

# REGISTER OF BENEFICIAL OWNERS OF TRUSTS



FREQUENTLY ASKED QUESTIONS

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# Revisions Log



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## Background

The Trusts and Trustees Act (Register of Beneficial Owners) Regulations (“the Regulations”) came into effect on 1<sup>st</sup> January 2018 by virtue of Legal Notice 373 of 2017. The Regulations implemented the relevant provisions on beneficial ownership information, 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 (“4<sup>th</sup> AMLD”), in so far as they are applicable to trusts and trustees

The amendments to the Regulations were published on 20<sup>th</sup> February 2020 by virtue of Legal Notice 27 of 2020. The provisions of these Regulations are aimed at implementing the relevant provisions on beneficial ownership information, emanating from article 31, of Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (“5<sup>th</sup> AMLD”), in so far as they are applicable to trusts and trustees. The amendments brought into the scope of the Regulations all trusts regardless of whether the trust generates trust consequences or otherwise. The provisions and requirements emanating from these Regulations came into force on 1<sup>st</sup> January 2020.

The aim of these revised Frequently Asked Questions (“FAQs”) is to provide guidance in relation to the reporting obligations, including those introduced by the amendments to the Regulations with respect to the Register of Beneficial Owners of Trusts (“the Register”) and the details which need to be provided for the relevant persons involved in such a trust relationship. These FAQs should be read in conjunction with, and as supplementary guidance to the Regulations, and should not be deemed to substitute a thorough reading thereof.

In referring to this document the following points should be kept in mind:

- This document is intended to be a live document and therefore the contents thereof may be updated from time to time as deemed appropriate by the Authority.
- The replies provided in this document do not purport to cover all the obligations applicable to trustees in terms of the said Regulations, but should merely serve as guidelines to the parties concerned in adhering to the requirements set out in the Trusts and Trustees Act (Register of Beneficial Owners) Regulations.

## List of Acronyms and Definitions

*"the Authority" or "MFSA"*: The Malta Financial Services Authority.

*"the Regulations"*: The Trusts and Trustees Act (Register of Beneficial Owners) Regulations.

*"5th AMLD"*: Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

*"PMLFTR"*: Prevention of Money Laundering and Funding of Terrorism Regulations (Subsidiary Legislation 373.01).

*"Qualified Person"*: a person authorised in terms of article 43(9)(a) of the Trusts and Trustees Act engaged by trustees not authorised under the Trusts and Trustees Act to ensure due compliance with all fiscal, prevention of money laundering and other legal obligations in connection with the relevant property.

*"The Register" or "TUBOR"*: The Register of Beneficial Owners of Trusts set up by the Authority in terms of Regulation 4.

*"the Act"*: The Trusts and Trustees Act (Cap. 331, Laws of Malta).

## FAQ 1: Who needs to provide the beneficial ownership information of trusts to the Authority?

Any Trustee authorised in terms of Article 43 or registered as a Trustee of Family Trusts in terms of Article 43B of the Act as well as any trustee whose place of establishment or residence is outside the European Union when such trustee enters into a business relationship or acquires real estate in Malta in terms of Regulation 3A of the Regulations, is required to provide the beneficial ownership information of any express trust under its administration. Therefore, the legal responsibility falls upon the Trustee to submit the relevant declaration of beneficial ownership of trusts in terms of the Regulations.

## FAQ 2: Where the Authorised/Registered Trustee is acting as co-trustee with another trustee, which trustee shall be responsible to provide the relevant beneficial ownership information?

Where the Trustee as defined in FAQ-1 above is acting as co-trustee with another authorised trustee(s), any one of the said trustees may complete the relevant declaration of beneficial ownership. The relevant details of all co-trustees must however be provided within the declaration of beneficial ownership. Both trustees, if authorised/registered in terms of the Act as aforesaid, would remain liable for providing the relevant beneficial ownership information on the appropriate form, or for failure to do, or delay in doing, so.

## FAQ 3: What is deemed to constitute a business relationship by a trustee of a trust established or resident outside the European Union in terms of Regulation 3A of the Regulations?

Regulation 3A of the Regulations extends the requirement to register the beneficial ownership of an express trust to any trustee of a trust whose place of establishment or residence is outside the European Union, where such trustee enters into a business relationship as contemplated under article 2 of the PMLFTR or acquires real estate in Malta, in its capacity as trustee of a trust.

The PMLFTR in Regulation 2 defines a “business relationship” as a business, professional or commercial partnership between two or more persons, at least one of which is acting in the course of either relevant financial activity, and which has, or is expected to have at the time when the contact is established, an element of duration.

The trustee of a trust whose place of establishment or residence is outside the European Union is required to determine whether it is entering in a business relationship in Malta, as defined under Regulation 2 of the PMLFTR, and hence is required to report the beneficial ownership of the trust concerned.

It is the responsibility of the trustee established or resident outside the European Union to assess whether the criteria outlined in the definition of “business relationship” as defined in terms of Regulation 2 of the PMLFTR subsist.

In the event of reasonable doubt as to whether a trustee of a trust whose place of establishment or residence is outside the European Union is required to report the beneficial ownership information with respect to a particular trust in terms of Regulation 3A of the Regulations, the matter shall be conclusively determined by the Authority.

In this regard, the said trustee may contact the Authority for guidance on [trustsboregister@mfsa.mt](mailto:trustsboregister@mfsa.mt).

The Authority would like to clarify that it is currently holding discussions and monitoring international developments which may result in further guidance being provided in the future with respect to this requirement.

**FAQ 4: Are Qualified Persons appointed by foreign trustees required to provide beneficial ownership information of a trust in relation to their appointment?**

One of the situations in terms of article 43(9)(a) of the Act which requires the appointment of a trustee licensed in Malta to act as a qualified person, is where a trustee who is not authorised in terms of the Trusts and Trustees Act acquires immovable property in Malta. Where such non-authorised trustees are trustees whose place of establishment or residence is outside the European Union, the appointed qualified person is expected to advise the said trustees of their reporting requirements in terms of the Regulations. This would be part of the obligations which a Qualified Person is expected to fulfil in terms of Article 43(9)(b) of the Act.

As indicated under FAQ-3, the duty to submit the declaration of beneficial ownership with respect to an express trust in regard to which a trustee established or resident outside the

European Union enters into a business relationship in Malta or acquires immovable property in Malta falls on the said trustee.

## FAQ 5: Does the beneficial ownership of security trusts need to be reported on TUBOR?

Security trusts set up in the context of companies listed on a regulated market which is subject to disclosure requirements consistent with the law of the European Union are not required to be reported on TUBOR in light of the fact that the bonds and other financial instruments which are listed on the Malta Stock Exchange require the approval of the MFSA as the Listing Authority prior to being listed on the Malta Stock Exchange and the information with respect to such bonds is accessible to the MFSA.

Trustees of security trusts set up in the context of entities that are listed on a foreign stock exchange are required to report the said trust on TUBOR by including the details of the issuer as the settlor and in the field relating to the class of beneficiaries to indicate that this is a security trust and to identify the regulated market on which the bonds relating to the particular entity are listed. Trustees of security trusts with respect to entities listed on a foreign stock exchange are required to provide the Authority, at registration stage on TUBOR and every three (3) months thereafter, with identification information in regard to the bondholders at that particular time.

The identification information should include:

- i. Name and Surname;
- ii. Date of Birth;
- iii. Nationality;
- iv. Country of residence;
- v. Official identification document type;
- vi. Official identification document number;
- vii. Country of Issue of the identification document

The information indicated above is to be provided in excel format and sent by email on [trustsboregister@mfsa.mt](mailto:trustsboregister@mfsa.mt). The information is to be provided by 31<sup>st</sup> March, 30<sup>th</sup> June, 30<sup>th</sup> September and 31<sup>st</sup> December of each year respectively.

Trustees of security trusts set up in the context of listed entities, whether listed in Malta or otherwise, are required to enter into an agreement with the bond issuer to ensure that a



register of bondholders containing all the identification information of the beneficiaries (name and surname, date of birth, nationality, country of residence, official identification document type, official identification document number and country of issue of the identification document) is held and that information on the bondholders is readily available and provided to the Authority within five (5) days from the date of any ad hoc request for information made by the MFSA.

Security trusts not set up in the context of a listed entity are to be reported on the Register in terms of the Regulations.

### FAQ 6: What information needs to be registered?

The Regulations provide that trustees must submit a declaration of beneficial ownership of all express trusts. For the purposes of the Regulations, a “beneficial owner” shall have the meaning assigned to it under the Prevention of Money Laundering and Funding of Terrorism Regulations, and in relation to trusts this includes:

- (a) The Settlor;
- (b) The Trustee(s);
- (c) The Protector, if any;
- (d) (i) The Beneficiaries, or  
(ii) 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 referred to in paragraphs (a) to (d)) whose consent is to be obtained, or whose direction is binding in terms of the trust instrument or of any other instrument in writing, for material actions to be taken by the trustee. The term “material actions” is defined within the Regulations.

The following sections set out the details which need to be provided in respect of each of the above-mentioned parties. It should be clarified that the data and information which is indicated as being reportable in the below sections should be distinguished from the information required to be collected by trustees as part of their due diligence obligations in terms of the PMLFTR. Therefore, for the sake of clarity, even though a look-through approach has not been adopted with respect to reporting of details of a body corporate settlor, trustee and protector, this does not imply that due diligence should not be conducted on the said parties until the identification of an individual beneficial owner.

## A) The Settlor

- Where the Settlor is an Individual: The name and surname, date of birth, nationality, country of residence, official identification number, type of identification document, and country of issue of the document.
- Where the Settlor is a Body Corporate: The Name of the Body Corporate (such as company name), date of registration, country of registration and registration number.
- Where the Settlor is a Trust. The details of the trustee and the name of the trust are to be provided (ex. *XYZ Trustee Ltd as Trustee of ABC Trust*) together with the following information:
  - i. Where the trustee is an individual- the name of the trustee of trust and the name of the trust (as indicated above), the date of birth, nationality, country of residence, official identification number, type of identification documents and country of issue of the document of the trustee; or
  - ii. Where the trustee is a body corporate- the name of the trustee of the trust and the name of the trust (as indicated above), date of registration of the trustee, country of registration of the trustee and the registration number of the trustee.
- In the event that the Settlor is deceased: Please tick the relevant field to indicate that the Settlor is deceased, and insert the month and year of death of the relevant settlor when prompted. The name and surname, date of birth and nationality are mandatory fields which still need to be completed for a deceased settlor. All other fields may be indicated as 'Not applicable'.
- Where there are multiple settlors, relevant details as explained above should be provided for each and every settlor.
- Where the settlor indicated on the trust instrument is merely acting as mandator for another person (the 'Economic Settlor' or 'Mandator'), the Economic Settlor/Mandator shall also be reported in the declaration of beneficial ownership under section (e) as 'any other person exercising control over the trust', in the manner explained under point vi below.
- ALL of the information must be provided. Trustees are expected to take all reasonable steps to obtain and hold the information indicated above, and to ensure that the records and information provided are accurate and up to date.

## B) The Trustee

- Where the Trustee is an Individual: The name and surname, date of birth, nationality, country of residence, official identification number, type of identification document, and country of issue of the document.
- Where the Trustee is a Body Corporate: The name of the Body Corporate (such as company name), date of registration, country of registration and registration number.
- Where there is a Co-Trustee(s): The above-mentioned details must also be provided for the co-trustee, depending on whether the co-trustee is a body corporate or an individual.

## C) The Protector(s)

- Where the Protector is an Individual: The name and surname, date of birth, nationality, country of residence, official identification number, type of identification document, and country of issue of the document.
- Where the Protector is a Body Corporate: The Name of the Body Corporate (such as company name), date of registration, country of registration and registration number.
- ALL of the information must be provided. Trustees are expected to take all reasonable steps to obtain and hold the information indicated above, and to ensure that the records and information provided are accurate and up to date.
- Where a Protector is named in the trust instrument or on any other written document by the settlor, but the Protector will only take office upon the happening of a conditional event set out in the trust instrument (such as following the death of the settlor), the details of the Protector need not be reported until the happening of such an event which triggers the Protector taking office. Once the Protector has taken office, the details of the said Protector shall be reported in the Register within the timeframes for notification of changes set out by law.

## D) (i) Beneficiaries

- Where the beneficiary is an Individual: The name and surname, date of birth, nationality, country of residence, official identification number, type of identification document, and country of issue of the document. The information must be provided for each and every individual beneficiary. For each of these individuals, the Trustee must also indicate the nature and extent of the benefit (ex. Fixed interest [and the percentage], discretionary, lifetime beneficiary, remainderman etc) as well as an indication as to whether the beneficiary has received a benefit or otherwise. This is

especially important in those instances when the beneficiaries are identified through a letter of wishes by the settlor. An indication as to whether the 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 is also to be provided.

- Where a guardian or a curator is appointed with respect to an individual beneficiary, the name and surname of the guardian/curator as well as the effective date of appointment are to be included in the field related to the 'Nature and Extent of the Benefit'.
- Where any of the individuals is a minor, the field related to the 'Nature and Extent of the Benefit', should also include:
  - a. A specific indication that such individual is a minor;
  - b. The name and surname, and nationality of the legal guardian(s) of such minor;  
AND
  - c. An indication whether such minor has ever received any financial payment or has been provided with a non-financial benefit by the trustee.

The above-mentioned details in relation to minors are required as, in terms of Regulation 6(2), the MFSA may concede, on a case-by-case basis and in exceptional circumstances, that access not be granted, in full or in part, where the beneficiary is a minor, to certain subject persons in terms of the Prevention of Money Laundering and Funding of Terrorism Regulations requesting access to the beneficial ownership information of any particular trust for the purposes of carrying out customer due diligence in accordance with the Prevention of Money Laundering and Funding of Terrorism Regulations.

- Where the beneficiary is a Body Corporate: Information should be provided about both the body corporate and the beneficial owners thereof, specifically as follows:
  - a. Body Corporate: The Name of the Body Corporate (such as company name), date of registration, country of registration and registration number; AND
  - b. Beneficial Ownership: The name and surname, date of birth, nationality, country of residence, official identification number, type of identification document, and country of issue of the document, for any individual holding direct or indirect ownership of 25% plus one or more of the shares in the body corporate, or more than 25% of the voting rights or other ownership interests, including through bearer shares or through control with other means.

Provided that if, after having exhausted all possible means and provided there are no grounds of suspicion, no beneficial owner in terms of this paragraph has been identified, the beneficial owner shall be considered to be the natural person or persons who hold the position of director of the Body Corporate, and the above-mentioned details relating to individuals shall be provided for such director(s). It is important that the appropriate selection is ticked when

completing the details for each individual under this section, to clearly indicate whether the details being provided relate to an ultimate beneficial owner as defined above, or an individual who is a director/senior managing official of the company. A record must be kept of all the actions taken to identify the beneficial owner in terms of this paragraph.

- Where the beneficiary, or one of the beneficiaries, is a charitable organisation, this should be included as a body corporate beneficiary and all the details available for the said organisation (the name, any registration number/voluntary organisation enrolment number, country of registration/establishment/enrolment) should be included in the section for body corporate beneficiaries. The section relating to the ultimate beneficial ownership of a body corporate need not be completed in the case of charitable organisations which are listed as beneficiaries.
- Where the beneficiary of the trust is, in turn, the Trustee of another trust: Information should be provided about both the Trustee and the Trust (*ex. XYZ Trustee Ltd as Trustee of ABC Trust*) and the beneficiaries of the said trust, as follows:
  - a. Where the trustee is an individual: The name and surname of the trustee followed by the name of the trust (as per example above), date of birth, nationality, country of residence, official identification number, type of identification document, and country of issue of the document; OR
  - b. Where the trustee is a body corporate: The name of the Body Corporate (such as company name) followed by the name of the trust (as per example above), date of registration, country of registration and registration number; AND
  - c. To the fullest extent possible, the above-mentioned details related to individual beneficiaries in the section related to individual beneficiaries, which should also include a specific indication that such individuals are beneficiaries of the underlying trust (*ex. Jane Doe as beneficiary of ABC Trust*).

#### D) (ii) Class of Beneficiaries

- In terms of the Regulations, where the individuals (or some of the individuals) benefiting from the trust have yet to be determined, a description of the class of beneficiaries can be provided. In this context 'determined' should be interpreted to mean 'identified' or 'named' in a written document from the settlor (not restricted to the trust instrument) as someone who should benefit from the trust. When a beneficiary can be clearly identified by his or her name, then the identity details referred to above need to be provided, even if such beneficiary is a discretionary beneficiary who has not yet received any financial payment or has been provided with a non-financial benefit by the trustee.
- When a beneficiary forms part of a class of beneficiaries who are not named (*ex. the grandchildren of the Settlor*), then a description of the class of beneficiaries shall be

provided instead. Similarly a description of the class of beneficiaries is to be provided where the beneficiaries are yet to be born.

- If an individual from the class of beneficiaries can be identified, then the beneficial ownership details referred to above must also be provided. The same applies to individual beneficiaries within a class of beneficiaries who are named and can be identified, even if such individuals have not received any financial payment or been provided with a non-financial benefit by the trustee.
- Where a description of a class of beneficiaries is provided in the Register, the Trustee shall nonetheless update the information and provide the beneficial ownership details of any individual forming part of that class who subsequently receives any financial payment or is provided with a non-financial benefit by the trustee.
- The above guidelines should also be read in conjunction with the rules relating to a class of beneficiaries as set out in Regulation 3(3).
- Where an individual beneficiary has not yet received any financial payment or been provided with a non-financial benefit, or the beneficiary may not be aware of his entitlement under the trust, and verification of identity may therefore not have been carried out on the said beneficiary, it shall be sufficient to provide the identification details which are available on the trust instrument or on any other written document by the settlor wherein such beneficiary is named, provided that a statement explaining why such details are not available must be included in the field related to the 'Nature and Extent of the Benefit', and such details must also be updated within the timeframes for notification of changes set out by law.
- Where a trust is set up solely for a charitable purpose as defined in the Trusts and Trustees Act, and which trust does not have any beneficiaries as defined in (d) above, the trustee shall only be required to provide the beneficial ownership information relating to the Settlor, the Trustee, the Protector and any other person exercising ultimate and effective control over the trust by any means, as defined in (e). Reference to the fact that this is a charitable purpose, and a description of such purpose, should be included under the 'Class of beneficiaries' section.

#### E) Any other person exercising ultimate and effective control over the trust by any means

For individuals falling within this category, the Trustee shall provide the name and surname, date of birth, nationality, country of residence, official identification number, type of identification document, and country of issue of the document as well as details of the role of this individual in the trust or the manner in which control is exercised.

## FAQ 7: What procedure is to be followed when there is a change in the beneficial ownership information of a trust reported on TUBOR?

Whenever there is a change to the beneficial ownership information of a trust which is reported on TUBOR the Trustee is required to submit an updated declaration of the particular on TUBOR within 14 days from date on which the change is recorded by the trustee.

Changes to the beneficial ownership information include:

- i. Changes to the identification details of the beneficiaries (e.g. change in name & surname, change in passport details, country of residence);
- ii. Appointment or removal of beneficiaries;
- iii. Changes in the benefit status of beneficiaries in instances where beneficiaries have received a benefit;
- iv. Change in the trustee in which case the newly appointed trustee is required to notify the Authority.

Trustees are required to inform the Authority of the changes carried out as well as the effective date of such changes within the timeframe indicated above by sending an email on [trustsboregister@mfsa.mt](mailto:trustsboregister@mfsa.mt).

Trustees are reminded that the annual declaration which needs to be submitted by the 31<sup>st</sup> January of each calendar year in terms of Regulation 5(2) should merely serve as a confirmation that there have been no changes to the beneficial ownership information in the previous calendar year, other than any changes notified in terms of Regulation 5(1). This does not substitute the trustees' obligation to report changes to beneficial ownership information of reported trusts within the timeframe indicated in Regulation 5(1) as they occur throughout the year. Trustees should therefore not await the submission of the annual declaration in terms of Regulation 5(2) to report such changes.

## FAQ 8: What procedure is to be followed in the instance that a trust is terminated?

When a trust which has been reported on the Register is terminated the trustee is required to inform the Authority by providing the following information:

- i. The effective date of termination of the trust;
- ii. Confirmation whether the trust was revocable or irrevocable;
- iii. If the trust was irrevocable, confirmation that there are no further assets under trust and that all beneficiaries consented to the termination of the said termination.

Trustees are required to provide the above information in the form of a signed declaration, signed by two directors in the case of body corporate trustees and by the trustee in case of individual trustee.

Following receipt of the said declaration by the Authority, trustees will be guided accordingly.

## FAQ 9: Who can access the beneficial ownership information on the Register?

- i. In terms of the Regulations, the following institutions and authorities shall be granted access to the registered beneficial ownership information of trusts in a timely manner, without any restriction and without alerting the beneficial owners concerned:
  - a. national competent authorities with designated responsibilities for combating money laundering and terrorist financing;
  - b. national competent authorities that have the function of investigating or prosecuting money laundering, associated predicate offences and terrorist financing, or of tracing, seizing, freezing and confiscating criminal assets;
  - c. the Financial Intelligence Analysis Unit;
  - d. national tax authorities.

The beneficial ownership information requested under FAQ- 5 is available to competent authorities upon a request made to the MFSA. In this regard trustees are required to ensure that the beneficial information required in terms of FAQ-5 is available on all the parties to the security trust up until the ultimate beneficial owner in the prescribed form.

- ii. The Regulations also provide that access shall also be granted to subject persons in terms of the PMLFTR, for the purpose of carrying out customer due diligence in accordance with the said regulations, in a timely manner and subject to the MFSA's right to request any of the documents outlined in Regulation 6(1)(b).

Subject persons in terms of this paragraph shall only be allowed to request access to beneficial ownership information by name of a particular trust or trusts for the purposes of carrying out customer due diligence in accordance with the said regulations.

- iii. Any natural or legal person that, upon a written request made under Regulation 6A of the Regulations, can demonstrate a legitimate interest in terms of Regulation 6(1)(c) of the Regulations.
- iv. Any natural or legal person that submits a written request to the Authority in relation to a trust which holds or owns a controlling interest in any corporate or other legal entity through direct or indirect ownership, including through bearer shareholdings or through control by other means other than:
  - i. in any corporate or other legal entities referred to in the Companies Act (Register of Beneficial Owners) Regulations, the Civil Code (Second Schedule) (Register of Beneficial Owners-Associations) Regulations, or the Civil Code (Second Schedule) (Register of Beneficial Owners-Foundations) Regulations; or
  - ii. in any corporate or other legal entity incorporated within any other Member State of the European Union.