

User Guidelines

Proposed amendments to the Companies Act- (Register of Beneficial Owners) Amendments Regulations – SL 386.19 of the Laws of Malta

Purpose

The aim of these amendments is to:

- To transpose and implement Article 74 of Directive (EU) 2024/1640 of the European Parliament and of the Council of 31 May 2024 on the mechanisms to be put in place by Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Directive (EU) 2019/1937, and amending and repealing Directive (EU) 2015/849 as applicable to commercial partnerships formed and registered under the Act, and these regulations shall be interpreted and applied accordingly.
- To improve the communication and co-operation amongst competent authorities in Member States and counterpart bodies in other jurisdictions with which Malta has established cooperation agreements.
- To amend the forms to increase transparency and making the forms easier to complete.

SL 386.19 - Regulations

- Definitions - **regulation 1 of the principal regulations**

The scope of these regulations has been amended to transpose and implement article 74 of Directive (EU) 2024/1640, which article amends the relevant provisions on beneficial ownership information of Directive 2015/849.

- Declaration on beneficial owner- **regulation 3 of the principal regulations**

In this regulation, the below has been amended as follows:

- the term "nationality" is broadened to impose an obligation towards reporting the beneficial owner's "nationalities" where he/she has more than one nationality; and
 - widening the scope of the principal regulations making it applicable in the same way to companies registered in Malta following a cross-border conversion, merger and division in terms of the Cross-border Divisions of Limited Liability Companies Regulations, the Cross-border Conversions of Limited Liability Companies Regulations and the Cross-border Mergers of Limited Liability Companies Regulations.
- Register of beneficial owners - **regulation 4 of the principal regulations**
- The amendments include the introduction of sub-regulations, thus inserting a provision to cater for circumstances where a natural or legal person is granted access to the beneficial ownership information of a

company based on proving a legitimate interest but is unable to use electronic means. In this instance, the law provides that the Registrar shall provide a print-out of the information held in the register of beneficial owners.

- Company to keep record of beneficial owners - **regulation 5 of the principal regulations**

- The amendments include the introduction of the term “nationalities” of its beneficial owners, where a beneficial owner would have more than one nationality to report.

- Access to information on the beneficial owner – **regulation 7 of the principal regulation**

Regulation 7 on the access to beneficial ownership has been amended as follows:

- in relation to access, any natural or legal person, that can demonstrate a legitimate interest in the prevention and combating of money laundering, its predicate offences, or the financing of terrorism, shall be granted access to information on the beneficial ownership of the company by the Registrar. The requirement to provide access to any natural or legal person based on legitimate interest has been created to harmonise the approach across all EU Member States.
- in relation to the above, the natural or legal persons are required to submit a written request to the Registrar of Companies with supporting documentation to understand the legal basis of their request contributing to the prevention, detection and combatting of money laundering or the associated predicate offences or the financing of terrorism.

- in the process of verifying the existence of a legitimate interest, the Registrar may consult with other bodies before granting access to such information on the beneficial ownership of a company. Such consultation may be necessary to enhance transparency and ensure the decision is well-informed.
- the Registrar may refuse a request for access to the beneficial ownership and shall be obliged to make this decision known in writing. There shall be a right of recourse to the applicant from the decision and may, within 20 working days from the receipt of the decision, file an application in the Civil Court (Commercial Section) as the competent court authorized to hear applications from the Companies Act.
- the Registrar is permitted to provide the information about the beneficial owners to the competent authorities and to do so in a timely manner and without charge. Furthermore, the Registrar shall also share information with other bodies, outside Malta, responsible for the register of beneficial owners, with which Malta has an arrangement, for the purposes of the prevention and combating of money laundering, its predicate offences, or the financing of terrorism.
- Applicability to partnerships *en nom collectif* and partnerships *en commandite* or limited partnerships - **regulation 10 of the principal regulations**

A proviso has been added to this regulation as a safeguard measure to ensure transparency of beneficial ownership. Thus, where a general partner of a partnership *en commandite* or limited partnership in its position as “shareholder” falls under the definition of beneficial owner

in terms of the Prevention of Money Laundering and Financial Terrorism Regulations, then the general partner shall be treated as a "shareholder" and disclose the beneficial owner/s.

- The Forms

The First Schedule of the Regulations is being amended as follows:

The Form BO2 - a new option is added in Section A, so that where a change consists only of a change to the extent and/or nature of the beneficial ownership, the full name and surname only of the respective beneficial owner/s in the first column, followed by a description of the change as applicable, shall be required. Additionally, a detailed description shall be required for the designation/capacity of the Senior Managing Official.

The Annual Confirmation BO form, the Change in Senior Managing Officials form and the Change in details of BO/Senior Managing Officials are amended in a similar manner with the aim of enhancing the transparency of reporting and making the form easier to complete.

All forms under this Regulation have been amended, to incorporate reference to "nationalities", where more than one nationality is applicable with respect to a beneficial owner.

Conclusion

Officers of companies are to be fully aware of the amending Act. It is advisable that when they are unsure about their obligations, they consult a lawyer, accountant, or auditor. Any required prescribed forms will be issued under the respective legislative regulations through a Legal Notice. Failure to make the necessary filings or take the necessary action within the requested time frames will result in penalties being imposed on the company and officers of the company. Penalties can be avoided if the company officers are familiar with the Maltese company law and regulations thereto.

***N.B.** The User Guidelines contained within this document is solely intended to serve as guidelines and should not be construed as legislation. This document should not be considered as an exhaustive description of the instrument nor a substitute thereof or a legislative supplement to it. The Guidelines do not purport to be an authoritative ruling on the interpretation of the legislation. Please refer to the related legislation for a more comprehensive understanding.*

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