

# MFSA

MALTA FINANCIAL SERVICES AUTHORITY

## Circular

- I. **Notice of coming into force of Regulations - Trusts and Trustees Act (Register of Beneficial Owners) Regulations, 2017 [Legal Notice 373 of 2017]**
- II. **Notice of coming into force of the Various Financial Services Laws (Amendment) Act, 2017 [Act XXXI of 2017] – Part II: Amendments to the Trusts and Trustees Act**

### 1. Introduction

- 1.1. The Authority would like to draw the attention of Trustees authorised in terms of Article 43 or registered in terms of Article 43B to the **Trusts and Trustees Act (Register of Beneficial Owners) Regulations, 2017**, which were published on 20<sup>th</sup> December 2017 by virtue of [Legal Notice 373 of 2017](#). These regulations are aimed at implementing the relevant provisions on beneficial ownership information, including the register of beneficial owners, emanating from article 31 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 (“4th AMLD”), in so far as they are applicable to trusts and trustees. An outline of these regulations is provided in section 2.1 below.
- 1.2. By means of this Circular the Authority would also like to notify **ALL** persons authorised or registered in terms of the Trusts and Trustees Act, that on 22<sup>nd</sup> December 2017, various amendments to the Trusts and Trustees Act were introduced by virtue of **Part II of the Various Financial Services Laws (Amendment) Act, 2017** ([Act XXXI of 2017](#)). Most of these amendments relate to the provision of company services as defined in the Company Service Providers Act (Cap. 529, Laws of Malta), by persons authorised under the Trusts and Trustees Act. However, an outline of all the amendments introduced by virtue of this Act, is provided in Section 2.2 below.

- 1.3. The Authority also wishes to highlight that the content of this circular does not substitute a comprehensive reading and understanding of the above-mentioned Legal Notice and Act.

## **2. Content Summary**

### **2.1. Outline of the Trusts and Trustees Act (Register of Beneficial Owners) Regulations, 2017**

The main elements which are being introduced by virtue of the said regulations are the following:

- Trustees are required to submit to the MFSA a declaration of beneficial ownership as defined within the regulations, in respect of every express trust which generates tax consequences, under their administration.
- A trustee of such a trust which was set up, and in respect of which the trustee was so acting prior to the coming into force of the regulations, shall be granted a period of six months from the coming into force of the regulations to submit the declaration of beneficial ownership in respect of such trusts.
- The information collected from the above-mentioned declarations of beneficial ownership shall 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 role of each Beneficial Owner in the trust, as defined within the regulations.
- The information on Beneficial Owners must be entered into a register of Beneficial Owners kept by the MFSA for this purpose.
- A trustee is required to notify the MFSA of any changes in beneficial ownership of a trust, within fourteen days after the date on which the change is recorded by the trustee.
- The regulations also set out the parties who have access to beneficial ownership information, and the extent of such access. These include various national competent authorities and subject persons under the Prevention of Money Laundering and funding of Terrorism Regulation for the purpose of conducting customer due diligence work.
- The MFSA may impose an administrative penalty on any trustee who contravenes or fails to comply with any provisions of these regulations.

- The register of beneficial owners shall be interconnected with the central registers of Member States of the European Union.

In terms of the above-mentioned Legal Notice 373 of 2017, these regulations shall come into force on **1st January 2018**, other than the provisions of regulation 6 relating to **access to the register of beneficial owners** which shall come into force on **1st April, 2018**.

## 2.2. **Outline of Part II of the Various Financial Services Laws (Amendment) Act, 2017**

- *Introduction of a new proviso to Articles 43(4)(i), 43(13)(i), 43(15)(i)* – As at to date, the provisions of these sub-articles provide that any other activities or services provided by the applicant, should be ancillary or incidental with the trustee services/services of mandatory/services of an administrator of private foundations, being provided by the applicant, as the case may be in terms of the relevant provision. In this respect, company services as defined in the Company Service Providers Act, could only be provided by trustees if such company services were being provided as ancillary services to the fiduciary services being provided in terms of its authorisation.

By virtue of the new proviso introduced following the above-cited provisions, a trustee/mandatory/administrator of private foundations, will be allowed to act as a company service provider as defined in the Company Service Providers Act, notwithstanding the provisions of paragraphs (a) and (b) of each relevant subarticle, subject to any rules or regulations which may be applicable under the Trusts and Trustees Act. This will also bring the provisions under the Trusts and Trustees Act in line with the provisions of the Company Service Providers Act which provides that a person authorised to act as trustee or to provide other fiduciary duties in terms of the Trusts and Trustees Act is not required to be registered with the Authority to offer CSP services.

- *Removal of requirement for authorisation under Article 43(4), 43(12), 43(13), and 43(15) for persons merely resident in Malta* – The Authority felt that a trustee/mandatory/administrator of private foundations should not be subject to authorisation under these provisions simply because he is resident in Malta, but the authorisation requirement should be tied to whether the

trustee/mandatory/administrator of private foundations is operating in or from Malta. This is also in line with the approach adopted in other areas of financial services.

- *Amendment of Article 51(7)* - This provision has been amended to reflect the approach taken in other areas of financial services with respect to the Authority's enforcement powers, including the possibility to publish any administrative sanctions imposed on a person in terms of this Article.
- *Amendment to Article 55(2)(e)* - This Article has been amended to include the possibility under the Act to appeal from any directive issued by the Authority.

The contents of Part II of the Various Financial Services Laws (Amendment) Act, 2017, and therefore the above-mentioned amendments to the Trusts and Trustees Act should be deemed to have come into force on the date of publication of the said Act XXXI of 2017, therefore on **22<sup>nd</sup> December 2017**.

### **3. Contacts**

Any written queries regarding the subject matter of this circular are to be directed to: [csu@mfsa.com.mt](mailto:csu@mfsa.com.mt)

For further information about the above, you are kindly requested to contact:

**Dr Michelle Mizzi Buontempo**  
**Director**  
**Conduct Supervisory Unit**  
**E-mail: [mmizzibuontempo@mfsa.com.mt](mailto:mmizzibuontempo@mfsa.com.mt)**

**Dr Petra Camilleri**  
**Analyst**  
**Conduct Supervisory Unit**  
**E-mail: [pcamilleri@mfsa.com.mt](mailto:pcamilleri@mfsa.com.mt)**

**Communications Unit**  
**Malta Financial Services Authority**  
**29 December 2017**