

CONSULTATION PROCEDURE

CONSULTATION ON THE PROPOSED INTRODUCTION OF AN ANNUAL COMPLIANCE RETURN FOR TRUSTEES AND OTHER FIDUCIARIES

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

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This Consultation document refers to the proposed introduction of two new reporting requirements: [1] the completion and submission of an Annual Compliance Return; and [2] the submission of the audited financial statements to the Supervisory Unit for review. These two new reporting requirements are applicable to persons authorised to provide trustee and other fiduciary services under the Trusts and Trustees Act (Cap 331). This document also refers to the proposed consequential amendments to the Code of Conduct for Trustees and other Fiduciaries (“the Code”).

The documents circulated by the MFSA for the purpose of consultation are in draft form and consist of the following proposals:

- 1) The introduction of an Annual Compliance Return for persons authorised to provide trustee and other fiduciary services under the Trusts and Trustees Act.
- 2) The new requirement to submit a full set of audited financial statements to the Supervisory Unit within a specified time.
- 3) The revision of the Code of Conduct for Trustees (“the Code”), whereby a new rule, which shall be binding on the trustees and other persons, as may be specified therein, is to be included in the said Code.

Accordingly these proposals are not binding and are subject to changes and revisions. It is important that persons involved in the consultation bear these considerations in mind.

The proposed amendments to the Code of Conduct for Trustees and the introduction of the Annual Compliance Return are being issued for consultation. The Authority invites comments by not later than **12th April 2013**.

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Copies of this Consultation Document are available to download from the MFSA Website.

1. INTRODUCTION

The Malta Financial Services Authority is the competent authority that authorises and regulates the activities of persons acting as trustees and/or other fiduciaries in terms of the Trusts and Trustees Act. The Authority has a number of supervisory tools that are utilised to obtain an insight as to the operations of authorised entities, which are essential to ensure effective supervision. The main supervisory tools that are currently utilised by the Authority are on-site compliance visits and regular meetings with management.

The Authority feels that the current supervisory tools should be complemented with additional information flow to enhance off-site supervision. The Authority intends to adopt a more clearly defined and enhanced risk based approach to on-site compliance visits. The provision of up-to-date and regular information will make the risk based approach more effective and efficient.

2. REPORTING REQUIREMENT APPLICABLE AS FROM 2014 ONWARDS

[1] Annual Compliance Return

The Authority is proposing that as from 2014 onwards, authorised persons should be required to complete and submit an Annual Compliance Return. It is being proposed that the Annual Compliance Return shall include information relevant to the reporting period which will be defined as the twelve months prior to the reporting date. The Authority is proposing that the reporting date is the anniversary date of the authorisation of the authorised person. Consequently the reporting period will be the twelve months ending on the reporting date.

The information collated should be submitted in electronic format in the first instance to a dedicated e-mail address which the Authority will designate. Accordingly the time limit for submission in electronic format is being proposed as one month after the reporting date. Following the electronic submission, the printed format - duly signed by two directors - should be mailed to the Authority together with supporting documentation by not later than two weeks after the electronic submission.

[2] Audited Financial Statements

The Authority is also proposing the introduction of an additional requirement, whereby authorised persons acting as trustees and/or other fiduciaries in terms of the Trusts and Trustees Act shall be required to submit a full set of audited financial statements to the

MFSA for review. It is being proposed that this new requirement is applied to all authorised persons acting as trustees and/or other fiduciaries in terms of the Trusts and Trustees Act with an accounting period commencing on or after the 1st January 2013.

The Authority believes that it is important to have up to date financial information about authorised persons. Linking the submission of accounts with the Annual Compliance Return could have the effect of obtaining financial information that could be up to as much as 18 months old. Rather than linking the submission of accounts with the Annual Compliance return, the Authority is proposing that the audited financial statements are submitted within a specified time after the financial year end of the authorised person.

The Authority is hereby requesting comments from the industry as to the submission timetable for the audited financial statements:

Are you in favour of the introduction of the obligation to submit the audited financial statements to the Authority:

[i] four months; or

[ii] six months, after the financial year-end of the authorised person?

3. REPORTING REQUIREMENT APPLICABLE IN 2013

The Authority does not believe that it should do nothing until the proposed amendments of the Trusts and Trustees Act, which were issued for consultation on the 14th December 2012, receive Parliamentary Approval. It is important to collect the information this year in order to enhance off-site supervision through the review of the information submitted by authorised persons and to strengthen with immediate effect the risk based approach to on-site supervision.

Consequently, in terms of Article 52 of the Trusts and Trustees Act (Cap 331), and the powers granted thereunder, the Authority is proposing the revision of the Code of Conduct for Trustees and other Fiduciaries to include a new rule whereby authorised persons shall be required to submit an Annual Compliance Return for 2013.

4. PROPOSED AMENDMENTS TO THE CODE OF CONDUCT FOR TRUSTEES

Through this Consultation Procedure the Authority is proposing the following amendments to the Code of Conduct for Trustees and other Fiduciaries:

New Paragraph 12.0 – Trustees and other fiduciaries authorised in terms of the Trusts and Trustees Act shall each year submit a completed Annual Compliance Return to the Authority, together with supporting documentation. The Annual Compliance Return shall include information relevant to the reporting period which is hereby defined as one year up to the reporting date. The reporting period shall be the period commencing on 1st July 2012 up to 30th June 2013, while the reporting date is 30th June 2013. The Annual Compliance Return, duly signed by two directors, shall be submitted in the form as prescribed by the Authority within one month from the reporting date.

Any trustee or other fiduciary who fails to submit the Annual Compliance Return within the prescribed time would be considered in breach of the Trusts and Trustees Act and may be subject to an administrative sanction.

5. REPORTING REQUIREMENT FOR 2013

For 2013, the Authority is proposing that the Annual Compliance Return will be submitted on a fixed date for all authorised persons. It is being proposed that the first Annual Compliance Return will have a reporting period commencing on the 1st July 2012 up to 30th June 2013, while the reporting date shall be the 30th June 2013. The information collated should be submitted in electronic format in the first instance to a dedicated e-mail address which the Authority will designate. Following the electronic submission, the printed format - duly signed by two directors - should be mailed to the Authority together with supporting documentation, including a full set of the latest audited financial statements. The Authority is proposing that the electronic format of the Annual Compliance Return is submitted by 31st July 2013 and printed format together with supporting documentation should follow by not later than 15th August 2013.

6. PROPOSED FORM AND CONTENT OF THE ANNUAL COMPLIANCE RETURN

The Authority has drafted the Annual Compliance Return in excel format to facilitate the input of information for authorised persons as well as the review to be undertaken by the Authority. It is being proposed that a number of sheets are used to categorise the type of information being requested. With respect to the content of the Annual Compliance Return, the intention of the Authority is to better understand the scale and size of the entity concerned, what plans it has for the future, what services the authorised person is offering, details about the operations of the entity and factors which might influence the operations of the authorised person. The Annual Compliance Return should also be seen by authorised persons as a tool to guide them as to what procedures should be in place to adhere to the requirements of the Trusts and Trustees Act and the Code of Conduct for Trustees and Other Fiduciaries.

The Authority is hereby requesting comments from the industry as to proposed form and content of the Annual Compliance Return.

7. CONCLUSION

It is important that interested parties in this consultation document bear in mind that the proposed introduction of the Annual Compliance Return is based on the requirements of the Trusts and Trustees Act in its current format. Once the proposed amendments of the Trusts and Trustees Act, receive Parliamentary Approval, the Annual Compliance Return will be reviewed to reflect the changes being proposed.

In conclusion, the Authority invites comments by not later than **12th April 2013** on the following proposals:

- [i] The introduction of the two new requirements to complete and submit an Annual Compliance Return and to submit the audited financial statements to the Supervisory Unit;
- [ii] The proposed submission dates with respect to the audited financial statements;
- [iii] Amendments to the Code of Conduct for trustees and other fiduciaries with respect to the introduction of the new reporting requirement in 2013; and
- [iv] The format and content of the Annual Compliance Return, which is being annexed to this consultation document.

Communications Unit
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