

BENEFICIAL OWNERSHIP BILL, 2020*(Bill No. 3 of 2020)***OBJECTS AND REASONS**

This Bill seeks to provide for identification and verification of beneficial ownership of legal persons and legal arrangements; to establish and maintain up to date register of beneficial owners, a centralised database and for matters connected therewith or incidental thereto.

The Financial Action Task Force (FATF), an inter-governmental body established in 1989 by the Ministers of the member jurisdictions has set out the standards to promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and financing of proliferation and other related threats to the integrity of the international financial system. The recommendations of the FATF has set out a comprehensive and consistent framework of measures, which the States are required to implement, to combat money laundering and terrorist financing activities.

The Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), a regional body founded in August, 1999 has been tasked to oversee the member countries of the Group in combating money laundering and terrorist financing by implementing the FATF recommendations. The ESAAMLG has evaluated the Anti Money Laundering and Countering Financing of Terrorist measures in place in the Republic of Seychelles and submitted its Mutual Evaluation Report (MER) in September, 2018. The shortcomings identified by the ESAAMLG in its MER are required to be met out in time bound manner. Recommendation No.'s 24 and 25 of the FATF relates to transparency and beneficial ownership of legal persons and arrangements. The ESAAMLG observed that the Republic is Largely Compliant (LC) in respect of recommendation No. 24 and Partially Compliant (PC) in respect of recommendation No. 25. In order to meet out the shortcomings identified by the ESAAMLG, the proposed Bill, *inter alia*, provides that —

Part I provides for preliminary matters such as short title, commencement, application, interpretation of various expressions used in the Bill and the competent authorities under the proposed legislation.

Part II provides for the register of the beneficial owners, its evidentiary value, retention period, duty to identify and verify the beneficial ownership information and disclosure of change of beneficial ownership information.

Part III provides for accessibility, disclosure and confidentiality of beneficial owners which includes inspection of register of beneficial owners, rectification of the register, population of the information on the database etc.

Part IV provides for miscellaneous provisions which includes regulations making power as well as transitional provision, which enables the legal persons and legal arrangements to comply with the provisions of the Act by 30th September, 2021 and the Schedules.

Dated this 31st day of January, 2020.

**FRANK D.R. ALLY
ATTORNEY-GENERAL**

BENEFICIAL OWNERSHIP BILL, 2020

(Bill No. 3 of 2020)

ARRANGEMENT OF SECTIONS

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BENEFICIAL OWNERSHIP BILL, 2020

(Bill No. 3 of 2020)



A BILL

OF

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 register of beneficial owners, a centralised database and for matters connected therewith or incidental thereto.

ENACTED by the President and the National Assembly.

PART I - PRELIMINARY

1. 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.

Short title and
commencement

Application	2.(1)	This Act applies to the following —
	(a)	Legal person being —
Cap 40	(i)	a company, including an overseas company, incorporated or registered under the Companies Act;
Cap 201	(ii)	an association registered under the Registration of Associations Act;
Cap 274	(iii)	an international business company incorporated or continued or converted under the International Business Companies Act;
Cap 300	(iv)	a protected cell company incorporated under the Protected Cell Companies Act or the International Business Companies Act;
Cap 274		
Cap 253	(v)	a company incorporated under the Companies (Special Licences) Act; and
Cap 270	(vi)	a foundation established under the Foundations Act.
	(b)	Legal arrangement being —
Cap 276	(i)	a resident trustee of an international trust under the International Trusts Act;
Cap 281	(ii)	a general partner of a limited partnership under section 4 of the Limited Partnerships Act; and
Cap 33	(iii)	a partner of a partnership under the Civil Code of Seychelles Act.

(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. In this Act, unless the context otherwise requires —

Interpretation

“beneficial owner” means a natural person or persons who ultimately owns or controls a customer or the natural person on whose behalf a transaction is being conducted and includes those persons who exercise ultimate effective control over a legal person (with the threshold specified in the Second Schedule) or a legal arrangement;

“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

Act 13 of 2013

section 3 of the Financial Services Authority Act, 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 a 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 partnership of persons, a trust or similar arrangement or any person holding assets in a fiduciary capacity in any other similar entity or arrangement;

Cap 208

“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 —

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| Cap 40 | (a) a secretary appointed under section 179 of the Companies Act; |
| Cap 201 | (b) the person responsible under section 12 of the Registration of Associations Act; |
| Cap 274 | (c) a registered agent under section 39 of the International Business Companies Act; |
| Cap 300 | (d) a receiver appointed under section 20 of the Protected Cell Companies Act; |
| Cap 270 | (e) a registered agent under section 28 of the Foundations Act; |
| Cap 276 | (f) a resident trustee of an international trust under section 4 of the International Trusts Act; |
| Cap 281 | (g) a general partner under section 4 of the Limited Partnership Act; or |
| Cap 33 | (h) a partner of a partnership under the Civil Code of Seychelles Act; and |

“service address” means the physical office address of the individual for the purpose of service of communication to him.

Competent
Authorities

4. For the purposes of this Act, “Competent Authority” in respect of legal persons and legal arrangements —

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| (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. |

PART II - REGISTER OF BENEFICIAL OWNERS

5.(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 (with the threshold specified in the Second Schedule) or legal arrangement —

Register of
beneficial
owners

- (a) the name, residential address, service address, date of birth and nationality of each of the 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 other 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 the accurate and updated information required under subsection (1) in the register of beneficial owners.

(3) Failure to maintain the register of beneficial owners under subsection (1) or to maintain accurate and updated 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 legal person or the legal arrangement, as the case may be, every director, councillor of a legal person or a partner or a general partner of a 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 be with such information and in such form and manner as may be prescribed by regulations.

6. 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.

Register to be
prima facie
evidence

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

Electronic
register etc.

8.(1) Every legal person or legal arrangement which ceases to operate in the Republic shall handover all the required records under this section to its competent authority for safe custody in such form and manner and in such time as may be prescribed by regulations.

Retention
period

(2) An entry relating to a former beneficial owner of the legal person or legal arrangement may be struck off from 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.(1) Every legal person or legal arrangement, as the case may be, shall identify and verify its beneficial owners.

Duty to
identify and
verify
beneficial
ownership
information

(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 he is a beneficial owner, requiring the addressee —

- (a) to state whether or not he 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 him.

(3) A resident agent may also give written notice to any person, if he 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 for from the addressee be provided within 30 days from the date of issue of the notice.

Disclosure of
change of
beneficial
ownership
information

10.(1) Every person on becoming a beneficial owner in relation to a legal person or legal arrangement, as the case may be, shall submit the declaration of the beneficial ownership 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, about the registrable particulars relating to him.

(2) Upon receipt of the declaration of beneficial ownership Form, 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 the beneficial ownership Form; and
- (b) cause the register of beneficial owners to be updated on the basis of the said declaration.

(3) If a relevant change occurs in relation to an individual, he shall, within 14 days of such change, give written notice to the legal person or the legal arrangement, as the case may be, giving the following details for changes in 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 concerned legal person or the legal arrangement may take any action it deems appropriate, after giving an opportunity of being heard and giving the findings of the legal person or the legal arrangement, as the case may be, in writing, 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 the 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 the 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 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.(1) The register of beneficial owners maintained by every legal person or the legal arrangement through the resident agent, shall be maintained in confidentiality and the following persons of that legal person or the legal arrangement are entitled to inspect the register of beneficial owners without any charges —

Inspection of
register of
beneficial
owners

- (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 a partnership; and
- (e) a person whose name is entered as a beneficial owner in the register of beneficial owners (limited to inspection of his 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 the 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 for 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, 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 owner 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 said 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 the copies thereof on payment of such fee and in such form as may be prescribed by regulations.

Rectification
of register of
beneficial
owners

12.(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 inaccurately entered in the register or there is unreasonable delay in entering the information in the register, he 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 have incurred;
- (b) determine any question relating to the right of a person who is a party to the proceedings to have his 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.

Beneficial
ownership
database

13.(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 on the database shall be such as may be specified by guidelines issued by the Financial Intelligence Unit from time to time.

(4) The procedure for access to the database, by the entities specified in the Third Schedule, shall be such as may be prescribed.

(5) 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) In case of intentionally furnishing wrong information on beneficial ownership database by a legal person or the legal arrangement through its resident agent, commits an offence and the resident agent, who 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.

Access to
information
of beneficial
owners by
Competent
Authorities
etc.

14.(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 the 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 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 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.

Appeals Board

15. 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 the orders passed by the Supreme Court.

Act to have
overriding
effect

16. 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

Regulations

17. 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.

Transitional
provision

18. Every legal person and legal arrangement (other than the extractive companies) through the resident agent, shall comply with the provisions of this Act by 30th September, 2021.

FIRST SCHEDULE

[See section 4]

PART A

(1) 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.

(2) LEGAL ARRANGEMENTS:

- (a) 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

[See section 3 and 5(1)]

**MINIMUM THRESHOLD FOR IDENTIFYING THE
BENEFICIAL OWNERS OF LEGAL PERSON**

The minimum threshold for identifying the beneficial owners of legal persons under the provisions of this Act shall be 10 per cent.

THIRD SCHEDULE***[See 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.