


# **COMPANY SERVICE PROVIDERS UPDATED CSP RULES & RULEBOOK**

A decorative graphic on the right side of the page consists of four horizontal light blue bars of varying lengths, stacked vertically. Below these bars is a large, light orange shape that resembles a folded corner or a stylized 'S'.

Feedback by  
Malta Chamber of SMEs

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## Introduction

Malta Chamber of SMEs (formerly GRTU) is the largest social partner in Malta representing over 7,000 SMEs from over 90 different sectors. The SME Chamber has been established for over 70 years and its aim is of safeguarding the interest of businesses at large.

The following feedback has been compiled following an internal consultation with members, involved and working directly in the financial services, specifically with Company Service Providers (CSPs) and other professionals which include lawyers and accountants. The group includes a number of small to medium sized companies together with a number of sole-practioners working in their own capacity.

The SME Chamber positively notes that the rulebook published addresses a number of concerns raised in earlier feedback by the SME Chamber. Moreover, a number of recommendations put forward by Malta Chamber of SMEs have been upheld and taken on-board.

The SME Chamber however notes that certain proposals and clauses listed are still very vague and leave room for doubt thus it is not always clear if the Authority intends to take into consideration the principle of proportionality or if in reality a one-size fits all approach is being adopted.

The feedback below covers the consultation issued on the Updated CSP Rules and also on the Rulebook for CSPs. This paper will be limited to the main areas of concern members have raised and areas on which further clarification and details on the proposed rulebook is required. Moreover members have also recommended a number of amendments which add value to what is already being proposed.

# **1. SME Chamber Feedback on the Consultation Document on the Updated CSP Rules**

## **1.1 Class A Under Threshold**

From the feedback received, it is noted that there appears to be a positive concession for natural persons in possession of a warrant who offer CSP services not exceeding 35% of the combined revenue or not more than Euro 100,000 (whichever is higher). Applying for a full license still however presents a significant deterrent. It is sometimes the case for members whose overall revenue is not generated from CSP related activities, that offer the service of 'provision of registered office. Both services in fact go hand in hand and are normally offered together.

The SME Chamber therefore agrees with the set thresholds, in order to ensure that the principle of proportionality is being observed, the SME Chamber however recommends that those applying under this Class under threshold will also be allowed to provide the service of registered office, business or correspondence address apart from providing the service of formation of companies or other legal entities.

Members have also noted that it is not clear as to why Class A under Threshold refers 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 individuals and excludes legal persons. The SME Chamber believes that should this distinction be made, small firms will be encouraged to restructure and operate as individual service providers. The SME Chamber

therefore proposes that legal persons are not excluded from Class A under threshold.

## 1.2 Risk Management Function

Members of the Malta Chamber of SMEs note that the Risk Management function within the CSPs is a very important aspect and function. The SME Chamber also positively notes that the principle of proportionality is also being taken into consideration. The proposed amendment however is still very vague with no clear parameters of what will be accepted and what not.

The derogation relating to the Risk Management function also does not provide guidance on what constitutes appropriate and proportionate, therefore it is still uncertain as to whether CSPs will be required to engage a person specifically to fill this role.

On putting forward obligatory requirements related to human resources. as in the case with MLRO/compliance personnel, one take an idealistic approach and not consider the limited labour market Malta has in this respect. Malta does not have a ready supply of trained risk managers able to take on such a senior role. This will further push an already expensive role to engage to a much higher cost.

The rulebook mentions that the Authority 'may' consider allowing a CSP to establish and maintain a risk management function which does not operate independently provided that;

- 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**

Members of the SME Chamber require more clarity on this. Although in principle the majority of members agreed that the Authority should allow for such derogation, there is no specific detail on the criteria to be satisfied in these cases.

The SME Chamber therefore recommends that clearer criteria is listed in terms of what the Authority will take into consideration when assessing the nature, scale, complexity and services offered. Such criteria must be specified ahead and transparent. The SME Chamber also proposes that a longer transition period than the mentioned 6 months will be allowed for the CSP industry to fulfil this position and honor its obligation.

### **1.3 Exemption for Specific Categories of Persons from Authorisation under the Act**

The SME Chamber notes that following feedback submitted the Authority has now included the exemption for persons authorized to act as trustees or to provide other fiduciary duties in terms of the Trusts. This is in light that Trusts and Trustees already go through a process of authorization and are therefore already subject to rigorous checks and compliance.

Members also agree that in the case of Trusts and Trustees and Trustees and VFA agents a notification is still required for them to be able to provide any of the services of a CSP.

From the feedback gathered the SME Chamber also proposes the below exemptions are also included:

- A director that besides being a member of the board of directors, is employed with the company as executive director and performs other services, for example being a CEO, CFO, etc. In this case this exemption will apply whether the person is employed on full-time or part-time basis while also sitting as a director;
- The exemption listed under exemption three (3) implies that acting as an officer on a company to which a person has only up to 50% ownership will not fall under this exemption. The SME Chamber therefore proposes that; 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 but no controlling interest (shareholding would be less than 25%).
- In the above proposed exemption and in exemption as specified under exemption three (3) of the consultation document, the SME Chamber is proposing that the exemptions are also extended to cases; in which the person has a relationship of Consanguinity & Affinity till the 2nd degree with a beneficial owner of the company.

The above scenarios should be excluded and considered with the exemptions. These will apply for both Class B & C and under threshold Class B.

## **2. SME Chamber Feedback on the CSP Rulebook**

The below feedback is based on feedback received by members who offer CSP services and also through discussions between the CSP committee within the SME Chamber. The below is based on the principle of proportionality and keeping in mind that businesses come in all forms and sizes and a one size fits all approach does not work for all business types.

### **2.1 Interpretation**

**Class A under threshold:** As mentioned in the previous section, the under threshold class A can only be in proportion if natural persons are allowed to offer all services which can be offered under Class A. The Authority is therefore encouraged to re-consider this clause. Moreover the authority is also encouraged to consider allowing legal persons to apply under this class.

**Class B under threshold:** The SME Chamber notes that the Authority is also proposing creating a Under threshold for Class B. In principle the majority of members agree with this clause and the aggregate proposed, others noted that the Authority should consider increasing the aggregate to a maximum of 10.

Members would however like to seek clarification on what will be considered as 'involvements'. Specifically, if a natural person has a number of directorship of own companies (not a group of companies) and owns a minimal shareholding of less than 25% (no controlling interests) will this still be taken into consideration? In this case the SME Chamber proposes that such 'involvements' would be exempted. Reference is also being made to section 1.3 of this document.

**Under threshold Class C:** A number of members lamented that although the authority is seeking to adopt the principle of proportionality especially with natural persons, (through the creation of under thresholds Class A & B whose main revenue is not generated from corporate services), there are a number of instances that even though the main revenue is not generated through corporate services they would still be offering all services of a CSP as specified under article 2 (1) of the CSP Act.)

Members mentioned that, as currently proposed, a sole practitioner would still have to go for the full Class authorization process (setting up a legal entity etc.), in order to be able to offer all CSP related services. This is so also in instances where the service offered are not the main revenue stream for a particular sole practitioner.

The SME Chamber therefore recommends that an under threshold Class C is created in order to ensure that the principle of proportionality is being observed. By way of eligibility, the SME Chamber is proposing that;

- i. CSP Services offered are this within the CSP Act as listed under Article 2 (1)
- ii. Refers 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.



- iii. Aggregate of not more than five (5) involvements for acting as 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.

## 2.2 – Authorisation of Company Service Providers

The Malta Chamber of SMEs and its members welcome the fact that the Authority has reversed the initial proposal to list a set amount (unless clause R3-4.3 applies) of the initial capital requirement rather than stipulating only a minimum amount as initially proposed in the feedback statement published earlier.

**R 2-2.12 - Class C Under Threshold:** As proposed under section 2.1 of this paper, In terms of initial capital, the SME Chamber recommends that this should be of Euro 7,500, in line and in proportion with the other thresholds and categories.

**R 2-2.13:** Although the rulebook published lists the amount held in cash and cash equivalents in terms of International Accounting Standards, It is still not yet clear on what assets will be accepted. More clear information is therefore required.

Although the international accounting standards list that; investments normally only qualify as cash equivalents when they have a short maturity or less from the date of acquisition, Members have put forward a proposal for the authority to consider accepting local government bonds as initial capital.

**R 2-5.7.3:** The Authority lists down that those individuals subject to the fitness and properness test shall be required to obtain a number of CPE hours on an

annual basis. The SME Chamber would like further details particularly on [i] the number of CPE hours required annually [ii] the CPE topics approved and accepted and [iii] what will be accepted as CPE hours and not. The Authority is therefore required to provide more details.

Other members have also enquired if the same CPE hours acquired for other warrants such as accountants can also be accepted even though these are being claimed elsewhere.

**R 2-6.2.7:** Although in principle the majority of members agree that the role of the MLRO is a very important and onerous role, members noted that the requirement to possess **both** relevant qualifications and experience in AML/CFT matters might cause a number of issues in the sector.

Members mentioned that as per current practice no qualifications in AML/CFT are required for persons sitting as MLROs. Having said that normally MLROs would have years of experience working in AML/CFT.

In order to address this gap and provide a transitional mechanism, the SME Chamber is proposing that for the first 2 years of implementation, the Authority will accept MLROs with only relevant work experience as long as the particular MLRO undertakes a course which would lead up to a qualification during the first 24 months from authorization. This would give enough time for current MLROs to update their position. Moreover the Authority is to indicate the courses that are accepted in addition to giving the time for operators to get the qualification.

Members have also asked for more details on what qualifications will be accepted. As a general feeling amongst members, the preferred option would be to have a list of courses and qualifications which are certified and verified by MFSA as sufficient for the above-mentioned requirement. Any courses not included in the list, can be eventually reviewed, verified and added to the list.

This measure will give clear guidance and direction to CSPs on what is expected by the Authority.

**R 2-6.2.8:** Under sub-article (F), there is a clear indication that the due diligence process for directors will be increased substantially. Currently providers are only required to identify the directors however both the revised rulebook published as well as the FIAU's Implementing Procedures for CSPs appear to clarify that CSPs are required to identify and verify the directors.

This change requires additional effort to collate the required documentation at a time when the current pandemic is a limiting factor. The Authority is therefore encouraged to provide sufficient transition time to CSPs in order to bring their compliance in order in this regard.

**Concluding remarks (Authorisation):** From the feedback gathered, members note that at the moment there is a huge skills shortage when it comes to qualified MLROs and Compliance officer in the market. Malta Chamber of SMEs therefore proposes that this issue is tackled holistically in light of the new requirements being proposed in the legislation and rulebook.

With regards to the overall Authorisation process, members are particularly concerned on the time-frames mentioned in the legislation *Vis a Vis* the actual time-frames the authority will require to authorize a CSP. In this regard members would like clarification as to whether they will still be able to operate and offer CSP services while the authority conducts its checks and balances in order to authorize that particular CSP.

## 2.3 – Ongoing Obligations for CSPs

**R 3-5.1 Insurance Requirement:** Although it is understood that CSPs are required to take out a PII where pursuant to R2-2.13, from our initial research and from the feedback gathered from members, the number of insurers willing to provide professional indemnity has reduced substantially and the available insurers have increased their premiums considerably, in some cases by up to 300%. The SME Chamber therefore proposes that prior to imposing mandatory PII on the industry and/or increased required minimum limits of indemnity, the Authority carries out market research to ensure that there is suitable coverage available from the insurance industry.

**R 3-7.3** In addition to the points raised under section 1.2 of this document, more information is being requested in order to ensure that the measure is objective, fair and proportionate.

The SME Chamber therefore requests more clear parameters on when the authority will accept CSPs to establish and maintain a risk management function which does not operate independently.

## 2.4 – Enforcement and Sanctions

**R 5-2.8** The SME Chamber requests that the initial and daily penalties set are communicated beforehand as the rulebook does not give any details on what the initial and daily penalties, will be.

### **3. Conclusion**

The SME Chamber positively notes that a number of improvements have been made since the Authority published its first consultation document published on 'Raising the Bar for CSPs'.

The Proposed changes mentioned in this consultation document are all industry based proposals which apart from adding value to the overall legislation, ensure practicality and functionality, and thus ensure the successful implementation of the legislation and rules published.

The SME Chamber also believes that the clarifications required are essential in order to ensure that the reform is successfully implemented while benefitting members at large and ensuring that quality throughout the sector is maintained and improved.