



THE MALTESE NATIONAL RISK ASSESSMENT & THE MONEYVAL REPORT

Company Service Providers (CSPs), lawyers, trustees. They have all been considered by Maltese authorities to contain high inherent vulnerabilities in their 2018 National Risk Assessment, in particular due to the acknowledgment that legal persons and legal arrangements can be used to obscure beneficial ownership (source: the 2019 MONEYVAL ¹ Mutual Evaluation Report ²). Anti-money laundering/counter financing of terrorism (AML/CFT) controls implemented across all sectors are considered to be weak with the result that the residual ML/FT risk for the above subjects was deemed to be high.

Since the last evaluation, Malta has taken steps to improve the AML/CFT framework, including the introduction of beneficial ownership registers and the amendments of the Prevention of Money Laundering Act and related Regulations. Nevertheless, it was pointed out that the Financial Intelligence Analysis Unit (FIAU) and the authorities should increase the frequency and depth of onsite inspections and ensure that their staff should maintain appropriate expertise and skills to undertake risk-based supervision. Lastly, the Sanctions Monitoring Board should ensure that the UN Targeted Financial Sanctions are implemented in a timely manner and that any violation is remedied.

Focus on the Trust and Company Service Providers (TCSP) sector

The number of Trustees ³ and of CSPs ⁴ amounted to, respectively, 169 and 188 (of which 70 were licensed trustees providing CSP services) in 2018. In general, Malta has seen a slow but steady growth of the TCSP sector in recent years. In early 2018, 51,000 active companies were registered with the Registry of Companies (compared to around 44,000 in 2013). There is no registration obligation for trusts, other than those that generate tax consequences in Malta. Due to this fact officially approved statistics are not available. It is however estimated that authorised trustees in Malta provide services to 3529 trusts, including trusts created under Maltese law. As of

¹ MONEYVAL is a permanent monitoring body of the Council of Europe entrusted with the task of assessing compliance with the principal ML/FT international standards and the effectiveness of their implementation, as well as with the task of making recommendations to national authorities in respect of necessary improvements to their systems. Through a dynamic process of mutual evaluations, peer review and regular follow-up of its reports, MONEYVAL aims to improve the capacities of national authorities to fight money laundering and the financing of terrorism more effectively.

² <https://rm.coe.int/moneyval-2019-5-5th-round-mer-malta2/168097396c>

³ The total number of clients is 12.205 (out of which number of Maltese resident clients is 2.115 and number of Non-Malta resident clients is 10.090). The total number of assets under administration is approx. EUR 13,4bln.).

⁴ The total number of clients is 14.871 (out of which number of Maltese resident clients is 4.801 and number of Non-Malta resident clients is 10.070). No information is provided by the authorities on the total number of assets under administration.



June 2018, about 49% of all Maltese registered companies were fully Maltese-owned with the remaining 51% which were partially or fully foreign-owned.

Key Findings: not adequate market entry measures and attempts to obscure beneficial ownership

In 2018 there were 588 subject persons, either in the form of firms or professionals, offering CSP services of which 400 were not licensed under the CSP Act. Approximately 70 of these are trustees duly licensed and therefore subject to market entry requirements⁵. However, the remaining 343 are lawyers, notaries, auditors and accountants, and, given that they are already subject/authorised persons, exempt from registration with the Malta Financial Services Authority (MFSA).

In addition to this, there is no legislative provision requiring a subject person to incorporate a company and maintain its registered office: nothing prevents the creation of legal persons without the scrutiny of an entity subject to Maltese AML/CFT supervision, although, in practice, 98% of legal persons seek the services of a subject person at the incorporation stage and/or on on-going basis. However, where services are provided by lawyers or accountants, these are exempt from registration with the MFSA and are therefore not subject to adequate market entry measures.

Moreover, it is acknowledged by the authorities that Maltese legal persons and legal arrangements can be misused for ML/FT purposes, in particular to obscure beneficial ownership. Unfortunately, no in-depth analysis of how these could be used for criminal purposes has been finalised yet. Also, it was pointed out that there is a lack of detailed knowledge amongst some of the authorities and the private sector of the main types of predicate crime that legal persons and legal arrangements are exposed to.

Mitigating measures to prevent the misuse of legal persons and arrangements

Malta has taken three key measures, specifically the introduction of:

- i. two legal persons' registries, which provide a source of basic information on all Maltese legal persons
- ii. regulation covering trustees and CSPs, that are supervised by the MFSA and by the FIAU
- iii. beneficial ownership registers on 1 January 2018 for all types of legal persons and trusts.

A multi-pronged approach should allow the Maltese authorities to promptly obtain beneficial ownership information on legal persons and legal arrangements, via the below method(s):

- i. the subject person administering the legal person and legal arrangement;
- ii. the depositing of share capital at Maltese banks; and
- iii. the disclosure of beneficial ownership information relating to all legal persons and trusts which generate tax consequences in Malta to the pertinent registries (as from January 2018).

⁵ Trustees and CSPs have respectively been regulated and supervised by the MFSA since 2004 and 2013.



The assessment team has identified shortcomings with each of the above methods, which could call into question the accuracy of beneficial ownership information held on legal persons in Malta. As stated above, the lack of adequate market entries for certain subject persons is likely to impair the first method. The second method implies the collection of information in relation to the depositing of share capital at Maltese banks; however, there is no express requirement for it to be deposited in a Maltese bank and the increasing difficulties for CSPs to bank their clients in Malta is likely to negatively affect the second method. Even more interesting are the observations related to the third method in view of its recent introduction further to the 5th AML Directive. For this reasons, the main key findings have been outlined in the below separate Section.

The registers of beneficial ownership and their shortcomings

The beneficial ownership registers for both legal persons and legal arrangements were introduced in 2018 and are maintained respectively by the Registrar of Companies, Registrar of Legal Persons (Associations and Foundations), and the MFSA.

These registers are freely accessible by all authorities through an online system, including for the tax authorities and customs. Subject persons may also access the register in order to carry out due diligence in terms of the Prevention of Money Laundering and Financing of Terrorism Regulations. In the case of the trusts, upon receipt of beneficial ownership information of trusts, the MFSA also carries out sample checks of identification details against electoral registers and other due diligence tools.

Notwithstanding the introduction of such registers represent a positive move towards enhanced transparency, the assessment team identified critical shortcomings. To begin with, these registers are currently being retroactively populated ⁶ and, as a result, it is not possible to properly assess the effectiveness of this new mechanism yet. In addition to this, the Registry of Companies does not have sufficient human resources and legal gateways to adequately verify/monitor the accuracy of the beneficial ownership information held on register of beneficial ownership. In particular, the Registry of Companies is not empowered in legislation to undertake on-site visits to verify the accuracy of beneficial ownership information. At the time of the evaluation, the authorities advised that the Registry of Companies carries out a thorough vetting of a company's memorandum and articles prior to incorporation, as well as checks on the natural persons involved in the company. Lastly, it was noted that the potential fines for failing to submit accurate and up to date beneficial ownership information on legal persons do not seem effective, dissuasive and proportionate.

Both the public and private sector should enhance their measures to protect the reputation of the overall financial sector

It is vital and critical that all subject persons adopt all adequate measures to effectively mitigate all ML/FT risks which are inherent to the TCSP sector.

⁶ It is expected that Malta would have retroactively populated the beneficial ownership registers information for all legal persons by the third quarter of 2019



The selectivity towards our clients, the long-standing expertise in this sector together with the employment of the best technical and human resources place Mandaris in a position to promptly identify and effectively mitigate any potential ML/FT risk, with the ultimate goal to safeguard both our clients and our company from the effects of an inadequate compliance culture.

For this purpose, Mandaris adopts cutting-edge technical and security measures as well as ensures that its staff is always abreast of any regulatory development by constantly investing in their external and in-house training.

However, this legal and moral obligations should be carried throughout the whole financial and TCSP industry in Malta. Not only the reputation of Malta and of its professionals, but also of the European Union and of the overall financial sector is at stake and all entities should make their contribution in this direction.

Please do not hesitate to contact the author if you have any questions or queries.

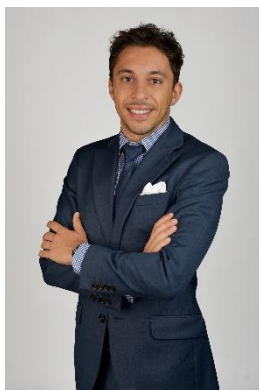
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