

Suppliment tal-Gazzetta tal-Gvern ta' Malta Nru. 20,350, 20 ta' Frar, 2020

Taqsimha B

L.N. 27 of 2020

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

**Trusts and Trustees Act (Register of Beneficial Owners)
(Amendment) Regulations, 2020**

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 acting on the advice of the Malta Financial Services Authority, has made the following regulations:

1. (1) The title of these regulations is the Trusts and Trustees Act (Register of Beneficial Owners) (Amendment) Regulations, 2020, and these regulations shall be read and construed as one with the Trusts and Trustees Act (Register of Beneficial Owners) Regulations, hereinafter referred to as "the principal regulations".

Citation, scope and commencement.

S.L. 331.10.

(2) The purpose of these regulations is to transpose the relevant provisions on beneficial ownership information, and therefore 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, in so far as applicable to trusts and trustees under the Act, as amended by Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018, and as may be further amended from time to time.

(3) These regulations shall be deemed to have come into force on 1st January, 2020.

2. In sub-regulation (2) of regulation 1 of the principal regulations, for the words "as applicable to trusts and trustees under the Act, and they shall be interpreted and applied accordingly.", there shall be substituted the words "as applicable to trusts and trustees under the Act, as amended by Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018, and as may be further amended from time to time."

Amends regulation 1 of the principal regulations.

3. Regulation 2 of the principal regulations, shall be amended as follows:

Amends regulation 2 of the principal regulations.

(a) in sub-regulation (1) thereof:

(i) in paragraph (e) of the definition "beneficial owner", for the words "in terms of the terms of the trust

instrument", there shall be substituted the words "in terms of the trust instrument"; and

(ii) immediately after the definition "material actions", there shall be added the following new definition:

" "Minister" shall have the meaning assigned to it under the Act;"

(b) sub-regulation (2) thereof, shall be substituted by the following:

"(2) These regulations shall only apply to express trusts:

Provided that, these regulations may also apply to other types of legal arrangements, other than trusts, having a structure or functions similar to trusts, as may be prescribed by the Minister."

Amends regulation 3 of the principal regulations.

4. Regulation 3 of the principal regulations, shall be amended as follows:

(a) sub-regulation (1) thereof, shall be substituted by the following:

"(1) 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. The declaration of beneficial ownership shall include the information referred to in sub-regulation (2) on all the beneficial owners of the trust and such information shall be adequate, accurate and up to date, and 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.";

(b) in sub-paragraph (iii) of sub-regulation (3) thereof, for the words "within three months of the birth or marriage;", there shall be substituted the words "within three months of the notification to the trustee of the birth or marriage"; and

(c) sub-regulation (5) thereof, shall be substituted

by the following:

"(5) 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."

5. Immediately after regulation 3 of the principal regulations, there shall be added the following:

Adds new regulation to the principal regulations.

"3A. (1) The provisions of regulation 3 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.

S.L. 373.01.

(2) The trustee of a trust whose place of establishment or residence is outside the European Union shall comply with the provisions of regulation 3 within fourteen days from the date when the business relationship has been established or the real estate acquired, as the case may be."

6. Regulation 4 of the principal regulations, shall be amended as follows:

Amends regulation 4 of the principal regulations.

(a) in sub-regulation (1) thereof, for the words "every express trust provided to the Authority in accordance with regulation 3", there shall be substituted the words "every express trust provided to the Authority in accordance with regulation 3 or regulation 3A".;

(b) sub-regulation (2) thereof, shall be renumbered as sub-regulation (4) and immediately after sub-regulation (1) there shall be added the following new sub-regulations:

"(2) Where there are co-trustees of a trust who are established or reside in different Member States of the

European Union, the Authority may consider a certificate of registration or an excerpt of the beneficial ownership information held in a register by one Member State as sufficient proof of having fulfilled the obligations in terms of regulation 3.

(3) Where a trustee whose place of establishment or residence is outside the European Union, enters into multiple business relationships in such trustee's capacity as trustee of a trust or person holding an equivalent position in different Member States of the European Union, the Authority may consider a certificate of registration or an excerpt of the beneficial ownership information held in a register by one Member State as sufficient proof of having fulfilled the obligations in terms of regulation 3A."; and

(c) in sub-regulation (4), as renumbered, for the words "The information provided by a trustee as required in terms of regulation 3", there shall be substituted the words "The information provided by a trustee as required in terms of regulation 3 and regulation 3A."

Amends
regulation 5 of
the principal
regulations.

7. Regulation 5 of the principal regulations, shall be amended as follows:

(a) in sub-regulation (1) thereof, for the words "Where there is a change in the beneficial ownership of an express trust which generates tax consequences, the trustee", there shall be substituted the words "Where there is a change in the beneficial ownership of an express trust, the trustee"; and

(b) in sub-regulation (2) thereof, for the words "A trustee who has submitted a declaration of beneficial ownership for any trust in terms of regulation 3 or regulation 7", there shall be substituted the words "A trustee who has submitted a declaration of beneficial ownership for any trust in terms of regulation 3 or regulation 8".

Amends
regulation 6 of
the principal
regulations.

8. Regulation 6 of the principal regulations, shall be amended as follows:

(a) in paragraph (a) of sub-regulation (1) thereof:

(i) for the words "associated criminal offences", in sub-paragraph (ii) thereof, there shall be substituted the words, "associated predicate offences";

(ii) immediately after the words "the Financial

Intelligence Analysis Unit;" in sub-paragraph (iii) thereof, there shall be added the word "and";

(iii) for the words "national tax authorities; and", in sub-paragraph (iv) thereof, there shall be substituted the words "national tax authorities."; and

(iv) sub-paragraph (v) thereof, shall be deleted;

(b) in paragraph (b) of sub-regulation (1) thereof:

(i) in the proviso thereof, for the words "may be required", there shall be substituted the words "shall be required";

(ii) in sub-paragraph (i) thereof, for the words "an engagement letter", there shall be substituted the words "an executed engagement letter";

(iii) immediately after sub-paragraph (iv) thereof, there shall be added the following new paragraphs:

"(c) any natural or legal person that, upon a written request made under regulation 6A, can demonstrate a legitimate interest. For the purposes of these regulations:

(i) a legitimate interest to be granted access to information on the beneficial ownership of a trust shall be conclusively determined, on a case by case basis, by the Authority 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;

(ii) Unless prohibited by these regulations or applicable law, in the event that the Authority considers that there exists a legitimate interest to be granted access to beneficial ownership information, it shall notify

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the trustee of its conclusions and the reasons for its decision and shall grant the trustee at least ten (10) working days to present any submissions to it in writing which the trustee may wish to make.

(iii) After consideration of such submissions, if any, the Authority shall notify the applicant and the trustee of its final decision.

(d) 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:

S.L. 386.19.

(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

S.L. 16.16.

S.L. 16.15.

(ii) in any corporate or other legal entity incorporated within any other Member State of the European Union.";

(c) sub-regulation (2) thereof, shall be substituted by the following:

"(2) Access to information on a beneficial owner of a trust under sub-regulation (1)(b), (c) and (d) may be refused by the Authority, 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 following a detailed evaluation of the exceptional nature of the circumstances, the Authority considers that access to such beneficial ownership information would expose the beneficial owner to the risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation, or where the beneficial owner is a minor or otherwise legally incapable:

Provided that sub-regulation (2), shall not apply to:

(a) any legal or natural person carrying out 'relevant financial business' as defined in regulation 2(1)(a) to (f) and (h) of the Prevention of Money Laundering and Funding of Terrorism Regulations; S.L. 373.01.

(b) notaries and other independent legal professionals, carrying out a 'relevant activity' as defined in regulation 2(1) of the Prevention of Money Laundering and Funding of Terrorism Regulations, in their capacity as public officials; and S.L. 373.01.

(c) authorities referred to in regulation 6(1)(a).";

(d) sub-regulation (5) thereof, shall be re-numbered as sub-regulation (6) and immediately after sub-regulation (4) thereof, there shall be added the following new sub-regulation (5):

"(5) The access granted by the Authority to the information on the beneficial owners of a trust to:

(a) natural or legal persons who have satisfactorily demonstrated a legitimate interest in terms of sub-regulation (1)(c); and

(b) natural or legal persons who have filed a written request in relation to a trust in terms of sub-regulation (1)(d),

shall, in respect of each beneficial owner, consist of:

(i) the name and surname,

(ii) date of birth,

(iii) the nationality,

(iv) the country of residence, and

(v) in the case of a beneficiary, the nature and extent of the beneficial interest held."; and

(e) immediately after sub-regulation (6) thereof, as renumbered, there shall be added the following new sub-

regulation (7):

"(7) Access to the information on the beneficial owners of the trust held by the Authority in the register of beneficial owners shall be subject to on-line registration and to the payment of a fee, to be prescribed in a legal notice issued by the Minister, for every access request in respect of the information on the beneficial owners of each trust:

Provided that access to the provision of information on beneficial owners of trusts by national competent authorities and the Financial Intelligence Analysis Unit as identified in regulation 6(1)(a) shall not be subject to the payment of a fee."

Adds new regulations to the principal regulations.

9. Immediately after regulation 6 of the principal regulations, there shall be added the following:

"Requests for access to the beneficial ownership information based on a legitimate interest and the decision taken by the Authority.

6A. (1) The Authority shall receive requests for access to the beneficial ownership information based on a legitimate interest in terms of regulation 6(1)(c) in writing and shall, in a timely manner from the date of receiving such request, notify the applicant of the Authority's decision, following an evaluation to determine whether the applicant requesting access to the register of beneficial ownership information satisfactorily demonstrates and justifies to the Authority a legitimate interest in terms of regulation 6(1)(c).

(2) In determining and arriving at a decision whether the applicant has a legitimate interest, the Authority may request any information or any relevant documentary evidence it deems necessary, and may seek guidance from or consult with any person, authority or other body as may be deemed necessary.

(3) The Authority may, but shall not be obliged to, notify the trustee of the request made for access to the beneficial ownership information of a particular trust administered by that particular trustee. The Authority may request from the trustee any pertinent information required by the Authority in order to assess and process the request.

Appeal from a decision of the Authority denying access to the register of beneficial owners.

6B. (1) (a) An applicant who feels aggrieved by a decision of the Authority denying access, in full or in part, to the beneficial ownership information requested on the basis of legitimate interest, in terms of regulation 6A, may appeal to the Court of Appeal (Inferior Jurisdiction) (hereinafter referred to as "the Court") by means of an application filed in the registry of that court within twenty days from the date on which the Authority's decision has been notified to such person.

(b) the appeal application shall be made in writing clearly explaining the grounds for such appeal and filed against the Authority, which shall have twenty days from the date of service within which to file a reply:

Provided that, if the appellant fails to notify the appeal application to the Authority within twenty days of the filing of the appeal, the Court, after hearing during the first sitting of the appeal the reasons why service was not affected, may declare by means of a decree delivered in Court that the appeal is deserted with expenses to be borne by the appellant.

(c) the Court shall set down the cause for hearing to a date no later than two months from when the date on which the appeal is brought before it and shall cause notice of such date to be given to the parties to the suit.

(d) after appointing the application for hearing, and after listening to oral or written submissions, as the case may be, made by the parties and any evidence that they may be authorised to submit, the Court shall decide the application on its merits, within the shortest time possible but not later than four months from the day when the application has been appointed for hearing.

(e) if the Court decides in favour of the appellant, the Court shall, in its decision, indicate the time frame within which the appellant is to be granted access to the beneficial ownership information requested in terms of regulation 6(1)(c).

(f) if, during the hearing of the appeal, the Court finds that the application is frivolous and vexatious, the Court may decide to impose on the applicant, a penalty, to be paid to the Authority, of between one thousand euro (€ 1,000) and five thousand euro (€5,000), as the Court shall determine.

S.L. 12.09. (g) the Court vacations provided for in the Court Practice and Procedure and Good Order Rules shall not suspend the hearing of the appeals filed in terms of these regulations:

Provided that for the purposes of this regulation, the Court may, for reasons deemed serious and necessary by the Court, by means of a decree, extend for a reasonable period, the judicial time limits that are imposed on it according to these regulations.

(2) The persons referred to under regulation 6(1) (b), (c) and (d) who are aggrieved by a decision of the Authority denying access to the beneficial ownership information, in full or in part, on the basis that access to such beneficial ownership information would expose the beneficial owner to the risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation, or where the beneficial owner is a minor or otherwise legally incapable, in terms of regulation 6(2), may appeal against such decision to the Court of Appeal (Inferior Jurisdiction), under the same terms and conditions indicated in sub-regulation (1) and, accordingly, the provisions of sub-regulation (1) shall apply *mutatis mutandis*.

(3) (a) Proceedings in relation to the determination of a legitimate interest under this regulation shall be held *in camera* and only the appellant and other parties who can prove they have an interest in the proceedings to the satisfaction of the Court, and their respective advocates and legal procurators shall be allowed in Court during the hearings;

(b) Any decree or decision of the Court shall preserve the confidentiality of the proceedings and shall only reveal such facts as may be necessary to make the same intelligible and enforceable by the parties;

(c) All applications, responses, affidavits, statements and other documents or evidence shall be kept by the Registrar of the Court in a confidential manner and no access shall be given thereto except with the written consent of the Court.

Inaccuracies or discrepancies in the information available in the register.

6C. (1) Where the Authority has reasonable cause to believe that the beneficial ownership information submitted in respect of a trust may not be accurate and updated, the Authority may make enquiries with the trustee or carry out any other action in terms of its powers granted to it under the Act, in order to establish the current beneficial ownership.

(2) Where a national competent authority and, or the Financial Intelligence Analysis Unit referred to in regulation 6(1)(a), if appropriate, and to the extent that this requirement does not interfere unnecessarily with its functions, as well as any person referred to in regulation 6(1)(b), becomes aware of any discrepancies between the beneficial ownership information available in the register referred to in regulation 4 and the beneficial ownership information available to them, they shall report such discrepancies to the Authority.

(3) Where discrepancies are reported and communicated to the Authority in terms of sub-regulation (2), the Authority shall take any appropriate actions in order to resolve such discrepancies in a timely manner. Until such time as the discrepancies are rectified, any reference to such discrepancies may be included in the register referred to in regulation 4."

10. In regulation 7 of the principal regulations, for the word "under", there shall be substituted the word "to".

Amends regulation 7 of the principal regulations.

11. Regulation 8 of the principal regulations, shall be substituted by the following:

Amends regulation 8 of the principal regulations.

"Applicability to trusts prior to the coming into force of L.N. 27 of 2020.

8. Every trustee authorised or registered in terms of the Act shall, with regard to every express trust in respect of which the trustee was so acting prior to the coming into force of the Trusts and Trustees Act (Register of Beneficial Owners) (Amendment) Regulations 2020, submit to the Authority a declaration of beneficial ownership within six months of the coming into force of the said regulations:

Provided that the above six month transitory period shall not apply to any trustee of a trust who was already required to submit a declaration of beneficial ownership in terms of the requirements set out in these regulations prior to 1 January 2020."

12. Immediately after regulation 10 of the principal regulations, there shall be added the following:

Adds new regulation to the principal regulations.

"Duration for which information on register shall be available.

10A. The information held in the Authority's register of beneficial owners of a trust under regulation 4 shall be available through such register for at least ten years after the grounds for registering the beneficial ownership information have ceased to exist."

