

27 February 2020

## Notice of coming into force of Regulations – Trusts and Trustees Act (Register of Beneficial Owners) (Amendment) Regulations, 2020

### I. 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) (Amendment) Regulations, 2020 (“the Regulations”), which were published on 20 February 2020 by virtue of [Legal Notice 27 of 2020](#). This legal notice amends the Trusts and Trustees Act (Register of Beneficial Owners) Regulations, 2017, which amendments are aimed at transposing the provisions 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 (hereinafter referred to as the “5<sup>th</sup> AMLD”), and amending Directives 2009/138/EC and 2013/36/EU, in so far as these provisions relate to the register of beneficial owners of trusts, which register has been set up since 1 January 2018 and is being maintained by the Malta Financial Services Authority (“MFSA”).

The Authority would like to highlight that these Regulations have entered into force retrospectively, with effect from 1 January 2020. An outline of these Regulations is provided in Section II below

1.2 It is important that trustees carry out a comprehensive review and reading of the above-mentioned Legal Notice in order to obtain a sound understanding of their obligations in terms of the amended legislation.

### II. Content summary

The main amendments introduced to the Trusts and Trustees Act (Register of Beneficial Owners) Regulations, by virtue of the above-mentioned Legal Notice are the following:

- Trustees who are authorised or registered in terms of Article 43 or Article 43B, are required to submit to the MFSA a declaration of beneficial ownership as defined within the regulations, with respect to every trust under their administration – this requirement applies irrespective of whether the trust generates tax consequences or otherwise.
- 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, is granted a period of six months from the coming into force of the amending regulations to submit the declaration of beneficial ownership with respect to such trusts. In this respect, in view of the fact that, as explained above, the amendment

Regulations have entered into force retrospectively, trustees are required to have submitted the relevant declarations of beneficial ownership of such existing trusts by not later than 30 June 2020.

- Such reporting requirements shall also apply 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 defined under article 2 of the Prevention of Money Laundering and Funding of Terrorism Regulations, or acquires real estate in Malta, in its capacity as trustee of a trust.
- A trustee submitting a declaration of beneficial ownership is required to ensure that the data submitted is adequate, accurate and up to date.
- Where an individual beneficiary of a trust 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.
- In addition to the existing access rights under the previous Regulations, namely unfettered access to competent authorities as defined in the Regulations, and to subject persons for the purposes of carrying out due diligence on a particular trust, access has also been extended to:
  - (i) Any natural or legal person who, upon a written request, can demonstrate a legitimate interest;
  - (ii) Any natural or legal person who 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 any corporate or other legal entities (companies, associations, foundations) in Malta or in another EU Member state
- Legitimate interest shall be determined on a case by case basis by the MFSA and shall be satisfactorily demonstrated if the person requesting such access can prove that the interest specifically and solely relates to 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.
- An appeal mechanism to the Court of Appeal is available for applicants who feel aggrieved by a decision of the MFSA denying access, in full or in part, to the beneficial ownership information requested on the basis of legitimate interest

### III. Way Forward

The Authority would like to remind trustees that declarations of beneficial ownership of trusts are to be submitted through the online portal for the Trusts Ultimate Beneficial Ownership Register ("TUBOR") - <https://tubor.mfsa.mt>. Trustees who have not as yet set up a trustee account on TUBOR are requested to ensure that they register for such an account through the said portal. An explanatory video for this process can be found at <https://www.mfsa.mt/firms/conduct-supervision/trustees-other-fiduciaries/TUBOR/>. References in the video to 'only trusts which generate tax consequences' being reportable, are of course now obsolete in the light of the above-mentioned legislative amendments.

Moreover, trustees are also reminded to refer to the [Frequently Asked Questions](#) (“FAQs”) issued by the MFSA, for further guidance on the information which needs to be reported in declarations of beneficial ownership of trusts. This document is also currently being updated to include any additional guidance which may be deemed necessary with respect to the new provisions introduced by the above-mentioned legislative amendments.

#### IV. Contacts

In case of queries regarding the subject matter of this circular, you are kindly requested to contact Conduct Supervision on [trustsboregister@mfsa.mt](mailto:trustsboregister@mfsa.mt)