

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

The Regulations introduce a requirement for foundations established under the laws of Malta as a beneficiary foundation for a private interest or as a purpose foundation for the achievement of a social purpose or for the carrying on of any lawful activity on a non-profit making basis to submit a declaration of beneficial ownership to the Registrar of Legal Persons.

With effect from 1st January 2018, foundations to be established and registered under the Second Schedule of the Civil Code, the declaration of beneficial ownership shall be delivered to the Registrar of Legal Persons prior to registration thereof.

The following foundations shall be excluded:

- (a) A foundation which is established and controlled by the Government of Malta;
- (b) Pious foundations;
- (c) An ecclesiastical entity in the form of a foundation or is marriage legacy; or
- (d) Any other type of foundation designated by the Minister.

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

- the founder;
- the administrator(s);
- the protector or members of a supervisory council, if any;
- the beneficiaries, or where the individuals benefitting from the foundation have yet to be determined, the class of persons in whose main interest the foundation is set up or operates and when the beneficiary is a legal entity then this terms shall also include the ultimate beneficial owner of such legal entity; and
- Any person exercising ultimate and effective control over the foundation by any means, including any person (other than those already mentioned herein) whose consent is to be obtained, or whose direction is binding in terms of the statute or of any other instrument in writing, for material actions to be taken by the foundation or the administrators.

The information on the beneficial owners of the foundation to be provided to Registrar of Legal Persons shall, in respect of each beneficial owner, at least 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 in relation to the foundation
- In the case of the beneficiaries of the foundation, the nature and extent of beneficial interest held, as well as, where applicable, an indication as to whether the foundation statute includes any suspension of the officer’s duty to inform such beneficiary of his benefit under the foundation or that he forms part of a class of beneficiaries which may so benefit, and in such case such person shall not be considered to be a beneficiary until such time as he is informed of such benefit or receives actual benefit
- The effective date on which a natural person became, or ceased to be, a beneficial owner of the foundation or, in the case of a beneficiary, the effective date on which his beneficial interest in the foundation has increased or been reduced.

Where the beneficiaries of the foundation are a class of beneficiaries, the same rules applicable to trusts shall apply.

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

In the case of foundations established prior to 1st January 2018, the declaration of beneficial ownership required to be submitted to the Registrar of Legal Persons by 1 July 2018.

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 a foundation 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