

The implementation of the beneficial ownership register

The Fourth Anti-Money Laundering Directive (“4AMLD”) imposed the requirement on Member States to ensure that companies and other legal entities or arrangements incorporated in their territory hold adequate, accurate, and current information on their beneficial ownership. This information should also be maintained in a central register in each Member State.

Legal basis

On 20th December 2017, four legal notices were published to transpose the 4AMLD requirements in connection with the establishment and maintenance of beneficial ownership registers. These legal notices set out the obligations incumbent upon companies and commercial partnerships (L.N. 374/2017), foundations (L.N. 375/2017), associations, (L.N. 376/2017) and trusts (L.N. 373/2017), and came into effect as of 1 January 2018.

This briefing note will specifically focus on the provisions applicable to legal entities under L.N. 374/2017.

Companies Act (Register of Beneficial Owners) Regulations, 2017 (the “Regulations”)

The Regulations are applicable to all commercial partnerships, including companies, incorporated in Malta. Entities listed on a regulated market and entities all the registered shareholders of which are natural persons who are disclosed in the public records maintained by the Registrar of Companies, are excluded.

The basic requirements ushered through by the Regulations can be categorised into three: (i) the establishment of an internal register of beneficial ownership to be maintained by the legal entity; (ii) reporting obligations; and (iii) the establishment of a central register of beneficial ownership to be maintained by the Registrar of Companies. These are further discussed in turn below.

For the purpose of these Regulations, ‘beneficial owner’ is defined as any natural person or persons who ultimately owns or controls a legal entity through direct or indirect ownership of 25% plus 1 or more of the shares or more than 25% of the voting rights or an ownership interest of more than 25% in that body corporate or body of persons, including through bearer share holdings, or through control via other means. If, after having exhausted all possible means, no beneficial owner has been identified, the natural person or persons who hold the position of senior managing official or officials shall be considered to be the beneficial owners.

Internal beneficial owners register

By 30 June 2018, legal entities falling within the scope of the Regulations shall obtain and at all times hold adequate, accurate and up to date information in respect of its beneficial owners. The information must be entered and held by the entity in an internal beneficial owners register to be kept at the registered office of the entity or at such other place as may be specified in its Memorandum and Articles of Association.

The information featuring on the internal register shall at least include the following information with respect to each beneficial owner:

- 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;
- the nature and extent of the beneficial interest held by each beneficial owner and any changes thereto; and
- the effective date on which a natural person became, or ceased to be, a beneficial owner of the legal entity or has increased or reduced his beneficial interest in the entity.

The entity is required to obtain this information either from the shareholders of the entity or otherwise from any natural person whom the entity has reasonable cause to believe to be a beneficial owner.

Reporting obligations

Entities that are in the process of being set up, as well as existing entities are required to report to the Registrar of Companies on their beneficial ownership.

Going forward, anyone who wishes to set up a legal entity in Malta must, in addition to the Memorandum and Articles of Association as well as any other supporting documentation, also submit a declaration to the Registrar of Companies containing information on the beneficial owners of that entity. This declaration must be in the form prescribed in the Schedule to the Regulations.

If, following incorporation, there are changes to the beneficial ownership of the entity, for example due to a transfer of shares, changes in voting rights, or similar circumstances, the entity must submit a separate declaration to the Registrar of Companies, within 14 days from when the change was recorded in the internal register.

Insofar as existing legal entities are concerned, these are required to submit to the Registrar of Companies details of their beneficial owners. This is to be delivered either with the next annual return falling due immediately after 30 June 2018, or where there is a change in the beneficial ownership of the entity occurring after this date, whichever is earlier. An annual update is to be provided to the Registry thereafter.

Central register of beneficial owners

The Registrar of Companies is responsible for maintaining a central register of beneficial owners. The information on beneficial owners held in the central register shall be accessible by national competent authorities (including tax authorities and other authorities responsible for combatting money laundering and terrorist financing), and subject persons in terms of the Prevention of Money Laundering and Funding of Terrorism Regulations for the purpose of carrying out customer due diligence. Any person or organisation that upon a written request can satisfactorily demonstrate to the Registrar of Companies and justify a legitimate interest shall also be granted access to the name, month and year of birth, nationality, the country of residence and the extent and nature of the beneficial interest of the beneficial owners.

Access to the information on the central register is subject to on-line registration and, other than in respect of such access by competent authorities, will also entail the payment of a fee of €5 for every access to the information on the beneficial owners of each entity.

Penalties

If an entity fails to comply with any of the provisions of these Regulations (including failure to keep record of beneficial owners, failure to update the Registrar of Companies with any changes to beneficial owners, and failure to submit the necessary declarations), the entity and every officer, shareholder and beneficial owner of the entity shall be jointly and severally liable to a maximum penalty of €1,000 and a maximum daily penalty of €10, for each default. An officer shall however not be liable if s/he can satisfactorily demonstrate that s/he had exercised all due diligence to comply with the provisions of these Regulations and the default was hence not due to any act, omission or negligence on his/her part.

Way forward

Our overriding advice to legal entities falling within the scope of the Regulations would be to prioritise the compilation of the internal beneficial owner register. This is particularly important for companies which are part of a group of companies operating in a number of jurisdictions and hence obtaining information on their beneficial owners might not be as straightforward.

Another important consideration relates to implementing systems and controls in order to ensure that the local entity is kept updated with changes to beneficial owners and can hence comply with its obligation to maintain internal registers which are adequate, accurate and current, whilst also reporting into the Registrar of Companies within the stipulated timeframes.

We understand that the Registry of Companies is currently in discussion with industry bodies in order to clarify certain 'grey areas' which are giving rise to varying interpretations. Following these discussions, certain of the requirements may also be revisited in order to streamline the process and reduce the red-tape insofar as possible.

Contact us

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We have substantial experience in advising and assisting clients with their corporate and anti-money laundering obligations. Please contact our experts below for further information as to how we can help.



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