

INDEPENDENT COMPLIANCE AUDITS

MFSA Ref: 13-2019

ISSUED: 22 JULY 2019

CLOSING DATE: 30 AUGUST 2019

1. Introduction

In line with MFSA Vision 2021, the Malta Financial Services Authority ('MFSA' or 'the Authority') is continuously aiming at strengthening its supervisory engagement, with the aim of better achieving its statutory objectives, as well as safeguarding the interest of consumers and the reputation of Malta as a jurisdiction of choice for financial services.

In this respect, the MFSA intends to implement a new framework in order to have an additional supervisory tool, to strengthen further our supervisory approach and ensure proper and effective supervision of our licence holders.

This tool will empower the MFSA to appoint, or require licence holders or any other person, to appoint a qualified person to undertake independent compliance audits, in relation to one or more areas of focus of a firm's **activities**, as indicated by the Authority.

2. Scope and Purpose of Consultation

The Authority is hereby issuing this Consultation Document to the public to allow stakeholders to comment, make suggestions and submit other contributions to the proposal being mentioned in this document, as well as to provide feedback in relation to the proposal being issued together with this Consultation, for an [MFSA Rule on qualified persons](#).

3. Amendment to the MFSA Act

In order to provide the Authority with the necessary statutory powers for the appointment of qualified persons, a new provision shall shortly be introduced in Article 16(2) of the MFSA Act, which will read as follows:

"(c) appoint a qualified person or otherwise require a person to appoint a qualified person, whenever it deems it necessary or expedient, to carry out such tasks under such terms and conditions as the Authority may direct. All fees and expenses to be charged by the qualified person in relation to, or incidental to such appointment, shall be paid by the person in relation to whom the qualified person is appointed, unless determined otherwise by the Authority. The Authority may issue Rules or guidelines laying down the procedures and requirements relating to such appointment, and such Rules may also lay down the powers, duties and obligations of the qualified person"

4. Appointment of Qualified Persons

In determining whether the appointment of a qualified person is required in relation to a licence holder or any other person, the MFSa will have regard to certain relevant factors, including the following:

- i. other supervisory and enforcement powers available to the MFSa and their effectiveness in relation to the objective and subject matter of the required review;
- ii. **considerations relating to the MFSa's resources, including whether the review of the relevant area(s) of focus, require(s) the particular expertise and analysis that must be provided by a qualified person;**
- iii. the **firm's** circumstances, such as: compliance history, quality of internal controls and responsiveness of the firm to the issue(s) being raised by the MFSa;
- iv. cost issues and whether the review required to be carried out by the qualified person, can adequately be undertaken by the firm in an objective manner, and it is appropriate for the MFSa to rely on such internal review;
- v. the extent of areas of concerns/ breaches/ deficiencies relating to the firm at a point in time, including whether the MFSa may rely on the **firm's** willingness, ability and its available resources (including technical expertise) to address and satisfactorily resolve such matters.

5. Registration of Qualified Persons

Any person wishing to act as a qualified person will be required to apply for a formal registration with the Authority and provide the information set out in an Application Form, that will be published by the Authority for such purpose. In this respect, the Authority is proposing to issue a Rule, which will set out the requirements for applying to be registered as a qualified person, as well as the duties and powers of the qualified person.

A copy of the draft Rule is being published together with this Consultation Document so that the relevant stakeholders can provide their comments and feedback accordingly.

Furthermore, the MFSa will establish and maintain a Register of qualified persons, that will be available on its website.

As soon as the licence holder or any other person is informed by the Authority of the proposed appointment of a qualified person, it will then be required to, *inter alia*, enter into a service level agreement with the qualified person which would specify, amongst other things, the duration of

the engagement of the qualified person and the amount of fees to be paid. The Authority may appoint, or require a licence holder or any other person, to appoint, a qualified person for, *inter alia*, the following purposes:

- i. where analysis is required in relation to specific areas of concern, and/ or to identify, measure and assess risks, in particular those arising from unexpected events that require immediate supervisory action;
- ii. to gather information and to track the development of identified trends and risks, wherever these arise;
- iii. for remedial action, including follow-ups of compliance visits and thematic reviews carried out by the Authority;
- iv. for preventive purposes, in order to limit or reduce particular risks;
- v. where material changes are being proposed to the business model, the governance structure or internal systems of a firm, or in the case of a proposed change in control of such firm.

The table below highlights the main areas of focus in relation to which a qualified person may be appointed by the Authority, or a licence holder or any other person, as the case may be. The scope of the engagement of a qualified person may include any aspect of the licence holder's or any other person's business, as determined by the Authority.

Prudential	Conduct of Business	Financial Crime	Other	Authorisation
Governance	Client File Reviews	Transaction Analysis	IT Security and Technology	Cross border services
Risk Management	Conflicts of Interest	Systems Analysis	Administration of Trusts	
Compliance	Remuneration	AML Policies & Procedures	Business Model Assessment	
Internal Audit	Record Keeping	Customer Due Diligence	Regulatory and Financial Reporting	
Outsourcing	Sales Practices	MLRO Function		
Client Money and Assets	Product Governance	Customer Risk Assessment		
	Fees & Charges			
	Inducements			

Upon conclusion of the engagement, the qualified person is required to present a report to the Authority with its findings. On the basis of those findings and depending on the objective and subject matter of the required review, the Authority will determine the necessary action to be taken, including potential regulatory action, where this is deemed necessary.

6. Consultation Period

This Consultation is open to the public until 30 August 2019. Industry participants and interested parties are invited to send their responses via email to complianceaudits@mfsa.com.mt