
**Chairman,
Malta Financial Services Authority**

**Minister of Finance, the Economy and
Investment**

L.N. of 2012

**MALTA FINANCIAL SERVICES AUTHORITY ACT
(CAP. 330)**

**INVESTMENT SERVICES ACT
(CAP. 370)**

Company Services Providers Regulations 2012

IN exercise of the powers conferred by article 20A of the Malta Financial Services Authority Act and by article 12 of the Investment Services Act, the Minister of Finance, the Economy and Investment, acting on the advice of the Malta Financial Services Authority, has made the following regulations :-

Title and Scope.

1. (1) The title of these regulations is the Company Services Providers Regulations, 2012.

(2) The purpose of these regulations is to implement article 36 of Directive 2005/60/EC of the European Parliament and of the Council of 26 October, 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, in so far as the said article applies to company services providers.

Interpretation.

2. In these regulations, unless the context otherwise requires:

“company services providers” means any natural or legal person which by way of business provides any of the following services to third parties:

(a) formation of companies or other legal entities;

(b) the operation or management of companies including acting as or arranging for another person to act as director or secretary of a company, a partner in a partnership or in a similar position in relation to other legal entities;

(c) provision of a registered office, a business correspondence or administrative address and other related services for a company, a partnership or any other legal entity;

“Authority” means the Malta Financial Services Authority established in terms of article 3 of the Malta Financial Services Authority Act;

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“registered person” means a person in relation to whom a registration to act as a company services provider has been issued by the Authority in terms of these regulations.

Competent authority.

3. For the purposes of article 36 of Directive 2005/60/EC, the Malta Financial Services Authority established in terms of article 3 of the Malta Financial Services Authority Act shall be the competent authority responsible for the registration and supervision of company services providers.

Requirement of registration for company service providers.

4. (1) Any person resident or operating in or from Malta who acts as a company services provider on a habitual and regular basis, shall apply for registration with the Authority in terms of these regulations:

Provided that the following persons shall not be required to be registered with the Authority in terms of these regulations:

a) a person in possession of a warrant to carry out the profession of advocate, notary public, legal procurator or certified public accountant, provided that acting as a company services provider is limited to what is necessary and incidental in the course of carrying out his profession and does not otherwise hold himself out as a company services provider to the public;

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b) a person authorised to act as a trustee or to provide other fiduciary duties in terms of the Trusts and Trustees Act.

(2) In the event of reasonable doubt as to whether the carrying out of a particular activity would be subject to registration in terms of these Regulations, the matter shall be conclusively determined by the Authority.

Application for registration.

5. An application for registration as a company services provider in terms of regulation 4 shall be made to the Authority and shall:

- a) contain or be accompanied by such information and particulars and be in such form as the Authority may require;
- b) be verified in the manner and to the extent required by the Authority;
- c) indicate the address in Malta for service on the applicant for registration, of any notice or other document required or authorised to be served on him in terms of these regulations; and

be accompanied by an application fee of two hundred Euro (€200) , irrespective of whether the registration is eventually granted or not.

Power of the Authority
to refuse or grant a
registration.

6. (1) The Authority may register or refuse an application for registration made under these regulations. Such registration may be general or may be restricted to particular specified activities. The Authority shall not grant a registration applied for under these regulations unless it is satisfied that:

- a) the applicant is a fit and proper person to provide the services concerned and that the applicant will comply with and observe the requirements of these regulations and any rules made thereunder and which are applicable to him;
- b) where the applicant is a natural person, such person is resident or operating in Malta;
- c) where the applicant is a company or other type of legal entity:
 - i. its objects include acting as company services provider and carrying on activities ancillary or incidental thereto and do not include objects which are not compatible with the services of a company services provider;
 - ii. its actual activities are compatible with its objects in terms of subparagraph (i) ;
 - iii. the directors of the company are not less

than two in number and are individuals who are fit and proper persons;

- iv. every person who directly or indirectly owns or controls 25% or more of the shares or voting rights in the company, or otherwise exercises control over the management of the company, is a fit and proper person;
- v. the name of the company is not inconsistent with its activities as outlined in sub-paragraphs (i) and (ii); and
- vi. where the company is not formed and registered in Malta, it is formed, constituted or incorporated in a reputable jurisdiction. For the purposes of this sub-paragraph, reputable jurisdiction shall have the meaning assigned to it in the Prevention of Money Laundering and Funding of Terrorism Regulations.

(2) In granting registration, the Authority may subject the applicant to such conditions as it may deem appropriate. After having granted registration, the Authority may, from time to time, vary or revoke any condition so imposed or otherwise impose new conditions.

(3) The Authority shall notify any applicant of its decision whether to grant or refuse registration applied for, within six months from the receipt of a complete application made in accordance with the applicable provisions of these regulations and

any rules made thereunder.

(4) Any person to whom a registration has been granted in terms of these regulations shall be subject to a registration fee of two thousand Euro (€2,000) which is payable on the date on which such registration is granted and, thereafter, to a supervisory fee of two thousand Euro (€2,000) which is payable annually upon the anniversary of the date of such registration.

(5) A register of all company services providers to whom registration has been granted in terms of these regulations shall be established by the Authority. The register shall be publicly available on the Authority's website and shall indicate the names of the persons to whom such registration has been granted, as well as their contact details and shall be updated on a regular basis.

(6) A company services provider shall notify the Authority of any change or circumstance which would have a bearing upon his status as a registered person and, in the case of any change in its charter, statute, memorandum or articles of association or other instrument constituting the company, directors or members, such changes shall not be effective until they are notified and approved by the Authority.

Power of the Authority
to cancel registration.

7. (1) The Authority may, at any time, cancel a registration granted in terms of these regulations where:

(a) the registered person is no longer deemed to be a fit and proper person;

(b) the registered person has contravened any of the provisions of these regulations or any

Rules made thereunder or has failed to satisfy or comply with any obligation or condition to which he or the registration is subject by virtue of these regulations and any Rules issued thereunder;

(c) the registered person or someone acting on his behalf has knowingly supplied the Authority with information that is false, inaccurate or misleading;

(d) the registered person has ceased to act as a company services provider;

(e) the cancellation of such registration is considered desirable for the protection of the general public or the reputation of Malta;

(f) the registered person has so requested; or

(g) there are other circumstances under which the Authority would have been precluded from granting registration under these regulations or where the Authority would have been entitled to refuse the granting of such registration.

(2) The Authority shall make public the fact that the registration of a company services provider has been cancelled.

Notification of proposed
refusal or cancellation
of registration..

8. (1) Where the Authority intends –

(a) to vary any condition to which the registration is subject or to impose a new condition thereon; or

(b) to refuse an application for the registration or to cancel a registration,

it shall give the applicant or the registered person, as the case may be, a notice in writing of this intention, setting out the reasons for such decision.

(2) A notice given under subregulation (1) shall state that the recipient of the notice may, within such reasonable period of time after receipt thereof as may be stated in such notice, being a period of not less than forty-eight hours and not longer than thirty days, make representations in writing to the Authority giving reasons why the proposed decision should not be taken, and the Authority shall consider any representation so made before arriving at a decision.

(3) The Authority shall, as soon as practicable, notify its final decision in writing to the applicant or the registered person, as the case may be.

(4) Any person whose registration has been cancelled shall, ensure, within thirty days from the date of the cancellation of the registration, that, where applicable, the services he had been providing to companies or other legal persons in terms of its registration, are now being provided by a person which is duly registered in terms of these regulations.

Power of the Authority
to issue Rules.

9. (1) the Authority may issue Rules applicable to company services providers as may be required, for the carrying into effect of these regulations and may, in particular, but without prejudice to the generality of the foregoing, by such rules:

(a) lay down requirements, conditions and criteria for the carrying out of activities by company services providers;

(b) lay down the conduct, duties and obligations of company services providers;

(c) lay down the responsibilities of company services providers towards the Authority and provide for the form of applications, returns, statements or notices to be made or given to the Authority;

(d) lay down the criteria which the Authority shall take into account when determining whether a person is a fit and proper person for the purpose of these regulations, including an indication of the type and nature of academic qualifications and experience as well as the additional areas of expertise which would be acceptable to the Authority when determining whether a person qualifies to be a fit and proper person;

(e) provide for any other matters as the Authority may consider appropriate in relation to company services providers and the conduct of their activities.

(2) Such Rules shall be binding on company services providers.

10. (1) Where the Authority is satisfied that a registered person's conduct amounts to a breach of any of the provisions of these regulations or of the Rules, including failure to cooperate in an investigation, the Authority may, by notice in writing and without recourse to a court hearing, impose on the registered person and, or any other person as the case may be, an administrative penalty which may not exceed twenty five thousand Euro (€25,000) for each infringement or failure to comply, as the case may be.

(2) An administrative penalty imposed in terms of subregulation (1) may be imposed in the form of a fixed penalty, a daily penalty or both:

Provided that when an administrative penalty in terms of subregulation (1) is imposed on a daily cumulative basis, such accumulated penalty shall not exceed twenty five thousand euro (€25,000).

(3) The imposition by the Authority of an administrative penalty in terms of this regulation, shall be without prejudice to any other consequence of the act or omission of the offender under civil or criminal law.

(4) The Authority shall, by means of a public statement, disclose the name of the person sanctioned, the particular breach of the provision of these regulations or the Rules, and the penalty or administrative measure imposed.

Offences.

11. (1) Any person who acts or purports to act as a company services provider in Malta without being duly registered to do so by the Authority in terms of these regulations shall be guilty of an offence.

(2) Any person who for the purposes of, or pursuant to, any of the provisions of these regulations or any condition, obligation, requirement, directive or Rules issued under or emanating from these regulations, furnishes information or makes a statement or declaration which he knows to be inaccurate, false or misleading in any material respect, or recklessly furnishes information or makes a statement which is inaccurate, false or misleading in any material respect, shall be guilty of an offence.

(3) Any person who intentionally obstructs a person exercising powers conferred by these regulations shall be guilty of an offence.

(4) Any person who, while subject to a disqualification order under regulation 12 hereunder, acts in contravention thereof, shall be guilty of an offence.

(5) Any person who, with intent to avoid detection of the commission of an offence under these regulations removes, destroys, conceals or fraudulently alters any document, data records or other information, shall be guilty of an offence.

(7) Any person who is guilty of an offence under subregulations (1) to (5) and saving any higher punishment which may be provided under any other law, shall, on conviction, be liable to a fine (*multa*) not exceeding fifty thousand euro (€50,000) or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment.

(8) Where an offence in terms of subregulations (1) to (5) is committed by a body or other association of persons, be it corporate or unincorporated, every person who at the time of the commission of the offence was a director, manager or other similar officer of such body or association, or was purporting to act in any such capacity, shall be guilty of that offence, unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence.

(9) Without prejudice to subregulation (8), where the offence is committed by a body or other association of persons, be it corporate or unincorporated, or by a person within and for the benefit of that body or other association of persons, such body or association shall also be liable to an administrative penalty which may not exceed twenty five thousand euro (€25,000).

Persons not qualified to act as company services providers.

12. A person shall not qualify for registration as a company services provider if:

(a) he is subject to any of the disqualifications under article 142(1) of the Companies Act;

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(b) he has been convicted of any of the offences under the Malta Financial Services Authority Act, the Investment Services Act, the Banking Act, the Financial Institutions Act, the Financial Markets Act, the Insurance Business Act, the Prevention of Financial Markets Abuse Act, the Prevention of Money Laundering Act, the Trusts and Trustees Act and any regulations made thereunder;

(c) he is a minor; or

(d) he is subject to a disqualification order under article 320 of the Companies Act.

13. (1) In this article the Financial Services Tribunal means the Tribunal established under article 21 of the Malta Financial Services Authority Act.

(2) Subject to the provisions of this regulation, an appeal shall lie to the Financial Services Tribunal with respect to:

(a) any decision taken in terms of regulation 4(2);

(b) any failure to inform an applicant or a registered company services provider of the refusal of its application or of the cancellation of its registration in terms of regulation 8;

(c) any administrative penalty imposed under regulation 10;

(d) any refusal of an application for registration or cancellation of registration in terms of regulations 6 and 7;

(e) any directive given under article 16(2)(b) of the Malta Financial Services Authority Act

(3) The provisions of article 21 of the Malta Financial Services Authority Act shall apply *mutatis mutandis* to appeals that may be brought before the Financial Services Tribunal under this regulation.

Transitory Provisions

14. (1) Any person who, on the date of the coming into force of these regulations, is carrying out the services of a company services provider within the meaning of these regulations, shall, within three months from the date of coming into force of these regulations, apply to the Authority for registration in terms of regulation 4.

(2) The Authority shall accept all the applications referred to in subregulation (1) and shall process the said applications within six months from the receipt of a complete application, including receipt of all supporting documentation as may be required by the Authority in processing such application.