

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

*Taqsimha B*

**L.N. 373 of 2017**

**TRUSTS AND TRUSTEES ACT  
(CAP. 331)**

**Trusts and Trustees Act (Register of Beneficial Owners)  
Regulations, 2017**

IN exercise of the powers conferred by article 57(1)(t) of the Trusts and Trustees Act, the Minister responsible for the regulation of financial services, on the advice of the Malta Financial Services Authority, has made the following regulations:-

**1. (1)** The title of these regulations is Trusts and Trustees 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 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, as applicable to trusts and trustees under the Act, and they shall be interpreted and applied accordingly.

(3) 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. (1)** In these regulations, unless the context otherwise requires – Interpretation.

"Act" means the Trusts and Trustees Act; Cap. 331.

"Authority" means the Malta Financial Services Authority;

"beneficial owner" shall have the meaning assigned to it under the Prevention of Money Laundering and Funding of Terrorism Regulations, specifically as applicable to trusts, and for the purposes of these regulations shall be specifically applied to the following: S.L. 373.01

- (a) the settlor;
- (b) the trustee(s);
- (c) the protector, if any;

(d) the beneficiaries, or where the individuals benefiting from the trust have yet to be determined, the class of

persons in whose main interest the trust is set up or operates;  
and

(e) any other person exercising ultimate and effective control over the trust 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 terms of the trust instrument or of any other instrument in writing, for material actions to be taken by the trustee; and

"beneficial ownership" shall be construed accordingly;

"declaration of beneficial ownership" shall have the meaning assigned to it in regulation 3;

"express trust" means a trust which is set up in writing, by means of a trust instrument as defined in the Act;

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"Financial Intelligence Analysis Unit" means the Unit established under the Prevention of Money Laundering Act;

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

(a) the amendment of the trust instrument;

(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 trustees or protectors or to give another individual control over the trust;

(d) the acceptance of an additional settlor as may be applicable in terms of the terms of the trust instrument;

(e) the change of the Proper Law of the trust;

(f) the assignment or transfer of all or most of the assets of the trust or the termination or revocation of the trust;

"officers" means the directors of a trustee which is set up as a company or, where the trustee is another body corporate, the persons entrusted with the management and administration thereof.

(2) These regulations shall only apply to any express trust which generates tax consequences and irrespective of the manner in which the trust is treated, or elects to be treated in terms of the Income Tax Act.

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(3) Unless otherwise stated or the context otherwise requires, terms and expressions used in these regulations which are also used in the Act and in the Prevention of Money Laundering and Funding of Terrorism Regulations, shall have the same meaning as in the Act or in the said regulations, as the context may require.

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3. (1) With effect from the date of the coming into force of these regulations a trustee who is authorised or registered in terms of article 43 or article 43B of the Act shall, within fourteen days of being appointed as a trustee of an express trust, submit to the Authority a declaration of beneficial ownership, in the form set out by the Authority, in respect of every such trust which generates tax consequences. The declaration of beneficial ownership shall include the information referred to in sub-regulation (2) on all the beneficial owners of the trust, shall be signed by the trustee. Where the trustee is a company, such declaration shall be signed by at least two directors, and where the trustee is another body corporate it shall be signed by at least two persons entrusted with the management and administration thereof.

Declaration of  
beneficial  
ownership.

(2) Without prejudice to the customer due diligence requirements emanating from the Prevention of Money Laundering and Funding of Terrorism Regulations and any implementing procedures issued thereunder, the information on the beneficial owners of the trust to be provided to the Authority in accordance with sub-regulation (1) shall, in respect of each beneficial owner, consist of:

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- (a) the name;
- (b) the date of birth;
- (c) the nationality;
- (d) 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 trust, in terms of paragraphs (a) to (e) of the definition "beneficial owner" under regulation 2; and

(g) in the case of a beneficiary as defined under paragraph (d) of the definition "beneficial owner" under regulation 2, the nature and extent of the benefit as well as, where applicable, an indication as to whether the trust instrument includes any suspension of the trustee's duty to inform such beneficiary of his benefit under the trust or that he forms part of a class of beneficiaries which may so benefit.

(3) For the purposes of this regulation, where the beneficiaries of a trust are a class of beneficiaries, the following rules shall apply unless stated otherwise in the trust instrument or any other instrument indicating the beneficiaries of the trust:

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

(ii) 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;

(iii) 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;

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

(v) "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 recognized by law in the country where they are habitually resident, including where permitted, of the same gender;

(vi) the information prescribed in this sub-regulation shall be submitted to the Authority as soon as a beneficiary is determined from such a class, or is appointed as a beneficiary under the trust, whichever is the earlier:

Provided that nothing in the above shall affect the interpretation of a trust instrument or any other instrument indicating the beneficiaries of the trust, or any entitlements of persons who may or may not be beneficiaries or have any entitlements, which shall be governed by the trust instrument or any such other

instrument 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.

(4) Where a trust is set up solely for a charitable purpose in terms of the Act, and which does not have any beneficiaries as defined in paragraph (d) of the definition "beneficial owner" under regulation 2, the trustee shall only be required to provide the beneficial ownership information relating to the persons mentioned in paragraphs (a) to (c) and (e).

(5) A trustee shall not enter the name of any beneficial owner as defined in these regulations, in the declaration of beneficial ownership unless it has carried out customer due diligence obligations in terms of the requirements under the Prevention of Money Laundering and Funding of Terrorism Regulations: S.L. 373.01

Provided that information contained in a trust instrument, any other instrument indicating the beneficiaries of the trust, a power of attorney, an engagement or instruction letter, or any other official document, shall be deemed to be sufficiently reliable for the purposes of carrying out the duties under this regulation.

4. (1) The information on the beneficial owners of every express trust provided to the Authority in accordance with regulation 3 shall be entered and held by the Authority in a register of beneficial owners kept by the Authority for this purpose. Register of beneficial owners of trusts.

(2) The information provided by a trustee as required in terms of regulation 3 shall be deemed to be sufficiently reliable for the Authority in fulfilment of its duties under these regulations.

5. (1) Where there is a change in the beneficial ownership of an express trust which generates tax consequences, the trustee shall, within fourteen days after the date on which the change is recorded by the trustee, notify the Authority of the change, providing the information required under regulation 3 on any new beneficial owner, and the effective date of changes made. The said changes shall be entered in the register of beneficial owners: Notice of change in beneficial owners and annual declaration,

Provided that if the change in the beneficial ownership information relates to a change in trustee, it shall be the duty of the new trustee to notify the Authority of such change.

(2) A trustee who has submitted a declaration of beneficial ownership for any trust in terms of regulation 3 or regulation 7 shall, for every such trust, submit annually thereafter, and by not later than

31<sup>st</sup> January of each year, a declaration confirming that there have been no changes to the beneficial ownership of the trust in the previous calendar year, other than any changes notified in terms of sub-regulation (1).

(3) The notice referred to in sub-regulation (1) and the declaration referred to in sub-regulation (2) shall be signed by the trustee. Where the trustee is a company, such notice or declaration shall be signed by at least two directors, and where the trustee is another body corporate they shall be signed by at least two persons entrusted with the management and administration thereof.

Access to  
beneficial owner  
information .

**6.** (1) The information on the beneficial owners of an express trust held by the Authority in the register of beneficial owners shall 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),

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in a timely manner without any restriction and without alerting 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, in a timely manner:

Provided that the subject persons mentioned in sub-regulation (1)(b) may be required to submit to the Authority:

(i) an engagement letter engaging the subject person;

or

(ii) a power of attorney, licence, warrant or other evidence of the function of the subject person; or

(iii) a declaration that the purpose of the enquiry relates to the duties of the subject person or alternatively the basis of such request; or

(iv) any other document which the Authority may deem necessary.

(2) Access to information on a beneficial owner of a trust under sub-regulations (1)(b) 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.

(3) 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

(4) The fact that trustees comply with these regulations with regard to provision of information to the Authority shall not imply that such trustees 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 any other relevant legislation, about such trust and beneficial owners. Cap. 373.

(5) 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 Member States of the European Union and third countries.

7. Access to or receipt of information in terms of these regulations shall be without prejudice under the applicable data protection laws and rules in relation to the processing of personal data. Data protection and confidentiality.

Applicability to trustees of trusts set up prior to the coming into force of these regulations.

**8.** Every trustee authorised or registered in terms of the Act shall, in respect of every express trust which generates tax consequences, which was set up and in respect of which the trustee was so acting prior to the coming into force of these regulations, submit to the Authority a declaration of beneficial ownership in the form set out by the Authority within six months of the coming into force of these regulations.

Administrative sanctions.

**9.** Where a trustee authorised or registered in terms of the Act, contravenes or fails to comply with any of the provisions of these regulations, the Authority may impose an administrative penalty which may not exceed one hundred and fifty thousand euro (€150,000):

Provided that a trustee shall not be held liable if it is shown that the trustee had exercised all due diligence to comply with the provisions of these regulations and the default was not due to negligence on the part of the trustee or any of its officers as may be applicable.

Interconnection of the register of beneficial owners.

**10.** (1) In accordance with the requirements of Directive EU/2015/849 of the European Parliament and the Council of 20<sup>th</sup> May 2015, the register of beneficial owners held by the Authority in accordance with regulation 4 shall be interconnected with the central registers of Member States via the European Central Platform established by Article 4a(1) of Directive 2009/101/EC, as amended by Directive 2012/17/EU.

(2) The information on the beneficial owners of a trust as defined in regulation 3, held by the Authority in the trust register of beneficial owners shall be available and accessible through the system of interconnection of registers mentioned in this regulation.

Electronic communication.

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

Cap. 426.