



**The Disclosure of Companies' Beneficiaries  
The implementation of the 5th AML Directive  
Trusts in the scene**

### **The 5<sup>th</sup> AML Directive**

As per the 5<sup>th</sup> AML EU Directive, (the "Directive") member states should import the Directive into national legislation.

As per the provisions of the Directive, each company / legal entity, MUST declare its ultimate beneficial owners, physical persons, holding more than 25% of beneficial interest in the company / legal entity, to the public registry of beneficiaries for companies / legal entities, the "Companies' Registry", that it will be created for this purpose and their names will be open to the public.

### **The Council of Ministers decision dated 16/12/2020**

The Council of Ministers, during its meeting on 16/12/2020, on the basis of a relevant proposal of the "Advisory Authority for Combating Money Laundering and Terrorist Financing", which was made pursuant to the provisions of Article 57 (b) of "on Preventing and Combating Money Laundering and Terrorist Financing Laws from 2007 to 2019" decided to:

1. Appoint the Registrar of Companies and Official Receiver, of the Ministry of Energy, Trade and Industry, as the competent authority for the maintenance of the central Register of the Real Beneficiaries of companies and other legal entities and
2. Authorize him to collect information about the real beneficiaries of companies and other legal entities through the intermediary system solution that has been developed.

### **The Registrar of Companies announcement dated 21/12/2020**

Based on the above, the Department of the Registrar of Companies on 21/12/2020 announced that the starting date of data collection for companies is set for Monday, 18.01.2021.

From this date, the companies will be granted a period of 6 months (i.e., until 19/7/2021) for recording in the system that has been developed, the information concerning the real beneficiaries of their legal entity. It is emphasized that the system that has been developed is an intermediary solution and access to it will only be granted to competent authorities, upon relevant request to the Registrar of Companies.

The information collected will be transferred to the final system solution to be developed in the second half of 2021 and access to it will be based on the provisions of the 5th European Directive (EU 2018/843) of the European Parliament and of the Council of 30 May 2018, concerning the prevention of money laundering and terrorist financing.

The companies are invited to start collecting the above information which they should already have in their possession, based on the provisions of article 61 (A) of the "On Preventing and Combating Money Laundering and Terrorist Financing Law of 2007, as amended. In addition, these data are kept in some cases by liable entities that provide services to companies under the provisions of Articles 2A (d), 60 and 61 of the above Law in the context of the exercise of due diligence measures and on the basis of the provisions of the "Law Regulating the Businesses Providing Administrative Services and Related Matters of 2012, Law No. 196(I)/2012, as amended. In case it is deemed necessary, the provision of legal advice is recommended.

The Companies Registrar will return in due course with more information and the relevant link for submitting this information.

The Companies' Registry, once the system will be developed, will be open to the public and in this respect, any person or governmental authority, may have access and get the information as to who the ultimate beneficiaries of companies are, holding share percentage more than 25%.

### **Corporate structures – Beneficiaries as direct shareholders**

In such structures the beneficiaries are already disclosed and any information submitted will clarify the relationship of the registered shareholder as the ultimate beneficiary holding more than 25% of the shares issued.

### **Nominee corporate structures**

In those companies where nominee shareholders are used, the ultimate beneficial owners holding more than 25% of the shares issued, will be disclosed to the Companies' Registry and the information therein will be accessible to the public.

### **Trust corporate structures**

The Directive creates a separate registry for trusts. This is the trust registry for beneficiaries of trusts, the "Trusts' Registry". In this case, the trustees of a particular trust are obliged to disclose in the Trusts' Registry to be created, the ultimate beneficiaries of the particular trust. The difference with the Companies' Registry, is that the Trusts' Registry, will not be open to the public.

### **Which trusts are to be disclosed?**

The disclosure obligations will apply to trustees of express trusts administered in a member state (regardless of the governing law of the trust).

**Express trusts** are those created by the express clear intention of the settlor (intentionally), or the express and clear declaration of the person to whom the property is vested, the trustee, to the benefit of a particular beneficiary or for a purpose.

The obligation of disclosure is in place regardless of whether the trusts have taxable consequences in the member state as the 4<sup>th</sup> AML directive provided.

The trustees will need to disclose and register beneficial ownership information on all existing trusts as well as new trusts created after the legislation comes into effect.

The Directive will also extend the registration obligation to non-EU trustees of express trusts which form a business relationship or acquire real estate in a member state.

The Directive applies the same obligations to persons holding equivalent positions in other types of legal arrangements having a structure or effect similar to trusts, such as "fiducie" and certain types of "Treuhand" or "fideicomiso" – the French, German and Spanish fiduciary notions similar to trusts respectively).

### **Conditions for having access to the Trusts' Registry**

As per the Directive, only the authorities and persons that can demonstrate legitimate interest and proving same through relevant procedure to be implemented, may have access to the Trusts' Registry. The conditions for the "legitimate interest" test, must be defined in the law by each individual member state.

Access to the Trusts' Registry must also be granted to any member of the public in relation to a trust which holds or owns a controlling interest in a company that is not incorporated in the EU (and is therefore not included in any member state's register of Companies' Registry).

Member states must put in place mechanisms to ensure that information on beneficial ownership in the registers of companies and trusts is "*adequate, accurate and current*"; and member states will have to ensure interconnection between each member states' registers of companies and trusts via an EU "Central Platform". The Trusts' Registry must have been set up by the 10<sup>th</sup> of March 2020.

Based on the Council of Ministers' decision of 16/12/2020 mentioned above, it is expected that relevant provisions and system must be set up for the Trust structures as well.

### **Important Difference between corporate structures – Nominees in place and Trust structures.**

The corporate structure where a trust is used as a shareholder and not a nominee or the beneficiary is a direct shareholder, gives additional protection to the ultimate beneficial owners as their identity will not be open to the public at large BUT only if legitimate interest is shown and accepted under certain procedure to be provided.

It remains to be clarified by the law / regulations implementing the Directive how this will be implemented. Certain legal or other procedures to be followed will be set down in order to disclose the information related to the beneficiaries of a trust, to those proving legitimate interest.

### **Creation of an express trust**

The creation of an express trust might be a step to be considered under a proper case, having in mind the benefits of trusts as a whole.

### **Important note as to the implementation of the Directive**

There might be complications subject to the way the Directive will be implemented. If a company has as its shareholder a trust, (not a nominee shareholder), the proper approach to follow in such a case, would be the company officials to declare to the Companies' Registry only the name of the trust in place. In such a case, the beneficiaries

of the trust will not be disclosed in the Companies' Registry. The implementing law / regulation should provide that the beneficiaries of a trust should be disclosed only in the Trusts' Registry.

If the beneficiaries of a trust are disclosed in the Companies' Registry, the provisions of the Directive to be implemented as to the beneficiaries of a trust, providing that such information is given only upon proof of legitimate interest, will be defeated as the Companies' Registry will be open to the public. There will be a breach of the provisions of the Directive in case of such implementation.

So far though, there has not been any governmental guidance as to this possible complication and how they will implement the Directive related to trusts.

We expect that the provisions of the Directive will be honoured and the beneficiaries of a trust will not be disclosed without the appropriate procedure showing legitimate interest as provided in the Directive.

Our view is that the beneficiaries of a trust should be declared ONLY in the Trusts' Registry and not in the Companies' Registry, as otherwise the clear provisions of the Directive will be defeated.

## **DISCLAIMER**

This publication has been prepared as a general guide and for information purposes only. It is not a substitution for professional advice. One must not rely on it without receiving independent advice based on the particular facts of his/her own case. No responsibility can be accepted by the authors or the publishers for any loss occasioned by acting or refraining from acting on the basis of this publication.

**December 2020**

### **Author**

**Christos Kinanis**

Lawyer – Managing Partner

Kinanis LLC

[Christos.Kinanis@kinanis.com](mailto:Christos.Kinanis@kinanis.com)

## OUR FIRM

We are a Law Firm with offices in Cyprus and Malta and a representative office in Shanghai China comprising of more than 50 lawyers, accountants and other professionals who advise, international and local clients.

The Firm has been offering legal and consulting services since 1983 evolving from a traditional law firm to an innovative cutting-edge multidisciplinary law firm combining exceptional expertise in law, tax, vat and accounting.

From its establishment the Firm's focus has been heavily business oriented and always abreast with the latest global developments and innovations. Drawing from our pool of experienced professionals we provide our clients' businesses full legal and accounting support on an everyday basis as well as customized solutions in today's global financial and legal challenges.

We consider ourselves as 'traditional pioneers' and our motto is to foresee and anticipate any issues that may potentially impact our clients' business and to offer effective advice and solutions proactively.

### **Kinanis LLC**

Lawyers' Limited Company  
12 Egypt Street, 1097, Nicosia  
P.O. Box 22303, 1520 Nicosia, Cyprus  
Tel: + 357 22 55 88 88 – Fax: + 357 22 66 25 00  
E-mail: [KinanisLLC@kinanis.com](mailto:KinanisLLC@kinanis.com) – Web site: [www.kinanis.com](http://www.kinanis.com)

### **Kinanis**

Civil Partnership, Law Firm  
**Kinanis Fiduciaries Limited**  
Suite 20, The Penthouse, 4th Floor, Ewropa Business Centre,  
Dun Karm Street, Birkirkara, BKR 9034, Malta  
Tel: + 356 27 54 00 24, Fax: + 356 27 54 00 25  
E-mail: [malta@kinanis.com](mailto:malta@kinanis.com) Website: [www.kinanis.com](http://www.kinanis.com)

### **Kinanis (China) Limited**

China Representative Office  
Unit 661, 6/F CIROS PLAZA,  
388 Nanjing West Road, Huangpu District,  
Shanghai City, 200003, China  
Tel: + 86 18 410 072 690  
E-mail: [china@kinanis.com](mailto:china@kinanis.com) Website: [www.kinanis.com](http://www.kinanis.com)