

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Consultation on the introduction of the proposed regulatory regime for Company Services Providers.

1.0 Background

Directive 2005/60/EC of the European Parliament and of the Council of 26th October, 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, also referred to as the Third Money Laundering Directive, requires relevant businesses, including trust or company service providers, to establish and maintain appropriate policies and procedures relating to, *inter alia*, customer due diligence, reporting, record keeping, monitoring and management of compliance in order to prevent activities related to money laundering and terrorist financing.

In terms of the same Directive trust and company service providers are defined as any natural or legal person who by way of business provides any of the following services to third parties:

- (a) Forming companies or other legal persons;
- (b) Acting or arranging for any person to act as director or secretary of a company, a partner of a partnership or a similar position in relation to other legal persons;
- (c) Providing a registered office, business address, correspondence or administrative address and other related services for a company, a partnership or any other legal person or arrangement;
- (d) Acting or arranging for another person to act as trustee;
- (e) Acting or arranging for another person to act as nominee shareholder for another person.

The majority of the provisions of Directive 2005/60/EC relating to the combating of money laundering and funding of terrorism have been implemented in national legislation through the Prevention of Money Laundering Act and the Prevention of Money Laundering and Funding of Terrorism Regulations (LN 180 of 2008 as amended by Legal Notices 328 of 2009 and 202 of 2012).

In terms of this Article 36 of the Directive, Member States are obliged to ensure that *'...company service providers shall be licensed or registered....in order to operate their*

business legally.’ Furthermore Member States are also required to ensure that competent authorities refuse licensing or registration of such entities if they are not satisfied that the persons who effectively direct or will direct the business of such entities or the beneficial owners of such entities are fit and proper persons.

In order to fully comply with the requirements of Article 36 of the Directive, MFSA is proposing a new regime which would require company services providers to obtain a registration with the MFSA as further described below. It is being proposed that the term “company services providers” be defined in the new legislative framework as being any natural or legal person who provides any of the following services to third parties:

- Formation of companies or other legal entities;
- The operation or management of companies including acting or arranging for another person to act as a director or secretary of a company, a partner in a partnership or in a similar position in relation to other legal entities;
- Provision of a registered office, a business correspondence or administrative address and other related services for a company, a partnership or other legal entity.

2.0 Proposed Regulatory Regime

Registration Requirement

It is being proposed that all persons, resident in or operating from Malta who act as company services providers on a habitual and regular basis be required to apply for registration with the MFSA. The local legal provisions within which this regime will come into force are the proposed Company Services Providers Regulations, to be issued under the Malta Financial Services Authority Act and the Investment Services Act (“the Regulations”). A draft of these Regulations is attached to this document as Appendix 1.

In general, the Authority will only grant such registration if it is satisfied that the applicant for such a registration is a “fit and proper” person to provide the services concerned and will comply with Regulations and with any Rules which the Authority may issue thereunder.

In addition, in the case of natural persons, applying for registration as company services providers, in order to issue such a registration, the Authority must be satisfied that such person is resident or operating in Malta. In the case of applicants which are companies or other type of legal entities, in order to issue registration, the Authority must be satisfied that:

- The applicant’s 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;
- The applicant’s actual activities are compatible with its objects as described above;

- The directors of the company are not less than two in number and are individuals who are fit and proper persons;
- 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 applicant, is a fit and proper person;
- The name of the applicant is not inconsistent with its activities as outlined above;
- Where the applicant is not formed and registered in Malta, it is formed in a country which is considered to be a reputable jurisdiction for the purposes of the prevention of Money Laundering and Funding of Terrorism Regulations referred to above.

Exemptions

It is being proposed that the following persons shall be exempt from the requirement of registration described above only if such persons provide company services in a manner which is incidental and limited to what is necessary in the course of carrying out their profession and do not otherwise hold themselves out as company services providers to the public:

- Advocates
- Notaries public
- Legal Procurators
- Certified Public Accountants.

It is being proposed that persons authorized to act as a trustee or to provide other fiduciary duties in terms of the Trusts and Trustees Act shall also be exempt from the requirement to apply for registration in terms of the proposed Regulations, given that such persons are already regulated in the provision of such services in terms of their authorizations under the Trusts and Trustees Act.

Company Services Providers Rules

The Authority shall, in due course, issue Company Services Providers Rules which would contain, in further detail, the requirements which a person applying for registration in terms of the proposed Regulations attached herewith would need to satisfy as well as the ongoing requirements which registered persons would need to abide by.

These Rules will be issued for consultation prior to their coming into force.

3.0 Transitional Arrangements

Following the consultation period and on the coming into force of the proposed Regulations, all persons who are currently providing company services as defined therein, shall be required to apply for registration within three months from the date on which the proposed Regulations have come into force. The Authority shall accept all such applications and shall process them within six months of receipt of the relevant complete

applications which should include all supporting documentation as may be required by the Authority.

Any persons who are seeking to provide company services after the date of the coming into force of the Regulations are required to apply for registration prior to the commencement of the provision of such services.

4.0 Offences

Under the proposed Regulations, 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 shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding €50,000 or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

5.0 Fees

A non-refundable fee of €200 is payable on application for registration. Furthermore a registration fee of €2,000 is also payable on the date of the granting of registration by the Authority and a supervisory fee of €2,000 is also due annually, on the anniversary of such date.

6.0 Consultation Period and Contacts

Interested parties are requested to send their submissions in writing to the Director – Securities Unit, MFSa (or by email at su@mfsa.com.mt) by not later than the 7th December, 2012.

Any queries regarding the proposed Regulations are to be directed to:

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Explanatory 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 comments received not only from licence-holders and other involved parties but also following the necessary review and vetting by the Office of the Attorney General and the relevant Minister to whom the MFSA is required by law to provide advice on financial services matters. It is important that persons involved in the consultation bear these considerations in mind.

**Communications Unit
Malta Financial Services Authority
MFSA Ref: 09-2012
23rd November 2012**