

L.N. 375 of 2017**CIVIL CODE
(CAP. 16)****Civil Code (Second Schedule)
(Register of Beneficial Owners - Foundations) Regulations, 2017**

IN exercise of the powers conferred by article 24(k) of the Second Schedule to the Civil Code, the Minister responsible for justice has made the following regulations:-

Citation, scope
and
commencement.

1. (1) The title of these regulations is the Civil Code (Second Schedule) (Register of Beneficial Owners - Foundations) Regulations, 2017.

(2) The purpose of these regulations is to implement the relevant provisions of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC relating to information about the beneficial owners of foundations established under the laws of Malta, and they shall be interpreted and applied accordingly.

(3) These regulations shall come into force on the 1st January, 2018.

Interpretation.

2. (1) In these regulations, unless the context otherwise requires:

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"beneficial owner" shall have the meaning assigned to it under the Prevention of Money Laundering and Funding of Terrorism Regulations specifically as applicable to foundations and for the purposes of these regulations shall be specifically applied to the following:

- (a) the founder;
- (b) the administrator(s);
- (c) the protector or members of a supervisory council, if any;
- (d) the beneficiaries where identified in the relevant foundation instruments, subject to regulation 4(1)(g), or where

the individuals benefiting from the foundation have yet to be determined, the class of persons in whose main interest the foundation is set up or operates and when the beneficiary is a legal entity then this term shall also include the ultimate beneficial owner of such legal entity; and

(e) any other natural person exercising ultimate and effective control over the foundation by any means including any person (other than those already referred to in paragraphs (a) to (d) of this definition) whose consent is to be obtained, or whose direction is binding, in terms of the statute of the foundation or any other instrument in writing, for material actions to be taken by the foundation or the administrators;

and "beneficial ownership" shall be construed accordingly;

"foundation" is an organisation consisting of a universality of things constituted in writing, whether by public deed, private writing, resolution or otherwise, by a founder or founders whereby assets are destined either for the fulfillment of a specified purpose or for the benefit of a named person or class of persons, which assets are entrusted to the administration of a designated person or persons, and this, irrespective of whether it is registered with the Registrar for Legal Persons in terms of the Second Schedule or applicable regulations or not;

"material actions" means the following actions or any other actions achieving the same result:

- (a) the amendment of the statute;
- (b) the addition or removal of any beneficiary, or any person from a class of beneficiaries or any action affecting the entitlement of a beneficiary;
- (c) the appointment or removal of administrators or protectors or members of the supervisory council;
- (d) the acceptance of new founders;
- (e) the re-domiciliation of the foundation;
- (f) the assignment or transfer of all or the majority of the assets of the foundation; or
- (g) the termination or revocation of the foundation;

"officer" means the administrator or administrators of the

foundation who are named in its statute and, or where there are changes, the relevant notice form submitted to the Registrar for Legal Persons, and where the administrator is a legal organisation, the persons entrusted with the management and administration thereof, and this, for as long as they continue to occupy such office;

"Register of Beneficial Owners" means the Register of Beneficial Owners - Foundations kept by the Registrar for Legal Persons in terms of these regulations;

"register of beneficial owners" means the register of beneficiaries and other persons kept by the foundation in terms of these regulations;

"Registrar for Legal Persons" is the person appointed by the Minister responsible for justice in accordance with article 11 of the Second Schedule;

Cap. 16. "Second Schedule" means the Second Schedule to the Civil Code;

Cap. 373. "subject person" means a subject person in terms of the Prevention of Money Laundering Act, and applicable regulations.

Cap. 373. (2) Unless otherwise stated or the context otherwise requires, terms and expressions used in these regulations shall have the meaning attributed to them in the Second Schedule and the Prevention of Money Laundering Act and regulations made thereunder, as the context may require.

Applicability of these regulations. **3.** (1) Subject to the exclusions stated in sub-regulation (2), these regulations shall apply to all foundations established:

(a) as a beneficiary foundation, for a private interest; or

(b) as a purpose foundation for the achievement of a social purpose or for the carrying on of any lawful activity on a non-profit making basis;

and this, irrespective of whether they are registered with the Registrar for Legal Persons in terms of the Second Schedule or applicable regulations and includes voluntary organisations in the form of foundations.

(2) These regulations shall not apply to:

(a) a foundation which is established and controlled by the Government of Malta where "controlled by the Government of Malta" means that the Government of Malta has the power,

whether directly or indirectly, to nominate, appoint, change or remove a majority of the administrators of the foundation; or

(b) a foundation which constitutes a pious foundation or an ecclesiastical entity in the form of a foundation in terms of the Second Schedule or is a marriage legacy governed by the Marriage Legacies Law; or

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(c) any other type of foundation not referred to above which the Minister responsible for justice may by notice designate.

4. (1) Every foundation shall take all reasonable steps to obtain and at all times hold adequate, accurate and up to date information in respect of its beneficial owners, which shall at least include the following particulars:

Foundations to keep record of beneficial owners.

(a) the name;

(b) the date of birth;

(c) the nationality;

(d) the country of residence;

(e) an official identification document number indicating the type of document and the country of issue;

(f) the role of the beneficial owner in relation to the foundation in terms of paragraphs (a) to (c) and (e) of the definition of "beneficial owner" in regulation 2(1);

(g) in the case of a beneficiary as defined in paragraph (d) of the definition "beneficial owner" in regulation 2(1), the nature and extent of the benefit and any changes thereto, as well as, when applicable, an indication as to whether the foundation statute or any other instrument in writing include any suspension of the officer's duty to inform such beneficiary of his benefit under the foundation or that he forms part of a class of beneficiaries which may so benefit, and in such case, such person shall not be considered to be a beneficiary until such time as he is informed of such benefit or receives actual benefit; and

(h) the effective date on which a natural person became, or ceased to be, a beneficial owner of the foundation or, in the case of a beneficiary, the effective date on which his beneficial interest in the foundation has increased or been reduced.

(2) For the purpose of this regulation, where the beneficiaries of a foundation are a class of beneficiaries, the following rules shall apply unless stated otherwise in the statute or the beneficiary statement of the foundation:

(a) the class shall be described and its members declared as required by this regulation;

(b) when reference is made to the "family" of a person, the class is considered to be made up of the person, his direct ascendants, his spouse, his direct descendants, and unless excluded, their respective spouses;

(c) when a child is born or a marriage takes place, unless stated otherwise, such child and spouse shall be declared within three months of the birth or marriage;

(d) "children" include children born out of wedlock and adopted children;

(e) "spouse" includes the person who the relevant person is married to at the relevant time and not persons who they have divorced or separated from, and also includes persons with whom there is a civil union or a cohabitation or a *de facto* arrangement recognised by law in the country where they are habitually resident, including where permitted, of the same gender;

and the information prescribed in this sub-regulation shall be submitted to the Registrar for Legal Persons as soon as a beneficiary is determined to form part of a class of beneficiaries or is appointed a beneficiary of the foundation, whichever is the earlier:

Provided that nothing in the above shall affect the interpretation of a statute of a foundation or a beneficiary statement indicating the beneficiaries of a foundation, or any entitlements of persons who may or may not be beneficiaries or have any entitlements, which shall be governed by the statute, the beneficiary statement and principles of applicable law and the declaration made for the purposes of these regulations may not be used for the purpose of proving whether an entitlement exists or not or the extent thereof.

(3) The foundation shall obtain the information required under sub-regulation (1) from the beneficial owners of the foundation and, or from any natural person whom it has reasonable cause to believe to be a beneficial owner, who shall be bound to provide the said information to the foundation without delay and every beneficiary

who acquires, disposes of, increases or reduces his beneficial interest in the foundation, or whose beneficial interest is disposed of, increased or reduced through an action of the administrators of the foundation, and every person who is appointed or ceases to carry out the role of beneficial owner in relation to the foundation in terms of paragraphs (a) to (c) and (e) of the definition of "beneficial owner" in regulation 2(1) shall be bound to immediately provide the said information to the foundation.

(4) Such information shall be verified by the foundation on the basis of documents, data or information obtained from a reliable source. The foundation shall also ensure that it obtains declarations confirming that the beneficial owner is not an intermediary, such as an agent, nominee or trustee, for another person, and if so, the foundation shall also obtain information on the principal or beneficiary of such intermediary.

When the beneficiary is a legal organisation or a fiduciary or other intermediary, information shall be obtained with reference to the natural person who is the ultimate beneficial owner thereof.

Any information contained in the deed or statute of a foundation, or any beneficiary statement, a power of attorney, an engagement or instruction letter, delivered to the Registrar for Legal Persons at the time of the registration of the foundation or at any time thereafter, and any document or notice registered with the Registrar for Legal Persons at any time, any testament or any other official document shall be deemed to be sufficiently reliable for the purposes of carrying out the duties under this regulation.

(5) Every beneficiary foundation, that is a foundation established for the benefit of a beneficiary or beneficiaries or a class of beneficiaries, shall enter the information referred to in sub-regulation (1) in a register of beneficial owners, which register shall be kept and maintained by the foundation at the registered address of the foundation or at such other place as may be specified in the statute of the foundation.

(6) Every purpose foundation, that is a foundation established solely to achieve a stated purpose and which does not have any beneficiaries as defined in paragraph (d) of the definition "beneficial owner" in regulation 2(1) shall only be required to enter the information referred to in paragraphs (a) to (c) and (e) of such definition in a register of beneficial owners, which register shall be kept and maintained by the foundation at the registered address of the foundation or at such other place as may be specified in the statute of the foundation.

(7) A foundation shall not:

(a) enter the name of a beneficial owner or any changes to the beneficial interest in the register of beneficial owners; or

(b) notify, when required upon an event, the Registrar for Legal Persons in compliance with the Second Schedule, of the name of any beneficial owner;

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(8) Unless excluded, suspended or postponed by the terms of the foundation or a beneficiary statement, any person who is a beneficial owner of a foundation, has a right of access to information relating to himself in the register of beneficial owners held by such foundation within a reasonable period after he makes a request in writing to this effect to the foundation. However the fact that any such persons do not have a right to the information until they are appointed to benefit under the foundation shall not imply that the duty to declare their entitlement under this regulation shall not arise.

(9) If default is made in complying with the provisions of this regulation, the foundation and every officer of the foundation who is in default shall be jointly and severally liable to a penalty, and, for every day during which the default continues, to a further penalty:

Provided that an officer of the foundation shall not be liable if he had exercised all due diligence to comply with the provisions of this regulation and the default was not due to any act or omission or negligence on his part.

Declaration which is to be delivered to the Registrar for Legal Persons.

5. (1) With effect from the date of the coming into force of these regulations, where:

(a) a foundation is to be established and registered under the Second Schedule; or

(b) a foundation has been established and, or registered prior to the coming into force of these regulations;

there shall be delivered to the Registrar for Legal Persons, in case of those foundations referred to in paragraph (a) prior to registration thereof and in case of those foundations referred to in paragraph (b) within six months of the coming into force of these regulations a

declaration, in the prescribed form, if any, signed by two of the administrators of the foundation, unless the foundation has a sole administrator in which case by such administrator, containing the information in accordance with regulation 4 on all the beneficial owners of the foundation. Where the administrator is a body corporate, such declaration shall be signed by at least two persons entrusted with the management and administration thereof.

(2) A foundation, and all relative documents, shall not be registered unless the Registrar for Legal Persons is satisfied that the requirements of this regulation have also been complied with.

(3) In case of default, the foundation and every officer of the foundation who is in default shall be jointly and severally liable to a penalty, and, for every day during which the default continues, to a further penalty:

Provided that an officer of the foundation shall not be liable personally if he shows that he had exercised all due diligence to comply with the provisions of this regulation and the default was not due to negligence on his part.

6. (1) The information on the beneficial owners of every foundation provided to the Registrar for Legal Persons in accordance with these regulations shall be held by the Registrar for Legal Persons in a Register of Beneficial Owners kept for this purpose.

Register of
Beneficial
Owners.

(2) Documents required to be delivered to the Registrar for Legal Persons under any of the provisions of these regulations shall not form part of, nor be registered in, the main Register administered by the Registrar for Legal Persons under the Second Schedule and the information on the beneficial owners of every foundation provided to the Registrar for Legal Persons in accordance with these regulations shall be entered and held by the Registrar for Legal Persons only in the Register of Beneficial Owners kept by the Registrar for Legal Persons for this purpose.

(3) The Register of Beneficial Owners shall be accessible only to such persons and in accordance with such procedures as set out in these regulations. For the avoidance of doubt, in case of conflict regarding accessibility, these regulations shall prevail over the provisions of the Second Schedule in so far as concerns the Register of Beneficial Owners.

(4) The information provided by a foundation in terms of regulation 5 shall be deemed to be sufficiently reliable for the Registrar for Legal Persons in fulfillment of his duties under these regulations.

Notice of
change in
beneficial
owners to the
Registrar for
Legal Persons.

7. (1) The information held in the Register of Beneficial Owners must be adequate, accurate and up-to-date.

(2) Where there is a change in the beneficial ownership of a foundation or any other change occurs as a result of which the particulars in the Register of Beneficial Owners in relation to a beneficial owner are incorrect or incomplete, the foundation shall, within fourteen days from the date on which the change is recorded with the foundation, deliver to the Registrar for Legal Persons a notice, in the prescribed form, if any, of the change, providing the information required under regulation 4 on any new beneficial owner, updated information including the nature and extent of the beneficial interest held on each of the other beneficial owners and the effective date of changes made, and the Registrar for Legal Persons shall enter the said changes in the Register of Beneficial Owners:

Provided that if the change in the beneficial ownership information relates to a change in the administrator(s), it shall be the duty of the new administrator(s) to notify the Registrar for Legal Persons of such change.

(3) The Registrar for Legal Persons shall not register any changes in the beneficial owners unless the requirements of sub-regulation (2) have been complied with.

(4) The notices of changes in beneficial ownership referred to in sub-regulation (2), duly completed, shall be signed by at least one officer of the foundation. Where the officer is a body corporate, such notices shall be signed by at least two persons entrusted with the management and administration thereof.

(5) If default is made in complying with the provisions of this regulation, the foundation and every officer of the foundation who is in default shall be jointly and severally liable to a penalty, and, for every day during which the default continues, to a further penalty:

Provided that an officer of the foundation shall not be liable personally if he shows that he had exercised all due diligence to comply with the provisions of this regulation and the default was not due to negligence on his part.

(6) The obligation to file a notice in terms of this regulation shall not exonerate the foundation, or any of its officers, from any duty to notify such changes to the Registrar for Legal Persons or any other person in terms of the applicable special law.

8. (1) If:

Rectification of
the Register of
Beneficial
Owners.

(a) the name of any person is, without sufficient cause, entered in or omitted from the register of beneficial owners kept and maintained by a foundation or the Register of Beneficial Owners kept and maintained by the Registrar for Legal Persons; or

(b) unnecessary delay takes place in entering in the register of beneficial owners kept and maintained by a foundation or the Register of Beneficial Owners kept and maintained by the Registrar for Legal Persons the fact that a person has ceased to be a beneficial owner;

the person aggrieved or any beneficial owner may apply to the First Hall, Civil Court, for the rectification of the register of beneficial owners and, or the Register of Beneficial Owners.

(2) Where an application is made under sub-regulation (1), the First Hall, Civil Court may:

(a) refuse the application;

(b) decide any question as to whether the name of any person who is a party to the application should or should not be entered in or omitted from register of beneficial owners or the Register of Beneficial Owners, as the case may be;

(c) order the rectification of the register of beneficial owners or the Register of Beneficial Owners, as the case may be;

(d) order payment by the foundation of compensation of up to one thousand euro (€1,000) for any loss sustained by any party aggrieved; and, or

(e) more generally, decide any question necessary or expedient to be decided for rectification of the relevant register.

(3) All decisions of the First Hall, Civil Court, relating to the register of beneficial owners or the Register of Beneficial Owners shall be deemed to be orders which apply to the foundation and the Registrar for Legal Persons, without being a party thereto, and they shall, upon being notified with a certified copy of the judgment of the First Hall, Civil Court, act accordingly to ensure that identical actions are taken in the register of beneficial owners and, or the Register of Beneficial Owners.

Access to information in the Register of Beneficial Owners.

9. (1) The information on the beneficial owners of a foundation held by the Registrar for Legal Persons in the Register of Beneficial Owners shall, subject to the provisions of these regulations, be accessible to:

(a) national competent authorities with designated responsibilities for combating money laundering and terrorist financing, or that have the function of investigating or prosecuting money laundering, associated criminal offences and terrorist financing, or of tracing, seizing, freezing and confiscating criminal assets, the Financial Intelligence Analysis Unit and national tax authorities, and any other national competent authority within the meaning assigned to it under the Prevention of Money Laundering and Funding of Terrorism Regulations not already covered above, for the purposes of fulfilling their statutory functions in a timely manner without any restriction and without alerting the foundation or the beneficial owners concerned; and

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(b) subject persons in terms of the Prevention of Money Laundering and Funding of Terrorism Regulations for the purpose of carrying out customer due diligence in accordance with the said regulations with reference to such foundation, which access shall be granted in a timely manner on a written request.

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(2) Subject to compliance with the provisions of the Data Protection Act, on access to personal data, any person who, or organisation which, in a written request, satisfactorily demonstrates and justifies a legitimate interest specifically related to the prevention of money laundering and the financing of terrorism may be provided with the following information held in the Register of Beneficial Owners with reference to a specified foundation:

- (a) the name;
- (b) the month and year of birth;
- (c) the nationality;
- (d) the country of residence; and
- (e) the extent and nature of the beneficial interest of the beneficial interest of the beneficial owners of the foundation;

and this shall be granted in a timely manner. Any such person or organisation shall not be granted access to any other information or documents relating to the beneficial owners of the foundation which

may be in the possession of the Registrar for Legal Persons.

(3) The subject persons mentioned in sub-regulation (1)(b) shall, together with the written request, submit to the Registrar for Legal Persons:

(a) identification details and other information supported by documents, certified as authentic, showing that the person requesting access to the Register is a subject person, such as a licence or a professional warrant or other evidence of the function of the subject person;

(b) a declaration that the purpose of the enquiry relates and will contribute to the prevention, detection and combating of money laundering or the associated predicate offences or the financing of terrorism;

(c) documentation, certified as authentic, of the legal relationship with the foundation or the beneficial owners, such as an engagement or instruction letter engaging the subject person or a power of attorney; and

(d) any other document which the Registrar for Legal Persons may deem necessary.

(4) The persons or organisations mentioned in sub-regulation (2) shall, together with the written request, submit to the Registrar for Legal Persons:

(a) identification details and other information supported by documents, certified as authentic, identifying the person requesting information from the Register of Beneficial Owners;

(b) a declaration that the purpose of the enquiry relates and will contribute to the prevention, detection and combating of money laundering or the associated predicate offences and the financing of terrorism;

(c) a statement on the basis of the legitimate interest underlying the request and associated supporting documentation as may be reasonably required by the Registrar for Legal Persons to *prima facie* ascertain that the person or organisation has a legitimate interest in consulting the Register of Beneficial Owners with reference to the particular foundation or beneficial owners thereof; and

(d) any other document which the Registrar for Legal

Persons may deem necessary.

For this purpose, the Registrar for Legal Persons may publish guidelines setting out the documentation required to support such a request to information held in the Register of Beneficial Owners and the evidence of any stated legitimate interest as well as the procedure for making such requests and any other applicable conditions.

(5) Access to, or provision of, information held in the Register of Beneficial Owners shall be subject to the following conditions:

(a) the competent authorities in sub-regulation (1)(a) shall be granted access without restriction to the requested information held in the Register of Beneficial Owners on the assumption that such consultation is related to such competent authority's statutory functions and without prejudice to the relevant competent authority's obligations under applicable data protection laws and regulations;

(b) subject persons referred to in sub-regulation (1)(b) shall be granted access to the requested information held in the Register of Beneficial Owners upon written request to the Registrar for Legal Persons on the basis of the declarations made and documents submitted being satisfactory as stated in sub-regulation (3) and without prejudice to the relevant subject person's obligations under applicable data protection laws and regulations and laws relating to professional secrecy; and

(c) the persons or organisations set out in sub-regulation (2) shall be granted the information requested on satisfactory compliance with sub-regulation (4). For the avoidance of doubt, it shall be incumbent on the person or organisation to prove its legitimate interest to the Registrar for Legal Persons. Any such request and any permission granted shall be limited to the specific foundation and the relevant beneficial owner or owners.

(6) Access to information on a beneficial owner of a foundation under sub-regulations (1)(b) and (2) may not be granted, in full or in part, where in exceptional circumstances to be justified by means of documentary evidence and to be determined on a case by case basis, access to such beneficial ownership information would expose the beneficial owner to the risk of fraud, kidnapping, blackmail, violence or intimidation, or whether the beneficial owner is a minor or otherwise incapable.

Such limitation shall not hinder in any way the access of

persons referred to in sub-regulation (1)(a) or of credit or financial institutions in carrying out their duties under laws for the prevention of money laundering and terrorist financing.

Each request for information which raises the above risks based on information provided by the foundation when complying with these regulations shall be examined by the Registrar for Legal Persons on a case-by-case basis prior to his determination on whether to grant access to information or otherwise.

(7) The Registrar for Legal Persons shall be bound to notify in writing the applicant of any decisions that he may take refusing a written request made to him providing the reasons for his decision. Any person or organisation which feels aggrieved by any decision of the Registrar for Legal Persons may appeal to the First Hall, Civil Court, from such decision within thirty days of receipt thereof or, where there is no response to an application, after forty-five days from the date of such written request to the Registrar for Legal Persons.

(8) Notwithstanding the provisions of any other law, including the laws on professional secrecy and data protection, the competent authorities referred to sub-regulation (1)(a) and the Financial Intelligence Analysis Unit are permitted to, in pursuance of their functions in accordance with applicable law, provide the information about the beneficial owners to competent authorities and to Financial Intelligence Units of other Member States of the European Union and to do so in a timely manner.

(9) The Registrar for Legal Persons shall be entitled to require online requests to access information in the Register of Beneficial Owners, and to levy a fee for such access to the Register as established in guidelines which he may issue for this purpose, so as to cover the administrative costs thereof.

10. (1) All persons entitled to access information in terms of these regulations shall be subject to the Data Protection Act and relevant regulations thereunder and shall also be subject to the obligation not to disclose any information about beneficial owners except as required or permitted by applicable law.

Data protection
and
confidentiality.
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(2) The Registrar for Legal Persons shall be bound to maintain confidentiality on any access to the Register of Beneficial Owners by the authorities referred to in regulation 9(1)(a) and shall not inform the foundation or the beneficial owners on whom information is sought of such access.

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Provisions to support the Registrar for Legal Persons functions.

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11. (1) The fact that foundations comply with these regulations with regard to provision of information to the Registrar for Legal Persons shall not imply that such foundations do not remain equally obliged to provide any information requested of them by subject persons taking customer due diligence measures in accordance with the Prevention of Money Laundering Act and applicable regulations, as well as others entitled to such information under special laws, about such foundation and its beneficial owners.

(2) So as to ensure that the Registrar for Legal Persons is not inundated with requests under these regulations which would be easily met by observance of basic compliance with applicable laws and so as to avoid demands on the Registrar for Legal Persons which are not eligible under these regulations:

(a) all subject persons shall deal directly with foundations and beneficial owners prior to applying to the Registrar for Legal Persons; and

(b) all foundations shall provide information about their beneficial owners, direct and indirect, to subject persons, as well as others entitled to such information under special laws, in a timely manner, when:

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(i) such subject persons are taking customer due diligence measures in accordance with the Prevention of Money Laundering Act and applicable regulations; or

(ii) other persons who are seeking information from the foundation itself and who are entitled to demand, and be provided with, such information, are doing so for the purposes of special laws which are intended for the prevention, detection and combating of money laundering or the associated predicate offences or the financing of terrorism.

(3) In any case, subject persons shall not rely exclusively on the Register of Beneficial Owners to fulfil their customer due diligence requirements and access to such Register of Beneficial Owners by subject persons in terms of these regulations shall not exonerate such subject persons from all responsibilities and duties incumbent upon them in terms of applicable law.

Misleading, false or deceptive information.

12. Any officer or beneficial owner of a foundation who knowingly or recklessly makes a statement, declaration or otherwise provides to the Registrar for Legal Persons information on the beneficial ownership of a foundation, that is misleading, false or deceptive in a material particular, shall be guilty of an offence and

shall be liable on conviction to a fine (*multa*) of not more than five thousand euro (€5,000) or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

13. (1) The Register of Beneficial Owners held by the Registrar for Legal Persons in accordance with regulation 6 shall be interconnected with the system of interconnection of central registers composed of the registers of Member States and EEA States via the European Central Platform and the European e-Justice portal serving as the European electronic access point.

Interconnection
of the Register
of Beneficial
Owners.

(2) The information on the beneficial owners of a foundation held by the Registrar for Legal Persons in the Register of Beneficial Owners shall be available and accessible to the persons mentioned in regulation 9(1)(a) through the system of interconnection of registers mentioned in this regulation.

14. Any document which is required to be delivered to the Registrar for Legal Persons under any of the provisions of these regulations, and any such delivery and the retention of any such document by the Registrar for Legal Persons, may be in such format and by such means, including in electronic form and by electronic communication within the meaning of the Electronic Commerce Act, as the Registrar for Legal Persons may deem appropriate.

Electronic
communication.

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15. (1) Where any provision of these regulations provides for the imposition of a penalty, the amount of such penalty shall be determined by reference to the Schedule, which specifies the maximum penalty that may be imposed by the Registrar for Legal Persons under any of the provisions of these regulations.

Administrative
penalties.

(2) In the Schedule, the first column indicates the regulation and sub-regulation which prescribes that a penalty shall be imposed, the second column gives a general description of the infringement, which description shall not be relied on in interpreting any provision of these regulations, the third column prescribes the maximum penalty and the fourth column prescribes the maximum daily default penalty. The penalty shall become due on the day on which the default occurs and the daily default penalty shall be due for every day during which the default continues and shall accrue from the day following that on which the default occurs.

(3) Action by the Registrar for Legal Persons for the recovery of a penalty under these regulations shall be prescribed by the lapse of five years from the day on which the default occurs.

(4) A foundation shall be jointly and severally liable with its officers for the payment of any administrative penalties imposed

under these regulations.

(5) The provisions of the Schedule shall apply to any penalty imposed by the Registrar for Legal Persons under these regulations.

Fees.

16. Access to information in the Register of Beneficial Owners may be subject to the payment of a fee which shall not exceed the administrative costs thereof. The Registrar for Legal Persons may from time to time, by notice publicly available at the Registry for Legal Persons, establish such fee.

Forms.

17. The Registrar of Legal Persons shall have the power to issue and prescribe forms, and to modify the same as may be required, from time to time, to be used by foundations, beneficial owners, persons requesting access and information and otherwise, for the better carry out and implementation of these regulations.

SCHEDULE
Civil Code (Second Schedule)
(Register of Beneficial Owners - Foundations) Regulations

Penalties and Regulations applicable thereto

| Regulation | Default | Penalty | Daily penalty |
|-------------------|--|----------------|----------------------|
| 4(9) | Failure to keep record of beneficial owners | €500 | €5 |
| 5(3) | Failure to comply with regulation 5 | €500 | €5 |
| 7(5) | Failure to provide information to the Registrar for Legal Persons about a change in the beneficial owner of a foundation | €500 | €5 |

The following provisions shall apply to any penalty imposed by the Registrar for Legal Persons in terms of the Civil Code (Second Schedule) (Register of Beneficial Owners - Foundations) Regulations:

- (1) Where the Registrar for Legal Persons gives notice in writing to any foundation and, or any person that such foundation and, or person has become liable to a penalty under these regulations specifying the nature of the infringement, and indicating an amount as due by way of penalty in respect of such infringement, the foundation and, or person to whom the notice is given shall, without prejudice to the provisions of paragraphs (2) to (15) be deemed to have incurred a penalty under these regulations, and the amount indicated as aforesaid as due by way of penalty including any penalty due for each day during which the default continues shall be deemed to be the penalty due under these regulations in respect of the infringement specified in the notice.
- (2) A notice as is referred to in paragraph (1) shall, upon the service of a copy thereof by means of a judicial act on the foundation and, or any person indicated in the notice, constitute an executive title for all effects and purposes of Title VII of Part I of Book Second of the Code of Organization and Civil Procedure unless such person shall within thirty days from the date of such service institute proceedings before the court objecting to the penalty so fixed.
- (3) Where any foundation and, or any person desires to institute proceedings objecting to a penalty referred to in paragraph (1), such proceedings shall be instituted by application against the Registrar for Legal Persons.
- (4) The application shall, under pain of nullity, state clearly and concisely the nature of the complaint, the facts out of which the complaint arises, the reasons why such complaint should be upheld, and the claim that the penalty is not due at law or is due at law only in a smaller amount.
- (5) The court shall not annul or reduce a penalty as aforesaid unless such

penalty cannot at law be imposed in the circumstances of the case, or cannot at law be fixed in the amount fixed by the Registrar for Legal Persons.

- (6) The applicant shall attach to the application all such documents in support of his claim as it may be in his power to produce, and shall indicate in his application the names of all witnesses he intends to produce stating, in respect of each, the proof which he intends to make.
- (7) The court shall, without delay, set down the application for hearing at an early date, which date shall in no case be later than thirty days from the date of the filing of the application.
- (8) The application, and the notice of the date fixed for hearing, shall be served on the Registrar for Legal Persons without delay, and the said Registrar for Legal Persons shall file his reply thereto within fourteen days after the date of the service of the application.
- (9) The Registrar for Legal Persons shall, in his reply, state clearly and concisely whether he agrees to the facts set out in the application, and the reasons why he objects to the claim; he shall moreover state in his reply the names of the witnesses in support of his reasons and shall attach thereto all the documents in support thereof.
- (10) On the day fixed for the hearing of the application, the court shall consider only the issues of fact and of law as are ascertainable from the application, reply or documents filed, by either of the parties, or from the evidence indicated by either of the parties in the application or reply, as the case may be, or from the oral pleading of either of the parties.
- (11) The court shall hear the application to a conclusion within five working days from the date fixed for the original hearing of the application, and no adjournment shall be granted except either with the consent of both parties, or for an exceptional reason to be recorded by the court, and such adjourned date shall not be later than that justified by any such reason.
- (12) Saving the preceding paragraphs, the provisions of the Code of Organization and Civil Procedure relating to proceedings before the First Hall of the Civil Court shall apply in relation to any such application.
- (13) Notwithstanding the provisions of article 256(2) of the Code of Organization and Civil Procedure, the executive title referred to in paragraph (2) shall not be enforceable before the lapse of thirty days from the service of the judicial act therein referred to.
- (14) The decision of the court upon an application referred to in paragraph (3), confirming the imposition of a penalty fixed by the Registrar for Legal

Persons or reducing any such penalty, shall upon becoming *res judicata* be deemed to be a judgment of the court ordering the payment by the applicant of the penalty as confirmed or reduced.

- (15) An appeal from a decision of the court upon an application referred to in paragraph (3), shall be made by means of an application to the Court of Appeal to be filed within six working days of the date of the decision; the foundation and, or person against whom the appeal is entered shall within six working days from the service upon him of the application file a reply to the appeal.
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