

A presentation on legislation on Beneficial Ownership in Mauritius

**Corporate and Business Registration Department
Mauritius**

July 2020

Introduction

- Companies, Trusts, Foundations, Partnerships, and other forms of Legal Persons and arrangements are common vehicles which are used in the Corporate sector in Mauritius and elsewhere
- The use of Corporate vehicles are an attractive way to disguise and convert the proceeds of crime before introducing them into the financial system

Why is it necessary to disclose Beneficial Ownership (BO)?

To:

- prevent legal persons and legal arrangements from being misused for criminal purposes;
- make legal persons and legal arrangements sufficiently transparent;
- ensure that accurate and up-to-date basic and beneficial ownership information is available on a timely basis;
- Persons who breach these measures are subject to effective, proportionate and dissuasive sanctions

Misuse Of Corporate Vehicles

- The misuse of corporate vehicles could be significantly reduced if information regarding both the legal owner and the beneficial owner is available
- Transparency in beneficial ownership is to prevent the misuse of corporate vehicles for money laundering or terrorist financing

Legislative Reforms Concerning Beneficial Ownership in Mauritius

Changes In The Definition Of Beneficial Owner From 2002-2019

- 2001 - name of shareholder
- 2012 - name of person behind the nominee
- 2017 - natural person instead of person and to file info with the Registrar
- 2018 - all other entities to keep and disclose their beneficial owner in the register and file with the Registrar

Definition enlarged to include indirect control

- 2019 - prescribed % of aggregate voting power to be determined by Regulations - 20%

Registrar empowered to disclose the information in specific circumstances (investigation or inquiry)

Our Objective

- Understand what types of legal persons exist in the country
- describe processes for creating them and obtaining basic and beneficial ownership information
- Make this information publicly available
- Understand and assess the Money Laundering & Terrorist Financing risks associated with the various types of legal persons

Implementing Measures To Enhance Transparency Of Companies

- Maintain an up-to-date shareholders' register
- Company registries should:-
 - Record basic information about the company

Who Are Concerned ?

Legal persons and legal arrangements

- Legal persons and legal arrangements are prevented from misuse for money laundering or terrorist financing,
- Timely and accurate information on beneficial ownership should be available to competent authorities without impediments; and
- Basic information is available publicly

Amendment to Companies Act 2001

2001 - Section 91 of the Act

The number of shares were held by “ a person” known as the “shareholder”

2012 - Section 91 (3A) of the Act

amended to include Sections A1 and A2 with the introduction of “shares are held by a nominee

2017 -. (Amended Act No. 10 of 2017 Government Gazette No. 70 of 24.07.17)

- “Person” replaced by “the beneficial owners or the ultimate beneficial owners”
- Updated records to be kept by company
- Action taken to identify the BO and UBO

2019 - Companies Act 2001 Amended by the Finance (Miscellaneous Provisions) Act 2019 (GN No 13 of 2019) :-

Beneficial Owner and Ultimate Beneficial Owner redefined as natural person with direct and indirect ownership

2020 – (Amended Act No. 5 of 2020 – Government Gazette No. 85 of 09.07.2020)

- Definition of Beneficial Owner moved to Section 2 of Companies Act
- Provision for the filing of Beneficial Owner at various steps (Incorporation/ Issue of shares/ Transfer of shares/ Buy back shares/ Redemption)
- At least one resident officer authorised to provide all basic & BO Information to Competent Authorities

Definition Of Beneficial Owner

(moved to Section 2 of Companies Act – Act No. 5 of 2020 – Government Gazette No. 85 of 09.07.2020)

“beneficial owner” or “ultimate beneficial owner” –

- (a) means any natural person who ultimately owns or controls a company or the natural person on whose behalf a transaction or activity is being conducted in relation to a company;
- (b) includes the natural person who ultimately owns or controls a company through –
 - A direct or indirect ownership of a minimum of 20% shares of a company;
 - voting rights;
 - ownership interest; or
 - control by other means.

Definition of Beneficial Ownership (contd)

- (a) where no natural person under paragraph (i) is identified, or if there is any doubt that the person identified is the beneficial owner, the natural person who controls the company in the manner one company controls another company under section 5;
- (b) where no person under paragraphs (i) and (ii) is identified, the natural person who acts as executive director or has equivalent executive powers

Disclosure of Beneficial Ownership information

Unless

- (a) required by the beneficial owner or the ultimate beneficial owner;
- (b) required for the purpose of an investigation, enquiry or any other matter; or
- (c) ordered by a court or the Judge in Chambers, the Registrar shall not disclose to any person the information referred to in section 91(3)(a)(ii)

Obligations By Company

COMPANIES ARE REQUIRED TO KEEP:

- A register of their shareholders or members (containing the number of shares held by each shareholder and categories of shares).

Beneficial ownership information of legal persons should be determined as follows:

- The identity of the natural persons (if any), as ownership interests can be so diversified that there are no natural persons to the extent that there is doubt as to whether the persons with the controlling ownership interest are the beneficial owners
- Relevant natural person who holds the position of senior managing official

Filing Obligation By Companies

- Any Beneficial Ownership information must be lodged with the Registrar within 14 days from the date on which any entry or alteration is made in the share register
- The share register must be kept by a company for a period of at least 7 years from the date of the completion of the transaction, act or operation to which it relates

Sanctions For Non Compliance

- **Since 2001-**
- S.329 - failure to comply with s91(3) amounts to an offence and shall on conviction liable to a fine not exceeding 100,000 rupees
- **In 2019-**
- Failure to comply with s91(3) by Companies other than a small private company amounts to an offence and shall on conviction liable to a fine not exceeding 300,000 rupees

Other Legislation And Measures To Enhance Transparency Of Companies

- The Financial Intelligence and Anti-Money Laundering Act 2002 (FIAMLA) require companies and Designated Non-Financial Business Profession (DNFBP) to cooperate with competent authorities by sharing information,
- To ensure compliance with legislations provision for sanctions of non compliance are now available
- Companies to retain records for at least 7 years.

Other methods of obtaining Beneficial Ownership information on companies

- Registries
- Financial Institutions and Designated Non-Financial Business Professions(DNFBPs), including Customer Due Diligence (CDD) information (R.10/22)
- Companies
- Other competent authorities (e.g. supervisors, Tax authority, Stock Exchange)

Legislative reforms with respect to beneficial ownership information for other legislations

The requirements and obligations by companies are also applicable to the following legal entities and arrangements under these following legislations:-

- Limited Partnerships Act amended since 2018
- Limited Liability Partnerships Act amended since 2018
- Foundations Act amended since 2018 Business
- Registration Act amended since 2015

*Thank you for watching
this presentation*

companies.govmu.org