

## **Seychelles Updates – Beneficial Ownership Act, 2020; Anti-Money Laundering and Countering the Financing of Terrorism Regulations, 2020; and Beneficial Ownership Regulations, 2020**

### **Introduction**

In March 2020, two new pieces of legislation which known as the Beneficial Ownership Act, 2020 (the “**BO Act**”) and the Anti-Money Laundering and Countering the Financing of Terrorism Regulations, 2020 (the “**AML/CFT Act**”) were enacted by the President and National Assembly of Seychelles.

In August 2020, a Beneficial Ownership Regulations, 2020 (the “**BO Regulations**”) was made by the Minister of Finance, Trade, Investment and Economic Planning of Seychelles.

### **Highlights of the Beneficial Ownership Legislation**

**The BO Act** and the **BO Regulations** brought in several new requirements to those Seychelles International Business companies. Pursuant to section 18 of the **BO Act**, every legal person shall comply with the provisions of the **BO Act** by **31 January 2021**.

Set out below are the highlights of the **BO Act** and **BO Regulations**:

#### **New definition of Beneficial Owners**

**The new definition** of “beneficial owner” adopts a ten (10) percent instead of twenty-five (25) percent ultimate ownership interest threshold. Pursuant to regulation 3(2) of the **BO Regulations**, the beneficial owner in respect of a legal person (except the beneficial owner of a foundation), shall:

- be a natural person(s) who ultimately owns or controls, whether directly or indirectly, ten (10) percent or more of controlling ownership interest including the shares or voting rights of a legal person;
- hold the right directly or indirectly, to appoint or remove majority of the board of directors of a legal person.

#### **Register of Beneficial Owners (“ROBO”)**

**Every legal person** and legal arrangement shall maintain an accurate and up to date **ROBO** at the registered office in Seychelles as required by section 5 of the **BO Act**. However, as per section 2(2) of the **BO Act**, such requirement does not apply to a listed company, or a legal person which is formed, incorporated or established outside of Seychelles (excluding an overseas company registered under the Companies Act).

### **New format of ROBO**

The **existing** format of ROBO adopted the requirements under the International Business Companies Act, 2016, as amended (the “**IBC Act**”), was supplanted by the new format of ROBO under the BO Act. The new format of ROBO contains the following information:

- 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—
  - 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
  - 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.

### **Filing of the ROBO with the Financial Intelligence Unit (“FIU”)**

**Pursuant to** section 5(6) of the BO Act, the ROBO shall be submitted to the FIU in such form and manner as specified by the FIU. The beneficial owners’ information submitted to the FIU is not publicly accessible.

Please note that the compliance deadline of such filing is 31 January 2021. Procedures and details for the ROBO filing will be announced by the FIU soon.

### **Obligations relating to the beneficial owner**

**Provisions under** section 10 of the BO Act set out the obligations relating to a beneficial owner.

#### *Declaration of Beneficial Ownership (“**Declaration of BO**”)*

Every person shall, **within 14 days** from the date of becoming the beneficial owner of a legal person or legal arrangement, submit a Declaration of BO in the prescribed form as per Second Schedule of the BO Regulations, to the legal person or legal arrangement. Upon receipt of the Declaration of BO, the legal person or legal

arrangement shall **within 14 days** of its receipt furnish the Declaration of BO to the registered agent for updating its ROBO.

*Notice of relevant change of beneficial owner (“**Notice of Relevant Change**”)*

If there is any relevant change in relation to a beneficial owner occurs, a Notice of Relevant Change should be given by the beneficial owner to the legal person or legal arrangement **within 14 days** of such change.

Relevant change occurs if a person ceases to be a beneficial owner or any change occurs in the particulars of that beneficial owner.

**Other highlights**

- Pursuant to section 8 of the BO Act, where a legal person or legal arrangement dissolves or ceases to exist in the Seychelles, they should, through its registered agent, handover all the records required to be kept under the BO Act, including but without limitation to the most updated ROBO, Declaration of BO, Notice of Relevant Change, etc. to its competent authority for safe custody.
- Section 11 of the BO Act allows the following persons to inspect the ROBO by giving the legal person or legal arrangement prior notice and subject to the conditions as imposed by the legal person or legal arrangement. Persons entitle to inspect the ROBO include –

a) A director or member of the legal person.

b) A councilor, 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.

e) A person whose name is entered as a beneficial owner in the ROBO (limited to inspection of the person’s name in the register).

**Penalties for non-compliance**

Pursuant to section 5(3) of the BO Act, a person who fails to maintain the ROBO or to maintain accurate and up to date information 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 failure.

Pursuant to section 5(4) of the BO Act, in case of contravention of the provisions of sections 5(1) or 5(2) of the BO Act, in addition to the penalty upon a legal person or a legal arrangement, every director, councilor 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.

Pursuant to section 10(7) of the BO Act, any person (beneficial owner) who contravenes section 10(6) of the BO Act, 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.

**What should you do now?**

- a) All newly incorporated or established legal persons or legal arrangements should adopt the new ROBO format.
- b) All existing legal persons or legal arrangements should transform their existing ROBO which adopted the format under the IBC Act to the new format.
- c) Be prepared for the ROBO filing with the FIU.

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