

BENEFICIAL OWNERSHIP GUIDELINE FOR REGISTRARS (NO 2 OF 2023) FOR LEGAL PERSONS AND ARRANGEMENTS

PART A: INTRODUCTION

1. This Guideline is issued by the Commercial and Deeds Registry, in consultation with the AML/CFT/PF National Coordination Committee Working Group on Beneficial Ownership issues, the Registrar of Friendly Societies and the Chief Cooperatives and Development Officer.
2. The Guideline is issued in accordance with Regulation 5 of the AML/CFT (Miscellaneous) Regulations No 12 of 2023.
3. For the purpose of this guideline, the 'Relevant Registrars' refer to the Commercial Registrar, Deeds Registrar, the Registrar of Friendly Societies, and the Chief Cooperative Development Officer, the Compliance Commission, as more fully set out in the Companies Act, Deeds Registry Act, Friendly Societies Act, Cooperatives Societies Act, Compliance Commission Act, applying mutatis mutandis.¹
4. This guideline seeks to provide guidance to the Relevant Registrars on their key role and function within the AMLCFT framework to combat ML/TF/PF with particular focus on

¹ Regulation 2 of the AMLCFT (Amendment) Regulation 12 of 2023.

the requirements of Recommendations 24 and 25 of the FATF Recommendations and generally to effectively implement Guyana’s AML/CFT/CPF legal framework in a cohesive and comprehensive manner among supervisory authorities, law enforcement authorities, competent authorities, the financial intelligence unit and the relevant authorities.

5. The global threats of money laundering, and the financing of terrorism and proliferation of weapons of mass destruction mean that businesses are also susceptible to being misused for carrying these and other illicit activities. Often times, the individual perpetrators behind these nefarious activities hide behind businesses and complex corporate structures; employing a multitude of measures and going to great lengths to conceal their identities.
6. The availability of information on the basic and beneficial owners of body corporate² is an integral part of global transparency standards, and is a key requirement in combatting Money Laundering , Terrorist Financing and Proliferation Financing. In order to ensure that business entities are free from misuse for illicit activities, and therefore protect the legitimate financial system from illegitimately acquired funds, Guyana has introduced measures to identify the natural persons behind body corporate.
7. The Financial Action Task Force (FATF) has included beneficial ownership requirements in their standards and conduct assessments of jurisdictions on the availability of beneficial ownership information to the relevant Registrars or authorities in each country.
8. In 2022, Guyana implemented its National Policy and Strategy for Combatting Money Laundering, Terrorism Financing, and the Financing of Proliferation 2021-2025 with *Strategic Objective 8 of the National Policy titled- “Ensuring Adequate, Accurate and Up-to-date information on Beneficial Ownership and control of legal persons and legal arrangements.* As such, this Guideline serves as one of the measures to achieve this objective.

PART B: ROLE, FUNCTION AND RESPONSIBILITY OF REGISTRARS WITHIN THE AML/CFT/CPF FRAMEWORK

² For this context, means all forms of legal persons and arrangements.

1. Application of Guideline to the Relevant Registrars:

- (a) **The Deeds and Commercial Registrars Authority** is a corporate body established under the Deeds and Commercial Registrars Authority Act 2013 with functions assigned to the Registrar of Deeds; and the Registrar of the Commercial Registry under Section 4 of the Act.
- (b) **The Registrar of Friendly Societies** is the public officer appointed under the Friendly Societies Act 1893 responsible for keeping a register of all societies registered thereunder. The Registrar of Friendly Societies is also the supervisory authority appointed under the AML/CFT Act 2009 for all entities registered under the Friendly Societies Act.
- (c) **The Chief Cooperative Development Officer** is the public officer appointed under the Cooperative Societies Act and is the supervisory authority appointed under the AMLCFT Act 2009 for all entities registered under the Cooperative Societies Act.
- (d) **The Compliance Commission** is the Commission appointed under the Compliance Commission Act acting as a Registrar and a supervisory authority appointed under the First Schedule of the Compliance Commission Act in conjunction with the AMLCFT Act 2009, as amended for Designated Non-Financial Businesses (DNFBPS).

- 2. By way of Memorandum of Understanding dated 30th August, 2023, all Supervisory Authorities and the Relevant Registrars can share information in relation to their substantive functions and powers and/or as supervisory Authorities. Through the execution of the MOU the Relevant Registrars can share information including basic and beneficial ownership information to any supervisory authority.
- 3. The Relevant Registrars must ensure that basic types, forms and features of legal persons and arrangements and the beneficial ownership information for each of these types of legal persons and arrangements are kept, stored, maintained in a safe and secure manner.
- 4. The Relevant Registrars must ensure that basic and beneficial ownership information in relation to legal persons and arrangements are publicly available through whatever form or means possible, within their financial resources and budget. Publicly available may include the use of website, email, flyers, posters, newspapers and physical offices that are open and accessible to the public.

5. The Relevant Registrars must ensure that in promoting transparency of basic and beneficial ownership information disclosure of legal persons and arrangements they must give effect to the requirements provided in this guideline in relation to identifying and verifying the basic information and beneficial owners of a body corporate, keeping the basic and beneficial ownership information accurate and up-to-date so that it can be accessed in a timely manner.
6. The Relevant Registrars must ensure that the basic and beneficial ownership information are kept accurate and up-to-date and in accordance with the relevant legislation and also taking into consideration, any changes thereto by continuously updating same and keeping same accurate.
7. The Relevant Registrars should provide reasonable access in a timely and prompt manner to all domestic competent Authorities, supervisory authorities, regulatory bodies, law enforcement body or the Financial Intelligence Unit access to basic and beneficial ownership information which is respectively recorded, kept and maintained.³
8. The Relevant Registrars should establish and maintain a register of each type of body corporate registered under its primary legislation which should be clearly categorized and defined under their primary legislation.
9. The Relevant Registrars should establish and maintain a register of each body corporate registered which should record all the basic information of the body corporate including its name, address, rules, articles, legal form, status, registered address if different, basic regulating powers, list of directors or members, list of any other officers, if available, with their respective addresses, and any other relevant information as is more fully set out and specified in their respective primary legislation.
10. The Relevant Registrars should establish and maintain a comprehensive register of beneficial owners (shareholders or members) of the body corporate with their addresses and containing the number of shares held and/or percentage of voting rights attached thereto.

³ Regulation 6 of the AMLCFT (Miscellaneous) Regulations 12 of 2023.

11. The Relevant Registrars must ensure that every body corporate⁴ provides accurate and up-to-date beneficial ownership information, particularly when a body corporate-
 - a. Has changed its registered office or principal place of business, or
 - b. Has changed its beneficial ownership, director, or partner.
12. The Relevant Registrars must ensure that the information provided by a body corporate on beneficial ownership is verified through the use of existing information obtained from any other supervisory authority, competent authority, the Financial Intelligence Unit.
13. The Relevant Registrar is to ensure that all body corporates under its purview provide by way of written notification all changes pertaining to basic and beneficial ownership information within one (1) month of such a change, to notify the respective Relevant Registrars⁵.
14. The Relevant Registrars in ensuring that every body corporate⁶ notifies pursuant to Regulation 4(2) of the AMLCFT (Miscellaneous) Regulations 2023 may impose certain sanctions, for the failure of any person to notify them as required, as such person may be liable to –
 - a. A fine of two hundred thousand dollars for each failure to notify in accordance with subsection Regulation 4(1) of the AMLCFT (Miscellaneous) Regulations 2023, or
 - b. Be struck off the register of its Registrar.
15. The Relevant Registrars acting as a public registry shall in a timely and prompt manner cooperate, request, receive request and exchange information with international/foreign agencies performing similar functions in other countries and territories in investigations, proceedings, prosecutions, relation to ML/TF/PF abuse.
16. The Relevant Registrar in the performance of their duties and functions shall deal opening, honestly and cooperatively with all authorities, bodies, persons.
17. Where a Relevant Registrar is also deemed a Supervisory Authority, they shall discharge and perform their dual functions in tandem in accordance with Sections 22 and 23 of the AMLCFT Act. As such, reporting entities falling under the supervision of a Relevant

⁴ Defined by Section 2 of the AMLCFT Amendment Act 15 of 2023 and Regulation 2 of the AMLCFT (Miscellaneous) Regulations 12 of 2023 and includes legal persons and arrangements

⁵ Regulation 4 of the AMLCFT (Miscellaneous) Regulations 12 of 2023

⁶ Defined by Section 2 of the AMLCFT Amendment Act 15 of 2023 and Regulation 2 of the AMLCFT (Miscellaneous) Regulations 12 of 2023 and includes legal persons and arrangements

Registrar, places a requirement on the Relevant Registrar to also ensure compliance with Sections 15, 16, 18, 19, 20 and all other relevant Sections of the AML/CFT Act, as amended.

18. The Relevant Registrar in ensuring that beneficial ownership information is accurate and up to date shall as far as practicable-
- a. Require that at least one natural person is resident in the Guyana and authorized by the body corporate and accountable to the Relevant Registrar for providing all basic information and beneficial ownership information and cooperating with the Relevant Registrars and any competent authority, OR
 - b. Require that the one of the listed Designated Non-Financial Business Professionals (DNFBPs) as set out in the First Schedule of the Compliance Commission Act who are deemed as 'reporting entities' and subject to the AMLCFT Act, be the designated and authorized natural persons resident in Guyana for the body corporate, and accountable to the Relevant Registrar for providing all basic information and beneficial ownership information and cooperating with the Relevant Registrars and any competent authority.

As such professionals who are designated as DNFBPs should be required to be resident in or have at least one representative, resident in Guyana, which includes the following:

- Accountants
- Attorneys-at-law
- Auditors
- Commissioner of Oaths to Affidavits
- Notaries
- Non-Financial Trust and Company Service Providers

PART C: GUIDANCE ON OBTAINING BASIC AND BENEFICIAL OWNERSHIP INFORMATION

The following is referred to collectively as 'the Registrars', unless otherwise stated, in this Guideline.

1. OBTAINING BASIC INFORMATION

- (a) The Registrars are required to maintain a register for beneficial ownership information. The Registrars must ensure that there is adequate, accurate and up-to-date information

available on the beneficial ownership and control of legal persons. A beneficial owner is defined as follows in the Glossary to the FATF Recommendations. **SEE ANNEX 1.**

- (b) The Registrars are required to obtain, collect and maintain accurate and up to date basic information on the entities is registers as is provided for in its primary legislation and record such information in a Register. This information should include at minimum, the following:
- i. the name, type and basic features, purpose of the legal person or arrangement, where applicable,
 - ii. proof of incorporation, legal form and status
 - iii. the address of the registered office, basic regulating powers (for example, memorandum and articles of association)
 - iv. a list of directors a list of directors, or officers or members together with their addresses, and
 - v. a unique identifier number issued to the legal person or arrangement.
- (c) All information received by the Registrars which is required to be submit in relation to basic and beneficial ownership information should be verified utilizing various mechanisms to ensure that the information submitted is accurate and updated.
- (d) All changes in relation to basic information should be notified in writing to the Relevant Registrars within one month of such change for the relevant annotation and update to be made the respective records kept and maintained by the Registrars.

2. OBTAINING BASIC INFOFRMATION SPECIFIC TO COMPANIES

- (a) Companies are required to obtain and record basic information as set out below, some of which is the same information recorded by the Registrars:
- i. the company/entity name, proof of incorporation/ registration, legal form and status, the address of the registered office, basic regulating powers (for example, memorandum and articles of association), a list of directors, and unique identifier such as a tax identification number or equivalent (where this exists); and
 - ii. a register of their shareholders or members, containing the names of the shareholders and members and number of shares held by each shareholder and categories of shares (including the nature of the associated voting rights).
- (b) This information can be recorded by the entity itself or by a third person under the entity's responsibility. The information should be maintained by the company within the country,

either at its registered office or at another location notified to the Registrars, as the case may be.

- (c) However, if the entity or the Registrars hold beneficial ownership information within the country, then the register of shareholders need not be in the country, provided that the company can provide this information promptly on request.

3. LEGAL OWNERSHIP VS. BENEFICIAL OWNERSHIP ?

- (a) Legal ownership and beneficial ownership over a legal person are two separate concepts. A natural person may be considered a beneficial owner on the basis that he/she is the ultimate owner/controller of a legal person, either through his/her ownership interests or through exercising ultimate effective control through other means.
- (b) While legal ownership and beneficial ownership can overlap, the legal title or controlling shareholding of a company may be in the name of an individual or a legal person other than the beneficial owner who ultimately controls the entity, directly or indirectly.
- (c) Accordingly, individuals who exercise ultimate control over a legal person should be identified as beneficial owners, regardless of whether they own shares above any specified minimum ownership threshold.

4. OBTAINING BENEFICIAL OWNERSHIP INFORMATION

- (a) The Relevant Registrars are required to obtain, collect and maintain accurate and up to date beneficial ownership information on the entities is registers as is provided for in its primary legislation and record such information in a Register which may be kept in a numerical sequence and may be categorized according to the type or purpose of each type.
- (b) Beneficial Ownership information of legal persons and arrangement is the information on the identities and extent of the control and/or ownership exercised over a legal person or arrangement of:
 - a) The natural person(s) who ultimately have a controlling ownership interest in a legal person, if any and
 - b) The natural person(s) exercising ultimate effective control over the legal person through other means than ownership interests, if any.

- (c) In situations where a beneficial owner cannot be identified, the Registrar shall seek to identify a natural person who holds the position of senior managing official. This should be applied to all applicable approaches in collecting beneficial ownership information.
- (d) When collecting beneficial ownership information, reasonable measures should be taken to verify the identity(ies) of such persons, and their status as a beneficial owner.
- (e) The Relevant Registries may apply a risk-based approach in determining the reasonableness of the verification measures of beneficial ownership information.
- (f) Where there is doubt as to whether the person with the controlling ownership interest is the beneficial owner or there are no natural persons exerting control through the ownership interests, and the Relevant Registrar seeks to verify this information, the Registrar may obtain information on the identity of the natural person exercising control, or who is the senior managing official of the body corporate, legal person or legal arrangement through any other means, including the use of information and data from reliable open or closed sources.

5. BENEFICIAL OWNERSHIP IN RESPECT OF COMPANIES

- (a) The Relevant Registrar should ensure that Companies undertake the following measures:
 - To obtain and hold adequate, accurate and up-to-date information on the company's own beneficial ownership
 - To cooperate with competent Registrars to the fullest extent possible in determining the beneficial owner, including making the information available to competent Registrars in a timely manner;⁷and
 - To cooperate with financial institutions/DNFBPs to provide adequate, accurate and up-to-date information on the company's beneficial ownership information.
- (b) The Relevant Registrar should ensure that Companies maintain a list of their shareholders or members pursuant to Section 189(2) of the Companies Act. Such information may be accessed by the public and competent Registrars upon request.⁸ Further, Section 198 of the Companies Act requires all companies to keep a register of substantial shareholders (that is, 10% or more of the voting rights of the company).

⁷ MOU signed on 30th August, 2023 between all supervisory Registries and the Deeds and Commercial Registry

⁸This mechanism is further strengthened by the MOU signed August 30th 2023.

- (c) Section 198(5) provides that the Registrar (of companies) may at any time in writing require the company to furnish him with a copy of the register or any part of the register within 14 days after request is made to the company.
- (d) As a starting point, the beneficial owner of a company is a natural person who ultimately owns a body corporate or who exercises the ultimate ownership or control over the body corporate. The beneficial owner may be identified by using one or more of the criteria listed below. However, except for very simple company structures, share ownership might not equate to beneficial ownership, and thus companies must take steps to justify why they consider that meeting the share ownership threshold alone is sufficient to establish who the beneficial owner is.
- (e) This can be verified by the Relevant Registrar as companies are required to record and disclose their consideration of whether ultimate ownership or control is being exercised by the other means listed.
- (i) ***Holds at least 25% of the shares of the company or has a direct or indirect interest in at least 25% of the shares of the company.*** The Information in the register or List of shareholders (Section 123 of Companies Act, 89:01-Shareholders List) will establish whether any individual or corporate entity has an interest in at least 25% of the shares in the Company.
 - (ii) ***Directly or indirectly holds at least 25% of the voting shares of the company. Voting shares confer the right of the holder to vote on resolutions on all or substantially all matters which require a shareholder's vote.*** If the shares are directly owned, information in the share register will determine if an individual or corporate entity has an interest of at least 25% of the voting shares of the company.
 - (iii) ***Has the right to exercise ultimate ownership or control whether formal or informal over the company, or over the directors or the management of the company, including means of control other than direct control.*** Ultimate ownership or control refers to situations where the company, the directors or the management of the company are required to act under the directions, instructions or wishes of a particular person or persons. An individual exercises ultimate ownership or control over a company when any recommendation made by him which influences the decision of the company, is always followed by the shareholders holding a majority of the voting rights in the company, or by the directors or management of the company. This includes a means of control other than direct control such as instances where an individual consistently exercises influence or control over the company or is consulted by the directors or managers in making decisions, on a consistent basis. Other examples include:

- Amending the company's business plan
 - Changing the nature of the company's business
 - Making decisions on borrowing funds from the lenders; and
 - Appointing or removing the chief executive officer
- (iv) **Has the right or power to directly or indirectly appoint or remove a director(S) who holds a majority of the voting rights at the meeting of directors.** An individual may have influence or control over the company if he directly or indirectly appoints or removes a director who holds a majority of the voting rights at the meeting of directors.
- (v) **Is a shareholder of the company, and under an agreement with another shareholder(s) of the company, controls a majority of the voting rights in the company.** Control over a company may be exercised through the cumulative effect of an agreement which leads to the effective control of a company.
- (f) The obligation to maintain a record of beneficial ownership of companies is contained in Sections 470 and 470A of the Companies Act as amended by the Anti-Money Laundering and Countering of Financing of Terrorism Act 2009 as amended by AMLCFT Amendment Act No. 15 of 2016 and AMLCFT Amendment Act No. 17 of 2018) which provides that the Registrar must maintain a Register of Companies in which to keep the name of every body corporate- That is-
- (i) Incorporated under this Act
 - (ii) Continued as a company under this Act
 - (iii) Registered under this Act; or
 - (iv) Restored to the register pursuant to this Act; and
- That has not been subsequently struck off that Register.
- (g) The Registrar shall ascertain the beneficial ownership of any company and shall ensure in a timely manner that the information about beneficial ownership and the control of trusts or other legal arrangements in the Register is adequate, accurate, and current⁹.
- (h) The Relevant Registrar for Companies also has sanctioning powers and should be guided by Section 470A of the Companies Act when implementing same for failure of basic or beneficial ownership information. This includes:
- (a) A registered company shall provide the relevant information of beneficial ownership to the Registrar on a regular basis or on demand from the Registrar and where a registered company contravenes the provisions of this subsection any of its directors shall be liable on summary conviction to a fine of not less than ten million dollars nor more than forty million dollars and to imprisonment for a term not exceeding three years.'

⁹ Section 470A of the Companies Act.

- (b) The Registrar shall keep, update and maintain beneficial ownership information and the control of companies, trust and other legal arrangements obtained in accordance with this section in the Register.

6. BENEFICIAL OWNERSHIP IN RESPECT OF SOCIETIES

- (a) The Relevant Registrar should seek to ascertain the following information in relation to the beneficial ownership of societies:
 - a. Statement of the Objects and Situation of the Society
 - b. Proposed Name and address of the Society, which must be a local address
 - c. List of Officers appointed or to be appointed which must be by at least seven (7) members including the Secretary
 - d. List of members and their addresses
 - e. The rules of the proposed society
 - f. Bond to be given by the officers of the society, where applicable
 - g. Proof of residency of the members of the society within the society's area of operations in Guyana, where applicable
- (b) A variety of other legal persons have legal personality but are not companies and do not have shares, and hence will not be captured by any share threshold (25%). This requires an alternative approach in looking into control of the entity for determination of beneficial ownership.
- (c) **For example**, friendly societies and cooperative societies have no owners and are controlled by a board. Where they are similar to trusts, individuals holding the positions of founders, beneficiaries and members of the management may be considered to exercise control over the society. Furthermore, an individual can have control if he/she has the right to exercise (or actually exercises) significant influence over the running of the activities of the foundation. This could include, for example, the right to appoint or remove any of the board members, to direct or veto the distribution of the foundations funds or assets or its investment decisions, to wind up or convert the society.

7. BENEFICIAL OWNERSHIP IN RESPECT OF EXPRESS TRUSTS

- (a) The Registrars should seek to ascertain the following information for trusts arrangements:
 - a. The name, nature, and type of trust or legal arrangement
 - b. The country of establishment of the trust or legal arrangement

- c. The identify of the trustee, settlor, protector, controller, or similar person holding power to appoint or remove the trustee or persons of equivalent positions in other legal arrangements,
- d. The names and classes of beneficiaries,
- e. The identify of persons with powers to add beneficiaries, where applicable, and
- f. The identity of the person providing the funds, if not the ultimate settlor.

PART D: MULTI-PRONGED APPROACH TO BENEFICIAL OWNERSHIP INFORMATION

1. Utilizing several sources of information is more effective than using a single approach in preventing the misuse of legal persons for criminal purposes and implementing beneficial ownership transparency measures., as the different approaches supplement each other and lead ultimately to better quality information. A variety and availability of sources enhances access to information and helps to mitigate accuracy problems with individual sources.
2. The Core of a multi- pronged approach combines information held and or supplied by companies themselves and information held by, or on behalf of, public Registrars in a registry, or alternative mechanism if it ensures rapid and efficient access to beneficial ownership information for competent Registrars, and any additional measure as necessary.
3. The three (3) pillars of ensuring that beneficial ownership information is **adequate, accurate and up-to-date** are equally important, and not should be prioritized at the expense of the other.
4. Recommendation 24 standards provide for a **multi-prong approach** including at minimum, the following:
 - (a) *Company Approach*
 - (b) *Registry Mechanism OR Alternative Mechanism*
 - (c) *Supplementary Sources of Information*
5. In Guyana, the Company Approach, Registry Mechanism and Supplementary Sources of Information is utilized.
6. The Registrars shall use CDD Information obtained and maintained by Financial Institutions and designated non-financial businesses and professions, as an alternative mechanism. Supplementary information could also include basic and beneficial ownership information held by regulators pursuant to Section 23 and 76 of the AMLCFT Act 2009 as amended by the AML (Amendment) Act No. 15 of 2023; and any MOU established among supervisory Registrars, regulators, competent Registrars, or Government agencies/Ministries.

7. The Registrars should utilize its powers under the AML/CFT Act, its substantive legislation as well as any applicable MOU with domestic and foreign agencies to cross-check and verify beneficial ownership information.

PART E: PILLARS OF BENEFICIAL OWNERSHIP INFORMATION

The three (3) pillars of ensuring that beneficial ownership information IS **ADEQUATE, ACCURATE AND UP-TO-DATE** are equally important, and not should be prioritized at the expense of the other.

1. ADEQUATE BENEFICIAL OWNERSHIP INFORMATION

- (a) Adequate Information** is information that is sufficient to identify the natural person(s) who are the beneficial owner(s) and the means and mechanisms through ownership, control or other means.

As such, the Registrars should have mechanisms in place to ensure that basic information and BO information is adequate, including information provided to the registry or other available information.

(b) Information to Consider

- i. Some information which may be considered necessary to *identify a person* eg. First and last name, nationality and date of birth; while other information may be considered to *confirm the identity of the person* such as Tax Identification Number (TIN), Passport, National I.D. Number.
- ii. Similarly, with regard to the means and mechanisms through which the natural person(s) exercises beneficial ownership (whether through ownership or control), some information may be considered as necessary in order to identify such means and mechanisms (e.g., type of participation, voting rights or control through other means) and the scope (e.g., an indication of percentage of shares, voting rights or other form of control) of the beneficial interest.
- iii. Other information that may be useful to further confirm such means and mechanisms could include information on more than one form of beneficial ownership (e.g., through both ownership and control, if applicable), information on legal intermediaries or body corporate involved in the chain (i.e., those controlled directly by the beneficial owners); information on whether the beneficial owner is involved in any nominee relationship; and information

on whether the beneficial owner's interest in the legal person is held directly or indirectly.

- iv. In relation to friendly societies and cooperative societies and comparable legal persons, the following relevant position/role of the natural person(s) should be recorded:
 - a. Founder
 - b. Beneficiary
 - c. Member of the management

2. ACCURATE BENEFICIAL OWNERSHIP INFORMATION

(a) Verification

Following the identification of beneficial owners, information must be verified.

- i. Verification is a combination of checks and other processes that the Registrars must adopt at the various stages to ensure that the beneficial ownership data is accurate.
- ii. Verification applies to all prongs of the multi-pronged approach, and there are some principles that would apply to all prongs, (Company, Registry, Supplementary described below).
- iii. Verification may require professional expertise and the means of verification would depend on the approach in holding beneficial ownership information. The objective should be that the overall mechanisms established by a country ensure accuracy of beneficial ownership information and provide a degree in consistency of information across different sources.

Registrars shall verify beneficial ownership information as follows:

- i. Review documents submitted eg. Share certificates, shareholder register, board meeting resolutions, and power of attorney documents).
- ii. Depending on the level of risk, manual/automated cross checks with relevant government databases (Eg. Voting Register, Tax Identification Register, Commercial Registry, Deeds Registry), supervisory Registrars (eg. Guyana Revenue Authority, **competent Registrars etc.**

(b) Verification of beneficial owners should include verification:

- i. By companies under the companies approach
- ii. By authority(ies) or body(ies) responsible for the beneficial owner register under the registry approach
- iii. By entities responsible for providing beneficial ownership information under the alternative mechanism

- iv. By entities involved in any additional supplementary measures that are necessary to ensure that the beneficial ownership of a company can be determined, including eg. Information held by regulators or obtained by Fis and DNFBPs.

(C) Verification should comprise:

- i. **Verification of Identity** – appropriate steps should be taken to verify the identity of any natural person(s) recorded as a beneficial owners
- ii. **Verification of Status:** Appropriate steps should be taken to verify the basis of identification of a person as a beneficial owner.
- iii. A risk Based approach should be adopted for verification. Thus, in the case of higher risk, the extent and or frequency of verification measures should be enhanced. Higher risk cases may include, inter alia- companies with complex structures across multiple jurisdictions; the existence of nominee directors or shareholders, entities identified as high risk in a National Risk Assessment or Legal Persons and Arrangements risk assessment.

i. Verification Of Identity

In the identity verification processes appropriate steps should be taken to prove that a natural person, who has been identified as a beneficial owner, actually exists and is who they claim to be, e.g., through a review of government-issued identity documents.

An identity is a combination of “attributes” that belong to a person, e.g., name, date of birth and nationality. In order to verify the identity, in cases where there is a suspicion that the evidence of identity has been falsified or stolen, or of presence of any other related risks, steps should be taken to check whether the claimed identity belongs to the person presenting the evidence. This may entail asking a person to present government-issued evidence of their identity (such as a passport or driver’s licence).

Such verification may also be done by an automated exchange of data with a reliable national system such as a residence register, tax register, passport database or electoral information. The verifying party may rely on such an exchange if it provides the same level of assurance.

When verifying a person’s identity, the robustness of the evidence must be considered. This relates to the amount and reliability of independent source data, document or information provided, and a risk-based approach should apply. For verifying the identity of a beneficial owner located abroad, the receiving end of beneficial ownership information should take steps to verify the authenticity of legal documentation provided from abroad.

While a person's identity would not normally vary over their lifetime, the information may require updating upon expiry of identity documents or change of nationality. Measures should be put in place to ensure this information is checked and updated as necessary.

ii. Verification Of Status

Depending on the level of risk (as identified by risk assessment, etc.), verification of the status of the beneficial owner can include but is not limited to the following elements:

- I. Does the person identified as the beneficial owner have ownership, voting rights or control rights in the legal person, such that they meet the definition of a beneficial owner?
- II. Is the person identified as the beneficial owner actually exercising the rights associated with the level of ownership and/or control in practice, in his/her own name or is the person exercising those rights under instruction from, or by agreement with, an undisclosed third party?
- III. Whether the identified beneficial owners are consistent with the structure and risk profile of the legal person?

As the status of a beneficial owner may change over time, even down to the nature of control, the information should continue to be verified by the Registrar/CDDO (instead of simply relying on the checks carried out at the point of onboarding/incorporation/formation. The historical information collected over time would also be useful to national Registrars, FIs or DNFBPs.

iii. Discrepancy Reporting Mechanisms

Registrars should implement discrepancy reporting mechanisms as a complementary measure on the basis of risk, materiality, and context of Guyana should be implemented. Discrepancy reporting, if applied (most likely in respect of a register/alternative mechanism), should serve to complement the verification measures to various mechanisms outlined above; it should not replace them. Discrepancy reporting generally allows Registrars and entities with access to beneficial ownership data to report to the body holding beneficial ownership information of body corporate if the information the former hold is different from that held by the latter. Information on these discrepancies should be shared with all relevant Registrars in a timely manner.

The following should be considered in the Registrars discrepancy reporting mechanisms:

- (a) **Access by reporting entities to information:** Parties required to report discrepancies (FIs/DNFBPs or other obliged entities as defined by the country) would need access to the beneficial ownership information held in a registry/alternative mechanism, so that they can report differences (accuracy and completeness) between the

registry/alternative mechanism and their client information collected as part of CDD obligation.

- (b) **Materiality of discrepancy:** As volume of reported discrepancies may be very high, to optimise the amount of resources used by both reporting entities in filing reports and by receiving end in handling them, countries should clearly define the material threshold for discrepancies which should be reported. For instance, focus is usually put on factual errors, not typing mistakes or spelling errors.
- (c) **Adjudicating discrepancy reports and feedback system:** Countries should consider implementing a system to review and adjudicate discrepancy reports in a fair and efficient manner, with emphasis on due process and risk-based approach. Companies and other body corporate should be informed at the appropriate time of the reported discrepancies (with reasons) so that data can be rectified in a timely manner. Upon resolving a difference, countries should consider notifying the reporting entity so that all information would be aligned.
- (d) **Record-keeping:** Countries should consider properly recording discrepancy reports made (e.g., shown in excerpts of the register/alternative mechanism), so that potential users of this information are aware that this data might not be adequate, accurate or up-to-date. In particular, this information, if made accessible to the competent Registrars, could be helpful. From a broader management perspective, countries may consider monitoring the number of discrepancy reports and the reasons for them.
- (e) **Privacy Considerations:** Discrepancy reports very likely would contain personal data. Countries should take into account data privacy laws, client confidentiality, and other relevant concerns when seeking to implement discrepancy reporting mechanisms. For instance, safeguards should be made to prevent data leakage.

3. UP-TO-DATE BENEFICIAL OWNERSHIP INFORMATION

Recommendation 24 requires that mechanisms should be in place to ensure that basic and beneficial ownership information is current as possible, and is, updated within a reasonable period, following any change or the identification of outdated information.

This information should be updated on a continuous basis with regard to risk and context and other circumstances. The Registrars should have mechanisms in place for companies to periodically validate their beneficial ownership information on a risk -based approach.

PART F: A MULTI-PRONGED APPROACH

1. THE REGISTRY APPROACH

- (a) The Relevant Registrars are required to maintain a register for beneficial ownership information of legal persons, for which can be accessed by competent Registrars, supervisory Registrars and the public. These Registrars, having independent Registers for specific legal persons, eg. Companies, friendly societies and cooperative societies, should ensure that the different registers function coherently. Further, rapid and efficient access by competent Registrars should be ensured in all cases.

- (b) The Registrars should ensure that competent Registrars can access these Registrars and cross-check beneficial ownership information against other sources (eg. Financial Institutions and DNFBPs, documentation requested from legal persons etc.)

- (c) Key Requirements include the following:
 - i. Entities are required to provide basic and beneficial ownership information upon registration/incorporation.
 - ii. Entities are required to provide basic and beneficial ownership information regularly and within a reasonable period following the change.
 - iii. Entities are required to make a declaration regarding the beneficial owner and the ownership structure.
 - iv. On a risk-based approach, verify the identity of the beneficial owners and ensure that they satisfy the criteria for being regarded as beneficial owners.
 - v. Registrars should apply sanctions under the AMLCFT Act and where applicable, their respective substantive act, where entities fail to provide beneficial ownership information or provide incorrect information.
 - vi. The Registrars should take a proactive role, including checking information against other sources through risk-based verification, use of technologies etc. to identify anomalies or inconsistencies and reduce the risk of fraud on supporting documents or improper disclosure.
 - vii. Registrars should ensure that data protection and privacy safeguards are in place, including restrictions on the information available to the different users of the register and other beneficial ownership information, sources to prevent the improper disclosure of this information.

2. SUPPLEMENTARY INFORMATION APPROACH

- (a) This approach allows for the use of supplementary information as necessary to determine and verify beneficial ownership information. Information may be verified or identified using information:
- i. Held by other regulatory bodies or supervisory Registrars.¹⁰
 - ii. Held by the Guyana Securities Council
 - iii. Obtained by Financial Institutions in accordance with FATF Recommendation 10 and the AMLCFT Act 2009 and amendments thereto.
 - iv. Open Source information
 - v. Obtained by the Compliance Commission or DNFBPs in accordance with FATF Recommendation 22.
- (b) **This information should be shared with competent Registrars pursuant to Section 76 of the AMLCFT Act as amended by Section 40 of the AML (Amendment) Act No. 15 of 2023. Further, under the MOU signed dated August, 30th 2023, on information sharing among all supervisory Registrars and key agencies may be utilized.**

PART G: NOMINEE ARRANGEMENTS & MECHANISMS FOR PREVENTING AND MITIGATING RISK OF MISUSE OF NOMINEE ARRANGEMENTS

1. A nominee, as defined in the FATF Glossary, is a natural or legal person holding a role in a company as an agent acting upon instructions of a nominator who has a more substantive claim to control and/or ownership of the company. In many cases, the nominator is the beneficial owner of the company.
2. While many types of nominee arrangements have legitimate business purposes and pose minimal or no money laundering or terrorism financing risks at all, nominees can also be used as a deliberate device to evade beneficial ownership transparency rules by posing an obstacle to transparency, and thereby facilitating the misuse of companies and other corporate vehicles for money laundering and related crimes.
3. The Most common types of nominees are nominee directors and nominee shareholders.

NOTE: Nominee Directors are not contemplated under the Companies Act of Guyana and as such there is no legal recognition of such arrangements under the laws of Guyana.

¹⁰ Section 23 of the AMLCFT Act 2009 and the MOU signed on 30th August 2023 for all supervisory Registries and key agencies.

Further, in relation to nominee shareholders, it only applies to shareholders of public companies in accordance with Section 126 of the Companies Act.

4. However the following should be in place for Registrars:-

- **Nominee Shareholders** of public companies are required to disclose that they are acting as a nominee and the identity of the nominator upon whose instructions they are acting to the company. **This information should be held or recorded in the Registry.**
- Registrars shall adopt measures to detect undisclosed nominees/ informal nominees, based on international practice and the FATF Recommendations.

PART H: SANCTIONS

1. The Registrars should apply appropriate sanctions for breaches of the AML/CFT Act.

Pursuant to Section 23 of the AML/CFT Act as amended by the AMLCFT Amendment Act No. 15 of 2023 provides:

(1) The supervisory authority, any regulatory authority or competent disciplinary authority that discovers a breach of the obligations established under sections 15, 16, 18, 19 and 20 by a reporting entity it supervises may impose one or more of the following sanctions—

- (a) written warnings;
- (b) order to comply with specific instructions;
- (c) order regular reports from the reporting entity on the measures it is taking;
- (d) prohibit convicted persons from employment within the sector;
- (e) recommend to the appropriate licensing authority of the reporting entity that the reporting entity's licence be suspended, restricted or withdrawn;
- (f) in the case of default attributable to directors and senior management of a reporting entity, direct the reporting entity to remove them from the Board or relieve them from their functions to which the default is related and in addition to this sanction, supervisory Registrars shall impose a fine of not less than five million dollars nor more than fifteen million dollars.

(2) A reporting entity or in case of a body corporate, any of its directors, managers, officers or employees that or who breaches its obligation under this Act where no penalty is provided, commits an offence and shall be liable on summary conviction to a fine of not less than five million dollars nor more than fifteen million dollars and to imprisonment for a term not exceeding three

years, and in the case of a body corporate to a fine of not less than fifteen million dollars nor more than forty million dollars.

(3) The supervisory authority shall inform the Financial Intelligence Unit as to the sanctions imposed and may order the publication of its decision.

(4) Any supervisory or regulatory authority or the competent disciplinary authority that discovers facts likely to constitute indication of money laundering or terrorist financing shall so inform the Financial Intelligence Unit.

(1A) In addition to subsection 1(e), a supervisory authority may suspend, cancel or revoke any permit, registration, licensing or any other authorization it has issued, or take any other administrative penalty;

(1B) Where the supervisory authority has grounds for suspending, cancelling or revoking a permit or other authorization issued under its respective powers, the supervisory authority shall issue a written notice to the reporting entity, providing the reasons for the decision, and may include in the notice, an obligation to pay-

(a) A fine not exceeding three million dollars for natural persons; or

(b) A fine not exceeding seven million dollars for body corporates;

(1C) Fines paid under section 1B shall be deposited into the Consolidated Fund

(1D) if a person commits repeated violations of this Act, or the terms of any license, registration, permit or other authorization issued by the supervisory authority, the supervisory authority may recommend, to the Commercial Registry in writing with reasons, that the incorporation or business name of the reporting entity be revoked;

(1E) Upon receipt of such recommendation to revoke the incorporation or business name of the reporting entity, the Registrar of the Commercial Registry may suspend or revoke the incorporation or business name of the reporting entity within seven days.

ANNEX 1

Definition of "BENEFICIAL OWNER"

FATF'S DEFINITION:

Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those natural persons who exercise ultimate effective control over a legal person or arrangement. Only a natural person can be an ultimate beneficial owner, and more than one natural person can be the ultimate beneficial owner of a given legal person or arrangement.

- Reference to "ultimately owns or controls" and "ultimate effective control" refer to situations in which ownership/control is exercised through a chain of ownership or by means of control other than direct control.
- Customer- This definition should also apply to beneficial owner of a beneficiary under a life or other investment linked insurance policy.
- the ultimate beneficial owner is always one or more natural persons. As set out in R.10, in the context of CDD it may not be possible to verify the identity of such persons through reasonable measures, and, to the extent that there is doubt about whether a person with a controlling ownership interest in a legal person is the ultimate beneficial owner, or where no natural person exerts control through ownership interests, the identity should be determined of the natural persons (if any) exercising control of the legal person or

arrangement through other means. Where no natural person is identified in that role, the natural person who holds the position of senior managing official should be identified and recorded as holding this position. This provision of R.10 does not amend or supersede the definition of who the beneficial owner.

DEFINITION APPLICABLE IN GUYANA:

Section 2 of the AML/CFT Act 2009 as amended, ‘Beneficial Owner’ means ownership by a natural person or persons who ultimately exercise individually or jointly, voting rights representing at least twenty-five per cent of the total shares, or otherwise have ownership rights of a legal entity; or ownership by a natural person or persons who ultimately owns or controls a customer or the person on whose behalf a transaction is being conducted and includes those persons who exercise ultimate effective control over a legal person or arrangement.”

See Definition of Beneficial Owner in AMLCFT Act, as amended.

ANNEX 2

THE LIFE CYCLE OF A LEGAL PERSON

The ownership and control of a legal person may change during its life cycle. Beneficial ownership will need to be collected at various stages between the creation of a legal person to its ultimate dissolution.

A legal person is likely to go through several stages in its existence. Each stage will have implications for the way beneficial ownership is obtained, held, and made available to competent Registrars in a timely manner. Different stakeholders might hold beneficial ownership information at different stages of a legal person’s life cycle (for example, at creation, a company registry or a gatekeeper may collect this information, and it would also be collected when the legal person becomes a client of a financial institution or DNFBP).

Set out below, are various stages in the life of a legal person and the environment in which it has to operate, and suggest measures that should be considered at each of these stages to ensure the availability of adequate, accurate, and up-to-date basic and beneficial ownership information pertaining to the legal person.

- *Creation and registration.* What type of basic and beneficial ownership information should be collected at these stages and what steps need to be taken to verify that this information is accurate;

- *Interactions of legal persons.* What information a legal person needs to provide during its existence, for example, in the context of CDD measures and sharing information with other competent Registrars;
- *Changes to the legal person.* How and when to update this information, including changes further up the chain of ownership;
- *Supervision/enforcement.* How to ensure the accuracy and availability of beneficial information at all stages of a legal persons life, including in the context of monitoring/supervision and wider enforcement actions taken against the legal person; and
- *Liquidation/dissolution.* The record-keeping requirements for beneficial ownership information when a legal person is dissolved.

