

24 July 2024

To: The Management Body,

To: The Compliance Officer/Person in charge of the Compliance Function,

Thematic Review on the Reporting of Beneficial Ownership Information of Trusts in the Trusts Ultimate Beneficial Ownership Register (“TUBOR”)

You are receiving this letter as the Management Body and/or Compliance Officer and/or the person responsible for the Compliance function (the “Compliance Officer”) of a Trustee¹ supervised by the Malta Financial Services Authority (the “MFSA” or “Authority”).

INTRODUCTION

With the introduction of Article 31 of Directive (EU) 2015/849 of the European Parliament and of the Council of the 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (“4th AMLD”), EU Member States were required to establish a centralised register of beneficial ownership of trust arrangements which generated tax consequences, in each respective Member State. These requirements were transposed into Maltese law by virtue of [Legal Notice 373 of 2017](#)² entitled the Trusts and Trustees Act (Register of Beneficial Owners) Regulations 2017 (“the Regulations”). In 2020, the Regulations were amended by [Legal Notice 27 of 2020](#)³, to comply with the changes introduced by the 5th AML Directive (EU) 2018/843 (“5th AMLD”). The Regulations, as amended, which came into force on the 19 June 2018, continued to build on the measures adopted by the 4th AMLD by extending the scope of beneficial ownership reporting to include: a) all trusts administered by trustees resident or established in each respective jurisdiction within the European Union (“EU”), irrespective of any tax consequences or otherwise, and b) all trusts where the respective trustees thereof are established or resident outside the EU, where such trustee enters into a business relationship or acquires property in a EU Member State on behalf of such trust.

Proposed amendments to the AML Directive and Regulation (commonly referred to as the “AML Package”) and ongoing efforts on the interconnection of EU beneficial ownership register, as well as the changes made by the FATF to Recommendations 24 and 25 to Beneficial Ownership and

¹ Reference to ‘Trustee’ or ‘Trustees’ in this document should be interpreted as referring to any person authorised or registered in terms of the Trusts and Trustees Act to provide the services of trustee and which is acting as trustee and any trustee of a trust whose place of establishment or residence is outside the European Union, where such trustee enters into a business relationship in terms of Regulation 3A of the Trusts and Trustees Act (Register of Beneficial Owners) Regulations (S.L 331.10).

² <https://legislation.mt/eli/ln/2017/373/eng>

³ <https://legislation.mt/eli/sl/331.10/eng>

Transparency of Legal Persons and Legal Arrangements, continue to highlight the importance of the AML/CFT element in this sector, with particular focus on transparency and availability of beneficial ownership information for all legal persons and legal arrangements, such as trusts. The above-mentioned international standards set clear expectations on countries to impose requirements for reported beneficial ownership information to be adequate, accurate and current, and indeed countries are expected to put in place mechanisms to this effect.⁴ The Regulations place the onus on reporting trustees to ensure that all beneficial ownership data reported on the Trusts Ultimate Beneficial Ownership Register ('TUBOR' or the 'Register') is complete, accurate and up-to-date. The Authority is in turn obliged to take all necessary measures to ensure that the Register contains accurate and up-to-date information.

In this regard, the MFSA had issued Frequently Asked Questions ('FAQs')⁵, which are updated from time to time, to supplement the applicable requirements as set out in the Regulations and to provide further guidance to trustees reporting beneficial ownership information on trusts on TUBOR. Furthermore, the MFSA carries out various checks to verify the accuracy and the completeness of the data reported on the Register through: (a) desk-based reviews of all submitted beneficial ownership information declarations, including any changes thereto; and (b) on-site inspections held at the premises of trustees focusing specifically on the verification of reported beneficial ownership information of trusts.

A financial system which has in place a register of beneficial ownership which contains accurate and up to date information fosters a culture of transparency, and promotes accountability and oversight, ultimately assisting various stakeholders in the prevention of the misuse of legal structures, including trusts, for the purposes of money laundering, terrorist financing and other financial crimes. This is crucial not only to promote the integrity of the local market and strengthen consumer protection, but also plays a vital role in the ongoing efforts on the interconnection of EU beneficial ownership registers.

In fact, the Authority will also be involved in the effective transposition and implementation of any changes introduced to the international requirements and standards impacting the legislative and regulatory frameworks applicable to the reporting of beneficial ownership information of trusts. For this reason, and as outlined in the [Supervisory Priorities for 2024](#)⁶, whilst continuing to build upon the supervisory activities of previous years, where one of the key areas of focus was the verification of reported beneficial ownership information of trusts, for 2024 the Authority is taking this a step further by adopting an outcomes-based approach to supervision, with the accuracy of the beneficial ownership information of trusts held in the Register being one of the key areas of focus for this pilot project. The main aim of outcomes-based supervision is to focus on the intended results from supervisory practices and deriving an

⁴ Article 31(5) of the 5th AMLD

⁵ https://www.mfsa.mt/wp-content/uploads/2019/01/Trusts-BO-Register-FAQs_21Jun2018.pdf

⁶ <https://www.mfsa.mt/wp-content/uploads/2024/02/MFSA-Supervision-Priorities-2024.pdf>

efficient way to achieve them, by establishing concrete regulatory outcomes. Therefore, building on the MFSA's Risk-Based Approach, the outcomes-based supervision is focused on the grouping of outcomes of interactions and the analysis of 'systematic' problems, resulting in more effective supervision, enabling the MFSA to respond to industry concerns. Outcomes based supervision seeks to influence behaviour and cultivate a sound compliance culture within regulated entities, with a view to reducing the likelihood of misconduct and enhancing consumer protection. For the first year of this project, the Authority has identified the supervisory outcomes which it intends to pursue and has already commenced the relevant supervisory interactions for the purpose of its initial assessment in relation to this project. In the second year, the MFSA will conduct outreach with the industry to promote more awareness on the findings identified, and to provide guidance on its expectations to address these findings. In the third year, the findings emanating from the interactions carried out during this third year will be used to measure the achievement of the outcomes and the effectiveness of the Authority's supervision. Therefore outcomes-based supervision is not a one-time exercise but a continuous process of monitoring, evaluation and adaptation. The adoption of outcomes-based supervision implements part of the MFSA's 2023 Strategic Statement.

Vis-à-vis the subject matter of this letter, the key components of the beneficial ownership rules relate to the availability of beneficial ownership information which is (i) accurate and (ii) up to date. For this reason, the key supervisory outcomes of this workstream, are the following: 1. Accurately Reported Beneficial Ownership Information of trusts. 2. Timely Reporting and Updating of beneficial ownership information of trusts. The assessment of these supervisory outcomes will primarily be carried out through supervisory inspections to verify the reported beneficial ownership information of trusts on TUBOR, against the information and documentation held on file by trustees, and to gauge the timeliness of reporting of beneficial ownership information and changes thereto.

BACKGROUND AND METHODOLOGY

As part of its supervisory programme for 2021 to 2023, the Trustees and Company Service Providers Supervision Function has carried out a number of supervisory inspections aimed at: (i) reviewing the extent to which trustees have been complying with the requirements of the Trusts and Trustees Act (Cap 331 of the Laws of Malta), the Trustees Code of Conduct⁷ ("the Code of Conduct"), and in particular the Trusts and Trustees Act (Register of Beneficial Owners) Regulations, 2017 and as amended by Legal Notice 27 of 2020, with a focus on the trustees' compliance with their obligations vis-à-vis TUBOR and (ii) verifying the beneficial ownership information as reported by the trustees on TUBOR. The findings identified during these inspections serve as the basis of this Thematic Review and the aim of this letter is to share with the sector the Authority's expectations in addressing the findings identified.

⁷ <https://www.mfsa.mt/wp-content/uploads/2019/01/Trusteescodeofconduct.pdf>

The findings outlined in this document emanate from a sample of 28 supervisory inspections carried out between 2021-2023, making up 18.54% of the total supervisory interactions carried out by the TCSPs Function in this period. The trustees forming part of this thematic review (the 'Review') were chosen on the basis of the Authority's [risk-based approach to supervision](#)⁸.

As further outlined in the Supervisory Priorities for 2024, the purpose of this letter is to inform the industry of the key findings which emanated from this Review as well as to communicate the Authority's expectations, and to encourage trustees to implement the necessary mitigating measures and controls to ensure that the beneficial ownership information reported on TUBOR is accurate and up-to-date at all times, and that any new declarations of beneficial ownership, as well as any changes thereafter, are submitted in a timely manner. Overall, the Authority positively notes improvements in trustees' accuracy in the reporting of beneficial ownership information on TUBOR since its launch in 2018. The Authority also positively observed that generally trustees demonstrated an appetite for investment in ongoing training and implementation of robust internal controls to ensure the accuracy and timely reporting of beneficial ownership information on TUBOR.

KEY FINDINGS

1.0 Written Procedures on the Reporting of Beneficial Ownership Information on TUBOR

The Authority positively noted that the absolute majority of the trustees forming part of this Review had in place procedures on the reporting of beneficial ownership information on TUBOR, in line with the applicable legislative and regulatory framework. It was only in 2 instances that the Authority identified failures by trustees to have in place any written procedures in this regard.

Nevertheless, the Authority observed that notwithstanding that formal procedures were adopted by trustees, in most cases such procedures were deemed to be **too high level and lacked sufficient detail** in relation to the practicalities of reporting of beneficial ownership information on TUBOR. For instance, a number of procedures reviewed by the Authority did not include any references to: (i) the stipulation of the reporting timeframes in line with Regulation 3(2) of the Regulations (ii) the person responsible for the reporting of such information on TUBOR, (iii) the nature and level of identification details and information to be reported with respect to individual and body corporate beneficial owners, or (iv) any definition or explanation as to which parties to a trust are to be deemed to be "beneficial owners" in terms of the Regulations. In some cases, the procedures reviewed by the Authority were a mere replication of the FAQs and therefore, the procedures were not tailor made to the respective trustee business.

⁸ <https://www.mfsa.mt/wp-content/uploads/2020/06/Risk-Based-Supervision-Stengthening-Our-Supervisory-Approach.pdf>

In some cases, the procedures reviewed fell short of including any guidance on the **reporting requirements of specific scenarios**. For example, some of the procedures reviewed did not cover the process to be followed when: (i) reporting security trusts as per FAQ 5 of the FAQs; (ii) a trust is transferred to another trustee in terms of FAQ 8 of the FAQs; (iii) a trust is terminated as indicate in FAQ 9 of the FAQs; (iv) where the trustee is acting as co-trustee with another trustee as explained in FAQ 2 of the FAQs; (v) a trust is set up for charitable purposeFAQ6(d)(ii) of the FAQs); (vi) a settlor is a trust (FAQ6(a) of the FAQs); (vii) a beneficiary is the trustee of another trust or a charitable organisation (FAQ 6(d)(i) of the FAQs); and (viii) a settlor is deceased or a body corporate settlor is struck off (FAQ6(a) of the FAQs).

In other instances, the Authority noted that the procedures reviewed had not been updated to reflect the legislative changes introduced by the amendments to the Regulations through by LN 27 of 2020.

The Authority noted that in the instances where trustees did not have in place detailed and robust written procedures, a number of inaccurate and late reporting of beneficial ownership information on TUBOR were also consequently observed by the same trustees.

Regulatory Requirements

In line with Section 9.4 of the Code of Conduct, trustees are reminded of the importance of having proper and comprehensive policies and procedures in place to manage the trustee's business affairs, including ensuring compliance with legal obligations and standards. In this context, trustees are expected to have in place policies and procedures on the reporting of beneficial ownership information on TUBOR. Such policies and procedures are required to be commensurate with the scale and complexity of the trust business to be undertaken, and therefore tailored to the needs of the business. Furthermore, in line with Section 9.8 of the Code of Conduct, trustees are required to ensure that they have in place systems, controls, and procedures, to ensure that staff perform their duties in a diligent and proper manner. Staff members should therefore be made of aware of such procedures, and adequate training provided to the employees on an on-going basis to ensure that the employees are also aware of any changes to the legislative and regulatory framework. Trustees are also expected to ensure that the procedures are reviewed on a periodic basis to ascertain that the procedures are in line with Act, the Regulations and any guidance issued by the Authority from time to time. In the event that any gaps are identified during such compliance reviews, trustees are expected to address these shortcomings in a timely manner.

2.0 Timeliness of Reporting of Beneficial Ownership Information on TUBOR

Whilst generally the Authority positively noted that trustees were in compliance with the time periods stipulated in the Regulations, through the Review, the Authority did however encounter instances where reporting was not done within the applicable timeframes. These shortcomings were noted both in relation to the initial reporting of the declaration of beneficial ownership information submitted on TUBOR and also with respect to changes made thereafter. For instance, in one

particular case, the Authority noted through an on-site inspection that the trustee had failed to submit the initial beneficial ownership declaration in relation to two trusts in a timely manner and in fact, the trustee only proceeded to submit these declarations upon receipt of the Authority's notification informing the trustee of the upcoming inspection. In another instance, the Authority noted that the trustee under review had failed to re-submit the initial declarations pertaining to four trusts which were reverted to the trustee for changes to be made following a review of these declarations by the Authority. The updated declarations were only re-submitted by the trustee after a significant lapse of time and following a number of chasers sent by the Authority. In another case, the trustee under review failed to report changes to the identification details of beneficial owners of a particular trust, which were previously reported on TUBOR, within the stipulated timeframe applicable by law.

As observed in the previous section, late reporting instances were generally noted where trustees did not have adequate procedures in terms of reporting of beneficial ownership information on TUBOR or in the absence of adequate internal controls to ensure such timely reporting.

Regulatory Requirements

The Regulations establish the time period within which beneficial ownership information is to be reported on TUBOR. Regulation 3(1) of the Regulations clearly stipulates that trustees authorised in terms of Article 43 or registered in terms of Article 43B of the Act are obliged to submit a declaration of beneficial ownership on TUBOR within fourteen days of being appointed as trustee of an express trust. On the other hand, Regulation 5(1) of the Regulations establishes the time period within which changes to the submitted declarations of beneficial owners are to be made to the Authority, that is, within fourteen days from the effective date of the change or from the date the trustee became aware of such changes to the beneficial ownership information of a trust.

Trustees are also reminded that, in line with Section 6.0 and Section 9.0 of the Code of Conduct, they are required to implement robust and effective systems and controls to ensure compliance with all legal and regulatory requirements, which in this case includes the reporting of beneficial ownership information of trusts within the timeframes stipulated by the Regulations. This is key not only for trustees to ensure compliance with the Regulations, but also to ensure that the information reported on TUBOR is kept up-to-date at all times. Having inaccurate beneficial ownership information on the Register may lead to situations whereby parties entitled to access the beneficial ownership information on the Register, including competent authorities and subject persons, would be viewing inaccurate information, possibly also leading to reporting of discrepancies in beneficial ownership information to the Authority, as required by law.

3. Reporting of Adequate, Accurate and Up-to-Date Beneficial Ownership Information

The Authority positively noted the general inclination by trustees to ensure that adequate, accurate and up-to-date information is reported on TUBOR. This was observed from the implementation of internal controls by trustees in order to ensure accuracy when reporting beneficial ownership information of trusts under their administration, such as for example implementing dual control measures when reporting beneficial ownership information or having in place an internal beneficial ownership register held by the trustee, in order to ensure that the data reported on TUBOR is complete, accurate and up-to-date at all times. Nevertheless, through the carrying out of the supervisory interactions forming part of this Review, the Authority noted discrepancies and errors in the reported beneficial ownership information when verified against the records of the trustee, which findings are being outlined hereunder. The Authority's expectations as to the correct reporting of such beneficial ownership information is also being set out for guidance.

3.1. Omissions in Reporting of Beneficial Owners

Some of the findings emanating from the inspections forming part of this Review related to outright omissions of parties to the trust deemed to be 'beneficial owners' of a trust or omissions of relevant details relating to such beneficial ownership information. These are set out in the following sections.

3.1.1 Reporting of Economic Settlor

In the case of two trustees forming part of this Review which administered trusts where the settlor indicated on the trust instrument was acting as mandator for another person (the 'Economic Settlor' or 'Mandator'), the trustees only reported on TUBOR the details of the person indicated as the settlor on the trust instrument (the '**Nominal settlor**'). This finding was identified on two separate occasions during the on-site inspections forming part of this Review

Regulatory Requirements

Trustees are referred to FAQ 6(a) of the FAQs which clearly sets out that trustees are obliged to report both the nominal and economic settlor/s in the designated sections of the beneficial ownership declaration. Trustees are reminded that the details of economic settlors should be reported in the section relating to "any parties exercising control over the trust" on TUBOR and to clearly indicate the person being reported is an economic settlor of the trust. This ensures the reporting of beneficial ownership of a trust in a transparent manner which clearly identifies all persons who are to be deemed to be beneficial owners of a trust, including persons who might not feature on the trust instrument as parties to the trust, but who are effectively exercising control through other means.

3.1.2 Reporting of Individual Beneficiaries

In fourteen instances, the Authority identified situations where trustees failed to report beneficiaries who have been identified either in the trust instrument or in letters of wishes duly acceded to by the trustees. The Authority observed that three instances out of the fourteen cases indicated above related to scenarios wherein a settlor was also a beneficiary of the trust and the trustees only reported these individuals in their capacity as settlors.

During four on-site inspections forming part of this Review, the Authority noted instances whereby in the field for the class of beneficiaries in the declaration of beneficial ownership, the trustees included individuals who were effectively the settlor(s), and therefore clearly identifiable, as well as other beneficiaries who had also been duly determined and identified from the class. Therefore, since these individuals were identified and/or identifiable from the class and already reported in their individual capacity in the relevant declarations, it would have been expected that these would no longer be referred to in the description of the class.

Regulatory Requirements

Trustees are duly reminded that any beneficiaries which have been identified, either in the trust instrument or in letters of wishes duly acceded to by the trustees, as well as settlors of trusts who also stand to benefit as beneficiaries, must be reported in their individual capacity and not referred to in the description of the class of beneficiaries. Where any of the beneficiaries which form part of a class of beneficiaries are identifiable or are appointed as beneficiaries by the trustees, the said trustees are required to report the details of the named beneficiaries, in line with Regulation 3(2) of the Regulations and FAQ 6(d)(i) of the FAQs. In addition, trustees are also requested to ensure that any references to the identified beneficiaries and/or settlors from the class of beneficiaries' section are removed for the sake of completeness and clarity.

3.1.3 Reporting of Body Corporate Beneficiaries

Similarly, in two instances, the Authority noted that trustees omitted to report charitable organisations as body corporate beneficiaries despite the fact that such organisations had been identified in the relevant trust instruments and supplementary deeds. In these cases, the relevant trustees reported the charitable organisations as part of a class of beneficiaries.

Regulatory Requirements

In line with FAQ6(d)(i) [page 15], trustees are reminded to report charitable organisations named in the trust documentation as body corporate beneficiaries, and all available information on these organisations should be reported on the beneficial ownership information declaration. Whilst

trustees are not required to report the details of the Ultimate Beneficial Owners of charitable organisations, trustees are encouraged to refer to the FAQs for further details on what information is to be reported with regards to all other body corporate beneficiaries.

3.1.4 Reporting of Classes of Beneficiaries

Another common finding identified by the Authority during the Review relates to the failure to report all the classes of beneficiaries as set out in the trust instruments, any supplemental deeds as well as any letters of wishes which have been acceded to by the said trustees. The Authority observed that in the case of seven trustees forming part of this Review, there were few instances where the said trustees had omitted the reporting of all the classes of beneficiaries described in the trust documentation. In addition, the Authority also observed that in the case of four other trustees forming part of this Review, the said trustees omitted certain classes of beneficiaries from their reporting, which was often attributable to a matter of interpretation as to whether a particular description of potential beneficiaries was to be considered as a class of beneficiaries or otherwise. However, in two particular cases the Authority was concerned to note that one of the said trustees omitted the reporting of certain classes of beneficiaries in relation to five out of the eight trusts reviewed, whilst the other trustee omitted the reporting of certain classes of beneficiaries in relation to four out of the five trusts which were reviewed by the Authority during the inspection.

Regulatory Requirements

In line with Regulation 3(3) of the Regulations where the trust includes a class/classes of beneficiaries, trustees are required to report a description of the relevant class/classes and its/their members. This requirement is further supplemented by the guidance set out in FAQ6 (d)(ii) in relation to the reporting of classes of beneficiaries on TUBOR. The description of the relevant classes and its members should be provided on the respective declarations and any descriptions reported on TUBOR should be as faithful as possible to the wording used in the relevant trust documentation, to ensure as much of an accurate reflection of the class as possible.

3.1.5 Reporting of Other Persons Exercising Ultimate and Effective Control over the Trust

The Authority noted instances where trustees omitted the reporting of third parties deemed to be exercising ultimate and effective control over the trust on TUBOR. In a particular case, it was noted that the reporting trustee had failed to report the details of another trustee of a related trust within the same structure which was exercising certain powers and control over the administration of the trust, which are deemed to constitute 'material actions' in terms of Regulation 2 of the Regulations. In another instance, the trustee failed to report the enforcers in relation to one trust.

Regulatory Requirements

Regulation 2(1)(e) of the Regulations clearly sets out that any person exercising ultimate and effective control over the trust by any means, including any person (other than the other parties to the trust defined by law as beneficial owners) 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, is deemed to be a beneficial owner as defined in Prevention of Money Laundering and Funding of Terrorism Regulations and therefore, trustees are obliged to report the details of such individuals as well as the nature and extent of such control and/or influence, in the relevant field FAQ 6(e) of the FAQs also provides further guidance on this requirement.

3.1.6 Reporting of any Suspension of the Trustee's Duty to Inform a Beneficiary of his/her benefit under the trust/that he forms part of a class of beneficiaries

The Authority notes that there were four instances whereby trustees did not indicate for certain beneficiaries, in the relevant declarations submitted on TUBOR, whether the trust instrument, or other document from the settlor, refers to any suspension of the trustee's duty to inform the said beneficiaries of their benefit under the trust or that they form part of a class of beneficiaries, or otherwise.

Regulatory Requirements

Trustees are reminded of their obligation, in terms of regulation 3(2)(g) of the Regulations which provides that the information to be reported for each beneficial owner of a trust should include, in the case of beneficiaries, 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. This requirement is further complemented by the guidance provided under FAQ 6(d)(i) of the FAQs.

4. Accuracy of Reported Beneficial Ownership Information

Regulation 3 of the Regulations obliges trustees to report beneficial ownership information, which is adequate, accurate and up to date. Through this Review, the Authority positively noted an increase in trustees' appetite in ensuring that the beneficial ownership information reported reflects a true picture of the trusts being administered. However, discrepancies and inaccuracies were noted in a number of instances, as explained further below.

4.1. Errors in Reported Beneficial Ownership Information Details

In relation to certain trust files reviewed during the on-site inspections forming part of this Review, in some instances, whilst the correct parties were reported on TUBOR as beneficial owners, in line with the applicable requirement, the Authority noted errors in the identification details of the said reported beneficial owners. In some cases, the Authority noted that the name and surname, date of birth, nationality, identification document number and country of residence reported did not match the details indicated in the due diligence documents held on file either due to human error or due to information being reported from expired documentation. In some cases, the Authority noted that the identification details reported for certain beneficiaries, which had not yet received a benefit, were cited from expired identification documents.

Similar instances of inaccurate reporting of identification details were also identified in relation to body corporate beneficiaries, whereby discrepancies in the date of registration, registration number and country of registration reported on the respective declarations were identified by the Authority.

Other errors identified related to discrepancies between the date of appointment of trustees, trust names reported on TUBOR, the appointment dates and trust names indicated in the relevant trust instruments or deeds of appointment.

Regulatory Requirements

Trustees are expected to ensure that all beneficial ownership information reported on TUBOR is complete, accurate and up to date at all times in line with Regulation 3(1) of the Regulations. Trustees are therefore expected to exercise prudence, diligence and attention when completing declarations of beneficial ownership information, and all details reported should be checked for errors prior to submission.

In scenarios whereby beneficiaries have not received a benefit, trustees are only obliged to verify and report the identification details of such beneficiaries prior to a distribution being made. However, should a decision be made by the trustees to report the identification details prior to a distribution being made, the trustees are then obliged to ensure that the reported information is accurate and up-to-date.

4.2. Inaccurate description of the Nature and Extent of the Benefit

From a number of on-site inspections forming part of this Review, the Authority noted that the information reported in the nature and extent fields did not always reflect the nature and extent of the benefit indicated in the trust instruments, supplemental deeds or any letters of wishes which

were acceded to by the trustees. In three cases, the trustees reported that beneficiaries stood to benefit from the trust assets in a discretionary manner. However, upon review of the trust documentation it was noted that such beneficiaries stood to benefit in a fixed term manner. In fact, the relevant percentages of the entitlement were also clearly identifiable from the documentation reviewed, however these were not duly reported on TUBOR.

In a quite a number of cases, trustees fell short of indicating that the benefit was subject to a number of conditions in the relevant nature and extent fields on TUBOR. For instance, in some of these cases, trustees did not specify that beneficiaries were entitled to benefit from the trust income as opposed to the trust capital, or that the beneficiaries stood to benefit upon the demise of the primary beneficiaries. In other cases, the trustees did not specify that, for certain beneficiaries reported, these would only be entitled to benefit in the event that the settlor, his children and the remoter issue or one of the other specified beneficiaries pass away, and in such a way that the portion of the deceased beneficiary would be inherited by the other beneficiaries.

In other instances, the Authority noted that trustees failed to report changes in relation to the **benefit status** of various beneficiaries, referring to those circumstances where beneficiaries who were originally reported as never having received a benefit from the trust, subsequently received a benefit. In fact, in such instances, whilst the Authority found on file various documents which indicated that there had been multiple distributions to beneficiaries, the trustees did not submit a revised declaration to report these changes in a timely manner.

Regulatory Requirements

Trustees are requested to ensure that the information reported in the nature and extent field is complete, accurate and up-to-date at all times, in line with Regulation 3(2)(g) of the Regulations and FAQ 6(d)(i) of the FAQs.

FAQ 7 of the FAQs provides further details about the type of changes to reported beneficial ownership information which are to be reported within 14 days from the date on which the change is recorded by the trustee, in terms of Regulation 5(1) of the Regulations. These include any changes to the benefit status of beneficiaries as explained above. Whereas in the past this was required to be indicated in the 'nature and extent of benefit' field, through recent enhancements to the TUBOR platform, reporting of these circumstances has been facilitated through the possibility of indicating this through a drop-down feature on the online declaration form.⁹

Trustees are also requested to notify the Authority of such changes and the effective date of these changes.

⁹ <https://www.mfsa.mt/wp-content/uploads/2023/01/Important-Updates-Relating-to-the-Trusts-Ultimate-Beneficial-Ownership-Register.pdf>

4.3. Inaccurate reporting of the Suspension of Trustee's Duty to Inform Beneficiaries of their Entitlement

With respect to suspension of the trustee's duty to inform beneficiaries of their entitlement, a common finding identified both through desk-based reviews as well as various on-site inspections forming part of this Review, was in relation to the reporting of whether there is a suspension of trustee's duty to inform the beneficiaries of their entitlement or otherwise. The Authority observed that in three instances, trustees reported that there was no suspension in place in relation to various beneficiaries. However, upon review of the relevant trust instrument it was noted that in fact there is a suspension in place which was not reported by the said trustees.

In two other instances, whilst the trustees correctly reported that the trustee was indeed subject to such a suspension of their duty to inform the beneficiary being reported of their entitlement under the trust, as verified from the trust instruments reviewed during the course of on-site inspections, the description reported on the beneficial ownership information declarations did not reflect the wording in the latest trust documentation. This was the case where the original trust instruments were replaced by supplemental deeds, where the said trustees fell short of submitting revised declarations to reflect the change in the wording.

In another two cases, trustees reported that there was such suspension of duty applicable also to beneficiaries who were also the settlors of the relevant trusts. It would be difficult to contemplate how a settlor, in his capacity as beneficiary, would not be aware of his entitlement under the trust in view of the fact that he would necessarily have been involved in the trust's set up. In this regard, trustees would generally be expected to indicate that there is no such applicable suspension on the trustee's duty to inform the settlor, qua beneficiary, of his entitlement under the trust, on the understanding that the settlors would have set up the relevant trust and thus, be fully aware of their entitlement.

Regulatory Requirements

In line with Regulation 3(2), any details relating to any trust instrument provisions setting out a suspension on the trustee's duty to inform a beneficiary of his/her entitlement under the trust are reported on TUBOR, and the information reported must be complete, accurate and up to date at all times. In this regard, trustees are required to ensure that the necessary internal control mechanisms to ascertain that the information reported is reliable in accordance with Regulation 3(1) of the Regulations.

5.0 Verification of Reported Beneficial Ownership Information

5.1. Missing Due Diligence Documents

From the on-site inspections carried out as part of this Review, the Authority noted that, in nine instances, no documentary evidence confirming the details reported on TUBOR were found on file. Therefore, the Authority was not in a position to assess the validity and accuracy of the beneficial ownership information reported by the relevant trustees on TUBOR. For instance, in various cases the Authority was unable to verify the residential details reported in relation to a number of beneficial owners as no valid proof of residence documentation was found on file.

Regulatory Requirements

Trustees are reminded of the importance of having valid supporting documentation on file, in line with section 9.6 of the Trustees Code of Conduct which addresses the requirement for trustees to maintain adequate and up-to-date records, to enable the verification of information reported on the beneficial ownership information declarations. In circumstances where the requirement to verify the identity of beneficiaries has not been triggered in terms of the AML/CFT regulatory framework, but all details were nonetheless reported on TUBOR, trustees are to ensure that adequate records are kept on file which clearly indicate where the trustee obtained the identification details of these beneficiaries for the purposes of reporting. Such records are to be stored centrally and should be made available to the Authority, upon request. Should trustees resolve to report the details of beneficiaries which have yet to receive a distribution on TUBOR, said trustees are obliged to ensure that all information reported is complete, accurate and kept up-to-date, in adherence with Regulation 3(1) of the Regulations. Furthermore, in cases where trustees report that one of the beneficial owners is deceased, trustees are requested to ensure that any relevant death certificate or other documentation confirming such event is kept on file and is made available to the Authority for inspection in in line with FAQ 6(a) of the FAQs.

5.2. Inconsistencies relating to due diligence documents held on file

Another finding which was identified by the Authority was in relation to adequacy of the supporting documents provided during the inspections. The Authority noted that in a number of instances the documentation provided to verify the beneficial ownership information reported in the declaration on TUBOR was outdated. Therefore, trustees reported beneficial ownership information on TUBOR which was not up-to-date, as explained Section 4.1 of this document. In other cases, whilst updated due diligence documentation had been obtained by the trustees and was found on file, the trustees failed to amend the relevant declarations to reflect the updated beneficial ownership information details on TUBOR. Other instances were also noted whereby the documentation provided to the Authority was illegible and thus, the Authority was unable to review and verify the accuracy of the

information reported on TUBOR. In other cases, the documents provided were either in a different language and no translated copies were provided to the Authority or the documents were not certified as per the applicable AML/CFT requirements.

Regulatory Requirements

Trustees are requested to ensure that all due diligence documentation obtained and maintained by trustees is in line with the applicable AML/CFT regulatory regime, and that adequate and effective controls are in place to ascertain that the beneficial ownership information reported is complete, accurate and up to date at all times. Furthermore, the Company is requested to refer to Regulation 3(1) of the Regulations, the FAQs and any guidance published by the Authority from time to time for further guidance.

5.3. Record-Keeping: Documentation of Key Decisions

The Authority notes that in some cases trustees failed to have sufficient documentation in place evidencing decisions taken by the trustee's board of directors including key decisions which impact the beneficial ownership structure of the trust. In particular, these related to: the acceding, or otherwise, to letters of wishes received providing directions/wishes relating to the trust administration and possible distributions, matters relating to any loans taken to purchase any trust property and settlement of additional assets under trust. Inadequate records were also noted by the Authority with regards to any discussions held in relation to whether trusts generate tax consequences or otherwise prior to the introduction of LN 27 of 2020.

Regulatory Requirements

In line with Paragraph 9.4 and 9.6 of the Code of Conduct, trustees are required to ensure that adequate records of any discussions and subsequent decisions taken by the board are duly kept on file and made available to the Authority, upon request. In circumstances where trustees are in receipt of letters of wishes, however a decision whether to accede to such wishes is yet to be taken by the Board, trustees are required to ensure that they keep a written record of the fact that the contents of the letter of wishes are still to be considered by the trustee and that no decision has yet been made thereon.

CONCLUSION

The findings arising from this Review are being highlighted in this letter with the aim of sharing best practices identified in the course of the Authority's supervisory oversight over trustees and the manner in which they are reporting beneficial ownership information of trusts on TUBOR, as well as the Authority's expectations in this regard. The Review is also aimed at drawing attention to potential areas of improvement, and to further strengthen the accuracy and timeliness of the reporting of beneficial ownership information on TUBOR.

As indicated in the introduction to this letter the Authority is however pleased to note that there have been improvements in the accuracy and timeliness of reporting of beneficial ownership information of trusts, in particular when measured against the findings outlined in a previous Thematic Review on the Reporting of Beneficial Ownership of Trusts on TUBOR carried out in 2019¹⁰. Indeed, it was positively noted that some trustees who were subject to this latest Review had in fact carried out a gap analysis with the 2019 findings, with a view to address any shortcomings identified at the time.

Nevertheless, as outlined throughout this letter, some shortcomings persist. The Authority would therefore like to take the opportunity to remind trustees that the beneficial ownership information reported on TUBOR is of a highly sensitive nature. Thus, utmost care and diligence should be exercised by the trustees when reporting beneficial ownership information on TUBOR to ensure that the information reported on the Register is accurate and up-to-date. The upkeep and maintenance of the central register of beneficial ownership of trusts is fundamental in demonstrating Malta's active commitment as a jurisdiction to enhance transparency and strengthen the fight against money laundering and financing of terrorism across the European Union, with a particular focus on trusts and similar arrangements in this context. Moreover, trustees also owe a duty to their clients to ensure that the data which they are reporting about them in the Register is accurate and up-to-date, with a view to ensuring that the parties entitled to access the data are indeed viewing data which truly provides a correct picture of the trust structure.

In this regard, the Authority is committed to continue providing support and guidance to trustees to continue improving and refining on the quality of data reported in the Register, however trustees must also ensure to shoulder responsibility and take the necessary action, including through the implementation of adequate systems and controls, to keep abreast with the applicable requirements and the guidance issued by the Authority, ensure that the data on the Trusts Beneficial Ownership Register is reliable data. The Authority furthermore remains committed to continue refining and making the necessary enhancements to the Register in order to facilitate the trustees' accurate reporting of beneficial ownership information on the Register. In fact, numerous [enhancements](#) to the Register have been made and announced in recent months, including the

¹⁰ <https://www.mfsa.mt/wp-content/uploads/2020/04/Circular-Thematic-TUBOR.pdf>

introduction of a new [messaging function](#) to make the interface more user-friendly for trustees reporting on the Register. All of these changes have been duly included in the FAQs for ease of reference.

As outlined above, the MFSA has selected the verification of beneficial ownership on TUBOR as one of the workstreams for the purposes of its pilot project for an outcomes-based approach to supervision. The Authority will therefore continue to focus part of its supervisory engagement programme relating trustees on this subject matter, and will be assessing the results and improvements achieved by trustees in this sphere in the coming years.

Trustees are expected to carry out a gap analysis in order to ensure that the beneficial ownership information of the trusts they administer and which they have reported on TUBOR is accurate and up-to-date and according to the Authority's expectations, as set out in this letter. Trustees are further required to ensure to take the necessary steps to update and resubmit the declarations of beneficial ownership information submitted on TUBOR, where necessary, immediately and without any delay.

Should anything remain unclear or further guidance on achieving the Authority's expectations in practice be required, trustees are invited to contact the Authority, accordingly. The MFSA remains committed to continue providing guidance on the accuracy and timeliness of beneficial ownership information on TUBOR as required by applicable legislation and regulation.

Yours faithfully,

Malta Financial Services Authority

Christopher P. Buttigieg
Chief Officer Supervision

Petra Camilleri
Deputy Head - Trustees and Company Service
Providers Function

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