



WHITE PAPER

PUBLIC CONSULTATION

PROPOSED CHANGES TO THE BENEFICIAL OWNERSHIP REGULATIONS, 2020

White Papers communicate a decided Government policy or approach on a particular issue. They are chiefly intended as statements of Government policy.

The Financial Services Authority (FSA) and the Financial Intelligence Unit (FIU) are proposing a number of policy changes to the Beneficial Ownership Regulations, 2020.

This document will be used for consultation with stakeholders before finalization.

1. Introduction

In order to comply with the international standards for the fight against money laundering and the financing of terrorism, the Seychelles enacted the Beneficial Ownership Act (“the Act”) in 2020 to provide for the identification and verification of beneficial ownership of legal persons and legal arrangements in Seychelles. The Act requires every legal person and legal arrangement to establish and maintain up to date registers of beneficial owners (“BO”) in Seychelles and the beneficial ownership information to be uploaded on a centralized database maintained by the Financial Intelligence Unit (“FIU”). Following the enactment of the Act, the Minister has prescribed the relevant Regulations under the Act. Following the recent changes made to the Act in December 2022 and the deficiencies identified during the implementation of the Regulations, a number of amendments are being proposed to the Regulations.

Therefore, this paper will focus on the proposed changes to be made to the Beneficial Ownership Regulations to be discussed with the public before legislative amendments are undertaken.

2. Main reasons for changes

The International Standards set by Financial Action Task Force (“FATF”) and Organization for Economic Cooperation and Development (“OECD”) require jurisdictions to maintain beneficial ownership information, which shall be accessible and made available upon request to competent authorities, for the administration or enforcement of their relevant legislations in order to combat financial crimes. The Seychelles is devoted and continues to strive to uplift these standards.

Legal persons and legal arrangements conduct a wide variety of commercial and entrepreneurial activities. However, despite the essential and legitimate role that legal persons and legal arrangements contribute to the global economy, under certain conditions, they have been misused for illicit purposes such as, money laundering, bribery, corruption, insider dealings, tax fraud, terrorist financing and other illegal activities by disguising:

- the identity of known or suspected criminals
- the true purpose of any account or property held by a company or other legal persons
- the source or use of funds or property associated with a company

Beneficial ownership has come to the forefront for anti-money laundering (“AML”) compliance professionals around the world. Beneficial ownership information is essential in view of the following:

- Money Laundering concerns
- Global safety concerns
- Tax avoidance issues

The misuse of legal persons and legal arrangements could be significantly reduced if information regarding both the legal owner and the beneficial owner, the source of funds / assets, and if their activities were readily available to the authorities. Legal and beneficial ownership information can assist law enforcement and other competent authorities by identifying those natural persons who may be responsible for the underlying activity of concern, or who may have relevant information to further an investigation.

3. Proposed new changes

The main changes to the Beneficial Ownership Regulations being proposed are as detailed below.

3.1 Determination of Beneficial Owners

- (a) It is being proposed to remove the reference to the term “legal arrangement” under regulations 3(1), 3(2) and 3(3) as the cascading approach in regulation 3(1) should apply only to legal persons when identifying a beneficial owner.
- (b) It is being proposed to exclude foundations from using the cascading approach in identifying their BOs. Instead, foundations will have to identify the relevant persons (i.e. founder, councillor, protector, beneficiaries, etc.) similar to the identification of the BOs of trusts. Refer to proposed new regulation 3(4).
- (c) It is being proposed to review regulations 3(1)(b) and (c) to align the text with the wording of the FATF Standard.
- (d) It is being proposed to remove regulation 3(2)(b) as it is already provided for under regulation 3(3)(a).
- (e) Regulations 3(5), 3(7), 3(8) and 3(9) are being amended so that the cascading approach remains the first step when identifying the beneficial owners of a legal person which is in liquidation, administration or receivership proceedings. Therefore, rather than providing outright that these persons are beneficial owners, the new texts will provide further clarification that these persons may also be considered a beneficial owners.
- (f) It is being proposed to delete the provision under regulation 3(10) as it may contravene the standards. The cascading approach must be followed.
- (g) It is being proposed to amend the provision under regulation 3(11) to provide more clarity for the identification of beneficial owners of joint owners and to clarify that the minimum threshold should be considered even when interest is held jointly. That is, where 10% or more of any controlling ownership interest is held jointly, then each joint owner shall be treated as a separate beneficial owner.
- (h) It is being proposed to delete regulation 3(12), as the term “subsidiary” is not used in the Regulations.

3.2 Rights exercisable only in certain circumstances

It is being proposed to delete the provisions under regulations 10(2) and 10(3), as they contradict regulations 3(7) and 3(8). The cascading approach must be followed.

3.3 Beneficial Interest of Beneficial Owners

- (a) It is being proposed to delete the provision under regulation 12(1) in view that the format of the BO Register is no longer required to be prescribed (i.e. following the amendment made to section 5(7) of the BO Act in December 2022).
- (b) It is being proposed to amend the provision under regulations 12(2)(a) and (b) to reflect the terms used in the international standards to avoid interpretational issues.

- (c) It is being proposed to amend the provision under regulations 12(3) and (4) as it is now provided under the BO Act itself (i.e. section 5(2a)).

3.4 Periodic Review of Beneficial Owners

- (a) It is being proposed to delete current regulation 13 in view of the new amendments made to section 8 of the BO Act where all relevant provisions in relation to record keeping has been provided.
- (b) This regulation is being replaced with a new provision that will specify the frequency that legal persons and legal arrangements should update BO information. This is in line with the Global Forum recommendations which will ensure the availability of up-to-date beneficial ownership information. The new provision requires legal persons and legal arrangements to review and verify such information within the first quarter of every calendar year at a minimum.

3.5 First Schedule

It is being proposed to delete the First Schedule as the Minister no longer has the power to prescribe the format of the BO Register.

3.6 Second Schedule

The content of the Second Schedule is being amended in view of the new amendments made in the Act (e.g. to require the BO's NIN, TIN, etc.).

4. Amendments required

Enclosed herewith is the proposed Beneficial Ownership (Amendment) Regulations, 2023 that will be submitted to Government for consideration.

5. Timeframe to provide feedback

All comments and feedback on the proposed policy changes and the proposed amendment regulations must be provided to the FSA or the FIU by Monday 6th March, 2023.

S.I. ----- of 2023

BENEFICIAL OWNERSHIP ACT, 2020

(Act 4 of 2020)

Beneficial Ownership (Amendment) Regulations, 2021

In exercise of the powers conferred by section 17 of the Beneficial Ownership Act, 2020 (Act 4 of 2020), the Minister responsible for Finance, makes the following regulations—

1. These regulations may be cited as the Beneficial Ownership (Amendment) Regulations, 2021.
2. The Beneficial Ownership Regulations, 2020 are hereby amended as follows —
 - (a) in Regulation 2, in the definition of “authorised officer” by repealing the words “regulation 16(2)” and substituting them with the words “regulation 15(2)”;
 - (b) in Regulation 3 —
 - (i) in sub-regulation (1) —
 - (A) in the chapeau, by repealing the words “or legal arrangement” and substituting them with the words “(except for a foundation)”;
 - (B) in paragraph (a), by repealing the words “or legal arrangement”;
 - (ii) in sub-regulation (1)(b) —
 - (A) by inserting after the words “sub-regulation (1)(a),” the words “as to whether the person(s) with the controlling ownership interest are the beneficial owner(s) or where no natural person exerts control through ownership interest,”;
 - (B) by repealing the words “or legal arrangement”;
 - (iii) in sub-regulation (1)(c) —
 - (A) by inserting after the words “exists or” the word “no”;
 - (B) by repealing the words “or legal arrangement, as the case may be”;
 - (iv) in sub-regulation (2) —
 - (A) in the chapeau, by inserting after the word “shall” the words “be a natural person or persons, who”;
 - (B) in paragraph (a), —
 - (I) by repealing the words “be a natural person or persons, who”;
 - (II) by repealing the words “controlling”;
 - (III) by repealing the paragraph (b);

- (v) in sub-regulation (3) —
 - (A) in paragraph (a), by repealing the words “or legal arrangement, as the case may be”;
 - (B) in paragraph (c), by repealing the words “or legal arrangement”;
 - (C) in paragraph (d), by repealing the words “or legal arrangement”;
- (vi) by repealing sub-regulation (4) and substituting it with the following —

“(4) Subject to sub-regulation (4a), the beneficial owner in the case of a foundation shall be—

 - (a) the councillor;
 - (b) the founder;
 - (c) the protector, if any;
 - (d) the beneficiaries or class of beneficiaries; and
 - (e) any other natural person exercising ultimate control over the foundation by means of direct or indirect ownership or by other means, including a natural person —
 - (i) who holds, whether directly or indirectly, absolute decision or veto rights in the conduct and management of the foundation;
 - (ii) who holds the right, directly or indirectly to appoint or remove majority of the councilors of the foundation;
 - (iii) who is the default recipient of the assets of the foundation in the event of its termination; or
 - (iv) any other person, who benefits from the foundation.
- (vii) by inserting after sub-regulation (4), the following new sub-regulation —

“(4a) Where a person under sub-regulation (4)(a), (b), (c) or (d) is not a natural person, the beneficial owners of that person shall be the beneficial owners of the foundation.”;
- (viii) in sub-regulation (5), in the chapeau, by repealing the word “shall be” and substituting them with the words “shall, in addition to the natural persons referred to under sub-regulation (1), include”;
- (ix) in sub-regulation (6),—
 - (A) in the chapeau by repealing the words “The beneficial owner in the case of a trust and other legal arrangements shall be a natural person or persons who is” and substituting them with the words “Subject to sub-

regulation (6a), the beneficial owner in the case of a trust and other legal arrangements shall be”;

- (B) in paragraph (d), by inserting after the semicolon the word “and”;
- (C) in paragraph (e)(v), by repealing the semicolon and the word “and”, and substituting them with a full-stop;
- (D) by repealing paragraph (f);
- (x) by inserting after sub-regulation (6), the following new sub-regulation —

“(6a) Where a person under sub-regulation (6)(a), (b), (c) or (d) is not a natural person, the beneficial owners of that person shall be the beneficial owners of the trust or the legal arrangement.”
- (xi) in sub-regulation (7), by repealing the words “shall be the beneficial owner” and by substituting them with the words “shall be considered a beneficial owner in addition to the natural persons referred to under sub-regulations (1) to (6)”;
- (xii) in sub-regulation (8), by repealing the words “creditor who appoints the receiver shall be the beneficial owner” and substituting them with the words “natural person who is the creditor shall be considered a beneficial owner in addition to the natural persons referred to under sub-regulations (1) to (6)”;
- (xiii) in sub-regulation (9), by repealing the words “shall be the beneficial owner” and substituting them with the words “shall be considered a beneficial owner in addition to the natural persons referred to under sub-regulations (1) to (6)”;
- (xiv) by repealing sub-regulation (10) and substituting it with the following —

“(10) Where ten percent or more of any ownership interest is held jointly, then each joint owner shall be treated as a separate beneficial owner.”
- (xv) by repealing sub-regulations (11) and (12).
- (c) in Regulation 10, by repealing sub-regulations (2) and (3) and re-numbering sub-regulation (4) as sub-regulation (2);
- (d) in Regulation 12 —
 - (i) in the marginal note, by repealing the words “Form of register” and substituting them with the words “Beneficial interest”;
 - (ii) by repealing sub-regulations (1), (3) and (4) and re-numbering the remaining sub-regulations accordingly;
 - (iii) in the renumbered sub-regulation (1), —
 - (A) in the chapeau, by repealing the words “owners, the details of each beneficial owner’s beneficial interest” and substituting them with the words “owners with the details of the beneficial interest of each beneficial owner or each registrable legal person”;

(B) by repealing paragraph (a) and substituting it with the following —

“(a) means and mechanisms through which ownership or control is exercised; and”

(C) in paragraph (b), —

(I) by inserting after the words “interest held”, the words “, description of other forms of control”;

(II) by inserting after the word “owner”, the words “, whichever applicable”;

(e) by repealing Regulation 13 and substituting it with the following;

“Periodic review of beneficial owners

13.(1) Every legal person or legal arrangement shall, at least once in every calendar year, review and verify its beneficial owners, including any changes required to be made to the registerable particulars of a beneficial owner.

Provided that at least one review and verification shall be undertaken within the first quarter of every year.

(2) Every legal person or legal arrangement shall keep, before the end of the first quarter in every year, a declaration of compliance with sub-regulation (1) at the principal place of business of its resident agent in Seychelles.

(3) A legal person or legal arrangement shall not provide a false or misleading declaration under sub-regulation (1).

(4) A legal person or legal arrangement which fails to comply with sub-regulation (1), (2) or (3) shall be liable to a penalty not exceeding SCR20,000.”;

(f) in Regulation 14, by repealing the word “Second” and substituting thereof the word “First”;

(g) in Regulation 15, by repealing the word “Third” and substituting it with the word “Second”;

(h) in Regulation 16 —

(i) in the chapeau, by repealing after the word “means”, the word “the”;

(ii) in sub-regulation (4)(d), by repealing the words “this regulation” and substituting them with the words “the Act, these regulations”;

(i) by repealing the First Schedule and re-numbering the other schedules accordingly.

(j) in the re-numbered First Schedule —

(i) by repealing paragraphs 4, 6, 7 and 8 and substituting them with the following —

- “4. Date of Birth:
5. Nationality:
6. National Identification Number or equivalent (if any):
7. Tax Identification Number or equivalent (if any):
8. Date on which the person became the BO:
9. Particulars of the BO’s beneficial interest:”

- (ii) by repealing the words “shares held (>10%)” and substituting them with the words “shares held (≥10%)”
- (iii) by repealing the words “more than 10%” and substituting them with the words “10% or more”;
- (iv) by repealing the words “a majority (>10%) of the directors of the legal person” and substituting them with the words “directors holding majority of the voting rights at the meetings of the board on all or substantially all matters”;
- (v) by inserting after the words “or management position” the words “or other position”;
- (vi) by repealing the words “Details (name, residential address, service address, date of birth and nationality) of any person holding the interest on behalf of the beneficial owner and the particulars and details of the interest held by each nominee” and substituting them with the following —

“Interests held by nominees on behalf of nominator or beneficial owner (if applicable):

- Where the nominee is:
 - a natural person provide the name, residential address, service address, date of birth, nationality, national identification number or equivalent (if any) and tax identification number or equivalent (if any) of each nominee holding the interest on behalf of the beneficial owner and the particulars and details of the interest held by the nominee;

- a legal person, provide the name, registered address, incorporation or registration number, date of incorporation or registration, jurisdiction of incorporation or registration, tax identification number or equivalent (if any) and the particulars and details of the interest held by the nominee.

- Where the nominator is:

- a natural person, provide the name, residential address, service address, date of birth, nationality, national identification number or equivalent (if any) and tax identification number or equivalent (if any) of each nominator;

- a legal person, provide:

- the name, registered address, incorporation or registration number, date of incorporation or registration, jurisdiction of incorporation or registration, tax identification number or equivalent (if any) of each nominator;

- the name, residential address, service address, date of birth, nationality, national identification number or equivalent (if any) and tax identification number or equivalent (if any) of each beneficial owner of the nominator.

- (vii) by repealing the words “pursuant to section 10 (7)” and substituting them with the words “pursuant to section 10 (7a)”;

MADE this day of2023.

**NAADIR HASSAN
MINISTER OF FINANCE, NATIONAL PLANNING
AND TRADE**