

Trust and Trustees Act (Register of Beneficial Owners) Regulations

The Regulations introduce a requirement for trustees of express trusts which generate tax consequences to submit a declaration of beneficial ownership to the Malta Financial Services Authority ('MFSA').

As from 1st January 2018, trustees authorised in terms of article 43 or 43B of the Trusts and Trustees Act are required to submit to the MFSA a declaration of beneficial ownership within 14 days of being appointed to act as trustee of an express trust which generates tax consequences.

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

- the settlor;
- the trustee(s);
- the protector, if any;
- the beneficiaries, or where the individuals benefitting from the trust have yet to be determined, the class of persons in whose main interest the trust is set up or operates; and
- Any person exercising ultimate and effective control over the trust 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 trust instrument or of any other instrument in writing, for material actions to be taken by the trustee.

The information on the beneficial owners of the trust to be provided to MFSA shall, in respect of each beneficial owner, 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 trust
- In the case of the beneficiaries of the trust, the nature and extent of beneficial interest held, 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.

Where the beneficiaries of the trust are a class of beneficiaries, the following rules shall apply, unless stated otherwise:

- The class shall be described and its members declared;
- When reference is made to the "family" of a person, the class is considered to be made up of the person, his direct ascendants, his spouse, his direct descendants, and unless excluded, their respective spouses;
- When a child is born or a marriage takes place, such child and spouse shall be declared within 3 months of birth or marriage;
- Children shall include children born out of wedlock and adopted children;
- Spouse shall include the person who the relevant person is married to/ with whom there is a civil union or cohabitation or a de facto arrangement recognized by the law in the country where they are habitually resident at the relevant time and shall exclude person who they have divorced or separated from.

Where there is a change in the beneficial ownership of an express trust, the trustee shall notify the MFSA of the said change within 14 days from when the change is recorded by the trustee.

In the case of authorised or registered trustees already acting as trustees at the time of coming into force of these Regulations, the information is required to be submitted to the MFSA by 1 July 2018.

The **Beneficial Owner Register** kept by the MFSA 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.

Sharing of information will be done in timely manner without any restriction and without altering the beneficial owners concerned.

- 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

Access to information on a beneficial owner of a trust under B 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.

The register of beneficial owners held by MFSA shall be interconnected with the central registers of Member States via the European Central Platform.

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