

Corporate Service Providers

Looking further at Corporate Service Providers in Malta, *Lawyer Monthly* speaks to Dr Stephanie Sciberras, from GANADO Advocates.

Please introduce yourself, your role and your firm:

GANADO Advocates is a leading business law firm in Malta, servicing an extensive portfolio of international and local clients. It has contributed significantly over the past several years to the growth of the financial and maritime services sectors in Malta. Corporate law is one of its primary practice areas, but apart from its traditional corporate law advisory work, GANADO has been actively engaged – throughout almost three decades now, in offering a broad spectrum of corporate administrative services ranging from registered office, fiduciary shareholder, resident agent and process agent services to full company secretarial services. Furthermore, GANADO dedicates considerable energy and resources to provide its clients with full corporate governance support services.

I am a Senior Associate and leads GANADO Advocates' Corporate Services and Governance team. In particular I assist in all corporate matters including corporate and company law advice and guidance on corporate governance. I also regularly advises on matters relating to investment services law.

Please could you explain the new Company Service Providers Act, and what it involves?

On 24 December, 2013, Parliament enacted the Company Service Providers Act, 2013 (Act XX of 2013; the "Act"). Despite its name, this statute not only introduced regulatory supervision of all types of company service providers ("CSPs"), but its Parts II to XI also amended various financial services and banking laws. Part I which enacts the Company Service Providers Act implements into Maltese law Article 36 of Directive 2005/60/EC of 26 October, 2005 (on the prevention of

the use of the financial system for the purpose of money laundering and terrorist financing) requiring that EU Member States regulate CSPs by registration or licensing and by ensuring that the persons owning and running them are fit and proper persons.

The Act imposes for the first time a requirement to register a CSP with the Malta Financial Services Authority ("MFSA").

Will there be significant impacts made to the services companies receive in your country, will these be positive or negative, or both?

The Act defines a CSP as any natural or legal person resident or operating in or from Malta that by way of business:

- forms companies or other legal entities; or
- acts (or arranges for another person to act) as a director or company secretary or a partner in a partnership or occupies a similar position or office in other entities; or
- provides a registered office, business correspondence or administrative address or other related services for a company, partnership or other legal entity.

As legal persons therefore, all companies providing the above-outlined services must register as CSPs with the MFSA. This should lead to positive improvements in corporate services provided in or from Malta as more procedures and controls will be introduced by the CSPs in order to qualify for registration. Through effective and ongoing regulation of CSPs – important industry makers and players in their own right, the Act will contribute to maintain high qualitative standards throughout the sector and achieve a level playing field for all competitors, be they local or foreign CSPs operating from Malta.

Do you think this new law goes far enough in terms of preventing abuse of the financial system?

The new law implements the basic requirements for the prevention of the use of the financial system for the purposes of money laundering and terrorist financing and the draft Rules published by the MFSA impose a number of requirements.

At GANADO Advocates we believe that by providing effective and ongoing regulation of CSPs, this new Act will enhance the services provided by Malta's burgeoning financial services sector. CSPs are now subject to rigorous screening by the Malta Financial Services Authority which is the financial services regulator.

What are the main issues you deal with regarding Corporate Service providers in your role?

GANADO Advocates and some of its affiliated entities act as CSPs. As one of the leading law firms in Malta GANADO Advocates also provides legal advice to natural or legal persons to determine whether they fall within the parameters of the CSP Act and should therefore register as CSPs with the MFSA. GANADO Advocates has the necessary skills and expertise required to assist such persons to complete and file the application for registration with the MFSA.

What are the main challenges to arise within your work?

The main challenge experienced to date is the fact that the MFSA Rules which contain the working detail of the CSP Act have not been formally enacted and until 17th February 2014, were still open to consultation. Until the Rules are finalised, the full extent of the requirements will not be known and, in our view, many CSPs will wait for the Rules to be published before submitting their application in order to ensure that such application is fully compliant with the Rules. The deadline for registration with the MFSA is 24 March 2014.

How do you assist clients in overcoming these challenges?

We held numerous discussions with the MFSA and requested a number of clarifications on the proposed Rules. We feel confident and competent to interpret the Rules and through attendance at training sessions provided by the MFSA itself, we feel that we are capable to advise clients on their position vis-à-vis the CSP Act.

Do you feel the need for any further legislative changes, and if so, what and why?

It is still not clear whether groups of exempted persons who provide a service under one business name fall within the scope of the CSP Act. Such persons are exempted if they provide a service as individual natural persons and if they have not set up the business as legal persons. A clarification possibly in the CSP Act itself is required in this regard.

What issues should fast-growing companies be aware of in terms of Corporate Service Providers?

The MFSA rules impose a number of obligations which CSPs should fulfill on an ongoing basis. The application for registration should also be accompanied by a number of documents and procedures manuals which, unless already available, will need to be developed. MFSA has a six month period within which to process an application however, this period will not start to run before MFSA is in receipt of all the documents it requires.

Is there anything else you would like to add?

We believe that the Act will be instrumental in shaping a well-regulated pool of experienced and professional individuals able to perform their roles well and to command confidence in their ability to do so. We feel that this is a positive step forward towards ensuring that the Company Secretaries and Directors operating in or from Malta adhere to high standards of service and enhance the governance frameworks of the entities they deal with. **LM**

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