

# GUIDANCE NOTE ON THE SUBMISSION OF THE SOURCE OF WEALTH AND SOURCE OF FUNDS

12 August 2022



## REVISIONS LOG

VERSION	DATE ISSUED	DETAILS
1.00	18 SEPTEMBER 2020	GUIDANCE NOTE ISSUED
1.01	12 AUGUST 2022	AMENDMENT TO SECTIONS 2.4 ; 2.7 ; 3.3



## Section 1 Scope and Application

- 1.1 The take up of positions which can influence the direction, or otherwise occupy certain positions of trust with an authorised person providing financial services<sup>1</sup>, is subject to prior regulatory approval. Such approval is subject to a due diligence assessment carried out by the Malta Financial Services Authority ('MFSA' or 'the Authority') to ensure that the Applicant<sup>2</sup> meets the fitness and properness or suitability criteria and has the necessary qualities that will allow the individual to perform his/her responsibilities required in his/her position. Such process is based on four assessment criteria: competence, reputation, conflicts of interest and independence of mind and time commitment.
- 1.2 In particular, when assessing an individual's reputation, the Authority focuses on two main aspects: [i] his/her integrity; and [ii] solvency. In this regard, Anti-Money Laundering/Combating the Financing of Terrorism ('AML/CFT') considerations are an important aspect of this specific assessment, especially with respect to those persons holding significant or controlling interests with authorised persons, or who may be Politically Exposed Persons (PEPs)<sup>3</sup>. It is in this context that such individuals may be requested by the Authority to submit a declaration with respect to their Source of Wealth ('SOW') and Source of Funds ('SOF')<sup>4</sup>. The Authority may also require other individuals who may not necessarily fall in any of the above categories, to submit their SOW/SOF declaration on a risk-sensitive basis, as deemed appropriate.
- 1.3 The aim of this Guidance Note is to assist individuals who are requested by the MFSA to disclose their SOW and SOF, with the intent of setting out the expectations of the Authority with respect to the detail of such declarations, including documentary evidence.
- 1.4 This Guidance Note does not constitute secondary legislation and firms must always refer directly to the applicable regulatory framework when ascertaining their statutory obligations. This document is neither intended to be comprehensive nor to replace or override or substitute any legislative provisions or legal requirements stemming either from applicable European law or applicable national law. In the event of a discrepancy between this Guidance Note and the applicable regulatory framework, the latter shall apply.

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<sup>1</sup> 'Financial services' means the business of credit and financial institutions, the business of insurance and the activities of insurance intermediaries, the provision of investment services and collective investment schemes, pensions and retirement funds, regulated markets, central securities depositories and such other areas of activity or services as may be placed under the supervisory and regulatory competence of the Authority by the Minister or by any other law.

<sup>2</sup> References in this document made to 'Applicant(s)', refer to any person, including any entity corporate or unincorporated, which are applying for a license or other authorisation to be issued by the Authority.

<sup>3</sup> PEPs are defined as individuals who are or have been entrusted with prominent public functions, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials (FATF Recommendations – updated June 2019, Glossary).

<sup>4</sup> Chapter 4.4.3, Part I - FIAU Implementing Procedures 2019.

Furthermore, the Authority reserves the right to deviate from any of the details set out in this Guidance, as necessary.

1.5

The Authority may update or amend this Guidance Note from time to time, as appropriate.

## Section 2

## Source of Wealth

- 2.1 The SOW refers to the origin of the entire body of wealth of the individual. This can be the business or economic activity of the individual, employment, investments or inheritance. The information that should be obtained should give an indication as to the volume of wealth the individual has and should provide a picture of how it was acquired.
- 2.2 When requested, the SOW of PEPs, Ultimate Beneficial Owner(s) and/or qualifying shareholders should be established at application stage, as well as in case of changes in the (qualifying) shareholding structure of an authorised person. Such information should be updated from time to time where new material developments arise, such as but not limited to:
- Sudden and significant liabilities materialising
  - Inability to raise planned capital
  - Inclusion in a list of unreliable debtors
  - Failure to satisfy any debt adjudged and payable by the individual.
- 2.3 In such cases the Applicants and their qualifying shareholders are expected to act proactively and notify the Authority of the material developments to their SOW, particularly in the case of PEPs and other higher risk individuals<sup>5</sup>.
- 2.4 The SOW declaration shall provide, in a detailed manner:
1. Information on the individual's net worth (i.e. the SOW), whereby assets and liabilities are thoroughly detailed.; and
  2. Information on where such net worth came from, i.e. the economic activity, business, employment, investment, inheritance, etc. from where it is derived. The onus is on the Applicant to ascertain that such proceeds arose from legitimate business and commercial activities.
- 2.5 Generally, no single source is likely to account for the total value of net worth, and often net worth is derived from different sources. It is expected that the individual provides a comprehensive picture of all the different sources contributing to his/her net worth with the respective documentary evidence.
- 2.6 Evidence of the different sources of wealth may include a combination of different types of information, such as publicly available information, external confirmations and information directly provided by the individual.
- 2.7 The Authority may require, on a case-by-case basis, documentary evidence submitted to be certified in line with the Certification Requirements as

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<sup>5</sup> Reference is made to paragraph H of the Interpretative Note to Recommendation 10 (Customer Due Diligence), FATF Recommendations – updated June 2019.

prescribed in Section 4.3.1.2 (b) of the [Financial Intelligence Analysis Unit \('FIAU'\) Implementing Procedures Part 1](#). Such certification is to be provided by embassy officials, legal or accountancy professionals, entities/persons undertaking a relevant financial business or equivalent activities in reputable jurisdictions, or by any other person who is empowered to certify documents within the individual's jurisdiction.

When requested, documentary evidence are required to be provided in original or fully certified format to the MFSA.

2.8

The following is a non-exhaustive list of the various possible sources of wealth, details required and documentary evidence<sup>6</sup> which can support the SOW:

#### Employment income

- Full legal name, registered address of the employer and nature of business
- Payslips from the last three months showing employer and amount received
- Statement declaring annual salary and bonuses for the last two years in employment
- Letter from employer confirming salary and years in employment
- Bank statement showing receipt of salary
- If self-employed, latest audited accounts or tax declaration and shareholders register extract

#### Company Sale

- Letter from a certified lawyer detailing company sale
- Certified copy of the contract of sale and bank / financial institution statement showing proceeds

#### Loan

- Loan agreement clearly outlining the date of the loan, the full name and address of the lender, the amount of the loan taken out and the purpose of the loan
- Details of any security

#### Savings/deposits

- Bank statement showing name of customer, amount and enquiry of the source of wealth (showing how savings were acquired)

#### Sale of shares or other investment

- Share Certificate/ Contract Note/ Statement
- Bank statement showing the incoming redemption proceeds

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<sup>6</sup> With regards to each source of wealth listed, not all the documentary evidence needs to necessarily be submitted, but discretion may be applied by the individual in relation to which document(s) are deemed to be best supporting the respective source of wealth.



- Written confirmation of sale/ holding signed by an individual from a regulated profession on headed paper, clearly outlining the sale value of shares

#### Property Sale

- Original or certified copy of contract of sale clearly outlining the details of the property sold, the address, date of sale, value of property sold, and the parties involved
- Title deed from land registry

#### Company profits/ dividends

- Copy of latest audited financial statements
- Copy of latest management accounts
- Bank statement evidencing proceeds
- Board of Directors' approval
- Dividend contract note
- Tax declaration form

#### Inheritance

- Original or certified copy of Will or Grant of Probate, detailing the amount of inheritance
- Written confirmation of inheritance signed by a certified lawyer/ trustee/ executor on letter-headed paper, detailing the amount of inheritance
- Tax clearance documents

#### Gift

- Letter from donor explaining the reason for the gift and the source of donor's wealth
- Certified identification documents of donor

#### Maturity/Surrender of life policy

- Letter from insurance provider clearly outlining policy name and reference number
- Closing statement with the final surrender value

#### Divorce Settlement or any other form of settlement or compensation

- Original or certified copy of the court order/ agreement
- Written confirmation and details of settlement signed by a certified lawyer

#### Retirement Income

- Pension statement
- Bank statement showing the pension income
- Letter from the paying institution

#### Other Income Sources

- Nature of income, amount, date received and from who
- Appropriate supporting documentation

2.9 Individuals submitting a SOW declaration are required to provide accurate information and should avoid providing general or vague descriptions of the SOW, as this may lead to overall delays in the application processing.

2.10 The above list is provided for guidance purposes only. Each case will be assessed on its own merits, and the Authority reserves the right to request further information and documentary evidence, as deemed necessary.

## Section 3

## Source of Funds

- 3.1 The SOF refers to the origin of the particular funds or assets which are the subject of the business relationship or the transaction which is to take place (e.g. the amount of share capital being injected by an Applicant / authorised person). In practice, it is the activity, event, transaction, contract, business, occupation or employment from which the funds used are generated or derived.
- 3.2 The SOF should be identified for every individual transaction, for example, every time that funds are used to capitalise or otherwise finance an authorised person. The information on the SOF will be required both at the application stage in respect of the initial capital and any other type of financing, and on an ongoing basis thereafter, where necessary.
- 3.3 The Authority may require, on a case-by-case basis, documentary evidence which should not simply be restricted to knowing from which bank or financial institution the funds may have been received, nor is it enough to see evidence that funds have been moved through the banking system. The information provided should be substantive, relevant and should illustrate the origin of the funds and the method/circumstances under which the funds were acquired.
- 3.4 Therefore, when submitting a SOF declaration, individuals concerned should be aware of the following:
- A generic description about the source of funds used or an explanation stating that the funds to be used are derived from the business activity of the individual or from a particular transaction, is not considered as sufficient and may lead to overall delays in the application processing. Rather, the activity, event, transaction, contract, business, occupation or employment from which the funds are generated or derived should be clearly identified and supporting documentation should be provided;
  - Funds should ideally be remitted from a regulated credit or financial institutions in the EU or in a jurisdiction which has an AML/CFT regime and legislation of an equivalent standard and in any event, funds shall be remitted through the banking system;
  - Funds should ideally originate from an account held in the name of the individual concerned or an entity of which he is the 100% beneficial owner. Where funds are provided by or through a third party, a clear and detailed explanation about the relationship of the third party with the individual and a justifiable and rational reason as to why it is necessary that the funds be provided by a third party should be given;
  - Funds should, to the extent possible, not be provided through overly complex arrangements and in any event such arrangements should be clearly explained, justifiable and should have a commercial rationale.

- 3.5 Each case will be assessed on its own merits, and the Authority reserves the right to request further information and documentary evidence with respect to the SOF declarations, when deemed necessary.
- 3.6 Applicants are further informed that the Authority treats cases of inconsistent, incorrect or misleading information, as well as cases of non-cooperation very seriously and that this could potentially lead to a refusal of an application.

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