

# Consultation Document on the Proposed Enhancement to the Company Service Providers Framework

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NOTE: The documents circulated by the MFSA for the purpose of consultation are in draft form and consist of proposals. Accordingly, these proposals are not binding and are subject to changes and revisions following representations received from Licence Holders and other involved parties. It is important that persons involved in the consultation bear these considerations in mind.

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## 1. Introduction

Company Service Providers (CSPs) are the gatekeepers to the financial system as they are typically the initial contact point for individuals seeking to set up business in Malta.

CSPs in all jurisdictions are particularly vulnerable to ML/TF risk due to their role as gatekeepers to the financial sector, as one of their roles is that of assisting with the formation of companies or the establishment of other legal persons. Legal entities can be useful tools for criminals seeking to obfuscate the ownership of criminally derived assets and through which they can also gain access to the wider financial system. CSPs therefore play a key role in preventing such persons from gaining access to the wider financial sector. This gatekeeper role, if not undertaken appropriately, may result in CSPs being exploited (with or without their knowledge) by criminals to establish themselves as legal entities and process transactions using funds or assets derived from criminal activities.

Currently CSPs are defined as entities or individuals providing corporate services, *'by way of business'*, including formation of companies, directorship/company secretary services and the provision of registered office, business, or correspondence address for businesses.

The MFSA has been responsible for the registration (and more recently - authorisation) and supervision of the CSP sector since 2013. As part of Malta's ongoing efforts to improve the compliance culture in the sector and strengthen its ML/TF framework, in October 2019 the Authority set out its objectives and proposals to raise the bar for CSPs. These were presented in a consultation document published by the Authority in 2019 ("2019 Consultation") putting forward proposals relating to the institutional architecture for the supervision of CSPs.

The applicable legislation being the Company Service Providers Act, had been enacted in 2013 by virtue of Act XX of 2013 implementing Article 36 of Directive 2005/60/EC of 26 October 2005 on the prevention of the use of the financial system for the purposes of money laundering and terrorist financing. The Directive required EU Member States to introduce a licensing or registration framework for certain services (such as providing incorporation of companies and the service of registered office), to mitigate ML/TF risks. This was also a result of the fact that the Financial Action Task Force (“FATF”) introduced gatekeepers, including CSPs, within the scope of the FATF Standards in 2003.

In Malta this was implemented by the registration (and, subsequently, the authorising) of CSPs, thus ensuring that the persons owning and controlling the operations of CSPs are fit and proper persons. The introduction of the CSP Act complemented the existing AML/CFT obligations for the sector under the version of the Prevention of Money Laundering and Funding of Terrorism Regulation (PMLFTR) then in force, further strengthening the holistic supervisory framework required to mitigate the risks of ML/FT to which CSPs are exposed by virtue of their role as gatekeepers.

Following the MFSA’s efforts to raise the bar for CSPs, through the coming into force of the Company Service Providers (Amendment) Act, 2020<sup>1</sup>, the Authority has actively engaged with stakeholders to obtain their feedback on the current CSP regulatory framework. As a result, earlier this year the Authority published certain amendments to the CSP Rulebook, aimed primarily at simplifying and streamlining regulatory submissions by CSPs, taking into consideration, in particular, the size and nature of the business of individual CSPs.

Nevertheless, the Authority is now proposing further enhancements to the regulatory framework applicable to individuals who provide directorship/company secretary services

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<sup>1</sup> This was passed by Parliament as Act No. L of 2020.

to companies or hold equivalent positions in other legal entities but fall within specific criteria established by the Authority (as further explained below).

The Authority's proposal consists of:

- (i) revising the current legal framework in order to introduce the two new concepts of Registration and Notification applicable to individuals providing the service of director/company secretary to a company or holding a similar position in other legal entities, to different extents;
- (ii) introducing a new Rulebook applicable solely to individuals who qualify for Registration; and
- (iii) increasing the number of involvements both for Class B Under Threshold CSPs as well as Class B CSPs as a result of the introduction of the new categories mentioned above.

By virtue of this Consultation Document the Authority is seeking stakeholders' views on this proposal which is explained in further detail in section 2 hereof.

## 2. Proposal for Further Enhancement to the Regulatory Framework

### 2.1 Introduction

The Authority's main objective by virtue of the 2021 CSP reform was to strengthen the regulatory framework for CSPs and raise the bar for all those providing CSP services, including those who were providing such services whilst availing themselves of the exemptions applicable at the time.

After the completion of the reform in November 2022, the Authority, in line with the commitment taken at the time, continued to look into the enhancement of the framework. Throughout 2024, the Authority carried out extensive research on the operation and regulation of CSPs in other jurisdictions, both within the European Union and in jurisdictions that are direct competitors of Malta in the corporate sector. A number of meetings were held with stakeholders, regulators and professional bodies to identify areas where the Authority can adapt the framework by applying the proportionality aspect without lowering the market entry requirements and the governance, risk and compliance standards, which Malta has achieved across the CSP sector following the CSP reform.

Having taken into consideration the feedback received during these interactions the Authority is proposing enhancements to the current CSP framework in order to adopt a more proportionate regulatory approach whilst continuing to adhere to Malta's international commitments.

### 2.2 Current Legislative Framework applicable to Class B CSPs

In terms of the current regulatory framework, any person acting, or holding themselves out as acting, as director and/or company secretary of a company and, or a similar position in

other legal entities<sup>2</sup> *'by way of business'*<sup>3</sup> requires authorisation by the MFSA. By virtue of the changes that took place in 2021, the Authority had already introduced an element of proportionality with respect to such service providers. Currently, individuals who wish to act as director and/or company secretary to not more than 10 entities can apply for a Class B Under Threshold authorisation rather than a Class B CSP authorisation.

Below is a summary of the **current** framework relating to the provision of directorship and/or company secretarial services (or similar positions held) when it is being carried out *'by way of business'*:

### **i. 3 to 10 Directorship and/or Company Secretarial Involvements**

Individuals who intend to act as directors and/or company secretary on companies, but do not envisage to have a significant portfolio of clients and limit their services to a maximum of 10 involvements, are required to seek authorisation as a Class B Under Threshold CSP.

Class B Under Threshold CSPs act as the Compliance Officer as well as their own MLRO. The MFSA carries out full due diligence and competence assessments on such individuals and once authorised these Class B Under Threshold CSPs are subject to regular reporting submissions such as the MFSA's Annual Compliance Return ('ACR') and the Financial Intelligence Analysis Unit (FIAU)'s Annual Risk Evaluation Questionnaire ('REQ').

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<sup>2</sup> For purposes of simplicity, in the context of this document, wherever reference is made to having an involvement as director and/or company secretary of a company this is deemed to include acting as partner in a partnership and having a similar position in another legal entity.

<sup>3</sup> Refer to the Authority's [Guidance Note on the Application of the Company Service Providers Act \(mfsa.mt\)](#) and [Company Service Providers Rulebook](#) for explanations of the meaning of *'by way of business'*.

## ii. More than 10 Directorship and/or Company Secretarial Involvements

Individuals and/or legal persons who intend to act as director and/or company secretary on companies, amounting to more than 10 involvements, require a Class B CSP authorisation.

Class B CSPs need to appoint an independent Compliance Officer, but they have to be their own MLRO if they are individuals in terms of the FIAU's Implementing Procedures. The MFSA carries out full due diligence and competence assessments on the individuals involved in the management and control of the CSP. The same ongoing reporting requirements apply as Under Threshold Class B CSPs.

There are instances in which the Authority considers that an individual is not acting as director and/or company secretary in a company or holding an equivalent position in another legal entity '*by way of business*' as explained in the [Guidance Note on the Application of the Company Service Providers Act](#), and thus not falling within the CSP regulatory framework. These instances can be generally summarised as follows:

### 1. Provision of 1 to 2 Directorships

An individual who is acting as director on one or two entities is not deemed as doing such an activity '*by way of business*' and therefore does not require a CSP authorisation by the Authority. Such an individual is therefore also not considered as a subject person for FIAU's purposes. As a consequence of this, no reporting requirements apply to such individuals in terms of the applicable regulatory frameworks.



## 2. Provision of 3 Company Secretarial Roles

An individual who is solely acting as company secretary on three client companies does not require a CSP authorisation, as such an activity is deemed as not being done *'by way of business'*. The individual is not subject to authorisation by the Authority and is therefore also not considered a subject person for FIAU's purposes. Consequently, no reporting requirements apply to such individuals in terms of the applicable regulatory frameworks.

3. Persons who are required, through the terms of their **employment**, to act as director and/or company secretary on third party companies, as part of their employment duties.
4. Persons acting exclusively as director/company secretary on a company in which they hold a **beneficial interest** (as explained in the above-mentioned Guidance Note); and
5. Persons who act exclusively as director/company secretary on a company or group of companies due to a **family relationship**.

The legislative framework also caters specifically for exemptions relevant to the provision of directorship and/or company secretarial services to companies that emanate from the Company Service Providers (Exemption) Regulations<sup>4</sup>. This Legal Notice provides for limited instances where a person's involvement as director and, or company secretary is exempt from authorisation.

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<sup>4</sup> Legal Notice SL.529.02.

These are:

- (a) persons authorised by the Authority to act as trustees or to provide other fiduciary services in terms of the Trusts and Trustees Act;
- (b) persons registered to act as a VFA Agent in terms of the Virtual Financial Assets Act<sup>5</sup>;
- (c) persons who only offer the services of acting as director or secretary of a company, where such company, partnership or other legal entity is licensed, registered or otherwise authorised by the Authority; and
- (d) persons who only offer the services of acting as director or secretary of a company whose financial instruments have been admitted to listing on a regulated market in Malta in terms of the Financial Markets Act.

## 2.3 Proposed Enhancements

The main purpose of the proposed enhancements is aimed at addressing the fact that presently, the jurisdiction has little visibility on the extent of the activities of those individuals carrying out directorship/company secretary services when not acting *'by way of business'*, as well as the nature and extent of their own activities. The Authority considers that in line with international expectations, a risk assessment should be undertaken in respect of this category of individuals, to properly inform Malta's risk understanding of this sector as a whole. The aim is to continue enhancing the risk-based approach on the basis of a holistic assessment, and to ensure that the sector is not being exposed to unnecessary risks which are not being properly mitigated.

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<sup>5</sup> A proposed amendment to this Legal Notice is underway to remove reference to VFA Agents since this role was removed from the Virtual Financial Assets framework as of 16 April 2024, by way of Act XIV of 2024.

## 2.3.1 Proposed Introduction of a Notification Requirement

This Notification requirement is aimed at those individuals who are currently providing directorship and/or company secretarial services but, are not doing so '*by way of business*', and fall within certain criteria to be prescribed by the Authority.

### 2.3.1.1 Proposal

In the past three years, the Authority's thrust in terms of its supervisory and outreach efforts vis-à-vis CSPs was mainly to educate service providers in terms of their obligations and the Authority's expectations in this regard. Based on its supervisory experience the Authority considers that the market has by and large understood the main risks in place when providing such services. The Authority feels that this warrants a change to the interpretation of the number of involvements that are **not** considered to be regular and habitual, and therefore not '*by way of business*' and thus increase the involvements from 2 to 5 involvements<sup>6</sup>. This extended interpretation is however being qualified by restricting the number of group involvements to 2 groups, in line with the spirit of proportionality.

In terms of this proposal, individuals who are currently providing 1 to 2 directorships or serving as company secretary to not more than 3 companies, would be able to hold up to 5 involvements. Thus they would not be deemed to be providing such services on a regular and habitual basis, and therefore not deemed to be acting '*by way of business*', provided that they are not also holding themselves out as providing such services.

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<sup>6</sup> The current position as to what constitutes acting *by way of business* regularly and habitually is explained in points 1 and 2 of Section 2.2.

These individuals would not be required to seek authorisation or registration but would be required to notify the Authority of the fact that they hold solely these involvements, by submitting a Notification Form through the Authority's License Holder Portal. This Form is proposed to contain basic information on the individual providing the service, and on the client company/companies. For the time being it is being proposed that such information is only submitted at notification stage. However, it is not excluded that the Authority might ask for updated information from this category of individuals in the future, but such occurrence would be determined following a risk assessment which the Authority is proposing to carry out once the data is collected.

Involvements which are deemed to be outright exempt from the CSP framework in terms of the Company Service Providers (Exemption) Regulations, will not trigger the notification requirement under the Act. So an individual who acts exclusively as a director/company secretary in the circumstances set out in Regulation 3(1) (c) and (d) of the CSP (Exemption) Regulations, and therefore exempt completely from the scope of CSP framework, will not be required to notify the Authority of these involvements.

It is also being proposed that individuals who act as director/company secretary in a company in the following scenarios will not be required to notify the Authority of these particular involvements:

- a. individuals who are required to act as director and/or company secretary through their contract of **employment**, or
- b. persons acting exclusively as director/company secretary of a company in which they hold a **beneficial interest** (as explained in the above-mentioned Guidance);

- c. individuals who act exclusively as director/company secretary of a company due to a **family relationship**.

In terms of the current [Rulebook for Company Service Providers](#), an involvement shall entail acting as director or company secretary of a company, a partner in a partnership or in a similar position in relation to other legal entities. Involvements of the same person within the same group of companies (as defined in the CSP Rulebook) shall count as one involvement.

The Authority is mindful that an individual can be providing directorship/company secretary services to a number of companies which fall within the definition of “group of companies” and this is deemed as one single involvement. In view of the widening of the involvements, which are *not* deemed to be regular and habitual to up to 5 involvements, the Authority is proposing that the five involvements can include up to a maximum of two group companies. If an individual is acting as director/company secretary in more than two groups of companies, then such a person would be required to apply for Registration under the CSP Act rather than submit a notification form.

### **2.3.2 Proposed Introduction of a Registration Requirement Resulting in a New Category: Registered Persons**

During and subsequent to the 2021 reform, Class B under threshold CSPs undergo a rigorous fitness and properness assessment when they seek to obtain authorisation in terms of the Act. In the past three years this cohort was also subject to extensive supervisory oversight and the Authority has sufficient comfort that this category of CSPs has by and large acquired a sound understanding of the risks when providing such services whilst being aware of the necessity to have corresponding risk mitigating measures.

As a result, it is being proposed that a new category of CSPs will be created, to be known as 'Registered Persons'. This category will consist of individuals acting, or holding themselves out as acting, '*by way of business*' to third parties, who provide directorship and/or company secretarial services to companies **up to a maximum of 10 involvements**.

### 2.3.2.1 Proposal

In view of the limited activity and risk that would be undertaken by these individuals, the Authority is proposing to:

- create a registration requirement for those individuals acting, or holding themselves out as acting, as director/company secretary in a company, and who do so '*by way of business*' to third parties but who do not exceed 10 involvements;
- waive the requirement of the compliance function, in view that these individuals are carrying out the compliance function themselves;
- create an application form specifically for Registered Persons in order to simplify and streamline the application process;
- create a specific rulebook for Registered Persons, which will establish the requirements and obligations of such persons;
- streamline regulatory submissions to the Authority and the FIAU, by introducing a revised single, amalgamated annual submission applicable to Registered Persons, thus reducing the administrative burden of submissions on Registered Persons. Therefore, the proposal is that such individuals would no longer be required to register on CASPAR and submit REQs with FIAU; and
- for those currently authorised as Class B Under Threshold CSPs, the Authority will convert their authorisation to a registration if such individuals so request;

Q1	Do you agree with the general concept of the proposed revisions to the legal framework introducing the two new concepts of Registration and Notification?
Q2	Do you agree with the creation of a specific rulebook for Registered Persons and the proposed streamlining of regulatory submissions?

### 2.3.3 Proposed Increase in the Number of Involvements of Class B Under Threshold CSPs

As a result of the introduction of the Registered Persons category, it is being proposed that the number of involvements for Class B Under Threshold CSPs will be increased from a maximum of 10 involvements to a maximum of 20 involvements. For those individuals who wish to hold more than 20 involvements as director/company secretary, a full authorisation as a Class B CSP would be required.

With the introduction of the new category and the increase in the number of involvements which a Class B Under Threshold CSP may hold, individual CSPs currently authorised as Class B Under Threshold can either opt to:

- **Option 1:** retain their current authorisation since they have already gone through the rigorous fitness and properness assessment and have also invested to have in place governance, compliance and risks standards, thus having the opportunity to increase their business up to a maximum of **20** involvements; **or**
- **Option 2:** convert their authorisation to a registration and be classified as Registered Persons, thus being allowed to hold a limited number of directorship

and/or company secretarial involvements which do not exceed 10 involvements in number.

Q3	<b>What are your views on the Authority's proposal to extend the number of involvements of Class B Under Threshold CSPs to 20 involvements?</b>
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## 3. Conclusion

We invite all interested parties to submit their feedback by no later than **15 November 2024** by email on [cspreform25@mfsa.mt](mailto:cspreform25@mfsa.mt).

The proposals set out in this consultation document are not binding and are subject to changes and revisions following receipt of feedback from stakeholders.