

RULES FOR COMPANY SERVICE PROVIDERS

Introduction

These Rules are made pursuant to Article 8 of the Company Service Providers Act, 2013 which provides that the Malta Financial Services Authority (“the Authority”), as the Competent Authority may publish rules which shall be binding on company service providers. A copy of this document may be found on the Authority’s website (www.mfsa.com.mt).

1.0 Registration of Company Service Providers

The Company Service Providers Act, 2013 (“the Act”) provides a statutory basis for the registration of persons who provide company services. The following sections make reference to various articles of the Act but do not attempt to reproduce it, and therefore should not be treated as a substitute for consulting the Act itself.

The Act defines Company Service Providers (“CSPs”) as those persons which by way of business provide any of the following services to third parties:

- (a) formation of companies or other legal entities;
- (b) acting as or arranging for another person to act as director or secretary of a company, a partner in a partnership or in a similar position in relation to other legal entities;
- (c) provision of registered office, a business correspondence or administrative address and other related services for a company, a partnership or any other legal entity.

Types of business which are subject to Registration

The following business would fall within the remit of the Act and would be required to apply for registration in terms of this Act. This list is not an exhaustive list and it is possible for other types of business to fall within the requirements of the Act:

- Company Formation Agents and the formation of other legal entities;
- Providers of Registered Offices, business addresses, accommodation or correspondence addresses for businesses;
- Any individual or corporate entity arranging for another person to act as a director or secretary of a company, a partner of a partnership or similar position in relation to other legal person, as well as shareholder or trustee;
- Any individual or corporate entity providing their services as company director, company secretary, or partner to another firm unless the client is a member of the same group as the firm providing the services.

2.0 Registration under the Company Service Providers Act, 2013

In terms of Article 3 of the Act, “any person resident or operating in or from Malta who acts as a company service provider by way of business, shall apply to the Authority for registration.”

Persons who are licensed, authorised or recognised by the Authority in terms of any one of the laws for the purposes of which the MFSA has been designated as competent authority are still subject to registration in terms of the Act. However, given that these persons are already subject to the “fit and proper” test by the Authority, they shall be required to apply for registration to the Authority by means of a notification letter which shall include details regarding the type of licence/authorisation already held, the company services to be offered, the target market for such services and the expected level of company service business. This notification letter should be accompanied by the prescribed application fee.

These persons would still be subject to these Rules insofar as their provision of company services by way of business.

For the purposes of Article 3 of the Act:

- The phrase “*by way of business*” means that these activities must be provided by a person who **EITHER:**

- a) holds himself out as providing company services by, inter alia, soliciting the services on offer to members of the public OR:
- b) provides company services on a regular and habitual basis;

AND

- c) is being directly or indirectly in receipt of remuneration or other benefits for the provision of these services.

With respect to (c) above, where the company services being provided by a person are being remunerated through another company which is associated or connected with the person providing such services or which belongs to the same group of companies, then the provider of the services would still be deemed to be receiving indirect remuneration for the services it offers and provided that it meets one of the criteria mentioned in (a) and (b) above, it would be subject to registration in terms of Article 3 of the Act.

The MFSA shall conclusively determine whether the carrying out of a particular activity and/or the manner in which an activity is being carried out would be subject to registration in terms of the Act.

The following factors may indicate that a particular activity is being undertaken by way of business:

- the amount of time taken to fulfil the responsibility is considered significant;
- the individual has no other form of employment;
- the level of income received (both in terms of the quantum and as a proportion of the individuals' total income) is considered significant;
- the existence of a business relationship through which habitual or frequent or regular appointments are introduced;
- the individual is receiving significant non-financial benefits/benefits in kind;
- the individual claiming business expenses within his own tax return.
- the individual offering or providing more than one type of company service; and

- the turnover of engagements is considered significant.

The above indicators:

- a) represent a non-exhaustive list of considerations and the Authority would urge individuals either currently undertaking or contemplating commencing CSP activities, who remain unsure as to whether they meet the “by way of business” threshold test, to discuss their specific circumstances with the Authority.
- b) are not cumulative. However, the greater the number of indicators an individual meets the greater the change that a “by way of business” determination would be made by the Authority.

The Authority would consider that the following matters are indicative of acting in a private capacity and hence would **not** be regarded as undertaking an activity “*by way of business*”:

- directorships of private companies where the director is a beneficial owner or has a substantial financial interest in the company; and
- directorships of companies beneficially owned by family members.

The term “director” includes any person occupying the position of director of a company, by whatever name he may be called, carrying out substantially the same function in relation to the direction of the company as those carried out by a director.

De Minimis Rule:

For the purposes of establishing whether an individual is holding himself out as providing directorship services by way of business, and therefore subject to registration under the Act, the Authority shall consider whether such individual holds an aggregate of more than ten directorships and company secretarial positions in companies other than those licenced, recognised or authorised by the Authority in terms of any one of the laws for the purposes of which the MFSA has been designated as the competent authority. Accordingly, individuals holding directorships or company secretarial positions in companies which are so licenced, recognised or authorised shall not be considered as providing directorship or company secretarial services by way of business, for the purposes of registration in terms of the Act.

In establishing whether an individual may be considered to be providing company services by virtue of the directorships and/or company secretarial positions held, it is recommended that a final determination is sought from the Authority in terms of Article 3(4) of the Act.

For the purposes of calculating the threshold established in the de Minimis Rule directorships and company secretarial held by the same person in the same group of companies shall only count as a single appointment

The MFSA does not prescribe a maximum number of directorship appointments an individual may undertake. However, the Authority will review both at application and on an ongoing basis, an individual's capacity and ability to effectively carry out the responsibilities commensurate to that individual's engagements, bearing in mind the activities and complexities of the companies in which an individual holds a Directorship. This review will include onsite examination activity.

“Holding oneself out”

“Holding oneself out” involves actual representation to third parties. The test on *“holding oneself out”* cannot be confined to whether advertising or solicitation takes place. The following are indicators that a person may be deemed to be *“holding himself out”*:

- advertising the services provided or solicitation of business either verbally or through print (rather than being invited to provide services);
- making it known that the person will act to meet certain requests;
- being equipped so to act: e.g. office stationery, application form, business cards, business telephone book entries, website; etc.

The term *“arranging”* in the context of paragraph (b) of the definition of Company Service Providers in Article 2 of the Act, means the act of putting in order or providing for another person to act as a company director, company secretary, partner, fiduciary or trustee. This includes the situation where a person who is employed or who is a director or shareholder of a Registered Person is selected by that Registered Person to act as a director or company secretary to an entity as part of the company services the Registered Person provides to that entity.

3.0 Application for the Requirement of Registration

Employees of a Registered Person or directors of a Registered Person, whose appointment as directors or company secretary to another company is arranged by that Registered Person, are not subject to registration, in terms of the Act, in their own name.

Where a person is providing services as a director or company secretary, to one or more companies, by way of business, as defined above, then that person is subject to registration as a CSP in his own name, in terms of the Act.

In the case of a joint venture/outsourcing agreement entered into by a Maltese CSP with an overseas entity, whereby the local entity would be effectively “holding itself out” to provide company services and actually provides these services in Malta, the registration requirement in terms of the Act would only apply to the local entity.

Persons who hold themselves out to provide the services set out in article 3 of the Act, on the basis of a joint venture/outsourcing agreement with a Maltese CSP by virtue of which the latter would be effectively performing such services in Malta, it is only the local company service provider which is subject to registration in terms of the Act.

CSPs established in Malta providing services to companies outside Malta would be subject to registration since they are resident in Malta.

4.0 Exemptions

In terms of Article 3(1) of the Act, the following persons are exempt from registration under the Act:

- a) Persons in possession of a warrant, or equivalent, to carry out the profession of advocate, notary public, legal procurator or certified public accountant;
- b) Persons authorised to act as a trustee or to provide other fiduciary duties in terms of the Trusts and Trustees Act;
- c) An accountancy firm formed in terms of Article 10 of the Accountancy Profession Act and/or an auditing firm authorised to practice in the field of auditing in terms of article 10 of the Accountancy Profession Act would be considered as being equivalent to those persons in possession of a warrant to

carry out the profession of a certified public accountant and would therefore be exempt from registration under the Act.

Where these persons are carrying out company services by way of business they are still required to inform the Financial Intelligence Analysis Unit (FIAU) in terms of Article 3(1) of the Act. This notification should be carried out by completing and submitting the relevant “Company Services Providers – Notification Form”, a copy of which may be downloaded from the FIAU website (www.fiumalta.org).

For the purposes of notification, the persons referred above shall also include a civil partnership or any other form of partnership formed by practicing advocates intending to practice law in Malta jointly, excluding practicing advocates who share an office and provide services independently of each other.

5.0 The Fit and Proper Test

Fit and proper requirements are a key element for the effective supervision of CSPs.

In general terms, the fit and proper test includes the following criteria: integrity, competence (including experience and qualifications) and the requirement to be financially sound (solvency). All criteria 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 registration, or before it intends to suspend or withdraw a registration granted to, or held by, a company.

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.

The Authority shall not grant registration to an applicant to provide company services, if it appears to it that the criteria of fitness and properness are not, and will not, be met by a person concerned.

The Criteria of Fitness and Properness in the case of individuals are as follows:

- a) A fit and proper person is a person who is competent, honest and experienced.
- b) Such person is a person of integrity, has a good record of business and the requisite knowledge and ability for the position the person holds or proposes to hold.

- c) Conversely, a person who is incompetent, dishonest and inexperienced is an unfit and improper person.
- d) The Authority must be satisfied that there is nothing in a person's present state or past record that would make the person unfit for the position such person holds or proposes to hold.
- e) Testing for unfitness is carried out by examining a person's integrity in response to a range of standardised requirements set out in the Personal Questionnaire that are highly relevant to fitness.
- f) Requirements set out in the Personal Questionnaire are about a person's experience and qualifications; about a person's own business interests; about events which may cast doubts on a person's reputation and character including convictions, bankruptcy proceedings and regulatory actions against the person.

The Personal Questionnaire form is to be submitted in writing and signed by the person concerned.

In order for the Authority to carry out its due diligence exercise to establish the "fit and proper" status of an applicant, the latter would be required to submit a duly completed Personal Questionnaire form. The Personal Questionnaire should also be accompanied with any authenticated copies of any qualifications which the applicant may have.

Where the proposed shareholders of an applicant are corporate entities, these shall be required to complete the "questionnaire for qualifying shareholders other than individuals".

The "fit and proper" test must be satisfied by an applicant and a registered company service provider on a continuing basis. Accordingly, in this section any reference to a company applying for registration to provide company services includes a reference to a company which has obtained such registration.

6.0 Appointment of Compliance Officer

As the competent authority responsible for the registration of CSPs in Malta, the MFSA requires registered persons to adhere strictly to the requirements imposed under the law, the regulations and other rules in force. As part of the registration process, every applicant will be asked to identify an individual who will be responsible for ensuring the Registered Person's adherence to the On-going Obligations listed in these Rules.

The role of a Compliance Officer is an onerous one and no individual should accept this responsibility lightly – Compliance Officers are advised to ensure they are clear about the extent of their responsibilities, including those listed below:

- 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 Registered Person in terms of the Act.
- b) In order to be able to satisfy these requirements, the Compliance Officer must familiarise himself thoroughly with any conditions that may be imposed to the Registered Person's registration, including these Rules as well as any relevant guidance issued by the MFSA – and take steps to ensure that the Registered Person's staff are familiar with these Rules and any conditions that are relevant to their role within the company.
- c) In particular, the Compliance Officer must pay particular attention to those Rules which require the Registered Person to establish implement and maintain adequate policies and procedures to identify breaches by the Registered Person of the applicable registration requirements, and to minimise the risk of such breaches.
- d) The MFSA also expects the Compliance Officer to ensure, so far as is possible, that incorrect or misleading information is not provided deliberately or recklessly to the MFSA either in supervisory returns or in any other way.

Before an individual is appointed as Compliance Officer, the Registered Person must seek the MFSA's prior written consent. The Registered Person shall formally propose appointment to MFSA – after having conducted its own due diligence checks.

7.0 Appointment of Money Laundering Reporting Officer

CSPs carry on “relevant activity” for the purposes of the Prevention of Money Laundering and Funding of Terrorism Regulations [L.N. 180 of 2008] as amended. Accordingly, besides adhering to the Prevention of Money Laundering Act, 1994, Registered Persons are required to adhere to the Regulations made thereunder, as well as the Implementing Procedures and any guidance notes issued by the Financial Intelligence Analysis Unit.

In terms of the abovementioned Regulations, as subject persons, CSPs are required to appoint a Reporting Officer (commonly referred to as a Money Laundering Reporting Officer or “MLRO”). The individual assuming this role may or may not act as Compliance Officer having the duties outlined in the previous section. Furthermore, as stipulated by the said Regulations, the person appointed as a MLRO should be an officer of the subject person of sufficient seniority and command. S/he must also satisfy all requirements set out in the Implementing Procedures issued by the FIAU.

The role of the Money Laundering Reporting Officer is an onerous one and should only be accepted by individuals who fully understand the extent of responsibilities attached to the role.

The MLRO is responsible for the management and oversight of all aspects of the subject person’s AML/CFT activities, which include:

- a) Being himself/herself thoroughly familiar with the Prevention of Money Laundering Act, 1994, the Act, the Regulations made thereunder, as well as the Implementing Procedures as well as any guidance notes issued by the Financial Intelligence Analysis Unit.
- b) Similarly ensuring that all staff are familiar with the relevant provisions of the legislation mentioned in (a) above, and that regular training is being given in this regard. Note is to be taken of training that has been carried out and records retained of the persons trained and when. Care should also be taken when new staff is recruited to ensure that they obtain the necessary training.
- c) Reporting any suspicious transactions directly to the Financial Intelligence Analysis Unit (FIAU), even if the transaction is not carried out. It should be noted that such reports should not be copied to the Authority or to anyone else.

- d) Setting up an internal reporting procedure to ensure that staff can report any such transactions without hindrance and that clear reporting lines are in place. Senior management is to be made aware of such reports and should not be in a position to suppress them.
- e) Ensuring that proper Customer Due Diligence procedures are in place and that the procedures set out in the Implementing Procedures relating to the identification and verification of natural or legal persons are complied with. In this regard, it would be pertinent to point out that copies of identification documents are to be retained of all customers and these should invariably be authenticated.
- f) Particular care is to be taken as to identification procedures and records of corporate entities with authenticated copies of identification records being retained for all directors of such entities.

Before an MLRO is appointed, the Registered Person must seek the MFSA's prior written consent. The Registered Person shall formally propose appointment to the MFSA – after having conducted its own due diligence checks.

Upon being granted approval by the MFSA, the Registered Person shall inform the FIAU of the appointment of the MLRO. In this regard, the MLRO will need to register with the FIAU website in order to upload the “MLRO Details sheet”.

8.0 Procedure for the Approval of Compliance Officer, Money Laundering Reporting Officer, Directors and Senior Managers, by the MFSA

The request for MFSA's approval shall be made to the Authority by a Registered Person with respect to the appointment of a Director on its board, a Compliance Officer and/or a Money Laundering Reporting Officer prior to the formal appointment of such person, and shall be accompanied by a Personal Questionnaire (“PQ”). This shall be duly completed by the individual proposed together with all the relative documents.

In the case of a proposed Compliance and/or Money Laundering Reporting Officer, sufficient details of the individual's background, training and/or experience relevant to the post should also be included such that the MFSA is able to make adequate assessment with respect to the proposed individual's suitability for the proposed post.

Where the proposed person has within the previous five years submitted a PQ to the MFSA in connection with some other role with the same or another regulated company, the request for consent need not be accompanied by a new PQ. In these circumstances, it shall be accompanied by a confirmation by the proposed person as to whether the information included in the PQ previously submitted is still current, and indicated any changes or updates thereto.

Where more than five years have elapsed from the last PQ form submitted to the Authority, the person concerned is required to submit a fresh PQ.

9.0 Approval of Shareholders and/or Ultimate Beneficial Owners of CSP

The written approval of the MFSA is required with respect to every person who directly or indirectly owns or controls 25% or more of the shares or voting rights in the Registered Person (hereinafter referred to as “qualifying shareholder”) or in the person applying for Registration as a CSP, in terms of the Act, or who otherwise exercises control over the management of such company. Such approval is only granted if the MFSA is satisfied that such person is a fit and proper person.

For this purpose, applicants for approval as qualifying shareholders and/or Ultimate Beneficial Owners of Registered Persons, must submit an organogram, clearly depicting the shareholding structure of the Registered Person or entity applying for registration under the Act, as the case may be, as well as the percentage shareholding held by each entity in the applicant entity or Registered Entity as the case may be. The names of the ultimate beneficial owners must also be clearly disclosed.

Formal notification of a change in shareholding of a Registered Person is to be accompanied by:

- a) a Personal Questionnaire in the case of a proposed acquirer who is an individual; and
- b) the Questionnaire for Qualifying Shareholders other than Individuals in the case of a proposed acquirer who is not an individual.

In order to avoid undue delays in the assessment process, it is essential that the proposed acquirer promptly transmits all required information to the MFSA.

The information required shall be proportionate and adapted to the nature of the proposed acquirer and the proposed acquisition. In its assessment, MFSA shall take into account any information it may already possess in relation to the proposed acquirer.

In other cases, the MFSA may consider, on the basis of its analysis of the information submitted, by the proposed acquirer, that some additional information is necessary for the assessment of the proposed acquisition. In that case, the MFSA may request, in writing, that the proposed acquirer provides the additional information.

In the event that any of the information submitted is false or forged, rendering the conclusions of the MFSA liable to be erroneous, the MFSA shall refuse the approval of the proposed acquisition.

In assessing the request for approval as a qualifying shareholder or ultimate beneficial owner of a Registered Person, the MFSA shall adopt the following criteria:

- a) the reputation of the proposed acquirer;
- b) the reputation and experience of any person who will direct the business of the Registered Person holder as a result of the proposed acquisition;
- d) the financial soundness of the proposed acquirer
- d) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of article 1 of Directive 2005/60/EC is being or has been committed or attempted or that the proposed acquisition could increase the risk thereof.

10.0 The Application Process

When submitting an application for Registration as a CSP, the promoter should ensure that the appropriate Application Form is completed.

The application process to be followed by an Applicant for registration in terms of Article 3 of the Act is summarised below.

11.0 Application Documents

A request for registration as a CSP in terms of the Act should be supported by the following documents:

- i. a duly completed Application for registration as a CSP or notification as applicable;
- ii. Memorandum & Articles of Association, deed of partnership or equivalent constitutive document depending on the legal structure of the Applicant;
- iii. a copy of the most recent audited accounts where the Applicant is an entity which is already established together with the financial statements for its parent company and other members of the group (where relevant).
- iv. Where the applicant is an individual, a declaration that that person has €2,500 working capital to be retained for the duration of the registration is also required. Where the applicant is a company or other commercial partnership, evidence that the paid up share capital is not less than €5,000 which share capital must be maintained throughout the duration of the commercial partnership.
- v. a duly completed Personal Questionnaire by each Director, Qualifying Shareholder(s), Compliance Officer, Money Laundering Reporting Officer and Senior Manager of the Applicant. Where the persons concerned are corporate entities, the Questionnaire for Corporate Directors and/or Qualifying Shareholders, together with the additional documentation requested therein should be submitted.
- vi. Where the applicant is a company/any other commercial partnership duly incorporated, resolution of the Directors/ General Partners of the Applicant confirming their intention to apply for a Registration as a CSP in terms of Article 4 of the Act on behalf of the Applicant;
- vii. Memorandum and Articles of Association (and most recent audited accounts of any Qualifying corporate shareholders of the Applicant);
- viii. An application fee as may be prescribed by the MFSA;
- ix. Copies of any standard management agreements (client agreements) that the applicant intends to use.

- x. A Business Plan setting out a general Description of Business Activities, Competence of Staff, Local Substance, Dual Control, Operational Set Up, Outsourcing, Internal Control and marketing.

The Business Profile should be signed by the applicant (in the case of a legal entity, it must be signed by an authorised person on behalf of the applicant) and dated.

The MFSA may require applicants requesting registration in terms of Article 3 of the Act to submit to the MFSA whatever additional information it deems appropriate for the purposes of determining whether it should grant registration to the Applicant as a CSP.

12.0 Cessation of Company Service Provider business – Surrender of Registration

Registered CSPs should inform the MFSA at an early stage of their intentions to surrender their registration. The MFSA may require a registered person to delay the surrender of its registration as a CSP, or to wind-up such business in accordance with the conditions imposed by the MFSA.

The general procedure for surrendering a registration is described below, although the MFSA reserves the right to impose additional requirements.

Once a registered CSP informs the MFSA of its intention to surrender its registration, the following confirmations / action / documentation should be submitted to the MFSA:

- a) A formal request to the MFSA asking for approval to surrender the registration;
- b) A certified true copy of the Directors’/ General Partners’ Resolution confirming the Company’s intention to surrender its registration certificate, subject to the Authority’s approval and once the necessary formalities are finalised;
- c) Once the necessary formalities are finalised, the CSP must give due notice to its clients of its intention to surrender its licence. Confirmation to this effect should be submitted to the MFSA;
- d) A confirmation (where appropriate) that the Registered Person seeking to cease his company service business has transferred the clients of such services

to another appropriately recognised firm or to a firm which is exempt from the requirement of registration in terms of the Act;

- e) A confirmation that no litigation is pending which arises out of any event that occurred whilst the Registered Person was registered;
- f) A confirmation that the Registered Person will remove from all letterheads, and any other stationery, any reference to being registered by the Authority;
- g) A confirmation that the Registered Person has informed its auditor and insurer (if any) of the its intention to surrender its registration; and
- h) A confirmation from the auditors of the Registered Person specifying the date by when all business and obligations arising from the Registered Person's activities related to its Registration as CSP have been settled.

This list may not be exhaustive and it is the Registered Person's responsibility to ensure all its responsibilities have been satisfied.

Once all the requirements listed above are satisfied, an internal process will be set in motion for approval of the surrender of the Registration. Once a decision is taken, this will be conveyed to the Registered Person which will cease to be registered thereafter. The Registered Person should then return its original registration certificate to the MFSA. Moreover, following the Authority's approval of the surrender, unless arrangements are made for the winding up of the Registered Person, a certified true copy of the Constitutional Document of the Registered person duly amended to remove all references to the provision of company services from its Objects Clause and, (where appropriate) to change the name of the Registered Person should be submitted to the Authority.

The MFSA will ordinarily issue a public notice regarding the surrender of the Registration. The wording of the public notice will be provided to the Registered Person for its comments prior to being published.

13.0 General Requirements

13.01 The Registered Person shall co-operate in an open and honest manner with the MFSA and inform it promptly of any relevant information. The Registered Person shall supply the MFSA with such information and returns as the MFSA requires.

- 13.02 Where a Rules demands that a Registered Person notifies the MFSA of an event, such notification shall be made to the MFSA formally, in a durable medium. The request to notify the MFSA of any event shall not be satisfied merely by the fact that the information which ought to be notified to the MFSA is included in a standard regulatory return.
- 13.03 The Registered Person shall provide, to the satisfaction of the MFSA, alternative arrangements which ensure that it is soundly and prudently managed.
- 13.04 The Registered Person shall notify the MFSA in writing of:
- a) a change in the Registered Person's name or business name (if different) at least one month in advance of such change.
 - b) a change of address at least one month in advance of such change.
 - c) the termination or resignation of a Director, Compliance Officer and/or Money Laundering Reporting Officer immediately upon the occurrence of such termination or resignation. The Registered Person shall also request the Director, Compliance Officer and/or Money Laundering Reporting Officer to confirm to the MFSA that their departure had no regulatory implications or to provide relevant details, as appropriate. A copy of such request shall be provided to the MFSA together with the Registered Person's notification of departure.
 - d) any evidence of fraud or dishonesty by a member of the Registered Person's staff immediately upon becoming aware of the matter.
 - e) any material changes in the information supplied to the MFSA immediately upon becoming aware of the matter.
 - f) any actual or intended legal proceedings of a material nature by or against the Registered Person immediately after the decision has been taken or on becoming aware of the matter.
- 13.05 The Registered Person shall obtain the prior written consent of the MFSA before:
- a) making any change to its share capital or the rights of shareholders.

- b) acquiring 25 per cent or more of the voting share capital of another company.
 - c) taking any steps to cease its company services business.
 - d) resolving to go into dissolution.
 - e) any change in the ultimate beneficial ownership of any party directly or indirectly controlling 25 per cent or more of the Registered Person's share capital on becoming aware of the situation.
 - f) any proposed material change to its activity at least one month before the change is to take effect. Where the new activity is subject to any licence or authorisation from the MFSA, this new business shall not commence unless and until such authorisation or licence has been granted by the MFSA.
 - g) agreeing to sell or merge the whole or any part of its undertaking.
 - h) The appointment of a Director of the Registered Person's Compliance Officer and/or Money Laundering Reporting Officer.
- 13.06 The Registered Person shall maintain sufficient records to be able to demonstrate compliance with the conditions of its registration certificate and with the requirements of these Rules
- 13.07 The Registered Person shall co-operate fully with any inspection or other enquiry, or compliance testing carried out by the MFSA or an inspector acting on its behalf.
- 13.08 The Registration Fee shall be payable by the Registered Person on the day the Registration is first issued, as may be prescribed.
- 13.09 The Registered Person shall notify the MFSA of any breach of the condition of the Registration or of these Rules as soon as the Registered Person becomes aware of the breach.
- 13.10 A Registered Person which is an individual or a small business shall make arrangements to ensure that customer's interests are safeguarded in the event of death, incapacity, sickness, holidays or other absence of the Registered Person.

14.0 Financial Resources Requirement

- 14.01 The Registered Person shall have sufficient financial resources at its disposal to enable it to conduct its business effectively and to meet its liabilities.
- 14.02 The Registered Person must maintain and be able to demonstrate adequate financial resources for the nature and scope of their businesses.
- 14.03 Where the Registered Person is a commercial partnership the Registered Person shall have sufficient initial paid-up share capital to provide financial resources for its business at all times. This amount shall not be less than €5,000 which must be maintained for as long as that person remains registered under the Act.
- 14.04 Where the Registered Person is also regulated by the Authority for other activities and is therefore subject to higher financial resources requirements than those established in these Rules, these higher financial resources requirements shall be deemed to satisfy the requirements of these Rules and no additional financial resources would be required.
- 14.05 Where the Registered Person is an individual, a working capital of at least €2,500 must be maintained for as long as that person remains registered under the Act. In order to satisfy this requirement, the individual may opt to obtain a guarantee or irrevocable letter of credit as follows:

Subject to the conditions set out below, the own funds of an individual person registered under the Act shall be constituted and held in the form of a guarantee provided by, or an irrevocable letter of credit establish with a bank or credit institution:

- a) licensed to carry on business of banking under the law s of Malta; or
- b) lawfully permitted to carry on business of banking in a country outside Malta acceptable to the Authority provided that the bank or credit institution is of first class standing.

The conditions referred to in the preceding paragraph are:

- a) the guarantee or the letter of credit shall be in favour of the Authority;
- b) the content of the guarantee or letter of credit is to be approved in advance by the Authority; and
- c) where the Registered Person who is an individual intends to effect any changes to the content of the guarantee or the letter of credit, such Registered Person shall immediately submit, in writing, to the Authority the particulars of the proposed changes; and no such changes shall be made without the Authority's approval.

15.0 General Organisational Requirements

15.01 The Registered 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 members are 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 Registered 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 internal reporting and communication of information at all relevant levels of the Registered Person;
- f) maintain adequate and orderly records of its business and internal organisation;
- g) ensure that the performance of multiple functions by its staff members does not and is not likely to prevent those staff members from discharging any particular function soundly, honestly and professionally.

For these purposes, the Registered Person shall take into account the nature, scale and complexity of its business, and the nature and range of company services undertaken in the course of that business.

15.02 The Registered Person shall establish, implement and maintain systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question;

15.03 The Registered Person shall establish, implement and maintain adequate policies and procedures designed 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, 1994, 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 risk and to enable the MFSA to exercise its powers effectively.

15.04 The Registered Person shall monitor and, on a regular basis evaluate, the adequacy and effectiveness of its systems, internal control mechanisms and arrangements established in these Rules and take appropriate measures to address any deficiencies.

Competence and Effective Management

15.05 The Registered Person shall:

- a) Understand and comply with its contractual and other legal obligations
- b) Identify and act in each client company's best interest and avoid or deal properly with any conflict of interest between clients or client companies or between itself and a client or a client company;
- c) Ensure that any person for whom it arranges or acts as a director of a client company is fit and proper (within the meaning of these Rules) to do so;
- d) Keep the affairs of clients and client companies confidential except where disclosure of information is required or permitted by law or by guidance published by the Authority, or authorised by the person(s) to whom the duty of confidentiality is owed;

- e) Record and monitor compliance with the Act, any regulations issued thereunder and with these Rules.

15.06 Where a Registered Person is set up as a commercial partnership, the Registered Person shall ensure that it is effectively directed and/or managed by at least two individuals in satisfaction of the “dual control” principle. Such persons shall be of sufficiently good repute and sufficiently experienced so as to ensure the sound and prudent management of the Registered Person.

For the purposes of this Rule, it shall not be sufficient for one of the two persons to make some, albeit significant, decisions relating only to a few aspects of the business. Each must play a part in the decision-making process on all significant decisions. The persons involved are not expected to duplicate each other’s position but both must demonstrate the qualities and application to influence strategy, day-to-day policy and their implementation, and both must actually do so in practice.

Where there are more than two individuals directing the business, it is not necessary for all of these individuals to be involved in all decisions relating to the determination of strategy and general direction. Nevertheless at least two individuals must be involved in all such decisions. Both persons’ judgments must be engaged in order that major errors leading to difficulties for the undertaking are less likely to occur. Similarly, both persons must have sufficient experience and knowledge of the business and the necessary personal qualities to detect and resist any imprudence, dishonesty or other irregularities by the other person. Thus, where a single individual is particularly dominant in an undertaking this will raise doubts about the fulfilment of the criterion.

15.07 The Registered Person should have effective management and systems suitably chosen, trained and supervised staff to comply with these Rules. The Registered Person shall ensure that the responsibilities and authority of each member of staff are clear and appropriate to his or her qualifications and experience and that staff receive any training which is necessary for their roles.

15.08 The Registered Person shall formulate and keep up to date plans for staff training and development, including training in relation to anti-money laundering and countering the financing of terrorism, and for disaster recovery.

16.0 Conduct of Business Rules

- 16.01 The Registered Person shall act with due care, skill and diligence and shall treat its clients' best interests as paramount.
- 16.02 Registered Persons shall conduct their business with integrity and should not attempt to avoid or contract out of their responsibilities arising from these Rules.

Client Agreements

- 16.03 Registered Persons 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:
- a) services to be provided and the fees charged;
 - b) A record of how and by whom requests for action are to be given;
- 16.04 A record of any provision should indicate:
- a) A clear description of the for the termination of the agreement and the consequences of termination;
 - b) A description of the Registered Person's procedure for dealing with any complaints, and
 - c) A statement that the Registered Person is registered by the MFSA

Segregation of Funds

- 16.05 A Registered Person must ensure that any funds in his possession but belonging to a client are kept at all times separately from those of the Registered Person and also that they are not co-mingled with funds of other clients.

Non-fungible assets belonging to clients and which may come into the possession of the Registered Person must be kept separate and distinct both from the Registered Person's own assets and from other assets belonging to other clients.

In the case of fungibles, it is not necessary for Registered Persons to open separate accounts for each client as long as appropriate records are kept and effective reconciliation procedures are in place.

Customer Acceptance and Due Diligence

These requirements shall apply in addition to the Implementing Procedures issued by the FIAU.

16.06 A Registered Person shall ensure that a person is of sufficient good standing and repute prior to accepting to offer its services to that person.

16.07 Prior to offering company services to a client, a registered Person shall request a potential client to confirm in writing whether the latter has:

- a) ever been convicted of an offence (other than a minor traffic offence);
- b) ever been adjudged bankrupt;
- c) ever been the subject of an investigation by a government, professional or other regulatory body;
- d) ever been a director, shareholder, officer or manager of a business entity which has been the subject of an investigation as aforesaid
- e) ever been a director, shareholder, officer or manager of a business entity which has been adjudged bankrupt compulsorily would up or has made any compromise or arrangement where 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) ever had or currently has any direct or indirect beneficial interest in or whether he ever was or currently is a director of any other company registered in Malta.

The client should also be required, by the Registered Person, to confirm in writing that he is not acting on behalf of any other third persons.

- 16.08 The Registered Person shall undertake all the necessary identification procedures and shall carry out the customer due diligence procedures, including but not limited to the questions referred to in Rule 16.07, when there is a change in the directors, officers, members or beneficial ownership of the companies to which the Registered Person provides company services.
- 16.09 The Registered Persons shall ensure that it incorporates all the procedures relevant to the identification of clients and the due diligence enquiries to be made in their regard in a Procedures Manual.

Rules for Registered Persons providing the services of Company Formation

- 16.10 Before submitting the necessary documents to the Registry of Companies in order to form Maltese Companies (or before instructing a local agent to incorporate a company in another jurisdiction, the Registered Person shall:
- a) Carry out the necessary due diligence checks to identify and verify the ultimate beneficial ownership of the proposed company. Where the proposed company is held within a complex corporate structure, the Registered Person shall ensure that it has understood and verified the true/economic beneficial owners(s).
 - b) Ensure that the proposed name of the company does not breach the applicable requirements under the Companies Act.
- 16.11 Registered Persons, providing the services of company formation shall have procedures in place to:
- a) identify whether the activities of the proposed company 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 whether the persons involved in the proposed company and/or its activities would be deemed to be high risk. Examples include where the beneficial owner would be considered to be a politically exposed person, where the company is a part of a complex structure and where the proposed activities would be regarded as sensitive. Enhanced levels of due diligence and on-going monitoring by the Registered Person are required in such cases.

c) assess the level of risk which the formation of the Company would present to the reputation of Malta. These procedures should address the way in which the Registered 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:

- 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.

16.12 Registered Persons shall identify whether the activities of the proposed company 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).

Rules for Registered Persons which act as Directors in relation to other legal entities.

16.13 In acting as Directors to other legal entities, in terms of their registration under the Act, Registered Persons shall:

- a) Understand and act in accordance with their legal duties and the constitution of the company 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, directors and avoid conflict of interests with it or deal with them in accordance with the company's articles of association;
- d) Know who owns the company.
- 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 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;
- h) 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 regulatory or the authority which is entitled to information about the company's affairs;
- l) Not attempting to avoid those responsibilities by purposing to contact out of them or assigning them to others.

Record Keeping

- 16.14 The Registered Person shall retain copies of identification relating to all customers and these should invariably be authenticated. The Registered Person shall be obliged to keep any records for a period of not less than five years from the date of cessation of the provision of company services to the respective customer.
- 16.15 Particular care is to be taken as to identification procedures and records of corporate entities with authenticated copies of identification records being retained for all directors of such entities.
- 16.16 The Registered Person shall arrange for records to be kept of all services provided by it which shall be sufficient to enable MFSA to monitor compliance with the requirements under these Rules and in particular to ascertain that the Registered

Person has complied with all obligations with respect to clients or potential clients. The Registered Person shall arrange to keep sufficient backup of all such records.

16.17 The Registered Person shall keep at the disposal of the MFSA, for at least five years, the records relating to the provision of company services to clients. Such records shall contain all the information and details for the identity of the client and the information required under the Prevention of Money Laundering Act, 1994 and Regulations issued thereunder as well as by the Implementing Procedures issued by the FIAU.

The MFSA may, in exceptional circumstances, require the Registered Person to retain any or all of those records for such longer period as is justified by the nature of the transaction, if that is necessary to enable MFSA to exercise its supervisory functions.

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

- a) 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;
- c) it must not be possible for the records otherwise to be manipulated or altered.

16.19 Registered Persons must keep and preserve appropriate records in Malta which will at least include such records as are appropriate for their functions, as required by any applicable law and as will enable the provision of information to persons entitled to such information, on a timely basis. This should include the identity of all their clients and the beneficial owners thereof, as well as their residential addresses. The records retained should be sufficient to enable the Registered Person to comply with any notification and reporting requirements.

17.0 Reporting Obligations

- 17.01 The Registered Person shall have internal control mechanisms and administrative and accounting procedures which permit the verification of their compliance with these Rules.
- 17.02 The Registered Person shall in each year prepare an Annual Return in the form prescribed by the MFSA signed by the proprietor where the Registered Person is an individual, or otherwise by at least two directors or partners or any other persons authorised to sign by way of a Board Resolution. In the latter case, the Registered Person is expected to provide a certified true copy of such Board Resolution to the MFSA.
- 17.03 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 four months of the Accounting Reference Date.
- 17.04 The Registered Person shall notify the MFSA immediately it becomes aware that it will be unable to submit an Annual Return on the due date. The notice shall give reasons and shall explain what action is being taken to rectify matters.
- 17.05 The Registered Person shall notify the MFSA immediately 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;
 - c) it decides to claim on a professional indemnity or other policy relating to its company service provider business.
- 17.06 A Registered Person who is an individual is, required to submit a 'Statement of Solvency' (see pro forma as per Annex 1 to these Rules) on an annual basis, together with the Annual Financial Return in the form prescribed by the MFSA. A Registered Person which is an individual must appoint an auditor to audit his/her financial statements which should form the basis for the Annual Financial Return to be submitted to the Authority.
- 17.07 A Registered Person shall submit to the MFSA, on an annual basis, a Certificate of Compliance, in the style recommended in Annex 2 to these Rules. The Certificate of Compliance shall be signed personally by the Registered Person who is an

individual and by the directors or partners where the Registered Person is a corporate entity.

- 17.08 Where there have been breaches of the Act or of these Rules, the Registered Person is required to include a statement regarding such breaches in the Certificate of Compliance.

18.0 Fees and Remuneration

- 18.01 Registered Persons must agree on a clear fee structure which each of their clients before providing company services thereto and must ensure that the fees charged are transparent at all times. Registered Persons should also ensure that adequate notice is given before any material change in the fee structure is introduced.

19.0 Disclosure Requirements

- 19.01 Once registered, a Registered Person should ensure that its status as registered person is disclosed in all advertisements and correspondence. The following wording is suggested: “Registered to act as a Company Service Provider by the Malta Financial Services Authority.”

20.0 Co-operation with Regulatory Authorities

- 20.01 A Registered Person is expected to deal openly and in a spirit of co-operation with the Authority and any other relevant regulatory authorities.
- 20.02 A Registered Person should alert the Authority to any proposal to extend its business materially and in particular if it is proposed to undertake other business than the provision of company services.

21.0 Complaints

- 21.01 The Registered Person is required to 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.

21.02 The Registered Person shall maintain a complaints register a record of each complaint and the measures taken for its resolution.

22.0 Outsourcing

22.01 A Registered Person shall ensure, when relying on a third party for the performance of operational functions which are critical for the provision of a service to clients on a continuous and satisfactory basis, that it takes reasonable steps to avoid undue additional operational risk. Outsourcing of important operational functions may not be undertaken in such a way as to impair materially the quality of its internal control and the ability of the MFSA to monitor the Registered Person's compliance with all obligations.

22.02 An operational function of a Registered Person shall be regarded as critical or important if a defect or failure in its performance would materially impair the continuing compliance of a Registered Person with the conditions and obligations of its registration or its other obligations under these Rules, or the soundness or the continuity of its provision of company services.

22.03 Without prejudice to the status of any other function, the following functions shall not be considered as critical or important for the purposes of Rules 10.02:

- a) the provision to the Registered Persons of advisory services, and other services which do not form part of the company services business of the Registered Person, including the provision of legal advice to the Registered Person, the training of the Registered Person's personnel, billing services and the security of the Registered Person's premises and personnel; and
- b) The purchase of standardised services, including market information services.

Conditions for Outsourcing Critical or Important Operational Functions.

22.04 When the Registered Person outsources critical or important operational functions or the provision of company services, the Registered Person remain fully responsible for discharging all of their obligations under these Rules and are required to comply, in particular with the following conditions:

- a) the outsourcing must not result in the delegation by senior management of its responsibility;
- b) the relationship and obligations of the Registered Person towards its clients under these Rules must not be altered;
- c) the compliance of the Registered Person's with these Rules or with any conditions imposed on it in terms of its registration shall not be undermined; and
- d) none of the other conditions subject to which the Registered Person was granted a registration must be removed or modified.

22.05 The Registered Person shall exercise due skill, care and diligence when entering into, managing or terminating any arrangement for the outsourcing to a service provider of critical or important operational functions.

22.06 The Registered Person shall in particular take the necessary steps to ensure that the following conditions are satisfied:

- a) 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;
- b) the service provider must carry out the outsourced services effectively, and to this end the Registered Person must establish methods for assessing the standard of performance of the service provider;
- c) the service provider must properly supervise the carrying out of the outsourced functions, and adequately manage the risks associated with the outsourcing;
- d) 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;

- e) the Registered Person must retain the necessary expertise to supervise the outsourced functions effectively and manage the risks associated with the outsourcing and must supervise those functions and manage those risks;
- f) the service provider must disclose to the Registered 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;
- g) the Registered 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;
- h) the service provider must cooperate with the MFSA in connection with the outsourced activities;
- i) the Registered 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;
- j) the service provider must protect any confidential information relating to the Registered Person and its clients;
- k) the Registered 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.

22.07 The respective rights and obligations of the Registered Person and of the service provider must be clearly allocated and set out in a written agreement.

22.08 Where the Registered Person and the service provider are members of the same group, the Registered Person may, for the purposes of complying with this Section, take into account the extent to which the Registered Person controls the service provider or has the ability to influence its actions.

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

23.0 Enforcement

23.01 The Registered Person shall at all times observe the Rules which are applicable to it as well as all the relative requirements which emanate from the Act and regulations issued thereunder. In terms of the Act, the MFSA has various sanctioning powers which may be used against the Registered Person which does not comply with any of its obligations under the Act. Such powers include the right to impose administrative penalties.

Annex 1

Statement of Solvency and Compliance by a Company Service Provider who is an Individual

“Statement of Solvency” & “Certificate of Compliance”

i) Statement of Solvency

I certify, that to the best of my knowledge and belief, the total of my personal and business assets exceeds the total of my personal and business liabilities and that I am able to meet those liabilities as they fall due.

Confirmation and acknowledgement

I confirm that in making this statement of solvency, included (as a liability) a provision for taxation on the whole of my profits up to the date of the accompanying balance sheet.

By signing this Statement of Solvency, I confirm that I understand that if this statement is found to be false, inaccurate or misleading in any respect, I may be prohibited from conducting company services business and may be subject to disciplinary proceedings.

Name (Block Capitals).....

Signature.....

Trading name.....

Date.....

Annex 2

Certificate of Compliance for Company Services Providers

To: Director – Securities and Markets Supervision Unit
Malta Financial Services Authority

Dear Sir/ Madam,

Certificate of Compliance

With reference to the Registration as a Corporate Services Provider
authorizing me/the Registered Person to provide company services under the Company
Services Providers Act, 2013, I/the Registered Person confirm/s that during the period
..... to

(Kindly mark as appropriate)

All activity has been conducted in accordance with:

- a) the Company Services Providers Act;
- b) the Rules for Company Services Providers; and
- c) any recommendations or directives issued to me by the Malta Financial Services Authority

Other than the breaches detailed in the attached documentation, (if any), the company services business has been conducted in accordance with:

- a) the Company Services Providers Act;
- b) the Rules for Company Services Providers; and
- c) any recommendations or directives issued to me by the Malta Financial Services Authority

and that the Malta Financial Services Authority has been notified of all matters which may influence its decision to allow the registration to remain active.

I/The Registered Person further confirm that during the above mentioned period, I/the Registered Person have/has:

- not received any complaints from clients;
- have received (*please specify number*) complaints from clients.

At the end of the period, I/the Registered Person have/has (please specify no.) complaints which have not yet been resolved.

Signed by

Name of Registered Person (in case of Corporates)

Date