

12, September 2022

Dr George Theocharides
Chairman
Cyprus Securities and Exchange Commission (CySEC)

Dear Dr Theocharides

Subject: Issues related with CySEC Directive on Register of Beneficial Owners of Express Trusts and Similar Legal Arrangements

On behalf of the Cyprus Fiduciary Association and STEP Cyprus, we would like to bring to your attention the following issues that are of concern to industry members:

1. Conflicting Definition of Similar Legal Arrangements vs Definition of Express Trust

A review of The Prevention and Suppression of Money Laundering and Terrorist Financing Law of 2007 to 2021 (“AML Law”) and of the Directive on the Register of Beneficial Owners of Express Trusts and Similar Legal Arrangements (“CyTBOR Directive”) suggests that the definition of **Similar Legal Arrangements vs the definition of Express Trust, requires further interpretation as it leads to conflicting conclusions.**

Specifically in the AML Law a “similar legal arrangement” means a legal arrangement whose structure or functions are similar to those of a trust, ***and it is included in the list published by the Commission under the provisions of article 31(10) of the EU Directive.*** The above in practice restricts the Similar Legal Arrangements to only those Similar Legal Arrangements listed in the “List of trusts and similar legal arrangements governed under the law of the Member States as notified to the Commission” (“the EU List”). Further it does not include any Trusts or Similar Legal Arrangements that are not included on the EU List.

The issue that arises is that the definition of Trusts provided in the CyTBOR Directive in which **no reference is made to the EU List** follows a different approach to the definition of Similar Legal Arrangements in the AML Law that makes reference to the EU List.

To that extent we are of the opinion that the reference to the EU List in the AML Law in the definition of Similar Legal Arrangement should similarly be incorporated in the definition of Express Trust in the CyTBOR Directive to ensure consistency between the two definitions. The conflicting definitions as currently set, appear to create a different approach as to what is ‘In Scope’

for CyTBOR filing and this requires clarification as to the correct interpretation on the Similar Legal Arrangements and Trusts that are 'In Scope' or 'Out of Scope' for filing their UBO in CyTBOR.

2. Business relationship by a trustee of an express trust established or resident outside the EU

Points 12 and 13 of the Cyprus Beneficial Register of Express Trusts Q &A indicate that a *Trustee outside the EU has the responsibility to establish* whether it has entered into a business relationship in Cyprus and hence proceed with relevant registration to CyTBOR.

The first issue that arises relates to the obligations of service providers that have established business relationship with such foreign trustees. Specifically, questions arise as to a) how the foreign trustee is to be informed of the requirement and b) whether the said service providers are the obliged entities responsible to firstly inform the foreign trustee of the reporting requirement and secondly ensure its compliance or report its non-compliance. Taking the above into consideration, it is our opinion that the role and obligations of the service providers in the above stated case require further clarification and/or guidance by CySEC.

Secondly it is very important to be clarified as to the cases where a foreign trust, having a Cyprus subsidiary is considered to form a 'business relationship'. This is essential as it will define the relationship and the duties of each entity.

3. Controlling Interest of a Trust or Similar Legal Arrangement registered with CyTBOR

The CyTBOR System contains the following mandatory YES or NO question: "This Trust or this legal arrangement similar to trust holds or owns a controlling interest in any corporate or other legal entity other than those refer in Articles 61A(1) or 61B(1) or incorporated in another Member State, through direct or indirect ownership, including through bearer shareholdings, or through control via other means?"

An affirmative answer to this question, leads to further requirement to name and provide certain information for such corporate or other legal entity.

We are of the opinion that the above question and request for such additional information relates to the assets held by the Trust and not with the beneficial owners of the Trust. Therefore, it is excessive, disproportional and not in line with the scope and purpose of CyTBOR to collect **beneficial ownership information** regarding the Trust that includes the identity of the Settlor(s),

Trustee(s), Protector(s) (if any), the Beneficiaries or Class of Beneficiaries and any other natural person exercising effective control of the Trust.

Additionally, we note that neither the AML Law nor the CyTBOR Directive makes any reference regarding the need for collection of information on corporate or legal entities in which the Trust or Similar Legal Arrangement has a controlling interest. We are of the opinion that the above question and additional requested information appears to exceed the legal obligations as per the AML Law and the CyTBOR Directive.

To that extend we would hereby like to raise our objection for the need to collect such information and we kindly request CySEC to review the relevant requirement.

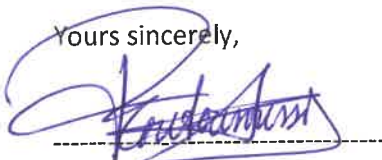
4. Generation of Reports from CyTBOR

In relation to the CyTBOR system, we would like to bring to your attention that the system does not seem to allow the generation of a printable Report with the uploaded information. We consider that such a function is essential as it will provide the opportunity for the user to print and double check the information uploaded to ensure no errors or typos. In addition, we consider that printing and/or extracting an electronic version of all the information provided is necessary for ensuring compliance and record keeping purposes. The function should be available pre and post publication of the Trust or Similar Legal Arrangement.

We therefore have the opinion that CySEC should consider a technological update of the CyTBOR system to ensure such an essential functionality.

We remain at your disposal.

Yours sincerely,



Chris Koutouroussis
President



Stella Kammitisi
President

