

# **COMPANY SERVICE PROVIDERS RULEBOOK**

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## REVISIONS LOG

VERSION	DATE ISSUED	DETAILS
1.00	15 March 2021	Rulebook Issued
<u>2.00</u>	<u>22 January 2024</u>	<u>Rulebook Amended</u>

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## Interpretation

Act	Refers to the Company Service Providers Act, Chapter 529 of the Laws of Malta, as amended.
Ancillary services	refers to those services, which are not regulated CSP Services in terms of the Act and which are provided to a client by a CSP in the course of providing CSP services in a manner which is ancillary and complementary to such services.
Applicant	refers to the person seeking authorisation under the Act.
Arranging	In the context of paragraph (b) of the definition of Company Service Providers in Article 2 of the Act, the term 'Arranging' means the act of putting in order or providing for another person to act as a company director, company secretary, partner or in a similar position in another legal person. This includes the situation where a person who is employed by, or who is a director or shareholder of a CSP, is selected by that CSP to act as a director or company secretary or in a similar position to an entity as part of the company services which the CSP provides to that entity.
Auditor	Shall have the meaning as assigned to it in the Accountancy Profession Act, Chapter 281 of the Laws of Malta, or regulations issued thereunder.
Authorised Person	Shall refer to a person authorised under the Act.
Beneficial Owner	Shall have the same meaning as assigned to it under Regulation 2 of the Prevention of Money Laundering and Funding of Terrorism Regulations.
By way of its business	<p>In the context of Article 3 of the Act, the phrase '<i>by way of its business</i>' means that these activities must be provided by a person who either:</p> <ul style="list-style-type: none"> <li>a) holds himself out as providing company services <i>inter alia</i> by soliciting the services on offer to members of the public; or</li> <li>b) provides company services on a regular and habitual basis; <b>and</b></li> <li>c) is being directly or indirectly in receipt of remuneration or other benefits for the provision of these services.</li> </ul> <p>Provided that, with respect to (c) above, where the company services being provided by a person are being remunerated through another company which is associated or connected with the person providing such services or which belongs to the same group of companies, then the provider of the services would still be deemed to be receiving indirect remuneration for the services it offers and provided that it meets one of</p>

the criteria mentioned in (a) and (b) above, it would be subject to authorisation in terms of Article 3 of the Act.

Further to the above, the following factors shall, *inter alia*, indicate that a particular activity is being undertaken 'by way of business':

- a) the amount of time taken to fulfil the responsibility is considered significant;
- b) the individual has no other form of employment;
- c) the level of income received (both in terms of the quantum and as a proportion of the individuals' total income) is considered significant;
- d) the existence of a business relationship through which habitual or frequent or regular appointments are introduced;
- e) the individual is receiving significant non-financial benefits/benefits in kind;
- f) the individual claiming business expenses within his own tax return;
- g) the individual offering or providing more than one type of company service; and
- h) the turnover of engagements is considered significant.

These indicators represent a non-exhaustive list of considerations and the Authority would urge individuals either currently undertaking or contemplating commencing CSP activities, who remain unsure as to whether they meet the 'by way of business' threshold test, to discuss their specific circumstances with the Authority. Furthermore, these indicators are not cumulative; however, the greater the number of indicators an individual meets the greater the probability that a 'by way of its business' determination would be made by the Authority.

Class A CSP	A company service provider authorised to provide, by way of its business, the following services to third parties: (i) formation of companies or other legal entities; and/or (ii) 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.
Class B CSP	A company service provider authorised to provide, by way of its business, the service to third parties of 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.
Class C CSP	A company service provider authorised to provide, by way of its business, all of the services of a company service provider specified in the definition of "company service provider" contained in article 2(1) of the Act.
Client	Means any natural or legal person to whom a CSP service is provided.

Companies Act

Refers to the Companies Act, Chapter 386 of the Laws of Malta.

Company Service Provider	As per Article 2 of the Act, 'Company Service Providers' or 'CSPs' are those persons who <i>'by way of business'</i> provide any of the following services to third parties: <ul style="list-style-type: none"> <li>a) formation of companies or other legal entities;</li> <li>b) acting as, or arranging for another person to act as, a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal entities; and</li> <li>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.</li> </ul>
Company Service Provider Services	Means the activities of Company Service Providers for which authorisation is issued in terms of the Act.
Competent Authority	Means the Malta Financial Services Authority established by the Malta Financial Services Authority Act, Chapter 330 of the Laws of Malta, also referred to as the 'Authority'
CPE	Refers to Continuous Professional Education.
D&O Insurance	Means Directors and Officers liability insurance cover.
Director	Includes any person occupying the position of director of a company, by whatever name he may be called, carrying out substantially the same function in relation to the direction of the company as those carried out by a director.
Exemption Regulations	The Company Service Providers (Exemptions) Regulations, 2021 <sup>10</sup> .
FIAU	<u>Means the Financial Intelligence Analysis Unit established by the Prevention of Money Laundering Act, Chapter 373 of the Laws of Malta.</u>
Group of Companies	In relation to any company, means any body corporate which is that company's subsidiary or parent company, or a subsidiary of that company's parent company, and the term "group" shall be construed accordingly as well as meaning a parent undertaking and all its subsidiary undertakings.
Holding oneself out	<p>The term 'Holding oneself out' involves actual representation to third parties. The test on 'holding oneself out' is not confined solely to a determination as to whether advertising or solicitation takes place.</p> <p>The following are indicators that a person shall be deemed to be 'holding himself out':</p>

- a) advertising the services provided or solicitation of business either verbally, through print or online (rather than being requested to provide CSP services); or
- b) making it known that the person will act to meet certain requests; or
- c) being equipped so to act: e.g., office stationery, application form, business cards, business telephone book entries, website; etc.

These indicators are not cumulative: however, the greater the number of indicators a person meets, the greater the probability that such person would be considered as 'holding oneself out' by the Authority.

Legal Person

Includes a body corporate or other association of persons whether granted legal personality in accordance with the provisions of the Second Schedule to the Civil Code, or not; and, a civil partnership in possession of a warrant, or equivalent, to carry out the profession of advocate, notary public, legal procurator or certified public accountant shall be deemed a legal person for the purposes of this Rulebook.

ML/FT

Money Laundering and Funding of Terrorism

Operational function

Means a function within an Authorised Person, the cessation or interruption of which would materially adversely impact the services provided to clients.

Person

Means a natural or legal person.

PII

Means Professional Indemnity Insurance.

Qualifying Shareholder

Any person who directly or indirectly owns or controls 25% or more of the capital or voting rights in an entity or otherwise exercises control over the management of the legal person.

Qualitative assessment of time commitment

The qualitative assessment of time commitment involves an assessment of qualitative factors that determine the amount of time a person can dedicate to his/her function. These include:

- i. the size and circumstances of the entity with whom the position is held;
- ii. the nature, scale and complexity of the activities of the respective entities;
- iii. the place or country where the entities are based;
- iv. the travel time required for the role;
- v. the number of meetings scheduled for the management body;

	<ul style="list-style-type: none"> <li>vi. adequacy, scope and quality of resources (internal and external) available'</li> <li>vii. the time needed for induction and training; and</li> <li>viii. the responsibility to be borne by the person.</li> </ul>
Quantitative assessment of time commitment	The quantitative assessment of time commitment involves an assessment of the number of commitments held by the person. The involvement in multiple roles is an important factor which may affect time commitment.
Recognised jurisdiction	Means a member state of the European Union, the European Economic Area (EEA) or any other jurisdiction which has, in the opinion of the Authority, an equal or comparable level of regulation regarding CSPs in Malta.
Regulations	Means any Regulations that may be issued under the Act.
Revenue	Means the net revenue which shall be calculated in the following manner: the gross revenue derived from Company Service Provider Services, in any one financial year, less any commissions, where applicable, that are directly related to the acquisition of the said gross revenue, paid or payable to third parties. In the case of individuals, the revenue should be based on the calendar year.
Under threshold Class A CSPs	Refers to individuals or civil partnerships in possession of a warrant, or equivalent, to carry out the profession of advocate, notary public, legal procurator or certified public accountant whose revenue from corporate services forms, or is forecast to form, in the upcoming year, not more than: [a] 35% of the combined total revenue in a calendar year from the provision of all professional services; or [b] EUR100,000, whichever is the higher. Provided that this category may not provide the service of "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."
Under threshold Class B CSPs	Refers to individuals who hold an aggregate of not more than ten (10) involvements. Provided that for the purposes of this definition: [i] the term 'involvements' shall encompass acting as director or company secretary of a company, a partner in a partnership or in a similar position in relation to other legal entities; [ii] involvements with entities which are licensed, recognised or otherwise authorised by the Authority shall not count as an involvement given that individuals holding directorships or company secretarial positions in companies which are so licensed, recognised or authorised by the Authority are not considered as providing directorship or company secretarial services ' <i>by way of business</i> '; for the purposes of authorisation in terms of the Act; [iii] involvements of the same person

within the same group of companies shall only count as one single involvement.



## Chapter 1      General Scope and High-level Principles

### ***Title 1                      Scope and Application***

- R1-1.1                      This Rulebook is being issued pursuant to Article 8 of the Act which provides that the Malta Financial Services Authority as the Competent Authority, may publish rules which shall be binding on Company Service Providers.
- R1-1.2                      This Rulebook shall apply to Company Service Providers authorised in terms of the Act and Applicants seeking authorisation as CSPs under the Act, as applicable, except for:
- i.      Chapter 2, Titles 7 and 8 which shall not apply to Applicants who are individuals;
  - ii.     Chapter 4, Title 2 which shall apply only to CSPs providing the services of Company Formation, in addition to other requirements which are of general application; and
  - iii.    Chapter 4, Title 3 which shall apply only to CSPs which act as director or secretary of a company, a partner in a partnership or in a similar position in relation to other legal entities, in addition to other requirements which are of general application;
  - iv.     Chapter 4, Title 4 which shall apply only to CSPs 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, in addition to other requirements which are of general application; and
  - v.      Chapter 4, Title 5 which shall apply only to CSPs who are either 'Under threshold Class A CSPs' or 'Under threshold Class B CSPs', in addition to other requirements which are of general application.
- R1-1.3                      This Chapter outlines the high-level principles which should guide CSPs in the provision of their activity in or from within Malta.
- R1-1.4                      Chapter 2 of this Rulebook outlines the Authorisation requirements and the respective Authorisation process for CSPs.
- R1-1.5                      Chapter 3 of this Rulebook outlines the ongoing obligations which CSPs must adhere to.

R1-1.6

Chapter 4 of this Rulebook provides for:

- i. Supplementary rules for CSPs providing the services of formation of Companies or other legal entities ~~Formation~~;
- ii. Supplementary rules for CSPs which act as director or secretary of a company, a partner in a partnership or in a similar position in relation to other legal entities;
- iii. Supplementary Rules for CSPs which arrange 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. These rules will apply to the said CSPs;
- iv. Supplementary Rules which are applicable to CSPs which are 'Under threshold Class A CSPs' or 'Under threshold Class B CSPs'; and
- v. Supplementary Rules applicable to CSPs which are neither 'Under threshold Class A CSPs' nor 'Under threshold Class B CSPs'.

The Rules stipulated in this Chapter apply in addition to other requirements, which are of general application, stipulated in other Chapters of this Rulebook.

R1-1.7

Chapter 5 of this Rulebook provides for enforcement and sanctions in the event of misconduct by CSPs.

R1-1.8

*Transitory Period for CSPs authorised in terms of the CSP Act of 2013*

Any person in possession of a registration to act as a Company Service Provider in terms of the Company Service Providers Act, 2013, prior to the date of coming into force of the amendments introduced by Act L of 2020 shall take all necessary measures to comply with these Rules within six (6) months from the date of the publication of these Rules.

Provided that such persons shall, during this six-month period, continue complying with the previous version of the Rules and strive to comply with these Rules on a best effort basis.

## **Title 2**

### ***High-level Principles***

R1-2.1

CSPs shall act in an ethical manner with due care, skill and diligence, taking into consideration the best interests of their clients and the integrity of Malta's financial system.

R1-2.2

CSPs shall act honestly, fairly and professionally and shall comply with the relevant provisions of the Act, the regulations issued thereunder, and these

Rules, as well as with other relevant legal and regulatory requirements, including *inter alia* the Prevention of Money Laundering Act, Chapter 373 of the Laws of Malta, as well as any regulations and rules issued thereunder.

R1-2.3 CSPs shall co-operate with the MFSA in an open and honest manner and shall provide the Authority with any information it may require. CSPs shall supply the MFSA with such information and returns as the MFSA requires.

R1-2.4 CSPs are also expected to deal openly and in a spirit of cooperation with any other relevant regulatory authority.

R1-2.5 In complying with R1-2.1, CSPs shall:

- i. refer to, and where applicable, comply with the applicable Maltese laws, regulations and rules issued thereunder as well as any Guidance Notes which may be issued by the MFSA or other relevant body to assist the said persons in complying with their legal and regulatory obligations; and
- ii. take due account and, where applicable, comply with any relevant EU legislation as well as any Guidance Notes/Statements/Industry Best Practices which may be issued by local and/or international standard setting bodies.

## Chapter 2 Authorisation of Company Service Providers

### ***Title 1 Scope and Application***

- R2-1.1 This Chapter identifies the Authorisation requirements for Applicants wishing to be authorised as CSPs under Article 3 of the Act, and the applicable Authorisation process.
- R2-1.2 This Chapter applies to all Applicants, except for Titles 7 and 8, which shall not apply to Applicants who are individuals.

### ***Title 2 The Authorisation Requirement for CSPs***

- R2-2.1 Any person, operating in or from Malta, who acts or holds himself out as acting as a CSP by way of its business, shall apply to the Authority for authorisation in terms of Article 3 of the Act:

Provided that persons who are licensed, authorised or recognised by the Authority in terms of any one of the laws for the purposes of which the MFSA has been designated as competent authority, other than those exempt in terms of the Exemption Regulations, are still subject to authorisation in terms of the Act.

Provided further that an Applicant shall only apply for authorisation under one of the classes referred to in the Act.

- R2-2.2 Pursuant to R2-2.1, a person providing, or holding itself out as providing, CSP services in or from Malta, without being so authorised by the MFSA, shall be in breach of the Act.
- R2-2.3 Employees of a CSP or directors of a CSP, whose appointment as directors or company secretary or similar position to another company or legal person is arranged by that CSP, are not subject to authorisation, in terms of the Act, in their own name.
- R2-2.4 Where a person is providing, *'by way of business'*, services as a director or company secretary of one or more companies, a partner in a partnership or a similar position in other legal entities, then that person is subject to authorisation as a CSP in his own name, in terms of the Act.

Provided that where such director or company secretary is acting in a private capacity, in that such person is a beneficial owner, or has a substantial financial interest in, or possesses special voting rights [conferring control], in a company, partnership or other legal entities in which he holds such position(s), then such person shall not require authorisation in terms of the CSP Act.

- R2-2.5 In the case of a joint venture or outsourcing agreement entered into by a Maltese CSP with an overseas entity, whereby only the local entity would be effectively 'holding itself out' to provide company services and actually provides these services in Malta, the authorisation requirement in terms of the Act would only apply to the local entity.
- R2-2.6 Pursuant to R2-2.56 where overseas entities hold themselves out as providing the services set out in article 3 of the Act, on the basis of a joint venture or outsourcing agreement with a Maltese CSP, by virtue of which only the latter would be effectively performing such services in or from Malta, it is only the local company service provider which is subject to authorisation in terms of the Act:
- Provided that the overseas entity shall specify to its current or prospective clients, as well as, in any marketing material it issues, that it is holding itself out as providing the services set out in article 3 of the Act on the basis of a joint venture or outsourcing agreement with a Maltese CSP, the name of which shall be specified.
- R2-2.7 CSPs having an establishment in Malta providing services to companies or other legal entities outside Malta would be subject to authorisation since they are providing CSP services from Malta.
- R2-2.8 A person wishing to be authorised to provide CSP services may be a legal or a natural person.
- R2-2.9 Further to R2-2.8, where the Applicant is a legal person, such person shall be established either in Malta or in another recognised jurisdiction. Where such legal person is not established in Malta, such person shall be eligible for Authorisation so long as:
- (i) it is established in a recognised jurisdiction;
  - (ii) it has a registered business office in Malta;
  - (iii) at least one of the persons entrusted with the management and administration, is resident in Malta; and
  - (iv) it complies with all other authorisation requirements under this Section.
- R2-2.10 Notwithstanding R2-2.8, based on the risk presented by the nature, size and complexity of the business of the CSP, where the Authority considers, both at authorisation stage and on an ongoing basis, that an individual CSP cannot meet its governance requirements, the Authority may, at its discretion, require the said natural person to establish a legal person.
- R2-2.11 Notwithstanding R2-2.8, 'Under threshold Class A CSPs' and 'Under threshold Class B CSPs' may only be natural persons.
- R2-2.12 A CSP shall be required to have an initial issued share capital or capital contribution, as set out hereunder:

CSP Class	Initial Capital Requirement
Class A CSPs	€10,000
	Under threshold Class A CSPs – €2,500
Class B CSPs	€15,000 + Mandatory PII
	Under threshold Class B CSPs – €5,000
Class C CSPs	€25,000 + Mandatory PII

Provided that, where applicable, the Authority may accept an adequate D&O insurance instead of, or in conjunction with, PII.

R2-2.13

A CSP shall, at application stage and on an ongoing basis, thereafter, maintain and be able to demonstrate adequate financial resources for the nature and scope of its business and shall be solvent at all times. It shall establish the level of resources which it deems necessary to meet its liabilities as they fall due and to withstand the risks to which it may be subject. In making its assessment of the financial resources required, the CSP shall take into consideration the risks to which it is exposed as a result of the nature of its business and the extent to which those risks can be avoided or reduced.

A CSP shall maintain the minimum capital required as initial capital in terms of R2-2.12 and this shall be maintained for as long as the person remains authorised under the Act. In the case of a CSP that is a limited liability company, its share capital shall be issued and fully paid up and no divestment of capital shall take place, unless the issued capital and cash reserves of the Authorised Person shall collectively amount to the minimum as prescribed in R2-2.12.

The own funds requirement, in the case of a legal person, shall also be deemed to be satisfied if such amount is held in the form of cash and cash equivalents in terms of International Accounting Standard 7, as may be amended from time to time. The CSP should revert to the Authority in case of doubt as to whether any assets it holds may be considered to be cash or cash equivalent for the purposes of this Rule.

R2-2.14

Notwithstanding R2-2.13, where the Applicant is an individual, such Applicant may opt to obtain a guarantee or irrevocable letter of credit in accordance with this Rule:

Subject to the conditions set out below, the own funds of an individual authorised under the Act may be constituted and held in the form of a guarantee provided by, or an irrevocable letter of credit issued by, a credit institution:

- a) licensed to carry on the business of banking under the laws of Malta; or

- b) lawfully permitted to carry on the business of banking in a country outside Malta which is established in an approved jurisdiction, provided that the credit institution is subject to effective prudential regulation and supervision having the same effect as Maltese law and which is effectively enforced.

The following conditions must be satisfied in relation to such guarantee or irrevocable letter of credit:

- a) the guarantee or the letter of credit shall be in favour of the Authority;
- b) the content of the guarantee or letter of credit is to be approved in advance by the Authority; and
- c) where the CSP who is an individual intends to effect any changes to the content of the guarantee or the letter of credit, such CSP shall immediately submit, in writing, to the Authority the particulars of the proposed changes; and no such changes shall be made without the Authority's approval.

### **Title 3                      The Application Process**

- R2-3.1                      Applicants shall submit their application and authorisation documents, as applicable, and in accordance with this Section, to the Authority. Applicants shall ensure that the appropriate Application Form, as determined by the Authority, is completed, and that any documentation requested in original should be submitted to the Authority in writing.
- R2-3.2                      The MFSA may require Applicants to submit to the MFSA whatever additional information it deems appropriate for the purposes of determining whether it should grant authorisation to the Applicant as a CSP.
- R2-3.3                      The Authority shall not initiate the review of any application which:
- i.      is not complete with all the required supporting documentation; or
  - ii.     has pending authorisation fees.

### **Title 4                      Authorisation Considerations**

- R2-4.1                      When considering whether to authorise an Applicant, the Authority shall *inter alia*, have regard to:
- i.      the protection of consumers and the general public;
  - ii.     the protection of the reputation of Malta, taking into account Malta's international commitments;
  - iii.    the promotion of competition and choice;
  - iv.    the reputation and suitability of the Applicant and all other parties connected with the Applicant; and
  - v.     the adequacy of resources including human, financial and systems.

- R2-4.2 Pursuant to considerations outlined in R2-4.1, the Authority may authorise an Applicant as a CSP, subject to the Applicant being a fit and proper person and it complies with all the other application requirements determined as may be determined by the Authority.
- R2-4.3 The onus of proving fitness and properness to provide the services of a CSP lies with the Applicant.
- R2-4.4 Notwithstanding Rule R2-4.3, the Authority shall, as part of its assessment process, avail itself of any additional information which may be available to it. Such information may include information which was not provided by the Applicant.
- R2-4.5 The Authority shall base its decision as to whether or not an Applicant is to be authorised in terms of the Act, on the basis of the information provided by the Applicant, and any other information that ought to have been disclosed by the Applicant. The MFSA shall not be liable in damages for any acts or omissions on the part of the Applicant.

## ***Title 5 Fitness and Properness***

- R2-5.1 Applicants seeking authorisation as CSPs shall be required to be fit and proper on a continuous basis.
- R2-5.2 The Authority shall not grant authorisation to an Applicant to provide company services, if it appears to it that the criteria of fitness and properness are not, and will not, be met by a person concerned.
- R2-5.3 When arriving at its decision as to whether a person concerned has met the fitness and properness criteria, the Authority will take account of all material facts, whether such facts are disclosed or otherwise.
- R2-5.4 Pursuant to R2-5.1, in assessing whether a person is a fit and proper person, the Authority shall assess the following:
- i. Competence, in terms of R2-5.7;
  - ii. Reputation, in terms of R2-5.8;
  - iii. Conflicts of Interest and Independence of Mind, in terms of R2-5.9; and
  - iv. Time Commitment, in terms of R2-5.10.
- In this respect, reference should be made to the [Guidance on the Fitness and Properness Assessments applied by the Authority](#).
- R2-5.5 The fitness and properness assessment shall be applicable to: (i) the Applicant, where the CSP is a natural person; (ii) Qualifying Shareholders; and (iii) any individual that intends to hold and approved position within the CSP.



- R2-5.6 All criteria referred to in R2-5.4 must be met in satisfaction of the fit and proper test. It shall not be the duty of the Authority to prove the converse before it refuses to grant authorisation to an Applicant, or before it intends to suspend or withdraw an authorisation granted to, or held by, an Authorised Person.
- R2-5.7 *Competence*
- R2-5.7.1 Applicants shall demonstrate and provide reasonable assurance to the satisfaction of the Authority, that both collectively and individually, they have an acceptable level of knowledge, professional expertise and experience and that adequate systems and resources are in place for the provision of the services of a CSP.
- R2-5.7.2 The Authority may, at its discretion, on the basis of a risk-based assessment, conduct further assessments as it may deem necessary. Such further assessment, which may be carried out in collaboration and in cooperation with other competent authorities as may be applicable and necessary, may include a viva-voce interview.
- R2-5.7.3 Further to R2-5.1, following approval, persons subject to the Fitness and Propriety assessment who are involved in the management of the CSP, shall be required to obtain a number of CPE hours on an annual basis, as determined by the MFSA.
- R2-5.8 *Reputation*
- R2-5.8.1 An Applicant shall demonstrate to the Authority and provide reasonable assurance to the satisfaction of the Authority that they are of good repute as well of their intentions to act in an honest, ethical and trustworthy manner.
- R2-5.8.2 The Authority's assessment of reputation shall be based on an assessment of [i] integrity; and [ii] solvency.
- R2-5.9 *Conflicts of Interest and Independence of Mind*
- R2-5.9.1 Any person applying to hold an approved position, in their proposed role, should be able to make their own sound, objective and independent decisions and judgments. Independence of mind can be affected by conflicts of interest. There is a conflict of interest if the attainment of the interests of a shareholder may adversely affect the interests of the supervised entity.
- R2-5.9.2 Any person applying to hold an approved position will not be considered suitable if there exists a conflict of interest which poses a material risk which is not possible to prevent, adequately mitigate or manage.
- R2-5.10 *Time Commitment*
- R2-5.10.1 Persons, in their proposed role, must be able to commit sufficient time to performing their functions efficiently and effectively.

- R2-5.11 In order for the Authority to carry out its due diligence exercise to establish the “fit and proper” status of an Applicant, the latter would be required to submit a duly completed Personal Questionnaire form.
- R2-5.12 The Personal Questionnaire form is to be submitted through the online portal.
- R2-5.13 Where the proposed shareholders of an Applicant are corporate entities, these shall be required to complete the “questionnaire for qualifying shareholders other than individuals”.

## **Title 6                      *Appointment of Key Function Holders/Officers***

### **R2-6.1                      *Appointment of Compliance Officer***

- R2-6.1.1 As part of the authorisation process, a CSP shall propose an individual, based in Malta, to be appointed as Compliance Officer. The proposed individual should not be involved in the client onboarding process unless to provide guidance with respect to Compliance issues if this is deemed necessary. In addition, the Compliance Officer should not be involved in the performance of activities which s/he is required to monitor.
- R2-6.1.2 Prior to appointing an individual as Compliance Officer, the CSP must seek the MFSA’s prior written consent. The CSP shall formally propose the appointment to the MFSA after having conducted its own due diligence checks.
- R2-6.1.3 Notwithstanding R2-6.1.1 and R2-6.1.2, where the Applicant is a natural person, such person shall himself be considered as being the Compliance Officer, if the individual is authorised as Under threshold Class A or Under threshold Class B CSP.

This notwithstanding, such CSP shall be required to prepare on an annual basis a compliance report which needs to be presented to the Authority when requested. This report should be proportionate with risks of the CSP and as a minimum should include confirmation whether:

- a) the CSP is complying with all the applicable legislative requirements;
- b) complaints handling procedures were adhered to;
- c) all conflicts of interest were adequately managed;
- d) the breaches register was adequately updated;
- e) business continuity measures are still adequate;
- f) critical service providers are being adequately monitored;
- g) client funds are being duly segregated at all times; and
- h) record keeping is adequate.

The Authority, through supervisory engagement, might also request for additional measures to be put in place, including but not limited to, the engagement of a third party to prepare compliance reports.

- R2-6.1.4 The role of the Compliance Officer is an onerous one and the CSP shall ensure that it is only accepted by individuals who fully understand the extent of responsibilities attached to the role with adequate skill, knowledge and experience in both compliance and company service providers.
- R2-6.1.5 The role of the Compliance Officer, *inter alia*, includes:
- a) As the individual responsible for all aspects of compliance, the Compliance Officer will be expected to demonstrate independence of judgement and to exercise proper day to day control over the activity of the CSP in terms of the Act.
  - b) In order to be able to satisfy these requirements, the Compliance Officer must familiarise himself thoroughly with any conditions that may be imposed in relation to the CSP's authorisation as well as the requirements emanating from the Act together with any regulations and rules issued thereunder, as well as any relevant guidance issued by the MFSA, and shall take steps to ensure that the CSP's staff are familiar with the said requirements and any conditions that are relevant to their role within the company.
  - c) In particular, the Compliance Officer must pay particular attention to those Rules which require the CSP to establish, implement and maintain adequate policies and procedures to identify breaches by the CSP of the applicable authorisation and ongoing requirements, and to minimise the risk of such breaches.
  - d) The MFSA also expects the Compliance Officer to ensure that incorrect or misleading information is not provided deliberately or recklessly to the MFSA either in supervisory returns or in any other way.
- R2-6.2 *Appointment of Money Laundering Reporting Officer*
- R2-6.2.1 CSPs carry on "relevant activity" for the purposes of the Prevention of Money Laundering and Funding of Terrorism Regulations. Accordingly, besides adhering to the Prevention of Money Laundering Act, CSPs are required to adhere to the Regulations made thereunder, as well as the Implementing Procedures and any guidance notes issued by the Financial Intelligence Analysis Unit.
- R2-6.2.2 In terms of the Prevention of Money Laundering and Funding of Terrorism Regulations, as subject persons, CSPs are required to appoint a Money Laundering Reporting Officer ('MLRO'). Therefore, as part of the authorisation process, an Applicant shall propose an individual to be appointed as MLRO.
- R2-6.2.3 In the case of an individual CSP, such individual shall undertake the role of the MLRO and may or may not be the Compliance Officer. In the case of legal persons, applications for multiple roles will be assessed by the Authority on a case-by-case basis, depending on the particular operational set-up of the company and its supervisory track record.

Furthermore, as stipulated by the Prevention of Money Laundering and Funding of Terrorism Regulations, the person appointed as a MLRO should be an officer of the subject person of sufficient seniority and command, and must also satisfy all requirements set out in the Implementing Procedures issued by the FIAU.

- R2-6.2.4 Prior to appointing an individual as MLRO, the CSP must seek the MFSA's prior written consent, which shall be subject to the MFSA being satisfied that the MLRO is a fit and proper person. The CSP shall formally propose the appointment to the MFSA after having conducted its own due diligence checks and shall ensure that the MLRO continues to meet the standards of a fit and proper person and the standards expected by the MFSA under these Rules, on an ongoing basis.
- R2-6.2.5 Upon being granted approval by the MFSA, the CSP shall inform the FIAU of the appointment of the MLRO. In this regard, the MLRO will need to register themselves as the entity's MLRO with the FIAU, through the FIAU's CASPAR platform on <https://caspar.fiaumalta.org/>.
- R2-6.2.6 The role of the MLRO is an onerous one and the CSP shall ensure that it is only accepted by individuals who fully understand the extent of responsibilities attached to the role. While the Authority expects proposed MLROs to possess both relevant qualifications and experience in AML/CFT matters, the Authority may still consider applications where the proposed MLROs are able to demonstrate to the Authority's satisfaction that their experience on its own is sufficient.
- R2-6.2.7 The MLRO shall have the responsibilities as outlined in the Implementing Procedures of the FIAU, as may be amended from time to time. In addition, the Authority expects the MLRO to be thoroughly familiar with the Act, the Prevention of Money Laundering Act, the Regulations made thereunder, as well as the Implementing Procedures (including any sector-specific Implementing Procedures) and any guidance notes issued by the FIAU. Other functions may be assigned to the individual acting as MLRO as long as these do not conflict with his responsibilities and obligations as MLRO and allow him to carry out the same in an independent and effective manner.

## ***Title 7                      The Approval and Departure Processes for Approved Persons***

- R2-7.1 For purposes of this Title, an 'Approved Person' shall mean any individual being proposed to hold a role which the Authority deems to require its prior approval. including but not limited to the Compliance Officer, MLRO, Directors, Senior Managers, Risk Officer and/or Committee members.
- R2-7.2 *The Approval Process*
- R2-7.2.1 The request for MFSA's approval shall be made to the Authority by a CSP with respect to the appointment of a Director on its board, a Compliance Officer and/or a MLRO prior to the formal appointment of such person and shall be accompanied by a

Personal Questionnaire ("PQ"). This shall be duly completed by the individual proposed together with all the relative documents.

In this respect, reference should be made to the [Guidance on the Fitness and Propriety Assessments](#) applied by the Authority.

R2-7.2.2 In the case of a proposed Compliance and/or Money Laundering Reporting Officer, sufficient details of the individual's background, training and/or experience relevant to the post should also be included such that the MFSA is able to make adequate assessment with respect to the proposed individual's suitability for the proposed post.

In this respect, reference should be made to the [Guidance Paper on the Money Laundering Reporting Officer](#).

R2-7.2.3 The Authority may also require further information from the proposed person. For purposes of this Rule, the MFSA may *inter alia* request any supporting documentation from the CSP, and/or proposed persons, as it may deem necessary.

R2-7.2.4 The Authority shall, as part of the assessment process, also use information not provided by the proposed person, *inter alia* including publicly available information. The Authority may also make reference to the overall organisational structure of the CSP.

R2-7.2.5 The MFSA shall base its decision as to whether the proposed Approved Person has met the required standards, on the basis of the information provided by the CSP as well as the approved person, and any other information that ought to have been provided or disclosed to the Authority. The MFSA shall not be liable in damages for any acts or omissions on the part of the proposed individual.

R2-7.3 *The Departure Process*

R2-7.3.1 The CSP shall notify the Authority of the resignation or removal of an Approved Person by not later than the effective resignation and/or departure date.

R2-7.3.2 The CSP shall request the relevant Approved Person, to provide the Authority with: (i) the reason for their departure; and (ii) a written confirmation that such departure was not a consequence of any regulatory implications or to provide relevant details of any such regulatory implications, as appropriate.

R2-7.3.3 The CSP shall also provide to the Authority, together with the notification, a written statement noting the reason/s for departure and the remedial measures being undertaken to satisfy the Authorisation conditions as applicable. Any evidence of fraud or dishonesty by a member of the CSP's staff should be notified to the Authority immediately upon becoming aware of the matter.

## ***Title 8                      Approval of Qualifying Shareholders***

R2-8.1                      The proposed acquisition of a qualifying shareholding in an Applicant or Authorised Person is subject to the prior written approval of the MFSA. Such approval is only granted if the MFSA is satisfied that such person is a fit and proper person.

R2-8.2                      Formal notification of a change in shareholding of a CSP is to be accompanied by:

- a) a Personal Questionnaire in the case of a proposed acquirer who is an individual;
- b) the Questionnaire for Qualifying Shareholders other than Individuals in the case of a proposed acquirer who is not an individual;
- c) organigram clearly depicting the shareholding structure of the CSP or entity applying for Authorisation under the Act, as the case may be, as well as the percentage shareholding held by each entity in the Applicant entity or Authorised Entity as the case may be. The names of the ultimate beneficial owners must also be clearly disclosed;
- d) details regarding the Source of Funds and, where applicable, Source of Wealth. In this respect, reference should be made to the [Guidance Note on the submission of the Source of Wealth and Source of Funds](#); and
- e) any additional information as may be determined by the Authority.

R2-8.3                      In order to avoid undue delays in the assessment process, it is essential that the proposed acquirer promptly transmits all required information to the MFSA.

R2-8.4                      The information required shall be proportionate and adapted to the nature of the proposed acquirer and the proposed acquisition. In its assessment, the MFSA shall take into account any information it may already possess in relation to the proposed acquirer.

R2-8.5                      The MFSA may consider, on the basis of its analysis of the information submitted, by the proposed acquirer, that some additional information is necessary for the assessment of the proposed acquisition. In that case, the MFSA may request, in writing, that the proposed acquirer provides the additional information.

R2-8.6                      In the event that any of the information submitted is false or forged, rendering the conclusions of the MFSA liable to being erroneous, the MFSA shall refuse the approval of the proposed acquisition. The Authority also has the power to take regulatory action if the information provided at application stage is incorrect even after approval has been granted.

R2-8.7                      In assessing the request for approval as a qualifying shareholder of a CSP, the MFSA shall adopt the following criteria:

- a) the reputation of the proposed acquirer;
- b) the reputation and experience of any person who will direct the business of the CSP holder as a result of the proposed acquisition;

- c) the financial soundness of the proposed acquirer; and
- d) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing is being or has been committed or attempted or that the proposed acquisition could increase the risk thereof.

## **Title 9                      Cessation of Business**

- R2-9.1                      CSPs intending to voluntarily cancel their Authorisation should submit a formal request to the MFSA for the approval of the voluntary cancellation as soon as possible.
- R2-9.2                      The Authority shall not proceed with the internal process to approve the voluntary cancellation of an Authorisation until the CSP has paid any amounts, *inter alia*, including any fees, due to the Authority.
- R2-9.3                      The Authority may request the CSP to delay the voluntary cancellation of its Authorisation or winding-up of its business, should it, at any stage of the voluntary cancellation, or winding up process, determine that this is required in order to ensure consumer protection and protection of market integrity, or to wind-up such business in accordance with the conditions imposed by the MFSA.
- R2-9.4                      The general procedure for voluntary cancellation of an Authorisation is set out in R2-9.5 to R2-9.7. This notwithstanding, the MFSA reserves the right to impose additional requirements.
- R2-9.5                      Once an authorised CSP informs the MFSA of its intention to voluntarily cancel its Authorisation, the following confirmations/action/documentation should be submitted to the MFSA:
- a) a formal request to the MFSA asking for approval to voluntarily cancel the Authorisation;
  - b) a certified true copy of the Directors’/General Partners’ Resolution confirming the Company’s intention to voluntarily cancel its Authorisation certificate, subject to the Authority’s approval and once the necessary formalities are finalised;
  - c) ~~once the necessary formalities are finalised,~~ the CSP must give due notice to its clients of its intention to voluntarily cancel its Authorisation. Confirmation to this effect should be submitted to the MFSA;
  - d) a confirmation (where appropriate) that the CSP which is seeking to cease its company service business has transferred its clients to another Authorised Person or to a person which is exempt from the requirement of Authorisation in terms of the Exemption Regulations;
  - e) a confirmation that no litigation relating to CSP services and CSP clients is pending;
  - f) a confirmation that the CSP will remove from all letterheads, and any other stationery, any reference to being authorised by the Authority;



~~f)g)~~ in the case of a CSP established as a legal person, a confirmation from the CSP whether it will liquidate or wind up the legal person or not following the voluntary surrender. ~~;-~~ In the event that there is no intention for the legal person ~~person is not intended~~ to be liquidated or wound up, a draft of the Constitutional Document of the CSP whereby all references to the provision of company services from its objects clause (or equivalent) are removed and, (where appropriate) the name of the CSP is changed so as to remove all references to the provision of CSP services, should also be submitted to the MFSA;

~~g)h)~~ a confirmation that the CSP has informed its auditor and insurer (if any) of its intention to voluntarily cancel its Authorisation; and

~~h)i)~~ a confirmation from the auditors of the CSP specifying the date by when all business and obligations arising from the CSP's activities related to its Authorisation as CSP have been settled.

Provided that, the above list should not be considered exhaustive and it is the CSP's duty to ensure that all its responsibilities have been satisfied.

R2-9.6

Once all the requirements listed above are satisfied, an internal process will be set in motion for the approval of the voluntary cancellation of the Authorisation. Once a decision is taken, this will be conveyed in writing to the CSP which will cease to be authorised thereafter. The CSP shall then return its original Authorisation certificate to the MFSA. Moreover, in the case of legal persons, following the Authority's approval of the voluntary cancellation, ~~unless arrangements are made for the winding up of the CSP, a certified true copy of the CSP's amended Constitutional Document as referred to in R2-9.5(g) of the CSP, duly amended to remove all references to the provision of company services from its objects clause and, (where appropriate) to change the name of the CSP, should be submitted to the relevant competent authority for registration and evidence of such submission is to be provided to the Authority within two weeks of the publication of the notice referred to in R2-9.7, to the Authority.~~

R2-9.7

The MFSA will ordinarily issue a public notice regarding the voluntary cancellation of the Authorisation.



## Chapter 3      Ongoing Obligations for CSPs

### ***Title 1                      Scope and Application***

R3-1.1                      This Chapter provides the ongoing obligations for all CSPs.

### ***Title 2                      General Requirements***

R3-2.1                      The CSP shall, at all times, have adequate business organisation, systems, resources, experience and expertise to act as a CSP.

R3-2.2                      The CSP shall take reasonable steps to ensure continuous and reliable regularity in the performance of its services. To this end, the CSP shall employ systems, resources and procedures that are appropriate and proportionate to the nature, scale and complexity of its business.

R3-2.3                      The CSP shall co-operate fully with any inspection or other enquiry, or compliance testing carried out by the MFSA or an inspector acting on its behalf.

R3-2.4                      The CSP shall maintain sufficient records to be able to demonstrate compliance with the conditions of its Authorisation and with all applicable requirements prescribed by the Act as well as the regulations and rules issued thereunder. In this regard a CSP shall conduct sufficient monitoring and regular reviews, including independent audits if necessary.

R3-2.5                      Pursuant to R3-2.4, such records shall be kept available for inspection by the MFSA, for at least five years from the date of the termination of services.

Provided that the Authority may request that such records are kept for a period of up to ten years from the date of the termination of services.

Provided further that the requirements set out in this Rule shall be without prejudice to:

- i.     any other record keeping obligations that the CSP may have in terms of any other law, rules or regulation; and
- ii.   the right of any other authority, in terms of applicable law, to access the documents, data or information covered by this Title.

R3-2.6                      Where the CSP is an individual, such CSP shall ensure compliance with Rule 3-2.2 and shall implement and maintain systems to ensure that clients' interests are safeguarded in the event of death, incapacity, sickness, holidays or other absence of the CSP.

### **Title 3**

### **Notifications and Prior Approvals**

R3-3.1

Where a Rule demands that a CSP notifies the MFSA of an event, such notification shall be made to the MFSA promptly and formally, in a durable medium. The requirement to notify the MFSA of any event shall not be satisfied merely by the fact that the information which ought to be notified to the MFSA is included in a standard regulatory return or information which is publicly available.

R3-3.2

The CSP shall notify the MFSA in writing of:

- a) a change of registered office or business address, at least one month in advance of such change;
- ~~a)b)~~ cases where a Class A CSP and Class C CSP authorised to provide the service of a registered office, a business correspondence or administrative address and other related services for a company, a partnership or any other legal entity, intends to use a different address for the provision of such services to clients through an address which is not the CSP's registered address;
- ~~b)c)~~ any material changes in the information supplied to the MFSA immediately upon becoming aware of the matter;
- ~~e)d)~~ any actual or intended legal proceedings of a material nature by or against the CSP immediately after the decision has been taken or on becoming aware of the matter; and
- ~~e)e)~~ any breach of any Authorisation condition/s or of any provision of the Act or the regulations and rules issued thereunder, as soon as the CSP becomes aware of the breach.

R3-3.3

The CSP shall obtain the prior written consent of the MFSA before:

- a) making any change to the CSP's name or business name (if different), at least one month in advance of such change;
- ~~a)b)~~ before the appointment of an individual as an Approved Person;
- ~~b)c)~~ acquiring of 25 per cent of more of the capital or voting rights in another entity;
- ~~e)d)~~ any material changes to the business plan as originally authorised, including any additional activities the CSP intends to start providing which does not fall under the company services that require authorisation;
- ~~e)e)~~ taking any steps to cease its company services business; and
- ~~e)f)~~ agreeing to sell or merge the whole or any part of its undertaking.

Provided that where the CSP is a legal person, it shall also seek the prior written approval of the MFSA before:

- ~~f)g)~~ making any change to its share capital or the rights of shareholders;
- ~~g)h)~~ resolving to go into liquidation or dissolution;
- ~~h)i)~~ any proposed change to its ownership structure, including any acquisition of a qualifying shareholding, takes place, immediately upon becoming aware of the situation; and

~~ii)~~ making any changes to the instrument of incorporation.

#### **Title 4                      Financial Resources Requirement**

- R3-4.1                      The CSP shall, at all times, have sufficient financial resources available to enable it to conduct its business effectively and to meet its liabilities.
- R3-4.2                      The CSP must maintain and be able to demonstrate, at all times, adequate financial resources in line with the nature, scale and complexity of its business and must therefore satisfy the requirements of R2-2.12 to R2-2.1~~4~~<sup>5</sup> for as long as that person remains authorised under the Act.
- R3-4.3                      Notwithstanding R3-4.2, where the CSP is also regulated by the Authority for other activities and is therefore subject to higher financial resources requirements than those established in these Rules, these higher financial resources requirements shall be deemed to satisfy the requirements of these Rules and no additional financial resources would be required.

#### **Title 5                      Insurance Requirement**

- R3-5.1                      Where pursuant to R2-2.12 CSP is required to take out PII, such CSP shall take out and maintain full PII cover and shall ensure that such insurance, *inter alia*:
- i.      covers any legal liability in consequence of any negligent act, error or omission in the conduct of the business by the CSP or any person employed by it or otherwise acting on its behalf, including consultants under a contract for service with the CSP;
  - ii.     covers legal defence costs which may arise in consequence of any negligent act, error or omission in the conduct of the CSP's business by the CSP or any person employed by it or otherwise acting on its behalf, including consultants under a contract for service with the CSP;
  - iii.    covers the whole territory of the European Union and extends to all other territories from, in or to which the CSP is providing its services;
  - iv.     covers any dishonest, fraudulent, criminal or malicious act, error or omission of any person at any time employed by the CSP, or otherwise acting on its behalf, including consultants under a contract for service with the CSP;
  - v.      covers libel, slander and defamation;
  - vi.     covers loss of, and damage to, documents and records belonging to the CSP or which are in the care, custody or control of the CSP or for which the CSP is responsible; including also liability, costs and expenses incurred in replacing, restoring or reconstructing the documents or records; including also consequential loss resulting from the loss or damage to the documents or records;

- vii. covers any liability resulting from any breach of a provision of the Act or of any regulations and rules issued thereunder, and any award resulting from any such breach;
- viii. covers claims made after the expiry of the policy where the circumstances giving rise to the claim were notified to the insurers during the period of the policy; and
- ix. covers the minimum limits of indemnity prescribed by R3-5.4 .

Provided that, where applicable, as per R2-2.13, the Authority may accept an adequate D&O insurance instead of, or in conjunction with, PII.

R3-5.2

For the purposes of demonstrating to the satisfaction of the MFSA that the requirements of this Title are being complied with on an ongoing basis, the- CSP shall, upon request by the MFSA, submit to the MFSA a copy of the renewal cover note or such other written evidence as the MFSA may require to establish compliance with these Rules.

R3-5.3

A CSP shall, within two working days from the date when it becomes aware of any of the circumstances specified in (i) to (vii) below, inform the MFSA in writing where:

- i. during the period of a policy, the CSP has notified insurers of an incident which may give rise to a claim under the policy;
- ii. during the period of a policy, the insurer has cancelled the policy or has notified its intention of doing so;
- iii. the policy has not been renewed or has been cancelled and another policy satisfying the requirements of this Title has not been taken out from the day on which the previous policy lapsed or was cancelled;
- iv. during the period of a policy, the terms or conditions are altered in any manner so that the policy no longer satisfies the requirements of this Title;
- v. the insurer has intimated that it intends to decline to indemnify the insured in respect of a claim under the policy;
- vi. the insurer has given notice that the policy will not be renewed or will not be renewed in a form which will enable the policy to satisfy the requirements of this Title; and
- vii. during the period of a policy, the risks covered by the policy, or the conditions or terms relating thereto, are altered in any manner.

R3-5.4

The required minimum limits of indemnity are:

- i. in respect of any one claim, the higher of:
  - a. three times the Relevant Income; or
  - b. EUR 1,000,000
- ii. in aggregate, the higher of:
  - a. three times the Relevant Income; or
  - b. EUR 1,500,000

- iii. legal costs limited to 20% of (i) or (ii) of this Rule, whichever is applicable.

Provided that, for purposes of this rule, 'Relevant Income' shall mean all gross income received or receivable which is commission, fees or other earnings arising from the business activities, whether those activities are authorised under the Act or not, for the last accounting year or on the basis of the business plan agreed with the Competent Authority in respect of the relevant year or period. Provided that income received or receivable in the form of interest, whether in respect of bank deposits or investments does not form part of 'Relevant Income'.

## **Title 6**

### **Governance**

R3-6.1 A CSP's business shall be effectively directed or managed by persons who are of sufficiently good repute, possess sufficient knowledge and experience, commit sufficient time to perform their functions and be sufficiently experienced so as to ensure the sound and prudent management of the CSP. In the case of authorised individuals, said individuals are required to document all decisions taken.

R3-6.2 The CSP shall:

- i. establish, implement and maintain decision-making procedures and an organisational structure which clearly and in a documented manner specifies reporting lines and allocates functions and responsibilities;
- ii. ensure that its staff is aware of the procedures which must be followed for the proper discharge of their responsibilities;
- iii. establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the CSP;
- iv. employ personnel with the skills, knowledge and expertise necessary for the discharge of responsibilities allocated to them;
- v. establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the CSP;
- vi. maintain adequate and orderly records of its business and internal organisation; and
- vii. ensure that the performance of multiple functions by its staff does not and is not likely to prevent those persons from discharging their particular function soundly, honestly and professionally.

For these purposes, the CSP shall take into account the nature, scale and complexity of its business, and the nature and range of the activity being undertaken in the course of that business.

R3-6.3 The CSP shall establish, implement and maintain systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question;

R3-6.4	The CSP shall establish, implement and maintain adequate policies and procedures designed to ensure compliance with its obligations under the Act, any Regulations issued thereunder and these Rules as well as with its obligations under other applicable legislation, in particular the Prevention of Money Laundering Act, the Regulations issued thereunder and the Implementing Procedures issued by the FIAU, as well as to detect the associated risks, and shall put in place adequate measures and procedures designed to minimise such risk and to enable the MFSA to exercise its powers effectively.
R3-6.5	The CSP shall regularly monitor and, at least- <del>annually</del> <u>every six (6) months</u> , evaluate the adequacy and effectiveness of its systems, internal control mechanisms and arrangements established in accordance with this sub-section and to comply with R3-2.4. Furthermore, the CSP shall prepare an annual report to the Board, or as part of the business record for an individual. Such report should be made available to the MFSA on request and should also include the appropriate measures put in place to address any deficiencies.
R3-6.6	<i>Competence and Effective Management</i>
R3-6.6.1	<p>The CSP shall:</p> <ul style="list-style-type: none"> <li>a) Understand and comply with its contractual and other legal obligations;</li> <li>b) Identify and act in each client's best interest and deal properly with managing and mitigating any conflict of interest between clients or between itself and a client;</li> <li>c) Keep the affairs of clients confidential except where disclosure of information is required or permitted by law or by guidance published by the Authority, or authorised by the person(s) to whom the duty of confidentiality is owed; and</li> <li>d) Record and monitor compliance with the Act, any regulations issued thereunder and with these Rules.</li> </ul>
R3-6.6.2	Where the CSP is a legal person, such person shall be effectively directed or managed by at least two individuals in satisfaction of the dual control principle.
R3-6.6.3	Persons acting as directors shall discharge all their duties and responsibilities in relation to the company and to comply with the law and principles of the good corporate governance and any applicable Codes, guidance or regulations including fully participating in all board decisions, being informed regarding the business of the CSP and taking such decisions in the best interests of the CSP and its clients. Decisions shall be taken by at least two (2) directors.
R3-6.6.4	Further to R3-6.6.2 and R3-6.6.3, where there are more than two individuals directing the business, a minimum of two persons' judgments must be engaged in order that major errors leading to difficulties for the undertaking are less likely to occur. Similarly, both persons must have sufficient experience and knowledge of the business and the necessary personal qualities to detect and resist any imprudence, dishonesty or

other irregularities by the other person. Thus, where a single individual is particularly dominant in an undertaking this will raise doubts about the fulfilment of the criterion.

- R3-6.6.5 Where the CSP employs staff, such CSP shall ensure that staff are suitably chosen, effectively trained, managed and monitored to comply with these rules. The CSP shall ensure that the responsibilities and authority of each member of staff are clear and appropriate to his or her qualifications and experience and that staff receive any training which is necessary for their roles.
- R3-6.6.6 Pursuant to R3-6.6.5, the CSP shall formulate and keep up to date plans for staff training and development, including training in relation to anti money laundering and countering the financing of terrorism, and for disaster recovery.

## ***Title 7***

### ***Risk Management***

R3-7.1 The CSP shall take the following actions with a view to managing its risks. In this context CSPs are expected to take a proportionate and comprehensive approach to risk management and not limit this to ML/CFR risks:

- i. undertake an assessment with the purpose of understanding and identifying all the risks associated with its business model and target markets. Such assessment should be duly documented and reviewed regularly in line with the changing environment within which the CSP is operating in. The relevant policies and procedures should reflect such assessment;
- ii. establish, implement and maintain adequate risk management policies and procedures, which identify risks relating to the CSP's activities, processes and systems and set the level of the CSP's risk appetite;
- iii. regularly review the risk management policies and procedures, including the business risk assessment in the light of internal or external changes and update the policies, procedures and business risk assessment to reflect the same;
- iv. adopt effective controls, processes and mechanisms to manage and mitigate the risks relating to the CSP's activities, processes and systems, in light of that level of risk tolerance;
- v. monitor the following:
  - a. the adequacy and effectiveness of the CSP's risk management policies and procedures;
  - b. the level of compliance by the CSP and its approved persons and staff members with the policies and procedures adopted in accordance with point (ii) above; and
  - c. the adequacy and effectiveness of measures taken to address any deficiencies in those policies and procedures, including failures by the relevant persons to comply with therewith; and
- vi. draw up and maintain a Risk Register vis-à-vis its clients.

For these purposes, the CSP shall take into account the nature, scale and complexity of its business, and the nature and range of the activity being undertaken in the course of that business.

R3-7.2 A CSP holding a Class C authorisation is required to establish and maintain a risk management function which independently carries out the following tasks:

- i. the implementation of the policy and procedures referred to in Rule R3-7.1; and
- ii. the provision of reports and advice to senior management.

R3-7.3 The MFSA may allow the CSP to establish and maintain a risk management function which does not operate independently, provided this does not give rise to conflicts of interest and the CSP demonstrates to the MFSA that the establishment and maintenance of a dedicated independent risk management function with sole responsibility for the risk management function is not appropriate and proportionate in view of the nature, scale and complexity of its business and the nature and range of the CSP services and activities undertaken in the course of that business.

This notwithstanding, where a Risk Officer is not specifically employed by the CSP, the role should be performed by a senior official of the CSP or a non-executive director.

R3-7.4 Where a CSP is granted such derogation, it must nevertheless be able to demonstrate that the policies and procedures which it has adopted in accordance with R3-7.1 satisfy the requirements thereof and are consistently effective.

R3-7.5 Furthermore, where a CSP is granted a derogation, the MFSA should be notified of the identity of the person identified to carry out the risk management function. Any changes in this regard should also be promptly notified to the Authority.

R3-7.6 For purposes of point (vi) of R3-7.1, the Risk Register shall:

- a) list all the clients which the CSP has onboarded together with the relevant risk classification/rating of each client; and
- b) identify the risks inherent to the business model of each client.

In addition, the Risk register should include other risks which the CSP is exposed to, based on the assessment as per Rule 3-7.1 (i).

## **Title 8**

## **Compliance**

R3-8.1 The CSP shall establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the CSP to comply with its obligations under the Act, the Regulations issued thereunder and these Rules, as well as with its obligations under other applicable legislation, as well as to detect the associated



risks, and shall put in place adequate measures and procedures designed to minimize such risk and to enable the MFSA to exercise its powers effectively.

The CSP shall, for this purpose, take into account the nature, scale and complexity of its business and the nature and range of CSP services and activities undertaken in the course of that business.

R3-8.2 The CSP shall establish and maintain a permanent and effective compliance function which operates independently, and which has the responsibilities provided in R2-6.1.

Provided that pursuant to R2-6.1.3, where a CSP is a natural person, such person shall be himself considered as being the Compliance Officer, if the conditions of R2-6.1.3 are satisfied.

R3-8.3 In order to enable the compliance function to discharge its responsibilities properly, the CSP shall ensure that the following conditions are satisfied:

- i. the compliance function shall have the necessary authority, resources, expertise and access to all relevant information; and
- ii. a Compliance Officer shall be appointed who shall assume responsibility for the compliance function and for any reporting as to compliance required by the Act or these Rules and shall prepare an annual report as provided by R3-6.5.

R3-8.4 Further to R3-8.3, the CSP shall also ensure that the following conditions are satisfied:

- i. the relevant persons involved in the compliance function shall not be involved in the performance of services or activities which they monitor and shall be sufficiently independent from the client onboarding process; and
- ii. the method of determining the remuneration of the relevant persons involved in the compliance function shall not compromise their objectivity and shall not be likely to do so.

R3-8.5 The Compliance Function shall draw up an annual compliance monitoring programme and provide the Board of the CSP with regular updates on the implementation thereof in the form of compliance reports which shall also include information on compliance matters in general.

## ***Title 9***

### ***Outsourcing***

R3-9.1 A CSP shall have a policy on its approach to outsourcing, including contingency plans, exit strategies as well as a general policy that covers all aspects of outsourcing, including non-material outsourcing, whether the outsourcing takes place within a corporate group or not.

- R3-9.2 A CSP shall ensure, when relying on a third party for the performance of any operational function, that it takes reasonable steps to avoid undue additional operational risk to the provision of continuous and satisfactory service to clients and the performance of its services on a continuous and satisfactory basis.
- R3-9.3 When the CSP outsources any function, the CSP shall remain fully responsible for discharging all of its obligations under the Act or these Rules and shall adequately manage the risks relating to such outsourcing arrangements at all times.
- R3-9.4 The CSP shall exercise due skill, care and diligence when entering into, managing or terminating any arrangement for the outsourcing to a service provider of any operational functions.
- R3-9.5 The CSP shall carry out an ongoing assessment of the operational risks and the concentration risk associated with all its outsourcing arrangements. The CSP shall notify the MFSA of any material developments.
- R3-9.6 CSP retains full regulatory responsibility and shall ensure that the proper management of the risks associated with the outsourced activities lies with the CSP.
- R3-9.7 When the CSP outsources any function, the CSP shall ensure that the outsourcing arrangements do not result in the delegation of responsibility.
- R3-9.8 The outsourcing of operational functions may not be undertaken in such a way as to materially impair:
- i. the ability of the MFSA to monitor the CSP's compliance with all its obligations;
  - ii. the orderly conduct of the CSP's business;
  - iii. the quality of the CSP's internal controls;
  - iv. the CSP's ability to manage and monitor its business and activities; or
  - v. the ability of internal governance bodies, such as the Board of Directors, to fulfil their oversight tasks.
- R3-9.9 The CSP shall, in particular, take the necessary steps to ensure that the following conditions are satisfied:
- i. the service provider must have the ability, capacity and any authorisation required by law to perform the outsourced functions, services or activities reliably and professionally;
  - ii. the service provider must carry out the outsourced services effectively, and to this end, the CSP must establish methods for assessing the standard of performance of the service provider;
  - iii. the CSP must properly monitor the carrying out of the outsourced functions, and adequately manage the risks associated with the outsourcing;

- iv. appropriate action must be taken if it appears that the service provider may not be carrying out the functions effectively and in compliance with applicable laws and regulatory requirements;
- v. the CSP must retain the necessary expertise to monitor the outsourced functions effectively and manage the risks associated with the outsourcing and must monitor those functions and manage those risks;
- vi. the service provider must disclose to the CSP any development that may have a material impact on its ability to carry out the outsourced functions effectively and in compliance with applicable laws and regulatory requirements;
- vii. the CSP must be able to terminate the arrangement for outsourcing where necessary, without detriment to the continuity and quality of its provision of services to clients;
- viii. the service provider must cooperate with the MFSA in connection with the outsourced activities;
- ix. the CSP, its auditors and the MFSA must have effective access to data related to the outsourced activities, as well as to the business premises of the service provider; and the MFSA must be able to exercise those rights of access;
- x. the service provider must protect any confidential information relating to the CSP and its clients; and
- xi. the CSP and the service provider must establish, implement and maintain a contingency plan for disaster recovery and periodic testing of backup facilities, where that is necessary having regard to the function, service or activity that has been outsourced.

R3-9.10	A CSP shall inform the MFSA of any material outsourcing arrangements and shall make available on request all information necessary to enable the Authority to supervise the compliance of the performance of the outsourced activities with the requirements of these Rules. The prior approval of the MFSA is required with respect to any material outsourcing arrangements.
R3-9.11	A CSP shall inform the MFSA of any material development affecting an outsourced activity and the manner in which it is proposing to rectify its position in order to fulfil its obligations to its clients.
R3-9.12	The MFSA may impose specific conditions on the CSP for the outsourcing of any activities.
R3-9.13	<i>The Outsourcing Contract</i>
R3-9.13.1	The CSP shall ensure that any outsourcing arrangement is based on a formal, clear, written contract which establishes the respective rights and obligations of the CSP and of the service provider, including the requirements emanating from Rule3-9.9.

**Title 10*****Procedures for the Reporting of Breaches***

- R3-10.1 Where the CSP employs staff, the CSP shall develop and maintain appropriate procedures for employees to report breaches internally. These shall include the maintenance of a breaches log which lists any reported breach.
- R3-10.2 Pursuant to R3-10.1, CSPs shall also refer to, and comply with, the applicable provisions of the Protection of the Whistleblower Act, Chapter 527 of the Laws of Malta.
- R3-10.3 In the case of individuals, the CSP is required to have in place a breaches log which also lists any breaches to the Act, Rules or other relevant laws and Regulations.

**Title 11*****Conduct of Business Obligations***

- R3-11.1 *General Conduct of Business Rules*
- R3-11.1.1 CSPs shall adopt appropriate and transparent reporting lines within its organisation, as applicable, *inter alia* in order to mitigate the risks associated with conflicts of interest.
- R3-11.1.2 A CSP shall establish, implement and maintain effective organisational and administrative arrangements appropriate to the size and organisation of the CSP and the nature, scale and complexity of its business. The CSP shall have a conflict of interest policy and shall prevent conflicts of interest from adversely affecting the interests of its clients.
- R3-11.1.3 The circumstances which should be treated as giving rise to a conflict of interest should cover cases where there is a conflict between the interests of the CSP or certain persons connected to the CSP or the group of which the CSP forms part, or from the performance of services and activities, and the duty the CSP owes to a Client; or between the differing interests of two or more of its clients, to whom the CSP owes in each case a duty.
- R3-11.2 *Segregation of Funds*
- R3-11.2.1 A CSP must ensure that any funds in its possession but belonging to a client are kept at all times separately from its own funds and also that they are not co-mingled with funds of other clients.
- R3-11.2.2 For purposes of R3-11.2.1, non-fungible assets belonging to clients and which may come into the possession of the CSP must be kept separate and distinct both from the CSP's own assets and from other assets belonging to other clients.
- R3-11.2.3 Furthermore, also for purposes of R3-11.2.1, in the case of fungibles, it is not necessary for CSPs to open separate accounts for each client as long as appropriate records are kept and effective reconciliation procedures are in place.

### R3-11.3 *Customer Acceptance and Due Diligence*

R3-11.3.1 The requirements set out in this rule (R3-11.3), shall apply in addition to the Implementing Procedures issued by the FIAU.

R3-11.3.2 Prior to accepting to offer its services to any client, a CSP shall, in so far as it can determine, ensure that such person is of sufficient good standing and repute. The CSP shall, *inter alia*, ensure that the proposed activities, or the engagement itself would not breach any international financial sanctions.

R3-11.3.3 Prior to offering company services to a client, a CSP shall request a prospective client to confirm in writing whether the latter has:

- a) ever been convicted of an offence (other than a minor traffic offence);
- b) ever been adjudged bankrupt;
- c) ever been the subject of an investigation by a government, professional or other regulatory body;
- d) ever been a director, shareholder, officer or manager of a business entity which has been the subject of an investigation as aforesaid;
- e) ever been a director, shareholder, officer or manager of a business entity which has been adjudged bankrupt, compulsorily wound up or has made any compromise or arrangement ~~with~~ where its creditors or has otherwise ceased trading in circumstances where its creditors did not receive or have not yet received full settlement of their claims; and
- f) ever had or currently has any direct or indirect beneficial interest in or whether he ever was or currently is a director of any other company registered in Malta.

The prospective client should also be required, by the CSP, to confirm in writing that he is not acting on behalf of any other third parties.

R3-11.3.4 The CSP shall undertake all the necessary customer due diligence procedures, including but not limited to the questions referred to in R3-11.3.3, when there is a change in the directors, officers, members or beneficial ownership of the companies to which the CSP provides company services.

### R3-11.4 *Disclosure Requirements*

R3-11.4.1 Once authorised, a CSP shall ensure that its status as a CSP is disclosed in all advertisements and correspondence. The following wording is to be included: "Authorised to act as a Company Service Provider by the Malta Financial Services Authority."

R3-11.5	<i>Rules on Personal Transactions</i>
R3-11.5.1	A CSP shall establish, implement and maintain adequate arrangements, including a personal transaction policy, which prevent any approved person or employee who is involved in activities that may give rise to a conflict of interest, or who has access to inside information or to other confidential information relating to clients or transactions with or for clients by virtue of an activity carried out by him on behalf of the CSP.
R3-11.5.2	<p>CSPs shall ensure that approved persons and employees do not enter into a personal transaction which meets at least one of the following criteria:</p> <ul style="list-style-type: none"> <li>i. it involves the misuse or improper disclosure of confidential information; or</li> <li>ii. it conflicts, or is likely to conflict, with any obligation of the CSP.</li> </ul>
R3-11.6	<i>Conflicts of Interest</i>
R3-11.6.1	A CSP shall establish, implement and maintain an effective conflicts of interest policy set out in writing and which is appropriate to the size and organisation of the CSP and the nature, scale and complexity of its business, to prevent conflicts of interest from adversely affecting the interests of its clients.
R3-11.6.2	A CSP shall keep and regularly update a record of the situations or services carried out by or on behalf of the CSP in which a conflict of interest entailing a risk of damage to the interests of one or more clients has arisen or, in the case of an ongoing service, may arise.
R3-11.6.3	<p>The conflicts of interest policy established in accordance with these Rules shall be set out in writing and shall <i>inter alia</i> include the following:</p> <ul style="list-style-type: none"> <li>i. The identification of, with reference to the specific services carried out by or on behalf of the CSP, the circumstances which constitute or may give rise to a conflict of interest entailing a risk of damage to the interests of one or more clients; and</li> <li>ii. Procedures to be followed and measures to be adopted in order to manage such conflicts and to prevent such conflicts from damaging the interests of clients.</li> </ul>
R3-11.6.4	The CSP shall assess and periodically review, at least annually, the conflicts of interest policy established in accordance with these Rules and shall take all appropriate measures to address any deficiencies.
R3-11.7	<i>Client Agreements</i>
R3-11.7.1	CSPs, prior to entering into a client relationship, shall discuss terms of business with each prospective client and keep a written record of the terms of the agreement with

each client, including evidence of the client's agreement to those terms. That agreement shall include, as a minimum:

- a) details of the services to be provided and the fees charged;
- b) a record of how and by whom requests for action are to be given;
- c) provision dealing with situations where the CSP loses contact with a client; and
- d) a provision granting right of access to the MFSA to all information pertaining to the services being provided to the client as well as the client.

R3-11.7.2 A record of any provision should indicate:

- a) A clear description of the grounds and procedure for the termination of the agreement and the consequences of termination;
- b) A description of the CSP's procedure for dealing with any complaints;
- c) A statement that the CSP is authorised by the MFSA; and
- d) A requirement on the client to cooperate and comply with requests for information promptly.

R3-11.8 *Fees*

R3-11.8.1 CSPs shall agree on a clear fee structure with each of their clients before providing company services thereto and must ensure that the fees charged are transparent at all times.

R3-11.8.2 Pursuant to R4-6.4.3.1, CSPs shall ensure that adequate notice is given before any material change in the fee structure is introduced.

R3-11.9 *Complaints*

R3-11.9.1 CSPs shall establish, implement and maintain effective and transparent procedures for the reasonable and prompt handling of complaints received from clients and to keep a record of each complaint and the measures taken for its resolution.

R3-11.9.2 CSPs shall maintain a complaints' register which contains a record of each complaint and the measures taken for its resolution.

## ***Title 12***

## ***Record Keeping***

- R3-12.1                      The CSP shall arrange for records to be kept of all services provided by it which shall be sufficient to enable the MFSA to monitor compliance with the requirements under these Rules and in particular to ascertain that the CSP has complied with all obligations with respect to clients or prospective clients. The CSP shall arrange to keep sufficient backup of all such records.
- R3-12.2                      The CSP shall obtain and make available to the MFSA upon request, for at least five years after the termination of the relationship, the records relating to the provision of company services to clients. This requirement does not extend to any documentation which the CSP is precluded from sharing with the MFSA due to other restrictions imposed under any other applicable law, including but not limited to requests for information by the FIAU, internal Suspicious Transaction Reports and assessments thereto, and Suspicious Transaction Reports made to the FIAU.
- The MFSA may, in exceptional circumstances, require the CSP to retain any or all of those records for such longer period as it may deem necessary to enable the MFSA to exercise its supervisory functions. Such period shall not exceed ten (10) years, and shall be subject to the outcome of a thorough assessment of the necessity and proportionality of such further retention.
- R3-12.3                      The records shall be retained in a medium that allows the storage of information in a way accessible for future reference by the MFSA and in such a form and manner that the following conditions are met:
- a) the MFSA must be able to access them readily and to reconstitute each key stage of the processing of each transaction;
  - b) it must be possible for any corrections or other amendments and the contents of the records prior to such corrections or amendments to be easily ascertained; and
  - c) it must not be possible for the records otherwise to be manipulated or altered.
- R3-12.4                      CSPs must keep and preserve appropriate records in Malta which will at least include such records as are appropriate for their functions, as required by any applicable law and as will enable the provision of information to persons entitled to such information, on a timely basis. This should include the identity of all their clients and the beneficial owners thereof, as well as their residential addresses. The records retained should be sufficient to enable the CSP to comply with any notification and reporting requirements.
- R3-12.5                      Where the CSP avails itself of digital record keeping solutions, such as cloud-based systems, the CSP shall ensure the security and availability of data and shall assess the cyber security of such solution.



- R3-12.6 The CSP shall retain its records in a centralised location, whether in paper or in soft copy format. Such records shall include, but not be limited to:
- i. Correspondence regarding initial contact and introductions with clients;
  - ii. Correspondence regarding client on-boarding and acceptance; and
  - iii. any other correspondence with clients.
- R3-12.7 Further to R3-12.6 Officers and employees of a CSP servicing clients shall have access to all the CSP's information in order to ensure effective client acceptance procedures and practices, as well as adequate ongoing monitoring and continuity.
- R3-12.8 A CSP shall, taking into account the size, nature, scale and complexity of the said undertaking and on a best effort basis, refer to the [Guidance on Technology Arrangements, ICT and Security Risk Management, and Outsourcing Arrangements](#), issued by the MFSA.

### **Title 13**

### **Reporting Obligations**

- R3-13.1 The CSP shall have internal control mechanisms and administrative and accounting procedures which permit the verification of their compliance with these Rules.
- R3-13.2 The CSP shall in each year prepare an Annual Compliance Return in the form prescribed by the MFSA; such Annual Compliance Return shall be signed by the proprietor where the CSP is an individual, or otherwise by at least two persons who are authorised to legally represent the CSP. In the latter case, the CSP is ~~expected~~ to provide the MFSA with a certified true copy of the ~~such~~ Board Resolution, or equivalent in the case of an entity not constituted as a company to the MFSA. The Annual Compliance Return shall be submitted to the Authority within the deadline specified in Annex 3.
- R3-13.3 In the case of CSPs established as legal persons, audited annual financial statements prepared in accordance with appropriate accounting standards, together with a copy of the auditors' management letter and the auditors' report, shall be submitted to the MFSA within the deadline specified in Annex 3~~within four months of the Accounting Reference Date. Mere~~ submission of these documents to ~~the Malta Business Registry or~~ any other register or authority shall not be deemed to have satisfied the submission requirement with the MFSA. In addition CSPs established as legal persons and registered under the Companies Act shall comply with any other requirements applicable under the Companies Act.
- Provided that in the case of a CSP established as a partnership, in lieu of audited annual financial statements, auditors' management letter and auditors' report, such partnership shall submit its annual income statement and balance sheet, and comprehensive notes to the income statement and balance sheet, these shall be dated and signed by a minimum of two partners. The partnership's income statement, balance sheet and notes to the income statement and balance sheet shall be submitted to the MFSA within the deadline specified in Annex 3. Mere submission

of these documents to any other register or authority shall not be deemed to have satisfied the submission requirement with the MFSA.

R3-13.4 The CSP shall notify the MFSA immediately if it becomes aware that it will be unable to submit an Annual Return on the due date. The notice shall give reasons and shall explain what action is being taken to rectify matters.

R3-13.5 The CSP shall notify the MFSA immediately if:

- a) ~~it is notified that its auditor intends to qualify the audit report;~~
- b) ~~it becomes aware of actual or intended legal proceedings against it; or~~
- c) ~~it decides to claim on a professional indemnity or other policy relating to its company service provider business.~~

R3-13.46 ~~A CSP. Notwithstanding R3-13.2 to R3-13.5, a CSP who is an individual established as a civil partnership having a warrant, or equivalent, and authorised to act as an Under threshold Class A CSP, shall only be required to submit a 'Statement of Solvency' (see pro forma as per Annex 1 to these Rules) on an annual basis, together with the Annual Financial Return in the form prescribed by the MFSA. A CSP provide the CSP's financial information to the Authority through the Annual Compliance Return referred to in R3-13.2, and for the avoidance of doubt R3-13.3 shall not apply to such CSPs. In so doing, the CSP shall ensure that the financial information so provided is complete and correct to the fullest extent possible. who is an individual must appoint an auditor to audit his/her financial statements which should form the basis for the Annual Financial Return to be submitted to the Authority.~~

R3-13.57 A CSP ~~who is an individual shall only be required to provide the CSP's financial information to the Authority through the Annual Compliance Return referred to in R3-13.2. In so doing, the CSP shall ensure that the financial information so provided is complete and correct to the fullest extent possible. shall submit to the MFSA, on an annual basis, a Certificate of Compliance, in the style recommended in Annex 2 to these Rules. The Certificate of Compliance shall be signed personally by the CSP who is an individual or by at least two persons who are authorised to legally represent the CSP, where the CSP is a legal person, as defined in the Act.~~

R3-13.68 Where ~~a CSP is a warranted civil partnership authorised to act as an Under threshold Class A or an individual there have been breaches of the Act, of any regulations issued thereunder or of these Rules, the CSP is required to include a statement regarding such breaches in the failure to submit the Annual Compliance Return to the Authority within the prescribed deadline shall also be deemed to be a failure on the part of the CSP to provide the Authority with the financial information it requires for the proper conduct of its supervisory activities.~~ Certificate of Compliance.

R3-13.79 The CSP shall notify the MFSA immediately if it becomes aware that it will be unable to submit an Annual Return on the due date. The notice shall give reasons and shall explain what action is being taken to rectify matters. Deadlines for all submissions to

the Authority are listed in Annex 3. Without prejudice to a CSP's obligations under R3-3.2(e), where there have been breaches of the Act, of any regulations issued thereunder or of these Rules, the CSP shall disclose all such breaches in the Annual Compliance Return.

R3-13.8

The CSP shall notify the MFSA immediately if:

- a) it is notified that its auditor intends to qualify the audit report;
- b) it becomes aware of actual or intended legal proceedings against it; or
- c) it decides to claim on a professional indemnity or other policy relating to its company service provider business.

R3-13.9

Deadlines for all submissions to the Authority are listed in Annex 3.

## Chapter 4      Supplementary Rules

### ***Title 1***

### ***Scope and Application***

R4-1.1

This Chapter outlines:

- i. The supplementary rules for CSPs providing the service of formation of companies or formation of other legal entities;
- ii. The supplementary rules for CSPs which act as Director or Secretary of a company, a partner in a partnership or a similar position in relation to other legal entities;
- iii. The supplementary rules for CSPs which arrange for other persons to act as director or secretary of a company, a partner in a partnership or a similar position in relation to other legal entities; and
- iv. The supplementary rules for those CSPs who are either 'Under threshold Class A CSPs' or 'Under threshold Class B CSPs'.

R4-1.2

Title 2 of this Chapter shall only apply to those CSPs providing the service of formation of companies or Company Formation of other legal entities.

R4-1.3

Title 3 of this Chapter shall only apply to CSPs which act as Director or Secretary of a company, ~~a partner in~~ a partnership or a similar position in relation to other legal entities.

R4-1.4

Title 4 of this Chapter shall only apply to those CSPs which arrange for other persons to act as director or secretary of a company, a partner in a partnership or a similar position in relation to other legal entities.

R4-1.5

Title 5 of this Chapter applies to all CSPs who are either 'Under threshold Class A CSPs' or 'Under threshold Class B CSPs'.

### ***Title 2***

### ***Supplementary Rules for all CSPs Providing the Service of Formation of Companies or y Formation and establishment of other legal entities***

R4-2.1

Before submitting the necessary documents to the competent registry or authority Malta Business Registry in order to form companies or other legal entities (or before instructing a local agent to incorporate a company or other legal entity in another jurisdiction), the CSP shall:

- a) carry out the necessary due diligence checks to identify and verify the ultimate beneficial ownership of the proposed company or legal entity.

Where the proposed entity is held within a complex ownership structure, the CSP shall ensure that it has understood and verified the true/economic beneficial owners(s); and

- b) ensure that the proposed name of the company does not breach the applicable requirements under the Companies Act.

R4-2.2

CSPs providing the service of formation of companies or other legal entities ~~formation~~ shall have procedures in place to:

- a) identify whether the activities of the proposed company entity would be legal in the country within which they will be carried out and whether these activities require any licensing or other authorisation (including, but not limited to, authorisation to conduct financial services activities);
- b) assess the risks involved in the proposed entity company and/or if its activities would be deemed to be risky, in which case enhanced levels of checks are to be undertaken by the CSP;
- c) assess the level of risk which the formation of the entity company would present to the reputation of Malta. These procedures should address the way in which the CSP shall use available information to identify cases which may damage Malta's reputation, and the manner in which such cases should be handled in a responsible manner. Examples of cases which may present reputational risk include those involving entities companies:
  - i. trading in arms, supplying technology or parts connected with defence or providing military security services; or
  - ii. carrying on financial services business in another jurisdiction, particularly one whose regulatory regime is not equivalent to that in Malta or acting as a holding company of such a business.

### **Title 3**

### ***Supplementary Rules for CSPs Which Act as Director or Secretary of a Company, a Partner in a Partnership or a Similar Position in Relation to Other Legal Entities***

R4-3.1

In acting as directors or company secretaries of a company, partners in a partnership or a similar position in relation to other legal entities, in terms of their Authorisation under the Act, CSPs shall, as applicable:

- a) understand and act in accordance with their legal duties and the constitutional document of the client and seek advice where necessary;
- b) ensure that the board of directors has effective control of the company;
- c) treat the company as a separate legal entity from its shareholders, directors and avoid or manage conflicts of interest in accordance with the company's constitutional document;
- d) know who ultimately owns the company;
- e) know the company's business and finances and have full and up to date information on them;

- f) ensure that the company keeps proper accounts and records, observes the minimum record retention periods under any applicable laws, and files accounts and returns as required by laws;
- g) comply with, and take reasonable steps to ensure that any company of which they are a director, complies with the Prevention of Money Laundering Act and any Regulations issued thereunder, where applicable;
- h) consider whether to resign from office and to notify the MFSA of the circumstances if they believe that the company is being used for illegal purposes, trading wrongfully or breaking the law in other ways, without prejudice to complying with any other legal obligation the director is subject to;
- i) ensure that they have adequate experience, expertise and resources to enable them to discharge their responsibilities as director;
- j) ensure that the basis on which they are to be remunerated is agreed or recorded in writing;
- k) co-operate fully with any regulator, including the MFSA, which is entitled to information about the company's affairs; and
- l) not attempt to avoid those responsibilities by proposing contracting out of them or assign them to others.

R4-3.2

CSPs must ensure that they can commit sufficient time to perform their functions efficiently and effectively in any role they take on. In this respect, CSPs are expected to conduct both a qualitative and quantitative assessment of time commitment.

#### **Title 4**

#### ***Supplementary Rules for CSPs Arranging for Another Person to Act as Director or Secretary of a Company, a Partner in a Partnership or a Similar Position in Relation to Other Legal Entities***

R4-4.1

CSPs may only arrange for natural persons to act as director or secretary of a company, a partner in a partnership or a similar position in relation to other legal entities. In the case of CSPs set up as a legal person, they can only arrange for the appointment of their officers or employees to act as director or secretary in client entities or a similar position.

R4-4.2

Where a CSP in terms of its Authorisation under the Act arranges for another person to act as director or secretary of a company, a partner in a partnership or a similar position in relation to other legal entities, it shall be required to:

- a) perform a fitness and properness assessment on such person, including adequate due diligence checks;
- b) perform adequate oversight and monitoring on such person; and request such person to provide regular reports on activities undertaken. The frequency of such reports should be determined upon the activity undertaken by the client company however such reports need to be prepared at least annually.

R4-4.3 Pursuant to point (a) of Rule R4-4.2 above, CSPs shall ensure that any such person is fit and proper, within the meaning of these Rules, to do so.

R4-4.4 Pursuant to R4-4.3 above, CSPs must ensure that any such person is capable of committing sufficient time to performing his functions efficiently and effectively. In this respect, CSPs are expected to conduct both a qualitative and quantitative assessment of time commitment.

**Title 5** ***Supplementary Rules applicable to CSPs which are ‘Under threshold Class A CSPs’ or ‘Under threshold Class B CSPs’***

R4-5.1 CSPs shall ~~be required to, on an annual basis, submit to the MFSA, a self-declare in the Annual Compliance Return evidencing that that~~ they fall within the applicable thresholds to qualify as ‘Under threshold Class A CSP’ or ‘Under threshold Class B CSP’.

R4-5.2 CSPs shall ~~be responsible for the accuracy and correctness of the information submitted in the self declaration referred to in R4 5.1, to the Authority, together with their Annual Compliance Return in relation to the thresholds to qualify as ‘Under threshold Class A CSP’ or ‘Under threshold Class B CSP’ and this shall be documented~~

R4-5.3 ~~by the CSP, as per the Deadlines of Submissions to the Authority set out in Annex 3 to these Rules.~~

R4-5.4 On a calendar year basis, if an ‘Under threshold Class A CSP’ exceeds the applicable threshold for ‘Under threshold Class A CSP’ as set out by these Rules, such CSP must inform the Authority in writing immediately upon becoming aware of such changes in circumstances. Such CSP shall, within three months of becoming aware of such circumstances, take reasonable steps to determine whether to apply to be re-classified as an ‘Over threshold Class A CSP’ and shall inform the Authority and apply accordingly at the expiry of the three months.

If an ‘Under threshold Class B CSP’ exceeds the applicable threshold for ‘Under threshold Class B CSP’ as set out by these Rules, such CSPs must inform the Authority in writing immediately upon becoming aware of such changes in circumstances. Such CSP shall, within three months of becoming aware of such circumstances, take reasonable steps to determine whether to apply to be re-classified as an ‘Over threshold Class B CSP’ and shall inform the Authority and apply accordingly at the expiry of the three months.

## Chapter 5      Enforcement and Sanctions

### ***Title 1***                      ***Scope and Application***

R5-1.1                      This Title provides detail with regard to administrative penalties and sanctions. It *inter alia* provides the principles which guide the MFSA when imposing an administrative penalty and provides for aggravating and mitigating circumstances in case of misconduct by CSPs authorised under the Act.

### ***Title 2***                      ***General***

R5-2.1                      The CSP shall at all times observe the legal requirements, Regulations and the Rules which are applicable to it, as well as all the relative requirements which emanate from the Act and regulations issued thereunder. In terms of the Act, the MFSA has various sanctioning powers which may be used against a CSP which does not comply with its regulatory obligations. Such powers include the right to impose administrative penalties.

R5-2.2                      Where a CSP breaches a Rule, the MFSA may, by virtue of the Authority granted to it under Article 9 of the Act, impose administrative penalties, without recourse to a court of law, up to a maximum of EUR50,000.

R5-2.3                      In determining whether to impose a penalty or other sanction, and in determining the appropriate penalty or sanction, the MFSA shall be guided by the principle of proportionality, deterrence and the disgorgement of profits derived from wrongdoing where the findings were systemic and their scale. The MFSA shall, where relevant, take into consideration the circumstances of the specific case, which may *inter alia* include:

- i.     the repetition, frequency, gravity or duration of the infringement by the CSP;
- ii.    the degree of responsibility of the person responsible for the infringement;
- iii.   the financial strength of the CSP;
- iv.    the profits gained or losses avoided by the CSP by reason of the infringement, insofar as they can be determined;
- v.     the losses for third parties caused by the infringement, insofar as they can be determined;
- vi.    the level of cooperation of the CSP with the Authority;
- vii.   previous infringements by the CSP and prior sanctions imposed by MFSA or other regulatory authorities on the same CSP;
- viii. the good faith, the degree of openness and diligence of the CSP in the fulfilment of his obligations under the Act, relative regulations, Rules and Authorisation conditions or of decisions of the Competent Authority in this regard;



- ix. any evidence of wilful deceit on the part of the CSP or its officers;
  - x. any potential systemic consequences of the infringement; and
  - xi. the reputation of Malta.
- R5-2.4 Whenever the infringement consists of a failure to perform a duty, the application of a sanction shall not exempt the CSP from its performance, unless the decision of the MFSA explicitly states the contrary.
- R5-2.5 These Rules stipulate various requirements for the submission of documents within set timeframes. In the instance when such timeframes are not complied with, and unless there is reasonable excuse for the delay, the CSP will be considered as breaching the relevant Rule/s and will be penalised accordingly.
- R5-2.6 Documents may be submitted in various ways. The date of receipt will be as follows:
- i. if it is sent by fax and/or email, the date of receipt recorded shall be the time stamp of the fax and/or email, respectively;
  - ii. if it is sent by post, this will be the date indicated by the MFSA stamp evidencing receipt; or
  - iii. if it is delivered by hand, on the date such delivery was made and recorded by the MFSA.
- R5-2.7 The MFSA will use its discretion to decide what action to take in respect of CSP who do not submit documents by their due date, after taking into consideration the reasons, if any, put forward by the CSP for the delay.
- R5-2.8 Late submission gives rise to liability to an initial penalty and an additional daily penalty. If the conditions imposed by the MFSA are not met, the Authority reserves the right to take any further action it may deem adequate in the circumstances.
- R5-2.9 A right of appeal to the Financial Services Tribunal is available to CSPs on whom penalties are imposed.

## Annex 1

[This annex has been removed]

### ***Statement of Solvency and Compliance by a Company Service Provider who is an Individual***

#### ***Statement of Solvency***

~~I certify, that to the best of my knowledge and belief, and based on reasonable inquiries, the total of my personal and business assets exceeds the total of my personal and business liabilities and that I am able to meet those liabilities as they fall due.~~

#### ***Confirmation and acknowledgement***

~~I confirm that in making this statement of solvency, included (as a liability) a provision for taxation on the whole of my profits up to the date of the accompanying balance sheet.~~

~~By signing this Statement of Solvency, I confirm that I understand that if this statement is found to be materially false, inaccurate or misleading in any respect, I may be prohibited from conducting company services business and may be subject to disciplinary proceedings.~~

*Name (Block Capitals)* .....

*Signature*.....

*Date*.....

## Annex 2

[This annex has been removed]

### ***Certificate of Compliance for Company Services Providers***

To: ~~Head—Conduct Supervisory Function  
Malta Financial Services Authority~~

Dear Sir/Madam,

#### **Certificate of Compliance**

With reference to the Authorisation as a Corporate Services Provider ..... authorizing me/the Company Services Provider to provide company services under the Company Services Providers Act, I/the Company Service Provider confirm/s that during the period ..... to .....

(Kindly mark as appropriate)

☐ All activity has been conducted in accordance with:

- a) ~~the Company Services Providers Act;~~
- b) ~~the Rules for Company Services Providers; and~~
- c) ~~any recommendations or directives issued to me by the Malta Financial Services Authority~~

or

☐ Other than the breaches detailed in the attached documentation, (if any), the company services business has been conducted in accordance with:

- a) ~~the Company Services Providers Act;~~
- b) ~~the Rules for Company Services Providers; and~~
- c) ~~any recommendations or directives issued to me by the Malta Financial Services Authority~~

and that the Malta Financial Services Authority has been notified of all matters which may influence its decision on the Authorisation status of the Company Service Provider.

~~I/The Company Service Provider further confirm that during the above mentioned period, I/the Company Service Provider have/has:~~

~~☐ not received any complaints from clients; or~~

~~☐ have received **(please specify number)** ..... complaints from clients.~~

~~At the end of the period, I/the Company have/has (please specify no.) ..... complaints which have not yet been resolved.~~

~~Signed by .....~~

~~(In the case of Corporates this form has to be signed by at least two directors)~~

~~Name of Company Service Provider (in case of Corporates) .....~~

~~Date .....~~

## Annex 3

### *Deadlines for submissions to the Authority*

Submissions to the Authority	Deadline
Annual Compliance Return <del>by</del> –Individuals	30 April
Annual Compliance Return <del>by legal persons- Others</del>	4 months following financial year end
Audited annual financial statements and copy of auditor's management letter and auditor's report <del>by legal persons (but excluding partnerships in terms of the proviso to R3-13.3)</del>	4 months following financial year end
<del>Annual income statement, balance sheet and notes to income statement and balance sheet by partnerships (but excluding warranted civil partnerships authorised to act as Under threshold Class A CSPs in terms of R3-13.4) Statement of Solvency as at 31 December of each year</del>	<del>4 months following financial year end</del> 30 April
<del>Certificate of Compliance covering calendar year from 1 January to 31 December of each year</del>	<del>31 January</del>
Authorisation Fee	On the date of submission of the application for Authorisation
Annual Supervisory Fee	31 January
<del>Annual self declaration by CSPs classified as Under threshold Class A and Under threshold Class B</del>	<del>31 January</del>



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MALTA FINANCIAL SERVICES AUTHORITY

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