administrative measures as appropriate.

R3-4.2.5 Documents may be submitted in various ways. The date of receipt will be as follows:

- i. if it is sent by fax or email, the date of receipt recorded shall be the time stamp of the fax or email, respectively;
- ii. if it is sent by post, this will be the date indicated by the MFSA stamp evidencing receipt;
- iii. if it is delivered by hand, on the date such delivery was made and recorded by the MFSA.

R3-4.2.6 The MFSA will use its discretion to decide what action to take in respect of Licence Holders who do not submit Documents by their due date, after

taking into consideration the reasons (if any) put forward by the Licence Holder for the delay.

R3-4.2.7 Late submission gives rise to liability to an initial penalty and an additional daily penalty. If the conditions imposed by the MFSA are not met, the Authority reserves the right to take any further action as it may deem appropriate in the circumstances.

R3-4.2.8 A right of appeal to the Financial Services Tribunal is available to Licence Holders on whom penalties are imposed.

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