

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

GUIDELINES TO THE PERSONAL QUESTIONNAIRE

CONTENTS

- 1 Purpose and effect of this guidance
- 2 Overview of the approval process
- 3 Guidance to the completion of sections 1 to 6 of the PQ
- 4 What is expected from the Applicant
- 5 Applicants already known to the MFSA
- 6 Attachments to the PQ
- 7 The Entity's assessment
- 8 Supplementary information regarding the MFSA's Competence Assessment

1

Purpose and Effect of this Guidance

- 1.1 The primary purpose of this guidance is to assist Applicants in compiling the PQ in the manner expected by the MFSA and to set out the steps which is expected by an Entity to take in order to satisfy itself on reasonable grounds that the proposed person is fit and proper to hold the proposed role before the submission of a PQ.
- 1.2 This guide is not intended to be comprehensive nor to replace or override or substitute any legislative provisions or legal requirements stemming either from applicable EU law or applicable national law.
- 1.3 The MFSA may update or amend this guidance from time to time as appropriate.
- 1.4 Applicants are now required to submit the PQ using the MFSA's online system – LH Portal. Once registered, the Applicant can track the progress of his/her PQ and any communication in relation to the PQ shall be done through the online system in order to ensure an effective and efficient process.
- 1.5 In case of any queries, we recommend you have a look at the video clip which is found on the LH Portal which explains how the PQ has to be completed. Should any queries not be addressed or other problems are encountered, please contact the MFSA on (+356) 25485142 or pq@mfsa.com.mt.

2

Overview of the Approval Process

- 2.1 Applicants who are being proposed by an Entity to hold and perform and approved position are required to obtain the MFSA's prior approval in writing. The Entity needs to notify the MFSA of a proposed appointment at the earliest possible due to the fact that the due diligence process is quite a lengthy process which is partially dependent on communications with third parties.
- 2.2 The MFSA expects an Entity to have conducted its own due diligence assessment before proposing the appointment of a person.
- 2.3 The approval process requires the submission of a PQ which is available on the LH Portal. This is accessible through the MFSA's website. Applicants shall be able to log on to the online system using a user name and a password.
- 2.4 Once the PQ is completed and submitted to the MFSA, the Applicant can easily monitor the progress of the application through the status updates.
- 2.5 Initially the status will show the PQ as "Submitted". The MFSA shall contact the Applicant through the Chatbot in case it requires further information or clarifications. Any amendments are to be directly changed in the PQ by the Applicant. In such case the status shall show "Pending Clarification". Once the MFSA is satisfied with the information submitted in the PQ, the status shall change to "Final Submission".
- 2.6 Since the information provided in the PQ has to be verified to the extent and whenever possible, by the Entity, once the PQ's status is changed to "Final submission" an automatic email shall be sent to the identified person within the Entity with the request to provide the MFSA with the necessary information as indicated in the next sections.

- 2.7 At this point, the status shall change to "Pending Entity's Assessment". The information required from the Entity is expected to reach the MFSA within 5 working days together with the necessary original documents as shall be indicated in this this guidance. The due diligence process shall not start before the MFSA is in receipt of all the required information.
- 2.8 Once all the documents are received and the MFSA is satisfied with the contents, the status shall change to "Due Diligence in Process" where the MFSA will start its due diligence process.
- 2.9 When a decision is reached regarding the proposed appointment, the status shall change according to the decision. The decision shall also be communicated to the Entity in writing by the MFSA.
- 2.10 The Entity is then required to update the corporate profile within the LH portal upon the Applicant's approval is granted.

In case the Applicant wishes to delete a PQ which is still in draft form, this can be done so by clicking "X". Once a PQ is submitted, this cannot be deleted.



3

Guidance to the Completion of Sections 1 to 6 of the PQ

SECTION 1: IDENTIFICATION DETAILS

The PQ application starts off with the identification of the name of the Entity with which the Applicant is being proposed, the sector in which it operates and whether it is regulated or not.

The Applicant is required to provide the details of a contact person from within the Entity who is of sufficient seniority and command to provide its assessment on the fitness and properness of the Applicant to take over the proposed role. This is because the Authority expects all Entities to *inter alia*:



- Carry out their own due diligence and suitability assessment prior to proposing an individual for an approved position; and
- To confirm that to the extent and whenever possible, the information included by the Applicant in the PQ has been independently verified.

The identified person from within the Entity shall be advised by means of an automatic email notification that a PQ has been sent by the Applicant and that before the MFSA is able to start processing the PQ, the Entity's assessment needs to be submitted in the form indicated below in part 7: The Entity's Assessment of these guidelines. This contact should also be provided even if the Entity is still in formation.

This section also contains the identification details of the Applicant. It is important that each field within this section is fully and accurately completed.

SECTION 2: THE PURPOSE OF THIS PQ

The PQ is to be completed by Applicants being proposed in the following positions:

- Qualifying Shareholders
- Beneficial Owners (in case of unincorporated body)
- Any person exercising control over regulated entities through any other means (apart from direct/indirect shareholding or voting rights)
- Chairpersons
- Directors
- Chief Officers
- Compliance Officer
- Money Laundering Reporting Officer
- Internal Auditor
- Actuary
- Investment Advisor
- Managers
- Committee Members

- Individuals designated with oversight responsibility for outsourced Key Functions or any other identified critical function in terms of Directive 2009/138/EC (Solvency II Directive)
- Board Members responsible for the oversight of re/insurance distribution activities of an undertaking
- Persons within the management structure of an undertaking responsible for the distribution in respect of insurance or reinsurance products
- VFA Agents

Persons who have been nominated to occupy positions of trust or persons who shall be reporting directly to the Board of Directors are also required to submit a PQ and this position is to be indicated under "Other position". It is recommended that if the proposed position is not a listed position, than the Applicant liaise with the MFSA for guidance.

It is strongly recommended that in case of doubt as to whether a position needs the MFSA's approval, the Entity/Applicant is to contact the MFSA for the necessary guidance

The PQ enables the Applicant to submit a single application when applying for more than one position within the same Entity. A separate PQ needs to be completed for each Entity in which the applicant is being proposed.

SECTION 3: THE SUITABILITY ASSESSMENT

The Entity has the primary responsibility to carry out its own due diligence assessment not only prior to the proposed appointment but also on an ongoing basis. It is to be understood that the principle of proportionality to the suitability criteria cannot lead to the lowering of the suitability standards applied by the MFSA. Nevertheless, the MFSA shall consider the time commitment required from proposed Applicants to undertake their role effectively.

The MFSA's "fitness and properness" assessment is based on the following four suitability assessment criteria:

3.1 Competence – based on the qualifications and experience of the Applicant;

Applicants must have sufficient knowledge, skills and experience to fulfil the proposed role/s. The term competence cover both practical and professional experience gained through previous occupations and academic knowledge through education and training.

3.2 Reputation – based on the integrity and financial soundness;

Applicants shall be of good repute to ensure the sound and prudent management of the Entity.

Please note that if any of the answers to Section 3.2 is marked as "Yes", as a minimum, the following details are to be provided in the reply:

- The nature of the charge or accusation (including whether the charge is criminal, civil or administrative in nature or involves a breach of trust);
- The phase of proceedings reached (i.e. investigation, prosecution, sentence, appeal);
- The expected penalty if a conviction ensues;
- The time that has passed and the Applicant's conduct since the alleged wrongdoing;
- Details of the Applicant's involvement in the charge or accusation;
- Any understanding of and/or insight into the Applicant's conduct gained by the appointee over time;
- Other mitigating or aggravating factors (example other current or past investigations, administrative sanctions imposed, dismissal from employment or any position of trust etc.); and

Any supporting documentation which the Applicant may have in connection with any charge is to be submitted to the MFSA. The MFSA reserves the right

to request additional information as well as the submission of any other official documentation as may be required.

3.3 Conflicts of interest and independence of mind

Applicants, in their proposed role, should be able to make sound, objective and independent decisions. Independence of mind can be affected by conflicts of interests. The Entity should have governance policies for identifying, disclosing, mitigating, managing and preventing conflicts of interest, whether actual, potential (i.e. reasonably foreseeable) or perceived (i.e. by the public). The Applicant should notify the MFSA of all actual, potential or perceived conflicts of interest.

3.4 Time commitment

Applicants must be able to commit sufficient time to performing their functions in the Entity. The dedicated time can be affected by several factors, such as the number of commitments held, the size and the situation of the companies where the commitments are held and the nature, scale and complexity of the activities, the place and country where the companies are based, and other professional or personal commitments and circumstances. In addition to quantitative assessments, an assessment of the qualitative aspect needs to be conducted by the Applicant.

Ongoing performance

The fit and proper requirement is an ongoing requirement and therefore, once approved, the Applicant will be subject to ongoing supervision by the MFSA. There may be instances which may lead to the reassessment of the Applicant's suitability.

SECTION 4: ADDITIONAL INFORMATION

Any additional information which the Applicant deems as relevant to the PQ is to be included in this section.

SECTION 5: ATTACHMENTS TO THE PQ

Here the Applicant is required to attach some documents. The only documents which vary on a case by case basis (and therefore are not mandatory) are "Additional Documents..." and "Appendix 3". Please also refer to 6: Attachments to the PQ below which indicate which documents are to be sent in original form.

SECTION 6: DECLARATION

All the statements in the declaration have to be agreed to in order for the Applicant to be able to save this section. Furthermore, the Applicant is also required to download and sign the declaration. This is to be submitted to the MFSA in both soft and hard copy.



4

What is Expected from the Applicant

- 4.1 This PQ should be completed directly by the Applicant, who should assume full responsibility of its contents.
- 4.2 Applicants should answer all questions. Any questions which are not applicable should be clearly indicated as 'Not Applicable' or 'N/A'.
- 4.3 Applicants should be open, clear and provide the MFSA with detailed information to enable it to carry out the applicable suitability assessment. An Applicant who provides information, or makes a statement which he/ she knows to be inaccurate, false or misleading in any aspect, or recklessly provides wrong information may be guilty of an offence and may severely prejudice his or her fit and proper status. Moreover, if the MFSA becomes aware of any material information which had not been disclosed, the MFSA's decision regarding the proposed appointment may be delayed or prejudiced.
- 4.4 It should not be assumed that information in the public domain, or which had been previously disclosed to the MFSA or to another regulatory body, is known to the MFSA. In case of any doubt about the relevance of information, this should still be disclosed to the MFSA.
- 4.5 The names and addresses, contact persons, email and where applicable contact numbers, of companies/ institutions mentioned in the PQ should be provided correctly and in full.
- 4.6 Applicants have an on-going obligation to notify the MFSA immediately when there is a change in the information provided by resubmitting the PQ.
- 4.7 All identification documents being received from foreign jurisdictions should be appropriately apostilled.
- 4.8 All documents submitted should be in English language, and if applicable, accompanied by an official translation.
- 4.9 The Applicant may also be required to submit the contact details of any referees (including email, address and contact number) or professional reference letters. Professional reference letters should be issued by persons who themselves are involved in the provision of similar activity to be undertaken by the Applicant and who are involved with regulated entities. Furthermore, besides including reference to the relation held with the Applicant, such letter/s should also include the basis on which such a confirmation with regards to the competency confirmation is being provided. The MFSA reserves the right to request professional reference letters as it deems necessary in relation to any financial sector. Such letters are to be:
 - In original format;
 - On a letterhead or supported by an official identification document and business card of the referee.



5

Applicants Already Known to the MFSA

- 5.1 Applicants who are already approved persons by the MFSA are required to notify the Authority with any changes to the PQ immediately.
- 5.2 Applicants are expected to submit an updated PQ for each and every proposed role. The PQ can be retrieved and updated as applicable.



6

Attachments to the PQ

- 6.1 Section 5 of the PQ contains a check list of all the attachments that are required to be submitted which includes:
 - An authenticated/ apostilled (as applicable) copy of an identification document (ID card or passport(s)) in colour;
 - A police conduct certificate not more than three months old;
 - A recent copy of a utility bill confirming your residential address. If a Utility Bill is not available, please submit any other official document which verifies your residential address;
 - Certified true copies/ apostilled (as applicable) of the certificates of the qualification(s) held/ courses and training attended;
 - Other documents such as court judgments, professional references etc. as applicable ;
 - Appendix 1: The banker's authorisation letter/s;
 - Appendix 2: The general authorisation letter;

- Appendix 3: The Authorisation letter to the Commission for the Administration of Justice (in the case of advocates practising in Malta only);
- 6.2 Apart from a soft copy, Applicants are required to submit in hard copy the following documents:
 - Appendices 1 and 2, and 3 (if applicable) in original format;
 - An authenticated/ apostilled (as applicable) identification document (ID card or passport(s)) in colour;
 - The police conduct certificate, which is not more than three months old, in original format;
 - Certified true copies of the qualification(s) certificates/ courses and training attended. The Certification is accepted only from professional persons such as lawyers, notaries, solicitors, auditors, accountants, medical doctors, professors and public officers not below the grade of an Executive within the Civil Service; and
 - The declaration which is automatically generated duly signed in original format.

The MFSA does not require a hard copy of the PQ itself apart from the documents mentioned in the above paragraph. Accordingly the MFSA shall return any hard copies of the PQ received.



7

The Entity's Assessment

- 7.1 The Entity has the primary responsibility to carry out its own due diligence and suitability assessment not only prior to the proposed appointment but also on an ongoing basis. The Entity is to provide its

assessment within 5 working days. The due diligence process shall not start before the MFSA is in receipt of all the required information and is satisfied with its content.

In its assessment the Entity shall include the following:

- Reference to the PQ code which can be found in the email notification sent by the MFSA. This code is unique to each PQ submitted;
- Details of whether the Applicant will be replacing someone else (as applicable);
- An evaluation of the competence (qualifications and work experience) of the Applicant and how this is relevant to the duties assigned to the proposed role, taking into account the nature, scale, and complexity of the Entity, its business model and any specific risks associated with its licensable activities;
- An evaluation of the character of the Applicant ensuring his/her good reputation, taking also into account the replies provided in Section 3, subsection 3.2 of the PQ;
- Identification of any potential conflicts of interest and an explanation as to how these will be managed also taking into consideration the Entity's Conflict of Interest Policy;
- The time commitment which needs to be dedicated to the proposed role;
- Details of any support arrangements that will be put in place to support the Applicant in the execution of his duties;
- Details of how the Applicant will complement the Entity's collective suitability where applicable, such as inter alia in the case of the Board of Directors, or executive committees.
- A confirmation that the contents of the PQ and attachments have been sighted and independently verified;

- An updated organisation chart clearly indicating the Applicant's position and reporting lines (if applicable); and
- Any future date when the appointment of the Applicant shall be effective unless it is not upon the MFSA's approval.

- c) An Entity must not lodge an application if it has reasonable grounds to believe that the Applicant is not fit and proper to carry out the proposed role.
- d) An Entity must keep records of the assessment process undertaken for each Applicant.

GUIDANCE NOTES

- a) In assessing the suitability of an Applicant, an Entity must:
- Obtain details of the knowledge and skills of the Applicant in relation to the knowledge and skills required for the role;
 - Take reasonable steps to verify the relevance, accuracy and authenticity of any information acquired;
 - Determine whether the Applicant holds any relevant qualifications with respect to the proposed role.
 - Determine the Applicant's relevant experience;
 - Determine the Applicant's knowledge of the Entity's relevant systems and procedures with respect to the type of business that is to be, or is being, conducted by the Applicant on behalf of the Entity;
 - Determine the time commitment required for the proposed position; and
 - Whether the Applicant is deemed to have enough time to carry out the proposed position effectively in conjunction with the current involvements.
- b) An Entity must be satisfied that an approved person:
- Continues to be competent in his/her proposed role;
 - Has kept abreast of relevant market, product, technology, legislative and regulatory developments; and
 - Is able to apply his/her knowledge.



8

Supplementary Information Regarding the MFSA's Competence Assessment

Applicants proposed in a role for which a competence assessment needs to be undertaken, are required to have the necessary competence in undertaking the proposed role. Such persons should generally have both the necessary qualifications and experience. However, the MFSA can authorise a person either on the basis of relevant qualifications or on the basis of experience also taking into consideration any relevant training obtained by such person.

Qualifications

With respect to qualifications, reference should be made to the non-exhaustive list of qualifications currently recognised by the MFSA. The list of Recognised Qualifications is available on the MFSA's website under 'Careers and Training/ MFSA Training Policy and Approved Qualifications'. The Applicant is encouraged to approach the MFSA in case of any other relevant qualification which s/he possesses and which does not feature on the list of Recognised Qualifications. Relevant details would need to be provided in this regard to enable the MFSA to undertake an assessment relating to the adequacy of such qualification. In the case where an Applicant is proposed for a role on the basis of a recognised qualification/s whilst having no direct experience in undertaking the proposed activity, the MFSA may require such Applicant to provide the role in question under the supervision of an experienced authorised individual for a specified

period to be determined by the MFSA. Following such period of supervision, the Applicant would ordinarily be authorised to undertake the proposed role upon receipt of confirmation from the experienced authorised person that the Applicant is competent to the applicable role without supervision.

The monitoring and operational arrangements of the respective Entity will also be taken into consideration in addition to the criteria mentioned above in reaching a decision whether to approve the Applicant to provide the indicated activity.

Experience

With reference to experience, the MFSA expects the Applicant to possess hands-on experience (as applicable), ordinarily with a regulated financial services entity. Hence, the Applicant would need to demonstrate that s/he has been undertaking the proposed activity for an adequate period of time.

The level of skills and expertise required of proposed Applicants will be considered in detail, taking into account the particular circumstances of the Applicant in question (such as *inter alia* the nature of the services to be provided by the Entity with which the Applicant is being proposed).

Each case will be assessed on its own merits and following consideration of the information provided, the MFSA may ask for any additional information or clarifications including, the submission of professional references confirming the competency of the Applicant.



For more information please contact MFSA

Telephone: (+356) 25485142

Email: pq@mfsa.com.mt