



Implementing Procedures

Issued by the Financial Intelligence Analysis Unit
in terms of the provisions of the Prevention of Money
Laundering and Funding of Terrorism Regulations

Part II

**Company Service
Providers**



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ABBREVIATIONS

AML/CFT	Anti-Money Laundering and the Combating of Funding of Terrorism
BO	Beneficial Owner
CDD	Customer Due Diligence
CFT	Countering the Funding of Terrorism
CSP	Company Service Provider
CSP Act	Company Service Providers Act (Cap. 529 of the Laws of Malta)
EDD	Enhanced Customer Due Diligence
EUROPOL	European Union Agency for Law Enforcement Co-Operation
FATF	Financial Action Task Force
FIAU	Financial Intelligence Analysis Unit
FT	Funding of Terrorism
ID&V	Identification and Verification
MBR	Malta Business Registry
ML	Money Laundering
ML/FT	Money Laundering and Funding of Terrorism
MLRO	Money Laundering Reporting Officer
MONEYVAL	Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism
NRA	National Risk Assessment
STR	Suspicious Transaction Report

1. Introduction to the Implementing Procedures Part II for CSPs

1.1 THE PURPOSE OF THESE IMPLEMENTING PROCEDURES

The number of company service providers in Malta has grown exponentially over the past few years, as the island continues to attract international business to its shores. At the time of publication of this document, there were just under 600 professionals and firms providing company services in terms of the Company Service Providers Act (Cap. 529 of the Laws of Malta – “CSP Act”).

The activities that can be performed by a company service provider (“CSP”) emerge from the CSP Act, and are defined as follows:

“company service provider” means any natural or legal person which, by way of business, provides any of the following services to third parties:

- a) formation of companies or other legal entities;
- b) acting as or arranging for another person to act as director or secretary of a company, a partner in a partnership or in a similar position in relation to other legal entities;
- c) provision of a registered office, a business correspondence or administrative address and other related services for a company, a partnership or any other legal entity.

These Implementing Procedures Part II are applicable to persons and entities carrying out the services envisaged under the CSP Act¹.

The purpose of this document is:

- a) to interpret and provide sector-specific guidance on the implementation of particular anti-money laundering and the combating of funding of terrorism (“AML/CFT”) obligations that warrant further elaboration at an industry-specific level; and also
- b) to provide detailed information on money laundering and funding of terrorism (“ML/FT”) risks to assist CSPs in formulating a better understanding of the ML/FT risks they face and ensure that they are better equipped to detect and report ML/FT suspicions.

It is important that this document is read in conjunction with the *Implementing Procedures Part I*.

This document has been drafted following consultation with the Institute of Financial Services Practitioners and the Malta Financial Services Authority.

¹ These Implementing Procedures Part II are intended to provide AML/CFT guidance to CSPs when they form and/or provide other services to companies or commercial partnerships. The formation and provision of services to other types of legal entities, even though a relevant activity, does not fall within the scope of this document.

1.2 MALTA'S NATIONAL ML/FT RISK ASSESSMENT

According to the results of the ML/FT National Risk Assessment (“NRA”) published by the Government of Malta in 2018, the CSP sector was identified as presenting a high risk of ML/FT to Malta in view of the inherent risks to which the sector is exposed, coupled with weak implementation of AML/CFT controls.

The NRA identified the following key inherent risk drivers for CSPs:

- i) Significant volume of high-risk clients – most notably the high incidence of non-resident beneficial owners (BOs);
- ii) Services provided are risky in nature – specifically the setting up of corporate structures that are complex, and the holding of shares in a fiduciary capacity;
- iii) High level of geographical risk – driven by the considerable number of non-EU resident BOs of companies set up in Malta, with a significant exposure to risky jurisdictions;
- iv) Large volume of international business handled by CSPs; and
- v) Higher service interface risk – considering that a significant portion of CSP clients are on-boarded on a non-face-to-face basis, with the involvement of intermediaries.

The NRA moreover concluded that the level of effectiveness of AML/CFT controls implemented by CSPs was weak, which further contributed to the sector’s high exposure to ML/FT risks. This was due to a number of factors.

The number of STR reports submitted by CSPs in proportion to the ML/FT risks that they are exposed to is significantly low. This may be indicative of a weak awareness of ML/FT risks. CSPs often do not have expertise in understanding how their products and services may be misused for ML/FT. The low level of STR reporting is also indicative of weak AML/CFT controls and, in particular, of ineffective ongoing monitoring procedures to identify suspicious transactions.

CSPs often lack the resources and specialisation of larger financial institutions to dedicate to the implementation of effective and robust AML/CFT controls and also often have few independent checks and balances to monitor the effective implementation of their AML/CFT obligations.

1.3 DEFINITIONS

Under this section, certain terminology that is envisaged under the Prevention of Money Laundering and Funding of Terrorism Regulations (S.L. 373.01 – “PMLFTR”), as well as the *Implementing Procedures Part I*, will be specifically defined in the context of company services to ensure consistency in the interpretation of these terms by CSPs and, consequentially, in the application of their AML/CFT obligations.

1.3.1 Arranging

When it comes to arranging for another person to act as a director or secretary of a company, a partner in a partnership, or a similar position in relation to other legal entities, CSPs are to refer to the definition of ‘arranging’ as set out in any rules or regulations issued under the CSP Act. It should be noted that arranging does not include the process of headhunting or advertising to find a suitable candidate for a position. These services would typically be carried out by recruitment agencies.

The mere compilation of statutory forms or the carrying out of other formalities necessary for the appointment of a company director, secretary or similar positions in other legal entities is not considered to be a service of arranging for someone to act as a director, secretary or an equivalent position. Nor is it considered to be a company service or a relevant activity that warrants the application of AML/CFT obligations.

1.3.2 Formation of Companies and other Commercial Partnerships

Formation services consist in the provision of services to incorporate companies or set up commercial partnerships, in which one would be actively assisting in the preparation and submission of relevant documentation and liaising with relevant registers for the purpose of setting up a company.

When the services only entail the compilation and submission of ancillary statutory forms to set up a company or other commercial partnership (e.g., beneficial ownership declarations), one would not be providing a formation service for the purposes of the PMLFTR and these Implementing Procedures Part II.

1.3.3 The Customer

The PMLFTR define a customer as a legal or natural person seeking to form (i.e., a potential customer) or has formed (i.e., an existing customer) a business relationship, or a legal or natural person seeking to carry out an occasional transaction with a subject person.

In the case of CSPs, the type of customer varies depending on the services that are being provided. The table below provides an interpretation of who the customer is in the context of the various company services that may be provided by CSPs:

Company Service	Who is the Customer?	Nature of Service
Formation of a company or a commercial partnership	The prospective shareholder/ BO/partner, for whom the company or other legal entity will be set up	Occasional transaction
Acting as a director or secretary of a company, or a partner in a commercial partnership, or arranging for another person to act as such	The company or commercial partnership to which such services are offered	Business relationship
Provision of registered office, business correspondence or administrative address or related services to a company or commercial partnership	The company or commercial partnership to which these services are offered	Business relationship

The person requesting the CSP's services may be the customer himself/herself. However, there may be circumstances in which the customer would be represented by another person or entity. In the CSP context, customers may be represented either by:

- a) Intermediaries – who introduce the customer to the CSP and remain involved in the business relationship between the customer and the CSP, by giving instructions to the CSP on the customer's operations or by co-ordinating work for the customer; or
- b) Agents – who act on behalf of a customer and can bind the underlying customer, for example by signing letters of engagement (thereby creating an indirect relationship between the CSP and the customer and a direct relationship with the Agent). When the customer is a company or commercial partnership, its directors and partners, who are legally empowered to represent and bind the company or commercial partnership, are likewise considered to be agents when they exercise these legal representation powers to bind the company or commercial partnership. These individuals are typically involved in the carrying out of an occasional transaction or business relationship by giving instructions to the CSP that bind the company or partnership, or by taking actions that likewise bind the company or commercial partnership (e.g., signing contracts on the company's behalf).

It should be noted that persons or entities that merely act as introducers by putting a prospective customer in contact with the CSP, without having any further involvement in the setting up and operation of a particular business relationship or the carrying out of an occasional transaction, are not considered to be either intermediaries or agents. The CSP would be creating a direct relationship with the customer following the introduction, and the introducer would play no further role, such as by representing the customer or giving instructions on his behalf. Thus, no AML/CFT obligations arise in relation to the introducer. With that said, the integrity and type of clientele brought forward by an introducer implicated in criminality may be compromised and CSPs may wish to carry out periodic checks on open sources to ensure there is no significant adverse media on the introducer.

In order to better understand these types of relationships, the concepts of Agent and Intermediary must first be examined.

1.3.4 Distinguishing between the concepts of Introducer, Intermediary and Agent

1.3.4.1 The Introducer

An Introducer is defined as a person who typically (though not necessarily) would have a business relationship with a third party (who, in this case, would be the Introducer's client) and who introduces that third party to a CSP. The intention would be that the third party would form a business relationship or conduct a one-off transaction directly with the CSP. In this way the Introducer's client or third party becomes a customer of the CSP directly.

The Introducer's role is solely to make the introduction, and he would have no further involvement in the business relationship or the occasional transaction that would be established or carried out. It is the identity of the introduced customer that must then be established and verified, and no AML/CFT obligations arise in relation to the Introducer.

1.3.4.2 The Intermediary

There are situations when an Introducer introduces a third party to a CSP, but then proceeds to remain actively involved in carrying out the occasional transaction or in the business relationship established with the CSP. This could be, for instance, by being responsible for communicating client instructions to the CSP (both at the initial stages when carrying



out an occasional transaction or setting up a business relationship, or throughout that business relationship, as the case may be) without necessarily being legally authorised to bind the customer in the same way as an Agent would. This scenario is explained in the following section.

In such a scenario, the person making the introduction does not remain an introducer but becomes an Intermediary. An Intermediary may, therefore, be an individual who enjoys the customer's trust and communicates the customer's intentions, instructions and decisions in relation to a particular transaction or matter to the CSP, and/or undertakes specific tasks or activities (such as project management, vetting of documents, general co-ordination of the project, and giving legal or other advice to the client), without having any powers to bind the customer.

In this scenario, while the CSP is always, naturally, obliged to carry out CDD measures on the customer, the CSP must also carry out further due diligence measures on the Intermediary. Guidance on how to carry out CDD is provided in Section 2.1 of this document.

1.3.4.3 The Agent

An Agent is a person who acts on the customer's behalf (be it the corporate client itself or the prospective shareholder, partner or BO) and has the authority to bind the customer with his/her actions. A person who executes transactions for and on behalf of a customer (such as when duly appointed to act as signatory on the customer's bank account) or who is duly authorised to sign contracts/agreements binding the customer (such as a company director) are considered to be Agents.

The role of company directors and partners as agents

Those company directors who are vested with the legal and judicial representation of the Company and partners of Commercial Partnerships who, within the context of an occasional transaction or a business relationship, act on behalf of the Company (e.g., signing contracts, agreements or letters of engagement), are likewise considered to be agents who purport to act on behalf of the respective company or commercial partnership.

In terms of Regulation 7(3) these would therefore be required to be identified and verified, and the CSP is expected to ensure that they are authorised in writing to act on the customer's behalf. As is explained in further detail under Section 2.1.3.1, not all directors and partners need to have their identity and authorisation verified; this applies only to those who exercise the legal powers to bind the company or commercial partnerships within the context of an occasional transaction or business relationship carried out or established with the CSP.

1.3.4.4 Application of the distinction in real-life scenarios

Intermediary relationships typically involve another local or foreign CSP, trustee and/or wealth management firm, family office (or multi-family office), law firm, accountancy/audit firm or other professional firm. The Intermediary, in this case, does not stop at merely *introducing* the customer, as explained above, but remains involved as the point of reference to carry out that occasional transaction or business relationship, without necessarily having the capacity to actually *bind* the customer.

The fact that all correspondence takes place between the CSP and the introducing law firm or other professional firm as the Intermediary (and irrespective of whether the customer is always or mostly copied in, never copied in or copied in only rarely), is in itself indicative of the law firm or other professional firm actually acting as an Intermediary and not merely as an Introducer.

While each case must necessarily be assessed on its own merits, there may be circumstances that would indicate that the purported introducer is not simply an Introducer, but is actually acting as an Intermediary, for instance:

- instructions are always or mostly provided by a person purporting to be merely an Introducer;
- the letter of engagement is entered into with the purported Introducer, who then ends up co-ordinating the project; or
- the letter of engagement is entered into with the customer directly, but interaction between the CSP and the customer takes place through the purported Introducer.

When it comes to determining whether a person is an Intermediary or a mere Introducer, it is irrelevant whether it is the Intermediary or the underlying customer who ultimately pays the fees or is taking the risk of non-payment of fees. It is also irrelevant who ultimately decides issues; that is, whether the underlying customer has given the Intermediary some formal authority to take decisions on certain matters or whether the Intermediary is required to refer all matters to the underlying customer for a decision.



In other words, any situation in which an individual or entity carries out additional activities beyond merely introducing the customer to the CSP and stopping there, renders that individual or entity an Intermediary, thereby necessitating the application of due diligence measures on that Intermediary.

It might transpire while (or even after) setting up a business relationship that a presumed customer or company BO is acting on behalf of another person, i.e., a *prestanome*, fiduciary mandatory or frontman. A CSP may become aware of these situations through various behavioural indicators, such as when:

- i) the presumed customer/BO is not able to provide outright instructions on the company's operations since he/she has to refer decisions to someone else;
- ii) correspondence between the CSP and the customer/BO might involve a third party, which is unknown to the CSP;
- iii) the CSP's professional fees are being paid up by someone else other than the presumed customer/BO; or
- iv) the presumed customer/BO shows a lack of detailed understanding about the company's business.

In these instances, and unless there exists a legitimate explanation, CSPs should consider submitting an STR to the FIAU and desist from providing further services to this customer.

1.3.5 Distinction between intermediation and reliance

It is important to distinguish an Intermediary or Agent relationship from a situation when reliance is being placed in terms of Regulation 12 of the PMLFTR. The two should not be confused since they are completely distinct, and one does not necessarily involve the other. That is, a CSP can be dealing with an Agent or an Intermediary without placing reliance on that Agent/Intermediary, just as a CSP can rely on another subject person or a third party in terms of Regulation 12 without that other subject person/third party being an Agent or an Intermediary with regard to the CSP.

In certain circumstances an Introducer, Intermediary or Agent could be another subject person or third party subject to AML/CFT obligations in another jurisdiction on whom the CSP is permitted at law to place reliance to carry out some aspects of CDD in accordance with Regulation 12 of the PMLFTR. In this case, it is up to the CSP to determine whether to place reliance or, alternatively, to conduct its own CDD on the underlying customer (besides also on the Intermediary or Agent).

For further guidance on implementation of the reliance provisions, see Section 4.10 of the *Implementing Procedures Part I*.



2. Customer Due Diligence

This document will not reinterpret or provide guidance on the customer due diligence obligations that CSPs, as subject persons, must apply in relation to the occasional transactions they carry out and business relationships they enter into. The purpose of this document is to focus on specific aspects of CDD that merit sector-specific guidance. In this Chapter, which shall focus on CDD obligations, guidance will be provided on the following aspects:

- CDD on intermediaries and agents;
- assessing and, as appropriate, obtaining information on the purpose and intended nature of the business relationship, and establishing the customer's business and risk profile;
- ongoing monitoring;
- the timing of CDD obligations; and
- the termination of business relationships.

2.1 CDD ON INTERMEDIARIES AND AGENTS

2.1.1 A person acting solely as Introducer

When a person acts solely as an Introducer, having no further involvement other than introducing the customer, by, for instance, providing instructions or otherwise representing the customer, the CSP would not be required to carry out any CDD on the Introducer.

2.1.2 A person acting as an Intermediary

CSPs should have internal processes to review and approve Intermediaries before the CSP starts servicing customers who are introduced and represented by these Intermediaries. These internal processes are necessary for CSPs to ensure that they deal with Intermediaries who are reputable and of good standing, which will itself reflect on the quality, standing and intention of customers who are introduced to them. These internal processes should require senior management approval before any working relationships with intermediaries are initiated. These processes should also require scrutiny and due diligence to be carried out on the Intermediary for the senior management's determination to be well informed. This scrutiny and due diligence should include the following:

Basic checks for all Intermediaries

- a) determine whether the Intermediary would be representing end customers to whom/which company services will be provided, or whether the Intermediary will be passing on instructions from another intermediary/other intermediaries, one of which would ultimately represent the end customer (i.e., “Intermediary Chains”);
- b) establish the existence of the Intermediary through public sources;
- c) assess, and be satisfied with, the Intermediary’s reputability and integrity. This would involve carrying out public searches (e.g., using online search engines, meta search engines or commercial databases) to assess whether any adverse information exists on the Intermediary, which would raise doubts about the Intermediary’s integrity, such as involvement in any wrongdoing (e.g., criminal offences or breaches of AML/CFT, prudential or other professional obligations). Moreover, given that these Intermediaries are typically professional law, accountancy or tax advisory firms or other CSPs, the CSP would also be expected to confirm that these Intermediaries are licensed, regulated or are accredited professionals, as the case may be; and,
- d) when the relationship with the Intermediary is ongoing, CSPs are to carry out regular checks to ensure that the information obtained at the point of establishing the working relationship with the Intermediary remains current and to be aware of any new information that might concern the Intermediary’s reputability and integrity. These ongoing checks are expected to be carried out at least on an annual basis.

Additional checks for higher risk Intermediaries

Higher risk Intermediaries would include Intermediaries who are:

- not subject to any licensing, regulation or professional accreditation;
- situated in high-risk or non-reputable jurisdictions; or
- less renowned and on whom it is difficult to find information through public sources.

Before establishing working relationships with higher risk Intermediaries, CSPs should be more cautious and should carry out additional and more in-depth checks on these Intermediaries. These additional checks may include:

- a) identifying and verifying the Intermediary’s identity by collecting the necessary identification details and verifying those identification details on the basis of data, documents or other information, as is explained under Section 4.3.1 of the Implementing Procedures Part I. In the case of Intermediaries that are firms or entities, CSPs should also identify the directors, partners or administrators of these Intermediaries and also identify and verify the identity of their ultimate BOs. See section 4.3.2 of the Implementing Procedures Part I for further details on the identification and verification procedures to be applied in the case of Intermediaries that are entities or firms;
- b) in the case of Intermediaries that are entities or firms, extending the reputability and integrity checks envisaged under paragraph (c) of the list of basic checks for Intermediaries to cover not only the Intermediary, but also its directors, partners or administrators, and its ultimate BOs;
- c) gathering further information on their internal AML/CFT procedures (where applicable) to formulate an understanding of the Intermediary’s compliance culture;
- d) holding introductory meetings (physical or virtual meetings using a video-conferencing facility);



- e) in the case of Intermediary Chains, carrying out the above procedures on each and every Intermediary in the chain; and
- f) where the relationship with the Intermediary is ongoing, CSPs are to carry out regular checks to ensure that the information obtained at the point of establishing the working relationship with the Intermediary remains current and to be aware of any new information that might concern the Intermediary's reputability and integrity. These ongoing checks are expected to be carried out at least on an annual basis.

This section is intended to provide guidance on the due diligence checks that are to be carried out by CSPs when they seek to establish a working relationship with an Intermediary. When CSPs would, in addition, be placing reliance on the CDD measures carried out by Intermediaries on the end customers, CSPs should abide by and follow the provisions of Regulation 12 of the PMLFTR, which are explained in further detail under Section 4.10 of the *Implementing Procedures Part I*.

2.1.3 A person acting as an Agent

Where a customer is represented by an Agent, who acts on his/her behalf to carry out an occasional transaction or to set up a business relationship, or else is empowered to act on behalf of and bind the customer throughout the business relationship, the CSP must not only identify and verify the customer but must also carry out specific CDD measures on that Agent, who is purporting to act on the customer's behalf in line with the requirements of Regulation 7(3) of the PMLFTR.

The following persons or entities would be considered to be acting for and on behalf of the customer:

- a) directors or partners who are authorised to legally represent the corporate customer and who take actions that formally bind the company or legal entity within the context of an occasional transaction or business relationship, such as by signing letters of engagement with the CSP or by signing off any operations and agreements that bind the company or commercial partnership throughout the business relationship; and
- b) other persons who are empowered to act on the customer's behalf, such as by carrying out transactions on behalf of the corporate customer being serviced by the CSP (e.g., bank signatories), or persons who, by means of a power of attorney or resolution, are authorised to take any action that binds the corporate customer.

In these cases, the CSP is expected to abide by the requirements of Regulation 7(3) of the PMLFTR and Section 4.2.1 (Customer vs Agent) of the *Implementing Procedures Part I*, which require the CSP to identify and verify the identity of any person purporting to act on the customer's behalf, and to also ensure that this person is authorised in writing to act on the customer's behalf.

2.1.3.1 Treatment of directors and partners

While CSPs are expected to identify all directors or partners of corporate customers (see paragraphs (iii) of Sections 4.3.2.1 and 4.3.2.3 of the *Implementing Procedures Part I*), CSPs are not expected to verify the identity of all these directors, but only those who are authorised to legally represent the corporate customer *and* who exercise that power of representation within the context of an occasional transaction or a business relationship.

In this regard, CSPs must also ascertain that these directors are actually vested with the power to legally represent the corporate customer. The same applies to partners of commercial partnerships (see paragraph (iii) of Section 4.3.2.3. of the *Implementing Procedures Part I*).

In order to ascertain that directors and partners are duly authorised to represent the respective company or commercial partnership, reference may be made to the constitutive document of that respective legal entity, such as the Memorandum and Articles of Associations or other statutory document, or to any power of attorney or resolution authorising the person concerned.

Scenario example

A company has four directors, and the legal and judicial representation of the company is vested in all four directors jointly. One director signed the letter of engagement with the CSP for the provision of registered office services, as authorised by a directors' resolution. In this particular case, the CSP is expected to identify all directors by collecting their identification details (see paragraph (iii) of Section 4.3.2.1 – *Implementing Procedures Part I*).

The CSP is however not required to verify the identity of all four directors but of that one director who exercised his power of representation to sign the letter of engagement on the company's behalf. The CSP should also verify that this director was authorised to bind the company, and so should obtain a copy of the resolution that authorised him/her to sign off the letter of engagement.

2.1.3.2 Provision of instructions by staff members of corporate entities

There may also be instances when the CSP is approached by an individual (such as a CEO or CFO), acting on behalf of the company or entity, to establish a business relationship with the CSP. As explained above, the CSP is expected to identify and verify this individual's identity, and also to ascertain that he/she is duly authorised to represent the company.

However, as the business relationship progresses, the CSP starts receiving instructions from members of staff working within that CEO or CFO's team. The requirement to ensure that the actual person sending instructions binding the entity is so vested with that authority is not to be interpreted to mean that the CSP should require documentation to ascertain that each staff member giving instructions is so authorised. In these cases the CSP should verify the link between this member of staff and the entity. This can be done by, for example, ensuring that the relevant individual (the CEO or CFO, in this case) is copied in on the relevant emails sent by the staff member in question, which would enable the CSP to assume that the CEO or CFO is aware that this staff member is giving binding instructions.

Alternatively, the CSP could also be considered as having verified the link between the member of staff and the respective entity if that member of staff would have been originally copied in, or introduced in earlier correspondence sent by, or including, the CEO or CFO, who originally requested the provision of services, or any other such situation indicating that one has been given authority by the CEO or CFO to continue providing instructions.



2.2 PURPOSE AND INTENDED NATURE, AND ESTABLISHING THE CUSTOMER'S BUSINESS AND RISK PROFILE

This section provides further guidance and explanation to assist CSPs to adhere to their obligations under Regulation 7(1)(c) of the PMLFTR, which are further explained under Section 4.4 of the *Implementing Procedures Part I*. In terms of Regulation 7(1)(c), CSPs are required to:

- a) assess and, where appropriate, obtain information and/or documentation on the purpose and intended nature of the business relationship; and
- b) establish their customer's business and risk profile.

When CSPs are requested to incorporate a company or establish a commercial partnership, they are typically approached by the prospective shareholders, partners or BOs of that prospective company or commercial partnership, or by Intermediaries. In addition to formation services, CSPs may also be requested to provide additional services once that company or partnership is established. These could include providing a correspondence address, secretarial services, a registered office or a directorship/s, among others.

Initially, therefore, the CSP's customer would typically be the prospective shareholder/s or BO/s of that prospective company or entity (who may or may not be represented by Intermediaries or other persons) and the CSP ought to identify and verify the identity of that individual or entity and, in the case of a legal entity or arrangement, its BO/s, and also adhere to the other obligations envisaged by Regulation 7(1)(b) of the PMLFTR, as further explained in Section 4.3.2 of the *Implementing Procedures Part I*.

CSPs who are requested to provide services, such as a registered office, a correspondence address, directorship or secretarial services to or within companies or partnerships which the CSP itself incorporates or which are already incorporated, would be establishing a business relationship (see the Table under Section 1.3.3 – 'The Customer'), since these services are offered over a span of time and hence denote an element of duration. Accordingly, these CSPs are required to assess, and, as appropriate, obtain information on the purpose and intended nature of the business relationship being established.

Information that would be relevant in this context would include the following:

a) Information on the rationale

The rationale for the setting up of the company or partnership in Malta and/or for the provision of the requested service/s. Is there a legitimate and economic/business rationale for the company or partnership being set up or serviced? When, for example, such a company forms part of a larger group of companies, it is important for the CSP to understand the company's purpose within the larger group (e.g., a conglomerate business in which the different business streams are set out under different companies). This would also involve gathering information on the commercial/trading activities pursued by the larger group or sub-group that owns the Maltese company.

When the company is set up to hold shares in another company, the CSP should also seek to understand the rationale for that set-up. This approach is important to ensure that multi-tier and/or complex structures are not being purposely set up to conceal ill-gotten gains and to create obstacles to the tracing of these gains.

Assessing the purpose behind the setting up of the company or partnership is especially relevant when non-residents are BOs of companies or partnerships set up or being set up in Malta. CSPs should also be particularly vigilant when they assist Maltese residents to set up companies or legal entities outside Malta, or when they provide other services to these companies or legal entities. When providing this assistance or these services, either directly through, for example, the drafting of incorporation documents (e.g., Memoranda & Articles of Association or other constitutive documents), or indirectly through liaising and representing the client with foreign CSPs, the Maltese CSP should question and understand the rationale behind the setting up of that company or other legal entity outside of Malta;

b) Information on the activity or purpose

Information on the activity or purpose that the company or partnership/s will be carrying out or serving would involve understanding the trading/commercial activity that is to be carried out by the company. When the company is not set up to carry out a commercial/trading activity but rather to hold assets (e.g., a shareholding in another entity), it would not suffice to simply determine the purpose of that company, which may be quite self-evident from the nature of the company itself (i.e., to hold shares in a subsidiary company or companies).

The CSP providing services to that company would be expected to understand and gather information on the trading/commercial activity carried out directly by the holding company's subsidiary or subsidiaries (where these are trading companies), or indirectly by subsidiaries of these subsidiaries in the ownership chain. It is only by doing so that the CSP would be able to get a holistic understanding of what purpose or activity the holding company will be linked to;

c) The profile of the shareholders or beneficial owners

The CSP is expected to assess whether this profile tallies with the company's or partnership's activity or purpose. Do these individuals have experience in the area of business that the company will be trading or involved in? For example, in the case of a company that will be providing consultancy services, do any of the parties involved have technical expertise in the area in relation to which the company will be providing consultancy?

d) The value of share capital or assets of that company or entity

CSPs are expected to obtain information on the value of the share capital or assets, and, depending on the ML/FT risks identified, obtain documentation evidencing the source of funds and/or assets forming the capital of the company or partnership. These checks would entail gathering information on the source of wealth of the shareholder or BO who contributes to the company's capital.

This would be, for instance, information on employment or business activity, including information on salary in the case of individuals in employment, or business income in case of corporate shareholders or individuals whose wealth is derived from business or commercial activities. Private companies in Malta can be incorporated with a minimum share capital of €1,164.69. In these cases, CSPs are not expected to obtain extensive information or to obtain documentation to substantiate the source of that minimum share capital, and it would suffice for the CSP to simply identify the employment or business activity of the shareholder/BO contributing to that share capital.

CSPs should, however, seek to establish how the company will continue to be financed, including whether any other capital injections are projected once the company is incorporated. Together, these measures would allow the CSP to place more focus on effective monitoring of the company's activities once it starts to operate.

e) Ongoing monitoring of transactions

CSPs who provide directorship services or act as partners in commercial partnerships, and who would be empowered to legally represent and bind the company or entity, are expected to carry out ongoing monitoring of the transactions that the entity undertakes, as is explained under Section 2.3 of this document. When providing these services, CSPs should obtain information on the anticipated level of the activity that is to be undertaken through the relationship (e.g., expected volume of transactional activity, projected turnover, proposed suppliers and customers) in order to understand the eventual source of funds flowing through the company.

This information is necessary for the CSP to be able to formulate an understanding of the typical transactional activity that is expected from that entity. This understanding is crucial to enable it to carry out effective ongoing monitoring of the companies' or entities' activities and transactions.

Naturally, the extent of the scrutiny as well as information and documentation to be gathered will vary according to the ML/FT risks connected with that particular business relationship.

2.3 COMPLYING WITH REGULATION 7(1)(C) WHEN PROVIDING COMPANY FORMATION SERVICES

When the CSP would be providing solely company formation services, without any additional company services, the CSP would be carrying out an occasional transaction and not establishing a business relationship, since the CSP's services will end with the setting up of the company.

This notwithstanding, CSPs are still expected to understand and, as appropriate, obtain information on the intended purpose of the company or other legal entity being set up. CSPs are expected to ensure that their services are not misused for the setting up of a company or entity intended to facilitate the laundering of proceeds of crime or the financing of terrorism. This not only exposes them to reputational risks and the risk of being involved in criminal acts, but undermines the reputability of Malta and its financial and business sectors.

CSPs should, therefore, carry out the assessment and obtain the information that is envisaged under paragraphs (a) to (c) above since this is the only way in which the risk of being involved in an ML/FT setup could be mitigated. As explained earlier, when private companies are incorporated with low value share capital, the due diligence to be carried out with respect to the source of the funds of that capital would be simplified, and CSPs should seek to understand how the company will continue to be financed and whether any other capital injections are projected.

CSPs who would only be forming the company, and providing no additional services that will lead to the establishment of a business relationship, would not be required to monitor the company's activities once it starts to operate. Apart from gathering information on the employment or business activity of the shareholder/BO as explained above, it is important for these CSPs to carry out open source checks on the individuals involved in the company or partnership (i.e., directors, partners, shareholders and BOs) or make use of commercial databases to ascertain that there is no adverse information that might link these individuals to criminal activities or participation in criminal organisations.

2.4 ONGOING MONITORING OF BUSINESS RELATIONSHIPS

Effective ongoing monitoring is vital to understand customers' activities and is an integral part of effective AML/CFT systems and controls. It helps CSPs to update their knowledge of their customers and detect unusual or suspicious transactions/activities. Ongoing monitoring in terms of Regulation 7(1)(d) of the PMLFTR is composed of two aspects:

- a) the scrutiny of transactions or activities being undertaken by the CSP's corporate customers to ensure that these transactions are in line with the CSP's knowledge and understanding of that corporate customer, in particular its business and operations; and
- b) ensuring that the data, documents and information obtained as part of the CDD process (i.e., identification and verification information, as well as information gathered on the purpose and intended nature of the business relationship and the customer's business and risk profile) are kept up to date.

2.4.1 Scrutiny of Transactions

The purpose of the first aspect of ongoing monitoring (i.e., monitoring of activities and, in some instances, the transactions being undertaken) enables the CSP to:

- identify transactions and/or activities that are not in keeping with the corporate customer's operations and business for further examination and scrutiny by the CSP;
- generate internal reports on unusual/dubious transactions or activities to be reviewed by the CSP's MLRO; and
- ensure that suspicions of ML/FT or proceeds of crime are reported to the FIAU in a timely manner, as required by law.

For the purpose of identifying unusual customer transactions or activities, CSPs should take into consideration a number of aspects, including:

- a) the nature and type of individual transactions or a series of transactions (i.e., the purpose of the transaction/s – e.g., a transaction linked to a sale of goods), and the manner in which the transaction is conducted (e.g., bank transfer or cash payment);
- b) the value of the transactions, paying special attention to particularly substantial transactions;
- c) unusual changes or increases in a customer’s activities or turnover;
- d) unusual changes in the nature of a customer’s transactions or activities;
- e) the detection of certain ML/FT typologies;
- f) the geographical origin/destination of a payment; and
- g) the customer’s usual pattern of activities or turnover.

The nature and extent of ongoing monitoring is dependent on the risk posed by the particular business relationship. Reference should be made to Section 2.4.1 of this document, which provides guidance on the application of ongoing monitoring obligations dependant on the type of company service that a CSP would be offering.

As is explained under Section 2.4.1, not all company services that are offered will give CSPs access to information on company transactions, and thus not all CSPs are required to carry out ongoing monitoring of transactions.

2.4.2 Keeping CDD data, information and documentation up to date

Through the second aspect of ongoing monitoring, that is ensuring that data, information and documentation obtained as part of the CDD process are kept up to date, the CSP is to keep the knowledge about his customer (e.g., involved parties and structure) and the customer’s business and risk profile up to date and current.

As explained in further detail under Section 4.5.3 of the *Implementing Procedures Part I*, there are different ways and methods CDD data, information and documentation should be kept up to date. Reviews may, for example, be carried out at regular intervals or else on the occurrence of a particular trigger event, or both, depending on the circumstances.

The CSP should determine the more suitable approach to ensure that customer information is kept up to date, with that approach taking into consideration, and being proportionate to, the level of risk posed by that particular business relationship. In any case, CSPs should ensure that CDD data, information and documentation for high-risk business relationships are reviewed at least once every year.

The list below includes examples of trigger events that should prompt the CSP to review and assess whether CDD obtained needs to be updated:

- changes in involved parties of a particular corporate customer (e.g., change in shareholders or BOs);
- the monitoring and assessment of transactions undertaken by the corporate customer may indicate a change in, or the venturing into new, business operations/activities of the corporate customer. In these cases the CSP

would be required to update the CDD records by obtaining information and/or documentation to understand the corporate customer's new business operations or activities;

- the customer requests the setting up of new corporate structures;
- the customer requests services that pose a higher risk;
- unexplainable frequent changes in the name of the company; and/or
- the filing of an STR to the FIAU, which should lead the CSP to assess whether CDD information is to be updated.

2.4.3 General Principles applicable to ongoing monitoring

It is crucial for proper ongoing monitoring to be carried out that the CSP's client-facing members of staff (in the case of firms), as well as compliance officers or other staff members tasked with monitoring business relationships, are equipped with the necessary knowledge and expertise to identify and flag dubious or suspicious transactions or activities, or trigger events that should prompt a review of business relationships.

CSPs are thus required to ensure that they, as well as senior management and all relevant members of staff (in the case of firms), receive training on ML/FT trends, methods and risks relevant to the services provided by the CSP. International bodies such as the FATF, MONEYVAL, EUROPOL, as well as the reports and documents published by the FIAU from time to time, provide information on the latest ML/FT trends and risks, including on the misuse of companies and other legal entities. Apart from attending and receiving training, CSPs should also keep themselves informed about ML/FT

risks and trends relevant to their business by referring to these publications. CSPs are to refer to Section 7 of the FIAU's *Implementing Procedures Part I* on awareness and training.

In the case of CSPs that are firms or entities, training should also reflect the specific tasks that are handled by staff members. For example, compliance staff members who are responsible for carrying out transaction monitoring, should be provided with detailed and regular training to enable them to detect suspicious transactions and behaviours, and ML/FT trends as these evolve over time. This likewise applies to client-facing members of staff whose role it is to flag anomalous or suspicious behaviour that is to be reviewed by the compliance team.

Similarly, staff members responsible for drafting constitutive documents or company contracts should receive more regular and focused training, as opposed to staff members who are responsible for the filling up and submission of statutory forms. In view of the nature of their work, the former type of staff members would have a better overview of the corporate customer's dealings and activities, which would therefore enable them to identify anomalous activities or transactions.

Moreover, and especially for high risk customers, CSP firms and entities should adopt adequate procedures and



mechanisms of information-sharing to ensure that relevant staff (e.g., the MLRO, designated employees, front-line staff, relationship managers and compliance staff) are provided with timely information about client relationships, such as the result of EDD or other additional measures undertaken, any information about any connected accounts or relationships, and about any suspicious or dubious behaviours or activities identified.

It is also important that CSPs review the monitoring methodologies and processes adopted on a regular basis to ensure they remain adequate since ML/FT risks and ML/FT trends and practices change. Moreover, the results of ongoing monitoring processes should always be documented, and records maintained.

2.4.4 Risk-based approach to ongoing monitoring

The extent of monitoring should be commensurate with the particular customer's risk profile, which risk profile is established through the customer risk assessment. For effective monitoring, resources should be targeted towards business relationships presenting a higher risk of ML/FT.

Some services (such as company formation) may be provided only on a one-off basis, without a continuing relationship with the customer, in which case no ongoing monitoring obligations would apply. Moreover, the CSP's access to documentation and information about the customer, his/her operations and business activities will vary depending on what type of company service that CSP would be offering.

By way of example, a CSP offering only registered office services would not have access to, or visibility of, specific transactions or contracts being undertaken by the customer, or of bank records, to enable the CSP to monitor the transactions being undertaken. On the other hand, CSPs offering directorship services and being vested with the legal representation of the company would have visibility of contracts or transactions that are to be executed by the corporate customer, enabling them to conduct appropriate ongoing transaction monitoring.

The company services provided by CSPs enable them to gain access to information and documents relative to the customer, to enable them to conduct ongoing monitoring and to identify suspicious activities or transactions carried out using companies or commercial partnerships. For example, their direct knowledge of, and access to, the records and management accounts of these structures, as well as through close working relationships with trustees, settlors, managers and BOs involved in corporate customers, may help CSPs to monitor the customer's activities in an appropriate manner. The continued administration and management of companies and commercial partnerships (e.g., account reporting, asset disbursements and corporate filings) would also enable the relevant CSPs to develop a better understanding of their customers' ongoing activities.

The list below identifies the type of ongoing monitoring that CSPs are expected to undertake depending on the particular CSP activities they provide. The list also provides examples of specific monitoring measures that may be undertaken. The CSP should determine which measures to implement based on the ML/FT risk posed by the particular business relationship.

- a) All CSP services (except company formation when provided as one-off services) – CSPs are expected to have processes in place to monitor and keep CDD documentation up to date. This is intended to ensure that identification data and documentation (e.g., the corporate customer's details, such as its name, information on its structure and involved parties, such as beneficial ownership information) and information on the customer's business operations or activities (determined through the gathering of information and/or documentation – refer to Section 2.4 of this document), is reviewed to ensure that it is still relevant and up to date.

This could be achieved through measures such as the following:

- i) reviewing financial statements to evaluate whether the customer activity disclosed at the outset remains unchanged;
 - ii) reviewing corporate filings that may be processed by the CSP or accessed through company registers. These may shed light on changes in the customer's structure or involved parties;
 - iii) carrying out media searches on an ongoing basis to be aware of any adverse or relevant information on the corporate customer and involved parties (such as shareholders and BOs), with the frequency of these checks being dependent on the customer risk classification;
 - iv) making use of commercial databases to screen, on an ongoing basis, the corporate customer and involved parties; and
 - v) requesting information about any changes from the customer itself.
- b) Registered office and hold mail services – no ongoing monitoring of transactions is expected when these services are provided. In these instances, CSPs are expected to carry out ongoing monitoring of CDD data, information and documents as explained under paragraph (a). When providing registered office or hold mail services, CSPs should also monitor the correspondence being received to ensure that this is in line, and tallies, with the CSP's understanding of the activities being carried out by the corporate customer;
- c) Directorship services – CSPs offering directorship services and who would be vested with the legal and judicial representation of the corporate customer, or are otherwise empowered to bind the corporate customer, are expected to carry out both types of ongoing monitoring, i.e., monitoring of transactions and monitoring and updating of CDD data, information and documentation. In these cases the CSP's visibility of payments or transactions undertaken by the corporate customer will depend on a number of factors, such as:
- i) whether, as director, one would have the legal representation (sole or joint) of the corporate customer, or whether this may be exercised by others without that director's involvement, for example if legal representation is vested in any one of the directors acting individually; or
 - ii) whether, as director, one would have signatory rights (sole or joint) on the company's bank or payment account.

The level of accessibility to, and visibility of, transactions and payments undertaken by the corporate customer will ultimately determine the type of ongoing monitoring of the company's transactions and activities that the CSP may carry out. Directors who are legal representatives of the corporate entity (solely or jointly) or are granted representation powers (e.g., through a Power of Attorney or Directors' Resolutions) and are responsible for approving payments or undertaking transactions (e.g., signing contracts) would have visibility of all prospective transactions to be undertaken by the corporate customer.

In these cases CSPs are expected to monitor transactions or payments prior to their execution (pre-transaction monitoring) to ensure that they are in line with the corporate customers' expected business activities. Furthermore, the CSP should request supporting documents and information when this is not clear and necessitates further scrutiny to ascertain the purpose and nature of the transaction or payment and, where appropriate, the source of funds.

CSPs may act as directors in a company when the legal representation or other powers to bind the corporate customer are vested in different directors acting individually. In such a scenario, the legal representation or binding powers may be exercised by other directors or individuals without that CSP's involvement, and thus the CSP acting as director would not be able to carry out pre-transaction monitoring at all times.

In these cases, CSPs should adopt post-transaction monitoring, whereby they periodically request information on transactions, contracts or payments undertaken by the corporate client to determine whether these are in keeping with the corporate entity's known activity. CSPs offering directorship services should also ensure that discussions and decisions at board level are minuted, and that they are in line with the customer's expected activities.

When CSPs provide directorship services, but are not vested with the customer's legal or judicial representation or any other power to bind the corporate customer, they might not always have access to information and documents on transactions, contracts and payments. Nevertheless, they are still expected to carry out the checks envisaged under paragraph (a) to monitor that the CDD data, information and documentation, including the information obtained on the corporate customer's activities, remain relevant and up to date.

This information and documentation is to be scrutinised and, when doubts or concerns arise on any particular activity or transactions, CSPs are to question and request further information and/or documentation to understand the rationale and purpose of the transactions or the activity in question. CSPs providing directorship services would also have access to discussions and minutes of the board of directors' meetings, and hence should also use this information and power of representation to obtain information on, and scrutinise, the company's activity to ensure that it remains in line with the corporate customer's expected line of activity and purpose.

- d) Company secretarial services – in addition to the ongoing monitoring obligations contemplated under paragraph (a), CSPs offering company secretarial services should ensure that discussions at board level (which, as company secretary, they are necessarily privy to) are in line with the understanding of the customer's business activities. CSPs offering these services are not expected to carry out ongoing monitoring of transactions;
- e) Company incorporation – where the only service being provided by a CSP to a customer is a company formation service, no ongoing monitoring obligations apply since this is considered as an 'occasional transaction'.

In addition to the above checks, which are led by the CSP, it may be wise for the CSP to hold the customer itself responsible for informing the CSP of any changes in connection with the customer and the ownership structure that are relevant for the purpose of fulfilling the CSP's ongoing monitoring obligations. This is especially helpful with respect to company services in relation to which the CSP does not need to meet the customer on a regular basis or does not have ongoing visibility of the customer's business activities (for example, the provision of registered office services).

This undertaking can be obtained in the contractual agreement or letter of engagement, or should otherwise be agreed on by the customer in writing. Although this provides an additional safeguard to the CSP, it does not in any way exonerate the CSP from its ongoing monitoring obligations in terms of the PMLFTR and as explained in this document. In other words, the CSP will always be held responsible for carrying out the necessary ongoing monitoring. This responsibility may not be shifted.

The FIAU acknowledges that CSPs provide ancillary services, which are not considered company services. Services such as the management of customers' funds, accounts or other assets, or a non-director acting as a signatory on a bank account, may still expose CSPs to an element of AML/CFT risk, which they may wish to mitigate through carrying out certain measures. Good practice in this regard includes having measures in place to monitor and scrutinise the transactions being undertaken through the clients' accounts, to understand their nature and purpose, and ensure that they are in line with the customer's business activities and the expected use of the clients' account.

CSPs may want to request additional information and supporting documentation when the purpose and nature of these services or transactions are not clear or are not in line with the customer's known activities and the perceived use of the clients' accounts. CSPs should avoid relying exclusively on the customers' declarations in higher risk scenarios. Moreover, CSPs are to bear in mind that clients' accounts are meant to hold funds or process transactions related to other ongoing services being provided by the CSP to the customer and that clients' accounts are not meant to be operated as regular bank accounts – which they are not.

2.4.5 Complex and unusual types of transactions

When transactions are complex, unusually large in amount or conducted in an unusual pattern, or have no apparent economic or lawful purpose, CSPs are expected to examine the background and purpose of those transactions as required by Regulation 11(9) of the PMLFTR and Section 4.5.1(a) of the *Implementing Procedures Part I*. Those transactions should include transactions between the CSP and its customer, as well as the underlying transactions between the CSP's customer and its own customers, where applicable.

This obligation is only applicable to those that offer CSP services that require the carrying out of ongoing monitoring of transactions, as explained in this section. The purpose of these examinations is that of determining whether these complex or unusual transactions give rise to suspicions of ML or FT, which should be reported to the FIAU, and to determine whether the continuation of services is appropriate.

The findings and outcomes of these examinations should be properly documented in writing and be available for inspection by the FIAU. Proper records of the decisions taken and the reasons for the decisions will help a CSP demonstrate that the manner in which it handles unusual or suspicious activities is appropriate.

Ongoing monitoring of the business relationship should be carried out on a risk-sensitive basis. This means that:

- a) the regularity of transaction/activity scrutiny or CDD reviews should be proportionate to the risks of ML/FT identified, though still in line with specific requirements on the type and timeliness of ongoing monitoring that is provided for in this document; and, moreover
- b) the extent of information or documentation being requested to understand the source of funds for particular transactions, the purpose of certain transactions or any changes in the customer's activity or business should also be proportionate to the ML/FT risks being posed by that customer.

Reference should be made to Section 4.5.3 of the *Implementing Procedures Part I* for further guidance.

2.5 TIMING OF DUE DILIGENCE PROCEDURES

In determining the appropriate time to commence CDD procedures, CSPs should be primarily guided by the introductory paragraphs of Section 4.6.1 of the *Implementing Procedures Part I*. CSPs are not expected to initiate CDD procedures on an enquiry being made by a prospective customer. When these enquiries are simply preliminary, it would be premature to commence CDD procedures. As a general rule, the CSP is expected to initiate CDD procedures when the customer takes active steps to seek the services of the CSP. CDD measures are then to be completed prior to the setting up of the business relationship or the carrying out of an occasional transaction.

Regulation 8(1) of the PMLFTR requires CSPs to complete verification procedures prior to the establishment of a business relationship or the carrying out of an occasional transaction. This notwithstanding, CSPs may complete verification procedures and carry out other CDD measures during the establishment of this business relationship, or the carrying out

of an occasional transaction, as long as it is demonstrated that the risk of ML/FT within that initial phase of establishment of the business relationship, or the conducting of the occasional transaction, and until CDD is completed, is low and remains low.

Completion of CDD – Company Formation

Where a CSP has been engaged to incorporate a company, the CSP need not obtain all the necessary CDD information in relation to the company formation on the signature of the letter of engagement. The CSP may commence drafting the Memorandum & Articles of Association and may accept the initial share capital (when the value of the initial share capital is low in value) prior to receiving the documentation to verify the identity and other information obtained on the prospective company, shareholders and BOs.

It is, however, expected that, at this stage, the CSP would have obtained the necessary identification information of the prospective company's involved parties and BOs, as well as information about the prospective company's structure and planned activities. The CSP is then expected to ensure that all the necessary identification and other documentation to complete the CDD process is obtained prior to the actual incorporation of the company.

If the customer is not forthcoming with documents, and CDD measures are not completed within a reasonable period of time as determined by the CSP in its procedures manual and prior to the incorporation of the company, the CSP should return any funds received from this customer to their origin, in line with the requirements of Regulation 8(6) of the PMLFTR, and desist from carrying out the company formation, and also consider whether to submit an STR.

It is also to be noted that the delay in carrying out verification procedures may not always be possible, notwithstanding the low risk of ML/FT within the initial period of setting up the relationship or carrying out the occasional transaction. By way of example, following the introduction of the Beneficial Ownership Register and the requirement to provide the Malta Business Registry with details of the BO(s)/senior managing official(s) prior to the company being incorporated, all the required due diligence documentation must be invariably obtained and verified prior to submitting the necessary forms.

2.6 TERMINATION OF BUSINESS RELATIONSHIPS FOR THE PURPOSES OF AML/CFT OBLIGATIONS

In certain cases, the relationship with the customer cannot be officially terminated. For example, CSPs providing registered office services, who wish to cease the provision of this service to a corporate customer, would not be able to do so when contact with the customer is lost or the customer becomes unresponsive and the CSP cannot obtain information on a new registered office to be notified to the MBR.

In these cases, only once the CSP has exhausted all possible means to contact the customer and has documented the actions taken to do so, the termination date of the business relationship for the purposes of the PMLFTR would be considered to be the date when the CSP would have informed the MBR that it has lost contact with the customer and is not willing to continue providing registered office services to that customer any longer.

The business relationship would be considered terminated as of that date, notwithstanding that the CSP's address would still appear as the corporate client's official registered office at the MBR. Termination as set out in this section is to be understood as termination of the business relationship for AML/CFT purposes only; that is, for the purposes of ongoing monitoring and the requirement of record keeping.

2.7 SANCTIONS SCREENING

CSPs are reminded that they are also subject to sanctions screening, freezing of assets and the reporting obligations envisaged under the National Interest (Enabling Powers) Act, Cap 365. In this regard, CSPs are encouraged to continuously keep up to date with any sanctions that may be imposed and with any guidance, notices, decisions, recommendations or rulings that may be issued by the Sanctions Monitoring Board ('SMB'). The SMB is the national competent authority responsible for monitoring the implementation of, and ensuring compliance with, targeted financial sanctions.

The FIAU and the SMB have signed a Memorandum of Understanding whereby the FIAU acts as an agent of the SMB and assists the SMB by monitoring compliance with the obligations emanating from the National Interest (Enabling Powers) Act in relation to targeted financial sanctions related to terrorism, terrorism financing and proliferation financing. The FIAU is obliged to report its findings on any subject person to the SMB for any subsequent enforcement action as envisaged under the National Interest (Enabling Powers) Act.

All CSPs are expected to subscribe to the sanctions list, which is constantly updated by the SMB, by sending an email to sanctions.mfea@gov.mt (or any other procedure that may be initiated by the SMB), and to screen their clients against this list on a regular basis, or alternatively have software which performs that function on an automated basis.

Of particular importance to subject persons, including CSPs, is the Guidance Note on the application of Article 17(6)(a), (b) and (c) of the National Interest (Enabling Powers) Act², which sets out the expectations of the SMB vis-à-vis CSPs' internal controls and procedures around sanctions.

² [https://foreignanddeu.gov.mt/en/Government/SMB/Documents/Guidance%20Notes/Guidance%20Note%20on%20the%20Application%20of%20Article%2017%20\(Systems%20in%20Place\).pdf](https://foreignanddeu.gov.mt/en/Government/SMB/Documents/Guidance%20Notes/Guidance%20Note%20on%20the%20Application%20of%20Article%2017%20(Systems%20in%20Place).pdf)



Annex 1: Explanatory Scenarios

ID&V and Scrutiny of the Purpose and Intended Nature of Business Relationships

When assisting with the setting up of companies in Malta, or providing additional company services thereto, the CSP must, apart from identifying and verifying the identity of that company and other involved parties (as set out below), undertake measures to understand the rationale for the establishment of such a company in Malta, and the purposes which that company would be pursuing, among other measures that are outlined in Section 2.2 of this document.

This Annex is intended to provide guidance to CSPs on the checks that they are expected to carry out at the point of establishing a business relationship. This Annex should not be interpreted as an exhaustive checklist of CDD measures that are to be undertaken at onboarding stage but rather an indication of possible CDD measures. Ultimately, CSPs must ensure that they undertake effective and risk-based CDD measures at on-boarding stage that enable them to:

- i) know who they are dealing with and to identify any adverse information that involved parties may be subject to and which may be indicative of ML/FT risks;
- ii) understand the purpose that the company being set up or serviced will serve and ensure that there is a commercial rationale for such a set-up and purpose, and also understand the commercial activities of connected companies (e.g., a larger group owning the Maltese company and/or subsidiaries of the Maltese company);
- iii) have an understanding of prospective transactions that will flow through the company when CSPs are required to monitor company transactions (see Section 2.4.1 – Risk-Based Approach to Ongoing Monitoring). This would enable the CSP to effectively monitor the company once this becomes operational.

This Annex is not intended to provide guidance on ongoing monitoring checks that are to be carried out. For guidance on ongoing monitoring obligations, reference should be made to Section 2.4 of this document.

Scenario 1

The Customer is a French holding company, part of a large group involved in printing. It wants to set up a company in Malta to handle its telemarketing and plans to have premises and employees in Malta. The CSP is also requested to provide directorship services with the power to represent and bind the company.

Identification and Verification Requirements

- Obtain the Group's organisational chart to understand the operational/specific sub-group with which the Maltese company will be involved.
- Identify and verify the French holding company (which is the customer requesting the company formation in Malta). ID&V information on the Maltese company would be available and collected since the CSP would be incorporating it. (See Section 4.3.2.1 of the Implementing Procedures Part I for further information on ID&V requirements in relation to private companies.)
- Identify and verify the BOs of the French Holding Company and the Maltese company being set up (See Section 4.3.2.1 Paragraph (v) of the Implementing Procedures Part I).
- Carry out background searches, using open source information or commercial databases, on the Group and on the French Holding Company, as well as the involved parties (i.e., directors, shareholders and BOs), which are and will be involved in the French Holding Company and the Maltese company, to be aware of any potential adverse information.

Understanding the Purpose and Intended Nature of the Business Relationship

- Group's Activity: obtain information and/or documents to show that the group is indeed involved in printing. The Group financial statements or open source searches may achieve this purpose.
- Activity of the Malta company: obtain information in writing from the customer (via email or through the compilation of a client application form) that it will be involved in telemarketing, and verify this information by referring to the objects clause (as long as this is sufficiently indicative of the company's specific activity) of the Maltese company and/or business plans (where these are available).
- Understand the commercial rationale for the setting up of a Maltese company by a non-resident customer. Use own judgment and expertise to evaluate this rationale and, if necessary, taking into account the ML/FT risk involved. Obtain information/documentation to assist in that evaluation, such as an expert opinion.
- Source of Wealth: Understand how the Maltese company will be financed in its initial stages, and ascertain that any funding, loans or loan guarantees are derived and/or linked to the Group. Be vigilant and cautious when financing would be derived from apparently unrelated third parties, and understand the rationale and connection to the Group. Obtain the consolidated financial statements of the Group, where this is necessary to substantiate any initial funding, and the commercial rationale for setting up the Maltese company.
- Given that, in this case, the Maltese company will be carrying a trading activity (i.e., telemarketing) and the CSP will be offering directorship services with the power to represent and bind the company, the CSP should also gather information on the exact activities that will be carried out, such as any potential contracting parties (when these are known at the outset) and expected transactional activity. This will enable the CSP to carry out effective ongoing monitoring of transactions once the company becomes operational.

Scenario 2

The Customer is a United States (US) holding company, part of a large group involved in steel manufacturing. It wants to set up a holding company in Malta, which will in turn have a Malta subsidiary, which in turn will own a company that holds the group's trademark. The CSP is to set up the company in Malta and also provide registered office services.

ID&V Requirements

- Obtain the Group's organisational chart to understand the operational/specific sub-group with which the Malta companies will be involved.
- ID&V of the US holding company (which is the customer requesting the company formations in Malta) and ID&V information on the Maltese companies would be available and collected since the CSP would be incorporating them. See Section 4.3.2.1 of the Implementing Procedures Part I for further information on ID&V requirements in relation to private companies.
- ID&V the BOs of the US Holding Company and the Maltese companies being set up (See Section 4.3.2.1 Paragraph (v) of the Implementing Procedures Part I).
- Carry out background searches using open source information or commercial databases on the Group and US Holding Company, as well as the involved parties (i.e., directors, shareholders and BOs) that are and will be involved in the US Holding Company and Maltese companies, to be aware of any potential adverse information.

Understanding the Purpose and Intended Nature of the Business Relationship

- Group's Activity: Obtain documents to show that the group is indeed involved in steel manufacturing. The Group financial statements or open source searches may achieve this purpose.
- Maltese Companies' Activities: Obtain information in writing from the customer (even by email or through a client application form) indicating that the company being set up will be a holding company, which will ultimately be holding the Group's trademark through a subsidiary company set up in Malta. Verify this information by referring to the objects clause of the Maltese companies (as long as these are sufficiently indicative of the companies' specific activities) and/or business plans (where these are available).
- Understand the commercial rationale for the setting up of the Maltese companies by a non-resident customer, and for the setting up of a multi-tier company structure (i.e., a Maltese holding company that will in turn own another Maltese company which will hold the group's trademark). Use own judgment and expertise to evaluate this rationale and, if necessary, taking into account the ML/FT risks involved. Obtain information/documentation to assist in this evaluation, such as expert opinions.

Scenario 3

The Customer is a German company, part of a larger group involved in real estate. It wants to set up a holding company in Malta to hold investments that will be quoted securities or stakes in unrelated private companies. The CSP will also be providing directorship services with the power to represent and bind the company.

ID&V Requirements

Same as previous scenarios.

Understanding the Purpose and Intended Nature of the Business Relationship

- **Group's Activity:** Obtain documents to show that the group is involved in real estate. The Group's financial statements or open source searches may achieve this purpose.
- **Malta Company:** Obtain information in writing from the customer (even by email or through the compilation of a client application form) indicating that the company being set up will be holding securities or investments in other companies. Verify this information by referring to the objects clause of the Maltese company (as long as this is sufficiently indicative of the company's specific activity) and/or business plans (where these are available).
- **Understand the commercial rationale** for the setting up of a Maltese company by a non-resident customer. Use own judgment and expertise to evaluate this rationale and, if necessary, taking into account the ML/FT risk involved. Obtain information/documentation to assist in this evaluation, such as expert opinions.
- **Source of Wealth/Funding of the Investments:** Ascertain that the funding for the acquisition of the investments will be derived from the Group, and obtain information on the wealth substantiating those investments (e.g., group financial statements). This would need to be carried out at the outset when the investments will be held by the Maltese company at formation stage or as part of ongoing monitoring checks when the investments would be acquired by the Maltese company at a later stage. Be vigilant and cautious when financing would be derived from apparently unrelated third parties.
- **Gather information on the investments** being made in securities and stakes of other unrelated companies (e.g., volume, value and type of investments, prices of acquisition, dividends payable, etc.). This information would need to be gathered at the outset in relation to the investments that will be held by the Malta company immediately on formation, or as part of ongoing monitoring checks when these investments would be acquired at a later stage. This information will also assist the CSP to identify any dubious or suspicious activities and to monitor the transactions that will go through the company once it becomes operational.

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Questions on this document may be sent to queries@fiaumalta.org

65C, Tower Street
Birkirkara BKR 4012
Malta

Telephone: (+356) 21 231 333
Fax: (+356) 21 231 090
Email: info@fiaumalta.org
Website: www.fiaumalta.org