

**MFSA**

---

MALTA FINANCIAL SERVICES AUTHORITY

**TRUSTS AND TRUSTEES ACT (CAP. 331)**

**RULES FOR TRUSTEES AND OTHER FIDUCIARIES**

## INTRODUCTION

---

- I. These Rules are made pursuant to Article 52(1) of the [Trusts and Trustees Act](#) (the “Act”) which provides that the Malta Financial Services Authority (the “Authority”/the “MFSA”) may make Rules governing trustees, whether authorised or not required to obtain authorisation in terms of the Act, on the operations of trustees in Malta, on the qualifications to act as trustees, and generally on any other matters as the Authority may consider appropriate.
- II. Notwithstanding the generality of the foregoing, these Rules shall apply only to a trustee or other person authorised in terms of the Act (an “Authorised Person”) as defined hereunder:
  - [i] a person authorised to act as trustee of a trust in terms of article 43(1) and 43(8) of the Act;
  - [ii] a person authorised to act as mandatory in the holding of securities and/or immovable for another person in terms of article 43(12) of the Act; or
  - [iii] a person authorised to act as administrator, trustee, director or similar functionary exercising control over the assets, by whatever name they may be called, of a private foundation in terms of article 43(12) of the Act (hereinafter collectively referred to as “administrators”).
- III. The Authority may amend or revoke the Rules and any such amendment or revocation shall be officially communicated to the persons concerned.
- IV. The Authority also has the power to interpret any Rule or amendment thereof.
- V. These Rules should be read in conjunction with the requirements established by the Trusts and Trustees Act. Whilst referring to various articles of the Act, these Rules nonetheless do not attempt to reproduce it and therefore should not be treated as a substitute for consulting the Act itself.
- VI. Without prejudice to any other provision of the Act, any person who breaches any Rule is liable to an administrative penalty as may be prescribed under the Act.

# PART A

## GENERAL REQUIREMENTS

---

### APPLICATION

The Rules set out under Part A shall apply to all Authorised Persons as defined in the Introduction to these Rules.

---

### 1 Requirement for Authorisation

1.1 Article 43(1) of the Act provides that any person resident or operating in or from Malta who receives property upon trust or accepts to act as a trustee or co-trustee of a trust requires authorisation by the Authority where:

- (a) that person receives or is entitled to remuneration for so acting; or
- (b) the person does so on a regular or habitual basis; or
- (c) the person holds himself out to be a trustee.

This requirement subsists whether the person is an individual or a body corporate and irrespective of the proper law of the trusts held and of whether all or a part of the trust property is located in Malta. However, the requirement is without prejudice to the provisions of Article 43(6) and (7) and Articles 43A and 43B of the Act.

Subsequent to authorisation, the person shall be subject to the requirements prescribed in these Rules.

1.2 Article 43(12) of the Act provides that any person resident or operating in or from Malta who –

- (a) acts as a mandatory in the holding of securities and/or immovable property for another person; or
- (b) acts as an administrator, a trustee, director or similar functionary, exercising control over the assets, by whatever name he may be called, of a private foundation,

requires authorisation by the Authority. This requirement subsists whether the person is an individual or a body corporate and irrespective of the extent of his activities, whether remuneration is payable therefor and whether he holds himself out as providing such services. However, the requirement does not apply to the persons referred to in Article 43(6) of the Act.

Subsequent to authorisation, the person shall be subject to the requirements prescribed in these Rules.

## 2 Assessment Criteria of an Application

- 2.1 In determining an application for authorisation, the Authority shall assess the “fit and proper” status of the applicant, the track record of the applicant and the nature of the applicant’s business.
- 2.2 Every individual seeking authorisation and every director or other officer of a body corporate seeking authorisation shall be fit and proper to hold the particular position which he holds or intends to hold. This requirement shall be satisfied on an ongoing basis.
- 2.3 In determining whether an applicant is fit and proper, the Authority will apply a cumulative approach. In this respect, it may decide that an applicant has failed to meet the fitness and properness criteria on the basis of a number of factors, each of which considered solely on its own merit would not lead to that conclusion. All material facts will be taken account of.
- 2.4 The Authority considers the fitness and properness of an applicant to be determined in terms of the following criteria:
  - (a) integrity;
  - (b) competence, experience and qualifications; and
  - (c) financial soundness and solvency.
- 2.5 The criterion of **integrity** would require the applicant to be of good repute and to act honestly and in a trustworthy manner in relation to his clients and other involved parties.
- 2.6 In assessing the integrity of an applicant, the Authority will take into account the applicant’s reputation and character.

### *Guidance 2.1*

*The following is an indication of the circumstances which the Authority will take into consideration when assessing the integrity of an applicant:*

- (a) *whether the applicant has a criminal record, particularly with respect to fraud;*
- (b) *whether the applicant has been the subject of any adverse findings in relation to investment or financial business;*
- (c) *whether the applicant has contravened, due to dishonesty, incompetence or malpractice, any provision of trusts-, banking-, insurance-, investments- or*

*other legislation designed to protect members of the public against financial loss;*

- (d) whether the applicant has been involved in any business practices appearing to be deceitful, oppressive or improper or which otherwise reflect discredit on his method of conducting business; and*
- (e) whether the applicant has been censured or disqualified by any professional or regulatory bodies.*

*While any evidence of relevant past misconduct will be taken into consideration, the Authority recognises that the lapse of time and the applicant's subsequent conduct may be relevant in assessing whether the applicant has attained fit and proper status for a particular position.*

- 2.7 The criterion of **competence** would require the persons carrying on the business of the applicant to be able to demonstrate an acceptable level of knowledge, professional expertise and experience in relation to the role assumed by him.

#### *Guidance 2.2*

*In determining the competence of a given person, the Authority will have regard to matters such as those included in the following indicative list:*

- (a) whether the person has the requisite soundness of judgement for fulfilling the responsibilities of the role he has assumed or intends to assume;*
- (b) whether the person satisfies any relevant training requirements as may be prescribed by the Authority in relation to the role which he has assumed or intends to assume; and*
- (c) whether the person has demonstrated, by experience and training, that he will be able to carry out the role he has assumed or intends to assume.*

- 2.8 In the case of an applicant which is a company or any other body corporate, at least two of the directors or, in the case of a body corporate that is not a company, at least two of the persons having responsibility for the management and administration thereof shall have completed the course organised by the Institute of Financial Services Practitioners (the "IFSP") regarding the Law and Administration of Trusts, or any other equivalent qualification as deemed satisfactory by the Authority. Such training shall be taken prior to authorisation by the Authority.

In the case of an applicant who is an individual, such person shall have completed the abovementioned course and shall also be in possession of a number of years' experience.

- 2.9 In the case of an applicant which is a company or any other body corporate, the majority of the members of the board of directors or, in the case of a body corporate that is not a company, the persons entrusted with the management and administration thereof shall satisfy **both** the criteria regarding qualifications and those regarding experience as laid down in Rule 2.8 above.
- 2.10 In exceptional circumstances where directors who are not “approved persons” in terms of Article 2 of the Act, are approved based on their experience in the relevant fields as referred to in the Act, the individuals would need to attend the IFSP Foundation Certificate in Trusts Law and Management or any other equivalent qualification as deemed satisfactory by the Authority within one year from his/her appointment. Furthermore this type of approval is to be used solely in exceptional circumstances and where the other directors satisfy both the qualification and experience criteria.
- 2.11 The criterion of **financial soundness and solvency** would be satisfied where it is ensured that the applicant applies proper financial control and management of liquidity and capital.
- 2.12 In determining an applicant’s financial soundness and solvency, the Authority will have regard to the general requirement that the business has sufficient resources to meet the financial demands on its business. Moreover, in the case of the Authorised Persons referred to in Part B of these Rules, such Authorised Persons will also be required to adhere to the financial resources requirements contained in that Part.
- 2.13 When considering an application for authorisation, the Authority shall also have regard to the following factors:
- (a) the protection of the settlors, ultimate beneficial owners and founders, as the case may be;
  - (b) the protection of any beneficiaries;
  - (c) the protection of the reputation of Malta, taking into account Malta’s international commitments; and
  - (d) the promotion of competition and choice.
- 2.14 An Authorised Person shall commence business within twelve months from the date of the granting of authorisation.
- 2.15 In the event that the Authorised Person is for any reason not in a position to comply with the requirement prescribed in the preceding Rule, it shall notify the Authority of this fact in writing and shall set out the reason/s for the delay together with an updated business plan indicating the proposed date of commencement of business. On the basis of the information provided and the circumstances of the case, the Authority may decide to suspend or cancel authorisation in accordance with the relevant provisions of the Act.

### 3 The Application Process

3.1 The applicant shall submit a draft application form together with the supporting documents indicated hereunder:

- (a) Competency Form/Personal Questionnaire (“PQ”) and/or Corporate Questionnaire (“CQ”) as applicable in respect of all qualifying shareholders;
- (b) Personal Questionnaires in respect of all directors, the money laundering reporting officer, the compliance officer, the company secretary and any other person occupying a senior role;
- (c) an organigram of the corporate structure;
- (d) an internal staff chart and job description of employees, including executive directors at authorisation stage, at end of Year 1, Year 2 and Year 3 of operations and an indication of which employees are residing in Malta and which of those are full-time and which part-time employees;
- (e) an overview of the anti-money laundering and compliance procedures;
- (f) a programme of operations setting out the proposed nature and scale of the business of the applicant in Malta and overseas and particulars on any arrangements proposed for the operation of the business, in particular including the following:
  - (i) General description of the applicant and its business activities: This should include the different types of services to be provided, an indication of the persons who will actually be involved in the provision of those services, a description of how business is to be obtained, the market sector targeted, current performance (where applicable) and expected performance. This information should ideally cover a three-year period and any underlying assumptions should be stated.
  - (ii) Information on systems and controls: Details on governance arrangements, the systems to be used and the internal and operational controls, including any dual control procedures in place and an indication as to whether resource sharing or outsourcing is envisaged.
  - (iii) Marketing strategy: A description of how the services offered will be marketed. Details should also be provided on any arrangements to market the services through third parties.
  - (iv) Employee information: An indication of the number of employees and a brief description of their roles and

responsibilities, their competence and their background of experience, qualifications and training.

- (g) a balance sheet and financial projections for the first three years;
- (h) in the case of an applicant that is a company already in existence, the financial statements/management accounts of the previous three years;
- (i) in the case of an applicant that will be seeking incorporation as a company, the proposed Memorandum and Articles of Association;
- (j) the standard letter of engagement and trust deed/client agreement/deed of foundation, as applicable; and
- (k) the application fee.

#### *Guidance 3.1*

*It is recommended that the applicant arranges to meet with representatives of the Authority to describe its proposal. This preliminary meeting should take place well in advance of the submission of an application and should follow the submission of a comprehensive written description of the proposed activity. The Authority will provide guidance on the applicable regulatory requirements and on the completion of the application documents. However, responsibility for the formulation of the proposal and for the completion of the application documents will remain with the applicant.*

#### *Guidance 3.2*

*The draft application and supporting documentation will be reviewed by the Authority and comments provided to the applicant. The Authority may request further information and may make such further inquiries as it considers necessary. The “fit and proper” checks will commence at this stage.*

- 3.2 On completion of its review of the draft application and supporting documentation, the Authority will issue its “in principle” approval for the issue of an authorisation. The applicant shall at this stage resolve any outstanding matters.

#### *Guidance 3.3*

*The outstanding matters to be resolved at this stage may include the incorporation of any company necessary for the business proposal, submission of signed copies of the revised application form together with supporting documents in their final format and any other issues raised during the application process.*

*Authorisation will be issued as soon as all such pre-licensing issues are resolved.*

## **4 Authorisation of trustees in terms of Article 43(8) of the Act**

- 4.1 In terms of article 43(8) of the Act, the following persons may apply to the Authority for a confirmation to provide trustee services in Malta:

- (a) a person with a licence or authorisation equivalent to those referred to in article 43 (6)(a)(i) to (iii) issued by the Authority or the relevant regulatory authority in an approved jurisdiction and who will be acting as trustee not in the course of its ordinary business for which it is licensed;
  - (b) a person having a licence or authorisation to act as a trustee issued by the relevant regulatory authority in an approved jurisdiction;
  - (c) a person authorised under the [Retirement Pensions Act](#) as a retirement scheme administrator.
- 4.2 Any such person, whether Maltese or foreign, shall notify the Authority in writing of its intention to act as a trustee in Malta. This notification shall be made at least 45 days prior to the commencement of activities in Malta. The applicant shall not commence operations unless the Authority has notified the applicant that it has no objection to such commencement. The 45-day time period shall start to run as from the date on which the Authority is in possession of all the documentation referred to in Rule 4.4 below, which documentation shall be to the satisfaction of the Authority.
- 4.3 An applicant in terms of Article 43(8) of the Act shall be required to have a registered office in Malta.
- 4.4 A notification submitted in terms of Article 43(8) of the Act shall outline the proposed activities of the applicant and shall be accompanied by the following information:
- (a) a copy of the applicant's authorisation detailing the activities that the applicant is authorised to carry out;
  - (b) an explanation given by the applicant as to the reasons why it deems its previous authorisation to be equivalent to an authorisation in terms of the Act;
  - (c) a confirmation of the fact that the relevant officials of the applicant, in the case of a company or other body corporate, have been subject to a fit and proper assessment undertaken by the relevant regulatory authority;
  - (d) a certified copy of the applicant's certificate of incorporation and of its memorandum and articles, including details of the shareholders and directors in the event that these are not indicated in the memorandum and articles;
  - (e) a copy of the passports of the directors and of the shareholders;
  - (f) a good standing certificate;
  - (g) a description of the group structure, where applicable;
  - (h) a description of the applicant's internal structure;
  - (i) a copy of the applicant's license including the list of services being offered by it;
  - (j) a copy of the applicant's business plan indicating the services that the applicant currently offers and the services it intends to offer in Malta;
  - (k) a PQ duly filled in by the applicant's local representative, its money-laundering reporting officer and its compliance officer (provided that the

identity of the local representative and the money-laundering reporting officer may vest in one and the same person);

- (l) financial statements pertaining to the previous 3 years; and
- (m) other documentation as the Authority may deem necessary.

4.5 Eligibility to benefit from this authorisation process shall also be subject to the condition that the licence or authorisation issued by the foreign regulatory authority in the approved jurisdiction shall be equivalent to the type of authorisation being applied for in Malta.

#### *Guidance 4.1*

*A foreign licence or authorisation which is limited to certain activities only will not entitle the applicant to the right to avail itself of the application process referred to in this section in the event that the applicant proposes to carry out a wider range of activities in Malta than that covered by its foreign licence or authorisation. In such case, the applicant shall be required to undergo the full authorisation process under the Act as is referred to in Section 3 of these Rules.*

#### *Guidance 4.2*

*Eligibility to benefit from this authorisation process shall not exempt the applicant from fulfilment of the requirements prescribed under the Act, which requirements shall be binding on the applicant both at application stage and on an on-going basis. In particular, applicants may still be subject the Authority's assessment as to competence.*

## **5 Authorised Persons acting as Company Service Providers<sup>1</sup>**

### **General**

- 5.1 In terms of the provisos to Article 43(4)(i), 43(13)(i) and 43(15)(i) of the Act, an Authorised Person is also allowed to act as a company service provider as defined in the Company Service Providers Act, notwithstanding the provisions of paragraphs (a) and (b) of each respective subarticle.
- 5.2 Prior to the carrying out of such activities, an Authorised Person shall be required to provide the Authority with the following information:
  - a) Provide the Authority with details regarding the company services to be offered, the target market for such services (EU/non-EU clients) and the expected level of company service business (in numbers not merely in turnover);

---

<sup>1</sup> The rules under this section shall become applicable upon the coming into force amendments to the Trusts and Trustees Act, which will introduce the possibility of Authorised Persons to act as company service providers.

- b) Confirm the level of business, or anticipated level of business, as applicable, of the Authorised Person;
- c) Advise the Authority whether the staff operating on the relevant fiduciary services will also be dealing with the provision of company services, or whether other staff members will be dedicated specifically to work relating to the provision of company services;
- d) Explain clearly, by also providing an organigram, the reporting lines, vis-à-vis the relevant fiduciary business and the CSP business;
- e) Provide the Authority with more details in respect of operational set up, outsourcing and internal control;
- f) Provide the Authority with the marketing strategy which the Authorised Person intends to adopt in order to market the CSP business and to attract new clients;
- g) Submit an updated Memorandum and Articles of Association reflecting the provision of corporate services by the Authorised Person

### **Company Services consisting in Company Formation**

- 5.3 Where the company service being provided by the Authorised Person consists in company formation, prior to the submission of the necessary documents to the Registry of Companies in order to form Maltese Companies (or before instructing a local agent to incorporate a company in another jurisdiction), the Authorised Person shall:
- a) carry out the necessary due diligence checks to identify and verify the unlimited beneficial ownership of the proposed company. Where the proposed company is held within a complex corporate structure, the Authorised Person shall ensure that it has understood and verified the true/economic beneficial owners(s);
  - b) ensure that the proposed name of the company does not breach the applicable requirements under the Companies Act.
- 5.4 Authorised Persons providing the services of company formation shall have procedures in place to:
- a) identify whether the activities of the proposed company 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 whether the persons involved in the proposed company and/or its activities would be deemed to be high risk. Examples include where the beneficial owner would be considered to be a politically exposed person, where the company is a part of a complex structure and where the proposed activities would be regarded as sensitive. Enhanced levels of due diligence and on-going monitoring by the Authorised Person are required in such cases;
- c) assess the level of risk which the formation of the company would present to the reputation of Malta. These procedures should address the way in which the Authorised Person 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 companies:
  - i. Trading in arms, supplying technology or parts connected with defence or providing military security services;
  - 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.

5.5 Authorised Persons shall identify whether the activities of the proposed company 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).

**Company Services consisting in acting as Directors in relation to other legal entities.**

- 5.6 Where the company service being provided by the Authorised Person consists in acting as directors to other legal entities, such Authorised Person shall:
- a) understand and act in accordance with its legal duties as director, and the constitution of the company 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 conflict of interests with it or deal with them in accordance with the company's articles of association;
  - d) know who 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 ensure that any company of which they are a director complies with the Prevention of Money Laundering Act and any Regulations issued thereunder;
- h) consider whether to resign from office and/or 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;
- 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 regulatory or the authority which is entitled to information about the company's affairs;
- l) not attempt to avoid those responsibilities by purposing to contact out of them or assigning them to others.

## **6 Ongoing requirements**

### **General**

- 6.1 The Authorised Person shall co-operate in an open and honest manner with the Authority and shall promptly inform it of any information which may have an impact on the continuation or otherwise of its authorisation, including any updated information regarding the fitness and properness of the applicant, of its directors or other officers, or of its qualifying shareholders, as the case may be.
- 6.2 In the case of a trust or private foundation, the Authorised Person shall at all times be familiar with the objects of any trust or private foundation, as applicable.
- 6.3 In the case of a mandate, the Authorised Person shall at all times be familiar with the terms agreed to with the client as stipulated in the client agreement. For the purposes of this rule, the client agreement shall include at least the following:
  - (a) a description of the services to be provided and the fees charged therefor;

- (b) a record of how and by whom requests for action are to be given;
  - (c) the process to be followed in the event of the resignation of the Authorised Person and the replacement thereof with another Authorised Person; and
  - (d) the process to be followed should contact with the client be lost.
- 6.4 The Authorised Person shall moreover satisfy itself that the trust or private foundation has been established or the mandate has been given for a lawful purpose. The Authorised Person shall seek legal or other advice where necessary.
- 6.5 Where a trust is created by oral declaration, the Authorised Person shall, at the first available opportunity, set out the terms of the trust in writing and, where possible, have such declaration endorsed by the settlor.
- 6.6 The Authorised Person shall have a considered and agreed policy on new client engagements or acceptances, having regard to an assessment of the quality, nature and scale of the proposed services involved and the ability of the Authorised Person to provide such services.
- 6.7 The Authorised Person shall ensure that it fully understands the rationale for the use of the particular legal structure/s relevant to it and that it is comfortable that the reasons are legitimate and the business structure is suitable to achieve the intended results. This standard shall also apply to any party to whom the business of the Authorised Person is delegated provided, however, that the Authorised Person shall retain liability for ensuring that the requirements of this Rule are met.
- 6.8 The Authorised Person shall be required to submit on a yearly basis to the Authority an Annual Compliance Return for Trustees and Other Fiduciaries in the form as may be issued by the Authority. The Authorised Person shall also generally provide the Authority with such other information as the Authority may from time to time require.
- 6.9 Where the Authorised Person is a body corporate, it shall ensure that its business is effectively directed or managed by at least two individuals. Such persons shall be of sufficiently good repute and sufficiently experienced so as to ensure the sound and prudent management of the business. The Authorised Person shall ensure that such persons have undergone formal training in the institutes of trust/mandate/foundation, as the case may be.
- 6.10 The Authorised Person shall promptly pay all amounts due to the Authority as prescribed under the [Trusts and Trustees Act \(Fees\) Regulations](#).
- 6.11 The application fee shall be payable by the Authorised Person upon submission of the application and thereafter a supervisory fee shall become due annually upon the anniversary of the date of authorisation.

## Regulatory Disclosures

6.12 The Authorised Person shall notify the Authority in writing of the following matters:

- (a) a change in address;
- (b) any evidence of fraud or dishonesty by an officer or employee of the Authorised Person immediately upon the Authorised Person's becoming aware of the matter;
- (c) a decision to make a material claim on any insurance policy held in relation to the Authorised Person's business (the notification is to be provided as soon as the decision is taken);
- (d) any proposal to extend its business materially, particularly in the event that the Authorised Person proposes to undertake business unrelated to its authorisation in terms of the Act and these Rules;
- (e) any actual or intended governmental, legal or arbitral proceedings of a material nature by or against the Authorised Person immediately on becoming aware of the matter;
- (f) any material changes in the information provided to the Authority immediately upon becoming aware of the matter. This shall include the obligation to notify the Authority on a continuous basis of any changes or circumstances which give rise to the existence of close links as defined in the Act or which could impinge on the fitness and properness of its officers;
- (g) a breach of any condition of its authorisation as soon as the Authorised Person becomes aware of the breach;
- (h) any significant developments relevant to its resources or to its systems and controls environment; and
- (i) any other material information concerning the Authorised Person, its business or its staff in Malta or abroad immediately upon becoming aware of the matter.

6.13 The Authorised Person shall obtain the approval of the Authority prior to the following events, which events shall not take effect in the absence of such approval:

- (a) a change in the Authorised Person's name or, if different, its business name;
- (b) the resignation or removal of a director or other officer. The Authorised Person shall also request the director or other officer to confirm, by direct communication to the Authority, that their departure had no regulatory implications or to provide relevant details, as appropriate. A copy of such request shall be provided to the Authority together with the notification of departure;
- (c) any proposed material change to the business of the Authorised Person;

- (d) the winding up or transfer of the business of the Authorised Person or the dissolution of the company;
- (e) the conclusion of any outsourcing arrangements between the Authorised Person and specified third parties; and
- (f) the retention of records at any place other than the registered office in Malta of the Authorised Person.

6.14 Where the Authorised Person is required in terms of the Act, any regulations issued thereunder, these Rules or any other applicable law to disclose information to any interested person, such disclosure shall, unless otherwise provided, be made in a durable medium. The following additional requirements shall also be adhered to:

- (a) the information shall be up-to-date, clear, accurate and provided in a manner that is comprehensible to the client;
- (b) the disclosure shall be made in English or in any other language agreed to between the parties; and
- (c) the disclosure shall be free of charge.

The Authorised Person shall also ensure that it has in place appropriate arrangements to ensure the security of information it receives from the client and the secure transmission of any information to clients.

6.15 The Authorised Person shall ensure that its status as an Authorised Person is disclosed in all advertisements and correspondence. The Authorised Person shall ensure that this regulatory disclosure statement shall not imply any endorsement by the Authority or by any other relevant competent authority of the Authorised Person.

### **Duty of Confidentiality**

6.16 An Authorised Person shall observe any obligation of confidentiality that may apply to it in respect of information communicated to it in the course of its business, unless the Authorised Person is authorised to disclose any given information, is required by any applicable law to disclose any such information, or gives information in accordance with the terms of its appointment or in the ordinary course of its administration.

6.17 In maintaining the confidentiality owed to those persons to whom the Authorised Person owes such responsibility, the Authorised Person shall take particular care not to mislead third parties, particularly as regards the origin of the assets and the beneficial interest in the case of a trust or private foundation and the ultimate beneficial ownership in the case of a mandate.

6.18 The Authorised Person shall advise all employees, officers, directors and other persons who may have access to confidential information held by the Authorised Person of the duty of confidentiality. This advice shall be transmitted in writing and upon

employment of the relevant employees. The Authorised Person shall periodically remind such persons of this duty.

### **Retention of Records**

6.19 The Authorised Person shall keep and preserve appropriate records at its registered office in Malta for a period of ten years following the termination of the trust or trusteeship/the mandate/the private foundation or administration, whichever event occurs earlier. The retention of records at any place other than the Authorised Person's registered office in Malta shall only be permissible with the consent of the Authority and only in exceptional cases. The Authority shall also have the right to require the Authorised Person to retain any records for such longer period as it deems fit.

#### *Guidance 5.1*

*Listed hereunder is an indicative list of the records which an Authorised Person is expected to keep:*

- (a) *information on the identity of:*
  - (i) *any co-trustees/mandatories/administrators;*
  - (ii) *the settlor/ultimate beneficial owner/founder;*
  - (iii) *any beneficiaries and their personal circumstances and residences, where appropriate;*
  - (iv) *any protector or enforcer in the case of a trust or any protector or members of a supervisory council in the case of a private foundation; and*
  - (v) *the custodian/s of the assets vested in or administered by the Authorised Person.*
- (b) *a signed copy of the trust deed/client agreement/deed of foundation as defined in these Rules and, in the case of a trust or private foundation, of any letter of wishes;*
- (c) *a full inventory of the assets vested in or administered by the Authorised Person and of all dealings relating to the property;*
- (d) *copies of bank statements and other deposits;*
- (e) *a copy of the deeds of appointment, resignation and removal of Authorised Persons;*
- (f) *the agenda and minutes of meetings held between trustees/mandatories/administrators in the exercise of their fiduciary duties;*
- (g) *the agenda and minutes of board of directors meetings;*

- (h) *annual accounts drawn up in accordance with Article 167 of the [Companies Act \(Cap. 386\)](#) and comprising of at least a balance sheet, capital account and income statement;*
- (i) *accurate accounts and records of each trusteeship in terms of Article 21(4) of the Act and including any accumulation accounts or beneficiaries' income statement;*
- (j) *valuation reports relating to the property vested in or administered by the Authorised Person;*
- (k) *correspondence between Authorised Persons and any beneficiaries and, in the case of a trust, between the Authorised Person and any protector of the trust or the settlor;*
- (l) *correspondence between introducers;*
- (m) *legal or other professional advice sought including instructions pursuant to which the advice was sought;*
- (n) *records of all research, deliberations and decisions; and*
- (o) *an updated list of all the trusts/mandates/private foundations under the administration of the Authorised Person.*

6.20 The accounts and records shall be stored in a durable medium that allows for ready access to the information for future reference by the Authority and any other interested parties.

The following additional conditions shall be met:

- (a) the records allow for the tracing of the various key stages of the relevant fiduciary agreement;
- (b) it is 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 is not possible for the records to be manipulated or altered.

Provided that the Authority shall deem the storage of information in electronic format to meet the requirement of durability for the purposes of this rule.

6.21 The Authorised Person shall maintain financial records so as to permit a thorough and satisfactory supervisory activity and the performance of any audits as pre-arranged. The records maintained shall also be sufficient to enable the undertaking to comply with any notification and reporting requirements.

6.22 The Authorised Person may enter into an outsourcing agreement whereby the duties relating to the storage of records as described in this section are delegated in whole or in part to a third party. The Authorised Person shall ensure that the outsourcing agreement shall provide the Authorised Person, the Authority and any other authority

having an interest in the records with the right of audit of and access to the records held by the third party in terms of the agreement.

- 6.23 Prior to any such delegation as is referred to in the preceding rule and on an ongoing basis thereafter, the Authorised Person shall ensure that the services rendered by the third party are aligned with the policies and procedures of the Authorised Person and are in line with the requirements of the Act, any Regulations issued thereunder, these Rules and any other applicable law.
- 6.24 Notwithstanding any such delegation as is referred to in Rule 5.22 above, the Authorised Person shall remain the responsible person for ensuring that the provisions of these Rules relating to the storage of records are complied with.
- 6.25 The Authorised Person shall ensure that the records required to be stored by it in terms of this section are stored within the jurisdiction of an EU Member State. This requirement shall also extend to any third party to which the Authorised Person has delegated the duties relating to the storage of records in accordance with Rule 5.22 above.
- 6.26 Where the records stored in terms of this section are stored electronically in a data centre, the Authorised Person shall submit to the Authority proof of any certifications held by the data centre and details relating to the controls that have been set in place to ensure effectiveness and best practice. The Authorised Person shall also submit to the Authority an ISAE 3000 Type II report, or equivalent certification, on the third party to whom the storage of records has been delegated, together with a high-level network diagram depicting the transfer of data between the data centre and the registered office, the technology employed for such data transfers and any mitigating controls to ensure that the integrity and confidentiality of data are safeguarded during the transfer.

## **7 Organisational Requirements**

### **Competent and Effective Management**

- 7.1 An Authorised Person shall have effective management and systems that are commensurate with the scale and complexity of its business. These shall include robust governance arrangements which include a clear organisational structure with well defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks it is or might be exposed to, and adequate internal control mechanisms including sound administrative and accounting

procedures, that are consistent with and promote sound and effective risk management of the Authorised Person.

- 7.2 The Authorised Person shall also have appropriate management resources to control its business affairs and to ensure compliance with its legal obligations and standards.
- 7.3 Where the Authorised Person is a body corporate, the board of directors shall be responsible for the proper exercise of fiduciary powers and for ensuring that the company has in place proper policies, procedures and other arrangements, as described in the Rules below.

The board of directors may assign the administration of such of the Authorised Person's fiduciary powers as it considers appropriate to such directors, officers, employees or committees as it may designate in accordance with policies and procedures which provide for appropriate authorisation and signing powers.

- 7.4 The directors of an Authorised Person shall ensure that board meetings are held regularly on at least a quarterly cycle and that the majority thereof are held in Malta.
- 7.5 An Authorised Person which falls under the definition of "public interest company" contained within the Authority's *Corporate Governance Guidelines for Public Interest Companies* is encouraged to adopt those Guidelines. Nothing contained in the Guidelines shall be deemed to override the general rules, laws and principles which regulate public interest companies but they shall be considered to be a general framework to support good governance within the Maltese financial sector.

#### **Adequate Personnel**

- 7.6 An Authorised Person shall have available suitable members of staff who are appropriately trained and competent to discharge their fiduciary duties effectively.
- 7.7 The Authorised Person shall ensure that members of staff are aware of the policies and procedures which must be complied with for the proper discharge of their responsibilities.
- 7.8 The Authorised Person shall formulate and keep up-to-date plans for staff training and development, taking into account the rules hereunder relating to continuous professional development. The Authorised Person shall maintain records of training undertaken by staff.
- 7.9 The Authorised Person shall ensure that the responsibilities of each member of staff are clear and appropriate to his or her qualifications and experience.

- 7.10 The Authorised Person shall ensure that the performance of multiple functions by members of staff does not and is not likely to prevent those persons from discharging any particular function soundly, honestly and professionally.

### **Staff Knowledge, Competence and Continued Professional Development (“CPD”)**

- 7.11 An Authorised Person shall ensure that he or, in the case of a body corporate, the key members of staff shall acquire knowledge and competence with regards to the fiduciary services offered by the Authorised Person and shall undergo periodical training in order to ensure continued professional development (“CPD”).

#### *Guidance 6.1*

*The term “knowledge and competence with regards to the fiduciary services offered by the Authorised Person” refers specifically to knowledge and competence with regards to trust services in the case of a person authorised to act as trustee, mandate services in the case of a person authorised to act as mandatory and foundation services in the case of a person authorised to act as administrator.*

- 7.12 The Authorised Person shall ensure that, where a key member of staff has not acquired the necessary knowledge and competence in the provision of the relevant services, this member of staff shall not provide the relevant services until such member of staff shall have acquired the appropriate experience and qualification.
- 7.13 The Authorised Person shall ensure that, where the key member of staff does not have appropriate experience in the provision of relevant services:
- (a) the inexperienced key member of staff is trained by another key member of staff until he or she is deemed to have gained the appropriate experience;
  - (b) the key member of staff providing the training has the necessary knowledge and competence required by these Rules and the necessary skills to act as a competent trainer;
  - (c) the training provided is tailored to the services to be provided by that key member of staff and covers the requirements of these Rules relevant to those services;
  - (d) during the training period, the person providing the training is present during all client meetings and communications; and
  - (e) responsibility for the provision of the relevant fiduciary service remains with the person providing the training.
- 7.14 An Authorised Person that is a body corporate shall ensure that all key members of staff undertake a minimum of 25 hours per year of CPD, of which a certain amount of hours shall be in relation to the specific fiduciary services offered by the Authorised Person

and of which no more than 5 hours may be in the form only of relevant reading. The requirement of 25 hours shall be pro-rated for part-time employees.

- 7.15 The Authorised Person shall maintain records of all CPD carried out as aforesaid. It shall provide such records on request to the Authority and shall ensure that the records contain information enabling the Authority to assess and verify compliance with these Rules.

Provided that it shall be permissible for the Authorised Person to require its employees to keep their own records and to account thereon to the directors on a regular basis.

- 7.16 The Authorised Person shall be responsible for ensuring that a given area of CPD is appropriate for the staff for whom it is intended. This consideration shall take into account the employee's job description and current duties and may include future development needs. Moreover, the Authorised Person shall review, on at least an annual basis, any development in the training requirements of its staff, including by way of regulatory developments, and it shall take the necessary action to address any such developments. The Authorised Person shall also be required to maintain records of such assessments, the relevant outcome and the action taken.

#### *Guidance 6.2*

*Employees shall achieve their CPD targets by adhering to the requirements of their respective professional bodies, such as the Accountancy Board in the case of accountants. However, where the relevant professional body does not prescribe any requirements as to CPD, an employee shall be deemed to comply with the CPD requirement via any of the methods indicated in the following list by way of example:*

- (a) studying for further qualifications;*
- (b) in-house training, seminars, conferences and presentations;*
- (c) web-based training;*
- (d) one-to-one tuition;*
- (e) reading of relevant professional and trade magazines;*
- (f) personal structured study; and*
- (g) attendance at external training courses.*

#### **Adequate Systems and Controls**

- 7.17 An Authorised Person shall ensure that it has in place the necessary systems, controls and procedures to ensure that members of staff perform their duties in a diligent and proper manner.

- 7.18 The Authorised Person shall ensure that members of staff understand and comply with the established systems, policies and procedures including those dealing with new business acceptance, any distributions of assets, investment reviews and staff training.
- 7.19 The Authorised Person shall have in place a documented business interruption recovery plan which shall take into account all of its critical functions.

### **Complaints Management Policy and Procedures**

- 7.20 An Authorised Person shall ensure that client complaints are properly handled and dealt with in a timely manner.
- 7.21 In order to comply with the preceding Rule, the Authorised Person shall ensure that it implements a complaints management policy. In the case of an Authorised Person that is a body corporate, such policy shall be defined and endorsed by the board of directors or senior management thereof.
- 7.22 The complaints management policy shall be set out in a written instrument and shall be made available to all key members of staff of the Authorised Person through an adequate internal channel.
- 7.23 The complaints management policy shall include procedures that enable complaints to be investigated fairly and possible conflicts of interest to be identified and mitigated.
- 7.24 The Authorised Person shall publish information on its complaints handling process in an easily accessible medium. Such information shall include details on how to make a complaint and an indication of the procedures that will be followed by the Authorised Person in handling the complaint.

#### *Guidance 6.3*

*The abovementioned details on how to make a complaint may include the type of information to be provided by the complainant and the identity and contact details of the person or department to whom the complaint should be directed.*

*The details on the procedures that will be followed by the Authorised Person in handling the complaint may include an indication as to the timeframes envisaged in acknowledging and handling complaints. Furthermore, the Authorised Person should inform of the availability of the office of the Consumer Complaints Manager within the Authority, or of any other means of redress, and of any alternative dispute mechanisms that may be available to the complainant should a dispute remain unresolved.*

*The Authorised Person may consider publication of the required information on its website or in brochures, pamphlets or contractual documents.*

- 7.25 The Authorised Person shall also provide written information on its complaints handling process on request or when acknowledging receipt of a complaint.
- 7.26 The complaints management procedure shall, as a minimum, consist in the following steps:
- (a) **acknowledgement of receipt of the complaint** within 7 days of such receipt;
  - (b) the **gathering and investigation of all relevant evidence and information** regarding the complaint; and
  - (c) **provision of a response** from the Authorised Person to the complainant without unnecessary delay or, at the least, by not later than one month from the date of registration of the complaint. In the event that a response cannot be provided within one month, the Authorised Person shall inform the complainant about the causes of such delay and provide an indication as to when the investigation is likely to be completed.
- 7.27 The response referred to in Rule 6.26(c) shall be in writing and shall include a thorough explanation of the Authorised Person's position on the complaint. It shall also provide information to the complainant as to his/her right to refer the complaint to the Consumer Complaints Unit within the Authority or to any alternative dispute resolution mechanism that may be available in the event that he is not satisfied with the response and any action taken in respect of his complaint.
- 7.28 The Authorised Person shall maintain a register of complaints received and shall ensure that each new complaint is entered in the register within 5 days of its receipt. The register shall differentiate complaints according to cause thereof and shall include, for each complaint, a description of the circumstances relating thereto, of the response given by the Authorised Person to the complainant and of any subsequent action taken.
- 7.29 The Authorised Person shall analyse its complaints handling data on an on-going basis in order to ensure the identification and addressing of any recurring or systemic issues and any potential legal and operational risks.

#### *Guidance 6.4*

*In ensuring compliance with the above rule, the Authorised Person may consider the following steps:*

- (a) *analysis of the causes of individual complaints in order to identify root causes common to different complaints;*
- (b) *determination as to whether such root causes could also affect other processes, including those not complained about;*
- (c) *the correction, where reasonable, of such root causes.*

7.30 The Authorised Person shall be in a position to provide information to the Authority on the complaints received by it and on its complaints handling procedures as and when requested.

## 8 Customer Due Diligence

8.1 An Authorised Person shall have procedures in place to ensure that proper due diligence is carried out before any decision is taken to act for a new customer.

8.2 As a minimum, the Authorised Person shall comply with the provisions of the [Prevention of Money Laundering Act \(Cap. 373\)](#), the [Prevention of Money Laundering and Funding of Terrorism Regulations, 2008](#), and the [Implementing Procedures](#) issued by the Financial Intelligence Analysis Unit (the “FIAU”) in terms of the aforementioned Regulations, together with any other relevant legislation that may come into operation from time to time.

8.3 An Authorised Person shall have adequate policies and procedures in place to ensure that the identity of persons such as the settlor or the protector in the case of a trust, the ultimate beneficial owner in the case of a mandate, the founder in the case of a private foundation and the custodian in relation to any of the foregoing are known to it. To the fullest extent possible, the Authorised Person shall also ensure the identity of any beneficiaries.

8.4 The Authorised Person shall verify the source of all assets introduced into the structure in order that it may be satisfied that they are not of illicit origin.

8.5 The Authorised Person shall request bank references for all the parties concerned (including the settlor and the beneficiaries in the case of a trust, the ultimate beneficial owner in the case of a mandate, and the founder and beneficiaries in the case of a foundation). The Authorised Person shall be obliged to verify the validity of such bank references.

8.6 The Authorised Person shall request each client to confirm in writing that he is acting solely on his own account and not on behalf of any other third persons. Furthermore, each client shall be required to confirm whether -

- (a) he has ever been convicted of any offence (other than a minor traffic offence);
- (b) he has ever been adjudged bankrupt;
- (c) he has ever been the subject of an investigation by a State-, professional or other regulatory body;
- (d) he has ever been director or other officer, shareholder or manager of a business entity which:

- (i) has been the subject of an investigation as is referred to in point (c);

- (ii) has been adjudged bankrupt or compulsorily wound up; or
  - (iii) has made any compromise or arrangement with its creditors or otherwise ceased trading in circumstances where its creditors did not receive or have not yet received full settlement of their claims;
- (e) he has ever had or currently has any direct or indirect beneficial interest in or was ever or is currently a director of any other company registered in Malta.

## **9 Conduct of Business**

- 9.1 An Authorised Person shall conduct its business with integrity at all times and shall not attempt to avoid or contract out of its responsibilities under these Rules.
- 9.2 The Authorised Person shall exercise its fiduciary duties prudently and competently and, in the case of a trust or a private foundation and subject to the terms of such trust or private foundation, shall consider the rights of all classes of any beneficiaries when making decisions affecting the administration of the trust or private foundation, as the case may be.
- 9.3 The Authorised Person shall, in the case of a trust or private foundation, invest, distribute or otherwise manage the trust or foundation assets in accordance with the law and the terms of the trust or private foundation.
- 9.4 The Authorised Person shall deal fairly with all clients and seek to ensure that clients are not misled with regards to the service being provided or the Authorised Person's duties and obligations.
- 9.5 The Authorised Person shall treat the interests of any beneficiaries as paramount (subject to any legal obligations to other persons or bodies) and shall always act with due care, skill and diligence. The level of skills required will vary according to the individual case and on the nature and scale of the Authorised Person's activities.

## **10 Provisions applicable to Authorised Persons appointing Introducers**

- 10.1 The Authorised Person shall advise the Authority of the names and addresses of any introducers appointed by it.
- 10.2 The Authorised Person shall remain responsible for carrying out due diligence procedures and shall not rely on the opinion of the introducer.

- 10.3 The introducer shall be bound by confidentiality as to the means and resources of the client, if aware of them.
- 10.4 The Authorised Person shall not be permit the introducer to pass on any documentation promoting any particular service on behalf of the Authorised Person to a prospective client or to assist a prospective client in the completion of any relevant documentation.
- 10.5 The Authorised Person shall not permit the introducer to receive any funds from clients or to give any commitments on behalf of the Authorised Person.
- 10.6 The introducer's involvement shall be limited to arranging a meeting between the Authorised Person and the client. The introducer may also attend the meeting if required so to do.
- 10.7 The introducer shall not hold himself out to the general public as acting as introducer and should not actively promote its "introducing services".
- 10.8 The client shall not incur charges differentiated according to whether the client approached the Authorised Person directly or through an introducer.
- 10.9 The Authorised Person shall retain records of commissions paid to each introducer and these shall be made available to the Authority upon request.
- 10.10 An introducer shall not act for more than one Authorised Person at any given time.

## **11 Conflicts of Interest**

- 11.1 The Authorised Person shall avoid situations wherein conflicts of interest may arise. In particular, the Authorised Person shall endeavour to avoid the following situations:
- (a) conflicts of interest as between different trusts or private foundations administered by the Authorised Person and as between different clients to whom mandate services are offered;
  - (b) in the case of a trust or private foundation, conflicts of interest as between the business of the Authorised Person and that of any of the beneficiaries of the trust or private foundation administered by the Authorised Person and, in the case of a mandate, conflicts of interest as between the business of the Authorised Person and that of the ultimate beneficial owner.
- 11.2 The directors, being individuals, of an Authorised Person that is a company or, in the case of a body corporate that is not a company, any persons entrusted with the management and administration of such body corporate, shall not act as the directors or be entrusted with the management and administration, as the case may be, of any other Authorised Person unless so authorised by the Authority on an exceptional basis where

the Authority is satisfied that no situation of conflict of interest may arise through the holding of such a position. This Rule shall not apply to the directors or the persons entrusted with the management and administration of the administrator of a private foundation.

- 11.3 Unless authorised so to do, an Authorised Person shall not enter into transactions in which it has a material interest without first disclosing such material interest to the relevant parties.
- 11.4 Subject to Article 21 of the Act, where conflicts of interest do arise, the Authorised Person shall ensure that the circumstances pertaining to the conflict of interest are properly disclosed to the relevant parties and duly documented.

#### *Guidance 10.1*

*The Authorised Person may choose to proceed in any of the following manners to ensure that any conflicts of interest are properly identified and disclosed:*

- (a) ***Maintenance of a register of conflicts:*** *A register of conflicts is a simple and effective method of monitoring actual, potential, or perceived conflicts. The Authorised Person may maintain a conflicts register to record any conflicts that have been disclosed and to assist with the monitoring process. For these purposes, the Authorised Person should also indicate the action taken to manage the conflict.*
- (b) ***Documentation of any conflicts of interest in the minutes of meetings:*** *The Authorised Person may choose to declare any conflicts of interest during meetings and to record such declarations and any subsequent action taken in the minutes thereto.*
- 11.5 In the case of a trust or a private foundation, the Authorised Person shall exercise particular care and attention when taking on any discretionary business in order to ensure that it is able to exercise appropriate independent discretion.
- 11.6 The Authorised Person shall only carry out the activities in respect of which it has been authorised and shall not engage in any other activities unless such other activities are ancillary, incidental and compatible with the services of a fiduciary. The Authorised Person shall only offer such other services to its existing fiduciary clients.

## **12 Internal Management and Controls**

### **Powers of Investment for Trustees and Administrators**

- 12.1 The Authorised Person shall invest and manage or make arrangements for the investment and management of the funds of the trust, mandate or private foundation under its administration in the terms of the purposes, terms, distribution requirements

and any other circumstances of the terms of the trust/mandate/private foundation and, where appropriate, in accordance with the applicable law.

- 12.2 Subject to any increase or restriction to any powers of investment set out in the trust deed/client agreement/deed of foundation or by law:
- (a) the Authorised Person may invest or otherwise apply the property under administration in the purchase or acquisition of property of any kind whether or not income-producing and whether for the purpose of receiving an appropriate total return from income and capital appreciation, controlling or limiting risk or benefiting persons interested in any way whatsoever in the income produced by the property under administration, or for a mixture of such purposes;
  - (b) in investing or otherwise applying the property under administration, the Authorised Person shall act in the manner of a *bonus pater familias* and shall exercise reasonable care, skill and caution in consideration of the purposes, terms, distribution requirements and other circumstances of the terms of the trust/client agreement/private foundation and by exercising reasonable care, skill and caution;
  - (c) in determining whether the Authorised Person has acted in accordance with the above Rules, any decision to invest or otherwise apply the property under administration shall be evaluated in the context of the property as a whole and as part of an overall investment strategy having risk and return objectives reasonably suited to the trust, mandate or private foundation, as applicable.

### **Segregation of Funds**

- 12.3 The Authorised Person shall ensure that the funds under administration are kept at all times separate and distinct from those of the Authorised Person and that they are not co-mingled with funds pertaining to any other trust, mandate or private foundation, as the case may be.
- 12.4 Without prejudice to the generality of Rule 10.3 and where the property vested in or under the administration of the Authorised Person consists of fungible things, such property may be placed and kept in a common pool of identical assets or in a clients' or common account. Where the property is so kept, at least two senior persons within the Authorised Person shall carry out and keep records of reconciliations on at least a quarterly basis in order to identify the assets pertaining to different trusts, mandates and private foundations, as appropriate.

### **Prompt and Timely Execution**

- 12.5 An Authorised Person shall deal effectively and in a timely manner with all requests from those persons to whom the Authorised Person owes responsibility or accountability and having previously sought and obtained any consent or approval as may be necessary.

#### *Guidance 11.1*

*The reference to responsibility and accountability is a reference to the responsibility and accountability owed to beneficiaries in the case of a trust or private foundation and that owed to the ultimate beneficial owner in the case of a mandate.*

*The reference to consent or approval is a reference to the consent of or approval by the protector or enforcer of a trust.*

- 12.6 In the case of a trust or private foundation, where the Authorised Person is granted an element of discretion, he shall exercise such discretion diligently and shall have regard to any relevant factors relating to any present or future beneficiaries.

#### **Delegation**

- 12.7 An Authorised Person shall not delegate any of its duties unless permitted so to do by the Act, these Rules, the terms of the trust/mandate/private foundation, or a court of law.
- 12.8 In delegating any of its duties and/or in the granting of any powers of attorney, an Authorised Person shall have regard to the terms of the trust/mandate/private foundation, to the law and to any powers conferred by the court with regard thereto.
- 12.9 In delegating any of its duties, the Authorised Person shall, where possible, consider a range of competent service providers and shall base its final choice of delegate on a due assessment of the fitness and properness of such service providers. Such considerations shall be duly documented and periodically reviewed by the Authorised Person.
- 12.10 Where the Authorised Person is granted discretion in the case of a trust or private foundation, such powers of discretion shall not be subject to delegation.

#### *Guidance 11.2*

*For illustrative purposes, the discretion referred to in this rule may include such discretion as relates, for instance, to which beneficiaries are to obtain a benefit, the quantity, timing and manner of any benefit to be granted, and any other powers relating to the appointment, application or advancement of any property under the Authorised Person's administration.*

- 12.11 Without prejudice to the provisions of article 25(3) of the Act, the Authorised Person shall not be discharged from its obligations under the Act, any Regulations issued

thereunder, these Rules or any other applicable law by reason of the delegation of any of its duties and/or in the granting of any powers of attorney.

### **13 Fees and Remuneration**

- 13.1 An Authorised Person shall, prior to the commencement of its services, clearly disclose to the client the existence, nature and amount of any fee or, where the amount cannot be ascertained, the method of calculating such amount. The disclosure shall be in a manner that is comprehensive, accurate and understandable.

#### *Guidance 12.1*

*The essential terms of the arrangements relating to the fee may be disclosed in summary form, provided that the Authorised Person undertakes to disclose further details at the request of the client and provided that it honours that undertaking.*

- 13.2 The Authorised Person shall ensure that the fees are at all times transparent and that adequate notice is given before the introduction of any material change in the fee structure.

## **PART B**

- I. COMPLIANCE**
  - II. FINANCIAL RESOURCES**
  - III. PROFESSIONAL INDEMNITY INSURANCE**
- 

### **APPLICATION**

The Rules set out under Part B shall apply to persons, whether individuals or bodies corporate, that are authorised to act as trustees or as mandatories.

---

## **I Compliance**

### **Introduction**

1.1 These Rules shall come into force with immediate effect from date of issue.

Provided that a person already authorised under the Act before the coming into force of these Rules shall ensure that they are in compliance therewith within six (6) months from the coming into force of the Rules.

### **Rules on the Compliance Function**

1.2 An Authorised Person shall appoint a Compliance Officer in order to ensure compliance with its legal and regulatory obligations under the Act, any Regulations issued thereunder, these Rules and any other applicable law.

1.3 The Authorised Person shall establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the Authorised Person to comply with the Act and any Regulations issued thereunder, these Rules, and its obligations under any other applicable legislation.

1.4 The Authorised Person shall maintain high standards of conduct and compliance. It shall establish and maintain a permanent and effective compliance function having responsibility for monitoring and regularly assessing the adequacy and effectiveness of the measures and procedures put in place to comply with Rule 1.5.

1.5 The Authorised Person shall appoint an appropriately knowledgeable and experienced person as its Compliance Officer. Such person shall be locally based.

- 1.6 Prior to the appointment of a Compliance Officer, the Authorised Person shall formally propose such appointment to the Authority together with a Personal Questionnaire duly completed by the person proposed as set out by the Authority. In the event that the Authority is satisfied regarding the adequacy of the proposed appointment, it shall contact the person proposed, in writing, reminding such person of the nature of the role and requiring that person to confirm, in writing, his understanding of the requirements and his acceptance of the responsibilities attached to the role of Compliance Officer. The role of Compliance Officer shall not be assumed prior to the Authority's receipt of such confirmation.
- 1.7 The Compliance Officer shall take on an onerous role involving an extensive level of responsibility and the possibility of censure by the Authority in the eventuality of the Authorised Person's non-compliance with the applicable legal and regulatory requirements. The role shall be assumed only after due consideration of such applicable legal and regulatory requirements and in full awareness of the extent of responsibility.
- 1.8 The Compliance Officer shall at the outset:
- (a) be able to demonstrate appropriate independence of judgement;
  - (b) either hold an appropriate compliance- or other relevant qualification or be in the process of obtaining any such qualification or, alternatively, possess extensive experience in the area of compliance;
  - (c) either have completed the course organised by the IFSP regarding the Law and Administration of Trusts or any other equivalent qualification as deemed satisfactory by the Authority, or shall be able to demonstrate extensive experience in the area of fiduciary services offered by the Authorised Person;
  - (d) be able to devote sufficient time and have sufficient resources to properly discharge the responsibilities of this position.

Provided that the determination as to what constitutes "extensive experience" shall be at the discretion of the Authority.

- 1.9 The Compliance Officer shall have the following ongoing responsibilities:
- (a) the exercise of proper oversight and monitoring of the activities of the Authorised Person;
  - (b) the monitoring and regular assessment of the adequacy and effectiveness of the measures and procedures put in place by the Authorised Person and the actions taken to address any deficiencies in the Authorised Person's compliance with its obligations;
  - (c) the provision of advice and assistance to the Authorised Person in order for it to comply with its obligations;
  - (d) the assumption of the role of principal point of contact within the Authorised Person on regulatory measures;

- (e) the carrying out of any reporting as to compliance as required by the Act, any Regulations made thereunder and these Rules;
  - (f) ensuring, so far as is possible, that no incorrect or misleading information is provided, whether deliberately or negligently, to the Authority.
- 1.10 The Authorised Person shall ensure that the following conditions are satisfied in order for the Compliance Officer to be able to properly discharge his responsibilities:
- (a) the Compliance Officer is granted the necessary authority and resources and is given appropriate status within the Authorised Person to ensure that relevant persons within the Authorised Person react to and consider acting upon his recommendations;
  - (b) the Compliance Officer is granted unfettered access to all relevant information and to all documents and records held by the Authorised Person;
  - (c) the Compliance Officer is not involved in the provision of services or the performance of activities monitored by him in his capacity as Compliance Officer;
  - (d) the method of determining the remuneration of the Compliance Officer does not compromise or have the potential to compromise his objectivity;
  - (e) the Compliance Officer, if not also a director of the Authorised Person, has direct access to its board of directors; and
  - (f) the Compliance Officer is precluded from participating in client-facing activities.
- 1.11 The Compliance Officer shall take steps to ensure that the members of staff of the Authorised Person are familiar with those conditions that are relevant to their role within the Authorised Person.
- 1.12 The Compliance Officer shall not to be in breach or permit any other person to be in breach of any internal control procedures and systems or any condition subject to which authorisation has been granted to the Authorised Person by the Authority. In the event that the Compliance Officer becomes aware of any such breach, he shall bring it to the attention of the person concerned and, where applicable, to the attention of the board of directors or, in the case of a body corporate that is not a company, any other persons entrusted with the management and administration of the Authorised Person. Any such breach and the action taken as a result thereof shall be recorded in writing.

### *Guidance 1.1*

*In the event of any doubts, concerns or queries arising in relation to the role of the Compliance Officer, the Authorised Person shall liaise with the Authority for guidance.*

## **II Financial Resources**

### **Introduction**

2.1 The Rules in this section are made pursuant to and for the purposes of articles 43(4)(i)(d), 43(4)(ii)(d), 43(13)(i)(d) and 43(13)(ii)(c) of the Act.

2.2 These Rules shall come into force with immediate effect from date of issue.

Provided that a person already authorised under the Act upon the publication of these Rules shall ensure that it is in compliance therewith by **25<sup>th</sup> April 2016** as established by article 58 (2) and 58 (3) of the Act.

### *Guidance 2.1*

*Due to the wide variation in the size and structure of Authorised Persons and in the range of activities undertaken by them, the Rules prescribed below shall only serve to establish minimum requirements. To that extent, each Authorised Person shall be responsible for assessing the level of resources necessary to enable it to meet its liabilities as they fall due and to withstand the risks to which it may be subject.*

### **Financial Resources Requirements**

2.3 An Authorised Person 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.

2.4 The Authorised Person shall have a minimum capital of €15,000 which shall be maintained for as long as the person remains authorised under the Act. In the case of an Authorised Person that is a body corporate, the minimum capital of €15,000 and, in the case of a body corporate 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 the working capital of the Authorised Person shall collectively amount to a minimum of €15,000.

2.5 Where the Authorised Person is, without prejudice to article 43 sub-articles (4)(i)(b) and (13)(i)(b) of the Act, also regulated by the Authority in respect of other activities and is in that respect subject to higher capital requirements than those established under the Act and these Rules, these higher capital requirements shall be complied with and shall be deemed to satisfy the requirements of these Rules and thereafter no additional capital shall be required.

2.6 An Authorised Person shall maintain and be able to demonstrate adequate financial resources for the nature and scope of the business it carries out. 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.

- 2.7 In making its assessment of the financial resources required, the Authorised Person 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.
- 2.8 The own funds requirement referred to in the preceding Rule shall also be deemed to be satisfied if such amount is held in the form of liquid assets. The Authorised Person should revert to the Authority in case of doubt as to whether any assets it holds may be considered to be liquid assets for the purposes of this Rule.

#### *Guidance 2.2*

*Liquid assets would include cash and securities that are readily realisable and of high quality, such as sovereign bonds, public sector entity bonds and other bonds all of which having a rating of at least AA- or equivalent.*

- 2.9 The own funds of an Authorised Person that is an individual may be constituted and held in the form of a guarantee or an irrevocable letter of credit issued by a credit institution:
- (a) authorised to carry on business of banking under the [Banking Act](#) (Cap. 370);
  - (b) having its registered office in the EU and authorised in accordance with Directive 2013/36/EU; or
  - (c) lawfully permitted to carry on business of banking 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.

Provided that the following conditions are met:

- (a) the guarantee or the letter of credit is made out in favour of the Authority;
- (b) the content of the guarantee or letter of credit is provided to the Authority for its approval; and
- (c) where the Authorised Person intends to effect any changes to the content of the guarantee or letter of credit, such Authorised Person immediately submits in writing to the Authority the particulars of the proposed changes for the Authority's approval.

### **III Professional Indemnity Insurance Cover (“PII Cover”)**

#### **Introduction**

- 3.1 The Rules in this section are made pursuant to, and for the purposes of, articles 43(4)(i)(e), 43(4)(ii)(e), 43(13)(i)(e), 43(13)(ii)(d) of the Act.

- 3.2 These Rules shall come into force with immediate effect from date of issue.

Provided that a person already authorised under the Act before the coming into force of these Rules and having thereby already been under the obligation to maintain adequate PII in terms of the Act, shall ensure that such PII complies fully with these Rules within 3 months from the coming into force thereof.

### **PII Requirements**

- 3.3 An Authorised Person shall maintain adequate PII cover to ensure that it is at all times able to meet the risks to which it is exposed.

#### *Guidance 3.1*

*Due to the wide variation in the size and structure of Authorised Persons and in the range of activities undertaken by them, the Rules prescribed below shall only serve to establish minimum requirements. To that extent, each Authorised Person shall be responsible for assessing the nature and extent of the risks to which it is exposed and the amount of PII necessary to adequately cover those risks, based on the nature of the business of the Authorised Person and the extent to which the perceived risks can be reduced or avoided.*

- 3.4 The Authorised Person shall ensure that the PII taken out also covers the activities of any of its subsidiaries.
- 3.5 The Authorised Person shall be able to withstand not only normal business risks associated with regular market conditions but also extraordinary risks. To this extent, the Authorised Person shall take out adequate PII to be covered against exposure to extraordinary risk.
- 3.6 The Authorised Person shall, on an annual basis and within one week of taking out or renewing its PII, submit to the Authority a declaration signed by the Authorised Person (if an individual) or by all of its directors or, in the case of a body corporate that is not a company, by any other persons entrusted with the management and administration of the Authorised Person (if a body corporate) stating the name of the insurance company providing the PII and the number of the relevant insurance policy. The declaration shall also include a statement to the effect that the amount insured amounts to the minimum required cover as prescribed in the Rules below.

### **Minimum Amount of PII**

- 3.7 The Authorised Person shall maintain a minimum amount of PII cover which shall be the greater of:

- (a) three times the annual turnover in the previous year ending on its annual reporting date or, for new businesses, the estimated turnover for the first year, from activities authorised in terms of the Act; or
- (b) €2,000,000; or
- (c) in the case of Authorised Persons that are authorised to act as trustees, 10% of the total value of assets held on trust. In cases where trust assets comprise shares in a company, this should be calculated on the value of the total underlying assets and not just the value of the shares.

Provided that an Authorised Person shall not be required by the above tests to maintain aggregate cover exceeding €5,000,000.

### **Further PII Requirements**

3.8 An Authorised Person shall ensure that its PII covers at least the following events:

- (a) breach of duty by reason of negligence, errors, breach of confidentiality, omissions or loss of documents by the Authorised Person;
- (b) liability for dishonest, fraudulent, criminal or malicious acts or omissions by current or former employees or by third parties engaged by the Authorised Person to carry out certain functions;
- (c) liabilities which the Authorised Person might incur in any jurisdiction in which it carries on business;
- (d) liabilities of members of the Authorised Person's staff who, in the course of their duties to the Authorised Person, perform functions in their own names; and
- (e) such other risks as the Authorised Person may from time to time stipulate.

3.9 The Authorised Person shall notify the Authority of any of the following circumstances within seven days from the day it becomes aware thereof:

- (a) any claim on its PII exceeding €15,000;
- (b) any change in any aspect of the PII that was previously notified to the Authority;
- (c) any non-renewal or cancellation of the PII policy, particularly where a subsequent policy satisfying the provisions of these Rules has not been issued;
- (d) any intention of the insurer's or the Authorised Person's to not renew or to cancel the policy or to renew the policy in a manner that will fail to satisfy the requirements of these Rules; and
- (e) any intention of the insurer to decline to indemnify the Authorised Person in respect of any claim under the policy.

- 3.10 An Authorised Person that intends to cease carrying on activities in terms of its authorisation or to sell or otherwise transfer the business to a third party shall arrange for appropriate “run-off” PII in respect of any claims arising from past acts or omissions. Such PII shall satisfy the following requirements:
- (a) it covers a period of at least 2 years following the last policy year;
  - (b) it is of at least the amount stipulated in Rule 3.8 of this Part; and
  - (c) it is made on terms deemed appropriate by the Authority.
- 3.11 The Authorised Person shall provide to the Authority a copy of the PII policy evidencing the insurance cover prior to the surrender of the authorisation in terms of the preceding Rule.
- 3.12 Where the Authorised Person sells the business to a third party, he shall provide the third party with details of the insurance company providing PII in terms of the arrangements made pursuant to Rule 2.18 above.
- 3.13 The PII policy shall be governed by Maltese law.

Provided that the Authority may permit an Authorised Person that is the subsidiary of a parent company established in another Member State or in an approved jurisdiction to be covered by the PII policy of the parent company and/or the parent company and its subsidiaries. In any such case, it shall be permissible for the PII policy to be governed by the law of such other Member State or approved jurisdiction.

- 3.14 The PII policy shall cover the whole territory of the EU.

# PART C

## I. AUDIT

---

### APPLICATION

The Rules set out under Part C shall apply to bodies corporate that are authorised to act as trustees or as mandatories.

---

## I Audit

### Introduction

- 1.1 The Rules in this section are made pursuant to and for the purposes of article 43C of the Act.
- 1.2 These Rules shall come into force with immediate effect from date of issue.

Provided that a person already authorised under the Act before the coming into force of these Rules shall ensure that the reporting requirements contained herein shall be complied with in respect of accounting periods ending on or after 31<sup>st</sup> December 2015.

### Audit Requirements

- 1.3 An Authorised Person shall appoint an auditor registered with the Accountancy Board. The Authority's consent shall be sought prior to the appointment or replacement of the auditor and the Authorised Person shall replace its auditor if at any time it is so requested to do by the Authority.
- 1.4 The Authorised Person shall make available to its auditor the information and explanations it needs to discharge its responsibilities as auditor.
- 1.5 The Authorised Person shall not appoint as auditor an individual and nor shall it appoint an audit firm where that firm or the individual within the firm directly responsible for the audit is:
  - (a) a director, partner, qualifying shareholder, officer, representative or employee of the Authorised Person;
  - (b) a partner or any person in the employment of any person referred to in (a) above;

- (c) a spouse, partner in civil union, parent, step-parent, child, step-child or other close relative of any person referred to in (a) above;
  - (d) a person in any other manner not independent of the Authorised Person; or
  - (e) a person whom the Authority has disqualified from acting as auditor of an Authorised Person.
- 1.6 The Authorised Person shall obtain from its auditor a signed letter of engagement clearly defining the extent of the auditor's responsibilities and the terms of appointment. The Authorised Person shall confirm in writing to its auditor its agreement to the terms of the letter of engagement. The auditor shall provide the Authority with a letter of confirmation, wherein the auditor confirms that its responsibilities as auditor of the Authorised Person have been defined in a signed letter of engagement which has been confirmed in writing by the Authorised Person and the said letter of engagement includes, as a minimum, the matters specified in these Rules. In addition, the letter of confirmation shall also include an undertaking by the auditor that it would report immediately to the Authority any of the circumstances prescribed under Article 43C of the Act.
- 1.7 The letter of engagement shall, as a minimum, include terms requiring the auditor to abide by the following requirements:
- (a) to provide such information or verification to the Authority as the Authority may require;
  - (b) to afford any other auditor all such assistance as it may require;
  - (c) to vacate its office in the event that it for any reason becomes disqualified to act as auditor;
  - (d) in the case of resignation, removal or non-reappointment, to advise the Authority of that fact and of the reasons therefor. The auditor shall also be required to advise the Authority of matters that it considers should be brought to the attention of the Authority in relation to its resignation, removal or non-reappointment;
  - (e) to immediately report to the Authority any fact or decision of which it becomes aware in its capacity as auditor of the Authorised Person and which:
    - (i) is likely to lead to a serious qualification or refusal of its audit report on the accounts of the Authorised Person;
    - (ii) constitutes or is likely to constitute a material breach of the legal and regulatory requirements applicable to the Authorised Person;
    - (iii) gravely impairs the ability of the Authorised Person to continue as a going concern; or
    - (iv) relates to any other prescribed matter.
  - (f) to report to the Authority any facts or decisions as specified in (e) above of any person having close links with the Authorised Person and of which the

auditor becomes aware in his capacity as auditor of the Authorised Person or of the person having such close links.

- 1.8 In the event that the Authorised Person fails to have in office an auditor for a period exceeding four weeks, the Authority shall be entitled to appoint a person to fill the vacancy. Any fees and charges so incurred shall be borne by the Authorised Person.
- 1.9 In respect of each annual accounting period, the Authorised Person shall require its auditor to prepare a management letter in accordance with the International Standards on Auditing and to confirm this fact with the Authority. In addition, the auditor shall also inform the Authority of the following:
- (a) whether proper accounting records have been kept and adequate systems for their control and for the safeguard of client assets and money maintained as required by the Authority during the period covered by the annual financial return;
  - (b) whether the Authorised Person's annual financial return has been prepared in accordance with its audited annual financial statements and whether these are in agreement with the Authorised Person's accounting records;
  - (c) whether the Authorised Person's financial resources requirements meet the requirements of these Rules;
  - (d) whether all information and explanations necessary for the purpose of the audit had been obtained; and
  - (e) whether the Authorised Person is complying with the segregation and reconciliation requirements and obligations incumbent on Authorised Persons in terms of the law and these Rules.

#### *Guidance 1.1*

*As part of the auditor's obligation to ensure proper segregation and reconciliation of assets, the Authority expects the auditor to carry out the necessary checks with any relevant third party custodians.*

- 1.10 Where the auditor is of the opinion that one or more requirements have not been met, the auditor shall include in his report a statement specifying the relevant requirements and the reasons as to why such requirements were not satisfied. Where the auditor is unable to form an opinion as to whether the requirements have been met, the auditor shall specify the relevant requirements and the reasons as to why it has been unable to form an opinion.
- 1.11 In the event that the Authorised Person is in receipt of a letter from its auditor containing recommendations to remedy any weakness identified during the course of the audit, it shall submit to the Authority by not later than six months from the end of the financial period to which the letter relates, a statement setting out in detail the manner in which

the auditor's recommendations have been/are being implemented. Where the Authorised Person has not taken/ is not taking any action in respect of any one or more recommendations in the auditor's letter, the reasons therefor shall be included.

- 1.12 The Authorised Person shall include in the directors' report forming part of the annual report to the members of the company, a statement regarding breaches or other regulatory requirements which have occurred during the reporting period and which were subject to an administrative penalty or regulatory sanction. Where there have been no breaches, it shall be sufficient to merely include a statement to this effect. However, in the event that any breaches have been identified, a summary thereof and of the regulatory sanction imposed shall be provided.
- 1.13 An Authorised Person shall submit a copy of its annual accounts to the Authority within four (4) months from the end of each financial year.

DRAFT

## GLOSSARY

In these Rules, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them. Moreover, any expressions defined in the Trusts and Trustees Act and not defined hereunder shall have the meanings assigned to them in that Act.

|                         |   |
|-------------------------|---|
| “approved jurisdiction” | A jurisdiction which has been approved by the Authority for the purposes of the Act   |
| “Authorised person”     | Unless the context otherwise requires, a body corporate or individual authorised to act in any of the following capacities: <ul style="list-style-type: none"><li>[i] a person authorised to act as the trustee of a trust in terms of article 43(1) or 43(8) of the Act;</li><li>[ii] a person authorised to act as mandatory in the holding of securities and/or immovable for another person in terms of article 43(12) of the Act; or</li><li>[iii] a person authorised to act as administrator, trustee, director or similar functionary exercising control over the assets, by whatever name he may be called, of a private foundation in terms of article 43(12) of the Act.</li></ul> |
| “the Act”               | the <a href="#">Trusts and Trustees Act (Cap. 331)</a>  |
| “the Authority”         | the Malta Financial Services Authority established by article 3 of the Malta Financial Services Authority Act (Cap. 330)  |
| “beneficiary”           | a person entitled to benefit under a trust or in whose favour a discretion to distribute property held in trust may be exercised  |
| “body corporate”        | any entity having a legal personality distinct from that of its members   |

|  |  |
|--|--|
| “client agreement”/“terms of a mandate”      | the written terms of a mandate   |
| “conflict of interest”                       | any situation in which the personal interest of a trustee, mandatory or administrator or the interests which he owes to any other person can lead or can be perceived as leading to a situation where such interests conflict with the fiduciary duties which the trustee, mandatory or administrator owes to the beneficiary or ultimate beneficial owner, as the case may be |
| “deed of foundation”/“terms of a foundation” | the public deed or will creating a private foundation  |
| “director”                                   | a person meeting the definition of “director” contained in article 2(1) of the <a href="#">Companies Act (Cap. 386)</a>  |
| “founder”                                    | the person who creates a foundation  |
| “information in a durable medium”            | information contained in paper format  |
| “key members of staff”                       | members of the staff of an Authorised Person involved in the provision of relevant fiduciary services  |
| “mandate”                                    | the term “mandate” has the meaning assigned to it under article 1856 of Title XVIII of Book Second of the <a href="#">Civil Code (Cap. 16)</a> , specifically restricted to the holding of securities and/or immovable property for another person.  |
| “Member State”                               | a Member State of the European Union   |
| “members of staff”                           | natural persons providing relevant services to clients on behalf of the Authorised Person  |
| “officer”                                    | a person meeting the definition of “officer” contained in article 2(1) of the <a href="#">Companies Act (Cap. 386)</a>   |
| “operating in or from Malta”                 | the existence of an office, branch or other centre of professional or commercial   |

|                                 |  |
|---------------------------------|--|
|                                 | activities of a regular nature in Malta and does not include one or more unconnected and sporadic acts   |
| “person”                        | an individual or body corporate  |
| “private foundation”            | the term “private foundation” has the meaning assigned to it under article 43(12)(b) of the Act  |
| “property”                      | property of any kind or description, whether movable or immovable, personal or real, and wherever situated, and in relation to rights and interests whether vested, contingent, voidable or future   |
| “property under administration” | the property for the time being held on trust, held in terms of a mandate or comprised in a foundation, as the case may be   |
| “qualifying shareholding”       | direct or indirect holding in a company which represents ten per centum or more of the share capital or of the voting rights or which makes it possible to exercise a significant influence on the management of the company in which that holding subsists, and “qualifying shareholder” shall be construed accordingly |
| “relevant fiduciary services”   | fiduciary services provided in terms of the authorisation granted to an Authorised Person  |
| “remuneration”                  | any compensation or reward for acting as a trustee, mandatory or administrator to be paid out of the property under administration in accordance with the terms of trust/mandate/foundation, or otherwise, other than the reimbursement of expenses or indemnification for expenses, liabilities and other claims        |
| “settlor”                       | the person who creates a trust and includes a person who provides trust property or makes a disposition on trust or to a trust   |

|                                 |  |
|---------------------------------|--|
| “terms of a trust”              | the written or oral terms of a trust, expressed or implied, and any other terms made applicable by the proper law  |
| “trust”                         | the term “trust” has the meaning described in article 3 of the Act and includes the trust property, the rights, powers, duties, interests, relationships and obligations under a trust |
| “trust instrument”/“trust deed” | the instrument whereby the trust is created and includes any instrument varying the terms of the trust and also a unilateral declaration of trust                                      |
| “ultimate beneficial owner”     | the person who gives a mandate   |

DRAFT