MFSA MALTA FINANCIAL SERVICES AUTHORITY

16 July 2026

To: The Authorised Person,

To: The Management Body,

To: Compliance Officer

Thematic Review on adequate Oversight when Arranging for Other Persons to act as Directors and/or Company Secretaries

You are receiving this letter as the Authorised Person, the Management Body and/or the Compliance Officer of a Company Service Provider ("Authorised Person" or "CSP") supervised by the Malta Financial Services Authority (the "MFSA" or "Authority") authorised to provide arranging for another person to act as company director, company secretary, a partner in a partnership or hold a similar position in relation to other legal entities in accordance with the Company Service Providers Act (Chapter 529 of the Laws of Malta) .

BACKGROUND AND METHODOLOGY

The Authority's Supervisory Priorities for 2025[1] identified the area of adequate oversight when arranging for other persons to act as directors and/or company secretaries (hereinafter referred to as 'Arranging Services') as one of the key supervisory priorities to focus on during 2025 vis-à-vis Company Service Providers ('CSPs'). CSPs' residual risk level in the latest National Risk Assessment ('NRA')[2] published in 2023 was that of medium-high risk, with the provision of offering the services of acting as, or arranging for another person to as a director and/or company secretary of a legal person resulting in a residual risk of medium and medium-low, respectively, in terms of ML/FT risks.

The provision of Arranging Services remains an area of particular supervisory focus, given the critical role such positions play in ensuring sound governance, effective control and compliance with applicable legal and regulatory obligations of legal entities. When providing Arranging Services, CSPs retain full legal responsibility and accountability vis-à-vis the client to whom such Arranging Services are provided. Therefore, the appointment of natural persons to provide such Arranging Services must not result in any dilution of accountability or effective control. First and foremost, CSPs should ensure that persons appointed to provide Arranging Services are fit and proper to perform such roles. Failure to appoint such adequate personnel or to carry effective oversight brings about numerous ML/FT risks, which CSPs, as gatekeepers of the financial services industry, must avoid. In particular, such arrangement might result in rubber-stamping situations wherein persons appointed lack real oversight over the client entity resulting in poor governance or possibly allowing decisions made by

[1] MFSA Supervisory Priorities 2025
[2] PublicNRA_Dec2023.pdf

the rest of the board without proper documentation or failure to question suspicious activity. In terms of the Corporate Governance Code issued by the Authority on 5 August 2022[3], directors are expected to provide leadership, integrity and judgement in directing the entity, both collectively and individually. On the other hand, appointing persons to act as company secretaries who are not adequate for the role may result in numerous compliance risks including lack of regulatory filings being made.

Secondly, CSPs, as gatekeepers of the financial services industry, are expected to exercise proper monitoring on an ongoing basis and ensure a comprehensive understanding of all risk/s they face or may face in the provision of such Arranging Services. In this regard, the Authority will continue to ensure that CSPs are carrying out adequate oversight over persons appointed to provide directorship and/or company secretary services in order to safeguard overall market integrity.

In order to achieve focused goals, the Authority regards the carrying out of thematic reviews as one of the most effective tools in view of the fact that common issues are analysed and expectations are communicated to the industry as a whole, as opposed to specific authorised persons only. In this regard, as part of its supervisory work plan for 2025, the Company Service Providers Supervision Function carried out a thematic review focussing on this pillar (the "Thematic Review"). This Thematic Review was launched in the form of a thematic questionnaire sent to a number of CSPs offering Arranging Services. For the purposes of this Thematic Review, the Authority selected, on a risk-based approach, a sample of fifty (50) out of eighty-two (82) CSPs authorised as Class B and Class C CSPs in terms of the Company Services Act (Chapter 529 of the Laws of Malta) ("CSP Act") and which are offering such arranging services, representing sixty-one per cent (61%) of the population.

The purpose of this letter is to inform the industry about the main findings of this Thematic Review and to communicate the Authority's expectations whilst encouraging CSPs to enhance the oversight being carried out over natural persons in providing such Arranging Services where gaps are identified. As an overall observation, the Authority positively noted that ninety-six per cent (96%) of the CSPs forming part of this Thematic Review confirmed that a fitness and properness assessment is carried out on persons arranged to provide such Arranging Services. Furthermore, the Authority further noted that ninety-four per cent (94%) of the CSPs forming part of this Thematic Review perform some degree of oversight and monitoring over persons arranged to provide directorship and/or company secretarial services.

On the other hand, primarily the Authority was concerned to note the lack of adequate definitions provided by CSPs in relation to Arranging Services. As described in further detail below, thirty-two per cent (32%) of the population failed to adequately describe the key attributes of such services. As a result, this lack of clarity gives rise to inconsistent interpretations and adherence to applicable legal and regulatory obligations, potentially also leading to situations where activities falling within the scope of the Act are not being properly identified and regulated. Furthermore, whilst it was observed that the vast majority of CSPs carry out some degree of oversight over persons arranged to provide such services, such oversight at times lacked adequacy. In particular, CSPs fell short of requesting updates on numerous key aspects of the Arranging Services. Furthermore, the Authority, at times noted inadequate qualitative assessments of time commitment being carried out on such arranged

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[3] MFSA Corporate Governance Code

persons due to a lack of detailed assessment of the nature of the underlying activities of the legal persons for whom the natural persons are being arranged.

In assessing the effectiveness of CSPs' oversight, the Authority took into account the size of the CSPs in question and the number of roles held by such appointed persons. The Authority is committed to continue raising awareness on the importance of implementing robust mechanisms to carry out adequate oversight by CSPs over persons arranged to act as directors and/or company secretaries by engaging in further outreach and guidance on the subject matter. In fact, as identified in MFSA' Supervisory Priorities of 2025, the assessment of this pillar was part of the Authority's outcomes-based supervision. Therefore, the Authority will be focusing on the intended results from the thematic questionnaires submitted out and will derive an efficient way to achieve them.

KEY FINDINGS

1. Definition of Services of Arranging for Other Persons to act as Directors and/or Company Secretaries

CSPs forming part of this Thematic Review were asked to define what is understood by the services of 'provision of directorship and/or company secretarial services through the arranging process'. The Authority noted that, sixty-eight per cent (68%) of the answers received, holistically described such services and noted all key aspects of the definition. However, the Authority was concerned to note that rest of the answers received, either fell short of highlighting a key aspect of the definition, such as specifying that persons appointed should be officers or employees of the CSP or incorrectly described the CSP service in general. In the latter instances, a few CSPs incorrectly made reference to the arranging of third parties to provide such services or that legal persons were arranged for, instead of natural persons. With respect to the latter, the Authority noted that fourteen per cent (14%) of CSPs replied in this manner. The Authority considers the absence of a clear and comprehensive definition to be a significant weakness in governance and internal control frameworks. In a few instances, it was noted that employees of a sister company were appointed to provide Arranging Services however in such cases the arrangement was governed by a resource sharing agreement.

Regulatory Requirements

In terms of the definition of 'arranging' as per the CSP Rulebook, the term 'arranging' means appointing another person to act as a company director, company secretary or partner or in a similar position in another legal person. Therefore, instead of the CSP providing such services directly, a natural person is appointed to provide such services. As set out in R4-4.1 of the CSP Rulebook, such person must be a natural person who is either an officer or employee of the CSP and therefore third parties or legal entities may not be arranged by CSPs to provide such CSP services. In instances wherein CSPs forming part of a group of companies arrange for natural persons within the group to provide such Arranging Services, such arrangement must be notified to the Authority and be governed by a resource sharing agreement.

CSPs are expected to ensure that Arranging Services are clearly defined within their internal policies and procedures in accordance with regulatory expectations and supported by appropriate controls, including fitness and properness assessments, oversight mechanisms and escalation procedures, as described in detail below in this letter.

1.1. Service Agreement in relation to Arranging Services

The Authority positively noted that all CSPs forming part of this Thematic Review governed the provision of Arranging Services to their clients by a contractual agreement. When questioned on the type of agreements entered into with clients when providing such services, the majority of CSPs replied that a service agreement between the CSP and the client is entered into. Other replies referred to tripartite and quadripartite agreements, specifically including the person/s arranged for in such agreements. Furthermore, the Authority also noted that a number of CSPs also prepare an additional and separate agreement between the arranged person and the client.

Regulatory Requirements

In terms of R3-11.7 of the CSP Rulebook, CSPs are obliged, prior to entering into a client relationship, to discuss terms of business with each prospective client and keep a written record of the terms of the agreement with each client, including evidence of the client’s agreement to those terms. As a minimum, the CSP Rulebook provides that such an agreement shall include:

a) details of the services to be provided and the fees charged;
b) a record of how and by whom requests for action are to be given;
c) provision dealing with situations where the CSP loses contact with a client; and
d) a provision granting right of access to the MFSA to all information pertaining to the services being provided to the client as well as the client.

Specifically, CSPs are expected to make reference to the provision of directorship and/or company secretary by way of arranging in their service agreements where these are intended to be provided to clients. The person/s being arranged for by the CSP may or may not be mentioned specifically in the service agreement however it must be made clear to the client/s who will be the person/s arranged for by the CSP in the provision of such Arranging Services.

1.2. Invoicing and Receipt of Remuneration for Arranging Services

When questioned on who is invoicing and receiving remuneration for Arranging Services, the majority of CSPs replied that the CSP is directly invoicing and receiving remuneration for Arranging Services. On the other hand, there were instances where CSPs replied that the arranged sister entity would invoice the client directly or instances wherein the appointed individual director received remuneration in the form a salary for such services. Several CSPs also made reference to the arranged person receiving a percentage of the remuneration received by the CSP for such services.

Regulatory Requirements

CSPs are reminded that in the provision of such Arranging Services, CSPs remain responsible for obligations arising from the provision of such services and therefore, CSPs should receive remuneration for such CSP services. Whilst the Authority acknowledges that a percentage of such remuneration may be allocated to the arranged person for the provision of such services, however this should be at the discretion of the CSP and in a fully transparent manner with all interested parties, at all times. In instances wherein the CSP is not receiving such remuneration, then the provision of such services would fall outside of the scope of 'arranging' and which may also trigger authorisation or registration requirements with the Authority for those individuals acting in such capacity. Should any persons/entities be receiving remuneration directly for such Arranging Services, an assessment should be made as to whether a notification, registration or authorisation is required for the provision of such services and should reach out to the Authority without any further delay.

2. Fitness and Properness Assessment of persons Arranged for

The Authority positively noted that ninety-six per cent (96%) of the CSPs forming part of this Thematic Review confirmed that a fitness and properness assessment is carried out on persons arranged for to provide such Arranging Services. Generally, the type of assessments described by CSPs focused on the carrying out of ongoing due diligence and adverse media checks. A few CSPs also described assessments carried out with respect to assessing the persons' competence and time commitment however these did not appear to be popular assessments carried out. However, the majority of CSPs put forward that background, knowledge, seniority and experience are the pillars upon which persons arranged for are chosen to provide such services.

A number of CSPS made reference to the fact that given that the persons arranged for are the approved directors of the CSP, they would have undergone the fitness and properness assessment by the Authority at approval stage and subsequently would only be subjected to due diligence checks.

In terms of the frequency of the carrying out of such assessments, generally, CSPs noted that due diligence checks are carried out daily on persons arranged to provide such services. It was also generally confirmed that other assessments are carried out on a regular basis to ensure that the persons arranged for remain fit and proper on an ongoing basis. As a good practice, the Authority noted that some practices extended to an annual internal review prepared by CSPs to confirm that persons arranged to provide such services still satisfy the fitness and properness test.

Regulatory Requirements

CSPs are expected to conduct robust and documented due diligence prior to appointing persons to provide Arranging Services, and on an ongoing basis. In terms of R4-4.2(a) of the CSP Rulebook, CSPs who provides Arranging Services, must perform a fitness and properness assessment on such person/s, including adequate due diligence checks. In this regard, CSPs are reminded that when offering such arranging services, the CSP remains responsible for the service provided and therefore, it is in the CSPs' best interest to ensure that the persons being arranged to provide such services are fit and proper not only at the time of appointment, but also on an ongoing basis. As explained in the MFSA's Fitness and Properness Guidance[4], the MFSA assesses fitness and properness against the following four criteria: (1) competence, (2) reputation, (3) conflicts of interest and independent of mind, and (4) time commitment. CSPs are expected to assess the persons' competence, experience, integrity and reputation as well as their ability to discharge the responsibilities attached to the role.

CSPs should ensure that these assessments are not treated as a one-off exercise, rather, CSPs must implement ongoing monitoring mechanisms to ensure that individuals continue to meet these standards throughout their appointment. Any concerns identified, including those relating to performance, conduct, or capacity, should be promptly escalated and addressed, including, where necessary, reconsideration of the individual's suitability to continue acting in such capacity. Furthermore, CSPs should not rely on the fitness and properness assessment carried out by the Authority at appointment stage of persons arranged to provide Arranging Service in lieu of the assessment they should be carrying out in order to ensure that fit and proper persons are appointed. CSPs are reminded that the onus is on them to ensure that the fitness and properness assessment is satisfied at all times by such individuals and that the Authority should be immediately notified of any events which may hinder such assessment.

3. Oversight, Monitoring and Reporting on Activities undertaken

3.1 Oversight and Monitoring

The Authority positively noted that ninety-four per cent (94%) of the CSPs forming part of this Thematic Review perform some degree of oversight and monitoring over persons arranged to provide Arranging Services. The Authority noted that out of the three remaining CSPs which indicated that no oversight and monitoring is carried out, two arrange for all the directors of the respective CSP entities to provide such services and in this regard, it was put forward that updates are provided by all directors during Board of Directors meetings. Furthermore, it was noted that out of these two CSPs only one CSP requests that persons arranged to provide regular updates on activities undertaken.

In terms of the manner in which oversight and monitoring is carried out, a number of CSPs replied that the CSP, in turn, would be providing other services to the same client/s through which it is able to monitor the arranging services being provided. Such services include bookkeeping, tax and vat compliance and secretarial support and therefore have full visibility of the financial affairs of the clients. Another popular answer was that the oversight and monitoring of arranged persons is included in the CSPs' Compliance Monitoring Programme as a compliance check, including file reviews of clients being provided such Arranging Services. By means of such compliance check, CSPs put forward that in particular, an assessment is made on whether such individuals are actively contributing to discussions and ensuring proper governance during Board of Directors meetings. Other CSPs provided that arranged individuals are backed up by a team assisting in work carried out and which work is also overlooked by the compliance function.

[4] Issued by the Malta Financial Services Authority on 2 July 2019

Other forms of monitoring and oversight provided extended to the carrying out transaction monitoring of such clients, review of board minutes, attendance records and assessing the quality of contributions during meetings. On the other hand, the Authority noted that several CSPs indicated that the monitoring and oversight carried out only extended to due diligence checks or the review of the statutory filings of the client companies.

As a good practice, the Authority noted that certain CSPs provide training and support to arranged individuals for them to remain aware of their legal and fiduciary duties on an ongoing basis.

3.2 Reporting on Activities Undertaken

The Authority positively noted that ninety per cent (90%) of the CSPs forming part of this Thematic Review request persons arranged to provide Arranging Services to provide regular updates on activities undertaken. Generally, CSPs provided that frequent meetings are held with the person/s being arranged which are then followed up by an annual or biannual checklist of confirmations relating to the activities undertaken. Furthermore, out of these ninety per cent (90%), ninety-six per cent (96%) request documented updates to be provided to senior management.

The Authority however was concerned to note that, out of these ninety per cent (90%) of CSPs which request documented updates, only twenty-seven per cent (27%) of these CSPs request updates to be provided on key aspects of the service being provided by the arranged persons. However, as a good practice the Authority noted that these twenty-seven per cent (27%) of CSPs requested a diverse array of updates on activities requested from arranged persons in relation to the provision of directorship services including aspects relating to:

- governance practices, including number and frequency of board meetings, decisions taken and agreements entered into;
- time committed to the role;
- operational client issues;
- compliance/breaches with statutory requirements;
- matters which may affect the going concern of the clients;
- client activity including new target markets;
- financial transactions and bank account activity, including payments approved, changes to bank signatories and new bank accounts opened;
- risk management;
- outcome of any audit processes;
- disclosure of any conflicts of interests; and
- solvency and capital maintenance;

In terms of the provision of company secretarial services, CSPs further generally indicated being updated by arranged persons on aspects of governance, administrative record-keeping, statutory compliance and regulatory monitoring.

Another good practice noted by the Authority was that, apart from regular reports being submitted to senior management, as described above, such reporting was also event driven wherein immediate reporting of any material developments or issues of concern is being done.

Regulatory Requirements

In terms of R4-4.2 of the CSP Rulebook, CSPs are obliged to perform adequate oversight and monitoring on persons being arranged to provide directorship and/or company secretarial services. In this regard, CSPs are expected to implement effective oversight mechanisms ensuring that appointed individuals are actively discharging their duties, that they maintain sufficient understanding of the business of the entities they are appointed on and that they contribute meaningfully to decision-making and governance processes. Monitoring should extent to the regular review of Board Meetings' attendance, level and quality of participation and escalation of matters, where necessary.

In this regard, CSPs are expected to request the provision of regular reports on activities undertaken, which should be provided at least annually. The frequency of such reports should be determined by the CSP according to the nature of activities and number of engagements undertaken. The aim of such reports is to monitor performance, attendance and participation and to ensure that the persons arranged to provide such Arranging Services are adequately performing their role and to be kept informed with the latest developments of its clients. Therefore, CSPs must ensure that they are being kept updated with all key aspects of the provisions of Arranging Services, including adequate information on client entities to whom such Arranging Services are being provided, as set out above in this letter.

CSPs are reminded that they remain responsible for the CSP services being provided through the arrangement process and therefore it is in their best interest to ensure, on the one hand that fit and proper persons are arranged for and that they remain fit and proper for the duration of the service being provided. On the other hand, adequate ongoing monitoring through both the compliance function and through receipt of reports on activities undertaken should be undertaken to ensure that the CSP services are being provided adequately and professionally and to ensure that clients remain within their risk appetite. CSPs must ensure that persons arranged are not regarded as passive, nominee or 'letterbox' directors or company secretaries.

Finally, CSPs are also expected to ensure that escalation procedures for identifies shortcomings or concerns are in place, especially if these impact the reputation of the CSP.

4. Time Commitment & Availability

4.1. Assistance provided to Arranged Persons

When describing the methodology undertaken in order to ensure that arranged persons are committing sufficient time to perform his/her function efficiently and effectively, CSPs noted various replies. Most notably, CSPs provided that such arranged persons are supported by staff in the carrying out of their role and ensure that sufficient help is dedicated to the person. Similarly, in some cases assistance from other departments servicing the same client is provided and persons arranged are provided with regular information on the said client/s. Furthermore, other mechanisms included the monitoring of attendance of Board meetings and monitoring of such persons' other commitments within the CSP to ensure adequate time is dedicated to the role/s.

Following an analysis of the number of arrangements noted in the replies provided by CSPs forming part of this Thematic Review, the Authority noted that the highest number of roles held by an arranged individual was 151 directorships and who such person is also a director of the said CSP. With respect to company secretarial services, the highest number of roles held by a particular individual being arranged was 63 companies with the said person also being a director of the CSP.

4.2. Qualitative and Quantitative Assessments of Time Commitment

As a good practice of quantitative assessment of time commitment carried out, the Authority noted that certain CSPs retain a register including the involvements of persons arranged as an assessment of time. Other practices included the retaining of an annual declaration to be confirmed by the arranged person confirming their time commitment and ability to effectively discharge their duties.

Furthermore, beyond the quantitative assessment of time commitment, the Authority noted that the majority of CSPs fail to assess the level of activity and industry that the legal entity is involved together with the risk of the legal entity in assessing the arranged person's time commitment. Rather, the majority of CSPs simply assess the arranged person's expertise in the provision of Arranged Services.

In terms of the documentation of qualitative and quantitative assessments of time commitment carried out by CSPs, the Authority noted that seventy per cent (70%) of CSPs document such assessments.

4.3. Absence of Arranged Persons

The Authority positively noted that all CSPs forming part of this Thematic Review have alternative arrangements in place should the person arranged for be indisposed for a prolonged period of time to ensure continuity of service. The majority of CSPs indicated that an alternative person could be appointed or else obtain a Power of Attorney to act for and on behalf the person for the time period indisposed.

Regulatory Requirements

In terms of R4-4.4 of the CSP Rulebook, CSPs are obliged to ensure that arranged persons are able to commit sufficient time to perform their functions efficiently and effectively. Section 2.1.1.2.13 of the Code provides that each director should apply the necessary time and attention to his duties and should undertake to limit the number of directorships or other commitments held in other companies to such an extent that the proper performance of his duties is assured. Notwithstanding the fact that arranged persons will have support from staff within the CSP, the Authority deems that having such a large number of appointments is inadequate, including instances wherein client companies are holding companies with minimal activity. From supervisory interactions carried out, the Authority deems that such situations indeed result in rubber stamping and inadequate service being provided.

Furthermore, in terms of R4-4.4 of the CSP Rulebook, CSPs are expected to carry out a qualitative and quantitative assessment of time commitment. Time commitment is considered a core element of fitness and propriety directly impacting the effectiveness of governance arrangements. CSPs should adopt a substance-over-form approach and not only limit their assessment to reference to the number of appointments held by such persons. Rather, they should assess whether the individual/s can effectively perform their duties across all mandates taking into account overall workload, nature and complicity of roles and a demonstrated level of engagement in the carrying out of such roles. In particular, CSPs are expected to differentiate between the level of work and participation required on the basis of the nature of the legal entities, whether they are regulated or not, the scale, structure and geographical footprint, whether groups are included and whether the entities are higher risk which require significantly greater time commitment. CSPs are expected to carry out such assessment both at appointment stage and on an ongoing basis.

Finally, CSPs should also ensure to have documented procedures in terms of business continuity should the person/s arranged for be indisposed for a prolonged period of time.

CONCLUSION

The findings arising from this Thematic Review are being highlighted in this letter with the aim of sharing experiences, best practices indicated by Authorised Persons themselves and drawing attention to potential areas of improvement identified in relation to the oversight carried out by CSPs when arranging for other persons to act as directors and/or company secretaries.

The Authority would like to highlight the importance that all CSPs to whom this letter is addressed, not merely those which formed part of the sample of this Thematic Review, carry out a gap analysis in relation to the arranging for other persons to provide directorship and/or company secretary services to take into account all the findings and recommendations made in this Thematic Review. The gap analysis should be duly documented and made readily available to the Authority upon request. The Authority may verify the said gap analysis during future supervisory interactions with CSPs.

CSPs are expected to ensure that they take the necessary actions to align the set up and operations of the provision of Arranging Services with the MFSA’s expectations. In taking the necessary corrective actions to align their position with the MFSA’s expectations, CSPs are expected to adopt a proportionate approach taking into account the nature, size and complexity of their authorised business.

Should anything remain unclear or further guidance on achieving the Authority's expectations in practice be required, CSPs are invited to contact the Authority, accordingly. The MFSA remains committed to continue providing guidance on best practices to continuously improve the provision of CSP services, in particular the provision of directorship and company secretarial services through the arranging process in the financial services sector.

Yours faithfully,

Malta Financial Services Authority

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