



GOVERNMENT OF MALTA

---

## Government response to the Consultation on the Updated Company Service Provider Rules

*22<sup>nd</sup> February 2021*

*Ministry for Finance and Employment  
30, Maison Demandols,  
South Street,  
Valletta VLT 1102*

This publication (excluding Logos) may be re-used free of charge in any format or medium provided that it is re-used accurately and not used in a misleading context. This material must be acknowledged as Government of Malta and the title of the publication specified.

Any queries regarding this publication should be sent at: [onlineconsultations@gov.mt](mailto:onlineconsultations@gov.mt).

Published by the Ministry of Finance and Employment

# Contents

## CONTENTS

Contents.....	3
Executive Summary.....	4
Introduction and overview .....	4
Responses to the consultation and process used to seek stakeholder views .....	5
Summary of responses and decisions.....	5
Implementation .....	7
Contact Details.....	8
Annex A: List of respondents ( <i>optional</i> ) .....	8

# Executive Summary

## Introduction and overview

1. A brief introduction about the subject.

Following the enactment of Act L of 2020 entitled 'Company Services Providers (Amendment) Act', 2020, the Malta Financial Services Authority ('Authority') made changes to the Company Services Providers ('CSP') Rulebook in order to *inter alia* align it with the said Act and proposed exemptions to specific categories of persons to be exempted from the Act by way of a Legal Notice.

2. The public consultation date.  
Include the objective and purpose of the public consultation.

On 1<sup>st</sup> December 2020, the Authority published a Consultation Paper on the CSP Rulebook and proposed exemptions.

This Consultation sought views on:

1. The exemptions to be included in a legal notice to be entitled the "Company Service Providers (Exemption) Regulations, 2021". The categories of persons exempt from the Company Service Providers Act, as amended by Act L of 2020, were proposed as follows:
  - a. a person authorised to act as a trustee or to provide other fiduciary duties in terms of the Trusts and Trustees Act;
  - b. 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;
  - c. 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;
  - d. 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
  - e. 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.

## Responses to the consultation and process used to seek stakeholder views

This document is the Government Response to this consultation and sets out the Government's decisions on these matters.

3. The closing date of the public consultation. Which methods were used to receive the feedback. The total amount of responses. From whom you received the feedback.

The consultation closed on 15<sup>th</sup> January 2021. The Consultation Document was available online and responses were accepted electronically on a dedicated email address set up specifically for the consultation. In total, there were 12 responses. These were received from across the industry including industry bodies, professional firms and individual practitioners.

4. Include (if any) meetings with stakeholders and list who the stakeholders were.

A number of meetings with industry bodies representing professional and industry stakeholders were also held during the consultation period. Meetings with industry bodies representing professionals were also held after the consultation period closed. The meetings were held with the Chamber of Advocates, Institute of Financial Services Practitioners, Malta Institute of Accountants and SME Chamber. These meetings and the feedback received from stakeholders have all contributed to and informed our thinking and final decision.

## Summary of responses and decisions

The following is a summary of the consultation responses received. We would like to thank all those who took the time to respond to the consultation and participate in stakeholder meetings around the consultation exercise.

5. Statistics.

- Total feedback received: 12
- Total feedback received by individuals: 3
- Total feedback received by organisations: 9
- Total feedback received through email: 12
- Total feedback received through online form: Not applicable
- Total feedback received by post: Nil

6. Summary of feedback received.

All stakeholders agreed with the proposed exemption to be granted to a person authorised to act as a trustee or to provide other fiduciary duties in terms of the Trusts and Trustees Act.

The majority of stakeholders were in agreement with the proposed exemption to be granted to those authorised as VFA Agents under the Virtual Financial Assets Act as proposed, with the exception of one industry body who suggested that the exemption relating to VFA Agents should be extended to allow them to provide directorship and company secretarial services.

All stakeholders agreed with the proposed exemption to be granted to 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.

In relation to the proposed exemption whereby 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, the majority of the feedback received requested clarification as to what is meant by the term “controlling interest”. The suggestions made in relation to the proposed exemption were quite diverse. An industry body commented that this exemption is too prescriptive and should be widened. It said that ownership interest, whether direct or indirect, in excess of 5% should be the criterion applied and further said that the professionals they represent who do not conduct CSP services as a business should not be considered as falling within a specific Company Service Providers regime.

Another industry body advocated tying the exemption to beneficial ownership of 25% or more rather than ownership and controlling interest. A third industry body said that this concept should not be implemented restrictively such that only persons who have a majority shareholding (50% voting rights plus at least one vote) and advocated that any shareholding of 10% or more typically entitles the shareholder to a level of influence, and usually a right to appoint a director, and hence any directorship emanating from or linked to a shareholding of 10% or more should be exempt from the requirement of authorisation. Another industry body suggested amending the wording to refer to a person who has an ownership but no controlling interest (shareholding would be less than 25%).

A company suggested meeting any one of the ownership or controlling interest criteria should be sufficient. In general queries were raised how this exemption would affect persons acting as directors or company secretaries or holding equivalent positions in other legal persons who are involved in family companies, companies where they have a commercial interest and employees who act in such capacities without having an ownership or controlling interest.

All those who gave feedback agreed that 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 should be exempt.

The majority of industry bodies objected to the exemption proposed in relation to 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.

Most industry bodies representing professional members commented that the exemptions should be extended to individuals acting as directors and company secretaries of listed companies.

Some suggested introducing an exemption to individuals who act as directors or secretaries of companies that are regulated by overseas regulatory authorities in comparable jurisdictions.

1. Your assessment and the Government's decision (list the Government's decisions).

Having considered the feedback received our opinion from the consultation exercise conducted is that the following categories of persons should be exempt from the Company Service Providers Act, once Act L of 2020 comes into force:

- (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 natural 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 entity, where such company, partnership or other legal entity is licensed, registered or otherwise authorised by the Authority:  
Provided that this exemption shall also apply to a natural person offering only such services to a company, partnership or other legal entity licensed, registered or otherwise authorised by an overseas regulatory authority in a recognised jurisdiction; and
- (4) a natural person who only offers 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;  
Provided that this exemption shall also apply to a natural person offering only such services to a company, partnership or other legal entity whose financial instruments have been admitted to listing on a regulated market by an overseas regulatory authority in a recognised jurisdiction

Given the strong views expressed by stakeholders, it is our view that the following categories of persons should not be exempt from the Company Service Providers Act, once Act L of 2020 comes into force:

- (1) 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;
- (2) 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.

## Implementation

7. When you intend to implement the decisions

Subject to Ministry approval, we intend to implement our decision on 3<sup>rd</sup> May 2021, with the aim of the changes coming into force on 3<sup>rd</sup> May 2021.

## Contact Details

If you have any questions regarding this response, please contact: [cspframework@mfsa.mt](mailto:cspframework@mfsa.mt)

## Annex A: List of respondents

Organisation