

BANK OF BOTSWANA

BANKING SUPERVISION DEPARTMENT



**GUIDELINES ON
IDENTIFICATION OF BENEFICIAL
OWNERSHIP INFORMATION FOR LEGAL
ENTITIES AND LEGAL ARRANGEMENTS**

March 9, 2022

TABLE OF CONTENTS

1.	AUTHORITY, PURPOSE AND SCOPE	3
(a)	Authority	3
(b)	Purpose.....	3
(c)	Scope.....	3
(d)	Responsibility	3
2.	DEFINITION OF TERMS USED IN THE GUIDELINES	3
3.	IDENTIFICATION OF ULTIMATE BENEFICIAL OWNERSHIP	6
4.	BENEFICIAL OWNERSHIP INFORMATION.....	7
(a)	Legal Persons.....	7
(b)	Other Matters	9
5.	PENALTIES FOR NON-COMPLIANCE	9
	Annexure: Information Required For Beneficial Owners.....	10

1. AUTHORITY, PURPOSE AND SCOPE

(a) Authority

- 1.1 These guidelines are issued by the Bank of Botswana (Bank), pursuant to its authority as provided for in Section 4 (2) of the Bank of Botswana Act (Cap. 51:01). They are also issued pursuant to the Bank's authority provided for in Section 49 (1) (c) of the Financial Intelligence Act, 2022 (FI Act), which empowers the Bank to issue instructions or guidelines to help an institution comply with the FI Act.

(b) Purpose

- 1.2 The purpose of these guidelines is to lay out the procedure for identifying beneficial owners of legal entities and arrangements in line with the requirements of Section 20 of the FI Act, which requires institutions to establish and verify the identity of beneficial owners when establishing a business relationship or carrying out a transaction with a customer to enhance the effectiveness of an institution's compliance with customer identification and verification requirements.

(c) Scope

- 1.3 These guidelines shall apply to any institution licensed by the Bank under the Banking Act (Cap. 46:04) (Banking Act); other financial institutions established under separate acts of parliament or granted exemption certificates, but falling within the purview of the Bank's supervision in accordance with Section 53(2) of the Banking Act or their respective statutes; bureaux de change licenced by the Bank under the Bank of Botswana Act (Cap. 55:01) (Bank of Botswana Act), Bureaux de Change Regulations, 2004; money or value transfer services and electronic service providers licensed under Bank of Botswana Act, Electronic Payment Services Regulations, 2019, and micro-finance institutions.
- 1.4 The guidelines specify procedures and minimum conditions that must be fulfilled in identifying beneficial ownership information for legal entities and arrangements when a customer seeks to establish, or during the maintenance of, a relationship with an institution, to enable the institution to understand the ownership and control structure of the customer.

(d) Responsibility

- 1.5 It shall be the responsibility of the management and board of directors of an institution to ensure that an institution conducts customer due diligence in line with the FI Act.

2. DEFINITION OF TERMS USED IN THE GUIDELINES

- 2.1 In these guidelines, the following definitions shall apply:

- (a) **Account:** any formal banking or business relationship established by a bank to provide products and services, or to engage in financial dealings, or transactions. An account

also includes demand deposits, savings deposits, time deposits accounts, or other transaction or asset accounts, or credit accounts or other extension of credit.

- (b) **Banking Act:** the Banking Act (Cap. 46:04).
- (c) **Bank:** the Bank of Botswana established under the Bank of Botswana Act (Cap. 55:01).
- (d) **bank:** a company licensed by the Bank, pursuant to the Banking Act, to conduct banking business in Botswana.
- (e) **Bureau de change:** a person licensed under section 30 of the Bank of Botswana Act (Cap. 55:01) to transact foreign exchange business.
- (f) **Beneficial owner:** a natural person who ultimately owns or controls a customer or a natural person on whose behalf a transaction is being conducted, including a natural person who exercises ultimate effective control over a legal person or arrangement,
 - (i) in relation to a legal person – a beneficial owner is a natural person who either directly or indirectly holds at least 10 percent of the shares, voting rights or other ownership interest. Provided that to the extent that there is doubt as to whether the person identified hereunder is the beneficial owner or where no natural person is identified as the beneficial owner, the natural person exercising control of the legal person through other means shall be the beneficial owner, or
 - (ii) is a person who holds the position of senior managing official where no natural person was identified as a beneficial owner in terms of subparagraph (i);
 - (iii) in the case of a trust – beneficial owner is the settlor, trustee, protector (if any), a beneficiary of a trust or a class of beneficiaries, where the individuals benefiting from the trust have yet to be determined, or any other natural person exercising ultimate effective control over the trust by means of direct or indirect ownership or by other means, such as when he or she has the power, alone or jointly with another person or with the consent of another person, to:
 - dispose of, advance, lend, invest, pay or apply trust property or property of the trust,
 - vary or terminate the trust,
 - add or remove a person as a beneficiary or from a class of beneficiaries,
 - appoint or remove a trustee or give another person control over the trust, or
 - direct, withhold consent or to overrule the exercise of a power referred to above.
 - (iv) in relation to other legal arrangements similar to trusts – beneficial owner is the natural person holding equivalent or similar positions to those referred to in paragraph (iii) above.

- (g) **Contractual agreement:** a contractual agreement is a legally binding agreement entered into among the shareholders, or among entities.
- (h) **Control:** a natural person controls a legal entity if that natural person –
 - (i) beneficially owns 10 percent or more of the issued share capital of the legal entity;
 - (ii) is entitled to exercise a majority of the votes that may be cast at a general meeting of the legal entity, or has the ability to control the voting of a majority of those votes, either directly or through a controlled entity of that company;
 - (iii) is able to appoint or to veto the appointment of a majority of the board of directors of a company;
 - (iv) in the case of the company being a close company, owns the majority of the members' interest or controls directly or has the right to control the majority of members' votes in the close corporation; or
 - (v) has the ability materially to influence the policy of the enterprise in a manner comparable to a person who, in ordinary commercial practice, can exercise an element of control referred to in paragraph (i) to (iv) to influence the course of events.
- (i) **Controller:** a person who is in a position to control or exert significant influence over the business or financial operations.
- (j) **Controlling interest:** an interest that permits the holder or owner thereof to elect, name or place into office a majority of the directors or senior managers of a legal entity.
- (k) **Credible sources:** any independent and reliable source of information such as international institutions, authoritative publications and mutual evaluations or detailed assessment reports.
- (l) **Customer:** includes a natural person, an unincorporated body, a legal arrangement, a legal person or a body corporate who has entered into or is in the process of entering into a business relationship or carries out a single or occasional transaction with an institution.
- (m) **Electronic payment service:** as defined under the Electronic Payment Services Regulations, 2019.
- (n) **Legal person:** any entity, other than natural person, created by law and recognised as a legal entity having distinct identity, legal personality, duties and rights, that can establish a permanent relationship with a financial institution or otherwise own property. Legal person can include companies, bodies corporate, foundations, partnerships, or associations and similar other entities that have legal personality. In addition, legal person can include non-profit organisations (NPOs) such as churches, foundations, associations or cooperative societies.

- (o) **Legal arrangement:** express trust or other similar legal arrangement.
- (p) **Senior management official:** a director, controlling officer, partner, settlor, trustee, or any person who is concerned with the management of the affairs of a legal entity or legal arrangement. This includes a managing director or chief executive officer (and deputies), chief financial or operations officer, chief lending officer, chief internal auditor, chief treasury officer (or their equivalents).
- (q) **Shareholder:** an individual, group, or organisation that owns one or more shares in a company and whose name appears in the share register or register of members.
- (r) **Trust:** as per the Trust Property Control, 2022, Act, includes a trust, non-profit trust, a foundation or any other arrangement through which the ownership in property of one person is by virtue of a trust instrument made over or bequeathed –
 - (i) to another person, the trustee, in whole or in part, to be administered or disposed of according to the provisions of the trust instrument for the benefit of the person or class of persons designated in the trust instrument or for the achievement of the object stated in the trust instrument; or
 - (ii) to the beneficiaries designated in the trust instrument, which property is placed under the control of another person, the trustee, to be administered or disposed of according to the provisions of the trust instrument for the benefit of the person or class of persons designated in the trust instrument or for the achievement of the object stated in the trust instrument, but does not include the case where the property of another is to be administered by any person as a trustee, executor, tutor or curator in terms of the provisions of any other written law.
- (s) **Ultimate effective control:** where ownership or control is exercised through a chain of ownership or by means of control other than direct.
- (t) **Verify:** establishing the truth of information received from the customer on the basis of documents or information obtained from a credible source which is independent of the person whose identity is being verified.

3. IDENTIFICATION OF ULTIMATE BENEFICIAL OWNERSHIP

- 3.1 Section 20 (1) (b) of the FI Act requires institutions to establish and verify the identity of beneficial owners before establishing a relationship or carrying out a transaction with a potential customer.
- 3.2 An institution should establish a systematic procedure for verifying the identity of its customers and, where applicable, any person acting on their behalf and any beneficial owner(s). Generally, an institution should not establish a relationship or carry out any transactions with a prospective customer until the identity of that customer has been satisfactorily established and verified in accordance with the FI Act.

- 3.3 An institution should identify the beneficial owner(s) of a legal entity and legal arrangement and take reasonable steps to verify the identity of the beneficial owner(s).
- 3.4 A beneficial owner should be individuals (natural persons) who are owners or controllers, either directly or indirectly, of an entity.
- 3.5 An institution should verify the identity of any individual exercising ultimate effective control over a legal entity or legal arrangement.
- 3.6 An institution should understand the nature of business, ownership and control structure of a legal entity and legal arrangement for purposes of establishing a customer risk profile.
- 3.7 An institution should verify the identity of any person acting on behalf of a legal entity or legal arrangement. The identity of a customer, beneficial owners, as well as persons acting on their behalf, should be verified using reliable and independent information sources.
- 3.8 A financial institution should, on an on-going basis, conduct customer due diligence with respect to an existing business relationship which is subject to the requirements of customer identification and verification, including periodic review of customer information to ensure that it maintains current information and records relating to the customer and beneficial owner.

4. BENEFICIAL OWNERSHIP INFORMATION

- 4.1 In line with the Financial Action Task Force (FATF) Guidance on Transparency and Beneficial Ownership and the Global Forum on Transparency and Exchange of Information for Tax Purposes – A Beneficial Ownership Implementation Toolkit, an institution should proceed as outlined below in determining the beneficial owners of legal persons and legal arrangements.

(a) Legal Persons

- 4.2 An institution should obtain and verify the identity of beneficial owners of the following nature:
 - (i) individual(s) who ultimately have a controlling ownership interest in a legal entity, whether by shares, voting property or other right; or
 - (ii) where it is not possible to identify natural persons who have control through ownership, or if there is doubt that those persons with the controlling ownership interest are the actual beneficial owners, then an institution should identify the individual(s) exercising control over the legal entity through other means, such as personal or financial influence. Examples of control by other means include personal connections to those owning or controlling a legal person, financing the legal entity, or contractual association; and

- (iii) where no natural persons are identified under (i) and (ii) above, an institution should identify and verify the relevant natural persons who are senior managing officers of the legal person.
- 4.3 Natural persons who may control the legal person through ownership interest refers to natural persons who directly or indirectly hold a minimum of 10 percent ownership interest in a legal person.
- 4.4 Despite the prescription of a threshold of 10 percent, it should be noted that shareholders can exercise control alone or together with other shareholders, including through a contract, arrangement, understanding, relationship, intermediary or tiered entity (a majority interest approach). This indirect control could be identified through various means such as shareholder's agreement, exercise of dominant influence or power to appoint senior management. Shareholders may thus collaborate to increase the level of control by a person through formal or informal agreements, or through the use of nominee shareholders. In such instances, an institution should identify and verify the identity of such shareholders. Other issues worth considering are whether a company has issued convertible stock or has any outstanding debt that is convertible into voting equity.
- 4.5 A common form of indirect control is through chains of ownership. Common examples of both direct or indirect control are as follows:
- (i) ownership of shares;
 - (ii) ownership of voting rights;
 - (iii) other ownership arrangements (for example, nominee and joint ownership arrangements);
 - (iv) contractual associations or personal connections with management or directors;
 - (v) management control (right to appoint or remove majority of directors); and
 - (vi) other ability to exert significant influence on corporate activity (for example, veto rights, decision rights, right to profit).
- 4.6 Natural persons may also exert control of a legal person through means such as:
- (i) exerting control of a legal person through personal connections to those owning or controlling a legal person; and
 - (ii) exerting control without ownership, by participating in the financing of the enterprise, or because of close and intimate family relationships, historical or contractual associations, or use or benefit from company assets.

4.7 Natural persons may exercise control through positions held in a legal entity in the following way:

- (i) responsibility for strategic decisions that fundamentally affect the business practices or general direction of the legal person. For example, depending on the legal entity, directors may or may not take part in exercising control over the affairs of an entity; and
- (ii) exercising executive control over the daily or regular affairs of the legal person through the holding of senior management positions such as chief executive officer, chief financial officer, executive director.

4.8 Where the customer or the owner of the controlling interest is a company listed on a stock exchange and subject to disclosure requirements; either by stock exchange rules or through law or enforceable means, which impose requirements to ensure adequate transparency of beneficial ownership, or is a majority-owned subsidiary of such a company, the relevant identification data may be obtained from a public register, from the customer or from other reliable sources.

(b) Other Matters

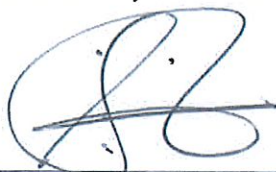
4.9 Regarding trusts, institutions should identify individuals who are settlors, trustees, protectors (if any), beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over a trust (including through a chain of control/ownership).

4.10 The beneficial ownership information that an institution should establish and verify is outlined in the Annexure.

5. PENALTIES FOR NON-COMPLIANCE

5.1 An institution that fails to comply with the requirements of Section 20 (1) (b) of the FI Act by not establishing and verifying the identity of the beneficial owner shall be liable to a fine not exceeding P1 million, as may be imposed by the Bank.

Issued this 9th day of March, 2022



DIRECTOR
BANKING SUPERVISION DEPARTMENT

Annexure

1. INFORMATION REQUIRED FOR BENEFICIAL OWNERS

1.1 Customer identification procedures used in the guidelines have been adopted from the Basel Committee on Banking Supervision Guidelines on Sound Management of Risks Related to Money Laundering and Financing of Terrorism, issued in January 2014 (revised July 2020).

(a) Identification of Legal Persons

1.2 An institution should obtain, record and maintain the following information concerning legal entities:

- (i) the company name (registered name, company constitution, company registration number, income tax and value-added-tax registration numbers, the address of the registered office) country of incorporation, legal form and status, nature of business of the legal entity, basic regulating powers, and a list of board of directors;
- (ii) identity of natural persons who are authorised to operate the account;
- (iii) identity of individuals holding senior management positions;
- (iv) identity of board of directors;
- (v) identity of the beneficial owners according to guidance in this paper;
- (vi) a register of shareholders or members (owning at least 10 percent), containing the number of shares held by each shareholder and categories of shares (including the nature of the associated voting rights);
- (vii) nature and purpose of the activities of the legal entity and its legitimacy;
- (viii) financial situation of the entity – this includes assets, liabilities, income, expenditure as well as expected source of funds. The information can be obtained through requesting recent financial statements for existing companies and projected cashflows for new companies (latest financial statement); and
- (ix) expected use of the account: purpose of the account, expected amount and frequency of the transactions in the account. Sources of funds paid into the account and destination of funds passing through the account.

1.3 An institution should verify the identity of customer information collected using reliable, independent source documents, data or information. For locally registered companies, institutions could verify the information from the Companies and Intellectual Property Authority (CIPA) on-line business registration system.

1.4 For foreign companies that are not registered with CIPA, an institution may verify company information using credible sources.

- 1.5 The measures to verify the information produced should be proportionate to the risk posed by a customer and should allow an institution to satisfy itself that it knows the identity of the customer. At a minimum, an institution should use the verification procedures listed below:
- (i) obtaining a copy of the certificate of incorporation and a company constitution, or partnership agreement (or any other legal document certifying the existence of the entity, for example, an abstract of the registry of companies;
 - (ii) for established corporate entities, review a copy of the latest financial statements (audited, if available); and
 - (iii) verify the identity of the beneficial owners.
- 1.6 For high risk customers, an institution may consider the additional verification procedures below:
- (i) undertaking a company search and/or other commercial enquiries to ascertain that the legal person has not been, or is not in the process of being dissolved, struck off, wound up or terminated;
 - (ii) using an independent information-verification process, such as by accessing public corporate registers, private databases or other reliable independent sources (for example, lawyers, accountants);
 - (iii) obtain prior institution references;
 - (iv) visiting the corporate entity's premises;
 - (v) contacting the corporate entity by telephone, mail or e-mail; and
 - (vi) as part of its broader customer due diligence measures, an institution will consider, on a risk-sensitive basis, whether the information regarding the financial situation and source of funds or origins of funds should be corroborated.
- (b) **Legal Arrangements and Similar Arrangements**
- 1.7 For legal arrangements, an institution should obtain and maintain the following information:
- (i) name of legal arrangement and proof of existence;
 - (ii) contact telephone and facsimile numbers, if relevant;
 - (iii) address and country of establishment;
 - (iv) nature, purpose and objects of the legal arrangement (for example, is it discretionary, testamentary etc.);

- (v) names and addresses of the settlor(s), the trustee(s), the protector(s) (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the legal arrangement (including through a chain of control/ownership);
 - (vi) identity of natural persons who are authorised to operate the account;
 - (vii) identity of relevant persons holding senior management positions;
 - (viii) description of the purpose and activities of the legal arrangement (for example, in a formal constitution, trust deed); and
 - (ix) source of funds.
- 1.8 An institution shall verify the identity of a customer established through information collected using reliable, independent source documents, data or information. At a minimum, an institution shall obtain a copy of documentation confirming the nature and legal existence of a legal arrangement (for example, a deed of trust, register of charities), verifying that any person purporting to act on behalf of the legal arrangement is so authorised. An institution shall verify not only the identity of that person but also the person's authorisation to act on behalf of the legal arrangement (by means of a signed mandate, an official judgment or another equivalent document). Measures to verify the information produced should be proportionate to the risk posed by the customer. Examples of other procedures of verification of high-risk customers include:
- (i) obtaining an independent undertaking from a reputable and known firm of lawyers or accountants confirming the documents submitted;
 - (ii) obtaining prior institution references;
 - (iii) accessing or searching public and private databases or other reliable independent sources (for example the Master's trusts registry);
 - (iv) verifying the identity of the beneficial owners of the legal arrangements; and
 - (v) verifying the information regarding the source of funds and/or origins of funds.
- (c) **Retirement Benefit Programmes**
- 1.9 Where an occupational pension programme, employee pension fund, employee benefit trust or share option plan is an applicant for an account, an institution should identify and verify identities of the following:
- (i) trustees and any other persons who have control over the relationship (for example, administrator, programme manager or account signatories); and
 - (ii) obtain a certificate of registration with the Non-Bank Financial Institutions Regulatory Authority.

- 1.10 An institution should verify that any person acting on behalf of a retirement benefit is so authorised and should verify the identity of that person.

(d) Societies and Cooperatives

- 1.11 Where societies and cooperatives open an account, persons exercising control or significant influence over their assets should be considered the beneficial owners and must be identified and verified. Identification and verification should be carried out on board members, executives and account signatories, among others.

(e) Professional Intermediaries

- 1.12 When a professional intermediary opens an account on behalf of a single customer, that customer must be identified.
- 1.13 Where funds held by the intermediary are not commingled, but sub-accounts are established that can be attributed to each beneficial owner, all beneficial owners of the account held by the intermediary should be identified.
- 1.14 Where the funds are commingled, an institution should establish the beneficial owners. However, there may be circumstances where an institution may not need to look beyond the intermediary as in the case where the intermediary is subject to due diligence standards in respect of its customer base (for example, collective investment undertakings, pension funds, broker-dealer) that are equivalent to those applying to the institution itself.
- 1.15 Where an account is established for an open or closed-end investment company, unit trust or limited partnership that is subject to customer due-diligence requirements that are equivalent to those applying to the institution itself, the institution should treat this investment vehicle as its customer and proceed to identify the following:
- (i) the fund itself;
 - (ii) directors or any controlling board where it is a company;
 - (iii) trustee, where it is a unit trust;
 - (iv) managing (general) partner, where it is a limited partnership;
 - (v) account signatories; and
 - (vi) any other person who has control over the relationship for example, fund administrator or manager.
- 1.16 In cases where no equivalent due diligence standards apply to an investment vehicle, all reasonable steps should be taken to verify the identity of the beneficial owners of the funds and those who have control of the funds.