

2021

Guidance Notes on the Registration of Foundations and Associations

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This guidance sets out an overview of the requirements, in terms of the Civil Code (Second Schedule) Cap. 16 of the Laws of Malta and the associated subsidiary legislation. Its purpose is solely to provide information and guidance for Maltese registered foundations and associations.

This guidance document is not intended to be definitive legal advice and should not be relied upon as such as the interpretation of the legislation is a matter on which the Malta Business Registry cannot advise and individuals will need to form their own view on compliance. This guidance document is intended for general information only and should not be used in relation to any specific foundation or association without independent investigation in the structure of the entity in question and the necessary verifications. Those making use thereof or relying thereon assume all risk and liability arising from such use or reliance. The Malta Business Registry shall not be held responsible for any loss or damage sustained by any entity, natural person or professional relying on this guidance document.

It is advisable that if in doubt, a legal entity should seek legal advice to assist it in registering legal entities and establishing who their beneficial owners are.

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Registration

What documents are required in order to register a Foundation?

The Administrators are required to submit the following documents within three months from date of establishment of the Foundation, in order to avoid incurring penalties for late filing:

- Form A - Application for registration of an organisation established under the laws of Malta Pursuant to articles 31(8) / 51(3)
- Form 1- Submission of initial Beneficial Owner Information for Foundations
- Foundation Deed & Statute, certified as true copy by the Notary
- Administrators' Consent Form, signed by all the administrators, signed in original
- A resolution in writing of the Board of Administrators authorising any one of the administrators to register the foundation with Registrar in terms of the Second Schedule to the Civil Code
- Certified copy of ID cards/passports of Founders and Administrators. In case of a non-EU national, a character reference would be required, apart from a certified copy of ID card/ passport
- Proof of initial endowment (e.g. bank deposit slip, copy of cheque deposited with the Notary)
- Registration Fees
- Non-profit: proof that the foundation has informed the office of the CVO that it is in the process of registering a non-profit, voluntary, public purpose foundation
- Private Foundation: note of registration (abstract of the public deed)
- Declaration from landlord (i.e. owner of the property where the foundation's office is situated) confirming that the foundation is authorized to use the address as its registered office address

From where the forms can be downloaded?

The Forms may be downloaded via this link: <https://mbr.mt/foundassoc-application-forms/>

The Forms must be signed in original.

The Statute must be in line with the provisions of the Second Schedule to the Civil Code, especially article 29.

What documents are required in order to register an Association as a Legal Person?

- Form A - Application for registration of an organisation established under the laws of Malta Pursuant to articles 31(8) / 51(3)
- Form 1 - Submission of initial Beneficial Owner Information for Associations
- Statute, signed by the associating members.
- Administrators' Consent Form
- A resolution in writing of the Board of Administrators authorising any one of the administrators to register the association with Registrar in terms of the Second Schedule to the Civil Code
- Certified copy of ID cards/passports of the Administrators. In case of a non-EU national, a character reference would be required, apart from the certified copy of ID card/ passport
- Declaration of initial assets
- Registration Fees
- Non-profit: that the association has informed the office of the CVO that it is in the process of registering a non-profit, voluntary, public purpose association
- Declaration certifying the signatures of the associating members
- Declaration from landlord (i.e. the owner of the property where the association's office is situated) confirming that the association is authorized to use the address as its registered office address

The Statute must be in line with the provisions of the Second Schedule to the Civil Code, especially article 49.

When is a local representative required – a clarification of the judicial representation of the local representative and what it involves?

In case all the administrators are non-residents, a local representative who is ordinarily resident in Malta is required to be appointed. It is a condition on the administrators to retain at all times a person who is ordinarily resident in Malta to act as local representative. Reference should be made in the statute to the fact that there has been an appointment of a local representative. Notification of this needs to occur through the filing of Form H. The local representative shall have, by operation of the law and without the need to any act on the part of the administrators:

- The legal representation of such organisation in Malta, he shall be the point of reference of the organisation in Malta, and
- The legal representation of such organisation, which is limited to the signing of forms and other notifications to the Registrar and other competent authorities in Malta and the enrolment of instruments and other documents executed by the administrators with a Notary Public in Malta when necessary to comply with the legal obligations of the organisation in Malta.

In case the administrators appoint another person for the above-mentioned tasks, the local representative shall only act in consultation with such persons when such persons are not in Malta or if they fail to carry out any such function when required to do so within the timeframes stated in the law.

Who can be an administrator of a private foundation?

An administrator of a private foundation must be a person who is authorised by MFSA to act as an administrator of private foundations. In case of a non-resident administrator, a declaration stating that the administrator shall not carry out any activities in Malta as per Trusts and Trustees Act would be required. “Any activities in Malta” relates to the offering of services from Malta but excludes the actual act of carrying out board meetings in Malta. A template of the declaration is available on this link: <https://mbr.mt/foundassoc-application-forms/>

What documents are required to change registered office address?

The following documents are required to be submitted:

- Form E - Notice of change in registered address of an organisation
- Form 2 (please state the current address in Part A and the new address in Part A under the ‘Revised Details’ section)
- Consent letter from owner (i.e. the owner of the property used as the association’s registered office address) confirming that the association is authorised to use the premises as its registered office address

What documents are required for change in administrators/ committee members of a registered organisation?

The following documents are required to be submitted:

- Resignation of administrator or committee member of a registered organisation:
 - o Form F - Notification of changes of Administrator of an Organisation
 - o Form 2 (please state details of the ‘resigned’ member in Part B and indicate the date of cessation in the ‘Revised Details’ section)
- Appointment of new administrators or committee member of a registered organisation:
 - o Form F Notification of changes of Administrator of an Organisation
 - o Form 2 (please state details of the new members in Part C)
 - o Certified copy of ID card/ passport of administrator, in case of a non-EU national, a character reference would be required, apart from certified copy of ID card/ passport copy
 - o Administrators consent form, signed by the new administrator

How can one effect the annual fees payments?

The annual fees are due on the anniversary of the organisation. Together with the annual fees, a declaration on the net assets as at date of anniversary should be submitted on an annual basis or audited accounts, where applicable.

The payments may be affected by means of cheque addressed to MBR or by means of bank transfer. The bank account details are the following:

Bank of Valletta plc

229, Fleur-De-Lys Road, Birkirkara BKR9069, Malta
Account Number: 40025310447
IBAN: MT09VALL22013000000040025310447
BIC: VALLMTMT
Beneficiary: Malta Business Registry

HSBC Bank Malta plc

Business Banking Centre, Mill Street, Qormi QRM3101, Malta
Account Number: 002-173649-001
IBAN: MT91MMEB44026000000002173649001
BIC: MMEBMTMT
Beneficiary: Malta Business Registry

In respect of: Give full details of settlement so that we can allocate payment

Please indicate name of organisation and provide us with proof of bank transfer in order to trace the payment.

Please instruct your bankers to transfer full amount due in our account. Bank charges are to be incurred by client.

What is the procedure to order a certificate of good standing?

Certificates of good standing are ordered via email sent to foundations.associations@mbr.mt indicating the name of the organisation and a request for us to issue the certificate. There is a payment of €23. The organisation should be in good standing before we may proceed and issue the certificate (e.g. annual fees are paid).

What documents are required to place a foundation/association in dissolution on a solvent and voluntary basis?

The procedure for de-registration

A written request to the Registrar signed by the administrators of a foundation/ association requesting that the relative foundation/ association be dissolved and wound up on a solvent and voluntary basis , a statement that the foundation/ association is enrolled as a voluntary organisation *in the applicable case*, a brief explanation of the circumstances in which dissolution is taking place and a statement on how the assets and liabilities are to be dealt with on termination of registration.

The written request may be in the form of an email or covering letter addressed to the Registrar. The Administrators will then be informed whether to proceed and submit the hereunder-listed documents marked as ‘The first stage of de-registration’. The foundation/ association must be in good standing before submission of these documents.

The first stage of de-registration

1. Form M - Notice of resolution and voluntary winding up of an Organisation
2. Board resolution signed by the administrators resolving to dissolve and wind up the foundation/ association on a solvent and voluntary basis as the assets exceed the liabilities and a brief explanation of the circumstances in which dissolution is taking place (such as that the purpose has been fulfilled / is impossible to fulfil / there are serious difficulties / the term has expired)
3. The date set for dissolution
4. A certified copy of the financial statements required by law (audited in the applicable case) as at date of dissolution evidencing the solvency of the foundation/ association, the profits and losses and the assets which exceed the liabilities
5. A confirmation signed by all the administrators re the following, viz:
 - that the balance sheet and cash flow statement are current, that the foundation/ association is solvent and that the assets exceed the liabilities;
 - that there are no outstanding commitments or obligations towards third parties including registry, legal, accounting, advisory, tax, fiduciary or other fees such as annual fees due to the Registrar for Legal Persons and that all the debts of the foundation/ association have been paid;

- that all lawful commitments have been fulfilled;
 - that the administrators/ legal representative/ protectors/ have not changed and that the statute has not been amended;
6. A statement on how the assets and liabilities are to be dealt with.

The Registrar will then inform the administrators to submit the documents listed in ‘the second stage of de-registration’.

The second stage of de-registration

1. Proof of the notification of dissolution proceedings to the Commissioner of Voluntary Organisations, *in the applicable case*
2. Form N - Notice of Scheme of Distribution of assets of an Organisation
3. A certified statement of distribution of the remaining assets of the foundation/ association signed by the administrators and approved by the founder if applicable as per the statute
4. A confirmation that all interested parties have been notified
5. Form S - Notice of completion of winding up of an organisation
6. The return of the original Certificate of Registration to the Registrar

All Forms may be downloaded via this link: <https://mbr.mt/foundassoc-application-forms/>

In case of an UNREGISTERED ORGANISATION, the above-mentioned documents would still be required, apart from the certificate of registration.

In case of a FOUNDATION, the Administrators are obliged to inform the Notary to prepare the Note of Termination in terms of Article 50 of CAP 55 of the Laws of Malta.

What are the penalties that can be incurred?

A penalty of two hundred and thirty-two euro and ninety-four cents (€232.94) is imposed on the Founders, the Administrators, the Notary and the person designated in the statute as having the power to appoint the administrators, for failure to deliver (i) the Deed, (ii) the Statute, (iii) the prescribed application form (i.e. Form A), (iv) the Note of Initial Registration (in case of private foundations), and (v) the written consent of the administrators, to the Registrar within three months from date of establishment. The amount of the penalty will be reduced to twenty-three euro (€23) per person in case of a public benefit foundation which is enrolled in accordance with the Voluntary Organisations Act (CAP 492).¹

Disclosure of Beneficial Owners

Foundations

Who is considered to be a beneficial owner?

As established by the Civil Code (Second Schedule) (Register of Beneficial Owners – Foundations), hereinafter referred to as “the Foundations Regulations”, the term beneficial owner shall have the same meaning assigned to it under the Prevention of Money Laundering and Funding of Terrorism Regulations, hereinafter referred to as “the PMLFTR”.

The PMLFTR specifies that in case of legal entities such as foundations and legal arrangements similar to trusts, the beneficial owner shall consist of the natural person or persons holding equivalent or similar positions to those referred to in the case of trusts. In the case of foundations, these positions shall specifically apply to the:

- founders;
- administrator(s);
- the protector or members of a supervisory council, if any;
- the beneficiaries where identified in the relevant foundation instruments, subject to regulation 4(1)(d) of the Foundations Regulations, or where the individuals benefiting from the foundation have yet to be determined, the class of persons in whose main interest the foundation is set up or operates and when the beneficiary is a legal entity, then this term shall also include the ultimate beneficial owner of such legal entity; and
- any other natural person exercising ultimate and effective control over the foundation by means of direct or 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 foundation or any other instrument in writing, for material actions to be taken within the foundation.

¹ Art. 31, Second Schedule to Civil Code

The position of an administrator is specifically defined in the Foundations Regulations as the person, under whatever designation one may operate, who is designated as such in the deed or statute of the foundation and who agrees in writing to so act. When there are changes in such office, the position of an administrator shall refer to those persons who are designated as such in the relevant notice submitted to the Registrar for Legal Persons and who agree in writing to so act; those persons who are designated as such in the resolution appointing the same, and who agree in writing to so act, if, for any reason, the foundation is not registered with the Registrar for Legal Persons; and where the administrator is a legal organisation, the persons appointed to act as directors of such legal organisation or the equivalent, if designated under any other name and who agree in writing to so act.

The foregoing definition of an administrator applies throughout the duration that one continues to occupy such office, whether resident in Malta or otherwise. For the avoidance of doubt, in the event that a foundation appoints a liquidator in the process of its winding up, such liquidator shall have the same duties assigned to administrators.

Which Foundations are Affected?

The Foundations Regulations apply to all foundations whether established for a private interest, benefit or purpose or for the achievement of a social or public benefit or other lawful purpose. This is applicable irrespective of whether the said foundations are registered or not with the Registrar for Legal Persons and shall include voluntary organisations in the form of foundations.

However, the Foundations Regulations are inapplicable in cases of:

- foundations established and controlled, directly or indirectly, by the Government of Malta - where “controlled by the Government” means that the Government enjoys the power to appoint or remove a majority of the administrators of the foundation;
- a foundation which constitutes a pious foundation or an ecclesiastical entity in the form of a foundation in terms of the Foundations Regulations or is a marriage legacy governed by the Marriage Legacies Law; and
- any other type of foundation not referred to above which the Minister, in consultation with the Minister responsible for finance, may by notice designate

How is beneficial ownership information recorded?

A foundation is always required to obtain and hold adequate, up-to-date and accurate information on its beneficial owners, including the details of the beneficial interests held. These shall at least include the following particulars:

- the name, the nationality, the country of residence, the date of birth or in the case of a legal organisation, the date of establishment or of registration and an official identification document number indicating the type of document and the country of issue;
- the effective date when any person became or ceased to be a beneficial owner of the foundation;
- the category of the beneficial owner in relation to the foundation (i.e. the founder, administrator, member of the supervisory council, etc.)

Associations

Who is considered to be a beneficial owner?

The Civil Code (Second Schedule) (Register of Beneficial Owners – Associations), hereinafter referred to as the “the Associations Regulations”, the term beneficial owner shall have the same meaning assigned to it under the PMLFTR as specifically applicable to associations. Under the Associations Regulations, the term “beneficial owners” shall refer to members of the association as well as relevant persons, as the case may be. The latter includes:

- the administrators;
- the protector or members of a supervisory council, if any; and
- any other natural person exercising ultimate and effective control over the association by means of direct or 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 within the association

It is to be noted that members who are entitled to act in general meetings or equivalent and act on the basis of percentages of interests shall not be considered to be relevant persons. In the circumstances when reference is made to a senior managing official on the basis of one’s post as such and not on the basis one’s ownership or control exercised over the association by other means, a clear indication of this is to be given in the register of beneficial owners – relevant persons.

What constitutes ‘material actions’?

The following are all kinds of material actions:

- the amendment of the statute;
- the appointment or removal of administrators or protectors or members of the supervisory council;

- the acceptance of new members or the removal of members or any increase or reduction in ownership interests, or any action affecting the entitlement of a member;
- the continuation of the association in another country;
- the assignment or transfer of all or the majority of the assets of the association;
- the termination of the association; or
- any other actions taken by relevant persons which achieve the same result

Which Associations are Affected?

The Associations Regulations apply to all associations whether established for a private interest, benefit or purpose or for the achievement of a social or public benefit or other lawful purpose. This applies irrespective of whether the said associations are registered or not with the Register for Legal Persons or with any other registrar, commissioner, board or authority in terms of any special law and includes civil partnerships, co-operative societies, sports organisations and voluntary organisations in the form of associations.

However, the following are excluded from the Associations Regulations' applicability:

- any association of persons which is regulated by the Companies Act;
- any association which is established as a condominium association in accordance with the Condominium Act;
- any association which is a trade union or an employers' association;
- any other type of association not referred to above which the Minister, in consultation with the Minister responsible for finance, may by notice designate

How is beneficial ownership information recorded?

Every association is responsible to obtain and at all times hold information which is accurate, adequate and up-to-date in respect of its beneficial owners. These are to include the details of beneficial interests held which are to include the following particulars:

- name, the nationality, the country of residence, the date of birth or in the case of a legal organisation the date of establishment or of registration, and an official identification document number indicating the type of document and the country of issue;
- the effective date when any person became or ceased to be a member, the nature and extent of the beneficial interest held by such member and changes thereto, including the effective date on which his interest in the association has increased or been reduced, if such changes take place;
- the role of the relevant person in relation to the association and the effective date on which a person became, or ceased to be, a relevant person of the association

Every association is to enter the information and details on its respective beneficial owners in a “register of beneficial owners – members” which shall contain information about the members of the association and a “register of beneficial owners – relevant persons” which shall contain information about the persons falling within the definition of relevant person.

Access

Who has access to information on beneficial owners?

The following persons have access to BO information, in a timely manner without any restrictions and without alerting the organisation or the beneficial owner concerned:

- National competent authorities with designated responsibility for combating money laundering or terrorist financing or that have the function of investigating or prosecuting money laundering, associated predicate offences and terrorist financing

- FIAU

- National tax authorities

- Supervisors of subject persons

- Any other national competent authority within the meaning assigned to it under the PMLFTR not already covered above.

Subject persons may be provided with information on a beneficial owner for customer due diligence purposes upon a written request to the Registrar, provided that first, the Subject Person has dealt directly with the organisation and beneficial owners prior to applying to the Registrar for BO information. In case Subject Person is not provided with BO information from the organisation, he may send a written request to the Registrar and submit a list of documents as outlined in article 10(3) of the above-mentioned regulations. Proof that the Subject Person has contacted the organisation and beneficial owners would be required.

Members of the general public may be provided with information on a beneficial owner, provided that they send a written request to the Registrar and submit the documentation listed in article 10(4) of the above-mentioned regulations. Proof that the purpose of the enquiry relates and will contribute to the prevention, detection and combating of money laundering or the associated predicate offences or the financing of terrorism and a general description of how access to the information will so contribute would be required.

Administrative Penalties

What are the penalties that can be incurred?

Penalties will be incurred in case the Form is not submitted within 14 days from date of change.

Regulation	Default	Penalty	Daily Penalty
4	Failure to keep record of beneficial owners	€500	€5
4	Failure to provide information within fourteen (14) days of formal request by the foundation/ association	€500	€5
6	Failure to submit the declarations to the Registrar for Legal Persons within the periods referred to in the regulations 5 & 6	€500	€5
8	Failure to provide information to the Registrar for Legal Persons about a change in the beneficial owners of a foundation/ association within the stated time period	€500	€5

Statutory forms

From where can the forms be downloaded?

The Forms may be downloaded via this link:

<https://mbr.mt/foundassoc-application-forms/>

Other entities

Kindly note that voluntary organisations, sports organisations and co-operatives should consult with the relevant authority. Below please find the respective contact details:

Voluntary organisations

Office of the Commissioner for Voluntary Organisations
Block C, Belt is-Sebh,
Floriana

Website: https://education.gov.mt/en/vo_home/Pages/vo_home.aspx

SportMalta

Cottonera Sports Complex
Cottonera Avenue,
Cospicua

Website: <https://sportmalta.mt/>

Co-operatives

The Co-operatives Board
Dar il-Koperattivi
105, Melita Street,
Valletta

Website: <https://economy.gov.mt/en/coops/Pages/coops.aspx>