

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE
No. 4452 of 05 April, 2018**

LEGAL NOTICE NO. 80 OF 2018.

PROCEEDS OF CRIME ACT 2015

**REGISTER OF ULTIMATE BENEFICIAL OWNERS
(AMENDMENT) REGULATIONS 2018**

In exercise of the powers conferred upon it by section 184 of the Proceeds of Crime Act 2015 and for the purpose of transposing, in part, 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, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, the Government has made the following Regulations-

Title.

1. These Regulations may be cited as the Register of Ultimate Beneficial Owners (Amendment) Regulations 2018.

Commencement.

2. These Regulations come into operation the day of publication.

Amendments to the Register of Ultimate Beneficial Owners Regulations 2017.

3.(1) The Register of Ultimate Beneficial Owners Regulations 2017 are amended in accordance with this regulation.

(2) In regulation 3(1)-

(a) in the definition “beneficial owner”-

(i) for paragraph (a)(ii) substitute-

“(ii) if, after having exhausted all possible means and provided there are no grounds for suspicion, no person under subparagraph (i) is identified, or if

there is any doubt that the person identified is the beneficial owner, the natural persons who hold the positions of senior managing officials;”,

- (ii) in paragraph (c) for “subparagraph (b)” substitute “paragraph (b)”;
- (b) in the definition “express trust” after “generates tax consequences” insert “in Gibraltar and unless the context does not admit such an interpretation, includes legal arrangements similar to trusts that are governed by Gibraltar law and which generate tax consequences in Gibraltar and foundations”
- (c) after the definition “financial institution” insert the following definition-

““foundation” means a foundation to which the Private Foundations Act 2017 applies and which generates tax consequences in Gibraltar;”;

- (d) after subregulation (4) insert-

“(5) In these Regulations-

- (a) an obligation imposed on;
- (b) a notification addressed to or served on;
- (c) a penalty or other sanction; and
- (d) anything required to be done or not to be done by,

an express trust must be construed as applying to the trustee of that express trust, and where there is more than one trustee to each and every trustee.”.

- (3) In regulation 6-

- (a) subregulation (3) is revoked;
- (b) in subregulation (5) for “member” substitute “shareholder”.

(4) Regulation 7 is revoked.

(5) For regulation 8(1) substitute-

“8.(1) A corporate or legal entity incorporated in Gibraltar must further to regulation 6 provide the information referred to in that regulation (“the information”) to the Registrar in accordance with this regulation.”.

(6) After regulation 8 insert-

“Duty on UBO to notify his existence: corporate or legal entity.

8A.(1) Where a person is an ultimate beneficial owner of a corporate or legal entity incorporated in Gibraltar that person must inform the that corporate or legal entity, in accordance with subregulation (2), of their status as an ultimate beneficial owner.

(2) Where a person becomes an ultimate beneficial owner after the coming into operation of this regulation, within 15 days of becoming an ultimate beneficial owner.

(3) Regulations 42 (power to impose civil penalties) and 43 (appeals) apply to a breach of this regulation save that references in those regulations to “an express trust, a corporate or legal entity” must be read as a reference to the ultimate beneficial owner to whom subregulation (1) applies.”.

(7) In regulation 9-

(a) in subregulation (2) for “Subject to subregulation (3).” substitute “A”;

(b) subregulation 9(3) is revoked.

(8) Regulation 10 is revoked.

(9) After regulation 11 insert-

“Foundations and other structures similar to trusts

Foundations and other structures similar to trusts.

11A.(1) For the avoidance of doubt, the obligations set out in regulations 9 and 11 shall apply to-

- (a) a foundation; and
 - (b) any legal arrangement made in Gibraltar that has a structure or functions in a similar manner as a trust and has tax consequences in Gibraltar.
- (2) For the purposes of subregulation (1) any references in regulations 9 and 11 to the trust, settlor, trustees, protector and beneficiaries are to be interpreted as a reference to the nearest equivalent for the foundation or other legal arrangement referred to therein.

Other Registerable Person

Other Registerable Person.

11B.(1) In a case where either regulation 6(4) or 9(4) applies and the beneficial owner is an Other Registrable Person, the requirements of those provisions are satisfied by the provision of information on the particulars of the Other Registerable Person.

- (2) For the purposes of subregulation (1) an Other Registerable Person is-
- (a) a corporation sole;
 - (b) a government or government department of a country or territory or part of a country or territory;
 - (c) an international organisation whose members include two or more countries or territories or their governments;
 - (d) a local authority or local government body in Gibraltar or elsewhere.

Relevant Legal Entity

Relevant Legal Entity.

- 11C.(1) In a case where either regulation 6(4) or 9(4) applies and the beneficial owner is a Relevant Legal Entity, the requirements of those provisions are satisfied by the provision of information identifying the Relevant Legal Entity.
- (2) For the purposes of subregulation (1) a Relevant Legal Entity is a company or other body corporate with shares admitted to trading on a regulated market situated in the European Economic Area or a regulated market outside the European Economic Area that is subject to disclosure requirements consistent with European Union law or subject to equivalent international standards which ensure adequate transparency of ownership information and which is set out in Schedule 3.
- (3) The Minister may by Notice in the Gazette amend Schedule 3 by adding, deleting or otherwise altering any entry therein.”
- (10) In regulation 12-
- (a) after subregulation (1) insert-
- “(1A) A corporate or legal entity incorporated in Gibraltar must keep records of the actions taken in order to identify the beneficial owners.”;
- (b) in subregulation (11)(b)(i) for “regulation 6 or regulation 9” substitute “regulations 8, 11 or 11A”.
- (11) In regulation 13-
- (a) in subregulation (1) for “regulation 6 or regulation 9” substitute “regulations 8, 11 or 11A”;
- (b) in subregulation (3) for “regulation 8 or regulation 11” substitute “regulations 8, 11 or 11A”.
- (12) In regulation 15 for “16” substitute “18”.

(13) Regulations 16 and 17 are revoked.

(14) For regulation 18(1)(b) substitute-

“(b) all the required particulars of that person have not been confirmed for the purposes of-

- (i) regulation 8;
- (ii) regulation 11; or
- (iii) regulation 11A.”

(15) Regulation 19 is revoked.

(16) In regulation 26-

(a) in subregulation (4) for “subsection (1)(d)” substitute “subregulation (1)(d)”;

(b) after subregulation (5) insert-

“(5A) The Registrar must by notice inform, by whatever means he deems appropriate, the beneficial owner where he intends to accede to a request under subregulation (1)(c) or (d), and a notice given under this subregulation shall be deemed to have been received by the beneficial owner 14 working days after it is issued and the Registrar must not accede to a request under subsection (1)(c) or (d), if the beneficial owner exercises the right of appeal under regulation 26A and the matter is before the Supreme Court.”.

(17) After regulation 26 insert-

“Appeal against decision.

26A.(1) A person who is aggrieved by the decision of the Registrar under regulation 26 may, within 14 days of notification of the Registrar’s decision, appeal to the Supreme Court.

(2) In considering an appeal under this regulation the Supreme Court must consider whether the Registrar was correct in acceding to or refusing the request in particular as regards the application of the Directive, and it may confirm, quash or substitute the Registrar's decision or make such other orders as it deems appropriate."

(18) In regulation 31(2)(e) after the words "application is made" insert "which includes the applicable exceptional circumstances".

(19) In regulation 33(1)(c) for "paragraph (1)(b)" substitute "paragraph (b)".

(20) In regulation 37-

(a) in subregulation (1)(b) for "subparagraph (2)" substitute "subregulation (2)";

(b) in subregulation (2) for "paragraph (1)(b)" substitute "subregulation (1)(b)";

(c) in subregulation (3) for "paragraph (2)(b)" substitute "subregulation (2)(b)".

(21) After regulation 37 insert-

"Further appeal.

37A. A person who is aggrieved by the decision of the Registrar under regulation 37 may within 14 days of the Registrar's decision appeal to the Supreme Court.

(2) In determining an appeal under subregulation (1) the Supreme Court may confirm, quash or substitute the Registrar's decision and make such other orders as it deems appropriate."

(22) In regulation 42-

(a) for subregulation (1) substitute-

"42.(1) The Registrar may impose a penalty of such amount as he considers appropriate, not exceeding £10,000.00, on an express trust, corporate or legal

entity incorporated in Gibraltar who fails to comply with any requirement in regulations 6(1), 6(2), 8(1), 8(4), 9(1), 9(2), 11(1), 11(4), 11A(1), 12(1), 12(2), 13(2), 15, 18(2), 20(2), 21(2), 22(2), 23(2), 23(3) or 23(4).”.

(b) in subregulation (4)(b)(iii) for “20” substitute “43”.

(23) In regulation 45-

(a) for subregulation (1) substitute-

“45.(1) A an express trust, corporate or legal entity incorporated in Gibraltar who fails to comply with any requirement in regulations 6(1), 6(2), 6(5), 8(1), 8(4), 9(1), 9(2), 11(1), 11(4), 11A, 12(1), 12(2), 13(2), 15, 18(2), 20(2), 21(2), 22(2), 23(2), 23(3) and 23(4), is guilty of an offence and is liable-

(a) on summary conviction, to a fine not exceeding level 5 on the standard scale;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, to a fine or to both.”;

(b) in subregulation (2) for “paragraph (1)” substitute “subregulation (1)”.

(24) For regulation 47 substitute-

“47.(1) Where a company or a legal entity incorporated in Gibraltar has committed an offence under regulation 45, and it shown-

(a) to have been committed with the consent or the connivance of an officer of the company or by a person in a legal entity holding a position equivalent to an officer of a company; or

(b) to be attributable to any neglect on his part,

then in addition to the company or legal entity, any officer of the company and any person in a legal entity holding a position equivalent to an officer of the company is guilty of an offence and liable to be proceeded against and punished accordingly.

(2) Where an offence under regulation 45 had been committed, and it shown-

(a) to have been committed with the consent or the connivance of a trustee of an express trust; or

(b) to be attributable to any neglect on his part,

then that trustee is guilty of an offence and liable to be proceeded against and punished accordingly.”.

(25) In Schedule 1, for paragraph 13(2) substitute-

“(2) Where the person is a corporate or legal entity, an offence is also committed by every officer of the corporate or legal entity who is in default.”.

(26) For Schedule 3 substitute-

“SCHEDULE 3

Regulation 11C

LIST OF NON-EEA MARKETS

In Israel—

— Tel Aviv Stock Exchange

In Japan—

— Fukuoka Stock Exchange

— Nagoya Stock Exchange

— Osaka Securities Exchange

— Sapporo Securities Exchange

— Tokyo Stock Exchange

In Switzerland—

— BX Berne Exchange

— SIX Swiss Exchange

- In the United States of America—
- BATS Exchange, Inc.
 - BATS Y-Exchange, Inc.
 - BOX Options Exchange LLC
 - C2 Options Exchange, Incorporated
 - Chicago Board Options Exchange, Incorporated
 - Chicago Stock Exchange, Inc.
 - EDGA Exchange, Inc.
 - EDGX Exchange, Inc.
 - International Securities Exchange, LLC
 - ISE Gemini LLC
 - Miami International Securities Exchange LLC
 - NASDAQ OMX BX, Inc.
 - NASDAQ OMX PHLX LLC
 - The NASDAQ Stock Market LLC
 - National Stock Exchange, Inc.
 - New York Stock Exchange LLC
 - NYSE Arca, Inc.
 - NYSE MKT LLC”.

Dated 5th April, 2018.

A J ISOLA,
for the Government.

EXPLANATORY MEMORANDUM

These Regulations amend the Register of Ultimate Beneficial Owners (Amendment) Regulations 2018.

GIBRALTAR GAZETTE, No 4452, Thursday 05 April, 2018

**Government Printers for Gibraltar,
Copies may be purchased at 6, Convent Place, Price £0.60**