Guidelines on High Risk Jurisdictions
Kindly note that this document includes information on what is requested for a new Company to be incorporated. However, in accordance with Regulation 9(1)(c) of the Companies Act (Register of Beneficial Owners) Regulations, the Registrar has every right to ask for further information/documents if he thinks there is a good reason to do so.
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Risk Assessment and Due Diligence Proposed Procedures

The MBR makes a distinction between companies being registered by a CSP and others being registered by a non-CSP. The documents requested in the two different scenarios are the following:

➢ Companies delivered for registration by a CSP:

➢ In cases where the UBO is an EU National:

1) Certified Copy of Passport/ID of all officers and shareholders
2) Consent to Use the Registered Office

➢ In cases where the UBO are Non-EU Nationals, the following additional documentation is also requested:

1) A Maltese Bank Reference since UBOs coming from Non-EU jurisdictions will be required to open a Maltese bank account or a Character Letter issued by a warranted Professional

➢ Companies delivered for registration by a non-CSP:

1) Certified copy of passports or ID
2) A Maltese Bank reference or a professional reference issued by a Maltese warranted professional on the shareholders/director
3) Police conduct certificate on each director/shareholder coming from Non-EU jurisdictions
4) Copy of utility bill as evidence of the residential address of the directors and shareholders
5) Declaration of the directors confirming that:
   - s/he is not interdicted or incapacitated or is undischarged bankrupt
   - s/he has not been convicted of any crime affecting public trust or of theft or of fraud or of knowingly receiving property obtained by theft or fraud

6) A Consent to use a registered office in Malta issued by a Maltese warranted professional

N.B. In both scenarios, if the certification of documents is issued by a non-EU professional, such certifications need to be apostilled.

In addition to the above documentation, the Compliance Unit within the MBR conduct screening on the officers (including beneficial owners) of the proposed new company to check the following:

- Any adverse media through a technology-based system (KYC)
- In case, of the directors, any pending documents where they are involved as directors

➢ Using technology to facilitate checking and validation

All new companies and existing companies which submit a change to the Registry Unit (i.e. various share transfers, change in name of the company, change in Beneficial Ownership, change in company registered office, various changes in directors and company secretaries) must be forwarded for screening of the involvements. These involvements will be screened using an existing KYC database within the MBR whereby names are checked against the following variables:

1) PEP
2) Previous Sanctions
3) Current Sanctions
4) Law Enforcement (Includes financial crime, money laundering and/or financing of terrorism)
5) Information from the Financial Regulator
6) Insolvency
In cases where there is a positive hit the information is passed over to the Money Laundering Reporting Officer (“MLRO”) for vetting and carrying out research himself and do the necessary reporting.

Analysis of documentation including corporate documentation and financial statements, business models at incorporation stage. The MBR may also ask for proof to verify whether the company is being set up for a valid reason and if the individual has a legitimate reason to establish a presence in Malta.

➢ Communication with licencing authorities

These authorities include the Malta Financial Services Authorities and the Malta Gaming Authority whereby due diligence is also carried out to the full by such authorities.

➢ Proposed Increase in Due Diligence Documents when founder and or UBO are from High Risk Jurisdiction (“HRJ”)

The FATF and the European commission list several non-reputable jurisdictions The FATF Public Statements\(^1\) mainly classifies the jurisdictions into two main categories which are:

1) Jurisdictions which are subject to a FATF call on its members and other jurisdictions to apply counter-measures to protect the international financial system from on-going and substantial money laundering and funding of terrorism risk which originate from the respective jurisdictions (High Risk Jurisdictions subject to a call for action); and

2) Jurisdictions with strategic AML/CFT insufficiencies that have not yet made the adequate progress required and are still subject to FATF call on its members to consider risks arising from any deficiencies which are associated with each jurisdiction (Jurisdictions under increased monitoring). Countries for both categories named are included in the below

footnotes. For countries which are included in these lists\textsuperscript{2,3} the MBR will be requesting additional documentation for the respective Beneficial Owner, Director or Secretary involved.

3) Jurisdictions which according to the National Risk Assessment are classified as high-risk jurisdictions will be also requested to submit additional documentation as being mentioned later in this document.

In order for MBR to strengthen its compliance work and further fights the issue of Money Laundering and Funding of Terrorism, it is being proposed that in case where the founder and/or beneficial owners are coming from jurisdictions that are high risk and jurisdictions under increased monitoring in accordance with FATF standards (http://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/call-for-action-june-2020.html) and jurisdictions identified by the European Commission that have weak anti money laundering and terrorist financing regimes (https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-supervision-and-risk-management/anti-money-laundering-and-counter-terrorist-financing/eu-policy-high-risk-third-countries_en) as previously mentioned, the company should be delivered by a Corporate Service Provider and in accordance with Regulation 9 (1)(c) of the Companies Act (Register of Beneficial Owners) Regulations submit the following additional documentation:

- Structure Chart which include all layers of shareholding with percentages;
- Source of Funds Declaration;
- Declaration by a CSP licenced by the MFSA that due diligence has been conducted and confirm that such due diligence was successful;
- Source of Wealth is to include legitimate assets which can be confirmed;
- Has a bank account in Malta or has a Maltese national acting as director.
- In case of complex structures ask for a legal opinion on such structure.

Source of funds and source of wealth should be verified since questions may arise if:

- Share capital is deposited in banks coming from jurisdictions with AML/CFT shortfalls;

\textsuperscript{3} Refer to Footnote 1
• PEPs are involved;
• Changing accounts between payments;
• Money comes from payment services providers or electronic money institutions;
• Preference for payments of annual fees and penalties in cash or other unusual payment requests;
• Sudden unexplained share transfers or pledging; and
• Court cases by companies that are affiliated with jurisdictions with AML/CFT shortfalls

Payments will also be required to be channelled through a Maltese bank account in the director/shareholder name.

Amend the law to state that it is obligatory to have the BO form submitted by a CSP if there is no Maltese director or no CSP as company secretary.

➢ Risk Assessment for Onsite Inspections

Onsite inspections are conducted on a risk-based approach. The two main factors which determine the risk of the company are the nationality of the beneficial owner and the activity of the company. The Compliance Unit follows the rating given to each Country in the National Risk Assessment.

However, there are other variable which the compliance unit considers in choosing a company for an onsite inspection such as the following:

• BO Form not yet submitted
• Companies with termination of services by CSPs and still haven’t found a new CSP
• Frequent changes in shareholders (even if low risk)
• Complex Structures (i.e. considerable amount of companies as shareholders to eventually arrive to the beneficial owner)
➢ Conducting more frequent Onsite Inspections on same companies

In order to keep track record and monitoring of companies, the MBR will be conducting more onsite inspections (i.e. on a yearly basis) on same companies (which have already been reviewed), especially those having frequent/continuous changes in directors and/or company secretaries. This would apply for both high and low risk Companies as the MBR would consider the frequent changes as a red flag and thus the Company would be automatically selected for an onsite inspection. Such a matter would normally be highlighted by the desk officer in charge of the company, but it could also be triggered by the officials within the Compliance when conducting the screening on the MBR’s database.