

The private sector challenges for VFA Agents

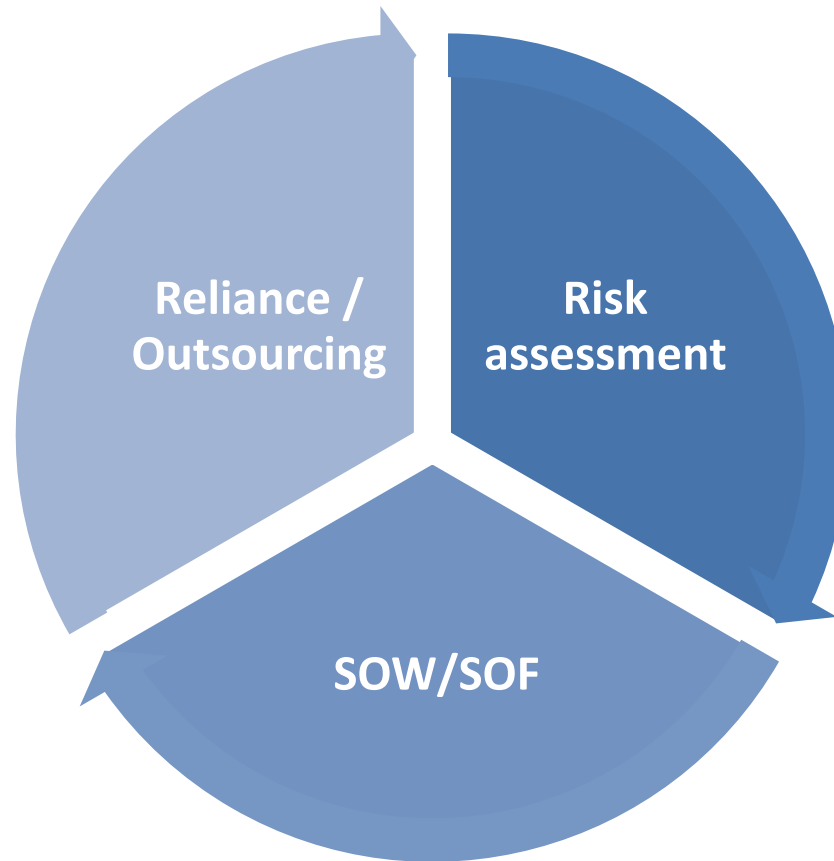
– Implementing and satisfying the FIAU requirements

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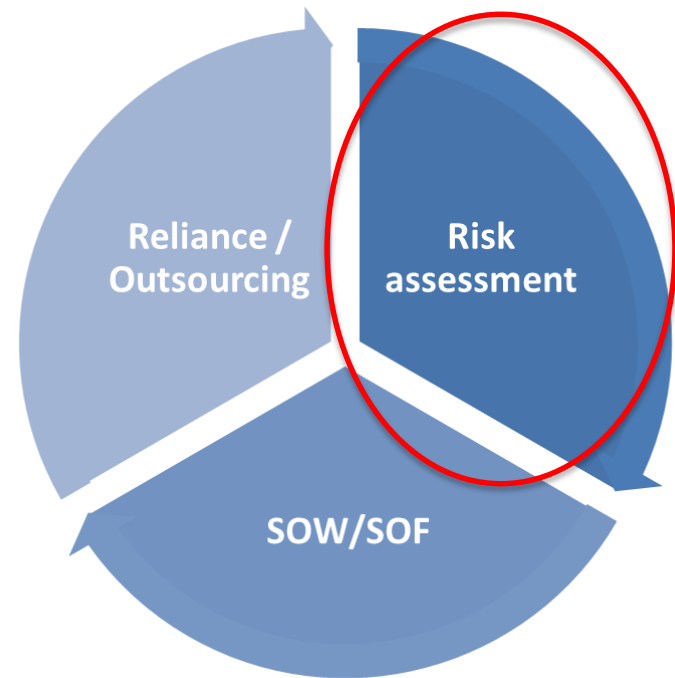
CAMILLERI PREZIOSI
— ADVOCATES —

The challenges



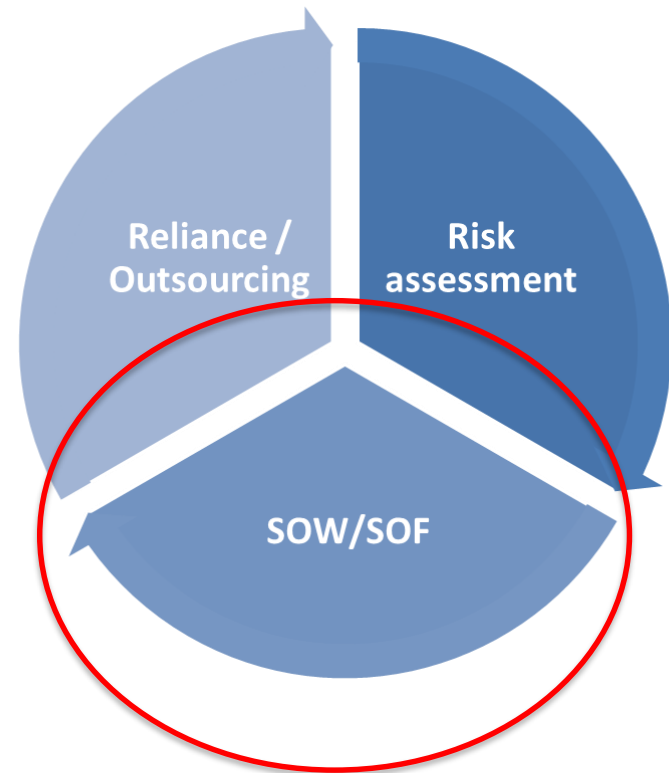
The challenges: *Risk Assessment*

- What factors to consider in the risk assessment?
- How to determine the profile of the underlying clients of a prospective VFA Issuer or VFA Licence Holder?
- Are automated systems better than manual systems?
- How to identify trigger events which would lead to an update of the CRA of a VFA Issuer?



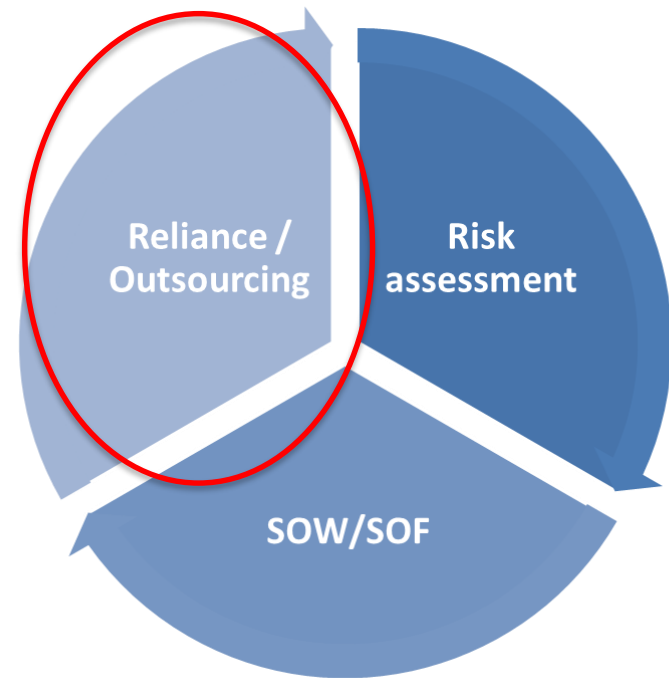
The challenges: *SOW/SOF*

- How to determine the nature and extent of SOW/SOF documentation to be requested?
- How to implement and justify a risk-based approach to SOW/SOF?
- What to request if the SOW/SOF originates from virtual currencies and/or related services?
- How to balance data protection obligations with SOW/SOF requirements?

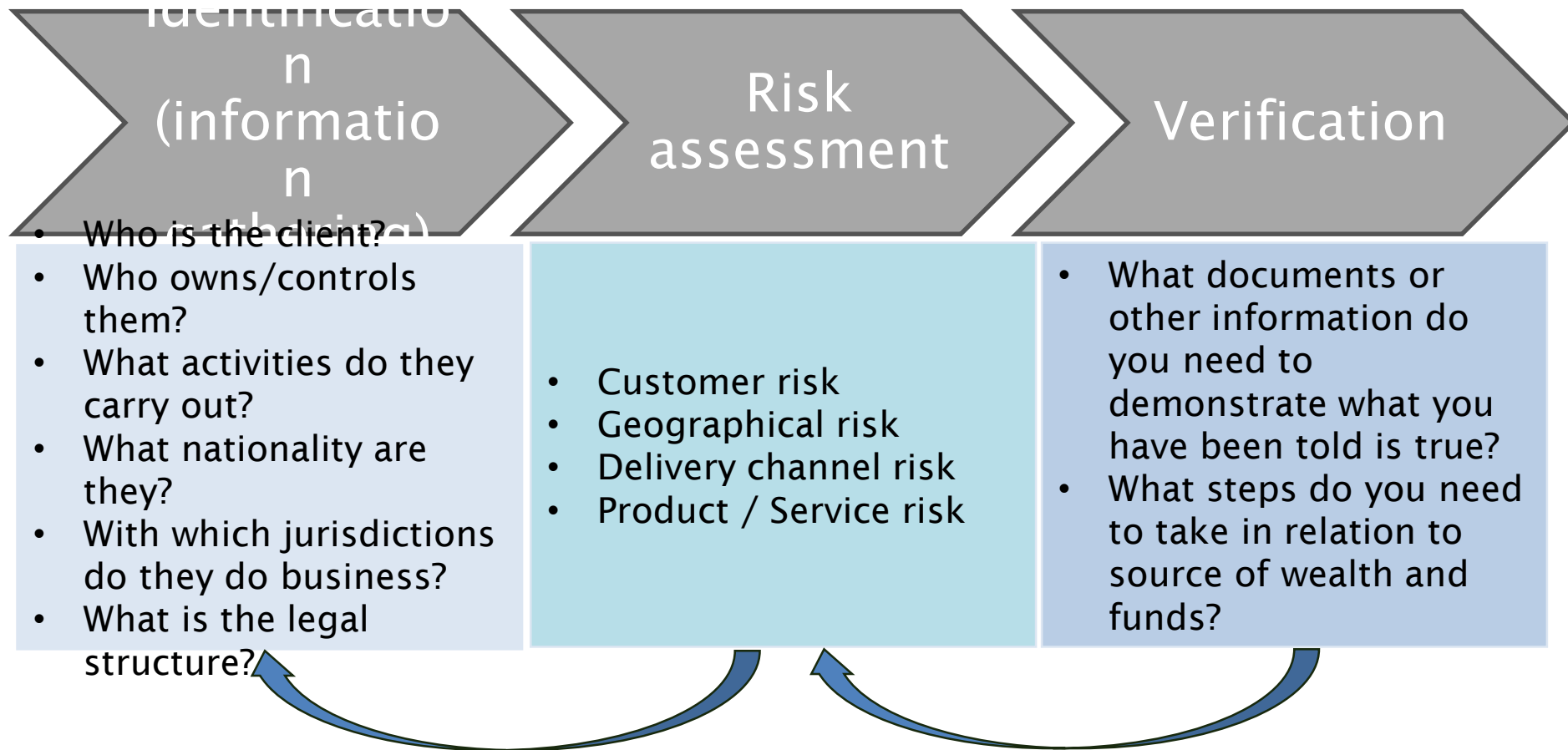


The challenges: *Reliance / Outsourcing*

- Is it worth placing reliance or outsourcing a part of AML/CFT obligations to third parties whilst still being retained responsible?
- What sort of checks should be carried out on third parties and how frequently?
- What can go wrong and how can the VFA Agent plan for it?
- What sort of agreements should be in place in order to safeguard the VFA Agent's interests?



The solutions: *Risk Assessment*



The solutions: *Risk Assessment focus areas*

Economic rationale
and commercial
viability

Jurisdictional risk –
target client base
and BOs / key
individuals

Extent of substance
in Malta

Adverse media
searches; sanctions
screening

Understanding of
AML systems and
controls

Remote vs face-to-
face encounters
with client or BOs

Other licences /
authorisations held
in reputable
jurisdictions

The solutions: *A detailed fit & proper assessment to inform your CRA*

Integrity

- Good repute
- Good standing

Competence

- Sufficient knowledge, experience and expertise in IT, DLT and DLT assets at all times

Solvency

- Sufficient financial resources

The solutions: *SOW/SOF principles*


Ultimate aim is to form a reasonable conclusion that:
(i) customer's wealth has been generated legally; and
(ii) funds used in carrying out transactions are legitimate.

When necessary information should be of sufficient quality and not merely generic.


Collect necessary information, refraining from requesting disproportionate, excessive or irrelevant information.

The solutions: *SOW/SOF stages*

Verification or corroboration of SOW and SOF should be sufficient to form a reasonable belief that the VFA Issuer or Licence Holder has not earned or otherwise acquired their wealth or funds from the proceeds of, or otherwise connected with, a criminal activity.



Reasonable steps should therefore be taken to collect information in order to understand and verify source of wealth and funds, including, for example, requesting documentary sources.



No two issuers or licence holders are likely to be the same and hence you should be able to show a distinction between the nature and extent of SOW and SOF information collected on a risk-based approach.

The solutions: *SOW/SOF stages*

Obtain info on net worth

- Indication of client's net worth through representations obtained from the client.
- There is no need obtain the exact amount and might be impractical to do so.

Obtain info on source of net worth

- Obtain information on where the wealth came from i.e. employment, business, investment, mining, etc.
- The client's failure to voluntarily disclose such information could be a red flag.
- Publicly-disclosed information can give more comfort if available.

Verify info on a risk-sensitive basis

- Focus on the sources that generated the major proportion of wealth.
- Level of proof should reflect the risk profile and address red flags – where the risk of ML/FT is higher, or there are doubts on the veracity of the info collected, supplement by obtaining independent and reliable information and documentation, e.g. contracts, statements, bills, etc.

The solutions: *Reliance / Outsourcing*

Written, signed and formal agreement in compliance with law

Risk assessment on placing reliance or outsourcing

Due diligence on third parties – including ongoing checks

Spot checks and monitoring through KPI/KRI reporting

Contingency plan

Key take-away points

Training

- Train all employees on, *inter alia*, ML/FT risks of VFAs and the VFA sector more broadly
- Keep abreast with new local and international guidance on VFA-related topics

Documentation

- Policies and procedures
- Risk assessment
- SOW/SOF checks
- Rationale and justification for risk assessment outcomes, nature and extent of documentation obtained, etc.

Ongoing monitoring

- AML/CFT audit reports and Compliance Certificates of VFA Issuers
- Ongoing fit & proper assessment, including screening for adverse media and sanctions
- Monitoring of milestones and information to investors

Thank you



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