

Suppliment tal-Gazzetta tal-Gvern ta' Malta Nru. 19,924, 20 ta' Dicembru, 2017

Taqsimha B

L.N. 374 of 2017

**COMPANIES ACT
(CAP. 386)**

Companies Act (Register of Beneficial Owners) Regulations, 2017

IN exercise of the powers conferred by article 425(6) of the Companies Act, the Minister for Finance has made the following regulations:-

1. (1) The title of these regulations is the Companies Act (Register of Beneficial Owners) Regulations, 2017. Citation and scope.

(2) The purpose of these regulations is to implement the relevant provisions on beneficial ownership information of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 as applicable to commercial partnerships formed and registered under the Act, and they shall be interpreted and applied accordingly.

(3) These regulations shall come into force on the 1st January, 2018 other than the provisions of regulation 7 relating to access to the register of beneficial owners which shall come into force on 1st April, 2018.

2. (1) In these regulations, unless the context otherwise requires – Interpretation and applicability.

"Act" means the Companies Act; Cap. 386.

"beneficial owner" shall have the meaning assigned to it under the Prevention of Money Laundering and Funding of Terrorism Regulations, 2017 and "beneficial ownership" shall be construed accordingly. S.L. 373.01.

(2) Words and expressions used in these regulations which are also used in the Act shall have the same meaning assigned to them in the Act.

(3) These regulations do not apply to a company:

(a) listed on a regulated market that is subject to disclosure requirements consistent with the law of the Community or subject to equivalent international standards which ensure adequate transparency of ownership information;

(b) all the registered shareholders of which are natural

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persons who are disclosed in the public records at the register of commercial partnerships maintained by the Registrar of Companies.

Declaration on
beneficial
owners.

3. (1) With effect from the date of the coming into force of these regulations, where a company is to be constituted under the Act, together with the memorandum and articles, if any, delivered to the Registrar for registration in accordance with article 76 of the Act, there shall be delivered to the Registrar a declaration, in the form set out in the First Schedule to these regulations, signed by two of the proposed directors of the company unless the company has one proposed director, containing information in accordance with sub-regulation (2) on all the beneficial owners of the company.

(2) The information on the beneficial owners of the company to be provided to the Registrar in accordance with sub-regulation (1) shall, in respect of each beneficial owner, consist of the name, the date of birth, the nationality, the country of residence, an official identification document number indicating the type of document and the country of issue, and the nature and extent of the beneficial interest held.

(3) The Registrar shall not register the memorandum and articles, if any, delivered to him in accordance with article 76 of the Act unless he is satisfied that the requirements of this regulation have been complied with.

S.L. 386.05

(4) The provisions of this regulation shall, *mutatis mutandis*, apply to companies continued in Malta in terms of the Continuation of Companies Regulations.

Register of
beneficial
owners.

4. Documents required to be delivered to the Registrar under any of the provisions of these regulations shall not be registered and the information on the beneficial owners of every company provided to the Registrar in accordance with these regulations shall be entered and held by the Registrar in a register of beneficial owners kept by the Registrar for this purpose.

Company to
keep record of
beneficial
owners.

5. (1) Every company shall 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:

(a) the name, the date of birth, the nationality, the country of residence and an official identification document number indicating the type of document and the country of issue, of each beneficial owner;

(b) the nature and extent of the beneficial interest held by each beneficial owner and any changes thereto;

(c) the effective date on which a natural person became, or ceased to be, a beneficial owner of the company or has increased or reduced his beneficial interest in the company.

(2) The company shall obtain the information required under sub-regulation (1) from the shareholders of the company 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 company without delay, and every beneficial owner who acquires, disposes of, increases or reduces his beneficial interest in the company shall be bound to immediately provide the said information to the company.

(3) The information referred to in sub-regulation (1) shall be entered and held by the company in a beneficial owners register to be kept at the registered office of the company or at such other place as may be specified in the Memorandum or Articles of Association of the company.

(4) The company shall not enter the name of a new shareholder or any changes to existing shareholdings in the register of members unless it has obtained, as may be applicable, information on the underlying beneficial ownership as required in accordance with sub-regulation (1) of this regulation.

(5) If default is made in complying with the provisions of this regulation, the company and every officer, shareholder and beneficial owner of the company 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 company 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.

6. (1) Where there is a change in the beneficial ownership of a company, the company shall, within fourteen days after the date on which the change is recorded with the company, deliver to the Registrar a notice, in the form set out in the First Schedule to these regulations, of the change, providing the information required under regulation 3 on any new beneficial owner, updated information including on the nature and extent of the beneficial interest held on each of the other beneficial owners and the effective date of changes

Notice of
change in
beneficial
owners.

made, and the Registrar shall enter the said changes in the register of beneficial owners.

(2) Where a notice of transfer or transmission of shares is delivered to the Registrar for registration in accordance with article 120(3) of the Act or where there is an increase or reduction of the issued share capital or a restructuring of a company's share capital or changes in the voting rights, the company shall, together with the said notice or other documents as applicable, also deliver to the Registrar a notice in the form set out in the First Schedule to these regulations, indicating whether or not there has been a change in the beneficial ownership of the company and providing the information as required under sub-regulation (1).

(3) The Registrar shall not register a notice of transfer, transmission or allotment of shares or any other document relating to changes in issued share capital or voting rights unless the requirements of sub-regulation (2) have been complied with.

(4) The notices of changes in beneficial ownership referred to in sub-regulations (1) and (2), duly completed, shall be signed by at least one director of the company or the company secretary.

(5) If default is made in complying with the provisions of this regulation, the company and every officer of the company 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.

Access to
information on
beneficial
owners.

7. (1) The information on the beneficial owners of a company held by the Registrar in the register of beneficial owners shall, in accordance with data protection requirements, be accessible to:

(a) (i) national competent authorities with designated responsibilities for combating money laundering and terrorist financing;

(ii) national competent authorities 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;

(iii) the Financial Intelligence Analysis Unit;

(iv) national tax authorities; and

(v) 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 under sub-paragraphs (i) to (iv),

in a timely manner without any restriction and without alerting the company concerned; and

(b) subject persons in terms of the Prevention of Money Laundering and Funding of Terrorism Regulations providing services in or from Malta, for the purpose of carrying out customer due diligence in accordance with the said regulations, in a timely manner. S.L. 373.01

(2) Any person or organisation that upon a written request can satisfactorily demonstrate and justify a legitimate interest shall, in accordance with data protection requirements, be granted access to the name, the month and year of birth, the nationality, the country of residence and the extent and nature of the beneficial interest of the beneficial owners of a company.

(3) A legitimate interest to have access to information on the beneficial owners of a particular company in accordance with sub-regulation (2) shall be satisfactorily demonstrated if the person or organisation requesting such access can satisfactorily demonstrate that the interest specifically and solely relates and will contribute to the prevention, detection and combating of money laundering or the associated predicate offences or the financing of terrorism and shall be justified on the basis of previous activities and a proven track record of actions in that field by means of relevant documentary evidence.

(4) A legitimate interest shall be conclusively determined by the Registrar, and for this purpose the Registrar may request information or seek guidance from or consult with any person or authority as he may deem necessary.

(5) Access to information on a beneficial owner of a company 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 where the beneficial owner is a minor or otherwise incapable.

(6) Subject persons shall not rely exclusively on the register of beneficial owners to fulfil their customer due diligence obligations in terms of the Prevention of Money Laundering and Funding of Terrorism Regulations. S.L. 373.01

(7) The authorities referred to in this regulation and the Financial Intelligence Analysis Unit may, in pursuance of their functions in accordance with applicable law, provide information on beneficial owners accessible to them in terms of this regulation to competent authorities and to Financial Intelligence Units of other Members States of the European Union and third countries.

(8) Access to the information on the beneficial owners of a company held by the registrar in the register of beneficial owners shall be subject to on-line registration and, other than in respect of such access by the authorities mentioned in sub-regulation (1) (a), shall be subject to the payment of a fee of five euro (€5) for every access to the information on the beneficial owners of each company.

Companies formed and registered before the coming into force of these regulations.

8. (1) Every company formed and registered before the coming into force of these regulations shall comply with the provisions of regulation 5 within six months from the date of the coming into force of these regulations.

(2) If default is made in complying with sub-regulation (1), the company and every officer, shareholder and beneficial owner of the company 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 company 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.

(3) Every company as is mentioned in sub-regulation (1) shall, on the anniversary of its registration falling due immediately after the expiry of six months from the coming into force of these regulations or where there is any change in the beneficial ownership of the company occurring after the expiry of six months from the coming into force of these regulations, whichever is the earlier, deliver to the Registrar a declaration in the form set out in the First Schedule to these regulations, containing the information mentioned in regulation 3 on all the beneficial owners of the company, as at the date of such anniversary or change as the case may be.

(4) The declaration duly completed shall be signed by at least one director of the company or the company secretary and shall be delivered to the Registrar within forty two days of the anniversary date to which it is made up or within fourteen days after the date on which the change is recorded with the company as the case may be, and the Registrar shall enter the information contained therein in the

register of beneficial owners.

(5) If default is made in complying with the provisions of sub-regulations (3) and (4) of this regulation, the company and every officer of the company 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.

9. The Registrar may refuse to register any document of a company, which is required to be registered under the Act, if he is not satisfied that the company has provided accurate and up to date information on all the beneficial owners of the company as required by these regulations.

Power of the Registrar not to register documents.

10. These regulations shall apply to partnerships *en nom collectif* and partnerships *en commandite* or limited partnerships, as if reference in these regulations to:

Applicability to partnerships *en nom collectif* and partnerships *en commandite* or limited partnerships.

(i) "company" were a reference to "partnership *en nom collectif* and partnership *en commandite* or limited partnership";

(ii) "memorandum and articles" were a reference to "deed of partnership";

(iii) "article 76 of the Act" were a reference to "article 15 of the Act";

(iv) "shareholders" were a reference to "partners";

(v) "director" or "directors", "officer" or "officers", "director of the company or the company secretary" were a reference to "partner or partners having the administration or representation of the partnership".

11. Any officer, shareholder or beneficial owner of a company who knowingly or recklessly makes a statement, declaration or otherwise provides to the Registrar information on the beneficial ownership of a company, 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.

Misleading, false or deceptive information.

12. (1) In accordance with the requirements of Directive EU 2015/849 of EU Parliament and Council of 20th May 2015 the register of beneficial owners held by the Registrar in accordance with regulation 4 shall be interconnected with the system of interconnection of central, commercial and companies registers

Interconnection of the register of beneficial owners.

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, in terms of Directive 2009/101/EC, as amended by Directive 2012/17/EU.

(2) The information on the beneficial owners of a company held by the Registrar in the register of beneficial owners shall be available and accessible through the system of interconnection of registers mentioned in this regulation.

Electronic communication.

13. Any document which is required to be delivered to the Registrar under any of the provisions of these regulations and any such delivery and the retention of any such document by the Registrar 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 may deem appropriate.

Cap. 426.

Administrative penalties.

14. (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 Second Schedule of these regulations, which specifies the maximum penalty that may be imposed by the Registrar under any of the provisions of these regulations.

(2) In the Second 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 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 company shall be jointly and severally liable with its officers for the payment of any administrative penalties imposed under these regulations.

(5) The provisions of article 401(3) to (17) of the Act shall apply to any penalty imposed by the Registrar under these regulations.

15. These regulations shall, *mutatis mutandis*, apply to private limited liability companies formed and registered under the Merchant Shipping (Shipping Organisations - Private Companies) Regulations.

Applicability to shipping companies.
S.L. 234.42

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FIRST SCHEDULE

FORMS

(Applicable to companies and to partnerships *en nom collectif* and partnerships *en commandite* or limited partnerships)

Companies Act (Register of Beneficial Owners) Regulations, 2017

Declaration on Beneficial Owners in terms of regulation 3

To the Registrar of Companies:

I/We the undersigned being the director/s of, a company to be constituted/continued in Malta* under the Companies Act, hereby declare that the beneficial owners of the company are as follows:

Particulars of Beneficial Owner (a)	Extent of Beneficial Ownership (b)	Nature of Beneficial Ownership (c)
Name:		
Date of Birth:		
Nationality:		
Country of Residence:		
Official Identification number:		
Document type:		
Country of Issue:		

.....

Director
(Name and Surname)

Director
(Name and Surname)

Dated this day of of the year

(a) Replicate table as necessary

(b) To be stated as a percentage of total ownership

(c) Describe the beneficial ownership indicating whether it is direct or indirect ownership of 25% plus one or more of the shares or more than 25% of the voting rights or other ownership interests, including through bearer shares or through control with other means such as for example exercise of a dominant influence, power to appoint or remove the majority of the board of directors and agreements with other members of the company

* Delete as necessary

FORM BO1

Companies Act (Register of Beneficial Owners) Regulations, 2017

Notice on Beneficial Owners in terms of regulation 6

To the Registrar of Companies:

The company
 having registration number hereby gives notice that (choose Section A
 or Section B as applicable) :

Section A

The company has submitted a notice of transfer, transmission or allotment of shares, or other document relating to changes in the share capital or voting rights and confirms that:

The aforesaid change has resulted in a change in the beneficial ownership,
as indicated in Section C below.

The aforesaid change has not had any effect on the beneficial ownership.

Section B

A change in the beneficial ownership of the company has occurred without a
 change in the registered shareholders, **as indicated in Section C below.**

Section C

The beneficial owners of the company are as follows:

Particulars of Beneficial Owner (a)	Extent of Beneficial Ownership (b)	Nature of Beneficial Ownership (c)
Name:		
Date of Birth:		
Nationality:		
Country of Residence:		
Official Identification number:		
Document type:		
Country of Issue:		

Date of change in beneficial ownership (if applicable):

.....

Director/Secretary
 (Name and Surname)

Dated this day of of the year

(a) Replicate table as necessary

(b) To be stated as a percentage of total ownership

(c) Describe the beneficial ownership indicating whether it is direct or indirect ownership of 25% plus one or more of the shares or more than 25% of the voting rights or other ownership interests, including through bearer shares or through control with other means such as for example exercise of a dominant influence, power to appoint or remove the majority of the board of directors and agreements with other members of the company

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FORM BO2

Companies Act (Register of Beneficial Owners) Regulations, 2017

Declaration on Beneficial Owners in terms of Regulation 8

To the Registrar of Companies:

I/We the undersigned being the director/s of the company having registration number hereby declare that the beneficial owners of the company, as at the date of the attached Annual Return / of this form (*delete as applicable*), are as follows:

Particulars of Beneficial Owner (a)		Extent of Beneficial Ownership (a)	Nature of Beneficial Ownership (b)
Name:			
Date of Birth:			
Nationality:			
Country of Residence:			
Official Identification number:			
Document type:			
Date of Issue:			

.....
 Director/Secretary
 (Name and Surname)

Dated this day of of the year

(a) Replicate table as necessary

(b) To be stated as a percentage of total ownership

(c) Describe the beneficial ownership indicating whether it is direct or indirect ownership of 25% plus one or more of the shares or more than 25% of the voting rights or other ownership interests, including through bearer shares or through control with other means such as for example exercise of a dominant influence, power to appoint or remove the majority of the board of directors and agreements with other members of the company

**SECOND SCHEDULE
PENALTIES****FORM BO3**

Regulation	Default	Penalty	Daily Penalty
5(5)	Failure to keep record of beneficial owners	€1000	€10
6(5)	Failure to provide information to the Registrar about a change in the beneficial ownership of a company	€1000	€10
8(2)	Failure to comply with regulation 5 within six months from the coming into force of the regulations	€1000	€10
8(5)	Failure to provide the Registrar with a declaration containing information on the beneficial owners of the company	€1000	€10

