

Rules for Trustees and Other Fiduciaries

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REVISIONS LOG

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Interpretation

Act	Refers to the Trusts and Trustees Act (Cap. 331 of the Laws of Malta) .
AML/CFT	Means anti-money laundering/combating the funding of terrorism.
Applicant	Refers to a person seeking authorisation under the Act.
Approved Jurisdiction	For the purpose of these Rules, refers to a jurisdiction which has been approved by the Authority for the purposes of the Act. This means an EEA State or an EU Member State or any other jurisdiction which, in the opinion of the Authority, has an equal or comparable level of regulation regarding trustees and other persons regulated by the Act to that in Malta.
Approved Position	Means any office or role to be held by an individual within an Authorised Person which requires the Authority's prior approval, including but not limited to the office of director, Compliance Officer, Money Laundering Reporting Officer, Risk Officer, and any other senior role whereby the individual performing such role has decision making powers in relation to the Authorised Person's business, its governance, risk or compliance, or is involved in the business strategy and implementation thereof.
Auditor	Has the meaning assigned to it in the Accountancy Profession Act (Cap 281 of the Laws of Malta) or regulations issued thereunder.
Authorised Person	Means a body corporate or individual authorised to act in any of the following capacities: <ul style="list-style-type: none">(i) a person authorised to act as the trustee of a trust in terms of article 43(1) or 43(8) of the Act;(ii) a person authorised to act as mandatary in the holding of securities and/or immovable property for another person in terms of article 43(12)(a) of the Act; or(iii) a person authorised to act as administrator, trustee, director, or similar functionary exercising control over the assets, by whatever name he may be called, of a private interest foundation in terms of article 43(12)(b) of the Act.

Authority	Means the Malta Financial Services Authority established by the Malta Financial Services Authority Act (Cap. 330 of the Laws of Malta) also referred to in this Rulebook as the 'MFSA'.
Beneficial Owner	Has the same meaning assigned to it under Regulation 2 of the Prevention of Money Laundering and Funding of Terrorism Regulations.
Beneficiary	Refers to a person entitled to benefit under a trust or in whose favour a discretion to distribute property held in trust may be exercised.
Body Corporate	Means any entity having a legal personality distinct from that of its members.
Conflict of Interest	For the purposes of these Rules, means any situation in which the personal interest of a trustee, mandatary or administrator of a private interest foundation, as the case may be, or the interests which it owes to any other person can lead or can be perceived as leading to a situation where such interests conflict with the fiduciary duties which the trustee, mandatary or administrator owes to the beneficiary or mandator, as the case may be.
Company Service Provider	Has the meaning assigned to it in Article 2 of the Company Service Providers Act, and is also referred to in this Rulebook as 'CSP'.
Company Service Providers (Exemption) Regulations	Refers to the Company Service Providers (Exemption) Regulations, (S.L. 529.02).
Company Service Providers Act	Means the Company Service Providers Act (Chapter 529 of the Laws of Malta).
Company Services	Has the meaning assigned to it in Article 2 of the Company Service Providers Act; and "services of a Company Service Provider" shall be construed accordingly.
CPE	Refers to Continuous Professional Education.
Deed of Foundation / Terms of a Foundation	Refers to the public deed <i>inter vivos</i> or will constituting a private interest foundation.
D&O Insurance	Means Directors and Officers liability insurance cover.

Durable Medium	Means information contained in paper format or any instrument or medium (including electronic form) which (1) enables the recipient to store information addressed personally to the recipient in a way accessible for future reference for a period of time adequate to the purposes of the information, and (2) which allows the unchanged reproduction of the information stored. For the purpose of this definition “a period of time adequate for the purpose of the information” shall include such timeframe for retention of information under any law, regulations or rules or in terms of any conditions or direction given by an authority or other competent body.
Director	Includes any person occupying the position of director of a company, by whatever name he may be called, carrying out substantially the same functions in relation to the direction of the company as those carried out by a director.
EEA State	Means a State which is a contracting party to the agreement on the European Economic Area signed in Porto on 2 May 1992 as amended by the Protocol signed in Brussels on 17 March 1993, and as amended by any subsequent Acts.
FIAU	Means the Financial Intelligence Analysis Unit established by the Prevention of Money Laundering Act, Chapter 373 of the Laws of Malta.
Founder	Refers to the person who creates a private interest foundation.
Key Members of Staff	Members of staff of an Authorised Person involved in the provision of relevant services which the Authorised Person is authorised to provide.
Mandate	Has the meaning assigned to it by article 1856 of Title XVIII of Book Second of the Civil Code (Cap. 16 of the Laws of Malta) , specifically restricted to the holding of securities and/or immovable property for another person.
Mandate Agreement / Terms of a Mandate	Refers to the written terms of a mandate.
Mandator	Refers to the person who gives a mandate in the context of a mandate relationship.

Member State	Means a Member State of the European Union and includes an EEA State.
Officer	For the purposes of this Rulebook, means a Director, Compliance Officer, Money Laundering Reporting Officer, Risk Officer but does not include a Company Secretary.
Operational function	Means a function within an Authorised Person, the cessation or interruption of which would materially adversely impact the services provided to clients.
Person	Refers to an individual or body corporate.
PII	Means Professional Indemnity Insurance.
Prevention of Money Laundering Act	Refers to the Prevention of Money Laundering Act (Chapter 373 of the Laws of Malta).
Prevention of Money Laundering and Funding of Terrorism Regulations	Refers to the Prevention of Money Laundering and Funding of Terrorism Regulations (S.L. 373.01).
Private Interest Foundation	Has the meaning assigned to it under article 31B of the Civil Code (Cap 16 of the Laws of Malta).
Property	Means property of any kind or description, whether movable or immovable, personal or real, tangible or intangible, and wherever situated, and in relation to rights and interests whether vested, contingent, voidable or future.
Property under Administration	Refers to property for the time being held on trust, held in terms of a mandate or held by a private interest foundation, as the case may be.
Qualified Person	Has the meaning assigned to it in Article 43(9) of the Act.
Qualifying Shareholding	Means a direct or indirect holding in a company which represents ten per centum or more of the share capital or of the voting rights or which makes it possible to exercise a significant influence on the management of the company in which that holding subsists, and “qualifying shareholder” shall be construed accordingly.

Relevant Property	In relation to qualified persons has the meaning assigned to it in Article 43(9) of the Act.
Relevant Services	Refers to any services provided in terms of the specific authorisation granted to an Authorised Person.
Remuneration	Means any compensation or reward for acting as a trustee, mandatary, or administrator whether to be paid out of the property under administration in accordance with the terms of trust/mandate/foundation, or otherwise, other than the reimbursement of expenses or indemnification for expenses, liabilities and other claims.
Securities	Means shares, debentures, interest in investment funds or any other similar instrument issued by a company or other commercial partnership.
Settlor	Means the person who creates a trust and includes a person who provides trust property or makes a disposition on trust or to a trust.
Terms of a Trust	Refers to the written or oral terms of a trust, expressed or implied, and any other terms made applicable by the proper law.
Trust	Has the meaning described in article 3 of the Act and includes the trust property, the rights, powers, duties, interests, relationships, and obligations under a trust.
Trust Instrument / Trust Deed	Means the instrument whereby the trust is created and includes any instrument varying the terms of the trust and also a unilateral declaration of trust.
Trusts and Trustees Act (Fees) Regulations	Refers to the Trusts and Trustees Act (Fees) Regulations (S.L. 331.01) as amended.

Chapter 1 General Scope and High-level Principles

Title 1 General Scope and Application

R1-1.1 These Rules are being issued pursuant to Article 52(1) of the Act which provides that the Malta Financial Services Authority may make Rules which shall be binding on trustees and other persons specified in the Act . These Rules are without prejudice to any obligations emanating from any law, regulations, rules or procedures applicable to the persons in scope of these Rules, including but not limited to the Prevention of Money Laundering and Funding of Terrorism Regulations and the FIAU's Implementing Procedures, as may be applicable.

Provided that these rules shall not apply in relation to trustees registered under Article 43B of the Act or any person seeking registration under that Article and the [Rules for Trustees of Family Trusts](#) shall apply to such trustees.

R1-1.2 The Authority has the power to interpret any Rule or amendment thereof.

R1-1.3 These Rules should be read in conjunction with the requirements established by the Act and any regulations issued thereunder.

R1-1.4 Without prejudice to any other provision of the Act, any person who breaches any Rule is liable to any regulatory or enforcement action which the Authority is empowered to take in terms of law.

R1-1.5 These Rules shall apply to Authorised Persons and Applicants seeking authorisation under the Act, as applicable. Chapter 4 contains supplementary rules applicable as follows:

1. Chapter 4, Title 2 which shall apply only to Authorised Persons who have notified the Authority in terms of the Company Service Providers (Exemption) Regulations that they are acting as Company Service Providers. Provided that the Rules in this Rulebook applicable to the provision of services by Authorised Persons shall also apply in relation to the provision of Company Service Provider Services by such Authorised Persons in addition to the rules in Title 2 of Chapter 4, as applicable,
2. Chapter 4, Title 3 which shall apply only to Authorised Persons providing the services of Qualified Person in terms of Article 43(9) of the Act.

3. Chapter 4, Title 4 which shall apply only to Authorised Persons established as bodies corporate.
4. Chapter 4, Title 5 which shall apply only to individuals acting as Private Trustees in terms of Article 43A of the Act. Provided that Title 2 of Chapter 1 relating to High-Level Principles, R3-2.8 and R3-2.9 relating to retention of documents, R3-11.9 relating to investments by trustees, and Title 10 of Chapter 3 relating to delegation by trustees, shall also apply *mutatis mutandis* to those persons not requiring authorisation in accordance with Article 43A.

R1-1.7 This Chapter explains the high-level principles which should guide Authorised Persons in the provision of their licensed activities.

R1-1.8 Chapter 2 of this Rulebook establishes the requirements for the Authorisation process for applicants seeking authorisation under the Act and individuals seeking to hold an Approved Position including the Money Laundering Reporting Officer and Compliance Officer.

R1-1.9 Chapter 3 of this Rulebook outlines the obligations which Authorised Persons must adhere to on an ongoing basis.

R1-1.10 Chapter 4 of this Rulebook provides:

1. The supplementary rules for Authorised Persons who have notified the Authority that they are acting as Company Service Providers;
2. The supplementary rules for Authorised Persons acting as Qualified Persons in terms of Article 43(9);
3. The supplementary rules for Authorised Persons established as bodies corporate;
4. The supplementary rules for individuals acting as private trustees in terms of Article 43A.

R1-1.11 Chapter 5 of this Rulebook provides for enforcement and sanctions in the event of misconduct by Authorised Persons.

R1-1.12 **Transitory Period**

R1-1.12.1 Any person falling within the scope of these Rules in terms of R1-1.1, shall take all necessary measures to comply with these Rules within six (6) months from the date of the publication of these Rules.

Provided that such persons shall, during this six-month period, continue complying with the previous version of the Rules and strive to comply with these Rules on a best effort basis.

Title 2 High-level Principles

R1-2.1 Authorised Persons shall act in an ethical manner with due care, skill and diligence, taking into consideration the best interests of their clients and the integrity of Malta's financial system.

R1-2.2 Authorised Persons shall act honestly, fairly and professionally and shall comply with the relevant provisions of the Act, the regulations issued thereunder, and these Rules, as well as with other relevant legal and regulatory requirements, including *inter alia* the Prevention of Money Laundering Act, Chapter 373 of the Laws of Malta, as well as any regulations and rules issued thereunder.

R1-2.3 Authorised Persons shall co-operate with the MFSA in an open and honest manner and shall provide the Authority with any information it may require. Authorised Persons shall supply the MFSA with such information and returns as the MFSA requires.

R1-2.4 Authorised Persons are also expected to deal openly and in a spirit of cooperation with any other relevant regulatory authority.

R1-2.5 In complying with R1-2.1, Authorised Persons shall:

- (i) Refer to, and where applicable, comply with the applicable Maltese laws, regulations and rules issued thereunder as well as any Guidance Notes which may be issued by the MFSA or other relevant body to assist the said persons in complying with their legal and regulatory obligations; and
- (ii) Take due account and, where applicable, comply with any relevant European Union legislation as well as any Guidance Notes/Statements/Industry Best Practices which may be issued by local and/or international standard setting bodies.

Chapter 2 Authorisation

Title 1 Scope and Application

R2-1.1 This Chapter identifies the Authorisation requirements for persons requiring authorisation in terms of the Act, other than trustees of family trusts in terms of Article 43B and explains the applicable Authorisation process to be followed by applicants.

R2-1.2 This Chapter should be read in conjunction with the MFSA's [Authorisation Process Service Charter](#) and any other guidance which the Authority may issue from time to time in relation to the authorisation process.

Title 2 The Authorisation Requirement

R2-2.1 Without prejudice to the provisions of Article 43(6) and (7) and Articles 43A and 43B of the Act any person operating in or from Malta who receives property upon trust or accepts to act as a trustee or co-trustee of a trust shall apply for authorisation by the Authority where:

- (a) that person receives or is entitled to remuneration for acting so; or
- (b) the person does so on a regular or habitual basis; or
- (c) the person holds himself out to be a trustee.

This requirement subsists whether the person is an individual or a body corporate and irrespective of the proper law of the trusts held and independently of whether all or a part of the trust property is located in Malta.

Subsequent to authorisation, the Authorised Person shall be subject to the ongoing requirements in terms of the Act, any Regulations issued thereunder and the requirements prescribed in these Rules.

R2-2.2 Any person operating in or from Malta who:

- (a) acts as a mandatary in the holding of securities and/or immovable property for another person; or

(b) acts as an administrator, a trustee, director, or similar functionary, exercising control over the assets, by whatever name he may be called, of a private interest foundation,

shall apply for authorisation by the Authority.

This requirement subsists whether the person is an individual or a body corporate and irrespective of the extent of such person's activities, whether remuneration is payable therefor and whether such person holds himself out as providing such services or not. However, this requirement does not apply to the persons referred to in Article 43(6) of the Act.

Subsequent to authorisation, the Authorised Person shall be subject to the ongoing requirements in terms of the Act, any Regulations issued thereunder, and the requirements prescribed in these Rules.

R2-2.3 Pursuant to R2-2.1 and R2-2.2, any persons having an establishment in Malta and providing services requiring authorisation in terms of Article 43 of the Act to persons outside Malta shall be subject to authorisation since they are providing such services from Malta.

R2-2.4 A person wishing to be authorised as a trustee, administrator of private interest foundations, or mandatary under the Act may be a body corporate or natural person.

R2-2.5 Where, based on the risk presented by the nature, size and complexity of the business, the Authority considers both at application stage and on an ongoing basis, that an individual cannot satisfactorily meet governance requirements, the Authority may at its discretion require the said natural person to establish a body corporate for the carrying out of the said business.

R2-2.6 Where the Applicant is a body corporate, such person shall be established either in Malta or in an approved jurisdiction. Where such body corporate is not established in Malta, such person shall be eligible for Authorisation so long as:

- (i) It is established in an approved jurisdiction;
- (ii) it has a registered business office with adequate resources in Malta;

- (iii) at least one of the directors or one of the individuals entrusted with its management and administration is resident in Malta; and
- (iv) it complies with all other authorisation requirements in this Rulebook.

Title 3 Minimum Capital Requirements

R2-3.1 The Rules in this Title shall be read in conjunction with Title 4 of Chapter 3 of this Rulebook relating to Financial Resources Requirements and R4-2.3 of Chapter 4 of this Rulebook, where applicable.

R2-3.2 Without prejudice to the provisions of the Act, a person providing services in terms of an authorisation under the Act shall be required to have an issued paid-up share capital in the case of a limited liability company, or capital contribution in all other cases, equivalent to the capital requirement as set out hereunder:

Type of Authorisation	Capital Requirement in EUR
Authorised to act as trustee in terms of Article 43(3)	€15,000
Authorised to act as administrator of private interest foundations in terms of Article 43(15)	€15,000
Authorised to act as mandatary in terms of Article 43(13)	€15,000
Authorised to act as trustee in terms of Article 43(8)	€15,000

R2-3.3 Without prejudice to the Rules in Title 4 of Chapter 3 relating to Financial Resources Requirements and, where applicable, to R4-2.3 of Chapter 4 relating to Financial Resources Requirements for Authorised Persons acting as Company Service Providers, an Authorised Person shall maintain the minimum capital required in terms of R2-3.2 for as long as the person remains authorised under the Act.

In the case of an Authorised Person that is a limited liability company its share capital shall be issued and fully paid up and no

divestment of capital shall take place, unless the issued capital and cash reserves of the Authorised Person shall collectively amount to the minimum capital prescribed in R2-3.2.

- R2-3.4 Where the Authorised Person is, without prejudice to article 43 sub-articles (4)(i)(b) and (13)(i)(b) of the Act, also regulated by the Authority in respect of other activities and is in that respect subject to higher capital requirements than those established under the Act and these Rules, these higher capital requirements shall be complied with and shall be deemed to satisfy the requirements of the Act and these Rules and thereafter no additional capital shall be required.

Title 4 The Application Process

- R2-4.1 Applicants shall submit their application and authorisation documents, as applicable, and in accordance with this Section, to the Authority. Applicants shall ensure that the appropriate Application Form, as determined by the Authority from time to time, and any documentation requested are completed and submitted in the manner and form indicated by the Authority.

Without prejudice to the above, where an Authorised Person intends to apply to provide services in terms of the Act, in addition to the services which the Authorised Person was originally authorised to provide under the Act, such person shall notify the Authority in writing, in advance of submitting the relevant documentation and, or information in the form and manner as may be prescribed by the Authority, and shall be subject to the Authority's approval.

- R2-4.2 The MFSA may require Applicants to submit to the MFSA whatever additional information it deems appropriate for the purposes of determining whether it should grant authorisation to the Applicant.

- R2-4.3 Applicants are to refer to the [MFSA Authorisation Process - Service Charter](#) for guidance on the MFSA Authorisation Process.

Moreover, Applicants shall also refer to the [MFSA Authorisation Process - Service Charter](#) in relation to:

- (a) The Authority's considerations and expectations applicable to Prospective Applicants and Applicants; and

- (b) the timeframes applicable to the applicant for the effective conclusion of the authorisation process.

R2-4.4 Without prejudice to the generality of R2-4.1 and R2-4.2, applicants shall submit the relevant application form together with supporting documents in the manner and through any medium as determined by the MFSA. Applicants should ensure to:

- (a) Complete and submit Personal Questionnaires in respect of each individual proposed to hold an Approved Position and any individual who is proposed to hold a Qualifying Shareholding;
- (b) Complete and submit Corporate Questionnaires in respect of Qualifying Shareholder/s having legal personality (where applicable); and
- (c) Pay the non-refundable application fee as prescribed by the [Trusts and Trustees Act \(Fees\) Regulations](#). For the avoidance of doubt, the application fee is payable in full upon submission of the application to the Authority.

R2-4.5 The Authority shall not initiate the review of any application which:

- (i) Is not complete with all the required supporting documentation; or
- (ii) has pending application fees.

R2-4.6 At any point in time during the authorisation process, in the event of failure by the Applicant to respond within the timeframe stipulated in the [MFSA Authorisation Process - Service Charter](#), the Authority shall inform the Applicant for such feedback to be provided. In the absence of receipt of such feedback within the time frame(s) stipulated in the [MFSA Authorisation Process - Service Charter](#), the Authority may consider the Application as withdrawn. When an application is considered as withdrawn and the Applicant wishes to pursue the application process, the Applicant would need to re-initiate the process, *inter alia*, including the submission of a new intention, application and application fee.

R2-4.7 On completion of its review of the application and supporting documentation, and on being satisfied that the applicant complies with the criteria established by the Act, any Regulations and/or Rules issued thereunder, the Authority will notify the Applicant of the pre-authorisation conditions to be satisfied for the issue of an authorisation. The applicant shall at this stage resolve any outstanding matters as indicated by the Authority.

Title 5 Authorisation Considerations

R2-5.1 When considering whether to authorise an Applicant, the Authority shall *inter alia*, have regard to:

- (a) the protection of settlors, mandators and founders, as the case may be;
- (b) the protection of beneficiaries;
- (c) the protection of the reputation of Malta, taking into account Malta's international commitments;
- (d) the promotion of competition and choice;
- (e) the reputation and suitability of the Applicant and all other parties connected with the Applicant; and
- (f) the adequacy of the Applicant's resources including human, financial and systems.

R2-5.2 Pursuant to the considerations outlined in R2-5.1, the Authority may authorise an Applicant as a trustee, mandatary or administrator, as the case may be, subject to the Applicant being a fit and proper person and complying with all the other application requirements as may be determined by the Authority.

R2-5.3 The Authority shall, as part of its assessment process, avail itself of any additional information which may be available to it. Such information may include information which was not provided by the Applicant.

R2-5.4 The Authority shall base its decision as to whether or not an Applicant is to be authorised in terms of the Act, on the basis of the information provided by the Applicant, and any other information that ought to have been disclosed by the Applicant. The MFSA shall not be liable for damages due to any acts or omissions on the part of the Applicant.

Title 6 Fitness and Propriety

R2-6.1 Applicants seeking authorisation as trustees, mandataries, or administrators, as the case may be, Qualifying Shareholders of the trustee, mandatary or administrator, as the case may be as well as individuals seeking to hold an Approved Position in an Authorised Person shall be required to be fit and proper at application stage, and on a continuous basis once a person has been authorised and/or approved as applicable.

R2-6.2 The onus of proving fitness and properness to provide the service of a trustee, mandatary, or administrator, as the case may be, lies with the Applicant.

R2-6.3 The Authority shall not grant authorisation to an Applicant to provide trustee, mandatary, or administrator services, as the case may be, if it appears to it that the criteria of fitness and properness are not met by the person concerned.

R2-6.4 When arriving at its decision as to whether a person concerned has met the fitness and properness criteria, the Authority will take account of all material facts, whether such facts are disclosed or otherwise.

R2-6.5 In assessing whether a person is a fit and proper person, the Authority shall assess the following:

- (a) Competence, in terms of R2-6.8;
- (b) Reputation, in terms of R2-6.9;
- (c) Conflicts of Interest and Independence of Mind, in terms of R2-6.10; and
- (d) Time Commitment, in terms of R2-6.11.

In this respect, Applicants and individuals seeking to hold an Approved Position within an Applicant or Authorised Person should refer to and ensure that they adhere to the [Guidance on the Fitness and Properness Assessments](#) applied by the Authority.

R2-6.6 The fitness and properness assessment shall be applicable to:

- (a) The Applicant, where the trustee, mandatary or administrator is a natural person;
- (b) Qualifying Shareholders of the trustee, mandatary, or administrator, as the case may be; and
- (c) any individual seeking to hold an Approved Position within the trustee, mandatary, or administrator, as the case may be.

R2-6.7 All criteria referred to in R2-6.5 must be met in satisfaction of the fit and proper test. It shall not be the duty of the Authority to prove the converse before it refuses to grant authorisation to an Applicant, or before it intends to suspend or withdraw an authorisation granted to, or held by, an Authorised Person.

R2-6.8 Competence

R2-6.8.1 Applicants shall provide reasonable assurance to the satisfaction of the Authority, that both collectively and individually, they have an acceptable level of knowledge, professional expertise and experience and that adequate systems and resources are in place for the provision of the services of a trustee, mandatary, or administrator, as the case may be.

R2-6.8.2 In determining the competence of a given person, the Authority will have regard to matters such as those included in the following indicative list:

- (a) whether the person has the requisite soundness of judgement for fulfilling the responsibilities of the role proposed to be assumed;
- (b) whether the person satisfies relevant training requirements as prescribed by the Authority in relation to the role proposed to be assumed; and
- (c) whether the person has demonstrated, by experience and training, that he will be able to carry out the role proposed to be assumed.

For the avoidance of doubt, any relevant training or qualification, as applicable, should be undertaken by an individual seeking to hold an Approved Position prior to the submission of the Personal Questionnaire referred to in R2-4.4(a). Provided that if such training is ongoing at the time of submission of the Personal Questionnaire, the type of training being undertaken and the expected timeframe for completion of such training must be indicated in the Personal Questionnaire.

R2-6.8.3 The Authority may, at its discretion, on the basis of a risk-based assessment, conduct further assessments as it may deem necessary. Such further assessment, which may be carried out in collaboration and in cooperation with other competent authorities as may be applicable and necessary, may include a viva-voce interview.

R2-6.8.4 Further to R2-6.1, following approval, persons subject to the fitness and properness assessment who are involved in the management of the Authorised Person, shall be required to obtain a number of CPE hours on an annual basis.

R2-6.8.5 Further to R2-6.1 and without prejudice to the definition of “Approved Person” in the Act, in the case of an Applicant intending to receive property upon trusts or accept to act as a trustee or co-trustee of a trust in terms of Article 43(1) of the Act, where such Applicant is a company or any other body corporate, at least two of the directors or, in the case of a body corporate that is not a company, at least two of the persons having responsibility for the management and administration thereof shall have completed comprehensive training on the law and administration of trusts and fiduciary obligations or such other qualification as deemed satisfactory by the Authority. Such training should be followed by an assessment. This requirement shall apply for the purposes of the fitness and properness assessment which needs to be satisfied at application stage and on an ongoing basis.

The above training requirement shall also apply in the case of an Applicant who is an individual and such individual shall also be required to have a number of years’ experience in the management and administration of trusts.

R2-6.8.6 In the case of an applicant which is a company or any other body corporate, the majority of the members of the board of directors or, in the case of a body corporate that is not a company, the majority of the persons entrusted with the management and administration thereof, shall satisfy both the criteria regarding qualifications and those regarding experience as laid down in R2-6.8.5.

R2-6.8.7 Without prejudice to R2-6.8.5 the individual who is proposed as Compliance Officer shall at the outset satisfy the following requirements:

- (a) Either hold appropriate compliance training or be in the process of obtaining any such training or, alternatively, possess extensive experience in the area of compliance; and, in addition to (a),
- (b) in the case of Authorised Persons authorised to act as trustees, either have completed comprehensive training on the law and administration of trusts and fiduciary obligations, or such other qualification as deemed satisfactory by the Authority. Such training is required to be subject to an assessment.

Provided that the determination as to what constitutes “extensive experience” shall be at the discretion of the Authority.

R2-6.9 Reputation

R2-6.9.1 Applicants shall demonstrate and provide reasonable assurance to the satisfaction of the Authority that they are of good repute as well of their intentions to act in an honest, ethical, and trustworthy manner.

R2-6.9.2 The Authority's assessment of reputation shall be based on an assessment of: [i] integrity; and [ii] solvency.

R2-6.10 Conflicts of Interest and Independence of Mind

R2-6.10.1 Any person applying to hold an Approved Position, should be able to make their own sound, objective and independent decisions and judgments in their proposed role. Independence of mind can be affected by conflicts of interest. A conflict of interest includes a situation where the attainment of the interests of a shareholder may adversely affect the interests of the Authorised Person.

R2-6.10.2 Any person applying to hold an Approved Position will not be considered suitable if there exists a conflict of interest which poses a material risk which is not possible to prevent, be adequately mitigated or managed.

R2-6.11 Time Commitment

R2-6.11.1 Persons, in their proposed role, must be able to commit sufficient time to performing their functions efficiently and effectively taking into consideration the factors outlined in the [MFSA Guidance on the Fitness and Properness Assessment](#) relating to time commitment.

R2-6.12 Submission of Personal and Corporate Questionnaires

R2-6.12.1 In order for the Authority to establish whether an individual is fit and proper, such individual, shall submit a duly completed [Personal Questionnaire](#) and supporting documents as indicated in the said Personal Questionnaire.

R2-6.12.2 The Personal Questionnaire is to be submitted through the designated online portal. Any supporting documents to the Personal Questionnaire shall be submitted to the Authority in the manner indicated in the Personal Questionnaire.

- R2-6.12.3 Where the person proposed to hold a qualifying shareholding in an Applicant or an Authorised Person is a corporate entity, such person shall be required to complete the Corporate Questionnaire and supporting documents as indicated in the Corporate Questionnaire.

Title 7 Appointment of Key Function Holders/Officers

R2-7 Appointment and Role of Compliance Officer

- R2-7.1 An Applicant or an Authorised Person, as the case may be, shall propose an individual, based in Malta, to be appointed as Compliance Officer.

- R2-7.2 The Compliance Officer shall be independent and shall not be involved in the client onboarding process unless to provide guidance with respect to Compliance issues if this is deemed necessary, nor be involved in the performance of activities s/he is required to monitor.

- R2-7.3 Prior to appointing an individual as Compliance Officer, the Authorised Person must seek the MFSA's prior written consent. The Authorised Person shall inform the MFSA in writing that it is proposing such individual as Compliance Officer after having conducted its own assessment, including due diligence checks, on the individual concerned and having satisfied itself that the individual can fulfil this role effectively. The Authorised Person shall also confirm that the individual proposed as Compliance Officer satisfies the requirements of R2-6.8.7.

- R2-7.4 The role of the Compliance Officer is an onerous one and the Authorised Person shall ensure that it is only held by individuals who fully understand the extent of the responsibilities attached to the role and have adequate skill, knowledge and experience in both compliance and the provision of trustee services, the services of an administrator of private interest foundations or the service of mandatary, as the case may be.

- R2-7.5 The Compliance Officer shall act as the main point of contact with the Authority within the Authorised Person on regulatory matters.

- R2-7.6 The role of the Compliance Officer, *inter alia*, includes:

(a) As the individual responsible for all aspects of compliance, the Compliance Officer will be expected to demonstrate independence of judgement and to exercise proper day to day control over the activity of the Authorised Person in regulatory and compliance matters.

(b) In order to satisfy these requirements effectively, the Compliance Officer must understand the implications of any conditions that may be imposed upon the Authorised Person as well as have a thorough knowledge of the requirements emanating from the Act together with any regulations and rules issued thereunder, as well as any relevant guidance issued by the MFSA. The Compliance Officer shall take steps to ensure that the Authorised Person's staff are familiar with the said requirements and any conditions that are relevant to their role within the Authorised Person.

(c) The Compliance Officer must pay particular attention to those Rules which require the Authorised Person to establish, implement and maintain adequate policies and procedures to identify breaches by the Authorised Person of the applicable authorisation conditions and ongoing requirements, and to minimise the risk of such breaches. The Compliance Officer should be familiar with any guidance and policies issued by the MFSA in relation to breaches.

(d) The MFSA also expects the Compliance Officer to ensure that incorrect or misleading information is not provided deliberately or recklessly to the MFSA either in supervisory returns or in any other way.

R2-7.7

Limited derogation from independence of Compliance Function

R2-7.7.1

The MFSA may grant a derogation from the requirement to have an independent Compliance Officer, where the Applicant or Authorised Person is a natural person providing **either**:

- (i) the service of administrator of private interest foundations only, **or**
- (ii) the service of mandator only.

Provided that such derogation shall not be granted to a natural person who has notified the Authority that he is also providing or intends to provide CSP services in terms of the Company Service Provider (Exemption) Regulations.

Provided further that a request in writing is to be submitted to the Authority by the Applicant or the Authorised Person, as applicable, explaining the reason for the request and why having an independent Compliance function would not be appropriate and proportionate in view of the nature, scale and complexity of that person's business and the nature and range of the services and activities undertaken in the course of that business.

R2-7.7.2

Where the derogation has been granted by the Authority the natural person shall himself be the person responsible for the compliance function and act as Compliance Officer, subject to any conditions which the Authority may deem fit to impose. Such natural person shall be required to prepare on an annual basis a compliance report which needs to be presented to the Authority when requested.

This report should be proportionate with the risks of the activities of the Authorised Person, and as a minimum should include confirmation whether:

- (a) The individual is complying with all the applicable legislative requirements;
- (b) complaints handling procedures were adhered to;
- (c) all conflicts of interest were adequately managed;
- (d) the breaches register was adequately updated, where necessary;
- (e) business continuity measures are still adequate;
- (f) critical service providers are being adequately monitored;
- (g) client funds are being duly segregated at all times; and
- (h) record keeping is adequate.

The Authority, through supervisory engagement, might also request for additional measures to be put in place, including but not limited to, the engagement of a third party to prepare compliance reports.

R2-7.8

Appointment of Money Laundering Reporting Officer

R2-7.8.1

Authorised Persons carry on 'relevant activity' for the purposes of the Prevention of Money Laundering and Funding of Terrorism Regulations. Accordingly, besides adhering to the Prevention of Money Laundering Act, Authorised Persons are required to adhere to the Regulations made thereunder, as well as the Implementing Procedures and any guidance notes issued by the FIAU.

R2-7.8.2 In terms of the Prevention of Money Laundering and Funding of Terrorism Regulations, as subject persons, Authorised Persons are required to appoint a Money Laundering Reporting Officer. Therefore, as part of the authorisation process, an Applicant shall propose an individual to be appointed as Money Laundering Reporting Officer.

In this respect, reference should be made to the [Guidance paper on what is a money laundering reporting officer](#) and to such other relevant guidance issued by the FIAU prior to seeking such approval from the MFSA.

R2-7.8.3 In the case of bodies corporate, applications for multiple roles by the same individual (including the MLRO role) will be assessed by the Authority on a case-by-case basis, depending on the particular operational set-up of the body corporate and its supervisory track record.

Furthermore, as stipulated by the Prevention of Money Laundering and Funding of Terrorism Regulations, the Money Laundering Reporting Officer should be an officer of the body corporate of sufficient seniority and command and must also satisfy all requirements set out in the Implementing Procedures issued by the FIAU.

R2-7.8.4 Prior to appointing an individual as Money Laundering Reporting Officer, the Authorised Person must seek the MFSA's prior written consent which shall be subject to the MFSA being satisfied that the Money Laundering Reporting Officer is a fit and proper person. The Authorised Person shall formally propose the appointment to the MFSA after having conducted its own due diligence checks and shall ensure that the Money Laundering Reporting Officer continues to meet the standards of a fit and proper person and the standards expected by the MFSA under these Rules on an ongoing basis.

R2-7.8.5 The role of the Money Laundering Reporting Officer is an onerous one, and the Authorised Person shall ensure that it is only accepted and carried out by individuals who fully understand the extent of the responsibilities attached to the role. While the Authority expects the individual proposed to act as Money Laundering Reporting Officer to possess both relevant qualifications and experience in AML/CFT matters, the Authority may still consider applications by individuals proposed as Money Laundering

Reporting Officer who are able to demonstrate to the Authority's satisfaction that their experience on its own is sufficient.

R2-7.8.6 The Money Laundering Reporting Officer shall have the responsibilities outlined in the Implementing Procedures of the FIAU, as may be amended from time to time. In addition, the Authority expects the Money Laundering Reporting Officer to be thoroughly familiar with the Act, the Prevention of Money Laundering Act, the Regulations made thereunder, as well as the Implementing Procedures of the FIAU (including any sector-specific procedures) and any guidance notes issued by the FIAU. Other functions may be assigned to the individual acting as Money Laundering Reporting Officer as long as these do not conflict with his/her responsibilities and obligations as Money Laundering Reporting Officer and allow him to carry out the same in an independent and effective manner.

R2-7.8.7 Upon being granted approval by the MFSA, the Authorised Person shall inform the FIAU of the appointment of the individual so approved as Money Laundering Reporting Officer. The individual so approved will be required to register himself as the Authorised Person's Money Laundering Reporting Officer with the FIAU, through the FIAU's CASPAR platform [here](#).

Title 8 The Approval and Departure Processes for Approved Persons

R2-8 Holding of Approved Positions in Authorised Persons

R2-8.1 Any individual being proposed to hold an Approved Position shall comply with the provisions of this Rule R2-8.

R2-8.2 The Approval Process.

R2-8.2.1 The request for MFSA approval shall be made in writing to the Authority by the Authorised Person with respect to the proposed appointment of an individual to hold an Approved Position, prior to the formal appointment of such person, and shall be accompanied by the assessment conducted by the Authorised Person in relation to that individual's suitability in the manner prescribed by the Authority. A Personal Questionnaire shall be duly completed and submitted by the individual proposed for the approved position

together with all the relative documents required to be submitted with the Personal Questionnaire.

In this respect, the Authorised Person should refer to the [Guidance on Fitness and Properness Assessments](#) applied by the Authority prior to seeking such approval from the MFSA.

R2-8.2.2 Where an individual is proposed to hold an Approved Position, sufficient details of the individual's background, training and/or experience relevant to the proposed role should also be included, for the MFSA to be able to make an adequate assessment with respect to the proposed individual's suitability for the proposed role.

R2-8.2.3 The Authority may also require further information from the proposed individual. For purposes of this Rule, the MFSA may *inter alia* request any supporting documentation from the Authorised Person and/or proposed individual, as it may deem necessary.

R2-8.2.4 The Authority shall, as part of the assessment process, also use information not provided by the proposed person, including publicly available information. The Authority also considers the overall organisational structure of the Authorised Person.

R2-8.2.5 The MFSA shall base its decision as to whether the proposed individual has met the required standards, on the basis of the information provided by the Authorised Person as well as the proposed individual, and any other information that ought to have been provided or disclosed to the Authority. The MFSA shall not be liable in damages for any acts or omissions on the part of the Authorised Person or the proposed individual.

R2-8.3 The Departure Process

R2-8.3.1 The Authorised Person shall notify the Authority, in the manner prescribed by the Authority, of the resignation or removal of an individual holding an Approved Position by not later than the effective resignation and/or departure date.

R2-8.3.2 The Authorised Person shall request the individual holding the Approved Position to provide the Authority with:

- (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.

R2-8.3.3 The Authorised Person shall also provide to the Authority, together with the notification, a written statement noting the reason/s for departure and the remedial measures being undertaken to satisfy the Authorisation conditions as applicable. Any evidence of fraud or dishonesty by a member of the Authorised Person's staff should be notified to the Authority immediately upon becoming aware of the matter. The Authority may request any information, or carry out interviews or checks as it deems necessary.

R2-8.3.4 Where the resignation or removal of an individual holding an Approved Position would result in a situation where: (a) the Authorised Person would not satisfy the minimum requirements relating to the minimum composition of the directors or other persons entrusted with the management and administration of the Authorised Person; and, or (b) would result in a situation where any of the roles of the key officers, including but not limited to the Compliance Officer and the MLRO, of the Authorised Person are vacant, the Authorised Person shall be obliged to identify an individual to fulfil the vacant role as soon as possible and to submit the necessary documentation for approval of such individual by the Authority to ensure compliance with the applicable legislative and regulatory framework.

Title 9 Qualifying Shareholders

R2-9 Approval of Qualifying Shareholders

R2-9.1 As indicated in R2-6.1, as part of the authorisation process the qualifying shareholders of an Applicant are required to be fit and proper persons and shall require prior written approval of the MFSA.

R2-9.2 In accordance with R3-3.2(c) an Authorised Person shall notify the Authority in writing of any proposed changes to its ownership structure immediately upon becoming aware of such proposed changes. Any proposed change in qualifying shareholding of an Authorised Person is subject to the prior written approval of the MFSA. Such approval is only granted if the MFSA is satisfied that such person is a fit and proper person in accordance with the

[Guidance on the Fitness and Properness Assessments applied by the Authority.](#)

- R2-9.3 In order to avoid undue delays in the assessment process, it is essential that the Applicant or Authorised Person, as the case may be, promptly transmits all required information to the MFSA.
- R2-9.4 The MFSA may consider, on the basis of its analysis of the information available, that some additional information is necessary for the assessment of the proposed change in qualifying shareholding. In that case, the MFSA may request in writing to be provided with additional information.
- R2-9.5 In the event that any of the information submitted is false, inaccurate or misleading, rendering the conclusions of the MFSA liable to being erroneous, the MFSA shall refuse the approval of the proposed change in qualifying shareholding. The Authority also has the power to take regulatory action if the information provided at application stage is found to be incorrect even after approval has been granted.

Title 10

Commencement of Business

- R2-10.1 An Authorised Person shall commence business within twelve months from the date of the granting of authorisation.
- R2-10.2 Provided that, if the Authorised Person is for any reason not in a position to comply with the requirement prescribed in the preceding Rule, it shall notify the Authority of this fact in writing and shall set out the reason/s for the delay together with a concrete plan indicating *inter alia* the proposed date of commencement of business. On the basis of the information available and the circumstances of the case, the Authority may decide to suspend or cancel authorisation in accordance with the relevant provisions of the Act.

Title 11

Authorisation of trustees in terms of Article 43(8) of the Act

- R2-11.1 In terms of article 43(8) of the Act, the following persons may also apply to the Authority for authorisation to provide trustee services in Malta and shall be subject to the authorisation process stipulated in this Title:

- (a) a person with a licence or authorisation equivalent to those referred to in article 43(6)(a)(i) to (iii) issued by the Authority or the relevant regulatory authority in an approved jurisdiction and who will be acting as trustee not in the course of its ordinary business for which it is licensed;
- (b) a person having a licence or authorisation to act as a trustee issued by the relevant regulatory authority in an approved jurisdiction;
- (c) a person authorised under the [Retirement Pensions Act](#) as a retirement scheme administrator.

R2-11.2 Any such person, whether Maltese or foreign, shall notify the Authority in writing of its intention to act as a trustee in Malta. This notification shall be made in writing at least 45 days prior to the commencement of activities in Malta. The applicant shall not commence operations unless the Authority has notified the applicant that it has no objection to such commencement. The 45-day time period shall start to run as from the date on which the Authority is in possession of all the documentation requested by the Authority, which documentation shall be to the satisfaction of the Authority.

R2-11.3 An Applicant in terms of Article 43(8) of the Act shall be required to have a place of business in Malta.

R2-11.4 A notification submitted in terms of Article 43(8) of the Act shall outline the proposed activities of the applicant and shall be accompanied by the information and documentation requested in writing by the Authority at the time of notification and subsequently thereafter.

R2-11.5 Eligibility to benefit from this authorisation process shall also be subject to the condition that the licence or authorisation issued by the foreign regulatory authority in the approved jurisdiction shall be equivalent to the type of authorisation being applied for in Malta and a confirmation that the relevant officials of the applicant, in the case of a company or other body corporate, have been subject to a fit and proper assessment undertaken by the relevant regulatory authority and the fitness and properness assessment is satisfied in relation to the officers and the applicant itself at time of notification made to the Authority and on an ongoing basis once the Authority grants its approval.

R2-11.6 A foreign licence or authorisation which is limited to certain activities will not entitle the applicant to the right to avail itself of

the application process referred to in this section in the event that the applicant proposes to carry out a wider range of activities in Malta than that covered by its foreign licence or authorisation. In such case, the applicant shall be required to undergo the full authorisation process under the Act as is referred to in Title 4 of this Chapter 2 of these Rules.

- R2-11.7 Eligibility to benefit from this authorisation process shall not exempt the applicant from fulfilment of the requirements prescribed under the Act and these Rules, which requirements shall be binding on the applicant both at application stage and on an on-going basis. Applicants will still be subject to the Authority's assessment as to competence.

Title 12 Cessation of Business

- R2-12.1 Authorised Persons intending to voluntarily cancel their Authorisation should submit a formal request to the MFSA for the approval of the voluntary cancellation as soon as possible.

- R2-12.2 Prior to commencing the procedure for voluntary cancellation of their authorisation, Authorised Persons should ensure that any amounts, including any fees due to the Authority, have been settled and all regulatory submissions are up to date.

Provided that the Authority shall not proceed with the internal process to approve the voluntary cancellation of an Authorisation unless the Authorised Person has paid any amounts, including any fees, due to the Authority.

- R2-12.3 The Authority may require an Authorised Person to delay the voluntary cancellation of its authorisation, or to wind-up such business in accordance with the conditions imposed by the Authority.

- R2-12.4 The general procedure for the voluntary cancellation of an authorisation is described below, although the Authority reserves the right to impose additional requirements and to request such additional documentation and information as it considers necessary.

- R2-12.5 Once an Authorised Person notifies the Authority of its intention to voluntarily cancel its authorisation, such Authorised Person shall

be required to submit the following documentation and confirmations to the Authority:

- (a) A formal request in writing to the Authority asking for approval to voluntarily cancel the authorisation;
- (b) A certified true copy of the Directors' Resolution confirming the Authorised Person's intention to voluntarily cancel its Authorisation certificate, subject to the Authority's approval and once the necessary formalities are finalised;
- (c) The Authorised Person must give due notice to its clients of its intention to voluntarily cancel its authorisation. Confirmation to this effect should be submitted to the Authority.
- (d) a confirmation (where appropriate) that the Authorised Person which is seeking to cease providing the services which it is authorised to provide, has transferred its clients to another Authorised Person.
- (e) A confirmation that no litigation is pending which arises out of any event that occurred whilst the Authorised Person was authorised;
- (f) A confirmation that the Authorised Person will remove all reference to being authorised/licensed by the Authority including from its letterheads, any other stationery, websites, and so forth; and
- (g) in the case of an Authorised Person established as a body corporate, a confirmation from the Authorised Person whether it will liquidate or wind up the body corporate or not following the voluntary surrender. In the event that there is no intention for the body corporate to be liquidated or wound up, a draft of the Constitutional Document of the Authorised Person whereby all references to the provision of services requiring authorisation from its objects clause (or equivalent) are removed and, (where appropriate) the name of the Authorised Person is changed so as to remove all references to the provision of services requiring authorisation, should also be submitted to the MFSA;
- (h) A confirmation that the Authorised Person has informed its auditor and insurer of the intention to voluntarily cancel its authorisation.
- (i) A confirmation from the auditors of the Authorised Person specifying the date by when all business and obligations arising from the Authorised Person's activities related to its authorisation in terms of the Act have been settled.

- R2-12.6 Further to R2-12.5, the Authority may, at its discretion, require additional confirmations from the Authorised Person. In this respect it is the Authorised Person's responsibility to ensure that all its responsibilities have been satisfied.
- R2-12.7 Once all the requirements listed above are satisfied, an internal process will be set in motion for approval of the voluntary cancellation of the authorisation. Once a decision is taken, this will be conveyed in writing to the Authorised Person which will cease to be authorised thereafter. The Authorised Person shall return its original authorisation certificate to the Authority.
- R2-12.8 In the case of a body corporate, following the Authority's approval of the voluntary cancellation a copy of its amended constitutional document as referred to in R2-12.5(g) should be submitted to the competent authority for registration and evidence of such submission is to be provided to the Authority within two weeks of the publication of the notice referred to R2-12.9.
- R2-12.9 The Authority will ordinarily issue a public notice regarding the voluntary cancellation of the authorisation.

Chapter 3 Ongoing obligations

Title 1 Scope and Application

R3-1.1 This Chapter outlines the ongoing obligations for all Authorised Persons.

Title 2 General Requirements

R3-2.1 The Authorised Person shall, at all times, have adequate business organisation, systems, resources, experience, and expertise to act as an Authorised Person.

R3-2.2 The Authorised Person shall take reasonable steps to ensure continuous and reliable regularity in the performance of its services. To this end, the Authorised Person shall employ systems, resources and procedures that are appropriate and proportionate to the nature, scale, and complexity of its business.

R3-2.3 Where the Authorised Person is an individual, such Authorised Person shall ensure compliance with Rule 3-2.2 and shall implement and maintain systems to ensure that interests are safeguarded in the event of death, incapacity, sickness, holidays, or other absence.

R3-2.4 The Authorised Person shall co-operate in an open and honest manner with the Authority and shall promptly inform it in writing of any information which may have an impact on the continuation or otherwise of its authorisation, including any updated information regarding the fitness and properness of the applicant, of its directors, other officers or individuals holding an Approved Position, or of its qualifying shareholders, as the case may be, including any material change to the information and declarations in any Application, Personal Questionnaire or Corporate Questionnaire submitted to the Authority.

R3-2.5 The Authorised Person shall co-operate fully during any inspection or other enquiry, or compliance testing carried out by the MFSA or person acting on its behalf.

R3-2.6 The Authorised Person shall be required to satisfy all conditions for authorisation and any conditions imposed thereafter, in terms of the Act, any Regulations and Rules issued thereunder, on an ongoing basis. Where the Authority becomes aware of any change

or circumstance which may have a bearing on the status of the Authorised Person, including any changes to any factors which were considered as part of its assessment criteria for granting authorisation, the Authority may deem this to be sufficient grounds for the Authority to cancel or suspend an authorisation or to take any other regulatory action which it may deem appropriate, in accordance with the provisions of the Act.

R3-2.7

The Authorised Person shall maintain sufficient records to be able to demonstrate compliance with the conditions of its Authorisation and any conditions imposed thereafter, with all applicable requirements prescribed by the Act, the regulations and rules issued thereunder and all obligations with respect to clients or prospective clients. In this regard an Authorised Person shall conduct sufficient monitoring and regular reviews, including but not limited to independent audits. In the case of Authorised Persons who are individuals, such individuals are required to document all decisions taken in relation to the business in order to be able to demonstrate compliance in terms of this Rule.

R3-2.8

Pursuant to the preceding rule R3-2.7, such records shall be kept available for inspection by the MFSA, for at least five years. Provided that the Authority may require that such records are kept for such longer period as it may direct. Such period as extended shall not exceed ten years.

Where an Authorised Person ceases to be authorised under the Act and the retention period has not yet lapsed, the record retention period will continue to run until it lapses in full and irrespective of this cessation.

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

- (i) any other record keeping obligations that the Authorised Person may have in terms of the Act, in particular Article 21(4)(b) thereof relating to the time period for retention of records by trustees;
- (ii) any other record keeping obligations applicable to the Authorised Person in terms of any other law, rules, or regulation; and
- (iii) the right of any other authority, in terms of applicable law, to access the documents, data or information held by the Authorised Person.

- R3-2.9 The retention period for the following specific categories of documents shall commence to apply as follows:
- (a) in the case of any records including accounts, relating to clients of the Authorised Person, from the date when the termination of the trust, mandate or foundation occurs, or the Authorised Person no longer acts as trustee, mandatary, or administrator. These records include but are not limited to records of any minutes, resolutions, deliberations, advice, accounts, or reports received in relation to the business relationship;
 - (b) in the case of outsourcing arrangements, from the date of termination of such outsourcing arrangement;
 - (c) in the case of training records (whether training is conducted in order to satisfy these Rules or in terms of a condition imposed by the Authority), from the date when the training was conducted or concluded;
 - (d) in the case of legal or any other professional advice, including any advice provided by a third party in relation to the Authorised Person's governance, risk or its compliance with the Act, any regulations and Rules published thereunder, from the date the advice was given.
- R3-2.10 In the case of a trust or private interest foundation, the Authorised Person shall at all times be able to demonstrate that it has a clear and documented understanding of the purpose and objects of any trust or private interest foundation, as applicable. In this Rule the reference to "purpose" shall be understood as the "objectives" of a trust or a foundation and not to be confused with what is traditionally known as a "purpose trust" or "purpose foundation".
- R3-2.11 In the case of a mandate, the Authorised Person shall at all times be able to demonstrate that it has a clear and documented understanding of the rationale for the mandate and the terms agreed to with the mandator as stipulated in the mandate agreement.
- R3-2.12 The Authorised Person shall moreover satisfy itself that the trust or private interest foundation or the mandate relationship has been established for a lawful purpose. The Authorised Person shall seek legal or other professional advice where necessary. Such advice

should be in writing and maintained by the Authorised Person for the period stipulated in R3-2.8.

R3-2.13 Where a trust is created by oral declaration, the Authorised Person shall, at the first available opportunity, set out the terms of the trust in writing and, where possible, have such declaration endorsed by the settlor.

R3-2.14 The Authorised Person shall have a considered and agreed policy on new client engagements or acceptances, having regard to an assessment of the quality, nature and scale of the proposed services involved and the ability of the Authorised Person to provide such services.

R3-2.15 The Authorised Person shall ensure that (i) it fully understands the rationale for the use of the legal structure/s proposed by the client and ascertains that the reasons are legitimate, and this is evidenced by the Authorised Person on a risk sensitive basis, and (ii) the business structure is suitable to achieve the intended results, whilst giving due consideration to the protection of the reputation of Malta, taking into account Malta's international commitments; and (iii) it fully understands why Malta was chosen as the jurisdiction for establishing the legal structure/s proposed by the client and, or for selecting an Authorised Person authorised in terms of the Act to provide the services in question in relation to the specific legal structure/s. This standard shall also apply to any party to whom certain aspects of the business of the Authorised Person is delegated, provided however, that the Authorised Person shall retain liability for ensuring that the requirements of this Rule are met.

Title 3

Notifications and Prior Approvals

R3-3.1 Where the Authorised Person is required in terms of the Act, any regulations or Rules issued thereunder, or any other applicable law, to notify of an event or disclose information to the Authority, such disclosure shall be made promptly and in writing, in a durable medium. The requirement to notify the MFSA of any event or disclose information shall not be satisfied merely by the fact that the information which ought to be notified to it is included in a standard regulatory return or information which is publicly available.

R3-3.2

The Authorised Person shall notify the Authority in writing of the following matters:

- (a) the resignation or removal of an individual holding an Approved Position in accordance with R2-8.3 relating to the Departure Process in Chapter 2;
- (b) a proposed change of registered office or business address, at least one (1) month in advance of such change;
- (c) a proposed change in ownership structure which would not result in a change in qualifying shareholding, before it takes place;
- (d) any evidence of fraud or dishonesty by any officer or employee of the Authorised Person immediately upon the Authorised Person's becoming aware of the matter;
- (e) any notification required in terms of R3-4.8 relating to insurance;
- (f) any actual or intended legal or arbitral proceedings of a material nature by or against the Authorised Person, or against any of its qualifying shareholders, directors or other officers, immediately after the decision has been taken or upon becoming aware of the matter, this shall also include any actual or intended proceedings against its clients particularly where this may impact the reputation of the Authorised Person;
- (g) any material changes in the information provided to the Authority or any material developments which may impinge upon the Authorised Person, its business or its staff in Malta or abroad, immediately upon becoming aware of the matter. This shall include the obligation to notify the Authority of any changes or circumstances which give rise to the existence of close links as defined in the Act or could impinge on the fitness and properness of its officers. Provided that in the event of doubt as to whether a change is material or otherwise, the Authorised Person should request the Authority's guidance;
- (h) if it intends to retain records at any place other than the Authorised Person's registered office in Malta in accordance with the second paragraph of R3-12.8, prior to the records being retained elsewhere;
- (i) a breach of any condition of its authorisation or of any provision of the Act, the regulations and rules issued thereunder as soon as the Authorised Person becomes aware of the breach; and

- (j) any instances of any circumstances or events which may lead to the Authorised Person not being in a position to comply with, either fully or in part, with the requirements relating to segregation of assets in terms of R3-11.10.

Provided that in the case of points (a) and (b) above, such changes shall be subject to the receipt of a confirmation in writing from the Authority that it does not object thereto.

R3-3.3

The Authorised Person shall obtain the written approval of the Authority **before**:

- (a) making any change in the Authorised Person's name or its business name (if different), at least one month in advance of such change;
- (b) the appointment of an individual in an Approved Position;
- (c) any proposed change to its ownership structure which would result in a proposed change in the qualifying shareholding of the Authorised Person before it takes place, which approval should be requested from the Authority in terms of Chapter 2 of these Rules;
- (d) making any change to its share capital or the rights of shareholders;
- (e) making any change to the instrument of incorporation such as the Memorandum and Articles of Association in the case of limited liability companies;
- (f) a proposed acquisition of 25% or more of the capital or voting rights in a body corporate;
- (g) any proposed material change to the business of the Authorised Person as originally authorised, including any deviations or changes from the information provided in relation to the Authorised Person's Business Plan during the authorisation phase such as any proposal to extend its business materially, particularly in the event that the Authorised Person proposes to undertake business unrelated to its authorisation in terms of the Act, any Regulations issued thereunder and these Rules;
- (h) taking any steps to transfer all or part of the business of the Authorised Person, or to cease or wind up its business, or resolve to go into liquidation or dissolution.
- (i) agreeing to sell or merge the whole or any part of the Authorised Person; and
- (j) the conclusion of any material outsourcing arrangements between the Authorised Person and specified third parties in terms of R3-9.10 on Outsourcing.

Title 4 Financial Resources Requirement

- R3-4.1 The rules in this Title are made for the purposes of supplementing articles 43(4)(i)(d), 43(4)(ii)(d), 43(13)(i)(d) and 43(13)(ii)(c) of the Act and shall be read in conjunction with Title 3 relating to Minimum Capital Requirements in Chapter 2 and where applicable, with Rule 4-2.3 relating to Financial Resources Requirements for Authorised Persons acting as CSPs.
- R3-4.2 An Authorised Person shall, at all times, maintain and be able to demonstrate that it has sufficient financial resources available to enable it to conduct its business effectively, to meet its liabilities as they fall due and to be solvent at all times.
- R3-4.3 Due to the wide variation in the size and complexity of Authorised Persons regulated by the Act and in the nature, scale and range of activities undertaken by them, the Rules prescribed below shall only serve to establish the minimum financial resources requirements of Authorised Persons. To that extent, Authorised Persons shall be responsible for assessing and documenting the level of financial resources necessary to enable them to meet their liabilities as they fall due and to withstand the risks to which they are subject and ensure that such financial resources are available at all times.
- R3-4.4 The Authorised Person shall maintain financial resources which are at least equivalent to the minimum capital as set out in terms of the applicable legislative and regulatory framework, and these shall be maintained for as long as such person remains authorised under the Act.
- In the case of an Authorised Person that is a body corporate, the minimum capital, (and, in the case of a body corporate that is a limited liability company, its share capital), shall be issued and fully paid up and no divestment of capital shall take place unless the issued capital and cash reserves of the Authorised Person shall collectively amount to at least the minimum established by R2-3.2 applicable to that Authorised Person.
- R3-4.5 The financial resources requirement in the case of a body corporate is also satisfied if such amount is held in the form of cash and cash equivalents in terms of International Accounting Standard 7, as may be amended from time to time.

R3-4.6 The financial resources of an Authorised Person that is an individual may be constituted and held in the form of cash or cash equivalents. Alternatively, the individual may opt for a guarantee, or an irrevocable letter of credit issued by a credit institution:

- (a) authorised to carry on business of banking under the Banking Act (Cap. 370);
- (b) having its registered office in the EU and authorised in accordance with Directive 2013/36/EU; or
- (c) lawfully permitted to carry on business of banking in an approved jurisdiction, provided that the credit institution is subject to effective prudential regulation and supervision having the same effect as Maltese law and which is effectively enforced.

Provided that the following conditions are met:

- (i) the guarantee or the letter of credit is made out in favour of the Authority;
- (ii) the content of the guarantee or letter of credit is provided to the Authority for its approval; and
- (iii) where the Authorised Person intends to effect any changes to the content of the guarantee or letter of credit, such Authorised Person immediately submits in writing to the Authority the particulars of the proposed changes for the Authority's approval. No such changes shall take place unless the Authority's approval is granted in writing.

Title 5 Insurance Requirement

R3-5.1 This Title is made pursuant to, and for the purposes of, articles 43(4)(i)(e), 43(4)(ii)(e), 43(13)(i)(e), 43(13)(ii)(d) of the Act.

R3-5.2 An Authorised Person shall maintain adequate PII cover to ensure that it is at all times able to meet the risks to which it is exposed and to meet, at the very least, the minimum limits of indemnity stipulated in R3-5.6. Where appropriate, it shall take out D&O insurance in conjunction with PII.

R3-5.3 When taking out PII the Authorised Person shall consider the effect that the PII policy's terms and conditions might have on the Authorised Person's business.

- R3-5.4 Due to the wide variation in the size and complexity of Authorised Persons and in the nature, scale and range of activities undertaken by them, the Rules prescribed below shall only serve to establish minimum requirements. To that extent, each Authorised Person shall be responsible for assessing the nature and extent of the risks to which it is exposed (including but not limited, to any Company Service Provider Services it is authorised to provide in terms of the Company Service Providers Exemption Regulations) and the amount of PII necessary to adequately cover those risks, based on the nature of the business of the Authorised Person and the extent to which the perceived risks can be reduced or avoided.
- R3-5.5 For the purposes of demonstrating to the satisfaction of the MFSA that the requirements of this Title are being complied with on an ongoing basis, the Authorised Person shall, upon request by the Authority, submit to it a copy of the renewal cover note or such other written evidence as the Authority may require to be able to ascertain whether the Authorised Person is compliant with these Rules.
- R3-5.6 The minimum limits of indemnity per year for Authorised Persons are no lower than:
- (a) three times the annual turnover in the previous year ending on its annual reporting date or, for new businesses, the estimated turnover for the first year, from activities authorised in terms of the Act; or
 - (b) €2,000,000; or
 - (c) in the case of Authorised Persons that are authorised to act as trustees, 10% of the total value of assets held on trust. In cases where trust assets comprise shares in a company, this should be calculated on the value of the total underlying assets and not just the value of the shares.
- Provided that, the Authorised Person shall satisfy as a minimum one of the criteria stipulated in (a), (b) or (c), whichever is the highest.
- Provided further that an Authorised Person shall not be required by the above tests to maintain aggregate cover exceeding €5,000,000.
- R3-5.7 An Authorised Person shall take out and maintain full PII cover and shall ensure that as a minimum such insurance, *inter alia*:

- (a) covers any legal liability (including but not limited to breach of duty) in consequence of any negligent act, error, or omission in the conduct of the business by the Authorised Person, or any person acting on its behalf, including but not limited to officers, employees, consultants under a contract of service with the Authorised Person;
- (b) covers legal defence costs which may arise in consequence of any negligent act, error, or omission in the conduct of the Authorised Person's business by the Authorised Person, or any person acting on its behalf, including officers, employees, consultants under a contract for service with the Authorised Person;
- (c) covers breach of confidentiality, omissions, loss of, or damage to, documents and records belonging to the Authorised Person, or which are in the care, custody or control of the Authorised Person, or for which the Authorised Person is responsible, including also liability, costs, and expenses incurred in replacing, restoring or reconstructing the documents or records, including also consequential loss resulting from the loss or damage to the documents or records;
- (d) covers the whole territory of the European Union and extends to all other territories from, in or to which the Authorised Person is providing its services;
- (e) covers libel, slander and defamation;
- (f) covers any liability resulting from any breach of a provision of the Act or of any regulations and rules issued under the Act, and any award resulting from any such breach;
- (g) covers claims made after the expiry of the policy where the circumstances giving rise to the claim took place and were notified to the insurers during the period of the policy; and
- (h) covers the minimum limits of indemnity stipulated in R3-5.6.

R3-5.8

The Authorised Person shall, within two working days from the date it becomes aware of any of the circumstances specified below, inform the MFSA in writing where:

- (a) during the period of a policy, the Authorised Person has notified insurers of an incident which may give rise to a claim under the policy;

- (b) during the period of a policy, the insurer has cancelled the policy or has notified its intention of doing so;
- (c) the policy has not been renewed or has been cancelled and another policy satisfying the requirements of this Title has not been taken out from the day on which the previous policy lapsed or was cancelled;
- (d) during the period of a policy, the terms or conditions are altered in any manner so that the policy no longer satisfies the requirements of this Title;
- (e) the insurer has intimated that it intends to decline to indemnify the insured in respect of a claim under the policy;
- (f) the insurer has given notice that the policy will not be renewed or will not be renewed in a form which will enable the policy to satisfy the requirements of this Title;
- (g) during the period of a policy, the risks covered by the policy, or the conditions, exclusions or terms relating thereto, are altered in any manner; and
- (h) the Authorised Person intends to commence legal proceedings against the insurer in the case of a dispute between the Authorised Person and the insurer on any particular claim.

R3-5.9 For the purposes of demonstrating to the satisfaction of the MFSA that the requirements in this Section are being complied with on an on-going basis, the Authorised Person shall, upon request by the MFSA, submit to the MFSA a copy of the renewal cover note or such other written evidence as the MFSA may require to establish compliance with these Rules.

R3-5.10 The PII policy shall be governed by Maltese law or the law of an EU or EEA State or an Approved Jurisdiction.

R4-5.11 Where an Authorised Person forms part of a group of companies, such Authorised Person can benefit from insurance cover taken out by another group company as long as the insurance cover satisfies the requirements of this Title. The Authorised Person shall be responsible for providing evidence of such cover under the group's policy, should the Authority request evidence that the requirements in this Section are being complied with on an on-going basis in terms of R3-5.9.

For the purpose of this Rule a "group of companies" means in relation to any company, any body corporate which is that company's subsidiary or parent company, or a subsidiary of that company's parent company, and the term "group" shall be

construed accordingly as well as meaning a parent undertaking and all its subsidiary undertakings.

Title 6 Governance

R3-6.1 An Authorised Person shall be effectively directed and managed by persons who are 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 Authorised Person.

R3-6.2 An Authorised Person shall have effective management and systems that are commensurate with the scale and complexity of its business. These shall include robust governance arrangements which include a clear organisational structure with well defined, transparent and consistent lines of responsibility.

R3-6.3 Pursuant to R3-6.2, the Authorised Person shall:

- (a) establish, implement, and maintain decision-making procedures and an organisational structure which clearly, and in a documented manner, specifies reporting lines and allocates functions and responsibilities;
- (b) ensure that its staff is aware of the procedures which must be followed for the proper discharge of their responsibilities;
- (c) establish, implement, and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the Authorised Person;
- (d) employ personnel with the skills, knowledge, and expertise necessary for the discharge of responsibilities allocated to them;
- (e) establish, implement and maintain effective systems of internal reporting and communication of information at all relevant levels of the Authorised Person;
- (f) maintain adequate and orderly records of its business and internal organisation; and
- (g) ensure that the performance of multiple functions by its staff does not and is not likely to prevent those persons from discharging their particular function soundly, honestly and professionally.

For these purposes, the Authorised Person shall take into account the nature, scale and complexity of its business, and the nature and range of the activity being undertaken in the course of that business.

R3-6.4 The Authorised Person shall establish, document, implement, and maintain systems and procedures that are adequate to safeguard the security, integrity, and confidentiality of information, taking into consideration the nature of the information in question.

R3-6.5 The Authorised Person shall implement and maintain appropriate and sufficient resources as well as adequate policies and procedures to ensure compliance with its obligations under the Act, any Regulations issued thereunder and these Rules as well as with its obligations under other applicable legislation, in particular the Prevention of Money Laundering Act, the Regulations issued thereunder and the Implementing Procedures issued by the FIAU, as well as to detect the associated risks, and shall put in place adequate measures and procedures designed to minimise such risks and to enable the MFSA to exercise its powers effectively.

R3-6.6 The Authorised Person shall regularly monitor and, at least annually, evaluate the adequacy and effectiveness of its systems, internal control mechanisms and arrangements established in accordance with this sub-section and to comply with R3-2.7. Furthermore, the Authorised Person shall prepare an annual report to the board of directors (or equivalent management body where the body corporate is not a company), or as part of the business records for an individual. Such report should be made available to the MFSA on request and should also include the appropriate measures put in place to address any deficiencies.

R3-6.7 Without prejudice to the provisions of the Act governing delegation, where the Authorised Person is a body corporate, the board of directors (or equivalent management body where the body corporate is not a company), shall be responsible for the proper exercise of powers and for ensuring that the Authorised Person has in place proper policies, procedures, and other arrangements.

The board of directors may delegate in writing the administration of the Authorised Person's powers insofar as is permissible under the Act, as it considers appropriate to such directors, officers, employees, or other persons as it may designate in accordance with written policies and procedures governing the terms of such

delegation and including appropriate controls over such delegation, while also providing for monitoring of such delegation on an ongoing basis.

R3-6.8 The directors of an Authorised Person shall ensure that board meetings are held regularly on at least a quarterly cycle and that the majority thereof are held in Malta and that accurate minutes are maintained as a record of the proceedings at the Authorised Person's registered office.

R3-6.9 Where the Authorised Person is a body corporate other than a limited liability company, the Authorised Person shall ensure that meetings of the management body are held regularly on at least a quarterly cycle and that the majority thereof are held in Malta and that accurate minutes are maintained as a record of the proceedings at the Authorised Person's main office.

R3-6.10 An Authorised Person is encouraged to adopt the principles and supporting provisions in the [MFSA Corporate Governance Code](#) while taking into consideration the nature, size and complexity of the business of the Authorised Person. Nothing contained in the said Corporate Governance Code shall be deemed to override the general rules, laws and principles which regulate Authorised Persons, but it shall be considered a general framework setting out best practice in corporate governance and the Board of Directors (or the management body in the case of a body corporate other than a limited liability company) of an Authorised Person is encouraged to refer to the principles and supporting provisions in the said Code when it requires guidance on any aspects of governance.

R3-6.11 Competent and Effective Management

R3-6.11.1 The Authorised Person shall:

- (a) understand and comply with its contractual and other legal obligations;
- (b) identify and act in the best interests of the beneficiaries and each client as applicable, and without prejudice to the requirements under R3-11.7 in relation to Conflicts of Interest, deal properly and appropriately with managing and mitigating any conflict of interest between clients and between itself and a client/s;
- (c) keep the affairs of the clients confidential except where disclosure of information is required or permitted by law, rules or guidance published by the Authority or any other

competent Authority or where such disclosure is authorised by the person(s) to whom the duty of confidentiality is owed; and

(d) record and monitor the compliance with the Act, any regulations issued thereunder and with these Rules.

R3-6.11.2 Where the Authorised Person is a body corporate it shall effectively be directed and managed by at least two individuals in satisfaction of the dual control principle.

R3-6.11.3 Where an Authorised Person is constituted as a limited liability company its Directors shall discharge all their duties and responsibilities in relation to such Authorised Person, and comply with the applicable law, principles of good corporate governance, and any applicable codes, guidance or regulations. This includes fully participating in board meetings and board decisions relating to the Authorised Person and its business, keeping themselves fully informed regarding the Authorised Person's business, and taking such decisions in the best interests of the Authorised Person, the beneficiaries and its clients, as applicable. Decisions shall be taken by at least two (2) directors.

R3-6.11.4 Where the Authorised Person is a body corporate other than a limited liability company, the persons vested with the management of the Authorised Person shall discharge all their duties and responsibilities in relation to it and comply with the applicable law, principles of good corporate governance and any applicable codes, guidance, or regulations. This includes fully participating in management meetings (by whatever name they may be called) and decisions relating to the Authorised Person and its business, keeping themselves fully informed regarding the Authorised Person's business and taking such decisions in the best interest of the Authorised Person, the beneficiaries and its clients, as applicable. Decisions shall be taken by at least two (2) persons vested with the management of the Authorised Person.

R3-6.11.5 The Authorised Person shall ensure that at least two (2) individuals' independent judgments are applied to both the formulation and implementation of the policies of the Authorised Person, and it shall not be deemed to be sufficient for one of the two persons to make some, albeit significant, decisions relating only to some aspects of the business. Each must play a part in the decision-making process on all significant decisions. Whilst these two individuals are not expected to duplicate each other's position, both must demonstrate the qualities and application to influence

strategy, day-to-day policy, and their implementation, and both shall be required to demonstrate that they are doing so in practice.

- R3-6.11.6 Both the individuals referred to in R3-6.11.2 and R3-6.11.5 shall be expected to exercise their judgement to be able to detect any possible major errors leading to difficulties for the Authorised Person. Such individuals must possess and demonstrate sufficient experience and knowledge of the business to be in a position to detect, resist and challenge any imprudence, dishonesty, or other irregularities by the other individual or any other person involved in the business. Where a single individual is particularly dominant in an Authorised Person, this will raise doubts about the fulfilment of these requirements

R3-6.12 Adequate Personnel

- R3-6.12.1 An Authorised Person shall have capable members of staff who are suitably chosen, appropriately trained, managed, and monitored to comply with these rules and competent to discharge their duties effectively.

- R3-6.12.2 The Authorised Person shall ensure that members of staff are aware of the policies and procedures which must be complied with for the proper discharge of their responsibilities and receive training in relation to such policies and procedures that is appropriate for their role.

- R3-6.12.3 The Authorised Person shall formulate and keep up-to-date plans for staff training and development, including training in relation to their specific duties, but also to anti money laundering and countering the financing of terrorism, and for disaster recovery. In so doing the Authorised Person shall comply with the rules hereunder relating to CPE. The Authorised Person shall maintain records of training undertaken by staff.

- R3-6.12.4 The Authorised Person shall ensure that the responsibilities and authority of each member of staff are clear and appropriate to his or her qualifications and experience.

- R3-6.12.5 The Authorised Person shall ensure that the performance of multiple functions by members of staff does not and is not likely to prevent those persons from discharging any particular function soundly, honestly, and professionally.

R3-6.12.6 The Authorised Person shall formulate and keep up to date plans for staff training and development to ensure that staff keep abreast with all applicable laws, rules, and regulations as well as the Authorised Person's internal policies and procedures.

R3-6.13 Staff Knowledge, Competence and Continuous Professional Education

R3-6.13.1 Authorised Persons shall ensure that key members of staff shall acquire knowledge and competence with regards to the services offered by the Authorised Person and shall undergo periodical training that is relevant and appropriate to their duties.

R3-6.13.2 In the preceding rule the phrase "knowledge and competence with regards to the services offered by the Authorised Person" refers specifically to knowledge and competence with regards to trust services in the case of a person authorised to act as trustee, mandate services in the case of a person authorised to act as mandatary and administration of foundations in the case of a person authorised to act as administrator of private interest foundations.

R3-6.13.3 The Authorised Person shall ensure that, where a key member of staff has not acquired the necessary knowledge and competence in the provision of the Relevant Services, such member of staff shall not provide the Relevant Services until the appropriate experience and training has been acquired.

R3-6.13.4 Persons subject to the fitness and properness assessment shall, on an ongoing basis attend training that is relevant and appropriate to their duties and role within the Authorised Person and maintain a record of such training and the CPE hours allocated to such training. The Authority expects that such training is attended at least annually. The Authority may from time-to-time issue guidance in relation to the minimum expectations relating to CPE, including the number of hours required. The above is without prejudice to any conditions relating to training imposed by the Authority on the individual holding an Approved Position including at the time of approval as well as to any other training requirements imposed by any other authority.

R3-6.14 Adequate Systems and Controls

R3-6.14.1 An Authorised Person shall ensure that it has in place the necessary systems, controls, and procedures to ensure that members of staff perform their duties in a diligent and proper manner.

R3-6.14.2 The Authorised Person shall ensure that members of staff understand and comply with the established systems, policies and procedures including those dealing with new business acceptance, any distributions of assets, investment reviews and staff training.

Title 7 Compliance

R3-7.1 The Authorised Person shall establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the Authorised Person to comply with its obligations under the Act, the Regulations and the Rules issued thereunder, as well as with its obligations under any other applicable legislation, regulations and rules, 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 Authorised Person shall, for this purpose, take into account the nature, scale and complexity of its business and the nature and range of services and activities undertaken in the course of that business.

R3-7.2 The Authorised Person shall maintain high standards of conduct and compliance. It shall establish and maintain a permanent and effective compliance function which operates independently and which has the responsibilities provided in R2-7.

Provided that where an individual has obtained a derogation under R2-7.7 such person shall himself be considered as being the Compliance Officer.

R3-7.3 In order for the Compliance function to properly discharge its responsibilities the Authorised Person shall ensure that the following conditions are satisfied:

- (a) a Compliance Officer shall be appointed who will assume responsibility for the compliance function and for any reporting as to compliance required by the Act or these Rules and shall prepare an annual report as provided by R3-6.6.
- (b) the Compliance function shall have the necessary authority, resources, expertise, and access to all relevant information and to all documents and records held by the Authorised Person;
- (c) the relevant persons involved in the compliance function shall not be involved in the performance of services or activities which they monitor and shall be sufficiently independent from the client onboarding process;
- (d) the method of determining the remuneration of the relevant persons involved in the Compliance Function shall not compromise their objectivity nor be likely to do so; and
- (e) in the case of a limited liability company, the Compliance Officer, if not also a director of the Authorised Person, has direct access to its board of directors and in the case of any other body corporate has direct access to the Authorised Person's management body.

R3-7.4

The Compliance Function shall draw up an annual compliance monitoring programme and provide to the Authorised Person, or the Authorised Person's Board of Directors (in the case of a company) or equivalent management body (in the case of any other body corporate) with regular updates on the implementation thereof in the form of compliance reports which shall be in writing and also include information on compliance matters in general.

R3-7.5

The Compliance Officer shall *inter alia* be responsible for ensuring that the records maintained by the Authorised Person are in accordance with the Act, any Regulations published thereunder and these Rules as well as any other law or rules applicable to the Authorised Person.

Title 8

Procedures for the Reporting of Breaches

R3-8.1

The Authorised Person shall develop and maintain appropriate procedures relating to internal reporting of breaches. These shall include the maintenance of a breaches log which lists any reported breach.

R3-8.2 Pursuant to the R3-8.1, Authorised Persons shall also refer to, and comply with, the applicable provisions of the Protection of the Whistleblower Act, Chapter 527 of the Laws of Malta.

R3-8.3 In the case of Authorised Persons who are individuals, the Authorised Person is required to have in place a breaches log which also lists any breaches of the Act, Rules or other relevant laws and Regulations.

Title 9 Outsourcing

R3-9.1 An Authorised Person shall have a policy on its approach to outsourcing, including maintaining and testing the outsourcing arrangement, contingency plans, exit strategies as well as a general policy that covers all aspects of outsourcing, including non-material outsourcing, whether the outsourcing takes place within a group of companies or not.

R3-9.2 An Authorised Person shall ensure, when relying on a third party for the performance of any Operational Function, that it takes reasonable steps to avoid undue additional operational risk to the provision of continuous and satisfactory service to clients and the performance of its services on a continuous and satisfactory basis.

R3-9.3 When the Authorised Person outsources any function, the Authorised Person shall remain fully responsible for discharging all of its obligations under the Act, any Regulations published thereunder or these Rules and shall adequately manage the risks relating to such outsourcing arrangements at all times.

R3-9.4 The Authorised Person shall exercise due skill, care and diligence when entering into, managing, or terminating any arrangement for the outsourcing to a service provider of any Operational Functions.

R3-9.5 The Authorised Person shall carry out an ongoing assessment of the operational risks and the concentration risk associated with all its outsourcing arrangements and same shall be adequately documented. The Authorised Person shall notify the MFSA in writing of any material developments.

- R3-9.6 The Authorised Person retains full regulatory responsibility and shall ensure that the proper management of the risks associated with the outsourced activities lies with the Authorised Person.
- R3-9.7 When the Authorised Person outsources any function, the Authorised Person shall ensure that the outsourcing arrangements do not result in the delegation of responsibility.
- R3-9.8 The outsourcing of Operational Functions may not be undertaken in such a way as to materially impair:
- (i) the ability of the MFSA to monitor the Authorised Person's compliance with all its obligations;
 - (ii) the orderly conduct of the Authorised Person's business;
 - (iii) the quality of the Authorised Person's internal controls;
 - (iv) the Authorised Person's ability to manage and monitor its business and activities; or
 - (v) the ability of internal governance bodies, such as the Board of Directors, to fulfil their oversight tasks.
- R3-9.9 The Authorised Person shall, in particular, take the necessary steps to ensure and evidence that the following conditions are satisfied:
- (i) the service provider must have the ability, capacity and any authorisation required by law to perform the outsourced functions, services or activities reliably and professionally;
 - (ii) the service provider must carry out the outsourced services effectively, and to this end, the Authorised Person must establish methods for assessing the standard of performance of the service provider;
 - (iii) the Authorised Person must properly monitor the carrying out of the outsourced functions, and adequately manage the risks associated with the outsourcing;
 - (iv) appropriate action must be taken if it appears that the service provider may not be carrying out the functions effectively and in compliance with applicable laws and regulatory requirements;
 - (v) the Authorised Person must retain the necessary expertise to monitor the outsourced functions effectively and manage the risks associated with the outsourcing and must monitor those functions and manage those risks;
 - (vi) the service provider must disclose to the Authorised Person any development that may have a material impact on its ability to carry out the outsourced functions effectively and in compliance with applicable laws and regulatory requirements;

- (vii) the Authorised Person must be able to terminate the arrangement for outsourcing where necessary, without detriment to the continuity and quality of its provision of services to clients;
- (viii) the service provider must cooperate with the MFSA in connection with the outsourced activities;
- (ix) the Authorised Person, its auditors and the MFSA must have effective access to data related to the outsourced activities, as well as to the business premises of the service provider; and the MFSA must be able to exercise those rights of access;
- (x) the service provider must protect any confidential information relating to the Authorised Person and its clients; and
- (xi) the Authorised Person and the service provider must establish, implement and maintain a contingency plan for disaster recovery and periodic testing of backup facilities, where that is necessary having regard to the function, service or activity that has been outsourced.

R3-9.10 An Authorised Person shall seek the prior approval of the MFSA with respect to any material outsourcing arrangements in accordance with R3-3.3 and inform the MFSA of any intended material outsourcing arrangements in writing providing appropriate information in respect thereof.

The Authorised Person shall make available on request all information necessary to enable the Authority to supervise the compliance of the performance of the outsourced activities with the requirements of these Rules.

R3-9.11 An Authorised Person shall inform the MFSA in writing of any material development affecting an outsourced activity and the manner in which it is proposing to rectify its position in order to fulfil its obligations to its clients.

R3-9.12 The MFSA may impose specific conditions on the Authorised Person for the outsourcing of any activities

R3-9.13 The Outsourcing Contract

R3-9.13.1 The Authorised Person shall ensure that any outsourcing arrangement is based on a formal, clear, written contract which establishes the respective rights and obligations of the Authorised Person and of the service provider, including the requirements emanating from R3-9.9.

Title 10

Delegation

- R3-10.1 An Authorised Person shall not delegate any of its powers, duties and, or obligations unless permitted so to do by the Act, any Regulations or Rules published thereunder, the terms of the trust, mandate, or private interest foundation, as applicable, or a court of law.
- R3-10.2 In delegating any of its powers, duties, obligations and, or in the granting of any powers of attorney, an Authorised Person shall have regard to the terms of the trust, mandate or private interest foundation, as applicable, to the law and to any powers conferred by the court with regard thereto.
- R3-10.3 In delegating any of its powers, duties and, or obligations, the Authorised Person shall, where possible, consider a range of competent service providers and shall base its final choice of delegate on a due assessment of the fitness and properness of such service providers. Such considerations shall be duly documented and periodically reviewed by the Authorised Person.
- R3-10.4 Where the Authorised Person is granted any discretion in the case of a trust or private interest foundation, such powers of discretion shall not be subject to delegation.
- R3-10.5 The discretion referred to in R3-10.4 may include but is not limited to instances where such Authorised Person has discretion as to which beneficiaries are to obtain a benefit, the quantity, timing, and manner of any benefit to be granted, and any other powers relating to the appointment, application, or advancement of any property under the Authorised Person's administration.
- R3-10.6 Without prejudice to the provisions of article 25(3) of the Act, the Authorised Person shall not be discharged from its obligations under the Act, any Regulations issued thereunder, these Rules or any other applicable law by reason of the delegation of any of its duties and/or in the granting of any powers of attorney.

Title 11 Conduct of Business Obligations

R3-11.1 General Conduct of Business Obligations

R3-11.1.1 An Authorised Person shall conduct its business with integrity at all times and shall not attempt to avoid or contract out of its responsibilities under these Rules.

R3-11.1.2 The Authorised Person shall exercise its fiduciary duties prudently and competently. In the case of a trust or a private interest foundation and, subject to the terms of such trust or private interest foundation, the Authorised Person shall consider the rights of all classes of any beneficiaries when making decisions affecting the administration of the trust or private interest foundation, as the case may be.

R3-11.1.3 The Authorised Person shall, in the case of a trust or private interest foundation, invest, distribute, or otherwise manage the trust or foundation assets in accordance with the law and the terms of the trust or private interest foundation.

R3-11.1.4 The Authorised Person shall deal fairly with all clients and seek to ensure that clients are not misled with regards to the service being provided or the Authorised Person's duties and obligations.

R3-11.1.5 The Authorised Person shall treat the interests of any beneficiaries as paramount (subject to any legal obligations to other persons or bodies) and shall always act with due care, skill, and diligence. The level of skills required will vary according to the individual case and to the nature and scale of the Authorised Person's activities.

R3-11.1.6 An Authorised Person shall establish, implement, and maintain effective organisational and administrative arrangements appropriate to the size and organisation of the Authorised Person and the nature, scale, and complexity of its business.

R3-11.2 Client Agreements

R3-11.2.1 Authorised Persons, prior to entering into a client relationship, shall discuss terms of business with each prospective client and keep a written record of the terms of the agreement with each client, including evidence of the client's agreement to those terms.

That agreement shall include, as a minimum:

- (a) details of the services to be provided and the fees charged;
- (b) a record of how and by whom requests for action are to be given;
- (c) provision dealing with situations where the Authorised Person loses contact with a client or no longer wishes to continue providing services to the client; and
- (d) a provision granting right of access to the MFSA to all information pertaining to the services being provided to the client as well as the client.

R3-11.2.2

A client agreement shall also include provisions indicating:

- (a) A clear description of the grounds and procedure for the termination of the agreement and the consequences of termination;
- (b) A description of the Authorised Person's procedure for dealing with any complaints;
- (c) A statement that the Authorised Person is authorised by the MFSA; and
- (d) A requirement on the client to cooperate and comply with requests for information promptly.

R3-11.3

Complaints Management

R3-11.3.1

An Authorised Person shall ensure that client complaints are properly handled and dealt with in a timely manner.

R3-11.3.2

Authorised Persons shall establish, implement, and maintain effective and transparent procedures for the reasonable and prompt handling of complaints received from clients and to keep a record of each complaint and the measures taken for its resolution.

R3-11.3.3

Authorised Persons shall maintain a complaints register which contains a record of each complaint, the measures taken for its resolution and when it was resolved.

R3-11.3.4

The Authorised Person shall provide information to the Authority on the complaints received by it and on its complaints handling procedures when requested.

R3-11.4 Customer Acceptance and Due Diligence

R3-11.4.1 An Authorised Person shall have procedures in place to ensure that proper due diligence is carried out before any decision is taken to act for a new customer.

R3-11.4.2 The requirements set out in this Rule R3-11.4, shall apply in addition to, and are without prejudice to, the obligations under the PMLFTR and Implementing Procedures issued by the FIAU.

R3-11.4.3 As a minimum, the Authorised Person shall comply with the provisions of the Prevention of Money Laundering Act the Prevention of Money Laundering and Funding of Terrorism Regulations, and the Implementing Procedures issued by the FIAU in terms of the aforementioned Regulations, together with any other relevant legislation and binding guidance that may come into operation from time to time.

R3-11.4.4 An Authorised Person shall have adequate policies and procedures in place to ensure that the identity of persons such as the settlor and the protector in the case of a trust, the mandator in the case of a mandate, the founder in the case of a private interest foundation are known to it. To the fullest extent possible, the Authorised Person shall also ensure the identity of any beneficiaries is established. Authorised Persons shall also identify any agents and service providers of the trust or private interest foundation including but not limited to service providers such as investment advisers, managers, accountants, and tax advisors.

R3-11.4.5 Pursuant to R3-11.4.4, prior to accepting to offer its services, an Authorised Person shall, in so far as it can determine, ensure that the proposed activities, or the engagement itself would not breach any international financial sanctions.

R3-11.4.6 Prior to entering into a business relationship, the Authorised Person shall request the settlor in the case of a trust, the founder in the case of a private interest foundation, the beneficiaries prior to receiving any distribution and the mandator in the case of a mandate to confirm in writing whether such person:

- (a) has ever been convicted of any offence (other than a minor traffic offence);
- (b) has ever been adjudged bankrupt;
- (c) has ever been the subject of an investigation by a government, professional or other regulatory body;

- (d) has ever been a director, officer, shareholder or manager of a business entity which has been the subject of an investigation as aforesaid;
- (e) has ever been a director, officer, shareholder or manager of a business entity which has been adjudged bankrupt compulsorily wound up or has made any compromise or arrangement with its creditors or has otherwise ceased trading in circumstances where its creditors did not receive or have not yet received full settlement of their claims; and
- (f) has ever had or currently has any direct or indirect beneficial interest in or was ever or is currently a director of any other company registered in Malta.

The Authorised Person should also require any of the abovementioned persons to confirm in writing whether they are acting on behalf of any other third parties. Should any of the above listed persons confirm that they are acting on behalf of a third party, then the Authorised Person shall request such third party to confirm in writing the matters referred to in (a) to (f).

R3-11.4.7

The Authorised Person shall undertake all the necessary customer due diligence procedures, including but not limited to the questions referred to in R3-11.4.6 (a) to (f), when there is a change to any of the parties referred to in the previous rule.

R3-11.5

Disclosure Requirements

R3-11.5.1

The Authorised Person shall ensure that its status as an Authorised Person is disclosed in all advertisements and correspondence. The following wording is to be included "Authorised to act as [*state authorisation type*] by the Malta Financial Services Authority". The Authorised Person shall ensure that this regulatory disclosure statement shall not imply any endorsement by the Authority or by any other relevant competent authority of the Authorised Person.

R3-11.5.2

Authorised Persons shall ensure that they disclose their status as trustee/administrators/mandators when engaging in transactions and/or dealing with third parties. In the case of mandataries such disclosure shall also be made to the company in which they hold securities on behalf of the mandator.

R3-11.6 Confidentiality

R3-11.6.1 An Authorised Person shall observe any obligation of confidentiality that may apply to it in respect of information communicated to it in the course of its business, unless the Authorised Person is authorised to disclose any given information, is required by any applicable law to disclose any such information or gives information in accordance with the terms of its appointment or in the ordinary course of its administration.

R3-11.6.2 In maintaining the confidentiality owed to those persons to whom the Authorised Person owes such responsibility, the Authorised Person shall take particular care not to mislead third parties, particularly but not limited to, as regards the origin of the assets and the beneficial interest in the case of a trust or private interest foundation and the mandator in the case of a mandate and to observe the disclosure requirements in Rule R3-11.5.

R3-11.6.3 The Authorised Person shall advise all employees, officers, directors and other persons who may have access to confidential information held by the Authorised Person, of the duty of confidentiality. This advice shall be transmitted in writing and upon commencement of the relationship with the Authorised Person. The Authorised Person shall periodically remind such persons of this duty.

R3-11.7 Conflicts of Interest

R3-11.7.1 An Authorised Person shall establish, implement and maintain an effective conflicts of interest policy set out in writing, and which is appropriate to the size and organisation of the Authorised Person and the nature, scale and complexity of its business, to prevent conflicts of interest from adversely affecting the interests of its clients.

R3-11.7.2 An Authorised Person shall adopt appropriate and transparent reporting lines within its organisation, as applicable, *inter alia* in order to mitigate the risks associated with conflicts of interest.

R3-11.7.3 The Authorised Person shall avoid situations wherein conflicts of interest may arise. In particular, the Authorised Person shall endeavour to avoid the following situations:

- (a) conflicts of interest as between different trusts or private interest foundations administered by the Authorised

Person and as between different clients to whom mandate services are offered;

- (b) in the case of a trust or private interest foundation, conflicts of interest as between the interest of the Authorised Person or certain persons connected to the Authorised Person or the group of companies of which the Authorised Person forms part, or from the performance of services and activities, and that of any of the beneficiaries of the trust or private interest foundation administered by the Authorised Person and, in the case of a mandate, conflicts of interest as between the business of the Authorised Person and that of the mandator.

R3-11.7.4 Without prejudice to Article 21 of the Act and R3-11.7.3, where conflicts of interest arise, the Authorised Person shall ensure that the circumstances pertaining to the conflict of interest are properly disclosed to the relevant interested parties and duly documented.

R3-11.7.5 An Authorised Person shall keep and regularly update a record of the situations or services it carried out in which a conflict of interest has arisen or, in the case of an ongoing service, may arise.

R3-11.7.6 The conflicts of interest policy established in accordance with these Rules shall be set out in writing and shall *inter alia* include the following:

- (i) The identification of 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.

R3-11.7.7 The Authorised Person shall assess and periodically review, at least annually, the conflicts of interest policy established in accordance with these Rules and shall take all appropriate measures to address any deficiencies.

R3-11.7.8 Unless authorised to do so, an Authorised Person shall not enter into transactions in which it has a material interest without first disclosing such material interest to the relevant interested parties.

R3-11.7.9 In the case of a trust or a private interest foundation, the Authorised Person shall exercise particular care and attention

when taking on any discretionary business in order to ensure that it is able to exercise appropriate independent discretion.

R3-11.7.10 The Authorised Person shall only carry out the activities in respect of which it has been authorised and shall not engage in any other activities unless such other activities are ancillary, incidental, and compatible with the service for which it has obtained authorisation under the Act. The Authorised Person shall not offer such other services on a standalone basis.

R3-11.8 Rules on Personal Transactions

R3-11.8.1 An Authorised Person shall establish, implement and maintain adequate arrangements, including a personal transaction policy, which prevent any individual holding an Approved Position or employee who is involved in activities that may give rise to a conflict of interest, or who has access to inside information or to other confidential information relating to clients or transactions with or for clients by virtue of an activity carried out by him on behalf of the Authorised Person.

R3-11.8.2 Authorised Persons shall ensure that individuals holding Approved Positions and employees do not enter into a personal transaction which meets at least one of the following criteria:

- (i) it involves the misuse or improper disclosure of confidential information; or
- (ii) it conflicts, or is likely to conflict, with any obligation of the Authorised Person.

R3-11.9 Powers of Investment for Trustees and Administrators

R3-11.9.1 Trustees and Administrators shall invest and manage or make arrangements for the investment and management of the funds of the trust or private interest foundation under their administration in light of the purposes, terms, distribution requirements and any other circumstances of the terms of the trust or private interest foundation (as applicable) and, in accordance with any applicable law.

R3-11.9.2 Subject to any increase or restriction to any powers of investment set out in the trust deed, deed of foundation or by law:

- (a) the trustee or administrator may invest or otherwise apply the property under administration in the purchase or acquisition of property of any kind whether or not income-producing and

whether for the purpose of receiving an appropriate total return from income and capital appreciation, controlling, or limiting risk or benefiting persons interested in any way whatsoever in the income produced by the property under administration, or for a mixture of such purposes;

- (b) in investing or otherwise applying the property under administration, the trustee or administrator shall act in the manner of a *bonus pater familias* and shall exercise reasonable care, skill, and caution in consideration of the purposes, terms, distribution requirements and other circumstances of the terms of the trust/ private foundation and by exercising reasonable care, skill, and caution;
- (c) in determining whether the trustee or administrator has acted in accordance with the above Rules, any decision to invest or otherwise apply the property under administration shall be evaluated in the context of the property as a whole and as part of an overall investment strategy having risk and return objectives reasonably suited to the trust, or private foundation, as applicable.

R3-11.10

Segregation of Assets

R3-11.10.1

The Authorised Person shall ensure that the assets under administration are kept at all times separate and distinct from those of the Authorised Person and that they are not co-mingled with assets pertaining to any other trust, mandate, or private interest foundation, as the case may be.

R3-11.10.2

Where the property vested in or under the administration of the Authorised Person consists of fungibles, such property may be placed and kept in a common pool of identical assets or in a clients' or common account. Where the property is so kept, at least two persons of sufficient seniority within the Authorised Person shall carry out and keep records of reconciliations on at least a quarterly basis in order to identify the assets pertaining to different trusts, mandates, and private interest foundations, as appropriate. The Authorised Person shall be responsible for ensuring that such records can be readily provided to the Authority in line with its obligations in Rule R3-2.7 if these records are so requested by the Authority.

R3-11.10.3

Where the property vested in or under the administration of the Authorised Person consists of non-fungibles, such property must

be kept separate and distinct from the Authorised Persons' own assets and from other assets pertaining to any other trust, mandate, or private interest foundation, as the case may be.

R3-11.11 Prompt and Timely Execution

R3-11.11.1 An Authorised Person shall deal effectively and in a timely manner with all requests from those persons to whom the Authorised Person owes responsibility or accountability, having previously sought and obtained any consent or approval as may be necessary.

R3-11.11.2 In the case of a trust or private interest foundation, where the Authorised Person is granted an element of discretion, such discretion shall be exercised diligently, and the Authorised Person shall have regard to any relevant factors relating to any present or future beneficiaries, the terms of the trust or foundation deed, as applicable, and its duties under the Act.

R3-11.12 Fees

R3-11.12.1 Authorised Persons must agree on a clear fee structure with any person engaging their services in advance of taking on an appointment and ensure that the fees charged are transparent at all times.

R3-11.12.2 Authorised Persons should also ensure that adequate notice is given before any material change in the fee structure is introduced. The disclosure shall be in a manner that is comprehensive, accurate and understandable.

R3-11.13 Business Continuity and Disaster Recovery

R3-11.13.1 The Authorised Person shall have in place a documented Business Continuity Plan which shall take into account all of the Authorised Person's critical functions. The Authorised Person shall also ensure that such Business Continuity Plan is tested from time to time, and the outcome of such testing shall also be documented and includes any remedial action which needs to be taken to address any shortcomings which are identified following the testing procedure

R3-11.13.2 The Authorised Person must establish, implement and maintain a documented contingency plan for disaster recovery and periodic testing of backup facilities, as necessary.

]R3-11.13.3 The Authorised Person shall ensure that it can readily provide any information relating to its business continuity plans, contingency plans for disaster recovery, testing thereof and any remedial action taken to address shortcomings identified following the testing procedures, should this information be requested by the Authority.

Title 12 Record Keeping

R3-12.1 This title shall be read in conjunction with R3-2.7.

R3-12.2 Records shall be retained in a Durable Medium allowing the storage of information in a way that is accessible for future reference by the MFSA. Authorised Persons shall arrange to maintain sufficient backups of all such records.

R3-12.3 An Authorised Person shall have in place arrangements to maintain all records, including accounts, relating to its management and administration of trusts, private interest foundations, or mandate, as the case may be.

R3-12.4 The Authorised Person shall retain its records in a centralised location. Without prejudice to the generality of the previous Rule, such records shall include but not be limited to:

- (i) correspondence regarding initial contact and introductions with clients;
- (ii) correspondence regarding client onboarding and acceptance; and
- (iii) any other correspondence with clients.

R3-12.5 Further to the preceding rule R3-12.4 officers and employees of an Authorised Person servicing clients shall have access to all the Authorised Person's information in order to ensure effective client acceptance procedures and practices, as well as adequate ongoing monitoring and continuity.

R3-12.6 Authorised Persons shall ensure that such records are easily retrieved and accessible so as to enable the Authority to monitor compliance with any requirements under the Act, any Regulations published thereunder and under this Rulebook, particularly during any on-site compliance visits, or other types of supervisory engagement, which may be carried out by the Authority.

- R3-12.7 The Authorised Person shall ensure that all records, including financial records, are adequately maintained to enable the Authority to carry out thorough and effective supervision. The records maintained shall also be sufficient to enable the Authorised Person to comply with any notification and reporting requirements to the Authority and any other competent authority as may be applicable.
- R3-12.8 The Authorised Person shall keep and preserve appropriate records at its registered office in Malta which will at least include such records as are required by any applicable legislative or regulatory framework and as will enable the provision of information to persons entitled to such information, on a timely basis. The records retained should be sufficient to enable the Authorised Person to comply with any notification and reporting requirements.
- The retention of records at any place in Malta other than the Authorised Person's registered office in Malta shall only be permissible subject to prior notification in writing being given to the Authority.
- R3-12.9 The records referred to in the previous Rule shall include as a minimum but not be limited to the following:
- (a) information on the identity of:
 - (i) any co-trustees/mandataries/administrators;
 - (ii) the settlor/mandator /founder;
 - (iii) any beneficiaries and their personal circumstances and residences, where appropriate;
 - (iv) any protector or enforcer in the case of a trust or any protector or members of a supervisory council in the case of a private interest foundation;
 - (v) any other person exercising control by any means over the trust or the private interest foundation; and
 - (vi) any agents and service providers of the trust or private interest foundation including but not limited to service providers such as investment advisers, managers, accountants, and tax advisors.
 - (b) a signed copy of the trust deed/mandate agreement/deed of foundation as defined in these Rules and, in the case of a trust or private interest foundation, of any letter of wishes;

- (c) a full inventory of the property vested in or administered by the Authorised Person and of all dealings relating to the property;
- (d) copies of bank statements and other deposits;
- (e) a copy of the deeds of appointment, resignation, and removal of Authorised Persons;
- (f) the agenda and minutes of meetings held, and decisions adopted by trustees/mandataries/administrators in the exercise of their fiduciary duties;
- (g) in the case of Authorised Persons established as bodies corporate, the agenda and minutes of board of directors meetings and resolutions adopted in writing (that is, not approved at a Board meeting);
- (h) accurate accounts and records of each trusteeship in terms of Article 21(4) of the Act and including any accumulation accounts or beneficiaries' income statement;
- (i) accurate accounts of the private interest foundation in terms of the Second Schedule of the Civil Code;
- (j) valuation reports relating to the property vested in or administered by the Authorised Person;
- (k) correspondence between Authorised Persons and any beneficiaries and, in the case of a trust, between the Authorised Person and any protector of the trust or the settlor;
- (l) correspondence between/with introducers;
- (m) legal or other professional advice sought, including instructions pursuant to which the advice was sought;
- (n) records of all deliberations and decisions together with supporting documentation;
- (o) any other documentary evidence of ongoing monitoring over their clients; and
- (p) an updated list of all the trusts/mandates/private interest foundations under the administration of the Authorised Person.

R3-12.10

Without prejudice to R 3-2.8 Authorised Persons shall obtain and make available to the MFSA upon request, for at least five years after the termination of the business relationship, the records relating to the provision of its services to clients. This request does not extend to any documents which the Authorised Person is precluded from sharing with the MFSA due to other restrictions imposed under any other applicable law, including but not limited to requests for information by the FIAU, internal Suspicious Transaction Reports and assessments in respect thereof, and Suspicious Transaction Reports made to the FIAU.

- R3-12.11 The records shall be stored in a durable medium that allows for ready access to the information for future reference by the Authority and any other interested parties; and in such a form and manner that the following conditions are met:
- (a) The MFSA must be able to access them readily and to reconstitute each key stage of the processing of each transaction;
 - (b) It must be possible for any corrections or other amendments and the contents of the records prior to such corrections or amendments to be easily ascertained; and
 - (c) It must not be possible for the records to be otherwise manipulated or altered.
- R3-12.12 The Authorised Person may enter into an outsourcing agreement whereby the duties relating to the storage of records as described in this section are delegated in whole or in part to a third party. The Authorised Person shall ensure that the outsourcing agreement shall provide the Authorised Person, the Authority and any other authority having an interest in the records with the right of audit of and access to the records held by the third party in terms of the agreement. It shall remain the Authorised Person's responsibility to ensure that adequate records are retained in relation to such outsourcing and that these are easily and promptly accessible should they be requested by the Authority.
- R3-12.13 Prior to any such outsourcing as referred to in the preceding rule and on an ongoing basis thereafter, the Authorised Person shall ensure that the services rendered by the third party are aligned with the policies and procedures of the Authorised Person and are in line with the requirements of the Act, any Regulations issued thereunder, these Rules and any other applicable law.
- R3-12.14 Notwithstanding any such outsourcing as referred to in R3-12.12 above, the Authorised Person shall remain the responsible person for ensuring that the provisions of these Rules relating to the storage of records are complied with.
- R3-12.15 The Authorised Person shall ensure that where it has outsourced the duties relating to the storage of records to a third party in accordance with R3-12.12 above, such records are stored in or easily accessible from Malta and a notification in terms of the second paragraph of R3-12.8 is made to the Authority, where applicable.

R3-12.16 Where the Authorised Person avails itself of digital record keeping solutions, such as cloud-based systems, the Authorised Person shall ensure the security and availability of data and shall assess the cyber security of such solution.

R3-12.17 An Authorised Person shall, taking into account the size, nature, scale and complexity of its business and on a best effort basis, refer to the [Guidance on Technology Arrangements, ICT and Security Risk Management, and Outsourcing Arrangements](#), issued by the MFSA.

Title 13 Risk Management

R3-13.1 An Authorised Person shall have effective management and systems that are commensurate with the scale and complexity of its business that include effective processes to identify, manage, monitor, and report the risks it is or might be exposed to, and adequate internal control mechanisms including sound administrative and accounting procedures, that are consistent with and promote sound and effective risk management of the Authorised Person.

R3-13.2 All Authorised Persons shall take the actions below with a view to managing its risks. In this context an Authorised Person is expected to take a comprehensive approach to risk management and not limit this to AML/CFT risks, while also taking into consideration the nature, scale, and complexity of its business and the nature and range of the activity being undertaken in the course of that business:

(i) undertake an assessment with the purpose of understanding and identifying all the risks associated with its business model and target markets. Such assessment should be duly documented and reviewed regularly in line with the changing environment within which the Authorised Person is operating in. The relevant policies and procedures should reflect such assessment;

(ii) establish, implement, and maintain adequate risk management policies and procedures which identify risks relating to the Authorised Person's activities, processes and systems and set the level of the Authorised Person's risk appetite

(iii) regularly review the risk management policies and procedures, including the business risk assessment in the light of internal or external changes and update the policies, procedures, and business risk assessment to reflect the same;

(iv) adopt effective controls, processes, and mechanisms to manage and mitigate the risks relating to the Authorised Person's activities, processes, and systems, in light of the Authorised Persons's level of risk tolerance;

(v) monitor the following:

(a) the adequacy and effectiveness of the risk management policies and procedures;

(b) the level of compliance by the Authorised Person, the individuals holding approved positions and staff members with the policies and procedures adopted in accordance with point (ii) above; and

(c) the adequacy and effectiveness of measures taken to address any deficiencies in those policies and procedures, including failures by the relevant persons to comply therewith;

and

(vi) draw up and maintain a Risk Register which shall, as a minimum include the following:

(a) list all the clients which the Authorised Person has onboarded together with the relevant risk classification/rating of each client;

(b) identify the risks inherent to the business model of each client; and

(c) record all other risks, which the Authorised Person is exposed to, based upon the assessment in terms of point i. above.

The Authorised Person shall document the considerations made to arrive at such risk classification/rating which shall be made available to the Authority upon request.

R3-13.3

Risk Management Function

R3-13.3.1

- (a) Authorised Persons who are authorised to act as trustees, and/or
- (b) Authorised Persons who are otherwise authorised under the Act and who have notified the Authority that they are also offering or providing the services of a Company Service Provider in terms of the Company Service Provider (Exemption) Regulations,

shall establish and maintain an independent risk management function which is responsible for:

- (i) Implementing the policy and procedures referred to in the Rules contained in this Title 13 relating to Risk Management; and
- (ii) Providing reports to senior management and advising them on the Authorised Person's risks and the management thereof.

R3-13.3.2 The individual responsible for the independent risk management function shall be required to submit a Personal Questionnaire in order to obtain approval from the Authority as Risk Manager in accordance with R2-4.4 of Chapter 2.

R3-13.3.3 The MFSA may, subject to a specific request for derogation being submitted to the Authority on the prescribed form, allow the Authorised Persons referred to in R3-13.3.1 to establish and maintain a risk management function which does not operate independently,

Provided that such Authorised Person shall be required to satisfactorily demonstrate to the MFSA that the granting of a derogation whereby the risk management function does not operate independently:

- (i) does not give rise to conflicts of interest, and
- (ii) that the establishment and maintenance of a dedicated risk management function that is independent and with sole responsibility for the risk management function is not appropriate and proportionate in view of the nature, scale and complexity of its business and the nature and range of the services and activities undertaken in the course of that business.

R3-13.3.4 Notwithstanding, R3-13.3.3 an Authorised Person who is granted a derogation from the independence aspect of the risk management function shall still be required to appoint an individual responsible for the risk management function.

Without prejudice to the considerations of conflicts of interest in terms of R3-13.3.3 (i), in all cases such role should be performed by an individual having sufficient seniority within the Authorised Person.

R3-13.3.5 Where a derogation is granted whereby the Authorised Person is allowed to operate a risk management function which is not independent, it must nevertheless be able to demonstrate that the policies and procedures which it has adopted in accordance with the Rules contained in this Title relating to Risk Management satisfy the requirements thereof and are consistently effective.

R3-13.3.6 Furthermore, where a derogation is requested in terms of the above, the Authorised Person shall be required to notify the MFSA on the prescribed form of the identity of the individual identified to carry out the risk management function, which shall also be subject to the MFSA's confirmation of no objection thereto. Any changes in this regard should also be promptly notified to the Authority on the prescribed form.

Title 14 Reporting Obligations

R3-14.1 The Authorised Person shall have internal control mechanisms and administrative and accounting procedures which permit the verification of their compliance with the regulatory framework.

R3-14.2 The Authorised Person shall in each year prepare an Annual Compliance Return in the form prescribed by the Authority; such Annual Compliance Return shall be signed by the individual himself where the Authorised Person is an individual, or otherwise by at least two persons who are authorised to legally represent the Authorised Person. In the latter case, the Authorised Person is to provide the MFSA with a certified true copy of the Board Resolution, or equivalent in the case of an entity not constituted as a company. The Annual Compliance Return shall be submitted to the Authority within the deadline specified in Annex 1.

R3-14.3 In the case of Authorised Persons established as body corporates, audited annual financial statements prepared in accordance with appropriate accounting standards, together with a copy of the auditors' management letter and the auditors' report, shall be submitted to the MFSA within the deadline specified in Annex 1. Mere submission of these documents to any other register or authority shall not be deemed to have satisfied the submission requirement with the MFSA. In addition, Authorised Persons established as bodies corporate and registered under the Companies Act shall comply with any other requirements applicable under the Companies Act.

Provided that in the case of an Authorised Person established as a partnership, in lieu of audited annual financial statements, auditors' management letter and auditors' report, such partnership shall submit its annual income statement and balance sheet, and comprehensive notes to the income statement and balance sheet, these shall be dated and signed by a minimum of two partners. The partnership's income statement, balance sheet and notes to the income statement and balance sheet shall be submitted to the MFSA within the deadline specified in Annex 1. The submission of these documents to any other register or authority shall not be deemed to have satisfied the submission requirement with the MFSA.

- R3-14.4 An Authorised Person, who is an individual, shall only be required to provide the Authorised Person's financial information to the Authority through the Annual Compliance Return referred to in R3-14.2. The Authorised Person shall ensure that the financial information so provided is complete and correct to the fullest extent possible.
- R3-14.5 Without prejudice to an Authorised Person's obligations under R3-3.2(i), where there have been breaches of the Act, of any regulations issued thereunder or of these Rules, the Authorised Person shall disclose all such breaches in the Annual Compliance Return.
- R3-14.6 The Authorised Person shall notify the MFSA immediately in writing if:
- (a) it is notified that its auditor intends to qualify the audit report;
 - (b) it becomes aware of actual or intended legal proceedings against it; or
 - (c) it decides to claim on a professional indemnity or other policy relating to its authorised business.
- R3-14.7 The Authorised Person shall promptly pay all amounts due to the Authority as prescribed under the [Trusts and Trustees Act \(Fees\) Regulations](#).
- R3-14.8 Deadlines for all submissions to the Authority are listed in Annex 1.

Chapter 4 **Supplementary Rules**

Title 1 Scope and Application

R4-1.1 This Chapter outlines:

- (i) The supplementary rules for Authorised Persons who have notified the Authority that they are acting as Company Service Providers;
- (ii) The supplementary rules for Authorised Persons acting as Qualified Persons in terms of Article 43(9);
- (iii) The supplementary rules for Authorised Persons established as bodies corporate;
- (iv) The supplementary rules for individuals acting as private trustees in terms of Article 43A.

The Rules stipulated (i) and (iii) in this Chapter apply to Authorised Persons in addition to other requirements, which are of general application, stipulated in other Chapters of this Rulebook.

R4-1.2 Title 2 of this Chapter shall apply only to Authorised Persons acting as Company Service Providers.

R4-1.3 Title 3 of this Chapter shall apply only to Authorised Persons acting as Qualified Persons in terms of Article 43(9).

R4-1.4 Title 4 of this Chapter shall apply only to Authorised Persons established as bodies corporate.

R4-1.5 Title 5 of this Chapter shall apply only to individuals acting as private trustees in terms of Article 43A.

R4-1.6 The Rules in this Rulebook applicable to the provision of services by Authorised Persons shall also apply in relation to the provision of Company Service Provider Services by such Authorised Persons, as applicable,

Title 2

Supplementary Rules for Authorised Persons acting as Company Service Providers

R4-2.1 **General**

R4-2.1.1 In terms of the provisos to Article 43(4)(i), 43(13)(i) and 43(15)(i) of the Act, an Authorised Person is also allowed to act as a company service provider in accordance with the Company Service Providers Act, notwithstanding the provisions of paragraphs (a) and (b) of each respective sub-article.

R4-2.1.2 For the purposes of this Title the term "Authorised Person" shall include a person authorised under the Act who has notified the MFSA in terms of the Company Service Providers Exemption Regulations of its intention to provide Company Service Provider Services.

R4-2.2 **Notification Requirement**

R4-2.2.1 An Authorised Person shall, prior to providing any of the services of a Company Service Provider, notify the Authority that they shall be acting as company service providers and that they are not required to apply for authorisation with the Authority as prescribed by the Company Service Providers (Exemption) Regulations.

R4-2.2.2 The Authorised Person shall notify the Authority of its intention to so act in writing and in the manner prescribed by the Authority. Provided that the Authority may, at its discretion and at any time, request the Authorised Person who gives such notification in terms of the Company Service Providers (Exemption) Regulations, to furnish any information and documentation related to such Authorised Person's operations and activities as it may deem necessary, and such Authorised Person shall collaborate with the Authority and shall promptly collate and transmit without any undue delay such information and documentation as the Authority may request.

R4-2.3 **Financial Resources Requirement**

R4-2.3.1 Where an Authorised Person also provides Company Service Provider Services, in making its assessment of the financial resources required in terms of R3-4.3, it shall assess the risks posed to it by providing this additional service and reflect its

exposure to such risks in the level of financial resources it maintains.

Provided that an Authorised Person who also provides the services of a Company Service Provider shall maintain the minimum financial resources set out hereunder in addition to the minimum capital required to be maintained by Authorised Persons indicated in Rule R2-3.2, as applicable to the Company Service Provider activity being provided:

Company Service Provider Activity	Financial Resources Requirements in EUR
Provision of company formation and registered office only	€10,000
Provision of directorships and company secretary and/or arranging for services of director and company secretary only	€15,000
All Company Service Provider Services	€25,000

R4-2.4 Customer Due Diligence and Acceptance Procedures

R4-2.4.1 The requirements set out in this Rule R4-2.4, shall apply in addition to the Implementing Procedures issued by the FIAU.

R4-2.4.2 Prior to offering company services to a client, an Authorised Person shall undertake all the necessary customer due diligence procedures and shall request a prospective client to confirm in writing the matters referred to in R3-11.4.6 (a) to (f).

R4-2.4.3 The Authorised Person shall undertake all the necessary customer due diligence procedures, including but not limited to the questions referred to in R3-11.4.6, when there is a change in the directors, officers, shareholders, or beneficial ownership of any company to which the Authorised Person provides services.

R4-2.5 Company Services consisting in the formation of Companies or other legal entities

R4-2.5.1 Where the company service being provided by the Authorised Person consists in formation of companies or other legal entities, prior to the submission of the necessary documents to the Registry of Companies in order to form Maltese Companies or other legal entities (or before instructing a local agent to incorporate a company or other legal entity in another jurisdiction), the Authorised Person shall:

- (a) Carry out the necessary due diligence checks to identify and verify the beneficial ownership of the proposed company or other legal entity. Where the proposed entity is held within a complex ownership structure, the Authorised Person shall ensure that it has understood who are the true/economic beneficial owners(s) and verified their identity accordingly; and
- (b) ensure that the proposed name of the company does not breach the applicable requirements under the Companies Act.

R4-2.5.2 Authorised Persons providing the services of formation of companies or other legal entities shall have procedures in place to:

- (a) identify whether the activities of the proposed company or legal entity would be legal in the country within which they will be carried out and whether these activities require any licensing or other authorisation (including, but not limited to, authorisation to conduct financial services activities).
- (b) assess the risks involved in the proposed company or legal entity and/or if its activities would be deemed to be risky, in which case enhanced levels of checks are to be undertaken by the Authorised Person;
- (c) assess the level of risk which the formation of the company or other legal entity would present to the reputation of Malta. These procedures should address the way in which the Authorised Person shall use available information to identify cases which may damage Malta's reputation, and the manner in which such cases should be handled in a responsible manner. Examples of cases which may

present reputational risk include those involving companies or other legal entity:

- (i) Trading in arms, supplying technology or parts connected with defence or providing military security services;
- (ii) Carrying on financial services business in another jurisdiction, particularly one whose regulatory regime is not equivalent to that in Malta or acting as a holding company of such a business.

R4-2.6 Company Services consisting of providing the service of a registered office, a business correspondence or administrative address and other related services for a company, a partnership, or any other legal entity

R4-2.6.1 An Authorised Person shall notify the Authority in writing where such Authorised Person provides the service of a registered office, a business correspondence or administrative address and other related services for a company, a partnership, or any other legal entity, and intends to provide such services to clients through an address which is not its registered address.

R4-2.7 Company Services consisting in acting as Director/Company Secretary of a Company, a Partner in a Partnership in relation to other legal entities

R4-2.7.1 Where the company service being provided by the Authorised Person consists in acting as director or company secretary of a company, a partner in a partnership or a similar position in relation to other legal entities, such Authorised Person shall:

- (a) understand and act in accordance with its legal duties as director, company secretary or equivalent position (as applicable) and the constitutional document of the client and seek advice where necessary;
- (b) ensure that the board of directors has effective control of the company;
- (c) treat the company as a separate legal entity from its shareholders and directors and avoid conflict of interests

with it or deal with it in accordance with the company's constitutional document;

- (d) know who ultimately owns the company or other legal entity;
- (e) know the company's business and finances and have full and up to date information on them;
- (f) ensure that the company keeps proper accounts and records, observes the minimum record retention periods under any applicable laws, and files accounts and returns as required by applicable laws, and which are complete and accurate, and within the timeframes also required by the said applicable laws;
- (g) comply with, and ensure that any company of which they are a director complies with the Prevention of Money Laundering Act and any Regulations issued thereunder, where applicable;
- (h) without prejudice to any other obligation that the Authorised Person may be subject to, consider whether to resign from office and/or to notify the MFSA of the circumstances if they believe that the company is being used for illegal purposes, trading wrongfully, or breaking the law in other ways;
- (i) ensure that they have adequate experience, expertise, and resources to enable them to discharge their responsibilities as director;
- (j) ensure that the basis on which they are to be remunerated is agreed or recorded in writing;
- (k) co-operate fully with any regulator or the authority which is entitled to information about the company's affairs;
- (l) not attempt to avoid those responsibilities by purposing to contracting them out or assigning them to others.

R4-2.7.2

Authorised Persons must ensure that they can commit sufficient time to perform their functions efficiently and effectively in any role they take on. In this respect, Authorised Persons are expected

to conduct both a qualitative and quantitative assessment of time commitment.

R4-2.8 Supplementary Rules for CSPs Arranging for Another Person to Act as Director or Secretary of a Company, a Partner in a Partnership, or a Similar Position in Relation to Other Legal Entities

R4-2.8.1 Authorised Persons may only arrange for natural persons to act as director or secretary of a company, a partner in a partnership or a similar position in relation to other legal entities. In the case of Authorised Persons set up as a body corporate they can only arrange for the appointment of their officers, shareholders or employees to act as director or secretary in client entities or a similar position.

R4-2.8.2 Where an Authorised Person arranges for an individual to act as director or secretary of a company, a partner in a partnership or a similar position in relation to other legal entities in accordance with R4-2.8.1, the Authorised Person shall be required to:

- (a) perform a fitness and properness assessment on such individual, including adequate due diligence checks; and
- (b) perform adequate oversight and monitoring on such individual; and request such individual to provide regular reports on activities undertaken. The frequency of such reports should be determined upon the activity undertaken by the client company however such reports need to be prepared at least annually.

R4-2.8.3 Pursuant to point (a) of Rule R4-2.8.2 above, Authorised Persons shall ensure that any such individual is fit and proper, within the meaning of these Rules, to act as director or secretary of a company, a partner in a partnership or a similar position in relation to other legal entities as applicable.

R4-2.8.4 Pursuant to R4-2.8.3 above, Authorised Persons must ensure that any such individual is capable of committing sufficient time to performing his functions efficiently and effectively. In this respect, Authorised Persons are expected to conduct both a qualitative and quantitative assessment of time commitment.

- R4-2.8.5 Employees, shareholders or directors of an Authorised Person, whose appointment as director or company secretary to another company or similar position to another legal person is arranged by that Authorised Person, are not subject to authorisation, in terms of the Company Service Providers Act, in their own name insofar as the appointments they hold are limited solely to those being arranged for by such Authorised Person.

Title 3

Supplementary Rules for authorised persons acting as Qualified Persons

- R4-3.1 These Rules are made pursuant to Article 43(9)(e) of the Act and are therefore binding on persons authorised in terms of Article 43 sub-articles (3), (8), (12)(a) or notaries authorised to act as qualified persons in terms of the applicable regulations issued pursuant to the Act, acting as qualified persons in terms of Article 43(9). Such persons shall hereinafter be referred to as “qualified persons”.
- R4-3.2 For the purposes of this Title “relevant property” shall have the meaning established by Article 43(9)(a) of the Act.
- R4-3.3 The holding upon trust of relevant property by trustees who are not authorised in terms of the Act shall only be permitted if a qualified person is engaged in writing by such trustee to carry out compliance functions as referred to in the Act and in this Title.
- R4-3.4 The holding of relevant property by a mandatary for another person, who is not authorised to provide such service in terms of the Act, shall only be permitted if a qualified person is engaged in writing by such mandatary to carry out compliance functions as referred to in the Act and in this Title.
- R4-3.5 The qualified person shall ensure due compliance with all fiscal, prevention of money laundering and other legal obligations in connection with the relevant property.
- R4-3.6 The qualified person shall, for the purposes of ensuring compliance with R4-3.5, shall take into consideration any specific applicable requirements to the relevant property. Such assessment should take into consideration whether the relevant property consists of immovable property in Malta or securities or interests in or issued by a commercial partnership registered in Malta, other than securities which are listed or traded on a

regulated market, or on a multilateral system established in Malta or in a recognised jurisdiction. This assessment shall be undertaken by the qualified person both prior to appointment and on an ongoing basis.

- R4-3.7 Prior to accepting an appointment as qualified person, the proposed qualified person shall ensure that it has, as a minimum and on the basis of a risk-based approach, a high-level understanding of the rationale for the trustee or mandator, as the case may be, acquiring the relevant property in Malta. This understanding should be supported by relevant information and documentation.
- R4-3.8 Prior to accepting an appointment as qualified person, and on an ongoing basis, such person shall ensure that it is aware of and has the identity details of the settlor, protector (if any), trustee, beneficiaries or potential beneficiaries in the case of a trust, and the mandator in the case of a mandate relationship. In the case of the trustee or the mandator, the qualified person shall in all cases also verify the identity details of the said trustee or mandator; provided that in the case where the trustee or mandator is a body corporate, the verification of identity may extend only to such body corporate. In terms of verification of such identification details of all other parties to the relationship, and the ultimate beneficial owners of a body corporate trustee or mandator, the qualified person should adopt a risk-based approach.
- R4-3.9 When considering whether to accept an appointment as a qualified person, such person shall have regard to, insofar as appropriate, the protection of the reputation of Malta taking into account Malta's international commitments.
- R4-3.10 The qualified person shall enter into an agreement with the trustee or mandatory not authorised under the Act, as the case may be, recording the terms of the agreement reached between the parties and should as a minimum stipulate the services to be provided by the qualified person, the fees chargeable for such services, and a record of how and by whom requests for action are to be given to the qualified person.
- R4-3.11 Information and documentation in relation to its appointment as qualified person by a trustee or mandatory authorised under the Act should be maintained in a durable medium for a period of 5

years from the date of termination of the qualified person's resignation or termination as the case may be.

R4-3.12 Notifications by Qualified Persons

R4-3.12.1 Any person wishing to be appointed as a qualified person in terms of the Act is to notify the Authority in writing of such proposed appointment, prior to any acquisition by or transfer of relevant property to the trustee or mandatary who is not authorised in terms of the Act.

R4-3.12.2 In its notification to the Authority the qualified person shall state the following:

- (a) a description of the relevant property providing sufficient detail to allow the Authority to identify the said relevant property.
- (b) Where the relevant property consists of securities or interests in or issued by a commercial partnership registered in Malta other than securities which are listed or traded on a regulated market or on a multilateral system established in Malta or in a recognised jurisdiction, the commercial partnership's registration number and registered address should be provided. Where the commercial partnership is not yet registered the qualified person should provide the proposed registered address.
- (c) the name, registered address or equivalent, and identification number (if applicable) of the trustee or mandatary not authorised under the Act on behalf of whom the qualified person will be acting.
- (d) where the engaging party is a trustee, the name of the trust for which the trustee not authorised under the Act is appointing the qualified person.

The Authority may request any further information considered necessary from the qualified person.

R4-3.12.3 A qualified person shall notify the Authority in writing of any changes that take place in relation to the information provided to the Authority at notification stage including but not limited to any changes to the relevant property or the identity of the trustee or mandatary not authorised under the Act.

- R4-3.12.4 The qualified person shall notify the MFSA in writing in the event that the qualified person resigns or has its engagement terminated or is otherwise hindered in performing its duties as qualified person. The outgoing qualified person shall ensure that the trustee or mandatory for whom it was acting is informed of its obligation to appoint a new qualified person in terms of Article 43(9) and a confirmation of this shall be included in the notification to the MFSA.
- R4-3.12.5 Where the relevant property may no longer be in existence such as where the commercial partnership deemed to be the relevant property is struck off in terms of the Companies Act, this shall also be deemed to be a termination of engagement which shall be notified to the MFSA.
- R4-3.12.6 The notification in R4-3.12.4 should be made to the MFSA within fifteen (15) days from the resignation or termination. Should the qualified person be hindered in performing its duties as qualified person it shall notify the Authority without delay.

Title 4 Supplementary Rules applicable to Authorised Persons established as bodies corporate

R4-4.1 Audit

- R4-4.1.1 This Rule R4-1.1 is made pursuant to and for the purposes of article 43C of the Act.
- R4-4.1.2 The Authorised Person shall make available to its auditor the information and explanations it needs to discharge its responsibilities as auditor.
- R4-4.1.3 The Authorised Person shall obtain from its auditor a signed letter of engagement clearly defining the extent of the auditor's responsibilities and the terms of appointment. The Authorised Person shall confirm in writing to its auditor its agreement to the terms of the letter of engagement. The said letter of engagement should include, as a minimum, an undertaking by the auditor that it would report immediately to the Authority any of the circumstances prescribed under Article 43C of the Act.

- R4-4.1.4 The letter of engagement shall, as a minimum, include terms requiring the auditor to abide by the following requirements:
- (a) to provide such information or verification to the Authority as the Authority may require;
 - (b) to vacate its office in the event that it for any reason becomes disqualified to act as auditor;
 - (c) the auditor shall advise the Authority of matters that it considers should be brought to the attention of the Authority in relation to its resignation, removal or non-reappointment;
 - (d) to immediately report to the Authority any fact or decision of which it becomes aware in its capacity as auditor of the Authorised Person and which:
 - (i) is likely to lead to a serious qualification or refusal of its audit report on the accounts of the Authorised Person;
 - (ii) constitutes or is likely to constitute a material breach of the legal and regulatory requirements applicable to the Authorised Person;
 - (iii) gravely impairs the ability of the Authorised Person to continue as a going concern; or
 - (iv) any other matter that may be prescribed by the Authority.
 - (e) to report to the Authority any facts or decisions as specified in (d) above of any person having close links with the Authorised Person and of which the auditor becomes aware in his capacity as auditor of the Authorised Person or of the person having such close links.
- R4-4.1.5 In the event that the Authorised Person is in receipt of recommendations from its auditor to remedy any weakness identified during the course of the audit, it shall submit to the Authority by not later than six months from the end of the financial period to which the recommendations relate, a statement setting out in detail the manner in which the auditor's recommendations have been/are being implemented. Where the Authorised Person has not taken/is not taking any action in respect of any one or more recommendations, the reasons therefor shall be included in the said statement.
- R4-4.1.6 Authorised Persons established as limited liability companies shall include in the directors' report forming part of the annual

investment advisers, managers, accountants, and tax advisors.

Provided that this information shall, as a minimum, include the: full name, date and place of birth, nationality(ies), residential address, the national identification number and document type, and tax identification number (or equivalent) where applicable, for all the Beneficial Owners; and where any of the Beneficial Owners is a body corporate or is a legal arrangement the information referred to in this proviso shall be obtained in relation to each natural person ultimate beneficial owner of such body corporate or legal arrangement

Provided further that the Private Trustee is required to obtain and maintain such information on an ongoing basis, and ensure that it is accurate and up-to-date in relation to the Beneficial Owners, with respect to all trusts under administration.

- (b) a signed copy of the trust deed and of any letter of wishes;
- (c) a full inventory of the property vested in or administered by the Private Trustee and of all dealings relating to the property;
- (d) copies of bank statements and other deposits;
- (e) a copy of the deeds of appointment, resignation, and removal of the Private Trustee;
- (f) the agenda and minutes of meetings held, and decisions adopted by the Private Trustee in the exercise of their fiduciary duties;
- (g) accurate accounts and records of each trusteeship in terms of Article 21(4) of the Act and including any accumulation accounts or beneficiaries' income statement;
- (h) valuation reports relating to the property vested in or administered by the Private Trustee;
- (i) correspondence between the Private Trustee and any beneficiaries and between the Private Trustee and any protector of the trust or the settlor;
- (j) legal or other professional advice sought, including instructions pursuant to which the advice was sought;
- (k) records of all deliberations and decisions together with supporting documentation.

R4-5.6

Private Trustees shall ensure that when engaging in dealings with third parties, the Private Trustee shall disclose that he is acting in

such capacity as trustee. Such disclosure shall also be made to any subject persons in defined in the PMLFTR when the Private Trustee seeks to form a business relationship or carry out an occasional transaction and the Private Trustee shall also provide such subject person, upon request, information on the Beneficial Owners and the assets of the trust under administration.

R4-5.7 The Private Trustee shall ensure that the conditions stipulated in Article 43A (3)(iii) and (iv) are satisfied on an ongoing basis.

R4-5.8 Where a Private Trustee contravenes or fails to comply with the obligations in Article 43A, without prejudice to Article 51 of the Act, the MFSA may, by virtue of the Authority granted to it under the said Article 51 of the Act, impose administrative penalties, without recourse to a court of law, up to a maximum of €150,000.

R4-5.9 The following shall apply to Private Trustees:

- (i) The Rules contained in Title 2 of Chapter 1 relating to High-Level Principles,
- (ii) R3-2.8 and R3-2.9 relating to retention of documents,
- (iii) R3-11.9 relating to investments by trustees, and
- (iv) The Rules contained in Title 10 of Chapter 3 relating to delegation by trustees,

Chapter 5 Enforcement and Sanctions

Title 1 Scope and Application

R5-1.1 This Title provides detail with regard to administrative penalties and sanctions. This should be read in conjunction with, and is without prejudice to, any policy or guidance issued by the Authority from time to time in relation to *inter alia* the principles which guide the MFSA when imposing administrative penalties and provide for aggravating and mitigating circumstances in case of misconduct.

Title 2 General

R5-2.1 The Authorised Person shall at all times observe the legal requirements, Regulations and Rules which are applicable to it, as well as all the relative requirements which emanate from the Act and regulations issued thereunder. In terms of the Act, the MFSA has various sanctioning powers which may be used against an Authorised Person who does not comply with its regulatory obligations. Such powers include the right to impose administrative penalties.

R5-2.2 Where an Authorised Person breaches a Rule, the MFSA may, by virtue of the Authority granted to it under Article 51 of the Act, impose administrative penalties, without recourse to a court of law, up to a maximum of €150,000.

R5-2.3 In determining whether to impose a penalty or other sanction, and in determining the appropriate penalty or sanction, the MFSA shall be guided by the principle of proportionality, deterrence and the disgorgement of profits derived from wrongdoing where the findings are systemic. 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 Authorised Person;
- (ii) the degree of responsibility of the person responsible for the infringement;
- (iii) the financial strength of the Authorised Person;
- (iv) the profits gained or losses avoided by the Authorised Person 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 Authorised Person with the Authority;
- (vii) previous infringements by the Authorised Person and prior sanctions imposed by MFSA or other regulatory authorities on the same Authorised Person;
- (viii) the good faith, the degree of openness and diligence of the Authorised Person in the fulfilment of his obligations under the Act, relative regulations, Rules and Authorisation conditions or of decisions of the Authority in this regard;
- (ix) any evidence of wilful deceit on the part of the Authorised Person or its officers;
- (x) any potential systemic consequences of the infringement; and
- (xi) the reputation of Malta.

R5-2.4 Whenever the infringement consists of a failure to perform a duty, the application of a sanction shall not exempt the Authorised Person from its performance, unless the decision of the MFSA explicitly states the contrary.

R5-2.5 A right of appeal to the Financial Services Tribunal is available to Authorised Persons on whom penalties are imposed.

Annex 1

Deadlines for submissions to the Authority

Submissions to the Authority	Deadline
Annual Compliance Return – Individuals	30 April
Annual Compliance Return – Others	4 months following financial year end
Audited annual financial statements and copy of auditor’s management letter and auditor’s report by bodies corporate (but excluding partnerships in terms of the proviso to R3-14.3)	4 months following financial year end
Annual income statement, balance sheet and notes to the income statement and balance sheet by partnerships	4 months following financial year end
Authorisation Fee	On the date of submission of the application for Authorisation
Annual Supervisory Fee	On the date when authorisation is granted and thereafter, annually upon the anniversary of the date of authorisation (as specified in the Trusts and Trustees Act (Fees) Regulations)

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