



Other amendments of note introduced by the Company Service Providers (Amendment) Act of the 13<sup>th</sup> of November 2020 are:

Reference	Principal Act	Act
Article 1(2)	The purpose of the Principal Act was to implement article 36 of Directive 2005/60/EC of the European Parliament and of the Council of 29 <sup>th</sup> October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing in so far as it applies to company service providers. (3 <sup>rd</sup> AML Directive)	The Act removes reference to Directive 2005/60/EC and refers to article 47 of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 <sup>th</sup> May 2015 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing in so far as it applies to company service providers. (4 <sup>th</sup> AML Directive)
Article 3 (1)	A person in possession of a warrant, or equivalent, to carry out the profession of advocate, notary public, legal procurator or certified public accountant and a person authorised to act as a trustee or to provide other fiduciary duties in terms of the Trusts and Trustees Act are not required to be registered with the MFSA.	The Act introduced a new paragraph to the article which says that article 3(1) shall cease to have effect and such persons shall no longer be exempt from the provisions of the Act. Such exemption shall cease to have effect following 8 months from the first date of the coming into force of the Act.
Article 3(2)	The Principal Act provides that a person in possession of another license, authorisation or recognition in terms of the Investments Services Act who intends to provide company services by way of business, has to apply for registration, and the MFSA shall consider any due diligence process already carried out by it.	This shall be removed through the Act.
Article 3(3)	The Principal Act provides that individuals mentioned in article 3(1) must notify the FIAU that they are acting as company service providers by way of business and that they are not required to register with the MFSA.	This shall be removed through the Act.
Article 3(5)(a)	This article provides that any person having a license or registration to provide company service, issued by the relevant regulatory authority in an approved jurisdiction does not require to register with the MFSA. However, they are to notify the MFSA, in writing, of their intention to provide company services in Malta at least 45 days prior to commencing such activities in Malta.	Whilst the Act kept such article, it amended the time period within which one must inform the MFSA. In accordance with the new amendments, MFSA would have to be informed at least 90 days prior to commencing the provision of company services in Malta.
Article 3(5)(a)		In addition, the Act introduces a new paragraph that states that <i>“such persons shall also be classified, at the discretion of the Authority, into one of the three classes”</i> that have been introduced by the Act, and as outlined above.



<p>Article 5(4)</p>	<p>The Principal Act provides that the MFSA shall notify any applicant of its decision whether to grant or refuse registration within 6 months from the receipt of a complete application.</p>	<p>The Act adds a further paragraph to such sub-article which provides that MFSA may at any time request the applicant to provide additional information it may deem necessary and from such time as the MFSA makes such a request until such time that the information requested has been provided, the running of the 6-month time period shall be suspended.</p> <p>The paragraph also mentions that should the applicant not provide the requested information within 3 months from the request being so made, MFSA shall deem such an application to have been withdrawn by the applicant.</p>
<p>Article 6(b)</p>	<p>This article provides the MFSA with the authority to cancel a registration on various grounds, one of which is:</p> <p>the registered person has contravened any of the provisions of this Act or any rules made thereunder or has failed to satisfy or comply with any obligation or condition to which such registered person or the registration is subject by virtue of this Act and any rules issued thereunder.</p>	<p>Whilst the Act kept such ground, it added at the end, the wording <i>“including any breach in relation to the authorised person’s governance and control framework”</i></p>
<p>Article 6(fA)</p>		<p>The Act provides a new ground on which the MFSA may cancel authorisation:</p> <p>The authorised person is found liable, by the FIAU, for a serious, repeated, or systematic breach of the Prevention of Money Laundering Act and, or of any regulations issued thereunder.</p>
<p>Article 6(3)</p>	<p>The Principal Act provides that any person whose registration has been cancelled, shall within 60 days from the date of the cancellation of the registration ensure that the services provided are transferred to another person which is duly registered.</p>	<p>The Act adds a further paragraph to such article whereby it states that such term shall apply to any other ground on which basis the registration has been cancelled except for when the cancellation has been requested by the authorised person himself. In such latter case, the authorised person is to make sure to transfer his services to another authorised person prior to the MFSA acceding to the request for cancelling the authorisation.</p>
<p>Article 7A</p>		<p>This is a new article introduced through the Act:</p> <p>An auditor of an authorised person shall have the duty to report immediately to the Authority any fact or decision of which such auditor becomes aware in his capacity as</p>



		<p>auditor of such authorised person which:</p> <p>(a) is likely to lead to a serious qualification or refusal of the auditor's report on the accounts of such authorised person; or</p> <p>(b) constitutes or is likely to constitute a material breach of the legal or regulatory requirements applicable to authorised persons under this Act; or</p> <p>(c) gravely impairs the authorised person's ability to continue as a going concern; or</p> <p>(d) relates to any other matter which may be prescribed.</p> <p>Any matters that the auditor may come privy to, could also relate to any person other than the authorised person, including any person having close links<sup>1</sup> with such authorised person.</p>
Article 9(1)	<p>The Principal Act provides that:</p> <p><i>"Where the Authority is satisfied that a registered person's conduct amounts to a breach of any of the provisions of this Act or of the rules issued thereunder, including failure to cooperate in an investigation, the Authority may, by notice in writing and without recourse to a court hearing, impose on the registered person and, or any other person, as the case may be, an administrative penalty which may not exceed twenty-five thousand euro (€25,000) for each infringement or failure to comply, as the case may be."</i></p>	<p>The Act has amended such article as follows:</p> <p><i>"Where any person contravenes or fails to comply with any of the provisions of this Act or of any regulations or rules issued thereunder, with any of the conditions imposed in an authorisation issued by the Authority, with any directive issued by the Authority, or fails to cooperate with the Authority in an investigation, the Authority may, by notice in writing and without recourse to a court hearing, impose on any such person an administrative penalty which may not exceed fifty thousand euro (€50,000) for each infringement or failure to comply, as the case may be."</i></p>
Article 10(1) (a)	<p>This article provides the MFSA with the power to require information that it deems fit <i>"with respect to any such activities as aforesaid;"</i></p>	<p>The Act further adds to such sub clause that the MFSA has the power to request existing telephone and data traffic records with respect to any company services.</p>

<sup>1</sup> The concept of "close links" has been introduced through the Act which means a situation in which two or more persons are linked in any of the following ways:(a) by participation, in the form of direct ownership or by way of control, of 20% or more of the voting rights or capital of a body corporate;(b) by control, through the relationship between a parent undertaking and a subsidiary undertaking as defined in article 2(2) of the Companies Act, or a similar relationship between any natural or legal person and an undertaking; or (c) to one and the same third person when: (i) such person is a member of the authorised person's family, including, but not limited to, the authorised person's spouse or partner, the authorised person's child or step-child, the authorised person's parents and other dependants of the authorised person; (ii) such person is acting in the capacity of a company service provider of any company, the beneficial owners of which include: (a) the authorised person, the authorised person's dependants, including, but not limited to, the authorised person's spouse, children or step-children; or (b) a body corporate with which one is associated in terms of (a) and (b)above; (iii) such person is acting as business partner of the authorised person or of any person who, by virtue of sub-paragraphs (i) or (ii) above is connected with the authorised person.