



Frequently Asked Questions

October 2021

The Financial Services Authority (“FSA”) is issuing these Frequently Asked Questions (“FAQs”) to assist legal persons, legal arrangements and their respective resident agents under its regulatory purview in understanding how to apply the provisions of the Beneficial Ownership Act 2020 and Beneficial Ownership Regulations 2020. These FAQs also clarify the position of the FSA on certain provisions of the Beneficial Ownership Act and Regulations in order to assist compliance with such provisions. FSA may issue additional FAQs or guidance, as appropriate.

Any questions regarding the Central Beneficial Ownership platform, GoAML, needs to be directed to the Financial Intelligence Unit directly.

Additionally, the onus is on every legal person or legal arrangement, as the case may be, to identify and verify its beneficial owners.

These FAQs must also be read in conjunction with the Beneficial Ownership Act, Beneficial Ownership Regulations and Beneficial Ownership Guidelines.

General Questions

Listed Companies / Exemptions of listed companies

1. Who are exempted from the Beneficial Ownership Act 2020?

Pursuant to Section 2(2) of the Beneficial Ownership Act 2020 (hereinafter referred to as “the Act”), the Act shall not apply to –

- *A listed company;*
- *A legal person which is formed, incorporated or established outside of Seychelles, excluding an overseas company registered under the Companies Act.*

2. An International Business Company (“IBC”) with multiple shareholders where one of the shareholder is a listed company, is the listed company exempted from maintaining a register of beneficial owners?

Where one of the shareholders of an IBC is a listed company, the particulars of all the natural persons who ultimately owns or controls the listed company should be entered as beneficial owners on the IBC's register of beneficial owner ("ROBO").

Trusts

- 3. A trust which has been registered overseas is the only shareholder of a legal person listed under section 2 (1) (a) of the Act. The law which governs the overseas trust does not require for one of the parties listed under BO Regulation 3(6) to be considered as a beneficial owner of the trust. Who are considered as the beneficial owner(s) of the legal entity?**

As per paragraph 7 (f) of the Beneficial Ownership Guidelines, where the ownership structure of a legal person includes a legal arrangement that is a trust, the beneficial owners of the legal person would be the settlor, protector, trustee, named beneficiaries and any individual that meets conditions set out in Tier 2 (control through other means). This would apply, irrespective of whether the trust is registered in Seychelles.

- 4. As per section 10 (3) of the Act, if a relevant change occurs in relation to a beneficial owner, the beneficial owner shall, within 14 days of such change, give written notice to the legal person or the legal arrangement, as the case may be, providing the following details for changes to be made to the register of beneficial ownership. In the event that the beneficial owner has deceased, who is responsible to make the declaration of BO?**

The new beneficial owner will now have the obligation to make the declaration and update the ROBO accordingly.

- 5. Should the natural person(s) behind a Corporate Trustee be identified?**

The general principle is that a beneficial owner should at all times be a natural person. Consequently, if the trustee is a corporate trustee, the natural persons behind the corporate trustee will need to be identified.

- 6. Who are the beneficial Owners of a trust?**

As per regulation 3 (6) of the BO Regulations 2020, the beneficial owner shall be a natural person or persons who is:

- (a) the trustee*
- (b) the settlor*
- (c) the protector*
- (d) the beneficiaries or class of beneficiaries*
- (e) any other natural person exercising ultimate effective control over the trust or the legal arrangement, including any person who has, under the trust deed of the trust or any similar document, power to —*
 - (i) appoint or remove any of the trustees of the trust;*
 - (ii) direct the distribution of funds or assets of the trust;*
 - (iii) direct investment decisions of the trust;*
 - (iv) amend the trust deed; or*
 - (v) revoke the trust; and*

- (vi) any other person, known by the resident agent of the legal arrangement, who is exercising control over the legal arrangement.

Note that the 10% threshold is irrelevant when identifying the beneficial owners of trusts and other legal arrangements.

7. Who are the beneficial owner(s) of a discretionary trust?

The same principle applies in the case of a discretionary trusts whereby all parties to the trusts are deemed BO of that trust.

Where the beneficiaries are named in the trust deed or are identifiable by reference to a class of beneficiaries, they are considered as beneficial owners for the purpose of the Act regardless of whether the interest has vested to the person and the registrable particulars should be entered on the ROBO accordingly.

Where the individuals (or some of the individuals) benefiting from the trust are yet to be determined or are not named in the trust deed, a description of the class of beneficiaries can be provided in the register of beneficial owners as provided under Paragraph 10 of the Beneficial Ownership Guidelines.

Nominee-nominator

8. Can the name of a body corporate, serving as a nominee, be inserted on the ROBO or the Declaration of Beneficial Owners?

Yes, whether the nominee is a natural person or corporate body, details of the nominee should be entered into the ROBO, as per the registrable particulars of section 5 (1) of the Act. However, it is to be noted that the current provisions of section 5(1)(e)(i) of the Act does not appear to cater for details of corporate bodies at this point in time. In the event that a corporate body is serving as a nominee, the particulars to be entered would be:

- the name of the legal person/corporate body;
- registered address;
- service address; and
- incorporation number (as appropriate).

9. Can the name of a body corporate, serving as a nominator, be inserted on the ROBO or the Declaration of Beneficial Owners?

No, the Act clearly specifies that where the nominator is a legal person or body corporate, the identity of the natural person who ultimately owns or controls the nominator must be inserted.

10. Trustee A holds shares in Company A on behalf of Trust A. In this case, is Trustee A a nominee of Trust A?

By nature, a trust cannot own shares as it is not a legal entity. As its legal owner, Trustee A holds the shares of Company A on Trust A's behalf. Bearing in mind the afore-mentioned, this cannot be considered as a nominee/nominator relationship as the trust does not nominate the trustee to hold shares on its behalf. The trustee does so in its capacity as the legal owner of the trust property for the

fiduciary duty it holds towards the beneficiaries. Notwithstanding this and by virtue of regulation 3 (6) (a) of the Beneficial Ownership Regulations 2020, with regards to the trust, the trustee is only considered as a Beneficial Owner of the trust for the purpose of populating the ROBO and effectively a BO of Company A.

Determination of beneficial owners

11. Who are the beneficial owners of a shelf company?

A shelf company is by nature owned by its Registered Agent. Thenceforth, the natural person(s) who ultimately owns or controls the Registered Agent shall be considered as its Beneficial Owners.

12. Should the ROBO include only beneficial owners with 10% or more ownership and control and exclude those below the 10% threshold?

Pursuant to Regulation 3(2)(a) of the Beneficial Ownership Regulations, 2020, a natural person is considered a Beneficial Owner if he owns or controls 10% or more interests in a legal person. Therefore, if a person owns or controls less than 10% interest, the person need not be inserted on the ROBO and need not be populated on the Beneficial Ownership Database. In line with that and further to the provisions of the Beneficial Ownership Regulations, please be guided by sections 4 and 5 of the Beneficial Ownership Guidelines which shall assist in determining as to who should be considered as a Beneficial Owner and the circumstances in which they are considered as one.

However, in the case of identification of the beneficial owners of trusts and other legal arrangements, the 10% threshold is not applicable. All relevant persons must be identified.

13. Should a person who was previously considered a Beneficial Owner before the coming into force of the Act be reflected on the ROBO?

The Act requires ROBO to be accurate and up to date. Consequently, it should capture all persons falling within the ambit of the new meaning of 'beneficial owner' introduced by the Act as from 28th August, 2020. Therefore, the details of any existing beneficial owner meeting the new definition as of that date, must be reflected in the ROBO.

Foundations and beneficial owners

14. The object of a Foundation includes a class of persons where the latter is yet to be identified. Whose information must be included in the ROBO?

Regardless of whether the foundation has identified any beneficiary, the ROBO of the foundation must kept. As per regulation 3 (4) of the Beneficial Ownership Regulations 2020, the beneficial owner in the case of a foundation shall be a natural person(s):

- (a) Who holds, whether directly or indirectly, absolute decision or veto rights in the conduct and management of the foundation;*
- (b) Who holds the right, directly or indirectly to appoint or remove majority of the councilors of the Foundation;*

- (c) Who is a beneficiary in whom an interest is vested;*
- (d) Who is the default recipient of the assets of the foundation in the event of its termination;*
or
- (e) Any other person, who benefits from the foundation.*

Nationality of beneficial owners

15. What is to be considered as the nationality of a beneficial owner?

The nationality of a beneficial owner would usually be what is written on the nationality section on the individual's passport. In other circumstances, if the identification document does not feature the nationality, the country that issues the identification document shall be considered as the nationality of the individual.