

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Circular to the Market

- Assessment Required Prior To Proposing Individuals for Approved Positions -

The Authority would like to highlight the requirement for regulated entities and applicants to conduct an appropriate assessment in all instances prior to proposing the appointment of individuals to be involved or hold key functions in a regulated structure. The Authority expects such assessment to be conducted against the backdrop of the particular business model and the risks of the regulated entity/applicant in question and to be commensurate with the role applied for.

The objective of this note is to highlight the importance that is given by the Authority to the prior assessment carried out by the regulated entity/applicant in all cases and in particular where proposals for approvals involve individuals who already hold MFSA approved positions.

The Authority acknowledges and appreciates the added value brought in by experienced individuals to the governance of a regulated entity.

In the conduct of their assessment in relation to proposals for approvals for individuals, also when these are already known to the MFSA, either through involvement or other engagement in regulated activities, regulated entities/applicants should *inter alia* take note of the following:

A. Time Commitment

The Authority expects all persons holding directorships and/or occupying approved senior/key positions within regulated entities to commit sufficient time to be able to perform the functions of their office or role, taking into account both the individual circumstances as well as the nature, scale and complexity of the activities of the regulated entity.

The time to be allocated to a directorship or other senior/key position should be agreed by the entity and individual concerned, taking into consideration the business model and associated risks of the regulated entity as well as the scale, nature and complexity of the activities involved, prior to seeking the Authority's approval for the appointment of the said individual. Engagement between the entity and the individual in question is key at this stage so that the proposed individual can understand the business model and associated risks of the regulated entity/applicant in which he/she will be involved and the regulated entity/applicant can conduct its own assessment of the suitability of the individual to the particular risks of the regulated activity.

When calculating the time to be allocated to a particular directorship or approved senior /key position, the following factors should *inter alia* be taken into consideration:

- the time required to carry out the functions of the office or role; for example, in the case of directorships, the time required to attend board meetings, including preparation for meetings,

review of documents, and additional time allocations required where acting as chairperson of the board of directors;

- buffers to deal with *ad hoc* issues that may arise; and
- the level of oversight required for specific functions.

Apart from the above, when assessing proposals for directors of credit institutions, particular reference should also be made to the limitations regarding the number of involvements as stipulated in Article 14 of the Banking Act.

Support Teams

The Authority notes that certain key functions such as compliance and risk management, are being supported through the engagement of support teams. The Authority emphasises that notwithstanding any such arrangement, the Compliance Officer/Risk Manager remains responsible for the proper execution of his/her duties, including in respect of activities carried out through the engagement of support teams. The Authority emphasises the importance of an adequate competence assessment by the regulated entity of such support teams.

B. Conflicts of Interest

The attention of regulated entities is drawn to the fact that proposed individuals who already hold approved positions and are being proposed for additional directorships:

- need to remain compliant with the provisions on fiduciary obligations contained in the Civil Code (Chapter 16 of the Laws of Malta) particularly with respect to the avoidance of any conflicts of interest; and
- are required to remain compliant with the provisions of the Trusts and Trustees Act (Chapter 331 of the Laws of Malta) and any related rules and regulations issued thereunder with respect to the avoidance of any conflicts of interest.

In the interest of best practice, it is also recommendable that persons being proposed for additional directorships obtain the prior approval of the companies within which they already hold the office of director, permitting them to take up such additional directorships in accordance with the provisions of the Companies Act.

C. Involvements in Pending Investigations and Litigation

Regulated entities/applicants should also be aware that where the proposed appointment involves individuals who are involved in pending investigations, court litigation, or have been the subject of administrative measures or sanctions, whether in Malta or abroad, the assessment should give consideration to the matters below:

- the nature of the issue;

- the stage of the investigation or proceedings; and
- the implications of possible outcomes of such investigations or proceedings on the fitness and properness of the individual concerned .

Investigations or litigation concerning alleged failures to comply with regulatory requirements; financial crime including market abuse; money laundering and funding of terrorism; bankruptcy, insolvency or other debt recovery proceedings; and involvement in the management of a business or company which has failed, where that failure has been occasioned in part by deficiencies in that management, should be carefully considered by regulated entities/applicants when carrying out their own assessment on these individuals.

Individuals involved in pending investigations and litigation are expected to be transparent and to fully disclose all relevant details to the Authority and the regulated entities/applicants in which they are involved/propose to be involved.

Any queries in relation to the above should be directed to the Authorisation Unit on authorisations@mfsa.com.mt.

Communications Unit
Malta Financial Services Authority
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