

Consultation Document on the Updated CSP Rules

Ref: 05-2020

Issue Date: 1 December 2020

Closing Date: 15 January 2021

NOTE: These proposals are not binding and are subject to changes and revisions following representations received from industry participants and other interested parties. It is important that persons involved in the consultation bear these considerations in mind.

Table of Contents

Foreword by Chief Officer Supervision & Chief Executive Officer <i>ad interim</i>	3
1. Introduction	5
2. Scope of Consultation	5
2.1 Class A Under Threshold.....	6
2.2 Risk Management Function.....	7
2.3 Exemption for Specific Categories of Persons from Authorisation under the Act	8
3. Conclusion.....	9

Foreword by Chief Officer Supervision & Chief Executive Officer *ad interim*



Dr Christopher P. Buttigieg

The recently published Company Service Providers (Amendment) Act, 2020 ('Act') marks the first step of implementation of the reform of the Company Service Providers sector.

The Authority has been working on this reform since it published its Consultation Document entitled *Raising the Bar for Company Service Providers* in October 2019. It has engaged extensively with the different stakeholders and taken on board industry feedback while always keeping in mind the primary objectives of this reform, being those of raising standards for Company Service Providers across the board. In addition, with the introduction of this reform, the Authority will be addressing the concerns raised by MONEYVAL in the Mutual Evaluation Report on Malta published in July 2019.

Achieving these objectives through the Company Service Providers reform will benefit the Industry as it will be governed by a consistent and robust risk-based supervisory framework. Regulation is not a burden, but an investment and these changes are being done in the interest of building an even more sustainable financial services sector for Malta.

As part of its efforts to reform the sector, the Authority is launching an updated Rulebook for Company Service Providers with this Consultation Paper. The new Rulebook, as revised by the Authority, is fully aligned with the Act and establishes detailed rules on the governance systems, core functions and capital requirements expected of Company Service Providers. It also establishes the criteria for those classes considered as 'under threshold' where a proportionate regulatory approach is being applied in line with the [Feedback Statement](#) to the Consultation Document issued in April 2020.

Company Service Providers will be expected to strengthen their governance structures and upgrade their systems, policies and procedures to comply with the Act and Rulebook. In order to give those in

the industry, not currently licensed by us, time to adjust to these changes, a phased approach is being adopted.

The amendments to the Act will be brought into force by a Legal Notice to be published in the coming months and that this will also be communicated by the MFSA via its usual channels. Once the Act and Rulebook come into force, through the application process we will engage with those requiring authorisation to ensure that they are able to achieve and can demonstrate to us that they do achieve, the same standards as apply to those already licensed. For more complex applicants, this will involve a longer process, during which they will be able to continue in business through the mechanism of provisional authorisation.

The Authority believes that in an era of global co-operation, regulation and reporting, there is an important role to be played by diligent and professional Company Service Providers who are compliant with all relevant laws and regulations and act with integrity in their clients' interests. By implementing this reform, the Authority has designed a stable and strong platform for Company Service Providers. Company Service Providers are urged to grasp this opportunity and work towards achieving the high standards expected of them in their role as gatekeepers to the financial system.

1. Introduction

Following the Consultation Document published on 22nd October 2019 entitled *Raising the Bar for Company Service Providers* ('Consultation Document') and the feedback received from stakeholders, the Authority continued to engage with stakeholders to achieve the goal of raising standards for Company Service Providers ('CSPs'). In so doing the Authority also sought to address the concerns raised by the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism ('MONEYVAL') in their Mutual Evaluation Report published in July 2019 and enhance the current regulatory framework for CSPs.

This has resulted in the Company Service Providers (Amendment) Act, 2020 (the 'Act') passed by Parliament as [Act No. L of 2020](#) and published in Government Gazette no 2521 of 13th November 2020. Before the Act enters into force in the coming months, by separate Legal Notice, the Authority considers it necessary to revise the CSP Rulebook so as to align it to the Act. It has therefore been working on updating the CSP Rulebook and this is being released with this Consultation Paper to give stakeholders time to consider its contents before it is formally brought into effect. In addition to aligning the CSP Rulebook to the Act, the Authority has strengthened the Rulebook's governance provisions and clarified the interpretation of certain key terms and principles.

The updated Rulebook should be read in the light of the Act, particularly the transitory provisions detailed in Article 19 of the Act which will apply once it comes into force. These provisions require persons, who are currently exempt from obtaining authorisation under the Act, to submit applications to be authorised under the Act within a two-month deadline, commencing from the date of coming into force of the Act. A separate communication will be issued in due course which will go into further detail with respect to implementation.

2. Scope of Consultation

This Consultation Paper is not intended to re-open for consultation any of the issues already raised in the Consultation Document given the extensive feedback and engagement that followed in the months leading up to Act L of 2020. At this stage, the Authority is seeking stakeholders' feedback focusing on the following:

1. Class A under threshold;
2. The Risk Management Function;
3. Exemption for specific categories of Licence Holders from authorisation under the Act.

As stated in the MFSA's Vision 2021 the governance, culture and conduct of all market players in the financial services industry affects the integrity and stability of the financial market. In this light the Authority is, through this Consultation Paper, putting forward the above-mentioned matters for the industry's consideration.

2.1 Class A Under Threshold

In the Feedback Statement the Authority acknowledged that some practitioners provide corporate services within a wider portfolio of services being provided to clients and indicated that these persons will be subjected to a risk-based approach towards their regulation and supervision, in line with the principle of proportionality. These would be based on verifiable information to be obtained by the Authority both at application stage and on an ongoing basis. The updated Rulebook takes into account this reality by creating a Class A under threshold category which qualifies for a proportionate approach, subject to satisfying specific criteria linked to actual and/or projected revenue from CSP activities as part of total services provided or to be provided. In addition, only warranted persons can qualify for a Class A under threshold authorisation in view of the fact that warranted professionals should already have controls in place. The Rulebook, as updated, also takes on board feedback from groups representing a substantial number of stakeholders when addressing the method of calculation of revenue and the percentage for the application of this proportionate approach.

The Class A under threshold category applies only to individuals in possession of a warrant, or equivalent, to carry out the profession of advocate, notary public, legal procurator or certified public accountant whose revenue from corporate services forms, or is forecast to form, in the upcoming year, not more than:

- a) 35% of the combined total revenue from the provision of all professional services; or
- b) EUR100,000, whichever is the higher.

This class only applies to individuals providing formation of companies or other legal entities and excludes persons providing the service of registered office, business or correspondence address.

The introduction of a second factor, being the EUR 100,000, to complement the percentage of the combined total revenue, allows these individuals to apply the highest of the two factors and is meant to strengthen the application of the proportionality principle.

Do you agree with the introduction of a second factor i.e. the EUR 100,000 in the definition of revenue?

2.2 Risk Management Function

In its Feedback Statement dated 9th April 2020 the Authority confirmed that it would be requiring CSPs to enhance the risk management function. This would involve establishing a Risk Management Function which implements adequate risk management policies and procedures, identifies risks relating to the CSP's activities, processes and systems and sets the level of risk tolerated by the CSP. In view of the fact that CSPs are the gatekeepers to the jurisdiction and that the area is deemed to be high risk, both at a national and international level, the Authority deems that such a function is vital in managing risks. Having noted stakeholders' feedback on the requirement for the Risk Management Function to be proportionate to the size and business model of the CSP, the Authority is proposing that, in certain instances, in the context of the Risk Management Function, a derogation will be available to CSPs.

In terms of this derogation, the MFSA is considering allowing a CSP to establish and maintain a risk management function which does not operate independently, provided:

- a) this does not give rise to conflicts of interest; and
- b) the CSP demonstrates to the Authority that the establishment and maintenance of a dedicated independent risk management function with sole responsibility for the risk management function is not appropriate and proportionate in view of the nature, scale and complexity of its business and the nature and range of the CSP services and activities undertaken in the course of that business.

Where a Risk Officer is not specifically employed by the CSP, the Authority is proposing that the role should be performed by a senior official of the CSP or a non-executive director and that the Authority should be notified of the individual performing such role.

The CSP will also be required to satisfy the Authority, at all times, that it is able to comply with the requirements relating to Risk Management in the CSP Rulebook and that its policies and procedures relating to risk management are consistently effective. Such derogation would also be subject to revision if, in the view of the Authority, there are any changes in circumstances or to the nature and activities of the CSP which merit a change in approach.

Do you agree that the derogation relating to the Risk Management function takes into account the proportionality principle?

2.3 Exemption for Specific Categories of Persons from Authorisation under the Act

The Authority decided to cater for certain exemptions from authorization in terms of the Act, under specific Exemptions Regulations to be set out in a Legal Notice. Exemptions will apply to very specific categories of persons who either offer CSP services as ancillary to other services which they are already licensed/authorised to carry out, or where the nature of the services is limited as detailed in the Regulations. In terms of specific Regulations to be published it is being proposed that the following persons be exempted from the requirement of authorisation for CSPs in terms of Article 3 of the Act and from complying with the provisions of the Act:

1. a person authorised to act as a trustee or to provide other fiduciary duties in terms of the Trusts and Trustees Act;
2. a person registered to act as a VFA Agent in terms of the Virtual Financial Assets Act, when providing the activity of a company service provider as part of its activity under the said Act provided that the said activity shall not be or include the service of acting as director or secretary of a company, as a partner in a partnership or of acting in a similar position in relation to any other legal person;
3. a person who only acts as director or secretary of a company, as a partner in a partnership, or who acts in a similar position in relation to other legal persons, in which such person has an ownership and controlling interest;
4. a person who only offers the services of acting as director or secretary of a company, as a partner in a partnership or of acting in a similar position in relation to any other legal person, where such legal person is licensed, registered or otherwise authorised by the Authority; and
5. a person who only acts as director or secretary of a company, as a partner in a partnership or who acts in a similar position in relation to other legal persons, in which the government of Malta is the majority shareholder.

It is being proposed that the persons referred to in paragraphs 1 and 2 prior to providing any of the services of a company service provider will be required to notify the Authority that they shall be acting as CSPs by way of business and that they are not required to apply for authorisation with the Authority under the Act.

Do you agree with the categories of exempt persons and the notification requirement to the Authority for the specified categories outlined above?

3. Conclusion

All those wishing to provide feedback on the matters raised in this Consultation Paper are requested to do so by email to cspframework@mfsa.mt by no later than 15 January 2021.