



THE INSTITUTE OF
FINANCIAL SERVICES
PRACTITIONERS

CODE OF
STANDARDS AND ETHICS

REVISED EDITION
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Part I

General provisions

1. INTRODUCTION

This Code of Ethics has been prepared by the Standards and Ethics Sub-Committee of the IFSP (hereinafter referred to as 'the Committee') pursuant to clause 8 of the Statute. As most of the Members of the IFSP are members of different professions each of which already have their own rules of ethics, these Rules have been prepared on the assumption that basic concepts of professional behaviour are already known and explained in detail in the specific sets of rules of ethics already in

2. SUPPLEMENTAL NATURE OF THESE RULES

2.01 **These Rules** of Ethics (the 'Rules') are not intended to substitute rules of ethics already in force for each of the professions of which the Members of the IFSP form part. At this point in time, the following professions have been identified: advocates, accountants, auditors, stockbrokers, insurers, fiduciary service providers and trustees.

2.02 **For the purposes** of these rules, the services provided by the Members of the Institute have been identified as including the following:

- **Legal Services:** Provided by Members of the legal profession;
- **Corporate/Structural Services:** Provided by all the Members of the Institute and include amongst others providing advice on structures, the setting up of companies, divisions and amalgamations and administrative/back-office services.
- **Accountancy and Auditing Services:** Provided by the Members of the accountancy profession
- **Investment Advice:** Services provided by fund managers
- **Trust Services:** Services provided by all the Members who are qualified in trust law.

2.03 **A breach** of the ethics of a Member of the rules of ethics binding him as such a professional, is a breach of these Rules without the need of any further enquiry.

2.04 **The IFSP** recognises all decisions of the relevant supervisory boards pertaining to each profession.

2.05 **A complaint** against a Member of the IFSP can be based on these Rules or the rules of ethics in force in relation to the profession to which a Member belongs and the Committee shall not be excluded from determining a complaint on the grounds that a supervisory body for any specific profession has jurisdiction to hear such complaint, is hearing such complaint or has dismissed such complaint.

It is however noted that the Committee will seek to co-ordinate its activities with those of more specialised supervisory bodies and not to duplicate efforts, thus starting from the assumption that a decision of such other board will be recognised and followed by the Committee, the Committee determining what consequences such breach or otherwise is to have only in so far as the IFSP itself is concerned.

3. APPLICATION OF THESE RULES

To the extent that a Member of the IFSP is not bound by rules of professional ethics or the rules which bind him do not cater for matters dealt with in these Rules, then these Rules will be the principal Rules of Ethics applying the Member

Part II

Fundamental Principles

4. HONESTY AND INTEGRITY

- 4.01 **All Members** of the IFSP are bound to act honestly and with integrity at all times. Members are bound to adhere to the law and the truth at all times. Members are expected to act fairly and reasonably in the interest of clients, colleagues, in the interest of the financial services industry and in the national interest.
- 4.02 **Members should** refrain from being accomplices to a breach of law or from organising schemes based on misrepresentation of facts to evade the application of the law.

5. PROFESSIONAL COMPETENCE

- 5.01 **Members of the IFSP** are expected to act efficiently and competently and not to undertake any tasks when they lack the resources to address the clients' requirements or are insufficiently aware of the technical matters on which they may be asked to act.
- 5.02 **Members** must act with due care at all times .

6. CONFIDENTIALITY AND DISCRETION

- 6.01 **Members of the IFSP** should respect the confidentiality of information relating to their clients and not seek to benefit from knowledge achieved in connection with a client's mandate in any manner without the express consent of the client.
- 6.02 **Discretion** should at all times be exercised in relation to projects and activities of clients.
- 6.03 Unless required by law, information relating to client's matters **should not be divulged** in any manner.
- 6.04 Any information obtained by a **Member** directly or indirectly through a breach of confidentiality shall not be used by such Member in any manner.

7. DISCLOSURE

Clients are entitled to full information about their affairs and the rules applicable to them and their property. Members shall provide all relevant information to clients after understanding the circumstances of each case. Such disclosure shall be a duty of the Member at all times during a professional relationship.

8. CONFLICTS OF INTEREST

- 8.01 Members should not act on instructions of a client if there exists a **conflict of interest** or a potential conflict of interest.

- 8.02 Should two clients consent to a Member acting for both of them in a situation which can lead to conflict, the Member must:
- a. obtain such consent from both parties in writing;
 - b. inform both parties of the consequences of a conflict developing;
 - c. not act for any party if a conflict develops unless he has expressly informed the other party that he would be free to so act;
 - d. obtain an express waiver by both clients of the duty of confidentiality in relation to the task.

9. CLIENTS' MONIES

- 9.01 A Member should keep clients' monies separate from his own, should not do anything other than as instructed and should immediately return such funds on demand.
- 9.02 If a Member is granted with instructions, or if reasonable in the circumstances due to the amounts involved and the time during which funds are to be held, he shall place clients' monies in an interest bearing account.
- 9.03 Nothing should be done which could impair the right of the client to immediate return of the funds on demand, other than bank arrangements in relation to the earning of interest which in any case should be revocable.

Part III

Administrative Principles

10. CHARGING

- 10.01 **Members should generally maintain** a tariff of charges and inform clients of their charging system and tariffs and where possible estimate charges for the task involved.
- 10.02 If a quotation is provided, **the Member should respect such quotation** except in exceptional circumstances of which the client is informed as soon as they develop. When no quotation is given charges should be reasonable and broadly in line with any estimate given.
- 10.03 As a rule, **resources applied to a task** should be commensurate to the requirements of a case and should not be excessive compared to the benefits achieved by clients.
- 10.04 **Billing should be detailed** and regular and if there is any request for information or review by client, the request should be received positively and due satisfaction given to the client.
- 10.05 Funds in hand held for a client **should never be applied to fees** unless express instructions are given by the client for such an act either on remittance or subsequently.
- 10.06 Should a **task be completed or instructions terminated** for any reason and funds belonging to a client are in possession of a Member, the Member must, as soon as possible provide a statement of funds held and as soon as possible request instructions from the client in relation to funds and act accordingly.
- 10.07 **Claims for fees due or disbursements** should immediately be made on providing clients with a statement and if clients do not accept the claims, then a reasonable retention can be made by a Member provided that he informs the client of his right to complain to the Committee.
- 10.08 **In the case of a complaint**, the Committee shall decide what is reasonable in the circumstances.
- 10.09 **There should not be hidden or unexpected or unexplained charges** and Members should not agree to receive commissions from client's work or in relation to it, unless fully disclosed to client and fully credited to client's benefit.

11. TERMINATING INSTRUCTIONS

- 11.01 A Member of the IFSP should **not act for any client who seeks to break the law**, act dishonestly or dishonourably. If instructions have already been taken, then a member should seek to disengage in a reasonable manner by providing client with adequate notice to seek alternative advice and assistance.
- 11.02 Instructions should be terminated **by notice in writing** to the client.
- 11.03 **Any funds or property** held by the Member belonging to the client should be immediately returned.

12. TRANSFER OF A CLIENT TO OR FROM ANOTHER MEMBER

- 12.01 A client is **entitled to change advisors** at any time, however advisors should not invite clients to dismiss their current advisors, especially when the client is to become a client of a new advisor on the tasks previously covered by the old advisor unless there are adequate professional reasons to do so.
- 12.02 Subject to clause 12.01, members should therefore **not seek to represent clients** who they know are already represented by other Members. This does not apply:
- a. to product suppliers such as banks or fund managers;
 - b. to services outside the competence of an existing advisor, provided the new advisor shall not seek to provide services of the existing advisor in addition to his own, or promote the services of a third advisor complimentary or connected to his own.
- 12.03 **Members should seek to protect and defend** the integrity and reputation of other Members. This shall also apply in cases where the client insists on changing advisor. In such cases, a Member can accept to act for a client instead of an existing Member on the following conditions:
- a. he shall demand that the client pays all fees and costs of the previous advisor;
 - b. he shall communicate with the previous advisor to inform him of the circumstances, confirm that there are no professional reasons why the appointment should not be accepted and ensure payment has been received;
 - c. if client has a dispute with the previous advisor and refuses to pay fees and disbursements then the new advisor shall seek to ensure that:
 - i. the disputed sums are deposited with the new advisor, the Committee or such other third party to which the previous advisor and the client would agree, until an arbitrator is engaged;
 - ii. the matter is referred to arbitration in Malta or if both parties agree is referred to another dispute resolution method including the courts.
 - d. In case of urgency, steps (a) to (c) can be carried out as soon as practicable.

13. REFERRALS

It is permissible for Members to recommend and refer a client to other Members for services, but no Member shall make it a condition of service that any other professional act in a particular case or otherwise put pressure on a client to use a particular advisor or service provider.

14. SECOND OPINIONS

- 14.01 It is permissible for a Member approached to give a second opinion by a client to provide such opinion; however the Member so approached should:
- a. provide the opinion without negatively criticising the previous opinion of the provider of that opinion even if he disagrees with it;
 - b. not seek to take over the client from the other Member.

- 14.02 Members should seek to **co-operate** in such cases in the best interests of the client.
- 14.03 In cases where clients insist they do not wish the professional to divulge the fact that a second opinion is being sought, the **confidentiality shall be respected** subject to 14.01 (a) and 14.01 (b) above.

15. CONSULTANCIES

- 15.01 Members are encouraged to seek the services of such other professionals as may be appropriate to the task involved in the interest of the best services to the client.
- 15.02 If Members are engaged as consultants, they shall be treated as consultants to the Member who shall be responsible for their fees and costs unless otherwise expressly agreed.
- 15.03 In acting as a consultant, a Member shall not seek to develop a professional relationship with the client or in any way seek to displace the engaging professional in his role with the client.

16. DISPUTE RESOLUTION

Disputes between Members and between Members and clients should be preferably resolved by arbitration in Malta in terms of the Arbitration Act 1996 or other peaceful means.

17. COMPLAINTS

The complaints procedure shall apply in case of any complaints against a Member. Complaints should be made to the Committee in writing. Annex 1 hereto outlines the complaints procedure.

Part IV

The Jurisdiction

18. PROTECTING THE REPUTATION OF THE JURISDICTION

All Members of the IFSP need to recognize that they have a duty of care to ensure that they do not harm the reputation of Malta as a jurisdiction. This duty of care is also towards other operators in our market as well as to the thousands of individuals whose livelihood depends on financial services.

As Members of the IFSP **if our reputation is tarnished** this could also affect negatively the reputation of our jurisdiction. Similarly if the reputation of our jurisdiction suffers Members of the IFSP will suffer as well albeit in an indirect way.

Each Member of the IFSP needs to bear in mind that we live in a very competitive world and that financial services is an industry that is particularly mobile.

There are of course numerous ways that the reputation of a jurisdiction and/or that of an IFSP member can be affected negatively and what follows are a few examples-

- a. Aggressive tax planning by an IFSP member;
- b. Inappropriate marketing of the jurisdiction;
- c. Making unjustified critical statements of other jurisdictions and/or of other practitioners;
- d. Making unrealistic promises to clients in a bid to secure work;
- e. Promoting the jurisdiction aggressively and exclusively for tax reasons;
- f. Advising clients to set up a structure with no substance when the proposed operations clearly warrant otherwise;
- g. Advertising of professional services in publications usually associated with tax havens;
- h. Assisting journalists in writing articles about our jurisdiction without carefully weighing the consequences sensational and inaccurate statements can have;
- i. Negative media coverage resulting from the above.

Members of the IFSP need to bear in mind that a good reputation, once lost, is very hard to regain.

This Code of Ethics strongly recommends to all Members of the IFSP that their behaviour keeps in mind at all times the collective and long term interest of all practitioners as well as of our jurisdiction.

Part V

Annexes

A1. STANDARDS COMMITTEE, RE CLAUSE 16

- A1.01 **There shall be a Standards Sub-Committee**, which shall be chaired by the Vice-president of the IFSP.
- A1.02 The Standards Sub-Committee shall have **full powers** to ensure that members do not infringe any rules promulgated by the IFSP or in any way harm or bring into disrepute the IFSP or its members.
- A1.03 The Standards Sub-Committee **shall decide upon any complaint** made to it after having heard representations and, besides reprimand, shall have the power to impose fines not exceeding €250 upon defaulting members, their suspension, and/or withdrawal of membership from the IFSP.
- A1.04 The Standards Sub-Committee shall have the power, **in the case of a serious breach of ethics**, to recommend to Council that the name of the practitioner in breach be published in the newspapers. The Council shall decide upon such recommendation during a Council meeting.
- A1.05 An **appeal** shall lie from any decision of the Standards Sub-Committee to the Council whose decision shall be final.