

# “BENEFICIAL OWNERSHIP”

## Botswana Experience

# ORIGINS OF BO IN BOTSWANA

- ❑ Botswana got exposed to the Concept of Beneficial Ownership through the Global Forum: Exchange of Information for Tax Purposes in 2016.
- ❑ The first set of Legal Reforms incorporating BO Concept was in 2018 when Botswana was preparing for Online Business Registration Services (“OBRS”).
- ❑ Botswana adopted the BO Definition similar to FATF

# INTERNATIONAL REQUIREMENTS ON BO

- ❑ The FATF Recommendations highlighted that our Companies Act was not compliant with FATF Standards in the following areas.
  - The deficiency in the provisions for requiring disclosure of beneficial owner information by legal persons.
  - There were no specific provisions facilitating access to beneficial owner information and that the information is not publicly available.

# PREPARATIONS DONE FOR BO CONCEPT

- ❑ There was need for the amendment of the Companies Act (Cap. 42:01), designed to effect or address the Recommendations from both the East and Southern African Anti-Money Laundering Group (ESAAMLG) and the Financial Action Task Force (FATF).

# BENEFICIAL OWNERSHIP DEFINITION

- ❑ Beneficial Ownership Definition in the Companies Act has been aligned to Financial Intelligence Act to include natural persons 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.

# BENEFICIAL OWNERSHIP DEFINITION CONT.

- The Definition also covers that beneficial owner,
  - is a natural person who either directly or indirectly holds at least 10% of the shares, voting rights or other ownership interest.
  - 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.
  - is a person who holds the position of senior managing official where no natural person was identified as a beneficial owner.

# BENEFICIAL OWNERSHIP DETAILS

- ❑ The Provisions of the Companies Act directs that companies provide full names of beneficial owners, their addresses and their association to the shareholding or membership of a company.
- ❑ The BO Information captured is made publicly available as per the 2022 amendments whereas before it was made private.
- ❑ A company can have more than one beneficial owner as per the parameters provided through BO definition.

# STAKEHOLDER ENGAGEMENT/AWARENESS

- All stakeholders were engaged to be made aware of the Recommendations before the implementation to bring understanding on the new requirement of providing beneficial ownership information.

# CHALLENGES FACED IN IMPLEMENTATION

- ❑ Funding remains the key challenge as changes in the law result in the enhancement of the system.
- ❑ Lack of clarity posed by frequent changes by FATF where some recommendations were not found to be deficient but were later regarded to be deficient.
- ❑ Issues of data protection and the security of individuals given the need to divulge certain data.
- ❑ We do not have a stand alone BO registry, using the same registry as for basic information.

# CURRENT SITUATION

- ❑ Currently BO information is collected for every shareholder.
- ❑ BO information not public on the Online Business Registration System (OBRS) but can be availed upon request from the office.

# WAY FORWARD

- ❑ Intends to have a stand alone BO Registry in future.
- ❑ Once the system enhancement is complete, BO information would be easily accessed publicly.
- ❑ Further engage with our stakeholders for them to have more understanding on the need to disclose beneficial owners in their companies.

# CONTACTS

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**END OF PRESENTATION**

**THANK YOU!!**