

TIP OF THE MONTH

Beneficial Ownership (BO) Information

*As part of the Customer Due Diligence (CDD) requirements, Reporting Persons have the legal obligations under the Financial Intelligence Anti Money Laundering Act 2002 (FIAMLA) and the Financial Intelligence and Anti-Money Laundering Regulations 2018 (FIAMLR 2018) to **identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner.***

IMPORTANCE OF TRANSPARENCY OF BO

- Your business can be used by legal entities and legal arrangements for Money Laundering (ML) and Terrorism & Proliferation Financing (TF) and as a reporting person, you have the obligation to put in place controls to ensure transparency of BO and mitigate risks of criminals using your business.
- Where there are no controls to ensure transparency on BO, the use of legal entities and legal arrangements may facilitate the movement of proceeds of crime by concealing:
 - The identity of the person
 - The true purpose of an account or assets
 - The origin of the funds or assets
- Anonymity is often sought and organised through complex legal arrangements and through jurisdictions that do not ensure a satisfactory degree of transparency on BO.
- The Financial Task Force (FATF) has issued **Recommendation 24 and Recommendation 25** on the transparency of the BO of legal persons and legal arrangements and require countries to take measures to prevent the misuse of legal persons and legal arrangements for ML or TF.

SOME KEY TECHNIQUES USED TO OBSCURE BO

- Generating **complex ownership & control structures** through the use of legal persons & legal arrangements, particularly when established across multiple jurisdictions.
- **Using individuals & financial instruments** to obscure the relationship between the beneficial owner & the asset, including bearer shares, nominees & professional intermediaries.
- **Falsifying activities** through the use of false loans, false invoices and misleading naming conventions.
- Common structures that are used to conceal BO are:

Trusts, Shell companies, Shelf companies, Bearer Shares and Nominees.

OBLIGATIONS TO KEEP BO INFORMATION

- Sections 17C & 17E of the FIAMLA and Regulations 3(1)(c), 6 and 7 of FIAMLR 2018 require reporting persons to apply CDD and Enhanced Due Diligence (EDD) measures to customers and beneficial owners to **effectively identify the beneficial owner** and take reasonable measures to verify the identity of the beneficial owner for customers who are legal persons or legal arrangements, **using relevant information or data obtained from a reliable source.**
- Additionally, reporting persons must ensure that the information obtained in relation to the **beneficial owner as a result of the CDD and EDD process are updated and accurate.**

WHO IS A BENEFICIAL OWNER?

- 17E (3)(1) of FIAMLA, Regulations 6 and 7 of FIAMLR 2018 and Part I (2) of the Companies Act 2001 provides guidance on the definition and identification of BO.

FAILURE TO KEEP BO INFORMATION

- Under S19(1)(a) of the FIAMLA, it is an offence punishable upon conviction with a fine not exceeding Rs 10Million and a term of imprisonment not exceeding 5 years
- Under the FIAMLR 2018: a person who contravenes the above-mentioned sections of the FIAMLR 2018 shall commit an offence and on conviction be liable to a fine not exceeding Rs 1Million and a term of imprisonment not exceeding 5 years.
- Under the Companies Act 2001 (Act): As per the Companies Act 2001 (Act), penalty where a company fails to comply with the Act, including BO information obligations, the company and every director of the company shall commit an offence and shall, on conviction, be liable to a fine not exceeding MUR 100.000.