

Report on Beneficial Ownership Inspections 2022



FINANCIAL SERVICES AUTHORITY

Bois De Rose Avenue
P.O. Box 991
Victoria
Mahé
Seychelles

Tel: +248 4380800
Fax: +248 4380888
Website: www.fsaseychelles.sc
Email: enquiries@fsaseychelles.sc

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INTRODUCTION

With the enactment of the Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020 (“AML/CFT Act”) the FSA assumed the mandate of sectoral AML/CFT supervisor for the regulated sectors under its supervisory purview under the Financial Services Authority Act, 2013. Additionally, under the Beneficial Ownership Act, 2020 (“BO Act”) the FSA was designated as a competent authority to fulfil its mandate under the BO Act.

As part of its supervisory mandate, the FSA considers on-site inspections to be an important tool to ascertain the level of compliance of legal persons, legal arrangements and reporting entities/resident agents with regards to the provisions of the AML/CFT Act and the BO Act. In that regard, the FSA, in accordance with the powers conferred to it by the AML/CFT Act and the BO Act, scheduled focused inspections during 2022 specifically, focused on the beneficial ownership information that is required to be maintained by legal persons and legal arrangements at the office of the resident agents in Seychelles.

The overall objective of the focused inspections was to verify the BO information maintained by legal persons and legal arrangements at the office of the resident agents in Seychelles in accordance with the provisions of Section 5 of the BO Act and to verify the accuracy of the BO information uploaded by the legal persons and legal arrangements, through their resident agent, in the central BO database held by the FIU, as the nodal agency, under section 13 of the BO Act. This was as part of the FSA’s endeavor to verify the accuracy of the BO information on the central BO database uploaded by the legal persons and legal arrangements, through their resident agent.

Concerning the AML/CFT Act, specific focus was in regards to the obligation of reporting entities to verify the identity of the beneficial owner(s) of legal persons and legal arrangements.

Inspection statistics

Inspections conducted for Q1, Q2, Q3 and Q4 covered a little over 50% of the resident agents targeting a total of 12 LP¹s, 1,413 IBC²s, 12 Trusts and 6 Foundations.

PERIOD	NUMBER OF RESIDENT AGENTS INSPECTED	SAMPLE SIZE CHOSEN	TYPE OF ENTITIES INSPECTED
Quarter 1 – March 2022	9	170	IBC
Quarter 2 – June 2022	7	12	LP
Quarter 3 – June/July 2022	16	1,243	IBC
Quarter 4 – December 2022	2	12	Trusts
Quarter 4 – December 2022	1	6	Foundations
TOTAL	35	1,443	

¹ Limited Partnerships

² International Business Companies

**COMPLIANCE STATISTICS – AVAILABILITY OF REGISTER OF BENEFICIAL OWNERS AND DECLARATION
/ NOTICE OF BECOMING A BENEFICIAL OWNER**

PERIOD	SAMPLE SIZE CHOSEN	REGISTER OF BENEFICIAL OWNERS		DECLARATION/NOTICE OF BECOMING A BENEFICIAL OWNER	
		NO.	% OF SAMPLE SIZE	NO.	% OF SAMPLE SIZE
Quarter 1 – March 2022	170	128	75%	105	62%
Quarter 2 – June 2022	12	10	83%	10	83%
Quarter 3 – June/July 2022	1,243	1,234	99%	969	78%
Quarter 4 – December 2022	18	18	100%	9	50%
OVERALL COMPLIANCE	1,443	1,390	96%	1,093	76%

The data on the table above depicts the compliance level of the entities inspected in terms of their obligations to maintain a register of beneficial owners and furnish a declaration of BO under the BO Act or a Notice of becoming a BO which was previously a requirement under the IBC Act for IBCs.

COMPARISON OF BENEFICIAL OWNERSHIP INFORMATION

As part of the inspection process, the FSA undertook an exercise to compare the BO information that are reported by the legal persons and legal arrangements through their resident agent with the information that was populated in the central BO database (GoAML platform) maintained by the Financial Intelligence Unit, as the nodal agency to maintain the central BO database. For this purpose, the information available in the Register of Beneficial Owners (“RoBO”) of the chosen legal persons and legal arrangements maintained by their respective resident agents were compared with the information that were populated in the central BO database. The FSA was able to gain access to the information populated in the central BO database through requests made to the FIU pursuant to the provisions of Regulation 16 of the Beneficial Ownership Regulations, 2020 as and when the inspection for each quarter progressed.

Following the exercise undertaken, the FSA noted certain discrepancies with respect to the information maintained on the central BO database when compared with the RoBO kept at the office of the resident agent. The below is a non-exhaustive list of some of the observed discrepancies:

- Discrepancy in the date/year when the individual became the BO in the central BO database
- The complete names of the BOs were not appearing in central BO database in comparison with the names on the RoBO
- Details of the nominee / nominator filed in the central BO database did not match the details in the RoBO
- Nominee/Nominator details do not appear in the central BO database
- Nature of interest held by the BO is different in the central BO database
- Details of additional BOs featured in the RoBO not appearing in central BO database
- Multiple entries for same IBC in the central BO database (with same discrepancies noted in subsequent submissions too)

- No registrable particulars of BO in central BO database for the legal persons and legal arrangements that claim to have populated the BO information
- Discrepancy in the number of BOs appearing in the central BO database
- Details of BO in central BO database does not match with the details in RoBO
- Country name spelt/entered incorrectly in central BO database
- Nationality of BO in the central BO database does not match the nationality of BO stated in RoBO
- Incomplete residential address in RoBO
- Residential / service address missing in RoBO
- Details of current BOs do not appear in central BO database
- Country name not stated in RoBO but same entered in central BO database

CUSTOMER DUE DILIGENCE MEASURES

As per the AML/ CFT Act, a reporting entity shall apply Customer Due Diligence (“CDD”) in respect of customers, business relationships and transactions and conduct ongoing monitoring of business relationships. In instances where the customer is not the beneficial owner, reporting entities should identify the beneficial owner and take reasonable measures on a risk-sensitive basis to verify the identity of the beneficial owner.

In line with that, the FSA also verified the availability and authenticity of CDD documents, which included but was not limited to proof of identification and proof of address that were available on file for each beneficial owner. Upon a review of these documents for the entities inspected during 2022, the following transpired:

PERIOD	SAMPLE SIZE CHOSEN	NATURAL PERSONS IDENTIFIED AS BENEFICIAL OWNERS	PROOF OF IDENTITY		PROOF OF ADDRESS	
			NO.	% OF SAMPLE SIZE	NO.	% OF SAMPLE SIZE
Quarter 1 – March 2022	170		153	90%	133	78%
Quarter 2 – June 2022	12		12	100%	12	100%
Quarter 3 – June/July 2022	1,243		1,038	84%	559	45%
Quarter 4 – December 2022	6	Founders (5)	5	100%	5	100%
		Protectors (3)	3	100%	2	67%
		Councillors (4)	4	100%	3	75%
Quarter 4 – December 2022	12	Trustees (12)	12	100%	7	58%
		Settlor (10)	9	90%	2	20%
		Beneficiaries (11)	10	91%	2	18%

ANALYSIS OF BO SURVEY QUESTIONNAIRE

1. Information used by reporting entities to establish the BO of a legal person and/or legal arrangement to which resident agent services are provided.

Resident agents were conversant in respect of the various methods used for accurately identifying the BOs of legal persons and legal arrangements to whom they act as resident agent, a finding which was confirmed from both the questionnaire and the onsite visits. On average, resident agents used a combination of 15 separate documents to assist them to identify the BO which are listed within the table above with the following eight source of information topping the list:

- Organisation / ownership structure
- Nominee agreement
- Declaration of trust
- Trust Deed
- Foundation Charter
- Declaration of Beneficial Owners
- Share certificates
- Register of Members
- Power of Attorney

This list is not exhaustive, as reporting entities used other information sources to assist them in identifying or verifying the relevant information such as: face to face meetings with clients and information collated as part of client due diligence to understand and assess the ownership and control of the legal persons including the information on the purpose and rationale for the relationship.

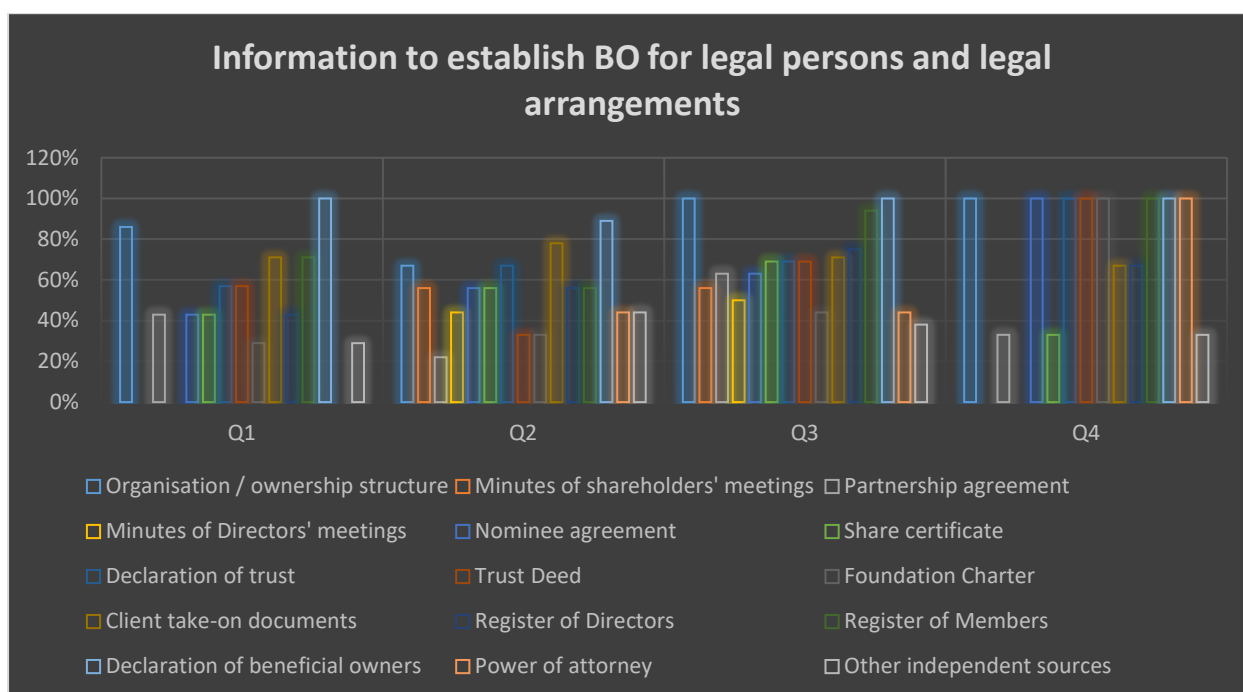
INFORMATION USED BY REPORTING ENTITIES TO ESTABLISH THE BO OF A LEGAL PERSON AND/OR LEGAL ARRANGEMENT³

TYPE OF INFORMATION	Q1	Q2	Q3	Q4
Organisation / ownership structure	86%	67%	100%	100%
Minutes of shareholders' meetings	-	56%	56%	-
Partnership agreement	43%	22%	63%	33%
Minutes of Directors' meetings	-	44%	50%	-
Nominee agreement	43%	56%	63%	100%
Share certificate	43%	56%	69%	33%
Declaration of trust	57%	67%	69%	100%
Trust Deed	57%	33%	69%	100%

³ Data from survey undertaken post inspection

TYPE OF INFORMATION	Q1	Q2	Q3	Q4
Foundation Charter	29%	33%	44%	100%
Client take-on documents	71%	78%	71%	67%
Register of Directors	43%	56%	75%	67%
Register of Members	71%	56%	94%	100%
Declaration of beneficial owners	100%	89%	100%	100%
Power of attorney	-	44%	44%	100%
Other independent sources	29%	44%	38%	33%

Below is the graphical representation of the information used by resident agents for identifying the BO of a legal person and/or legal arrangement to which resident services are provided:



2. The reporting entities were asked whether they undertake cascading test / three-tiered approach to identify the BOs and in the affirmative, to list down the mechanisms in place to undertake same.

Following the responses received, all the reporting entities inspected were using the cascading test / three-tier approach to identify the BOs, however, some of the reporting entities stated that they do not always use the cascading test as the legal person being administered by them do not have complicated structures and is usually owned by a single person.

The mechanisms adopted by the reporting entities are reliance on client on-boarding form, organogram, CDD documents and Business Plans. That said, one of the reporting entity took a further

step to provide the clients with the BO Act and BO Regulations along with sending numerous memos with explanation on the requirements with the BO guidelines developed internally by the reporting entity.

3. Mechanisms in place for negative / adverse review during the due diligence process on BO

Analysis of the responses provided by the reporting entities for this section of the questionnaire revealed the following:

- On-boarding clients with adverse/negative news for new relationships are not undertaken whilst existing clients' business relationship is terminated
- The client is not on-boarded, if the BO identified is a resident in country or operating in a country under FATF sanction list or US sanction list or involved in financial crimes
- Clients will be placed on enhanced due diligence if they are from countries under FATF Increased Monitoring list/Grey list
- If the due diligence report is of a criminal, terrorism or money laundering nature, then a suspicious transaction report is transmitted to the FIU
- Mechanisms used are according to the BO Act, AML-CFT Act, IBC Act, Trust Act, FATF Guidance, Transparency and Beneficial Ownership, OECD Policy – A Beneficial Ownership Implementation Toolkit
- The finding is forwarded to the management and relevant offices for their awareness and refusal to undertake the clients

4. Verification of nominee / nominator details

The reporting entities inspected were required to confirm how the nominee / nominator details provided by a legal person under their administration is verified.

Further to the analysis of the responses provided, it is evident that the most common mechanisms used by reporting entities to verify the nominee / nominator details of legal persons are:

1. Nominee agreement
2. Declaration of Trust
3. Declaration of BO
4. KYC documents obtained
5. Requiring legal person to disclose identity of their nominator.

5. Use/Presence of professional intermediaries

The reporting entities were required to explain whether the use/presence of Professional Intermediaries ("PIs") between the reporting entity and the end user clients hinder or assist in the process of identifying beneficial owners.

The analysis for the responses provided by reporting entities resulted in the following observations:

- PIs are responsive and complied with the requirements
- All clients introduced are identified through KYC/CDD obtained through PIs that they also verify. Therefore, in most circumstances reliance is not placed on PIs to keep records of the KYC/CDD documents even if there is an intermediary agreement in place.
- The use/presence of PIs assists in the process of identifying BO as the respondent has long term relationship with visits undertaken at the PIs' premises to understand their business and procedures

- Reporting entities does not rely on PI to conduct any due diligence for us. All relevant documents are requested following which due diligence is conducted on the client
- Use of PI is very important as it allows to conduct preliminary check and background of clients up to the BO and assist with the ongoing monitoring of clients
- If the PI is abiding to the PI agreement and relevant laws therefore this should not hinder the process in identifying the BO.
- It was observed that more than 80% of the end users of the legal persons are introduced to a reporting through professional intermediaries. On one hand it involves certain additional risk as there are no face to face meetings. On the other hand, the reporting entity felt that taking into account that 80% of the business now (especially during and in post Covid times) was/is/to be done online and remotely, relationship with PI helps to identify the clients face to face. Though the reporting entity relies on its PIs in face to face identification, it does not rely on its PIs while doing its CDD check.
- Use/presence of professional intermediaries does not hinder the process of identifying beneficial owners. From the outset, relationship with intermediaries are clearly defined making them aware of what is expected of them and are also made aware that if they do not comply with requirements of the reporting entity, the relationship will be discontinued.
- Professional Intermediaries in most cases only provide information to the resident agent that they have received from the end user client, they do not assist in the process of identifying the beneficiary owners of the company

Whilst all the reporting entities endorsed the use/presence of PIs, one reporting entity stated that PIs do not assist in the process of identifying the BOs of the company but rather provide the information they received to the reporting entity.

6. Below is the breakdown of the BO population statistics for each of the resident agents chosen for inspection in 2022:

COMPLIANCE STATUS - COMPLETION OF POPULATION OF BO INFORMATION IN THE CENTRAL BO DATABASE AS AT DECEMBER 27TH, 2021⁴

CSP	Q1	Q2	Q3	Q4
CSP 1	90%	90%	100%	100%
CSP 2	95%	100%	100%	100%
CSP 3	80%	95%	100%	Not available
CSP 4	40%	67%	95%	
CSP 5	67%	100%	100%	
CSP 6	100%	100%	35%	
CSP 7	95%	Not available	100%	
CSP 8	100%		76%	
CSP 9	35%		100%	

⁴ End of transitional period provided to resident agents

CSP	Q1	Q2	Q3	Q4
CSP 10			100%	
CSP 11			92%	
CSP 12			97%	
CSP 13			100%	
CSP 14			100%	
CSP 15			100%	
CSP 16			No specific stats	

FINDINGS

As per section 5 (1) of the BO Act, *“Every legal person and legal arrangement shall maintain a register, to be known as a register of beneficial owners, at the principal place of business of its resident agent”*. Prior to the amendment of the BO Act in December 2022, Regulation 12 of the BO Regulations required that this register shall be kept in the Form specified in the First Schedule of the BO Regulations.

Moreover, as per section 10 of the BO Act, every person on becoming a BO shall submit a declaration of beneficial ownership to the legal person and upon receipt, the latter shall furnish a copy of same to the resident agent.

In light of the above, for the inspections undertaken in 2022, legal persons and legal arrangements that did not have a copy of their RoBo in the format specified in the First Schedule of the BO Regulations on file during the inspection, were granted a 5-day period to furnish their resident agent with a copy of the RoBo as per the specified format. Failure to adhere to the stipulated timeframe shall result in the FSA taking further actions against those legal persons as stipulated in the BO Act.

That said, for the inspections undertaken during the first two quarters of 2022, the resident agents were advised during the on-site inspection to have the RoBOs in the specified format in place where the legal persons and legal arrangements were found to be non-compliant for this obligation as the non-compliance were minimal.

During Q4 inspections, the FSA observed that all the legal persons and legal arrangements chosen for inspection were 100% compliant with their obligations under section 5 of the BO Act.

With regards to the non-compliance of Section 10 (2) of the BO Act, there were no⁵ provisions for sanctions to be applied on legal persons and legal arrangements for not furnishing the Declaration of becoming a BO to its resident agent. Therefore, for inspections undertaken in 2022, no sanctions were imposed on legal persons and legal arrangements that were non-compliant with the provisions of section 10 (2) of the BO Act as the non-compliance for not furnishing the resident agent with a copy of the declaration of beneficial ownership. This was on account that prior to the amendments to the

⁵ Note that the Beneficial Ownership (Amendment) Act, 2022 introduced sanctions on legal persons/ legal arrangements for not furnishing the Declaration of becoming a BO to its resident agent.

BO Act in December 2022 there existed no sanctions for such non-compliance events. However, the non-compliant legal persons and legal arrangements were provided 7 days by the FSA to rectify their non-compliance even in the absence of the sanction provisions.

Additionally, pursuant to the provisions of Section 58(1) of the AML/CFT Act, the FSA is mandated to monitor reporting entities under its control on risk sensitive basis and take necessary measures for the purpose of compliance by those reporting entities with the provisions of the AML/CFT Act.

Furthermore, as the supervisory authority for AML/CFT for reporting entities under its regulatory purview, the FSA is provided with powers, under section 57(1) (a) and (h) of the AML/CFT Act to:

- (a) Request any documentation or information from a reporting entity; and
- (b) Impose dissuasive administrative sanctions on the reporting entity and on the directors and senior management of the reporting entity for non-compliance with the provisions of the AML/CFT Act, which may be in the form of one or more of the administrative sanctions as provided under section 60(3) of the AML/CFT Act.

As such, the reporting entities (resident agents) were given a 14-day period to ensure that all the CDD documents for the legal persons and legal arrangements under their administration are made available on file and accessible for the FSA for review. This will also apply for other discrepancies noted such as, translation of documents that are not in English and ensuring that the validity of identity documents are appropriately indicated.

Below are the sanctions imposed for the above-mentioned non-compliances for the BO inspections carried out in Q3 and Q4:

2022		Q3		Q4			
DETAILS OF NON-COMPLIANCE	LEGISLATION	NUMBER OF SANCTIONS IMPOSED					TOTAL
		IBCs	CSPs	TRUSTS	FOUNDATIONS	CSPs	
Failure to maintain the Register of Beneficial Owners	Section 5(1) of the Beneficial Ownership Act	10		-	-		10
Failure to furnish the Declaration of Beneficial Owners	Section 10(2) of the Beneficial Ownership Act	198		3	6		207
Customer Due Diligence Measures	Section 35(2)(c)of the AML/CFT Act		16			3	19
TOTAL		208	16	3	6	3	236

RECOMMENDATIONS

The above being said and in view of the discrepancies noted during the inspections, the following recommendations will be proposed to the reporting entities as part of creating awareness and outreach to the reporting entities on their obligations both under the BO Act and the AML/CFT Act:

- The resident agents will be recommended to review their policies, procedures and controls to include a separate section for BO that details trigger events which would require an update to the RoBO. Resident agents shall also be recommended to consider introducing sample testing of BO information as part of their periodic review process and compliance monitoring programme to ensure that their policies and procedures for implementing the various requirements specified within the BO Act and BO Regulations are effective and appropriate.

- The FSA would further recommend that resident agents ensure that their training policy and procedures for both new and existing staff members include the identification and ongoing maintenance of BO information, during the annual renewal process and incorporation of new legal persons and legal arrangements. This would ensure that training on the requirements for the RoBO, the BO Act and BO Regulations are included as a topic for training for new and existing staff.
- Following the conclusion of the inspections for 2022, the above recommendations has been communicated to the industry practitioners through a circular which can be accessed through the link provided (<https://fsaseychelles.sc/aml-cft/beneficial-ownership>). The FSA plans to conduct outreach programs during 2023 with the assistance of technical assistance providers recommended by International agencies.