



PORTCULLIS NOTICES

MCI (P) 067/07/2020

27 October 2020

SEYCHELLES – BENEFICIAL OWNERSHIP REGULATION 2020

The Seychelles had recently gazetted the Beneficial Ownership Regulation to take effect on 28 August, 2020 (Regulations) on top of the already existing Beneficial Ownership Act introduced on March 2020 (Act).

Under the provisions of the Act and Regulations, legal persons and arrangements will be required to maintain a Register of Beneficial Ownership (RBO) in prescribed format and in magnetic, electronic or other data storage form. The information is to be submitted to the Financial Intelligence Unit (FIU) via their Registered Agent.

Entries in the RBO is required to be retained for 7 years after a person ceases to become a beneficial owner.

Definition of “Beneficial Owners”

1. Under Section 3 of the Regulation “Beneficial Owner” means:-

One or more individual who ultimately have a controlling ownership interest in a legal person or arrangement by:-

- (i) holding directly or indirectly 10% or more shares or voting rights.
- (ii) holding the right directly or indirectly, to appoint or remove a majority of the board of directors.

2. A natural person or persons that exercise control over the company or any legal person or arrangement. This means that the individual:-

- (i) has the right to appoint or remove the majority of the board of directors or general partner.
- (ii) is controlling the legal person or arrangement by dominating the individual with controlling ownership interests by virtue of a familial or employment relationship.
- (iii) holds certain powers in relation to the legal person or legal arrangement which are likely to be used in practice to affect the decisions taken by the person with controlling ownership interests eg. A veto right; or
- (iv) any other control over a legal person or legal arrangement other than the control by ownership of any interests



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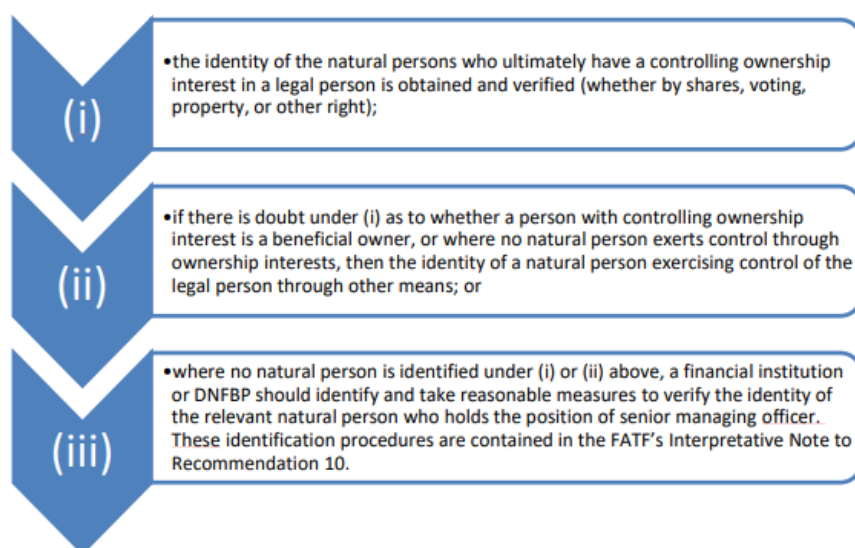
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How Beneficial Ownership is to be determined

Guidenotes issued by the FSA specifies that legal persons and arrangements may adopt the below Cascading Test (three tiered information-gathering approach) which mirrors the three tiered approach specified in the BO Regulations when seeking to ensure beneficial owners are identified.



It is important to note that the above measures are a cascading process, to be used in succession when a previous step has been taken but has not resulted in the identification of the beneficial owner or in instances where there is doubt with regards to the beneficial owner identified under a previous tier.

This means that measure (ii) and (iii) are not alternative options but are cascading measures, with each to be used where the previous measure has been applied and has not identified a beneficial owner or there is reason to believe that another natural person is also ultimately exercising control over the legal person by other means.

The guidelines for Beneficial Ownership will be published once available.



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Beneficial Owners of Other Legal Persons or Arrangements

The Regulations are also specific in providing for who will be deemed a beneficial owner in the case of legal person, joint ownership, foundations, partnerships, trusts and other legal arrangements including for legal arrangements that are in liquidation or receivership.

LEGAL PERSON OR ARRANGEMENT	HOW TO DETERMINE THE BENEFICIAL OWNER
SUBSIDIARY	Parent with 90% or more shares or voting rights or having direct or indirect interest
FOUNDATION	Absolute decision or veto rights in conduct and management
	Power to appoint/remove majority of councilors
	Vested beneficiary
	Default recipient on termination
	Any other beneficiary
PARTNERSHIP	Absolute decision or veto rights
	Right to appoint or remove majority of general partners
	Asset holder on termination
TRUST & Or	Trustee
	Settlor
	Protector
	Beneficiaries
	Any other person exercising ultimate effective control or certain specified powers
	Any other known by Resident Agent to be a person exercising control
INSOLVENT COMPANY	Liquidator, administrator, receiver
RECEIVER	Creditor who appoints receiver
DECEASED SHAREHOLDER	Executor or personal representative



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Register of Beneficial Ownership

The Regulations provide for a prescribed format of a register of beneficial owners specified in **Schedule 1**.

Upon becoming a beneficial owner or on a change of beneficial owner, a declaration of beneficial ownership is to be provided in prescribed form (as set out in **Schedule 2** Regulations) to the legal person or arrangement within 14 days of becoming a beneficial owner.

Submission of the Register of Beneficial Ownership, all declaration of beneficial ownership and copies of written notices relating to any changes in relation to a beneficial owner issued under s.10(3) of the Beneficial Ownership Act are to be handed over to the FSA within 14 days of a legal person or arrangement dissolving or ceasing to exist.

Penalties apply for a failure to comply with any aspect of Act or Regulations. A contravention of the provision to maintain a Register of Beneficial Ownership will result in penalties of up to SCR50,000 (approx.. USD2,790) for the legal person or arrangement and for every director, councilor, partner as the case may be.

You may access the full text of the legislation and schedules here:-

(i) CIRCULAR No 4 of 2020 Beneficial Ownership Act, 2020 Commencement Notice
https://www.seychellesfiu.sc/FIU/Publications/Circulars/Notice_to_LAs_and_LPs_BO_Act_2020.pdf

(ii) Beneficial Ownership Act 2020
https://www.seychellesfiu.sc/FIU/Legislations/Acts_&_Regulations/Beneficial_Ownership_Act_2020.pdf

(iii) Beneficial Ownership Regulation 2020
https://www.seychellesfiu.sc/FIU/Legislations/Acts_&_Regulations/SI_107_2020_Beneficial_Ownership_Regulations.pdf

(iv) Schedule 1
<https://portcullis.co/download/First Schedule -Register of Beneficial Owners.xls>



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(v) Schedule 2

[https://portcullis.co/download/schedule 2 of Beneficial Ownership Regulations \(word version\).doc](https://portcullis.co/download/schedule%20of%20Beneficial%20Ownership%20Regulations%20(word%20version).doc)

Next Steps

Portcullis will prepare the RBO and send this to you for review and update. (If the information is not correct, please ensure that any changes are notified to us in accordance with s.10(3) of the Act and a declaration of beneficial ownership is provided.)

Please note that you will have until 31st of January 2021 to confirm the details of the RBO and provide any declarations (if necessary) to us in line with s.18 of the Act.

Please be advised that Portcullis will charge a one time fee of USD250 to review our records, prepare the RBO, liaise with you as to the accuracy of the information contained in the RBO and update any changes or field any question you may have with regards to the RBO. Further charges may apply if changes to the RBO are extensive (i.e. number of new beneficial owners for which we are required to conduct due diligence and obtain documentation exceed 2).

Please do not hesitate to contact your Relationship Manager should you have any further queries.

Thank you.

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