

FEEDBACK BY THE MALTA CHAMBER

Consultation on the Proposed Enhancements to the Company Service Providers Framework

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INTRODUCTION

The Malta Chamber (TMC) welcomes the opportunity to contribute to this public consultation on the proposed enhancements to the Company Service Providers (CSPs) framework (Ref: 07-2024). Acting as a representative of the private sector, TMC is committed to fostering a regulatory environment that supports good governance, compliance, equity and competitiveness, while ensuring that the operational realities of its members are taken into consideration.

This document summarises the feedback from our members in the CSP sector regarding the proposals put forward by the Malta Financial Services Authority (MFSA). Their insights highlight the potential implications of these proposed changes.

FEEDBACK

1. Do you agree with the general concept of the proposed revisions to the legal framework introducing the two new concepts of Registration and Notification?

Firstly, TMC expresses overall support for the increase in the de minimis threshold from 2 to 5 involvements for individuals providing directorship or company secretary services without doing so "by way of business" as defined in the public consultation document. This change can benefit individuals who have recently retired from the profession and wish to take up directorship roles. The new threshold will encourage more experienced professionals to take on these roles, thereby strengthening company boards and indirectly enhancing our financial jurisdiction.

Regarding the notification requirement, submitting a notification form for each involvement, including a single directorship, may be burdensome. The TMC believes that there should be a more equitable balance between individuals with an employment agreement and individuals without an employment agreement. As it stands an individual with an employment agreement covering five involvements would not be required to notify the MFSA, whereas an individual with only one involvement, but without an employment agreement, beneficial interest, or family relationship, would still be required to submit a notification.

Furthermore, there are other significant concerns about potential competitive disadvantages and the risk of creating an uneven playing field. Specifically, the introduction of the new 'Registered Persons' category allows smaller providers to operate with fewer regulatory restrictions. This disparity could undermine the efforts and investments of companies that have made significant investments in governance, compliance, Professional Indemnity Insurance, share capital, operational structures, and risk standards – they are being potentially put at a disadvantage.

Waiving the requirement for a separate compliance function because these individuals are already fulfilling the compliance role themselves is not consistent with the approach applied to other types of CSPs who, even when appointed as directors, are still subject to the compliance function requirement. For instance, in the case of company formation, the compliance function might not be necessary, as it is an occasional transaction rather than a business relationship.

Furthermore, establishing compliance frameworks for CSPs involves significant costs, and many larger CSPs have made substantial investments to meet the stringent requirements of Class B and C licenses. Introducing lighter regulatory categories, risks devaluing these investments, potentially discouraging further spending on compliance infrastructure and weakening the industry's established compliance culture. Additionally, less rigorous compliance requirements may increase exposure to unaddressed risks, particularly in preventing money laundering and terrorist financing. Uniform thresholds are essential in maintaining consistent, high standards across all CSPs. Furthermore, this proposal risks promoting regulatory arbitrage, where firms may deliberately segment their services or operate below specific thresholds to evade stricter controls and reporting. Such practices could create compliance gaps and elevate systemic risks within the industry.

2. Do you agree with the creation of a specific rulebook for Registered Persons and the proposed streamlining of regulatory submissions?

Administering multiple CSP categories with varying thresholds and reporting obligations could place additional strain on the MFSA's resources – MFSA needs to ensure that it is properly resourced in terms of human resources with the required skills and expertise as well as technology to facilitate monitoring. This increased complexity may divert attention from overseeing high-risk entities, reducing the overall efficiency and focus of regulatory supervision. Introducing multiple compliance categories could also create inconsistent expectations across the CSP sector, leading to disparities in regulatory standards. Such inconsistencies might encourage firms to scale back compliance efforts to reduce costs, ultimately increasing the sector's risk profile.

Streamlining regulatory submissions to the MFSA and the Financial Intelligence Analysis Unit (FIAU) into a single amalgamated annual submission should apply to all CSP licenses, not just the proposed category. The current overlap between FIAU and MFSA reporting creates inefficiencies and adds unnecessary administrative responsibilities. TMC supports simplifying this process, provided all regulatory obligations are met, as it would ease the burden on the business community while maintaining compliance standards.

3. What are your views on the Authority's proposal to extend the number of involvements of Class B Under Threshold CSPs to 20 involvements?

TMC believes that the threshold requirements are to remain unchanged. CSPs that have already made significant investments to obtain Class B or Class C licenses to exceed the Under Threshold Class B limits (currently capped at 10 involvements) would face a competitive disadvantage under the proposed changes. Furthermore, it is assumed that having 20 directorships demands a higher level of sophistication, robust systems, and strict compliance. Relaxing regulations for CSPs operating at this scale distorts market fairness, disadvantaging those that uphold more rigorous standards. Additionally, sophisticated money launderers

could exploit weaknesses in Malta's CSP regulations by targeting service providers subject to reduced oversight, increasing the sector's vulnerability.

GENERAL COMMENTS AND CLARIFICATIONS

Regarding the first proposal, we seek clarification on several aspects of the notification requirements. Firstly, does the notification obligation apply to all individuals (Malta, EU, and non-EU nationals) offering directorships not "by way of business"? If so, this would imply that a notification must be submitted on behalf of foreign directors, for the majority of company setups. Furthermore, we seek clarification on the rationale behind the limit of up to 2 group entities. Does this mean that for instance, the two groups could each have up to 10 companies, but the remaining involvements must be standalone companies? How would the MFSA be impacted if the 5 involvements were in 5 different groups, each consisting of a trading and a holding company, rather than from 5 standalone entities? Additionally, we would appreciate further clarification on the term "family relationship" and whether this will be formally defined. Moreover, in the event that a director resigns, is there a requirement to submit a new notification to the MFSA to record the resignation? Finally, we kindly request confirmation that individuals who are required to submit notifications are not considered subject persons under anti-money laundering obligations.

In terms of the second proposal on the category of 'Registered Persons', given that these individuals are no longer required to register on CASPAR or submit REQs to the FIAU, are they still considered subject persons?

Finally, TMC recommends that the MFSA consider providing an exemption for independent non-executive directors appointed to Maltese-owned family businesses (not "by way of business"), for those family businesses registered with the Family Business Office, from the notification requirements. This would allow such businesses to access the expertise they need without being hindered by the limitations of the current proposal. While it is essential to safeguard the quality and professionalism of directors, we must recognise that family businesses, particularly those in transition from one generation to the next, face unique



challenges in securing the necessary expertise at the board level. We acknowledge that the MFSA's intention is to ensure that all directors maintain high standards, but family businesses often rely on trusted consultants who may not have initially intended to take on directorial roles. Therefore, we suggest that the MFSA consider exempting these specific family-owned businesses from the notification requirement, ensuring the exemption is structured in a manner that maintains regulatory integrity while providing practical support for family businesses.

CONCLUSION

TMC acknowledges MFSA's ongoing efforts to refine the CSP framework, ensuring alignment with international standards. Concurrently, fostering sustainable growth in Malta's corporate services sector requires a balanced approach which simplifies processes and reduces unnecessary bureaucracy. Such measures must not be misconstrued as inherently compromising corporate governance but rather as enablers for ethical businesses to operate more efficiently in the interests of CSPs themselves which operate in a jurisdiction already subject to heightened international scrutiny.

In this spirit, as explained, TMC supports specific proposed amendments, such as the streamlining of regulatory submissions to the MFSA and FIAU and encourages other similar measures which can help businesses without compromising essential regulatory obligations. At this juncture, it is imperative for Malta's regulatory framework to evolve and move on, consolidating past reforms while learning from recent reputational challenges.

By leveraging our jurisdiction's strengths and agility, Malta can continue to attract reputable and ethical players, thereby strengthening its position as a credible and competitive financial centre on the global stage.



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