

An Overview of the Proposed 'Company Service Providers Regulations 2012' in Malta

The Malta Financial Services Authority (MFSA) has proposed the regulation of company service providers and has issued draft regulations to this effect. Although still in the initial stages of discussion, if implemented, these regulations will surely have an impact on current company service providers in Malta.

The intention behind the adoption of such regulations is to implement article 36 of Directive 2005/60/EC of the European Parliament and of the Council of 26 October, 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, insofar as this applies to company service providers. A company service provider is described as a natural or legal person which by way of business provides any one of the following services to third parties:

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

The only persons exempt from the requirement of registration are Advocates, Notaries Public, Legal Procurators and Certified Public Accountants. However this is only limited to when the company service provider is doing what is necessary and incidental in the course of carrying out his profession. Additionally a proposal to exempt persons authorised to act as trustee or to provide fiduciary services in accordance with the Trusts and Trustees Act is also being suggested.

In terms of the draft regulations, the Malta Financial Services Authority shall have the power to refuse an application for registration. The requirements for approval of an application are the following:

- a. That the applicant is a fit and proper person to provide such services and that he will comply with and observe the requirements set out in the regulations and other rules applicable;
- b. In the case of a natural person, such person must be resident or operating in Malta;

- c. In the case of a company:
 - i. The objects include acting as a company services provider and carrying on activities ancillary or incidental thereto;
 - ii. Its activities are compatible with its objects;
 - iii. The minimum number of directors must be two;
 - iv. Any person who owns or controls 25% or more of the shares or voting rights in the company or any person who exercises control over the management of the company is a fit and proper person;
 - v. The name of the company must be consistent with its activities;
 - vi. In the case of a company not formed and registered in Malta, such company must be so formed, constituted or incorporated in a reputable jurisdiction.