

Seychelles

Beneficial Ownership Act, 2020

Beneficial Ownership Regulations, 2020

Statutory Instrument 107 of 2020

Legislation as at 28 August 2020

FRBR URI: /akn/sc/act/si/2020/107/eng@2020-08-28

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PDF created on 21 February 2024 at 18:12.

Collection last checked for updates: 30 June 2014.

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Seychelles

Beneficial Ownership Act, 2020

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Statutory Instrument 107 of 2020

Published in Supplement to Official Gazette on 28 August 2020

Assented to on 27 August 2020

Commenced on 28 August 2020

[This is the version of this document from 28 August 2020.]

In exercise of the powers conferred by sections 5, 8, 10, 11 and section 13 read with section 17 of the Beneficial Ownership Act, 2020, the Minister responsible for Finance, makes the following Regulations —

1. Citation and commencement

These regulations may be cited as the Beneficial Ownership Regulations, 2020 and shall come into operation on the 28th day of August, 2020.

2. Interpretation

In these Regulations, unless the context otherwise requires —

"Act" means the Beneficial Ownership Act, 2020 (Act [4 of 2020](#));

"authorised officer" means a person appointed under regulation 16(2);

"database" means the Seychelles Beneficial Ownership database maintained under section 13 of the Act;

"foreign counterparts" means the foreign competent authorities exercising functions and responsibilities in relation to the cooperation which is sought, though such foreign competent authorities have different nomenclature or status; and "specified entities" means the entities specified in the Second Schedule and referred to in section 13(4) of the Act.

3. Determination of beneficial owners

- (1) For the purposes of these regulations, the beneficial owner in relation to a legal person or legal arrangement includes but is not limited to—
 - (a) one or more natural persons who ultimately have a controlling ownership interest in a legal person or legal arrangement; and
 - (b) to the extent that there is doubt under subregulation (1)(a), the natural person or persons, if any, exercising control of the legal person or legal arrangement through other means; or
 - (c) if no such person exists or such person may be identified under sub-regulation (1)(a) and (b), the natural person or persons who holds the position of a senior managing official of the legal person or legal arrangement, as the case maybe.

- (2) For the purposes of sub-regulation (1)(a), the beneficial owner of a legal person (except the beneficial owner of a foundation), shall –
 - (a) be a natural person or persons, who ultimately owns or controls, whether directly or indirectly, ten percent or more of controlling ownership interest including the shares or voting rights of the said legal person;
 - (b) hold the right directly or indirectly, to appoint or remove majority of the board of directors of the said legal person.
- (3) For the purposes of sub-regulation (1)(b), exercising control through other means includes, but is not limited to –
 - (a) the right to appoint or remove the majority of the board of directors or general partners of a legal person or legal arrangement, as the case maybe;
 - (b) where the person with controlling ownership interest is dominated by another person because of a familial or employment relationship;
 - (c) where another person 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 that person with the controlling ownership interest; or
 - (d) any control over a legal person or legal arrangement other than the control by ownership of any interest.
- (4) The beneficial owner in the case of a foundation shall be a natural person or persons –
 - (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.
- (5) The beneficial owner in the case of a partnership with legal personality shall be a natural person or persons who –
 - (a) ultimately owns or controls, whether directly or indirectly, absolute decision or veto rights in the conduct or management of the partnership;
 - (b) holds the right, directly or indirectly to appoint or remove majority of the general partners of the partnership; or
 - (c) is entitled to the assets of the partnership in the event of the dissolution of the partnership.
- (6) The beneficial owner in the case of a trust and other legal arrangements shall be a natural person or persons who is –
 - (a) the trustee or, in the case of a legal arrangement other than a trust, any person in an equivalent or similar position of a trustee;
 - (b) the settlor or in the case of a legal arrangement other than a trust, any person in an equivalent or similar position of a settlor;
 - (c) the protector, if any or in the case of a legal arrangement other than a trust, any person in an equivalent or similar position of a protector;
 - (d) the beneficiaries or class of beneficiaries or in the case of a legal arrangement other than a trust, any person in an equivalent or similar position of a beneficiary 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
 - (f) any other person, known by the resident agent of the legal arrangement, who is exercising control over the legal arrangement.
- (7) In the case of a legal person or legal arrangement, which is in insolvent liquidation, administration or receivership proceedings, the natural person who has been appointed as a liquidator, administrator or receiver of the legal person or legal arrangement, shall be the beneficial owner.
- (8) In the case of a receiver being appointed over ten percent or more of the shares or voting rights in a legal person or legal arrangement, the creditor who appoints the receiver shall be the beneficial owner.
- (9) In the case of a deceased shareholder in the legal person, the natural person or persons acting as executor or a personal representative of the deceased's estate shall be the beneficial owner.
- (10) A person shall not be treated as a beneficial owner only by reason of —
- (a) having the benefit of a security interest over the shares or voting rights in a legal person or legal arrangement; or
 - (b) having commercial exposure to the financial performance of a legal person or legal arrangement pursuant to financial derivatives or similar contractual arrangements.
- (11) Where two or more persons hold any interest jointly as joint owners, then each such joint owner shall be treated as a separate beneficial owner.
- (12) For the purpose of these regulations, a legal person is a subsidiary of another legal person, if the parent entity —
- (a) holds, directly or indirectly, ninety percent or more beneficial interest in the shares of the subsidiary;
 - (b) hold, directly or indirectly, more than ninety percent of the voting rights in the subsidiary; or
 - (c) is irrespective of percentage has direct or indirect interest.

4. Holding of shares

- (1) In these regulations, holding shares in a legal person means holding a right to share in the capital or, as the case may be, profits of that person.
- (2) In these regulations, holding ten percent or more of the shares in that legal person means holding a right or rights to shares in ten percent or more of the capital or, as the case may be, profits of that person.

5. Voting rights

- (1) For the purposes of these regulations, voting rights refers to the rights conferred on shareholders in respect of their shares or, in the case of a legal person not having a share capital, on members or

officers, to vote at general meetings of the legal person or legal arrangement on all or substantially all matters.

- (2) In relation to a legal person or legal arrangement that does not have general meetings at which matters are decided by the exercise of voting rights—
 - (a) exercising voting rights means to exercise rights in relation to a person or persons that are equivalent to those of a person entitled to exercise voting rights in a company; and
 - (b) exercising ten percent or more of the voting rights in the legal person or legal arrangement means to exercise the right under the constitutional document of the legal person or legal arrangement to effect changes to the overall policy of the legal person or legal arrangement.

6. Holding shares and rights indirectly

Shares or rights held —

- (a) by a legal person, which is under the control of an individual; or
 - (b) by multiple legal persons, which are under the control of the same individual,
- shall be an indication of indirect ownership by such individual.

7. Rights to appoint or remove members of the Board of a legal person

For avoidance of doubt, the reference of right to appoint or remove majority of the board of directors of a legal person in these regulations refers to the right to appoint or remove directors holding majority of the voting rights at the meetings of the board on all or substantially all matters.

8. Shares held by nominees

For the purposes these regulations, shares held by a nominee on behalf of a nominator shall be treated as the shares were held by the nominator.

9. Rights treated as held by person who controls their exercise

- (1) For the purposes of these regulations, where a person controls a right, the right shall be treated as held by that person and not by the person who in fact holds the right, unless that person also controls it.
- (2) A person controls a right if, by virtue of any arrangement between that person and other person or persons, the right is exercisable only —
 - (a) by that person;
 - (b) in accordance with that person's directions or instructions; or
 - (c) with that person's consent or concurrence.

10. Rights exercisable only in certain circumstances

- (1) Rights that are exercisable only in certain circumstances are to be taken into account—
 - (a) when the circumstances have arisen, and for so long as they continue; or
 - (b) when the circumstances are within the control of the persons having the rights.
- (2) Notwithstanding sub-regulation (1), rights that are exercisable by a liquidator, administrator, receiver or creditor for the purposes of regulations 3(6) and (7), are not to be taken into account even when the legal person or legal arrangement is in any insolvency proceedings.

- (3) For the purposes of sub-regulation (2), insolvency proceedings includes, when —
 - (a) a liquidator has been appointed to act;
 - (b) a receiver has been appointed to act;
 - (c) a creditor has been appointed to act; or
 - (d) a winding-up process has commenced.
- (4) Rights that are normally exercisable but are temporarily incapable of exercise shall also be taken into account.

11. Rights attached to shares held by way of security

Rights attached to shares held by way of security provided by a person shall be treated, as held by that person —

- (a) where apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable in accordance with that person's instructions only; and
- (b) where the shares are held in connection with the granting of loans as part of normal business activities and apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in that person's interest only.

12. Form of register of beneficial owners

- (1) Every legal person and legal arrangement shall maintain a register of beneficial owners in the Form specified in the First Schedule to these regulations.
- (2) Every legal person and legal arrangement shall include and update the register of beneficial owners, the details of each beneficial owner's beneficial interest consisting of the —
 - (a) type and nature of the interests held; and
 - (b) numerical value of interest held or management position held by the beneficial owner.
- (3) The registrable particulars of a beneficial owner shall be entered in the register of beneficial owners, if all the registrable particulars relating to the beneficial owner have been provided in full and have been confirmed.
- (4) For the avoidance of doubt, a legal person or legal arrangement shall not enter the particulars of the beneficial owner in the register of beneficial owners until all the registrable particulars have been provided in full and have been confirmed.
- (5) Where there is a bona fide legal dispute as to the beneficial ownership of any interest in a legal person or legal arrangement which is in the process of being adjudicated by a court, no change should be recorded in the register of beneficial ownership before the determination of that matter by the court or the court orders, to do so.
- (6) For the purposes of section 5(1) of the Act, it shall be sufficient if the register of beneficial owners contains the particulars of the current beneficial owners of the legal person or legal arrangement as on the date of commencement of the Act and any change thereof shall be updated under section 5(2) of the Act.

13. Submission of records to Competent Authority

- (1) Where a legal person or legal arrangement dissolves or ceases to exist, the legal person or legal arrangement shall handover the following records to the Competent Authority, through its resident agent, within 14 days from the date that it is dissolved or ceases to exist —
 - (a) register of beneficial owners of the legal person or legal arrangement;

- (b) the declarations of beneficial ownership; and
 - (c) the copy of the written notices issued under section 10(3) of the Act.
- (2) Where a resident agent ceases to be a reporting entity under the Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020 (Act 5 of 2020) or otherwise ceases to operate in the Republic, the former resident agent shall handover the relevant records specified under sub-regulation (1) relating to every legal person or legal arrangement under its administration to the Competent Authority, within 14 days from the date that it ceases to be a reporting entity or it ceases to operate.
- (3) All records submitted to the Competent Authority shall be in digital form unless otherwise agreed upon between the Competent Authority and the resident agent.

14. Disclosure of a new beneficial owner

Every person, upon becoming a beneficial owner, shall submit to the relevant legal person or legal arrangement, a declaration of beneficial ownership, detailing the registrable particulars of the person in the Form specified in the Second Schedule to these regulations.

15. Inspection of the beneficial ownership register of extractive companies

Any person seeking inspection and obtaining copies thereof of the register of beneficial owners of an extractive company filed with the office of the Registrar General shall submit an application to the Registrar General in the Form specified in the Third Schedule along with payment of a fee of SCR200 to the office of the Registrar General.

16. Access to the database

- (1) No person, other than an authorised officer of a specified entity, shall have access to the database.
- (2) The Heads of specified entities shall appoint one authorised officer and an alternative authorised officer to access the database.
- (3) An authorised officer shall access the database to execute a search only for the permitted purpose.
- (4) For the purposes of these regulations, "permitted purpose" means searches related to —
 - (a) the prevention, detection, investigation or prosecution of criminal offences;
 - (b) the prevention, detection or investigation of civil offences;
 - (c) the prevention, detection, investigation of or the bringing of proceedings for conduct, in which penalties other than criminal penalties are provided; and
 - (d) the furtherance or discharge of any function under this regulation or any other laws under the purview of the specified entities.
- (5) The FIU shall maintain a record of searches conducted by every authorised officer.
- (6) Every authorised officer shall receive training conducted by the FIU to foster appropriate utilisation of the database.
- (7) Every authorised officer conducting or prompting a search on the database shall ensure that the search is fully in conformity with the requirements of these regulations.
- (8) An authorised officer who —
 - (a) fails to comply with any requirement of these regulations;

- (b) accesses the database for any purpose other than the permitted purpose under these regulations,
shall be terminated from employment and also liable to a fine not exceeding SCR20,000 or to imprisonment for a term not exceeding one year or to both.
- (9) Notwithstanding sub-regulation (2), in circumstances where direct access to the database by the authorised officers of the specified entities is not available, search shall be managed through an authorised officer of the FIU.
- (10) In the event that search on the database is to be managed through an authorised officer of the FIU, a written request shall be submitted to the FIU which shall include –
 - (a) name of specified entity and authorised officer;
 - (b) case reference number of specified entity;
 - (c) nature of the request;
 - (d) subject details of the entity to be searched;
 - (e) any other relevant information, to include but not limited to, the urgency of the request; and
 - (f) disclaimer that the request conforms to the requirements of these regulations.
- (11) Upon receipt of a request under sub-regulation (10), the FIU's authorised officer shall conduct the search and the result of the search shall be provided –
 - (a) within 14 days of receipt of the request; or
 - (b) where the request is urgent, within a shorter period of time as may be mutually agreed upon by the parties.

17. Disclosure of information from the database

- (1) Information obtained from the search on the database shall be treated as confidential and shall not be disclosed except for a permitted purpose under these regulations.
- (2) Notwithstanding sub-regulation (1), any information obtained from the database by a specified entity may be shared with any foreign counterpart agency –
 - (a) if the disclosure is made in response to a formal request made by the foreign counterpart agency;
 - (b) the request is made in furtherance of the agency's functions; and
 - (c) the request and response are made in such manner and form consistent with the appropriate laws governing foreign information sharing by those specified entities.
- (3) Any person who discloses any information obtained from the database other than for what is permitted under these regulations, shall be terminated from employment and also liable to a fine not exceeding SCR20,000 or to imprisonment for a term not exceeding one year or to both.
- (4) Any person who discloses information accessed from the database commits an offence, if the person knows or suspects that any information or other matter disclosed may prejudice a criminal, civil or regulatory investigation which is being or may be carried out, or which have been or may be initiated.
- (5) A person guilty of an offence under sub-regulation (4), shall be terminated from employment and also liable to a fine not exceeding SCR20,000 or to imprisonment for a term not exceeding one year or to both.

First Schedule (Regulation 12(1))

Register of beneficial owners	
Name of legal person or arrangement	
Identification number	

Name of beneficial owner	Residential and service address of beneficial owner	Date of birth of the beneficial owner	Nationality of the beneficial owner	Nature of Interest held **	If interest is held by nominee			Date on which the person became a beneficial owner	Date on which a person ceased to be a beneficial owner
					Name, residential address, service address, date of birth and nationality of each nominee	Particulars and details of the interest held by nominee	Name, residential address, service address, date of birth and nationality of each nominator		

Second Schedule (Regulation 14)

TO: *(Legal person/Legal arrangement name)*

Dated: _____

RE: Declaration of Beneficial Ownership

I, the undersigned, hereby confirm that I have become a beneficial owner (the "BO") as defined in the Beneficial Ownership Act, 2020 in respect of the above legal person or legal arrangement.

Therefore, I hereby provide you with the below particulars as required under section 10(1) of the Act, which I confirm to be true and correct:

**

Numerical value of interest held (if applicable, e.g., number, percentage and par value of shares), management position held (if applicable) or other forms of control (if applicable).

1. Name:
2. Residential address:
3. Service address:
4. Nationality:
6. Date of birth:
7. Date on which the person became the BO:
8. Particulars of the BO's beneficial interest (*tick at least one point*):
 - Number and class of shares held (>10%): «Share Total» registered shares, or
 - Exercise (directly or indirectly) ultimate control over more than 10% of total voting rights of members in the legal person, or
 - Is entitled (directly or indirectly) to appoint or remove a majority (>10%) of the directors of the legal person, or
 - Is otherwise entitled to exercise or actually exercise control over the legal person or legal arrangement or its management,
 - Others: (*Specify type or nature of the interest held, numerical value of interest held or management position held*)

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:

I, _____ (*name of the beneficial owner*), am cognizant that enforcement actions that may be taken against me pursuant to section 10(7) of the Beneficial Ownership Act, 2020, if it is found that I provided false or misleading information in this declaration.

Yours sincerely,

Signature with date _____

(*Full name of the beneficial owner*)

Third Schedule (Regulation 15)

The Registrar of Companies

Request form to inspect and obtain copies of the register of I beneficial owners for extractive companies

I _____, holding ID number _____ hereby submit this request for the inspection and to obtain a copy of the register of beneficial owners relating to _____. I have paid prescribed fee of SCR200 to the office of the Registrar General and copy of the receipt is enclosed herewith.

Date: _____ Signature: _____

MADE this 27th day of August, 2020.