

Financial Crime News

Register of Beneficial Owners



As of 1 January 2018 Malta implemented the provisions of Articles 30 and 31 of the 4th EU Anti-Money Laundering Directive (Directive EU/2015/849) in relation to beneficial ownership information. In terms of the new regulations, companies (including any other commercial partnership) are now obliged to identify, record and report beneficial owners to the Registry of Companies.

Impact of the changes

Companies are required to set up their own 'Beneficial Owners' Register' and record up-to-date information on their beneficial owner(s). This information consists of the name, date of birth, nationality, country of residence, an official identification document number indicating the type of document and the country of issue, and the nature and extent of the beneficial interest held.

Reporting

When registering a new company, the registration process now includes a new declaration concerning information on

the beneficial owners.

Companies registered before 1 January 2018 ("existing companies") must comply with the requirements of having updated information on the beneficial owners by the end of June 2018. Information on all the beneficial owners must be reported by existing companies:

- (a) on the anniversary of the company's registration (falling due after 30 June 2018); and
- (b) upon a change in the beneficial ownership of the company (occurring after 30 June 2018); whichever is the earlier.

The information must be included in a statutory form and delivered to the Registrar within 42 days of the date referred to in (a) or within 14 days from when the change referred to in (b) is recorded with the company.

Additionally, companies must submit information on, or changes of, their beneficial owners to the Registrar of Companies within 14 days from the date on which the change is recorded with the company.

Applicability and exemptions

These new obligations apply to existing and new companies set up in Malta (including redomiciled companies) as well as partnerships en nom collectif and partnerships en commandite or limited partnerships. However, companies

- (a) listed on a regulated market that are subject to disclosure requirements consistent with EU laws; or
- (b) where all the registered shareholders are natural persons who are disclosed in the public records maintained by the Registrar of Companies, are exempted from these obligations



Access to the register

The Registrar of Companies shall enter the information on beneficial owners in a register of beneficial owners kept for this purpose. Access to this register will be available to eligible persons as from 1 April 2018 (at a fee). The following will be considered as eligible persons:

- (a) national competent authorities with designated responsibilities for combating, investigating or prosecuting money laundering and terrorist financing;
- (b) the Financial Intelligence Analysis Unit;
- (c) national tax authorities;
- (d) subject persons in terms of the Prevention of Money Laundering and Funding of Terrorism Regulations providing services in or from Malta, for the purpose of carrying out customer due diligence in accordance with the said regulations; and
- (e) any person or organisation that can satisfactorily demonstrate and justify a legitimate interest.

A person or organisation requesting such access, must satisfactorily demonstrate that the interest specifically and solely relates and will contribute to the prevention, detection and combating of money laundering or the associated predicate offences or the financing of terrorism. This must be justified on the basis of previous activities and a proven track record of actions in that field by means of relevant documentary evidence.

Access to information on a beneficial owner 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):

- (a) access to such beneficial ownership information would expose the beneficial owner to the risk of fraud, kidnapping, blackmail, violence or intimidation; or
- (b) where the beneficial owner is a minor or otherwise incapable.

Administrative penalties

Non-compliance with these obligations attracts the application of administrative penalties, which can reach up to €1,000 (plus €10 daily) when failing to:

- (a) keep a record of beneficial owners;
- (b) provide information to the Registrar about a change in the beneficial ownership of a company;
- (c) provide the Registrar with a declaration containing information on the beneficial owners of the company;

Furthermore, providing false, misleading or deceptive information about beneficial owners to the Registrar, constitutes a criminal offence and is subject to a fine of up to €5,000 or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

Trusts, Associations and Foundations

In line with Directive EU/2015/849 and in order to ensure a level playing field among the different types of legal forms, trusts, associations and foundations are also obliged to identify, record and report beneficial owners.

Similar obligations for companies apply with some differences - these are briefly summarised in the following table:

	Trusts	Associations	Foundations
Beneficial owner shall have the meaning assigned to it under the Prevention of Money Laundering and Funding of Terrorism Regulations. This includes:	<ul style="list-style-type: none"> (a) Settlor; (b) Trustee(s); (c) Protector (if any); (d) Beneficiaries, or where the individuals benefiting from the trust have yet to be determined, the class of persons in whose main interest the trust is set up or operates, and (e) Any other person exercising ultimate and effective control over the trust. 	<ul style="list-style-type: none"> (a) Members; and (b) Relevant persons i.e. <ul style="list-style-type: none"> i) Administrators; ii) Protector or members of the supervisory council (if any); and iii) Any natural person exercising ultimate and effective control over the association 	<ul style="list-style-type: none"> (a) Founder; (b) Administrator(s); (c) Protector or members of the supervisory council (if any); (d) Beneficiaries where identified, or when not yet determined, the class of persons in whose main interest the foundation is set up and when the beneficiary is a legal entity, the ultimate beneficial owners of such legal entity.
Applicable to:	New or existing trusts that generate tax consequences.	All associations established: <ul style="list-style-type: none"> (a) for a private interest; or (b) for the achievement of a social purpose or for the carrying on of any lawful activity on a non-profit making basis. 	Foundations established: <ul style="list-style-type: none"> (a) as a beneficiary foundation, for a private interest; or (b) 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, including voluntary organisations in the form of foundations.
Exemptions	n/a	<ul style="list-style-type: none"> (a) An association which is established as a condominium association in accordance with the Condominium Act; (b) An association which is a trade union or an employers' association; (c) A voluntary organisation enrolled with the Commissioner for Voluntary Organisations which is in the form of a foundation, trust or temporary organisation; or (d) Any other type of association not referred to above which the Minister responsible for justice may by notice designate. 	<ul style="list-style-type: none"> (a) A foundation which is established and controlled by the Government of Malta; or (b) A foundation which constitutes a pious foundation or an ecclesiastical entity in the form of foundation or is a marriage legacy governed by the Marriage Legacies Law; or (c) Any other type of foundation not referred to above which the Minister responsible for justice may by notice designate.
Competent Authority	Malta Financial Services Authority	Registrar for Legal Persons	Registrar for Legal Persons
Access granted on	1 April 2018	1 January 2018	1 January 2018

	Trusts	Associations	Foundations
Access granted to	<ul style="list-style-type: none"> (a) Competent authorities referred to above (for companies); the Financial Intelligence Analysis Unit; national tax authorities; and (b) subject persons in terms of the Prevention of Money Laundering and Funding of Terrorism Regulations (subject to providing evidence required by the Competent Authority). 	<ul style="list-style-type: none"> (a) Competent authorities referred to above (for companies); the Financial Intelligence Analysis Unit; national tax authorities; (b) subject persons in terms of the Prevention of Money Laundering and Funding of Terrorism Regulations upon a written request; and (c) a person who can demonstrate a legitimate interest. 	<ul style="list-style-type: none"> (a) Competent authorities referred to above (for companies); the Financial Intelligence Analysis Unit; national tax authorities; (b) subject persons in terms of the Prevention of Money Laundering and Funding of Terrorism Regulations upon a written request; and (c) a person who can demonstrate a legitimate interest.
Reporting to the Competent Authority	<ul style="list-style-type: none"> (a) Within 14 days of being appointed as Trustee; and (b) By 30 June 2018 for trusts set-up prior to 1 January 2018. <p>Changes in beneficial ownership must be reported within 14 days after the date on which the change is recorded by the trustee.</p> <p>An annual declaration must be submitted by the trustee by the end of January, confirming no changes to the beneficial ownership in the previous calendar year other than those notified.</p>	<ul style="list-style-type: none"> (a) Prior to registration (but not earlier than 30 June 2018); and (b) By 30 June 2018 for Associations established and/ or registered prior to 1 January 2018. <p>Changes in beneficial ownership must be reported within 14 days after the date on which the change is recorded by the Association.</p>	<ul style="list-style-type: none"> (a) Prior to registration; and (b) By 30 June 2018 for Foundations established and/ or registered prior to 1 January 2018. <p>Changes in beneficial ownership must be reported within 14 days after the date on which the change is recorded by the Foundation</p>
Administrative penalties	Up to €150,000	€500 plus €5 daily	€500 plus €5 daily
Fines	n/a	Up to €5,000 or to imprisonment for a term not exceeding six months or to both such fine and imprisonment in case of providing false, misleading or deceptive information about beneficial owners	Up to €5,000 or to imprisonment for a term not exceeding six months or to both such fine and imprisonment in case of providing false, misleading or deceptive information about beneficial owners
Fees to access information on the Register of Beneficial Owners	n/a	May be subject to a fee which the Registrar of Legal Persons shall establish.	May be subject to a fee which the Registrar of Legal Persons shall establish.

Contacts



Lucienne Pace Ross
+356 2564 7194
lucienne.pace.ross@mt.pwc.com



Mirko Rapa
+356 2564 6792
mirko.rapa@mt.pwc.com



Deborah Gatt
+356 2564 2343
deborah.gatt@mt.pwc.com

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