

Civil Code (Second Schedule) (Register of Beneficial Owners – Associations) Regulations

The Regulations introduce a requirement for associations established under the laws of Malta to submit a declaration of beneficial ownership to the Registrar of Legal Persons.

With effect from 1st January 2018, associations established for a private interest or for the achievement of a social purpose or for the carrying on of any lawful activity on a non-profit making basis shall fall within the said Regulations.

The following associations shall be excluded:

- a. Any association of persons which is regulated by the Companies Act;
- b. An association which is established as a condominium association in accordance with the Condominium Act;
- c. An association which is a trade union or an employers' association;
- d. A voluntary organisation enrolled with the Commissioner for Voluntary Organisations which is in the form of a foundation, trust or temporary organisation; or
- e. Any other type of association not referred to above which the Minister responsible for justice may by notice designate.

The term 'beneficial owner' under the Regulations mirrors national anti-money laundering legislation and shall specifically apply to the following:

- Members; and
- Relevant persons, that is,
 - (a) The administrators;
 - (b) The protector or members of a supervisory council (if any); and
 - (c) Any other natural person exercising ultimate and effective control over the association by means of indirect ownership or by other means including any person (other than those already referred herein) whose consent is to be obtained, or whose direction is binding in terms of the statute of the association or of any other instrument in writing, for material actions to be taken by the administrators thereof.

The information on the beneficial owners of the association to be provided to Registrar of Legal Persons shall, in respect of each beneficial owner, as a minimum consist of:

- Name
- Date of birth
- Nationality
- Country of residence
- Official identification document number indicating type of document and country of issue
- The role of the beneficial owner
- The nature and extent of the beneficial interest held by each beneficial owner, and any changes thereto
- The effective date on which a natural person became, or ceased to be, a beneficial owner of the association or has increased or reduced his beneficial interest in the association.

An authenticated copy of its statute shall also be provided to the Registrar of Legal Persons with respect to associations established on or after 1st January 2018.

Where there is a change in the beneficial ownership information of an association, the association shall notify the Registrar of Legal Persons of the said change within 14 days from when the change is recorded with the association.

The **Beneficial Owner Register** kept by the Registrar of Legal Persons shall be **accessible** to:

A. Relevant competent authorities as follows:

- 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 criminal offences and terrorist financing, or of tracing, seizing, freezing and confiscating criminal assets;
- c. The Financial Intelligence Analysis Unit;
- d. National tax authorities; and
- e. Any other national competent authority under local anti-money laundering regulations.

B. subject persons in terms of the Prevention of Money Laundering and Funding of Terrorism Regulations for the purpose of carrying out customer due diligence. Subject persons shall submit a written request together with supporting documentation to the Registrar of Legal Persons.

C. Subject to the Data Protection Act, any person, who, or organization which, in a written request, satisfactorily demonstrates and justifies a legitimate interest specifically related to the prevention of money laundering and the financing of terrorism. Such persons or organization must also submit supporting documentation to the Registrar of Legal Persons together with the written request.

Access to information on a beneficial owner of an association under B and C above, may not be granted, in full or in part, where in exceptional circumstances to be justified by means of documentary evidence and to be determined on a case by case basis, access to such beneficial ownership information would expose the beneficial owner to the risk of fraud, kidnapping, blackmail, violence or intimidation, or where the beneficial owner is a minor otherwise incapable.

All persons entitled to access the information shall be subject to the Data Protection Act and shall also be subject to the obligation not to disclose any information about beneficial owners except as required or permitted by applicable law.

The register of beneficial owners held by MFSA shall be interconnected with the central registers of Member States via the European Central Platform and accessible to relevant competent authorities.

For further information on the Regulations and the Beneficial Owner Register please contact privateclient@whpartners.eu and corporate@whpartners.eu