

EXPLANATORY NOTE

Legal Notice 376 of 2017 Civil Code (Second Schedule) (Register of Beneficial Owners - Associations) Regulations, 2017

The Civil Code (Second Schedule) (Register of Beneficial Owners - Associations) Regulations, (the “**Regulations**”), have been drafted on the basis 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, and this, as relating to information about the beneficial owners of associations established under the Laws of Malta.

The aforementioned Legal Notice was published in Government Gazette No. 19, 924 of the 20th December 2017 and came into force on 1st January 2018. (Please vide the link further down below)

‘Beneficial Owners’ refer to (a) members and (b) relevant persons as defined in the said Regulations and in 2 below.

1.1 Applicability

As per regulation 3, the Regulations apply to associations established:

- (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;

and this, irrespective of whether they are registered with the Registrar for Legal Persons in terms of the Second Schedule or applicable regulations *or with any other registrar, commissioner, board or entity in terms of any special law and includes co-operative societies, sports organisations and voluntary organisations in the form of associations.*

N.B. Thus, it is to be noted that, SAVE FOR the associations mentioned in 1.1 below, the Regulations apply to ALL associations:

- whether they are private interest associations or purpose associations;
- whether they were established and /or registered *before 1st January 2018* or established on or *after 1st January 2018* when the said Regulations came into force;
- whether they are enrolled or not with the Commissioner for Voluntary Organisations.

1.2 Exceptions to Applicability

The Regulations shall NOT apply to:

- any association of persons which is regulated by the Companies Act;
- an association which is established as a condominium association in accordance with the Condominium Act;

- an association which is a trade union or an employers' association;
- a voluntary organisation enrolled with the Commissioner for Voluntary Organisations which is in the form of a foundation, trust or temporary organisation; or
- any other type of association not referred to above which the Minister responsible for justice may by notice designate.

2. Associations to keep record of Beneficial Owners

As per regulation 4, every association must take all reasonable steps to obtain and at all times hold adequate, accurate and up to date information in respect of its beneficial owners, which shall at least include the following particulars:

(a) the name, the date of birth, the nationality, the country of residence and an official identification document number indicating the type of document and the country of issue, of each beneficial owner;

(b) the nature and extent of the beneficial interest held by each beneficial owner and any changes thereto;

(c) the role of the relevant person in relation to the association, that is, whether:

- an administrator,
- a protector or member of the supervisory council, if any, or
- any other natural person exercising ultimate and effective control over the association by means of indirect ownership or by other means including any person whose consent is to be obtained or whose direction is binding, in terms of the statute of the association or any other instrument in writing, for material actions to be taken by the administrators;

(d) 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.

The Regulations provide that the association is required to obtain this information from the beneficial owners of the association, and/or from any natural person whom it has reasonable cause to believe to be a beneficial owner, who are bound to provide the said information without delay.

Such information is to be **verified** by the association on the basis of documents, data or information obtained from a reliable source.

The association shall also ensure that it obtains **declarations** confirming that the beneficial owner is not an intermediary, such as an agent, nominee or trustee, for another person, and, if so, the association shall also obtain information on the principal or beneficiary of such intermediary.

Any information contained in the statute of an association, a power of attorney, an engagement or instruction letter delivered to the Registrar for Legal Persons, and any document or notice registered with the Registrar for Legal Persons at any time, any testament or any other

official document shall be deemed to be sufficiently reliable for the purposes of carrying out the duties under regulation 4.

Every association shall enter the information in:

(a) a register of members, which shall contain such information about the members of the association; or

(b) a register of relevant persons, which shall contain such information about the relevant persons of the association;

which registers shall be kept and maintained by the association at the registered address of the association or at such other place as may be specified in the statute of the association.

The responsibility for maintaining this internal register of beneficial owners is placed on the officers (the administrators) of the association jointly and severally with the association itself.

An obligation is imposed on associations not to update the internal register or to notify, when required upon an event, the Registrar for Legal Persons in compliance with the Second Schedule to the Civil Code unless it has obtained information on the underlying beneficial ownership and unless it has carried out customer due diligence obligations in terms of the requirements of the applicable AML/CFT laws and regulations in force in Malta.

3. Submission of information to the Registrar for Legal Persons – FORM 1

Associations established on or after 1st January 2018 - FORM 1 and Statute

In the case of any association **which is established on or after the 1st January 2018**, there shall be delivered to the Registrar for Legal Persons:

(a) an authenticated copy of its statute; *and*

(b) a declaration in the prescribed form (Form 1) containing the required information on all the members¹ and the relevant persons of the association.

The association shall NOT commence activities and, or be registered in accordance with the applicable special law unless the Registrar for Legal Persons is satisfied that the aforementioned requirements have been complied with.

On an on-going basis, the Registrar for Legal Persons or where the registration is taking place under a special law, the relevant registrar, shall not proceed with the registration of any registerable forms or documents of the association delivered to him in accordance with any applicable special law unless the Registrar for Legal Persons is satisfied that the requirements of these Regulations have been complied with.

¹ The details of a member are inserted in Form 1 only if such member has a direct or indirect ownership of 25% plus 1 or more of the ownership interests or more than 25% of the voting rights. In the case of Purpose Associations/ Voluntary Organisations, the details are inserted only if a member has more than 25% of the voting rights.

Associations established and, or registered prior to 1st January 2018 – Form 1

Where an association **has been established and, or registered prior to 1st January 2018**, there shall be delivered to the Registrar for Legal Persons a declaration in the prescribed form (Form 1) containing the required information.

An association, and all relative documents, shall NOT be registered in accordance with the applicable special law unless the Registrar for Legal Persons is satisfied that these requirements have been complied with.

4. Changes to the information submitted to the Registrar for Legal Persons –Form 2

As per regulation 8, the information held in the Register of Beneficial Owners must be adequate, accurate and up-to-date.

Accordingly, whenever there is a change in the beneficial ownership of an association or any other change occurs as a result of which the particulars in the Register are incorrect or incomplete, the association is obliged, **within fourteen days** from the date on which the change is recorded with the association, deliver to the Registrar for Legal Persons a notice, in the prescribed form (Form 2) of the change, providing the required information.

If the change in the beneficial ownership information relates to a change in the administrator(s), it shall be the duty of the new administrator(s) to notify the Registrar for Legal Persons of such change.

The Registrar for Legal Persons shall not register any changes in the beneficial owners unless the requirements of these Regulations have been complied with. It is important to note that the obligation to file a notice with the Registrar for Legal Persons in terms of these Regulations does not exonerate the association, or any of its officers, from any duty to notify such changes to the Registrar for Legal Persons or any other person in terms of the applicable special law.

5. Rectification

Any member or relevant person who feels aggrieved by information included or omitted from the registers kept by the association or the Register of Beneficial Owners kept by the Registrar for Legal Persons may apply to the First Hall Civil Court for rectification of the relevant register and the Court may, *inter alia*, order the rectification of the relevant register and the payment by the association of compensation of up to EUR 1,000 for any loss sustained by any party aggrieved.

6.1 Offences and Penalties

As per regulation 13, any officer of the association (including, in the case of an administrator which is a legal organisation, the persons entrusted with its management and administration) or a beneficial owner thereof who **knowingly or recklessly** makes a statement, declaration or otherwise provides to the Registrar for Legal Persons information on the beneficial ownership of an association that is ***misleading, false or deceptive in a material particular***, shall be guilty of an offence and shall be liable on conviction to:

- (a) a fine (*multa*) of not more than EUR5,000; and/or
- (b) to imprisonment for a term not exceeding 6 months.

6.2 Administrative penalties

As per regulation 16 and the Schedule to the Regulations, in case of default with the provisions of these Regulations, the association and every officer of the association who is in default shall be jointly and severally liable to an initial penalty of EUR 500 and, for every day during which the default continues, to a further penalty of EUR 5 for the following:

1. Failure by the association to maintain the register of beneficial owners (Reg. 4(7) of the Regulations);
2. Failure by associations established and, or registered prior to 1st January 2018 to deliver the information on the beneficial owners of an association to the Registrar for Legal Persons (Reg. 5(3) of the Regulations);
3. Failure by associations established on or after the 1st January 2018 to provide information to the Registrar about the beneficial owners (Reg. 6(3) of the Regulations);
4. Failure to provide information to the Registrar for Legal Persons about a change in the beneficial owners of an association (Reg. 8(5) of the Regulations).

An officer of the association shall not be liable personally if he shows that he had exercised all due diligence to comply with the provisions of the Regulations and the default was not due to any act or omission or negligence on his part.

7. Register of Beneficial Owners kept by the Registrar for Legal Persons

The information on the beneficial owners of every association provided to the Registrar for Legal Persons in accordance with the Regulations shall be kept by the Registrar for Legal Persons in a Register of Beneficial Owners. This Register is distinct from the Register of Legal Persons kept by the Registrar for Legal Persons in terms of the Second Schedule to the Civil Code, Chapter 16 of the Laws of Malta.

It is to be noted that it is NOT mandatory for associations to be registered as legal persons in terms of the said Second Schedule to the Civil Code but it IS mandatory for ALL associations to submit Form 1 and Form 2, as applicable, in terms of the Regulations regarding the Register of Beneficial Owners.

As per regulation 10, the Register of Beneficial Owners is accessible only to such persons, under such conditions and in accordance with such procedures as set out in the Regulations. In case of conflict regarding accessibility, these Regulations prevail over the provisions of any special law in so far as the Register of Beneficial Owners is concerned. The Registrar for Legal Persons shall be entitled to require online requests to access information in the Register of Beneficial Owners and to levy a fee for such access.

8. Electronic Register

As per regulation 15, any document which is required to be delivered to the Registrar for Legal Persons in terms of these Regulations and any such delivery and the retention of any such document by the Registrar for Legal Persons may be in such format and by such means, including in electronic form and by electronic communication, as the Registrar for Legal Persons may deem appropriate.

9. Links and Contact Details:

- Webpage of the Registrar for Legal Persons: <https://identitymalta.com/legalpersons/>
- Legal Notice 376 of 2017: Civil Code (Second Schedule) (Register of Beneficial Owners - Associations) Regulations: <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12746&l=1>
- FORM 1: Submission of initial information on beneficial ownership: <https://identitymalta.com/wp-content/uploads/2018/06/Form-1-Associations-Editable-Format.docx> ;
- FORM 2: Changes: <https://identitymalta.com/wp-content/uploads/2018/06/Changes-Form-2-Associations-Editable-Format.doc>
- Method of Submission of Forms to the Registrar for Legal Persons at the Public Registry, Malta: <https://identitymalta.com/wp-content/uploads/2018/09/Method-of-Submission-of-Beneficial-Ownership-information-to-the-Registrar-for-Legal-Persons-1.pdf>
- Address: Office of the Registrar for Legal Persons, Public Registry, Evans Building, Level 1, Merchants Street, Valletta, Malta.
Opening hours for telephone enquiries: Tuesdays and Thursdays from 08:00 hrs to 13:00 hrs. Telephone: 25904108 / 25904109
Email: hilary.grech@gov.mt; rochelle.magri@gov.mt

Disclaimer:

Whilst every effort has been made to ensure the accuracy of the information contained herein, this notice is not intended to impart any advice of any sort. This notice is also not intended to serve as a substitute for a thorough reading and understanding of the Regulations, nor is it intended to be an absolute exhaustive list of all the obligations arising under the relevant Regulations.