

Registered at the EFTA Court under N° E-1/24-12 on 26th of March 2024

TO THE PRESIDENT AND MEMBERS OF THE EFTA COURT

WRITTEN OBSERVATIONS

Submitted pursuant to Article 20 of the Statute of the EFTA Court by

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in Case E-1/24

concerning an application submitted pursuant to Article 34 of the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice by the Administrative Court of the Principality of Liechtenstein (Verwaltungsgerichtshof des Fürstentums Liechtenstein) (hereinafter referred to as “Administrative Court”), in the case:

TC

Applicant / Appellant

requesting an advisory opinion regarding the interpretation of Article 30 of Directive (EU) 2015/849, as amended by Directive (EU) 2018/843, on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing .

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1. Introduction

- 1 The request for advisory opinion concerns the disclosure of information from the transparency register pursuant to Article 30 of Directive (EU) 2015/849, as amended by Directive (EU) 2018/843, on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (Anti Money Laundering Directive – hereinafter also referred to as «AMLD»), as implemented in Liechtenstein law, Art 17 Act on the Register of Beneficial Owners of Legal Entities (Gesetz über das Verzeichnis der wirtschaftlich berechtigten Personen von Rechtsträgern – hereinafter also referred to as «VwbPG»).

2. Law

2.1. EEA Law

- 2 Article 30 of Directive (EU) 2015/849, as amended by Directive (EU) 2018/843 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (AMLD) stipulates the following (author's emphasis):

« 1. Member States shall ensure that corporate and other legal entities incorporated within their territory are required to obtain and hold **adequate, accurate and current information on their beneficial ownership, including the details of the beneficial interests** held. [...]

5. Member States shall ensure that the information on the beneficial ownership is **accessible in all cases** to: [...]

(c) any person or organisation that can demonstrate a legitimate interest.

The persons or organisations referred to in point (c) shall access **at least the name, the month and year of birth, the nationality and the country of residence of the beneficial owner as well as the nature and extent of the beneficial interest held.**»

- 3 Recitals 25 - 36 of Directive (EU) 2015/849, as amended by Directive (EU) 2018/843 are essential for the interpretation in the matter at hand. The key passages from the complainant's point of view are as follows (author's emphasis):

« (25) Member States are currently required to ensure that corporate and other legal entities incorporated within their territory obtain and hold adequate, accurate and current information on their beneficial ownership. **The need for accurate and up-to-date information on the beneficial owner is a**

key factor in tracing criminals who might otherwise be able to hide their identity behind a corporate structure. The globally interconnected financial system makes it possible to hide and move funds around the world, and money launderers and terrorist financiers as well as other criminals have increasingly made use of that possibility. [...]

(27) [...] **The aim of the national law transposing those provisions should be to prevent the use of trusts or similar legal arrangements for the purposes of money laundering, terrorist financing or associated predicate offences.**

(28) With a view to the different characteristics of trusts and similar legal arrangements, Member States should be able, under national law and in accordance with data protection rules, to determine the level of transparency with regard to trusts and similar legal arrangements that are not comparable to corporate and other legal entities. The risks of money laundering and terrorist financing involved can differ, based on the characteristics of the type of trust or similar legal arrangement and the understanding of those risks can evolve over time, for instance as a result of the national and supranational risk assessments. For that reason, it should be possible for Member States to **provide for wider access to information on beneficial ownership of trusts and similar legal arrangements, if such access constitutes a necessary and proportionate measure with the legitimate aim of preventing the use of the financial system for the purposes of money laundering or terrorist financing.** When determining the level of transparency of the beneficial ownership information of such trusts or similar legal arrangements, Member States should have due regard to the protection of fundamental rights of individuals, in particular the right to privacy and protection of personal data. **Access to beneficial ownership information of trusts and similar legal arrangements should be granted to any person that can demonstrate a legitimate interest.** Access should also be granted to any person that files a written request in relation to a trust or similar legal arrangement which holds or owns a controlling interest in any corporate or other legal entity incorporated outside the Union, through direct or indirect ownership, including through bearer shareholdings, or through control via other means. **The criteria and conditions granting access to requests for beneficial ownership information of trusts and similar legal arrangements should be sufficiently precise and in line with the aims of this Directive.** It should be possible for Member States to refuse a written request where there are reasonable grounds to suspect that the written request is not in line with the objectives of this Directive.

(29) In order to ensure legal certainty and a level playing field, it is essential to clearly set out which legal arrangements established across the Union should be considered similar to trusts by effect of their functions or structure. Therefore, each Member State should be required to identify the trusts, if recognised by national law, and similar legal arrangements that may be set up pursuant to its national

legal framework or custom and which have structure or functions similar to trusts, such as enabling a separation or disconnection between the legal and the beneficial ownership of assets. Thereafter, Member States should notify to the Commission the categories, description of the characteristics, names and where applicable legal basis of those trusts and similar legal arrangements in view of their publication in the Official Journal of the European Union in order to enable their identification by other Member States. It should be taken into account that trusts and similar legal arrangements may have different legal characteristics throughout the Union. **Where the characteristics of the trust or similar legal arrangement are comparable in structure or functions to the characteristics of corporate and other legal entities, public access to beneficial ownership information would contribute to combating the misuse of trusts and similar legal arrangements, similar to the way public access can contribute to the prevention of the misuse of corporate and other legal entities for the purposes of money laundering and terrorist financing.**

(30) **Public access to beneficial ownership information allows greater scrutiny of information by civil society, including by the press or civil society organisations, and contributes to preserving trust in the integrity of business transactions and of the financial system. It can contribute to combating the misuse of corporate and other legal entities and legal arrangements for the purposes of money laundering or terrorist financing, both by helping investigations and through reputational effects, given that anyone who could enter into transactions is aware of the identity of the beneficial owners.** It also facilitates the timely and efficient availability of information for financial institutions as well as authorities, including authorities of third countries, involved in combating such offences. **The access to that information would also help investigations on money laundering, associated predicate offences and terrorist financing.**

(31) **Confidence in financial markets from investors and the general public depends in large part on the existence of an accurate disclosure regime that provides transparency in the beneficial ownership and control structures of companies.** This is particularly true for corporate governance systems that are characterised by concentrated ownership, such as the one in the Union. On the one hand, large investors with significant voting and cash-flow rights may encourage long-term growth and firm performance. **On the other hand, however, controlling beneficial owners with large voting blocks may have incentives to divert corporate assets and opportunities for personal gain at the expense of minority investors.** The potential increase in confidence in financial markets should be regarded as a positive side effect and not the purpose of increasing transparency, which is to create an environment less likely to be used for the purposes of money laundering and terrorist financing.

(32) Confidence in financial markets from investors and the general public depends in large part on the existence of an accurate disclosure regime that provides transparency in the beneficial ownership and control structures of corporate and other legal entities as well as certain types of trusts and similar legal arrangements. Member States should therefore allow access to beneficial ownership information in a sufficiently coherent and coordinated way, by establishing clear rules of access by the public, so that third parties are able to ascertain, throughout the Union, who are the beneficial owners of corporate and other legal entities as well as of certain types of trusts and similar legal arrangements.

(33) **Member States should therefore allow access to beneficial ownership information on corporate and other legal entities in a sufficiently coherent and coordinated way, through the central registers in which beneficial ownership information is set out, by establishing a clear rule of public access, so that third parties are able to ascertain, throughout the Union, who are the beneficial owners of corporate and other legal entities. It is essential to also establish a coherent legal framework that ensures better access to information relating to beneficial ownership of trusts and similar legal arrangements,** once they are registered within the Union. Rules that apply to trusts and similar legal arrangements with respect to access to information relating to their beneficial ownership should be comparable to the corresponding rules that apply to corporate and other legal entities.

(34) In all cases, both with regard to corporate and other legal entities, as well as trusts and similar legal arrangements, **a fair balance should be sought in particular between the general public interest in the prevention of money laundering and terrorist financing and the data subjects' fundamental rights.** The set of data to be made available to the public should be limited, clearly and exhaustively defined, and should be of a general nature, so as to minimise the potential prejudice to the beneficial owners. At the same time, information made accessible to the public should not significantly differ from the data currently collected. In order to limit the interference with the right to respect for their private life in general and to protection of their personal data in particular, that information should relate essentially to the status of beneficial owners of corporate and other legal entities and of trusts and similar legal arrangements and should strictly concern the sphere of economic activity in which the beneficial owners operate. In cases where the senior managing official has been identified as the beneficial owner only ex officio and not through ownership interest held or control exercised by other means, this should be clearly visible in the registers. With regard to information on beneficial owners, Member States can provide for information on nationality to be included in the central register particularly for non-native beneficial owners. In order to facilitate registry procedures and as the vast majority of beneficial owners will be nationals of the state maintaining the central register, Member States may presume a beneficial owner to be of their own nationality where no entry to the contrary is made.

(35) **The enhanced public scrutiny will contribute to preventing the misuse of legal entities and legal arrangements, including tax avoidance.** Therefore, it is essential that the information on beneficial ownership remains available through the national registers and through the system of interconnection of registers for a minimum of five years after the grounds for registering beneficial ownership information of the trust or similar legal arrangement have ceased to exist. However, Member States should be able to provide by law for the processing of the information on beneficial ownership, including personal data for other purposes if such processing meets an objective of public interest and constitutes a necessary and proportionate measure in a democratic society to the legitimate aim pursued.

(36) Moreover, with the aim of ensuring a proportionate and balanced approach and to guarantee the rights to private life and personal data protection, it should be possible for Member States to provide for exemptions to the disclosure through the registers of beneficial ownership information and to access to such information, in exceptional circumstances, where that information would expose the beneficial owner to a disproportionate risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation. It should also be possible for Member States to require online registration in order to identify any person who requests information from the register, as well as the payment of a fee for access to the information in the register.

- 4 The principle of effectiveness is a principle frequently used by the Court of Justice of the European Union to secure the authority of EU law over national law. The principle of effectiveness also means that the procedural rules for enforcing the rights that individuals derive from EU law must not make it practically impossible or excessively difficult to exercise these rights.¹

2.2. National Law in Liechtenstein

- 5 Art 17 Act on the Register of Beneficial Owners of Legal Entities (Gesetz über das Verzeichnis der wirtschaftlich berechtigten Personen von Rechtsträgern – VwbPG) states (author's emphasis):

„Article 17 Disclosure of data to third parties

1) Domestic and foreign persons and organisations may for a fee request from the Office of Justice that the data of unattached legal entities specified in Annex 1 entered in the Register be disclosed.

2) The application referred to in paragraph 1 shall be submitted to the Office of Justice. It shall contain the following information and documents:

¹ See e.g. CJEU C-71/14 East Sussex County Council, para. 54-55; C-416/10 Križan, para. 106 :

a) information on the Applicant:

1. in the case of natural persons: surname, first name and address;

2. in the case of legal entities and organisations: firm name, name or designation and address, purpose and domicile as well as the surname and first name of the natural person authorised to represent it; the power of representation must be proven;

*b) **firm name or name of the unattached legal entity specified in Annex 1 whose data are to be disclosed**; and*

c) a statement that the data from the Register are required for the prevention of money laundering, predicate offences to money laundering and terrorist financing.

3) ...

4) Domestic and foreign persons and organisations may for a fee request from the Office of Justice in relation to legal entities that cannot be deemed unattached legal entities specified in Annex 1 that the data entered in the Register be disclosed. This shall not apply to the data of founders and protectors who do not exercise control of a non-unattached legal entity specified in Annex 1. This shall be without prejudice to Articles 13, 15 and 16.

5) The application referred to in paragraph 4 shall be submitted to the Office of Justice. It shall contain the following information and documents:

a) information on the Applicant:

1. in the case of natural persons: surname, first name and address;

2. in the case of legal entities and organisations: firm name, name or designation and address, purpose and domicile as well as the surname and first name of the natural person authorised to represent it; the power of representation must be proven;

*b) **firm name or name of the legal entity whose data are to be disclosed**;*

c) information on the intended use of the information requested; and

d) proof of a legitimate interest as specified in paragraph 6 or of a controlling interest as specified in paragraph 7.

10) The Office for Justice shall forward the application referred to in paragraph 4, including the associated documents referred to in paragraphs 5 and 8, to the VwbP Commission for a decision.”

3. Subject matter of the proceedings, facts of the case

3.1. Division of the Chowgule Group reveals offshore structures and assets

- 6 The Chowgule Group², based in Goa, India, was founded in 1916 by Vishwasrao D. Chowgule. He and his brother, **Yeshwantrao D. Chowgule ("YDC")**, father of the Applicant, and to a lesser extent Laxmanrao D. Chowgule, another brother, built the Chowgule Group into one of the largest and most successful companies in Goa. Chowgule Group companies are active in mining, pellets, salt production, shipbuilding, port facilities, logistics/transportation and education, among others. In the 2020 financial year, the group generated a turnover of around INR 2,500 crore (Indian rupees)³, which is around CHF 310 million, and employs around 4,000 people.
- 7 YDC, father of the Applicant, died on 05.07.2005. Vishwasrao D. Chowgule died on 04.10.2008. After the death of the two central figures of the Chowgule Group, differences of opinion arose about the future of the group. It was therefore restructured and divided between two camps of the Chowgule family as part of a "Memorandum of Family Settlement" (as amended "MOFS") dated 11.01.2021. In simple terms, the restructuring provided for a **division of the parent company Chowgule and Company Pvt. Ltd. ("CCPL")** in the form of the spin-off of the parent company's own operating business units and the spin-off of several subsidiaries. This division was made public in January 2021.⁴
- 8 Following the division of the Chowgule Group, extensive assets in foreign trust structures suddenly came to light. This included both the private offshore structures of the Applicant's father, which had been kept secret for years, and the offshore structures of the Chowgule Group, which had been kept secret and were therefore not divided up, but probably remained within the parent company CCPL. This directly harmed the Applicant, especially as the latter belongs to the family side, which received the parts of the company and subsidiaries spun off from CCPL as part of the family settlement. By concealing the assets of the Chowgule Group, the other family side was directly enriched, especially as it received CCPL and the remaining parts of the company, including the undisclosed offshore structures still held by CCPL.

² Chowgule Group of Companies; <https://www.chowgule.co.in/>.

³ One crore is 10 million INR, i.e. 2,500 crore is 25 billion INR.

⁴ See for example <https://timesofindia.indiatimes.com/city/goa/chowgule-group-announces-split/articleshow/80274629.cms?fromapp=yes&from=mdr> from 15.01.2021.

3.2. Concealment of private offshore structures and assets

- 9 As a result of the findings about private and business offshore structures, the Applicant turned to her brother Jaywant Chowgule, among others, and demanded clarification and full disclosure of the concealed assets of her father and the Chowgule Group. Jaywant Chowgule evaded the question: He did not want to know anything; he claimed to have nothing to do with these issues; he said that there were no funds left in the private offshore structures anyway; or he referred to his brother Vijay V. Chowgule and the group's former accountant, Pradip Mahatme (who is a suspect in criminal proceedings pending in India by the Indian Enforcement Directorate, the body responsible for money laundering, tax evasion, customs offenses, etc.).
- 10 In spring 2021, the Applicant found out that the Liechtenstein trustee Christina Pucher (business name "Family Office Pucher") and her trust company NOTARA Anstalt is involved in the management of offshore structures of the Chowgule family and the Chowgule Group. **Pucher verbally confirmed to the Applicant that she was a beneficiary of a trust or other legal entity. Jaywant Chowgule was a key figure and liaison between Pucher and the Chowgule family.** Pucher further explained that it was, however, a long-running and delicate matter. Only the Applicant personally should receive information. The Applicant could personally inspect the files in Liechtenstein. Pucher would not provide any substantive information by e-mail or telephone. Furthermore, Pucher did not want to provide information to any authorized representative, not even to her son Vivekandhan on the basis of a written power of attorney. Instead of providing information to a person close to her, who also lives nearby, the Applicant should therefore travel from Malaysia.
- 11 Following these remarkable findings in spring 2021, the Applicant also increasingly demanded information about her inheritance within the family, in particular of course **from Jaywant Chowgule as a key figure and liaison.** There was correspondence between the Applicant and Jaywant Chowgule and other family members about the Pucher family office and the foreign trust structures. However, Jaywant Chowgule stubbornly refused to provide any information about these foreign trust structures of the Chowgule family or the Chowgule Group.

Email Applicant to Jaywant Chowgule dated 09.08.2021

Dear Jaywant ,

Trust you are well . Your phone always seems to be out of range.

Since I have become a Malaysian citizen in May 2019 , I am needed to declare my taxes back dating 7 years .

From 2017 till 2020 i have not received any foreign funds as my monthly maintenance , so i have nothing to declare

Prior to that i have a track record that i have received funds from Franz Pucher who i later this year discovered is no more and is replaced by his successor Ms. Christina Pucher .

I have spoken and inquired from Ms. Christina Pucher about the source and incoming of the funds , and she mentioned that you're the key person in charge to answer for the YDC family .

I further understand from Ms. Christina Pucher that there is YDC inheritance left and administered at Family Office Pucher .

Kindly explain and awaiting for your prompt reply

With Regards,
Sheela.

Email Applicant to Jaywant Chowgule and others dated 10.08.2021

Dear Brothers and sister,
I have come to realise that there are structures and assets relating to Dadd administered at family office Pucher in Gagoz 75 Liechtenstein, which were not disclosed in our family inventory or in Y.D.C.family settlement and even verbally communicated.

After contacting the successor of Family Office Pucher, Ms.Christina Pucher she confirmed verbally to me that Jaywant is the person in charge for the YDC assets but unfortunately this information has never been communicated to me by Jaywant despite writing to him, My emails have never been replied.

Currently we are the legal heirs of this assets and i kindly request your corporation of 6 legal heirs to solve this matter at earliest

- 12 The Applicant's emails to Jaywant Chowgule and others dated 05.10.2021 and 11.10.2021 again show the central role of Jaywant Chowgule in relation to the foreign trust structures of the Chowgule Group, and that Jaywant Chowgule has refused to provide any information about the Applicant's inheritance.

Email Applicant to Jaywant Chowgule and others dated 05.10.2021

I was totally shocked this year when I managed to reach Ms. Pucher during late April and discovered that there are shares, assets and money lying in the name of late YDC at Family Office Pucher .

Prior to this I had received funds from Late.Franz Pucher

I continuously asked Vijay and Jaywant what is the source of this fund but both my brothers refused to answer. Even more surprisingly when Jaywant told me there is no more money left in March 2017, but I was offered money by him again during a call in late November 2020 .

This year at the end of April I managed to track and call Ms. Pucher along with Jagdish and she clearly

mentioned that Jaywant was the manager of the assets of late YDC and that we should contact Jaywant to obtain detailed information, and should I drop by Vaduz she would only show me the documents and no one else even with a power of attorney. My advisor from Lecagon Anstalt was declined as my POA which was something very surprising for my advisor and allegedly according to the rules of Liechtenstein.

Email Applicant to Jaywant Chowgule and others dated 11.10.2021

Jaywant Chowgule had admitted over a Whatsapp conversation with me in late August 2021 ,that he had been instructing and is the signatory of fund transfers .

- 13 The letter from the Applicant's Indian legal representative, attorney Pawan Jhabakh to Daulat Chowgule, also shows that these assets were concealed under the MOFS:

4. These being the circumstances, my Client states that it cannot be disputed or denied that there are assets and financial structures of her late father Mr. Yeshwantrao D Chowgule amongst the Family Office to which my Client would be an inheritor/beneficiary.
5. My Client reiterates and places on record that the assets and financial structures relating at/to the Family Office has not been made part of the family settlement made by Mr. Yeshwantrao D Chowgule nor has this been ever communicated or informed by Mr. Jaywant Chowgule to my Client. My Client has issued several communications in this regard to Mr. Jaywant Chowgule for which no reply has been received by my Client. My Client states that any denial or concealment of information by any of the legal heirs is patently illegal and unsustainable under law.

- 14 But it was not only Jaywant Chowgule who refused to provide any information. The trustee Christina Pucher has also pursued an unbelievable strategy of obstruction and delay. Pucher no longer wanted to know anything about an individual inspection of the files, but the trustee suddenly took the position that certain information could only be provided to all heirs simultaneously and jointly. As the Applicant did not receive truthful and complete information from either side, she was forced to call in Liechtenstein legal representatives Christoph Büchel, Wilhelm & Büchel Rechtsanwälte (WBR). Extensive correspondence took place between WBR as the Liechtenstein legal representative of the Applicant and Christina Pucher and her

legal representative Wolfgang Rabanser, Lorenz Nesensohn Rabanser Rechtsanwälte (LNR), from 20.05.2021.

15 After the Applicant had painstakingly fulfilled all these newly invented (and civilly untenable) requirements and rounded up all the heirs to obtain information and documents about her inheritance, a meeting with the descendants of Yeshwantrao D. Chowgule was scheduled for 25.11.2021.

16 The agreed meeting took place on 25.11.2021 at the Liechtenstein law firm Lorenz Nesensohn Rabanser (LNR). Unsurprisingly, Jaywant Chogule did not attend the meeting in person, but was represented by Vidhya Chowgule. At this meeting, Christina Pucher provided some information on the trust structure of the late Yeshwantrao D. Chowgule, which she administered. For example, she presented:

- Deed of Appointment dated 01.07.1983;
- Fact sheet (only) about Marbu Anstalt: Endowment of USD 1.5 million when founded in 1983;
- By-Laws Marbu Anstalt from 09.06.2005;
- a current extract from the commercial register of Marbu Anstalt dated 22.11.2021 (but one that only shows the current data, especially since a historical HR extract would have shown the recent changes);
- Statutes of the Marbu Anstalt;
- Incomplete portfolio statement from VP Bank dated 19.11.2021 for portfolio no. 50.342.406.900 in the name of Marbu Anstalt with USD 1,714,263.53 credit balances;
- Letter of Wishes from 26.04.2005;
- List of alleged distributions to the Applicant, her son and Jagdeep Chowgule's children.

If such information is disclosed to unauthorized persons, a professional trustee would be liable to prosecution pursuant to Section 121 para. 1 no. 2 Liechtenstein Criminal Code. It is therefore clearly proven that the Applicant is a beneficiary of this structure.

17 Christina Pucher confirmed that **Jaywant Chowgule has been authorized to dispose of these Liechtenstein assets since at least 2005, i.e. since the death of their common father Yeshwantrao D. Chowgule ("YDC"), and has managed them on the basis of a power of instruction granted to him.**

18 However, Christina Pucher continued her series of excuses in this meeting as well. As a further new version, Christina Pucher claimed with regard to the Deed of Settlement of 13.01.1962 mentioned in the Deed of Appointment of 01.07.1983 that this document had been lost. The fact that it is completely absurd for a professional trustee to claim that a founding document of a trusteeship has been lost and not even be able to produce or provide a copy requires no extensive explanation.

- 19 Therefore, a **trust dated 13.01.1962**, a sub-trust dated 01.07.1983 in the form of the Liechtenstein Marbu Anstalt (which alone has assets of over USD 1.5 million), as well as foreign companies such as Natlata Holding Corp. and Bayano Holding SA, Panama, have become known.
- 20 The trust service providers Family Office Pucher / NOTARA Anstalt disclosed a Deed of Appointment dated 01.07.1983 to our client regarding the trust and the sub-trust Marbu Anstalt. This document shows the existence of the trust (referred to there as the settlement) dated January 13, 1962 as well as the establishment of the sub-trust Marbu Anstalt for our client as beneficiary and the financing of this sub-trust from the original trust. From this it can be concluded that our client is also the beneficiary of the trust, otherwise the establishment of the sub-trust and funding from the original trust would not be permissible. The Deed of Appointment and a fact sheet prepared by the Pucher Family Office are enclosed with this letter.
- 21 **However, the trust service providers have refused to disclose the name of the trust, the trustee(s) and the Trust Deed dated 13.01.1962.**
- 22 The Panamanian structures Natlata Holding Corp. and Bayano Holding SA were completely ignored. Other fiduciary structures that subsequently came to light were also not mentioned.
- 23 Due to this absurd attitude, the Applicant was forced to file a first action for information against the trustee Christina Pucher on 07 CG.2022.84 on 06.04.2022, although this obviously meant that the clarification of the facts would be further delayed. And so it was: Christina Pucher initially did not respond in any way to the first summons from the Princely Court of Justice. An attempt by the Applicant to clarify the issue of the bail that was obviously to be paid in advance with the already known counter-representative, Attorney Rabanser, was unnecessarily delayed. Pucher's legal representative claimed that the (undisputed) issue of the deposit obligation had to be examined and discussed with Christina Pucher. Ultimately, an amicable agreement on the deposit was only reached at the first hearing. The Applicant paid this immediately so that the proceedings could move forward. The district court set a four-week deadline for a response, which would have expired on 01.07.2022. Christina Pucher did not comply with this deadline and only submitted her response on 23.08.2022. After Christina Pucher had raised numerous objections (including fiduciary secrecy - towards an heir of the trust client YDC...), although she had already explicitly and repeatedly promised further information, it was at least agreed that Pucher would provide more detailed information on Marbu Anstalt, which then took place on 14.10.2022 - almost a year after the meeting on 25.11.2021, at which Pucher had already promised further information anyway.

24 Attorney Rabanser then explained in an email to the heirs of YDC dated October 18, 2022:

*"As you probably know, Sheela Chowgule sued Ms. Christina Pucher personally for **ample information about Chowgule family matters. Ms. Pucher could not and did not give any such information and Sheela Chowgule finally narrowed down her claim to some financial information of Marbu Anstalt, which Ms. Pucher offered to provide. Consequently Sheela Chowgule had to withdraw the claim in court entirely. According to that offer she or her lawyer is to receive various documents of Marbu Anstalt for the years 2012 through to 30 September 2022.**"*

25 This clearly shows once again that Christina Pucher has far more information on "Chowgule family matters" than she disclosed. There is clear evidence that the Applicant is being blocked from all sides so that she cannot uncover the true facts surrounding the inheritance from YDC and the Chowgule Group.

26 In December 2021, the Applicant's son, Vivekandhan, contacted Monika Kindle, who was appointed as a member of the NOTARA Board of Directors on 01.07.2021. He came to a meeting with Monika Kindle on December 20, 2021, **where Monika Kindle asked whether the Chowgule heirs had also been disclosed the account at LGT at the meeting on November 25, 2021 and thus confirmed that the trust structure of the deceased Yeshwantrao D. Chowgule at LGT, managed by Christina Pucher, had assets.** This is consistent, especially as the blocked account with the share capital was also held at LGT when Marbu Anstalt was founded. Monika Kindle also spoke of a Lamosa Foundation, which was previously unknown. These assets and structures have not been disclosed to date.

27 Vidhya Vernekar, another member of the Chowgule family, confirmed once again in an email to the other family members dated 10.01.2022 that the family has offshore assets that have been and are being deliberately concealed:

"LDC, VDC, YDC had foreign assets, so all their heirs have got entangled in this matter.

This is advance information to you all to take note of this matter to act suitably **before enquiry reaches you from enforcement authorities.** "

28 Despite the mounting evidence, Jaywant Chowgule denies that he was informed of his right to instruct Marbu Anstalt in 2005 and that the management of its assets was based on his instructions:

dated 07/02/2022, the contentions of your client that Mrs. Christina Pucher during the meeting held on 25/11/2021 had confirmed to all the legal heirs present at the meeting that the appointment of my client as the administrator was informed to my client as early as June 2005 and that the administration and distribution of funds of "MarbuAnstalt" were on the instructions of my client and that all yearly reports on the affairs of "MarbuAnstalt", were shared with my client is denied. Your client is specifically called to

29 This all clearly shows how shamelessly family members of the Applicant lie, try to deny even the obvious and actively conceal assets.

30 The Applicant therefore has certain indications of her father's concealed private offshore structures. However, the Applicant lacks a reliable overall picture. The full disclosure of the inheritance after YDC and the structures to which the Applicant has become entitled due to the death of her father is, however, demonstrably denied to her by all parties (family members, trustees, advisors). There is no comprehensible and legitimate justification for concealing the Applicant's inheritance from her. For the Applicant, it appears that Jaywant Chowgule has been abusing his power of disposal with regard to the assets also attributable to the Applicant since 2005 and wishes to claim these assets for himself even after the division of the inheritance between YDC and the Chowgule Group, thereby damaging the Applicant's assets and unlawfully enriching himself. To all appearances, he is supported in this by Liechtenstein trust service providers.

3.3. Concealment of offshore structures and assets within the Chowgule Group

31 In the course of the above-mentioned investigations in connection with the division of the Chowgule Group, further questionable transactions within the group of companies came to light.

32 An email correspondence dated 22.03.2021 between Abeezer E Faizullabhoy and Pradip Mahatme - the latter was the accountant of the Chowgule Group and centrally responsible for these foreign companies - reveals offshore structures that were not disclosed as part of the family settlement of 11.01.2021 and were therefore not included in the distribution.

33 Pradip Mahatme mentioned Natlata Holding Corp. and Bayano Holding SA, Panama, as well as other offshore structures that were previously unknown to the Applicant. Natlata and Bayano are particularly relevant in the context of the present action because these structures are managed by the Liechtenstein

trustee Christina Pucher (formerly Dr. Franz Martin Pucher), Family Office Pucher, and the Liechtenstein trust company NOTARA Anstalt for the Chowgule family.

34 Pradip Mahatme writes in this e-mail under point 13:

*"Please note that all the information being asked for Rudra, Dolphin Companies and other such companies (sr nos. 11 [Note: Here the companies managed from FL are mentioned], 12, 13) **are extremely critical and cannot be compromised.**"*

35 This shows once again that assets were kept secret to the detriment of the Applicant as part of the family settlement.

36 Furthermore, the Applicant has learned of potentially unlawful acts within the Chowgule Group. It has learned that the directors of Angre Port Pvt Ltd (APPL), including Vijay Chowgule, and the long-time accountant of the Chowgule Group, Pradip Mahatme, are accused of unlawfully writing off a loan between APPL and CCPL for INR 336.6 crores / around USD 44 million in the 2021/2022 financial year and falsifying a resolution for this purpose. The aggrieved APPL is reflected in the list of divested subsidiaries, thereby once again impairing the value of the shareholding of the family side of the Applicant. This matter is being investigated by the Indian law enforcement authorities under Articles 409 (criminal breach of trust), 420 (cheating), 465 (punishment for forgery) and other provisions of the Indian Penal Code. The passports of the suspects have been confiscated. The case is being conducted by the Goa Police under FIR No. 11/2022.

37 From the annual financial statements of 2017/2018 and 2018/2019 of Chowgule Steamships Ltd (CSL), a listed company, that the subsidiary of CSL, namely Chowgule Steamships Overseas Ltd (CSOL), recorded an untraceable loss of assets amounting to around USD 100 million. The auditors refused to respond to the inquiry. The directors of CSL and CSOL, including Jaywant Chowgule, also refused to provide any information on this matter despite repeated requests. The reason for the loss of around USD 100 million in assets at CSOL is in no way comprehensible. The whereabouts of this USD 100 million are completely unclear. Once again, CSL/CSOL is included in the list of divested subsidiaries, which once again impairs the value of the stake held by the Applicant's family. This matter is being investigated by the Securities and Exchange Board of India (SEBI), probably with a view to possible market manipulation.

38 The Applicant therefore has evidence of damage to and erosion of the divested parts of the company and subsidiaries of the Chowgule Group, in which it holds a 3.63% stake, which logically leads to a reduction in the value of its stake. It requests the disclosure of such facts.

3.4. Persons involved in the management of foreign assets

39 It should be noted that these suspicions relate to various family members, including **Vijay Chowgule**, one of the key persons managing the foreign affairs (including offshore structures and assets) of the Chowgule Group, and **Pradip Mahatme**, advisor and auditor of the Chowgule Group, who confirms in an email correspondence dated 22.03.2021 that he managed the foreign offshore structures and assets (including Natlata and Bayano). On the one hand, the latter is clear evidence of the connection between your client and Pradip Mahatme. On the other hand, it shows that he most probably also plays a central role in the concealment of these assets and the machinations against our client. In addition, Vijay Chowgule explicitly confirmed in a rejoinder in the Indian arbitration proceedings that Pradip Mahatme had destroyed the documents/data on the offshore structures and assets. The fact that foreign accounts were deleted indicates a major concealment of foreign offshore structures and assets.

3.5. Conclusion

40 Based on the investigations to date, the Applicant suspects that these actions may have served to deceive the Applicant and other members of the Chowgule family of the true structure and value of the inheritance after her father YDC and of the true structure and value of the Chowgule group, particularly in the course of the negotiation and implementation of the MOFS, so that these assets are not divided between the true beneficial owners but can be kept secret and withheld from the Applicant and other family members and/or to conceal them from the Indian (tax) authorities.

41 Behavior such as that described above is aimed precisely at concealing the company structures and assets as well as their true economic background. The Applicant had and has no knowledge of the names of the structures to be disclosed. Therefore, a legal requirement to provide the relevant names as a part of the application - at least in cases and circumstances such as the present one - would be de facto impossible to fulfill, would contradict the purpose of the AMLD and would make the enforcement of the Applicant's rights impossible, or at least considerably more difficult.

4. Questions Asked

42 The questions referred to the EFTA Court by the Administrative Court are the following:

Must Directive (EU) 2015/849, as amended by Directive (EU) 2018/843, be interpreted as meaning that it precludes a national provision according to which the request of a domestic or foreign person

or organisation for disclosure of the data entered in the register of beneficial owners on legal entities must include the naming of the firm name or name of the legal entity whose data are to be disclosed?

5. Legal Analysis

- 43 The primary objective of the AMLD is the **prevention of economic crime and money laundering**. According to the above-mentioned recitals, **public access to the** data in the transparency register serves to achieve this objective, and this must apply all the more if a legitimate interest is demonstrated. The **possibilities of concealing unlawful transfers of assets through companies, trusts and similar legal relationships** are explicitly mentioned. The possibility and risk that **controlling beneficial owners with extensive voting rights could be encouraged to divert company assets at the expense of minority investors and create opportunities for personal enrichment** through such structures is also explicitly mentioned.
- 44 The suspected situation presented by the Applicant is therefore explicitly and repeatedly cited in the recitals of the AMLD. This directive serves precisely to prevent the abuse of financial systems and legal arrangements to the detriment of others. The role of private legal entities and the public in preventing such unlawful conduct is also emphasized.
- 45 The complainant does not fail to recognize that data protection interests must also be adequately taken into account. This was also a key reason in the ECJ ruling of 22.11.2022 on C-37/20 and C-601/20 to abolish unrestricted public access **without a legitimate interest** in accordance with Art 30 para 5 AMLD, i.e. access after a legitimate interest has been demonstrated (see the operative part of the decision). However, this merely means that data protection interests must also be adequately taken into account when examining the legal interest. **However, the core of the AMLD is the prevention of white-collar crime and money laundering, including the prevention of the possibility of concealing unlawful transfers of assets through companies, trusts and similar legal relationships for personal gain.**
- 46 The requirement to name specific legal entities cannot be derived from a provision of the AMLD, nor would this be justified in light of the meaning and purpose of the provisions of the AMLD. Otherwise, the objectives of preventing the concealment of asset transfers via companies, trusts and other legal relationships for personal gain and (not least) to the detriment of minority shareholders such as the Applicant, the objective of strengthening confidence in the integrity of business activities and the financial system as well as the objective of combating tax avoidance as stated in the recitals would not be achieved.
- 47 This in no way prevents the possibility of examining the legitimate interest or balancing interests. It makes no difference whether this examination starts with the respective legal entity but takes into account the

interests of the underlying beneficial owners, or whether it starts with the interests of the beneficial owners and their legal entities from the outset.

48 Under no circumstances can a reversed order of examination or practical / technical insufficiencies in the search platform undermine the possibility of an individual to access the information provided for by Art 30 para 5 AMLD according to the purpose of the AMLD. If necessary, national authorities would have to adapt the transparency register in such a way that a search for beneficial owners and the legal entities attributable to them is possible, and not just a search for legal entities.

49 This must even more so be held in circumstances as seen in the present case where

1. it is virtually impossible for the Applicant to provide the names of the structures at the outset; and
2. there is substantial evidence that foreign trust structures were established and are managed for the very purpose of concealing the economic background from their true beneficial owners (whether such rights may be based on corporate law - shareholder's rights, trust law, contractual law, inheritance law or otherwise) or the (tax) authorities.

50 As a result, the requirement of Art 17 para 2 lit b ("Company name or name of the single legal entity pursuant to Annex 1 whose data is to be disclosed") and para 5 lit b („firm name or name of the legal entity whose data are to be disclosed“) VwbPG, according to which an application for disclosure must contain the company name or name of the single legal entity must give way to Art 30 AMLD.

6. Conclusion

51 In the light of the foregoing, the Applicant considers that the questions referred to the EFTA Court for an advisory opinion by the Administrative Court should be answered as follows:

Directive (EU) 2015/849, as amended by Directive (EU) 2018/843 must be interpreted as meaning that it precludes a national provision according to which the request of a domestic or foreign person or organisation for disclosure of the data entered in the register of beneficial owners on legal entities must include the naming of the firm name or name of the legal entity whose data are to be disclosed.