

Revised Personal Questionnaire

Explanatory Note

March, 2006

General Comments

As a general rule, due diligence enquires are to be carried out in connection with any appointment which requires approval. The due diligence process aims to satisfy the MFSA that the individual satisfies the fit and proper test. Various amendments have been carried out to the Personal Questionnaire (“PQ”) included in Schedule J to the Investment Services Guidelines. All regulatory units within the MFSA will utilise one version of the PQ both for processing licence applications as well as for the approval of individuals to be appointed with current licence holders. Whilst previously, the submission of the PQ was made to the regulatory unit depending on the particular financial services activity carried out, as a general rule, the PQ should now be submitted to the attention of the Director General.

An instruction to this effect is reflected in the PQ and the application documents. This will ensure that applicants and licence holders have one general point of contact, particularly when they are or are to be regulated by more than one regulatory unit. The Director General will then forward the PQ and application documents (as applicable) to the respective regulatory units for processing.

Notwithstanding the foregoing, licence holders which are regulated by one regulatory unit, may still be advised during discussions with the MFSA to submit the PQs with the head of the regulatory unit concerned. Similarly, entities which are in the process of applying for a licence from a regulatory unit can also send PQs and application documents directly to the Director of the regulatory units concerned.

Preamble to the PQ

The preamble to the PQ, headed “Important Information” has been amended to make it amply clear what is being expected by the MFSA from individuals when completing the PQ and the relative licence holders. The following are the salient amendments to the Preamble:

- It provides that the PQ is to be completed by individuals proposed as qualifying shareholders or proposed to occupy certain positions of trust or to carry out certain activities with a licence holder or an entity (incorporated or still in formation) which has applied to be authorised or licensed by the MFSA. Therefore, in the amended PQ, the reference to “*institution*” has been replaced by the words “*licence holder or entity*”.

- Since the PQ assists the MFSA to assess whether a person is fit and proper, applicants are expected to provide clear and detailed information to enable the MFSA to carry out the applicable fit and proper test, and in case of doubt of the relevance of information, the applicant should disclose that information to the MFSA.
- There is an emphasis that any questions which are not applicable should be indicated as “*Not applicable*”. Such questions should not be left unanswered.
- The PQ and the respective declaration in the PQ should be signed by the individual completing the PQ and countersigned by the licence holder. Entities which are still in the process of obtaining a licence are not required to countersign the PQ submitted for approval, given that the entity itself is not yet approved or licensed by the MFSA at that stage.
- The MFSA reserves the right to seek information and references from organisations and individuals named in the PQ and elsewhere both at the time of submission of the PQ and at any time thereafter.
- The applicant is also required to complete the authorisation letters attached to the PQ, that is, the Banker’s Authorisation Letter and the General Authorisation Letter as well as – in the case of advocates – the Authorisation Letter to the Commission of the Administration of Justice.
- The PQ is to be completed by the applicant personally and such person retains responsibility for the contents of the PQ. The licence holder should verify the information included by the applicant in the PQ.
- An applicant who furnishes information or makes a statement which he knows to be inaccurate, false or misleading in any material respect may be guilty of an offence and may severely prejudice his fit and proper status.
- An applicant should not occupy any post or begin performing any function which requires prior approval by the MFSA, until the MFSA has granted its approval.
- Correctly completed PQs accompanied by written requests from the licence holder or entity for approval of the individuals concerned in terms of the applicable laws should be submitted at least 21 business days in advance of the date when the licence holder or the entity in question would like the applicant to take up the post in question or commence the proposed activities.

The PQ

The revised PQ is divided into nine sections, a Glossary and three Appendices:

The nine sections are the following:

Section 1: Information regarding the licence holder or entity which has applied to become a licence holder

- Section 2: Personal Information regarding the Applicant
- Section 3: Qualifications/Memberships.
- Section 4: Employment History
- Section 5: Directorships
- Section 6: Bank References & Other Regulatory Authorisations
- Section 7: General Information
- Section 8: Declarations & Confirmations
- Section 9: Declaration

1.0 Section 1: Information regarding the licence holder or entity which has applied to become a licence holder

1.1 A note has been inserted under Section 1 to point out that applicants who seek approval to be appointed in connection with more than one licence holder or entity which applied to become a licence holder, should answer Questions 1. to 4. in that Section with respect to each licence holder or entity.

1.2 *Question 1* remained unchanged except for the change in terminology.

1.3 *Question 2* specifies who is to submit the PQ. As a general rule the PQ is to be submitted by a qualifying shareholder, a chairman, an executive director, a non-executive director, a company secretary, a chief executive officer, a senior manager and other managerial staff, a money laundering reporting officer and a compliance officer.

Licence holders and directors should note that directors who intend to appoint alternate directors should appoint a person who a director already approved by the MFSA. An alternate director may be another director within the same Board of Director of the licence holder or an alternate director of another entity licensed by the MFSA.

1.4 A new *question 3* has been included in the PQ whereby the applicant is to indicate the intended effective date of position. A note has been included in question 3 to remind the applicant that he cannot assume the proposed post with the licence holder or entity in question unless the applicant is considered to be a fit and proper person by the MFSA.

1.5 A new *question 4* has been added so that a name is to be disclosed as a contact point in connection with this questionnaire within the licence holder or entity. This requirement does not apply if the PQ is to be submitted by an applicant in connection with an entity which is still in the process of applying for a licence from the MFSA.

1.6 A new *question 5* provides that the applicant is to disclose his involvement with a licence holder other than the licence holder or entity in connection with which the PQ will be submitted and indicate the name of the other licence holder and position held.

2.0 Section 2 :Personal Information regarding the Applicant

2.1 *Questions 6, 8 and 9* reproduce the previous questions 2, 6 and 7. *Question 7* reproduces the previous question 4, with the addition that the mobile number of the applicant is to be disclosed.

3.0 Section 3: Qualifications/ Memberships

3.1 *Question 10* reproduces the previous question 8.

3.2 *Question 11* reproduces the previous question 9. However, applicants who have obtained qualifications from a University or Institution may be required to provide a certified true copy of the diploma or degree awarded should the MFSA not be in a position to verify in a timely manner the attainment of the respective qualifications from the indicated University or Institution.

3.3 *Question 12* reproduces the previous question 10. The words “*Sponsoring Body*” have been replaced with the words “*Educational Institute or Training Centre*”.

3.4 *Question 13* reproduces the previous question 11.

4.0 Section 4: Employment History

4.1 In this section, a note has been included to delineate the amount of information to be disclosed which may be relevant for the fitness and properness test. The note emphasises that a full employment history is required so that all periods of unemployment should be indicated and any gaps in employment should be explained, including details regarding any periods of self employment. Moreover, reasons for termination, dismissal or other issues that arose on leaving the employment which may be relevant to the fit and proper test are to be fully explained in a continuation sheet appended to the PQ.

4.2 *Question 14* which deals with previous employment of the applicant reproduces the previous question 12. Details of any previous employment in the financial services industry are to be disclosed. The details include the dates of employment, title of position held and brief explanation of duties, regulatory status and if applicable, name of regulatory body, full address and reasons for leaving employment.

5.0 Section 5: Directorships

5.1 In terms of *question 15*, which largely reproduces the previous question 13, the applicant is required to indicate the positions in relation to which he has been a

director or company secretary. If an applicant's job included the words "Director" but his or her duties did not include those associated with the title "director" as defined in the Glossary to the PQ, this fact should also be disclosed.

5.2 *Question 16* largely reproduces the previous question 38. The applicant is also required to disclose whether he has been dismissed from any of the positions described in questions 14 or 15 or asked to resign or agreed to resign instead of being dismissed or resigned whilst under investigation.

6.0 Section 6: Bank References & Other Regulatory Authorisations

6.1 *Question 17* largely reproduces the previous question 35. However, in the amended PQ not only the details of the current main bank are to be disclosed but also the details of the former banks which the applicant has made use of during the past 10 years. The specimen signature authorisation letter, which authorises the bank to disclose relevant information to the MFSA, is to be appended in original duplicate to the PQ. Moreover, the duration of the relationship with the bank, whether current or former, is to be disclosed.

6.2 *Question 18* largely reproduces the previous question 36.

7.0 Section 7: General Information

7.1 The questions found under this section ensure more transparency, since they require disclosure of connections or controls that may affect the fitness and properness of the applicant.

7.2 *Questions 19, 20, 21, 23 and 24* reproduce the previous questions 26, 27, 28, 31 and 32 respectively. *Question 22* reproduces the previous question 30 but no longer makes reference to related parties.

7.3 *Questions 25 and 26* have been added to the PQ. *Question 25* provides that any business interest, employment obligations or other situations which may give rise to conflicts of interest in the performance of the activities with the proposed post within the licence holder or entity in connection with which the PQ is being submitted, are to be disclosed. *Question 26* is a general question which requires the applicant to disclose any further information of direct relevance for the MFSA to carry out its fit and proper test.

8.0 Section 8: Declarations & Confirmations

8.1 A new *question 27* has been included in the PQ for the disclosure of any contractual impediments or restrictions through any previous occupation or employment, which preclude the applicant from taking up the post for which the PQ is to be submitted.

8.2 *Question 28* largely reproduces the previous question 15 and specifies that any offence whether criminal or otherwise is to be disclosed. In the amended PQ, decisions of any Tribunal or Court of Law whereby the applicant has been held responsible for any breach of regulations, or any offence, criminal or otherwise are to be disclosed.

8.3 *Questions 29 and 30* largely reproduce the previous question 33. Question 29 requires disclosure if the applicant is undergoing *current* criminal investigations and/or proceedings.

8.4 *Question 30* requires the disclosure of any *past* civil proceedings or litigation or future expectations to be engaged in litigation.

8.5 *Question 31* consolidates and amplifies on the former questions 16, 17 and 18. Question 31.1 reproduces the previous question 16. The application of question 31.2 (*former question 17*) has been widened to include restrictions or suspensions of licences. A new question has been included to provide that if the applicant has ever been found guilty of conducting or been investigated for possible conduct of any licensable activities without the necessary licence, authorisation or permit, to disclose this fact. Question 31.4 (*former question 18*) has been amended to include resignations of applicants whilst under investigation (whether current or previous).

8.6 *Questions 32, 33, 35, 36 and 37* reproduce to a large extent the previous questions 19, 21, 23, 24 and 25 respectively. *Question 34* reproduces question 22, but now includes the rulings of Tribunals. *Question 38* reproduces question 20 with the difference that disclosure is also to be made when a bank account is closed by the bank.

9.0 Section 9: Declaration

9.1 Since the PQ is to be counter signed by the licence holder, this section has been divided into two, a section which applies to the applicant and another which applies to the licence holder. The respective declaration in the PQ should be signed by an individual within the licence holder who has been authorised (legally or through delegation) to sign on behalf of the licence holder. Where the applicant will occupy positions with different licence holders, the declaration should also be signed by an official representing each licence holder, unless agreed otherwise with the MFSA.

9.2 The following documents are to accompany the PQ:

- a. An authenticated copy of an identification document (ID Card and/ or Passport) of the individual completing the PQ;
- b. A police conduct certificate, which should not be more than three months old or an equivalent certification from the country of residence of individual completing the PQ;

- c. A signed letter authorising Banks to answer any MFSA due diligence enquiries regarding the individual completing the PQ. A specimen authorisation letter is attached to the PQ;
- d. A signed general authorisation letter from the individual completing the PQ authorising the MFSA to contact any of the individuals named in the PQ. A specimen general authorisation letter is attached to the PQ.
- e. In the case of advocates only, a signed authorisation letter to the Commission for the Administration of Justice

10.0 Glossary to the PQ

In the Glossary to the PQ, a number of new definitions have been added. Most definitions remain largely unchanged except for a few differences highlighted hereunder:

Associate: The definition largely reflects the previous definition. However, the words “*in relation to, or holding shares in, a body corporate*” have been substituted with the words “*in relation to an unincorporated entity such as a partnership, or holding shares in a body corporate, that is neither a subsidiary nor an interest in a joint venture*”.

Fit and Proper Test: A new definition of fit and proper test has been added to the glossary. This definition provides that three criteria, *integrity, competence* and *solvency* must be met in satisfaction of the fit and proper test.

Laws: This new definition refers to legislation under which the MFSA issues regulatory licences, registrations or authorisations.

Licence holder: this new definition provides that the term “licence holder” refers to any individual or entity licensed or authorised and supervised by the MFSA.

Related Party or Parties: This definition has been amended to be interpreted in accordance with International Accounting Standard 24 issued by the International Accounting Standards Committee.

Trustee: In terms of the new definition added to the Glossary, a trustee refers to a person or persons holding or in whom the property is vested on terms of trust in accordance with the provisions of the Trusts and Trustees Act or is otherwise deemed to be a trustee under the Trusts and Trustees Act.

11.0 Appendices to the PQ

11.1 Three appendices are attached to the PQ:

- Appendix One refers to the *Banker’s Authorisation letter*;

- Appendix Two refers to the *Fit and Proper Enquiry - General Authorisation Form*
- Appendix Three which only applies in the case of advocates, refers to the *Authorisation Letter to the Commission for the Administration of Justice*

11.2 The Banker's Authorisation letter authorises the Bank to provide to the MFSA the information outlined in the letter and any other information as may be required by the MFSA.

11.3 The General Authorisation letter authorises any individual or organisation named in the PQ to provide information to the MFSA with regards to the applicant. Since there could be situations where organisations and individuals named in the PQ may require an authorisation letter addressed specifically to them before providing any information to the MFSA, applicants may have to send an authorisation letter specifically addressed to the organisations and individuals in particular.

11.4 The Authorisation letter to the Commission for the Administration of Justice which is to be sent by all advocates completing the PQ, authorises the said Commission to provide to the MFSA, the information outlined in the letter and any other information as may be required by the MFSA.

12. General observations regarding submission of PQs:

12.1 Applicants who have submitted PQs in the past will be required to submit a new PQ:

- where the individual is promoted/appointed to a new post within the licence holder and the MFSA holds a PQ which is more than three years old;
- where the individual concerned takes up an appointment with a new licence holder even if the PQ held at MFSA is less than three years old.
- wherever there have been material changes to the answers provided by the applicant in the PQ. This obligation arises as a consequence of the declaration signed by the individual.

In any other circumstances, individuals will be requested to submit a declaration confirming the changes to the PQ previously submitted to the MFSA. SLC 1.08(h) and (i) of Part C.I. of the Investment Services Guidelines, as well as 1.4(i) and (j) of Section C1 of the Guidelines for European Investment Firms Passporting into Malta, have been amended accordingly.

12.2 The MFSA retains the discretion to request details of personal referees on a case by case basis. In the instance that personal referees are requested, only personal references of persons of a certain standing will be accepted. Moreover, nominations

by applicants of MFSA officials, including Governors, employees and others who hold an office by virtue of a specific law, are not considered acceptable to the MFSA as personal referees.