“BENEFICIAL OWNERSHIP”

Botswana Experience
ORIGINS OF BO IN BOTSWANA

- 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.
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.
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 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.
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.
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.
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.
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.
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.
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.
Hildah D. Mocuminyane-Hlanti
Registrar of Companies and Business Names
Companies and Intellectual Property Authority
P.O. Box 102
Gaborone, Botswana

Tel: +267 3673765
Fax: +267 3188130
Email: hdmocuminyane@cipa.co.bw
THANK YOU!!