
The MFSA's Risk Based Approach towards supervision of Trustees and Administrators of Foundations

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**Finance Malta Webinar – Banks in
Malta: Dealing with Trusts &
Foundations**



MFSA Role

- Designated competent authority for the regulation and supervision of trustees and other fiduciaries, including administrators of private benefit foundations
- **Regulatory role:** Advises Minister to issue Rules and Regulations in terms of the Trusts and Trustees Act (TTA)
- **Supervisory Role:**
 - Functions and Powers conferred by law to supervise and monitor the activities of persons/entities licensed by the MFSA
 - To ensure activities conducted in line with the legislative & regulatory frameworks
 - Protection of clients
 - Safeguarding financial system



Regulation of Trustees & Administrators of Private Benefit Foundations



- Regulated since 1988 (Trusts Act 1988) – 2004 major overhaul of legislative and regulatory framework
- All trustees/fiduciaries operating in/from Malta – required to be authorised by MFSA
- Trustees of Family Trusts also regulated (Art 43B TTA) – not regulated in other jurisdictions
- Administrators of private benefit foundations – regulated by MFSA since 2009

Regulation of Trustees & Administrators of Private Benefit Foundations (2)

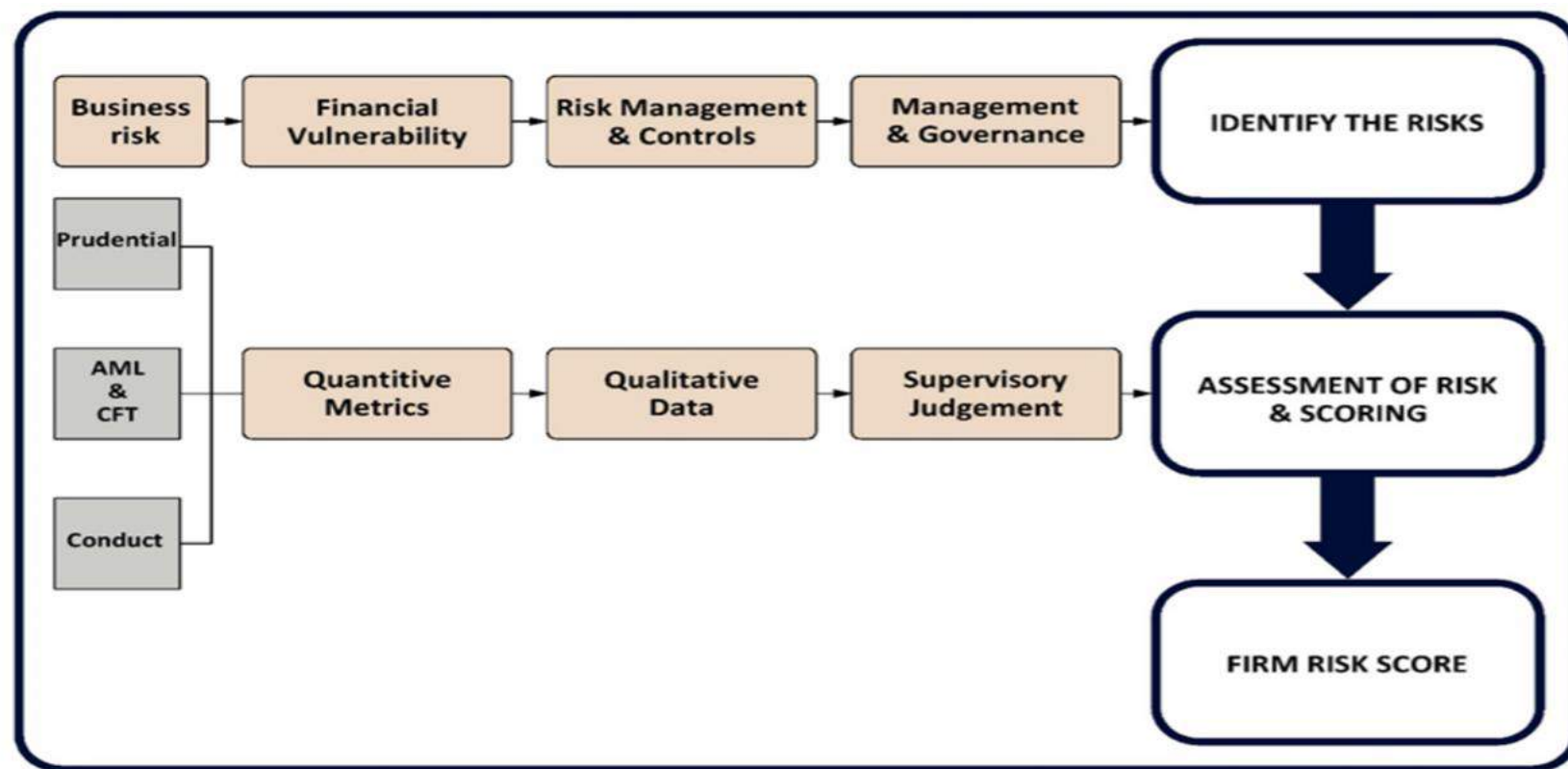
- Rigorous licensing process as applicable to other financial services sectors
- Share capital and PII requirements
- Fit & proper assessments of all qualifying shareholders, management body and other key officials (MLRO, Compliance Officer etc)
- Detailed assessments of business models and systems and controls in place
- Assessment of client acceptance procedures
- Increased focus on AML aspects and competency of MLRO – interviews often conducted sometimes with FIAU involvement

MFSA's Risk- Based Approach to Supervision

MFSA Document - [Risk Based Supervision – Strengthening our Supervisory Approach \(4 June 2020\)](#)

Focus on Key Risks:

Focus on firms that are likely to impose the greatest risks towards the MFSA's achievements of its supervisory objectives



Increased focus on supervision of Trustees & Other Fiduciaries

- Importance of sector had often been side-lined – not mainstream financial services
- Recent years – acknowledgement of inherent and reputational risk in the trustee and fiduciary sector
- Increased focus and more intrusive supervision of the sector
- 167 persons licensed in terms of the TTA – Offsite and Onsite Supervision required to adequately monitor the sector adequately



Offsite Supervision

- **Regulatory and Supervisory Submissions – submitted annually by Trustees & other Fiduciaries**
 - **Annual Compliance Return** – Value of assets under administration, client base, client jurisdictions, governance information, financial information, complaints, litigation etc
 - **Financial Statements** - Audited financial statements



Trusts Ultimate Beneficial Ownership Register (TUBOR) (1)

- MFSA designated authority responsible for Trusts BO register
- Online portal <https://tubor.mfsa.mt>
- Populated with beneficial ownership ("BO") information of trusts generating tax consequences by July 2018 (4th AMLD)
- 2020 – Amendments to legislation (transposing 5th AML Directive) – Trustees required to report BO information for ALL trusts irrespective of tax consequences or otherwise
- Existing trusts – 30 June 2020 deadline to report all trusts
- New trusts + changes – To be reported within 14 days of date of appointment/change
- Subject persons may request access to BO info of a trust on which they are carrying out DD

Trusts Ultimate Beneficial Ownership Register (2)

- Each submission is checked for errors and data verified to the extent possible
- When errors are identified – return to trustee for updating
- Annual Declaration
- Enforcement action taken in case of incorrect reporting and late submissions



Onsite Supervision

- Number of inspections carried out over calendar year
- Firms selected on a risk based approach
- Inspections have continued being carried out remotely during Covid-19 outbreak
- Various focuses of inspections: mainly driven by MFSA's Supervisory Priorities
- Includes verification of reported BO information on TUBOR
- Client files reviewed – onboarding processes and ongoing monitoring
- MFSA obliged to file STRs when necessary
- Enforcement action sometimes taken following inspections



Conclusion



- MFSA recognises higher risk of the trustee and fiduciary sector – increased intrusiveness in level of supervision reflects this.
- MFSA in the process of reviewing and strengthening the regulatory regime for trustees and fiduciaries
- Trustees and fiduciaries as gatekeepers
- Funds in local bank accounts facilitate tracing by authorities
- Collective responsibility on all players to do their part to ensure a robust financial system – awareness of risks and mitigating measures available

Thank you

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