

Seychelles

Beneficial Ownership Act, 2020

Act 4 of 2020

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Beneficial Ownership Act, 2020
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Seychelles

Beneficial Ownership Act, 2020

Act 4 of 2020

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Assented to on 5 March 2020

Commenced on 28 August 2020 by Beneficial Ownership Act (Commencement) Notice, 2020

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AN ACT to provide for the identification and verification of beneficial ownership of legal persons and legal arrangements; to establish and maintain up to date registers of beneficial owners and a centralised database, and for matters connected therewith or incidental thereto.

ENACTED by the President and the National Assembly.

Part I – Preliminary

1. Short title and commencement

This Act may be cited as the Beneficial Ownership Act, 2020 and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint and different dates may be appointed for different provisions of the Act.

2. Application

- (1) This Act applies to the following—
- (a) Legal person being—
 - (i) a company, including an overseas company, incorporated or registered under the Companies Act;
[Cap. 40]
 - (ii) an association registered under the Registration of Associations Act;
[Cap. 201]
 - (iii) an international business company incorporated or continued or converted under the International Business Companies Act;
[Cap. 274]
 - (iv) a protected cell company incorporated under the Protected Cell Companies Act or the International Business Companies Act;
[Cap. 300; Cap 274]
 - (v) a company incorporated under the Companies (Special Licences) Act;
[Cap. 253]
 - (vi) a partnership under the Civil Code of Seychelles Act.
[Cap. 33]
- and

- (vii) a foundation established under the Foundations Act.
[Cap. 270]
- (b) Legal arrangement being—
 - (i) a resident trustee of an international trust under the International Trusts Act;
[Cap. 276]
 - (ii) a general partner of a limited partnership under section 4 of the Limited Partnerships Act; and
[Cap. 281]
- (2) This Act shall not apply to —
 - (a) a listed company;
 - (b) a legal person which is formed, incorporated or established outside of Seychelles, excluding an overseas company registered under the Companies Act.
[Cap. 40]
- (3) The Minister may by notice in the *Official Gazette* apply or vary the provisions of this Act to legal persons and legal arrangements, other than those specified in paragraphs (a) and (b) of subsection (1), from time to time.

3. Interpretation

In this Act, unless the context otherwise requires—

"beneficial owner" means one or more natural persons who ultimately own or control a customer or the natural person or persons on whose behalf a transaction is being conducted and includes those natural persons who exercise ultimate effective control over a legal person or a legal arrangement;

"customer" shall have the meaning ascribed to it in the Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020;

"extractive companies" means the companies licensed under section 6 of the Petroleum Mining Act and the term "extractive industry" shall be construed accordingly and applied to the industry as a whole, and the Minister may by notice in the Gazette declare any other industry as an extractive industry from time to time;

[Cap. 166]

"Financial Intelligence Unit" means the Financial Intelligence Unit established under section 10 of the Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020;

"Financial Services Authority" means the Financial Services Authority established under section 3 of the Financial Services Authority Act, 2013;

[Act 13 of 2013]

"information" means any fact, document, statement or record in any form;

"law enforcement agency" shall have the same meaning assigned to it in the Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020 and the expression "law enforcement authority" shall be construed accordingly;

"listed company" means —

- (a) a company whose securities are listed on—
 - (i) a securities exchange licensed under the Securities Act;

- (ii) an exchange which is licensed in a jurisdiction that is an ordinary member of the International Organisation of Securities Commissions (IOSCO); or
- (b) a company which is a subsidiary of a body corporate, partnership or trust, whose securities are listed on any of the exchanges referred to in clause (a);

"**legal person**" means a body corporate or other body that is a legal person under the law by which it is governed;

"**legal arrangement**" means a trust or similar arrangement or any person holding assets in a fiduciary capacity in any other similar entity or arrangement;

"**member**" means—

- (a) in relation to a company, a person whose name has been entered in the company's register of members as a shareholder or a guarantee member;
- (b) in relation to an association, a member or an officer of the association under section 6 of the Registration of Associations Act;

[Cap. 201]

"**Minister**" means the Minister responsible for Finance and the term "Ministry" shall be construed accordingly;

"**registered agent**" means a person licensed to provide international corporate services or foundation services in accordance with the International Corporate Service Providers Act;

[Cap. 275]

"**register of beneficial owners**" means the register of beneficial owners maintained under [section 5](#);

"**Registrar of Associations**" means the Registrar of Associations appointed under the Registration of Associations Act;

[Cap. 201]

"**Registrar of Companies**" means the Registrar of Companies appointed under the Companies Act;

[Cap. 40]

"**registrable particulars**" means the particulars to be registered under this Act in relation to a legal person or a legal arrangement;

"**regulations**" means the regulations made under this Act;

"**resident agent**" means—

- (a) a secretary appointed under section 179 of the Companies Act;

[Cap. 40]

- (b) the person responsible under section 12 of the Registration of Associations Act;

[Cap. 201]

- (c) a registered agent under section 39 of the International Business Companies Act;

[Cap. 274]

- (d) a registered agent under section 28 of the Foundations Act;

[Cap. 300]

- (e) a resident trustee of an international trust under section 4 of the International Trusts Act;

[Cap. 270]

- (f) a general partner under section 4 of the Limited Partnership Act; or
[Cap. 276]
- (g) a partner of a partnership under the Civil Code of Seychelles Act; and
[Cap. 33]

"**service address**" means the physical address of the beneficial owner or nominee for the purpose of service of communications.

4. Competent Authorities

- (1) For the purposes of this Act, "Competent Authority" in respect of legal persons and legal arrangements –
 - (a) specified in Part A of the First Schedule, shall be the Financial Intelligence Unit;
 - (b) specified in Part B of the First Schedule, shall be the Financial Services Authority.
- (2) Without limiting the generality of subsection (1), for the sole purpose of monitoring and assessing compliance with this Act, the Competent Authority may, during normal office hours and after giving reasonable notice to the legal person or legal arrangement, as the case may be, –
 - (a) access the principal place of business of its resident agent;
 - (b) inspect the documents required by this Act to be kept by the legal person or legal arrangement.
- (3) Any person who in any manner impedes, prevents or obstructs the Competent Authority in the conduct of an inspection under this section commits an offence and is liable upon conviction to fine of not less than SCR50,000.

Part II – Register of beneficial owners

5. Register of beneficial owners

- (1) 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, containing the following information in respect of every beneficial owner of such legal person or legal arrangement –
 - (a) the name, residential address, service address, date of birth and nationality of each beneficial owner;
 - (b) details of each beneficial owner's beneficial interest, as may be prescribed by regulations;
 - (c) the date on which a person became a beneficial owner;
 - (d) the date on which a person ceased to be a beneficial owner;
 - (e) where a nominee holds interest on behalf of the beneficial owner –
 - (i) the name, residential address, service address, date of birth and nationality of each nominee holding the interest on behalf of the beneficial owner and the particulars and details of the interest held by the nominee; and
 - (ii) the identity of the nominator, and where the nominator is a legal person, the identity of the natural person who ultimately owns or controls the nominator.
- (2) Every legal person and legal arrangement, as the case may be, shall maintain accurate and up to date information required under subsection (1) in the register of beneficial owners.

- (3) A person who fails to maintain the register of beneficial owners under subsection (1) or to maintain accurate and up to date information under subsection (2) by the legal person or the legal arrangement, as the case may be, commits an offence and shall be liable to a penalty not exceeding SCR50,000 for each such failure.
- (4) In case of contravention of the provisions of subsection (1) or subsection (2), in addition to the penalty upon a legal person or a legal arrangement, as the case may be, every director, councillor of the legal person or a partner or a general partner of the legal arrangement, as the case may be, commits an offence and shall also be liable to a penalty not exceeding SCR50,000 for each contravention.
- (5) For the purposes of subsection (1),—
 - (a) "nominee" means a person who holds and has control over shares or other membership interests or any other control in a legal person for and on behalf of another person or persons; and
 - (b) "nominator" means a person who nominates a nominee to hold and have control over shares or other membership interests or any other control in a legal person for and on his or her behalf.
- (6) The registerable particulars of the register of beneficial owners maintained under subsection (1) shall be submitted to the Financial Intelligence Unit in such form and manner as may be specified by the Financial Intelligence Unit.
- (7) The register of beneficial owners required to be updated under subsection (2), shall contain such information in such form and manner as may be prescribed by regulations.
- (8) The minimum threshold for identification of beneficial owners of legal persons or legal arrangements shall be such as may be prescribed by regulations.

6. Register to be *prima facie* evidence

The register of beneficial owners maintained under subsection (1) of [section 5](#) shall be the *prima facie* evidence of any matter arising under this Act.

7. Electronic register etc.

The register of beneficial owners may be maintained in magnetic, electronic or other data storage form.

8. Retention period

- (1) Every legal person or legal arrangement, upon dissolution, or upon ceasing to exist in the Republic shall, through its resident agent, hand over all the records required to be kept under this Act to its competent authority for safe custody in such form and manner and in such time as may be prescribed by regulations.
- (2) An entry relating to a former beneficial owner of a legal person or legal arrangement may be struck off the register after 7 years from the date on which that person ceased to be a beneficial owner of the legal person or legal arrangement, as the case may be.
- (3) In case of contravention of the provisions of subsection (1) or subsection (2), every director, councillor of a legal person or a partner or a general partner of a legal arrangement, as the case may be, shall be liable to a penalty not exceeding SCR50,000 for each contravention.

9. Duty to identify and verify beneficial ownership information

- (1) Every legal person or legal arrangement, as the case may be, shall identify and verify its beneficial owners.

- (2) Subject to subsection (1), the legal person or the legal arrangement, as the case may be, shall give written notice to a person whom it knows or has reasonable grounds to believe that the person is a beneficial owner, requiring the addressee—
 - (a) to state whether or not the person is a beneficial owner in relation to the legal person or legal arrangement; and
 - (b) if so, to provide, confirm or correct the registrable particulars relating to the person.
- (3) A resident agent may also give written notice to any person, if the resident agent knows or has reasonable grounds to believe that the person knows the identity of a beneficial owner or knows the identity of someone likely to have that knowledge.
- (4) A notice under subsection (3) may require the addressee—
 - (a) to state whether or not the addressee knows the identity of a beneficial owner or knows the identity of any person likely to have that knowledge; and
 - (b) if so, to provide the particulars of such persons within the addressee's knowledge.
- (5) A notice issued under subsection (2) or subsection (3) shall specify that the information sought from the addressee be provided within 30 days from the date of issue of the notice.

10. Disclosure of change of beneficial ownership information

- (1) Every person on becoming a beneficial owner in relation to a legal person or legal arrangement, as the case may be, shall submit a declaration of beneficial ownership in such form, as may be prescribed, within 14 days from the date of becoming the beneficial owner, to the legal person or the legal arrangement, as the case may be, containing the registrable particulars relating to the person.
- (2) Upon receipt of the declaration of beneficial ownership, the legal person or the legal arrangement, shall within 14 days of its receipt—
 - (a) furnish the resident agent with a copy of the declaration of beneficial ownership; and
 - (b) cause the register of beneficial owners to be updated on the basis of the declaration.
- (3) 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—
 - (a) the relevant change;
 - (b) the date on which it occurred; and
 - (c) any information needed to update the register of beneficial owners.
- (4) Where a relevant change is not disclosed under subsection (3), the legal person or the legal arrangement, as the case may be, may take any action it deems appropriate, after giving the legal or beneficial owner, as applicable, an opportunity of being heard and furnishing to the legal or beneficial owner, as applicable, in writing the decision of the legal person or the legal arrangement, as the case may be, including but not limited to—
 - (a) placing of such restrictions as it thinks fit on the rights attached to the legal owner's interest in the legal person or the legal arrangement, as the case may be, including—
 - (i) any right to transfer or assign shares or other interest;
 - (ii) any voting rights;
 - (iii) any right to acquire further shares in addition to shares already held;

- (iv) any right to payment due in respect of the legal owner's interest, whether in respect of capital or otherwise;
 - (v) in the case of a limited partnership with legal personality, any right to take part in the management of the partnership;
 - (vi) in the case of a foundation, any benefit to which the legal owner becomes entitled under the foundation in accordance with the foundation instrument or the foundation rules; or
- (b) the cancellation of the legal owner's interest in the legal person or the legal arrangement, as the case may be.
- (5) Any person aggrieved by a decision taken pursuant to subsection (4), may appeal to the Supreme Court to set aside any restriction or cancellation.
- (6) No person shall intentionally provide false or misleading information required to be provided under subsection (1) to subsection (3).
- (7) Any person who contravenes subsection (6), commits an offence and is liable on conviction to imprisonment for a term not exceeding 1 year or to a fine of not less than SCR50,000 or to both.
- (8) For the purposes of this section, a "relevant change" in relation to a person occurs if—
- (a) the person ceases to be a beneficial owner in relation to the legal person or legal arrangement, as the case may be; or
 - (b) any other change occurs as a result of change in the particulars of the beneficial owner.

Part III – Accessibility, disclosure and confidentiality of beneficial ownership

11. Inspection of register of beneficial owners

- (1) The register of beneficial owners maintained by every legal person or legal arrangement through the resident agent shall be maintained in confidentiality and the following persons of that legal person or legal arrangement are entitled to inspect the register of beneficial owners without any charges –
- (a) a director or member of the legal person;
 - (b) a councillor, founder or supervisory person of the foundation;
 - (c) a trustee, settlor or beneficiary of the international trust;
 - (d) a general partner of the limited partnership or a partner of the partnership; and
 - (e) a person whose name is entered as a beneficial owner in the register of beneficial owners (limited to inspection of the person's name in the register).
- (2) A person's right to inspect the register of beneficial owners under subsection (1) shall be subject to prior notice and other conditions as the legal person or the legal arrangement may impose and the period of inspection shall not exceed 2 hours in a day and access to the register of beneficial ownership shall be restricted to the entries relating to such person only.
- (3) The persons referred to in paragraphs (a) to (e) of subsection (1) may request a copy of the register of beneficial owners or an extract of it and the same shall be provided within 10 days.
- (4) If the legal person or the legal arrangement through its resident agent refuses to allow any of the persons referred to in paragraphs (a) to (e) of subsection (1) to inspect the register of beneficial owners or fails to provide copy of the register of beneficial owners within 10 days, that legal person or legal arrangement commits an offence and is liable on conviction to a fine not less than SCR50,000.

- (5) Any person aggrieved by the decision of the legal person or the legal arrangement, as the case may be, for inspection of the register of beneficial owners under subsection (1), or failure to provide a copy thereof under subsection (3) within 10 days of the request, may file an application before the Supreme Court to direct the legal person or the legal arrangement, as the case may be, to allow the person to inspect the register of beneficial owners or to provide a copy of the extract of the register of beneficial owners.
- (6) Notwithstanding anything contained in subsection (1), in addition to maintaining the register of beneficial owners, a copy of the register in respect of extractive companies shall be filed with the office of the Registrar of Companies and shall be updated by the resident agent from time to time and the said register shall be made available to any person for inspection and for obtaining copies thereof on payment of such fee and in such form as may be prescribed by regulations.

12. Rectification of register of beneficial owners

- (1) If any beneficial owner finds that the information that is required to be entered in the register of beneficial owners is omitted from the register or is inaccurately entered in the register or if there is unreasonable delay in entering the information in the register, the beneficial owner may request the legal person or the legal arrangement, as the case may be, in writing to rectify the omission, inaccuracy or delay in entering the details in the register of beneficial owners.
- (2) On an application under subsection (1), the legal person or the legal arrangement, as the case may be, shall within 3 days from the date of receipt of such application rectify the omission, inaccuracy or delay in entering the details in the register of beneficial owners.
- (3) If the legal person or the legal arrangement, as the case may be, fails to rectify the omission, inaccuracy or delay in entering the details in the register of beneficial owners, the aggrieved person may file an application before the Supreme Court to that effect and, on such application, the Court may—
 - (a) order the rectification of the register of beneficial owners, and may direct the legal person or the legal arrangement, as the case may be, to pay all costs of the application and any damages the applicant may have incurred;
 - (b) determine any question relating to the right of a person who is a party to the proceedings to have the person's name entered in or omitted from the register of beneficial owners, whether the question arises between—
 - (i) two or more beneficial owners or alleged beneficial owners; or
 - (ii) between one or more beneficial owners or alleged beneficial owners and the legal person or legal arrangement;
 - (c) refuse the application, with or without costs to be paid by the applicant;
 - (d) determine any question that may be necessary or expedient to be determined for the rectification of the register of beneficial owners.

13. Beneficial ownership database

- (1) The Financial Intelligence Unit shall be the nodal agency to maintain the Seychelles Beneficial Ownership database by populating the beneficial ownership information (including the periodic update requirements) reported by the legal persons or the legal arrangements, through their resident agent.
- (2) The Financial Intelligence Unit shall establish a dedicated database with all security measures to keep the data intact in the database.
- (3) The procedure for uploading the beneficial ownership information onto the database shall be specified by guidelines issued by the Financial Intelligence Unit from time to time.

- (4) The procedure for access to the data base, by the entities specified in the Second Schedule, shall be prescribed.
- (5) Responsibility for the accuracy of the information being uploaded on the beneficial ownership database shall be on the legal person or the legal arrangement, as the case may be.
- (6) A resident agent who or which intentionally furnishes wrong information onto the beneficial ownership database relating to a legal person or a legal arrangement commits an offence and the resident agent, who or which furnished such information on the beneficial ownership database shall be liable on conviction, to imprisonment for a term not exceeding 2 years or to a fine not exceeding SCR100,000 or to both.

14. Access to information of beneficial owners by Competent Authorities etc.

- (1) Where a resident agent is requested by a written notice or Order, as the case may be,—
 - (a) by any competent authority;
 - (b) by any law enforcement authority;
 - (c) by the Registrar of Companies;
 - (d) by the Registrar of Associations;
 - (e) by the Seychelles Licensing Authority in respect of the legal person or legal arrangement licensed under the Licences Act or a legal person or legal arrangement applying for a licence under the Licences Act or any other Act;
[Cap. 113]
 - (f) by the Central Bank of Seychelles in respect of institutions under its regulatory control or a legal person or legal arrangement applying for a licence under the Financial Institutions Act or any other Act;
[Cap. 79]
 - (g) by Order of a Court—
 - (i) to provide any information maintained in the register of beneficial owners; or
 - (ii) to inspect the register so maintained under [section 5](#),

the resident agent shall provide the information or make available for inspection the register of beneficial owners within the time specified in the written notice or Order.

- (2) A resident agent, who or which fails to comply with subsection (1) shall be liable to a penalty not exceeding SCR50,000 for each such failure.
- (3) A resident agent, who or which intentionally provides false or misleading information as requested under subsection (1) commits an offence and shall be liable on conviction to imprisonment for a term not exceeding 2 years or to a fine not exceeding SCR50,000 or to both.

15. Appeals Board

The Appeals Board constituted under section 61 of the Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020, shall be the appeals board for hearing and deciding any appeal under the provisions of this Act, except against Orders made by the Supreme Court, and the procedure in section 62 of the AML Act shall apply to appeals under this Act.

16. Act to have overriding effect

Notwithstanding any other law, this Act shall prevail over the confidentiality provisions or restrictions on the disclosure of information contained in any other law.

Part IV – Miscellaneous provisions**17. Regulations**

The Minister may make regulations to provide for all matters which, by or under this Act, are required or permitted to be prescribed or necessary to be provided to carry out or to give effect to the provisions of this Act or to amend the Schedules.

18. Transitional provision

Every legal person and legal arrangement (other than extractive companies) through their resident agent shall comply with the provisions of this Act by 31st January, 2021.

First Schedule (Section 4)**Part A – Legal persons:**

- (a) A company, including an overseas company, incorporated or registered under the Companies Act.
- (b) An Association registered under the Registration of Associations Act.
- (c) A partner of a partnership under the Civil Code of Seychelles Act.

Part B**(1) – Legal persons:**

- (a) An international business company incorporated or continued or converted under the International Business Companies Act.
- (b) A protected cell company incorporated under the Protected Cell Companies Act.
- (c) A company incorporated under the Companies (Special Licences) Act.
- (d) A foundation established under the Foundations Act.

(2) – Legal arrangements:

- (a) A resident trustee of an international trust under the International Trusts Act.
- (b) A general partner of a limited partnership under the Limited Partnerships Act.

Second Schedule (Section 13(4))

1. Anti Corruption Commission of Seychelles

2. Central Bank of Seychelles.
3. Financial Crime Investigation Unit or any other Unit as may be designated by the Commissioner of Police within the Seychelles Police Force.
4. Financial Intelligence Unit.
5. Financial Services Authority.
6. Office of the Attorney General.
7. Registrar of Associations.
8. Registrar of Companies.
9. Seychelles Revenue Commission.