Beneficial Ownership Obligations – CSP Thematic Review
Agenda

- The Maltese CSP Sector
- The BO Thematic Review – The Examination Process
- The BO Thematic Review – Key Findings
- BO concealment red flags
The Maltese CSP Sector

The BO Thematic Review – The Examination Process

The BO Thematic Review – Key Findings

BO concealment red flags
What is a Company Service Provider (CSP)?

In terms of Article 2 of the CSP Act, any person who by way of business provides any of the following services to third parties:

a) formation of companies or other legal entities;

b) acting as, or arranging for another person to act as, a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal entities; and

c) provision of registered office, a business correspondence or administrative address and other related services for a company, a partnership or any other legal entity.
Amendment in CSP’s licencing regime through Company Service Providers Amendment Act 2020 (Act No L of 2020):

- Requirement to obtain MFSA authorisation extended to those previously exempt from authorisation under the Company Services Provided Act (Chapter 529 of the Laws of Malta), i.e. warranted professionals and persons operating under the De Minimis Rule.
- CSP authorisations classified as follows:

<table>
<thead>
<tr>
<th>Class Type</th>
<th>Class Description</th>
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<tbody>
<tr>
<td>Class A</td>
<td>Provision of services related to formation of companies or other legal entities an/or provision of a registered office, a business correspondence or administrative address and other related services for a company, a partnership, or any other legal entity</td>
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<tr>
<td>Class B</td>
<td>Provision of director or company secretary services, and/or acting as a partner in a partnership or in a similar position in relation to other legal entities or arranging for another person to act as a director or company secretary, a partner in a partnership or in a similar position in relation to other legal entities.</td>
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<tr>
<td>Class C</td>
<td>Provision of all of the services of a CSP specified in the definition of &quot;company service provider&quot; contained in article 2(1) of the Act.</td>
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CSP Authorisation Type (2021)

- Class A: 10.7%
- Class B: 19.4%
- Class C: 37.9%
- Exemption: 32.0%
The Maltese CSP Sector

CSP Type

- Legal persons: 60%
- Natural persons: 40%

CSP Size (2021)

- Very small (less than 50 customers): 66%
- Small (50-149 customers): 5%
- Medium (150-249 customers): 8%
- Large (250+ customers): 21%

Corporate service type (2020)

- Company formation: 13%
- Directorship: 26%
- Company secretary: 14%
- Registered office: 47%
The BO Thematic Review – The Examination Process

The Maltese CSP Sector

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The BO Thematic Review – Key Findings

BO concealment red flags
The BO Thematic Review – The Examination Process

Data Sources

- Subject Persons
- FIAU’s Intelligence Analysis Section
- Prudential Regulator
- MBR
- CBAR
- Other Data Sources

CASPAR Data Collection

Analysis of various information on CASPAR Risk Data Blocks

- Customers serviced by CSP mostly owned by foreign BOs
- Customers serviced are assessed by the CSPs themselves as being high-risk
- CSPs servicing customers with an ownership and control structure involving offshore vehicles, trusts, foundations or other similar legal arrangements, nominee shareholding, charities and not-for-profit organisations
- CSPs offering services to customers acting as holding companies with subsidiaries or investments in non-EU jurisdictions
- CSPs servicing customers who did not file financial statements in the previous calendar year
- CSPs with limited resources and weaker governance structures
- CSPs who never filed an STR
- CSPs flagged by the FIAU’s Intelligence Analysis Section for being potentially non-compliant with their BO-related obligations
- CSPs servicing companies whose BO information, as per CBAR, is different from that on the MBR register
- CSPs linked to companies in respect of which MBR needed to correct information on multiple occasions
- CSPs who serviced defunct companies

2-level compliance assessment

1. Individual CSP Level
2. Overall CSP Sector

CSP Selection (40)
The BO Thematic Review – The Examination Process

CSP Selection

- Legal persons: 62%
- Natural persons: 38%
- Large: 10%
- Medium: 13%
- Small: 47%
- Very small: 30%
- Class A: 8%
- Class B: 8%
- Class C: 62%
- Exemption: 23%
The BO-focused thematic examinations focused on various BO related obligations, including the requirements arising from the following provisions of the PMLFTR

<table>
<thead>
<tr>
<th></th>
<th>Regulation</th>
<th>Details</th>
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<tbody>
<tr>
<td>1</td>
<td>Regulation 7(1)(a)</td>
<td>The identification and verification of the BOs of a body corporate, foundation, trust, or similar legal arrangement through obtaining documents, data, and information from reliable and independent sources and the carrying out of independent checks to understand the ownership and control structure of the customer.</td>
</tr>
<tr>
<td>2</td>
<td>Regulation 7(1)(a)</td>
<td>Carrying out checks to ascertain that BO data has been duly registered with a designated beneficial ownership register</td>
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<tr>
<td>3</td>
<td>Regulation 7(2)(b)</td>
<td>Carrying out ongoing monitoring to ascertain that data, documents and information on beneficial ownership is kept up to date.</td>
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<tr>
<td>4</td>
<td>Regulation 8(1)</td>
<td>The identification and verification of BOs prior to the establishment of a business relationship or the carrying out of an occasional transaction.</td>
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<td>5</td>
<td>Regulation 15(3)</td>
<td>The application of procedures to consider and assess whether information available in relation to a business relationship or an occasional transaction gives rise to knowledge or suspicion of ML/FT, including potential BO concealment indicators, and if applicable, filing an STR with the FIAU.</td>
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The BO Thematic Review – The Examination Process

**Phase 1 - Pre-examination**
- SP notified of examination one week before kick-off meeting
- SP requested to submit documentation listed in notification letter 3-4 days after receipt of letter

**Phase 2 - Control Design Testing**
- Review of written CSP policies and procedures
- Assessment on whether the CSP has sufficient and adequate controls, policies and procedures in place to address BO related obligations and ensure compliance
- Interview with MLRO and with other members of Management

**Phase 3 – Control Implementation Effectiveness Testing**
- A sample of 25 corporate customers tested to assess whether the controls in place are being effectively implemented by CSPs
- CSPs requested to provide information and documentation for each file selected to demonstrate compliance (24-48 hours deadline)
- The documentation analysed to assess adherence to the obligations
The BO Thematic Review – Key Findings

BO Thematic Examination on 40 CSPs (933 companies reviewed)

- Sep – Dec 2021: 13 Closure Letters
- Nov 2021 – Mar 2022: 17 Remediation Letters
- Feb – Mar 2022: Analysis of findings
- Apr 2022: Publication of results

Overall Results

- Positive conclusion
- Most CSPs are compliant with their BO-related obligations
- Non-compliance was limited to exceptional cases
- No systematic breaches were identified
- 933 business relationships reviewed: 91% - no shortcomings, 8% - minor or medium shortcomings, 1% - serious breaches of BO-related obligations.
- Result shows effectiveness of CSPs in acting as gatekeepers in preventing misuse of corporate vehicles
- Short deadlines granted to CSPs → Higher level of confidence in effectiveness of CSP sector’s role

Shortcomings identified: Seriousness level

- 91%: No shortcomings
- 8%: Non-serious shortcomings
- 1%: Serious shortcomings
Key findings - Policies and procedures

100% of CSPs have established written policies and procedures that stipulate how BO-related obligations are to be fulfilled.

The written policies and procedures of 4 CSPs did not address the requirement to obtain proof to confirm that BO information has been duly registered with the designated BO register.

Areas for improvement

- Policies and procedures should be subject to regular review to ensure that these reflect current risk, activities and legislative changes.
- Carry out checks to confirm that policies and procedures are applied into practice (taking into consideration nature and size of business).
Key findings – Identification and verification

**Robust BO identification procedures** embedded in CSP’s AML/CFT control framework

0% customer’s BO/s unknown to CSP

**Detailed procedures to verify** identify details of BO

**Extensive checks** to independently **verify ownership and control structure** of the customer for the purpose of understanding the link between the customer and the BO

2.8% exception rate

**SMO** as BO resorted only following **thorough checks**

3.1% exception rate

**Better compliance in recent business relationships**

Past shortcomings addressed through ongoing monitoring or self-imposed remediation
### Key findings – Identification and verification

#### Areas for improvement

- Identity verification documents should be obtained from sources that meet the criteria of ‘independent’ and ‘reliable’.
- Unless SDD is applicable, the verification of the BO identity details should be carried out prior to customer onboarding.
- Verifying the customer’s ownership and control structure should not be limited to obtaining an organigram and/or an explanation from the customer – A structure chart signed by the company’s director is not sufficiently independent.
- Whilst CDD related shortcomings may have occurred as the time of customer onboarding, ongoing monitoring and self-imposed remedial action are good practices in addressing such shortcomings. The FIAU does take this into consideration when considering any breaches that might have occurred in the past.
### Key findings – Identification and verification

#### Areas for improvement

- Make sure you identify the BO by following the 3-tier BO determination test.
- Tier 2 is not optional, but a test that has to be carried out for every business relationship or occasional transaction.

<table>
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<tr>
<th>Tier 1</th>
<th>Identification of any natural persons who control the legal person (customer) through ownership by means of holding, directly or indirectly, 25% + 1 of the shares, voting rights or ownership interest.</th>
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</table>
| Tier 2          | Identification of any natural persons who control legal person through other means. Applicable in 2 situations:  
1. When no individual under Tier 1 could be identified  
2. When although an individual under Tier 1 was identified, there is reason to believe that another person(s) is/are exercising ultimate control over the running of the body corporate or its management through other means other than ownership |
| Tier 3          | If no BO is identified in accordance with Tier 1 and Tier 2 after exhausting all possible means and provided there are no grounds for suspicion, the SMO should be identified as the BO. The SMO should always be a natural person. |
**Tier 2**  
Identification of any natural persons who control legal person through other means

- **a.** An individual has absolute **decision or veto rights** over the running of the business of the legal person.

- **b.** An individual **controls the decisions** that affect the activities of a legal person.
Key findings – Ongoing monitoring (data, information and documents)

Adequate mechanisms to detect BO changes through trigger events or periodic reviews.

Risk-based approach – Higher risk profiles subject to more frequent periodic reviews.

More effective ongoing monitoring procedures in the past 2 years.

0.03% companies with evidence that BO information was not kept up to date.

1.2% required better checks to confirm that BO information was still valid.
Key findings – Ongoing monitoring (data, information and documents)

Areas for improvement

- If CSP was not involved in effecting BO changes, ensure that customer profiles are subject to periodic reviews to identify changes in BO information and to update BO information accordingly. Periodic reviews should be risk-based.
- Make sure that BO information changes was communicated to the BO register.
- Some customers are more prone to BO information changes. Make sure that there are mechanisms in place to detect such changes.
Key findings – Reporting

### Key Findings

**0.96%** cases with reasonable grounds for CSPs to **suspect BO concealment** and submit STR to FIAU

### Some prominent red flags

### Areas for improvement

- While only few case noted in relation to misuse of corporate vehicles for concealing the origin, ownership and control of illicitly gained assets, the risk is still there. It is important to remain vigilant and to be familiar with BO concealment red flags.
- Guidance:
  - Joint FATF / Egmont Group report “Concealment of Beneficial Ownership” (July 2018)
  - FIAU Intelligence Factsheet: The misuse of corporate vehicles in Malta, with a focus on beneficial ownership concealment” (December 2021)
  - Recording of training session “Concealment of Beneficial Ownership” (November 2021)
BO Concealment Red Flags

The CSP Sector

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BO concealment red flags
BO Concealment Red Flags

- Adverse information on persons connected to declared BO, previous shareholders or related companies
- Although there was a change in BO, instructions still derive from previous shareholder rather than from new BO
- Mismatch between BO profile and company profile with connected individuals’ profile more aligned with company profile
- SOW and SOF used to set-up and fund the activities of the company do not pertain to the declared BO
- Funds from the company remitted to individuals who are not the BOs of the company (without sufficient explanation)
- No communication with declared BO, with contact person behaviour resembling that of a BO rather than an intermediary
- Sudden changes in declared BO during company formation process
- Customer reluctant to provide information (e.g. on ownership and control of complex structure)
- Insufficient justification for a person who is not a BO or director to act as signatory
- Attempt to dilute shareholding to less than 25% + 1 with no logical rationale
BO Concealment Red Flags – Case Study 1

**Subject Person**
- CSP

**Services Offered to the customer**
- Company Incorporation
- Registered Address

**Customer company background**

1. A two-tier structure, with the corporate customer being registered in Malta owned 100% by an individual residing in the UK

2. Another three individuals also featured throughout the relationship

**BO concealment red flags**

1. Changes in BO prior to incorporation without any reasons provided.
2. There was conflicting information provided.
3. A statement during correspondence that the BO “will just be a shareholder”.
4. Company goals does not correspond with the BO's profile.
5. Fees for the services originating from different sources.
BO Concealment Red Flags – Case Study 2

Subject Person
- CSP

Services Offered to the customer
- Company Incorporation
- Registered Address
- Directorship services

Customer company background

2015

Mr. A (100%)

Nominee Shareholder (100%)

Company X (Maltese Registered)

2018

Mr. A (25%)

Mr. B (25%)

Mr. C (25%)

Mr. D (25%)

Company X (Maltese Registered)

1. 75% Share transfer to three other individuals for Eur 3k
2. Rationale behind the agreement was because they were close friends with Mr. A

BO concealment red flags

- Company X purchased EUR 20m+ in securities through investment service providers in Malta.
- As at 2018 (prior to change in shareholding), Company X held over EUR 10m in assets (securities).
- Following change in shareholding, further securities were purchased.
- CSP used the tier 3 and recognised the SMO as being the BO since shareholders did not hold 25% +1 of the shares/voting rights despite Mr. A having full control based on his activities.
- Securities were held only for 2-3 years and subsequently disposed off, with proceeds used to pay back shareholder loans and funds remitted to Mr. A.
- Adverse information was found on Mr. A by the CSP.
Thank you!