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ROYAL MONETARY AUTHORITY OF BHUTAN



BENEFICIAL OWNERSHIP GUIDELINE FOR REPORTING ENTITIES 2024

Legal Authority

This guideline is issued pursuant to Section 45 of Anti-Money Laundering and Countering of Terrorism Act of Bhutan Act 2018, hereafter referred to as AML/CFT Act 2018.

Overview

This guideline is to assist reporting entities (Financial Institutions and DNFBPs) in meeting the requirements to exercise customer due diligence on the customers and beneficial owners of the customers under Chapter VI of the Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) Rules and Regulations 2022.

This guideline serves as a reference tool and cannot be relied on as evidence of complying with the requirements of the AML/CFT Rules and Regulations 2022 and AML/CFT Act 2018. Examples provided in this guideline are suggestions to help you meet your obligations under the Act. These examples are not exhaustive; they are meant to provide illustration. It does not constitute legal advice from any of the AML/CFT supervisors and cannot be relied on as such.

Any updates to the Guideline will be notified to reporting entities from time to time. Should there be any need to obtain further clarification or explanation on the Guideline, enquiries may be emailed to the address: fiu@rma.org.bt

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1. Introduction

- 1.1. This guideline has been updated following the changes to the Financial Action Task Force (FATF) Recommendations on Beneficial Ownership 24 and Recommendation 25 in March 2022, whereby it requires countries to use a multi-pronged approach, i.e., to use a combination of different mechanisms, for collection of beneficial ownership information to ensure that adequate, accurate and up-to-date information on the beneficial ownership of legal persons and legal arrangement is available and can be accessed by the competent authorities in a timely manner. The standards require that countries use all the following sources and mechanisms, including requiring
- i. information to be held by the companies themselves,
 - ii. information to be held by a public authority or body (for example companies registry) or an alternative mechanism, and
 - iii. using additional supplementary measures such as information obtained by Reporting Entities such as financial institutions and Designated Non-Financial Business Professionals (DNFBPs).
- 1.2. Under the multi-pronged approach, countries need to ensure that beneficial ownership information is available from all these sources (which includes Reporting Entities) and that they cannot choose just one option, as the original standards allowed.
- 1.3. Considering the recent changes to the Beneficial Ownership standards, the guideline is to assist reporting entities (Financial Institutions and DNFBPs) in identifying and verifying their customers' beneficial ownership arrangements. It is crucial to know who the beneficial owner(s) are so that appropriate decisions can be made about the level of money laundering and terrorist financing risk associated with customers.
- 1.4. Reporting Entities should adopt a risk-based approach which will allow them some flexibility in the measures they adopt to verify the identity of the customers' beneficial owners. Evaluation of the money laundering and terrorist financing risks associated with reporting entity's customers shall be based on the risk assessment as detailed in their AML/CFT programme.
- 1.5. This guideline applies primarily in relation to **customers who are legal persons or legal arrangements**¹. The guideline provides information on how to determine beneficial ownership by identifying the individual(s) that own 25 percent or more of a customer, those with effective control of a customer, and persons on whose behalf a transaction is conducted.
- 1.6. The reporting entities should ensure that the beneficial information held are adequate, accurate and up to date. This guideline therefore provides concepts of those key terms.

¹ As per the AML/CFT Rules and Regulation 2022,

Legal persons refer to any entities other than natural persons that can establish a permanent customer relationship with a financial institution or otherwise own property. This can include companies, bodies corporate, foundations, anstalt, partnerships, or associations and other relevant similar entities.

Legal arrangements refer to express trusts or other similar legal arrangements.

2. Identification of Beneficial Owner

2.1 Who is a beneficial owner?

The AML/CFT Act 2018 defines a beneficial owner as:

- a. A natural person who ultimately owns or controls² the rights to or benefits from property, including the person³ on whose behalf a transaction is conducted; or
- b. A person⁴ who exercises ultimate effective control⁵ over a legal person or a legal arrangement.

2.1.1 As per the AML/CFT Act 2018, a natural person is deemed to ultimately own or control rights to or benefit from property within the meaning of the above definition when that person:

- a. Owns or controls, directly or indirectly, whether through trusts or bearer's shareholdings for any legal entity 25% or more of the shares or voting rights of the entity; or
- b. Otherwise exercise control over the management of an entity.

2.2 Why is it important to identify the beneficial owner?

2.2.2 While corporate entities such as companies, trusts, foundations, partnerships, associations and other types of legal persons and arrangements play vital roles in the economy through various commercial endeavors. Under certain conditions, they are sometimes misused to conceal assets gained illegally while maintaining a legitimate front. This includes, the utilization of shell companies and establishing complex ownership and control structures to deliberately hide the true owners and controllers and avoid detection by authorities. This lack of transparency and inability to identify ultimate beneficial owner(s) has become a hindrance in effectively combatting criminal activities.

2.2.3 Reporting entities play a crucial role by obtaining beneficial ownership information, which assists in preventing the misuse of legal persons/arrangements in the financial system. Reporting Entities are able to make appropriate assessments on the level of money laundering and terrorism financing risks associated with their customers, consequently leading to necessary decision making on control measures required to contain these risks.

2.2.4 All reporting entities must therefore identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner, using the relevant information or data obtained from a reliable source, such that the reporting entities are satisfied that they know the identity of the beneficial owner. The AML/CFT Act 2018 requires reporting entities to identify and maintain records of such beneficial owners.

² The expressions "ultimately owns or controls" and "ultimate effective control" in the definition refers to situation in which ownership and/or control is exercised through a chain of ownership or through control other than direct control. The definition makes it clear that a beneficial owner can never be a legal person or a legal arrangement, even if legal entities may own or control other legal persons, especially when there is a chain of ownership.

³ A "person" in this context shall mean a "natural person". The beneficial owner can only be an individual (a natural person). There may be however, more than one beneficial owner associated with customers.

⁴ A "person" in this context shall mean a "natural person".

⁵ Same as footnote 2.

2.3 The test to identify beneficial ownership.

- 2.3.1 Reporting entity may apply the test of beneficial ownership to their customers, taking into consideration the following three factors:
 - a) Who owns a controlling interest of the customer?
 - b) Who has the ultimate effective control of the customer?
 - c) Who is/are the person(s) on whose behalf a transaction is conducted?
 - d) A beneficial owner is an individual who satisfies any one element, or any combination of the three elements. A customer may have more than one beneficial owner. The reporting entity’s task is to identify and verify the identity of ALL beneficial owners of the customer.

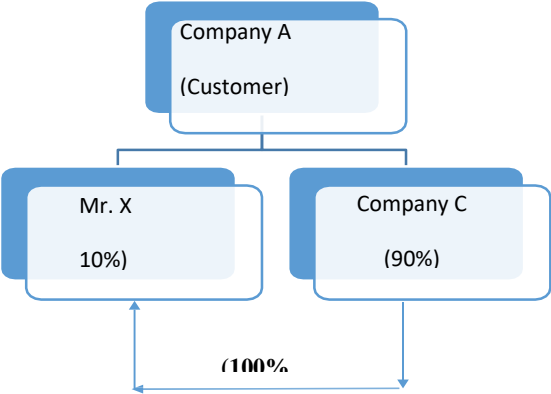
- 2.3.2 Reporting entities need to ascertain the ownership structure of the customer and grasp ownership details at each level. While some customers can promptly provide information about their beneficial owners, others may require further investigation into complex ownership or control structures to understand ownership or control at each layer. If complex ownership layers lack a reasonable explanation, reporting entities should contemplate the possibility that the structure is employed to conceal the beneficial owner(s).

3. Ownership Control

3.1 Controlling Ownership Interest

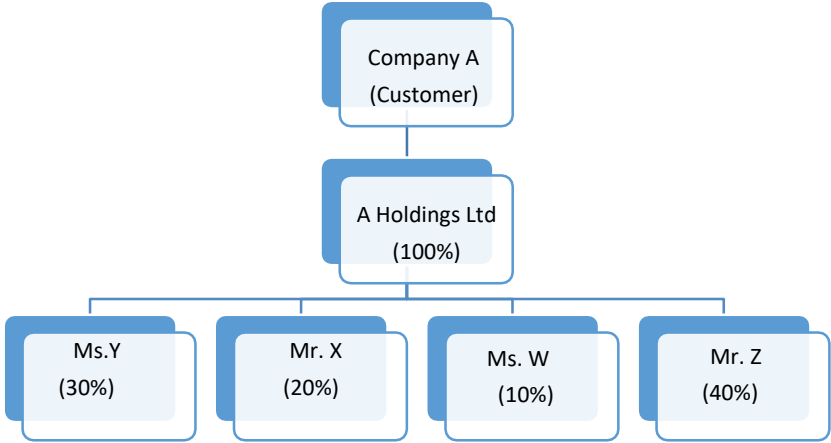
3.1.1 As per the AML/CFT Act 2018, having a controlling ownership interest in an entity entails having 25 percent or more of the ownership interest, which can be determined by examining factors such as share capital or voting rights. The ownership may either be direct ownership or indirect ownership. Reporting entities shall also consider that it is possible for ownership to be split into parcels of less than 25 percent, but relationships between the parties may give an individual aggregated ownership of the customer that amounts to more than 25 percent.

Figure 1: Direct and Indirect Shareholding



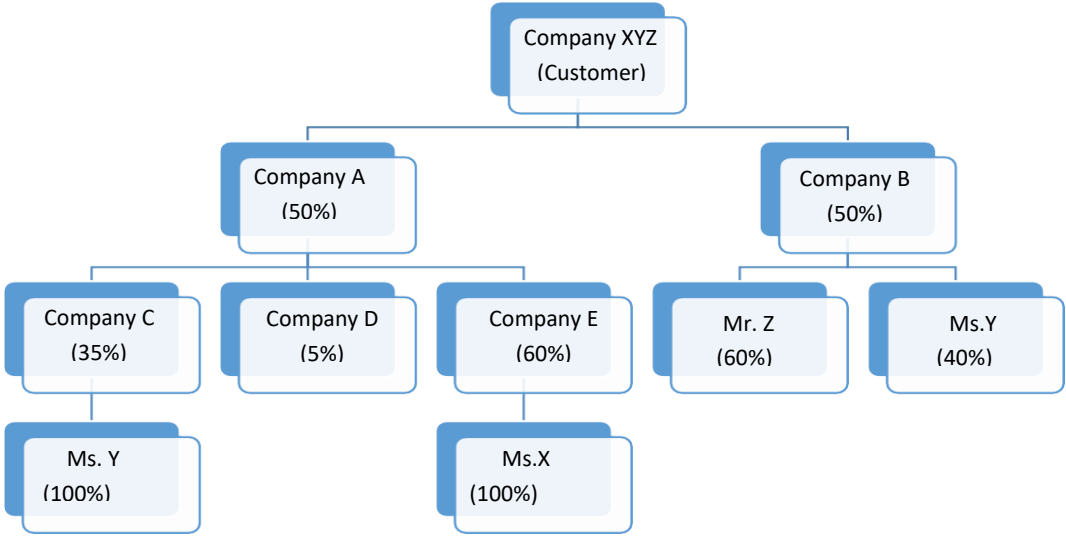
Mr. X is the sole beneficial owner of Company A (Direct 10% and Indirect 90%)

Figure 2: Simple Indirect Shareholding



Based on the ownership test, Ms. Y and Mr. Z are beneficial owners of Company A

Figure 3: Multi-level indirect shareholdings



Based on the ownership test, Ms. Y (through aggregated ownership), Ms. X and Mr. Z are the beneficial owners of Company XYZ through indirect shareholding.

3.2 Exercise of Control

3.2.1 Sometimes ownership is spread over a large number of individuals with no individual owning more than 25 percent. For example, a co-operative with a large number of members is likely to have no individual(s) owning more than 25 percent. In such cases the reporting entity shall still identify a beneficial owner(s) based on the effective control to determine the beneficial owner(s).

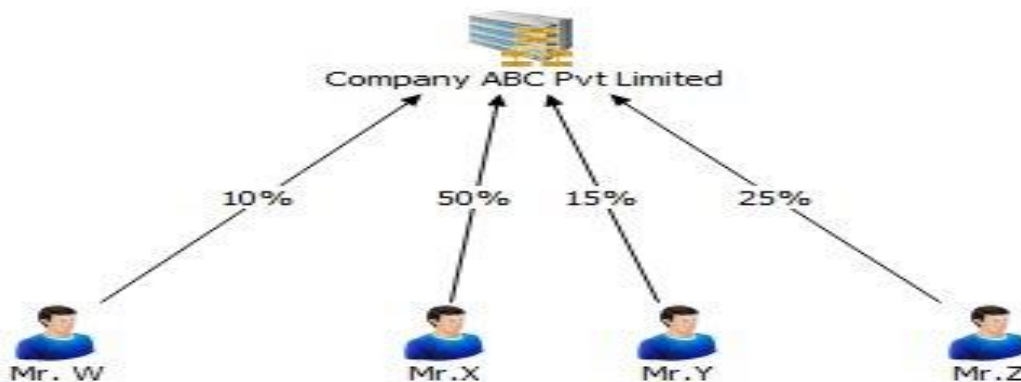
An example: An individual who exercises substantial control and responsibility for senior management decisions, or similar, of the customer.

3.2.2 Understanding the management and governance structure of the customer will assist reporting entities to establish those persons with effective control. In deciding the effective controller(s), Reporting Entities should consider but not limited to the following:

- a. Directly or indirectly holds a minimum percentage of ownership interest in the customer.
- b. Exerts a “dominant influence” over the financial, economic, or management policies of the entity, regardless of the amount, if any, of share ownership or voting rights in that entity.
- c. Power to appoint or remove majority of directors/ senior management directly or indirectly;
- d. Having the power of attorney over the customer.
- e. Exerts control of legal person through other means such as personal connections to persons in positions or that possess ownership.
- f. Exerts control without ownership by participating in the financing of the enterprise, or historical or contractual associations, or if a company defaults on certain payments.
- g. Trustees (where applicable).

3.2.3 A natural person demonstrating control may be, among others, the entity’s senior management, directors, authorised signatory, controller and etc.

Figure 4: Determination of Beneficial Owner based on Effective Control



Based on the figure above, Company ABC Ltd has 4 shareholders namely, Mr. W, Mr. X, Mr. Y and Mr. Z and each holds 10%, 50%, 15% and 25% shares respectively. Every shareholder holds fully paid shares and have the power to exercise full voting rights. Although Mr. W owns only 10% shares, let’s say he is the former Chairman of ABC Ltd who is usually consulted on all matters by the Board.

At the same time, he can also exercise his voting rights. Since Mr. W has the capacity to exercise significant control or influence over the company although he only holds 10% shares, he is deemed to be a beneficial owner. Hence, Mr. W, Mr. X (50%) and Mr. Z (25%) are the beneficial owners of ABC Ltd

3.3 Person on whose behalf a transaction is conducted.

3.3.1 Who is/are the person(s) on whose behalf a transaction is conducted?

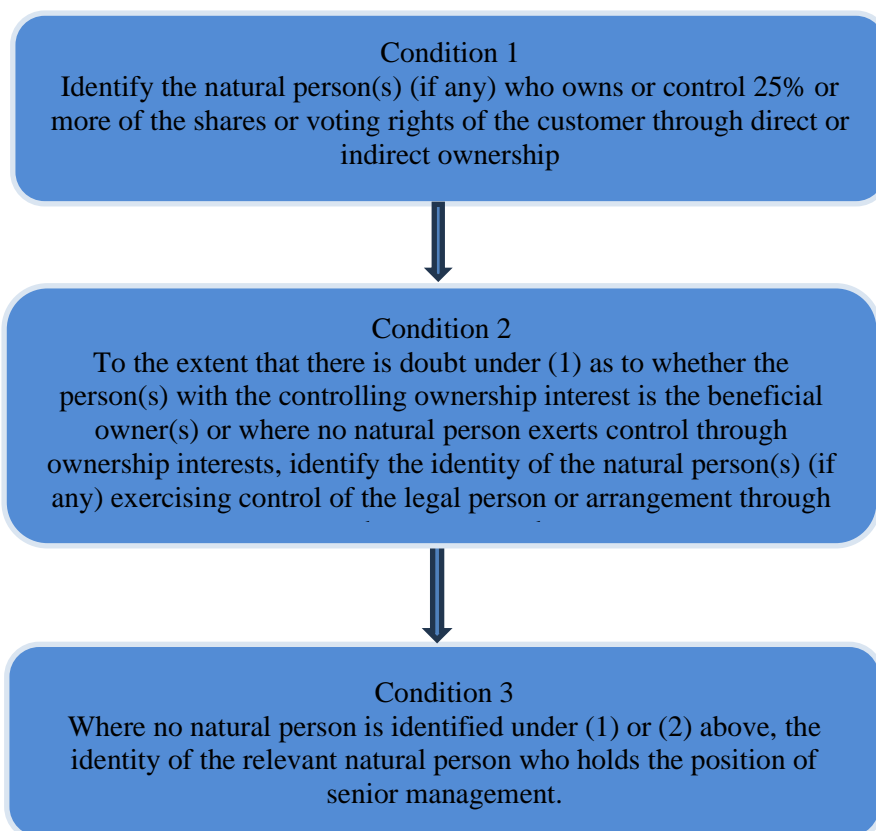
Another part of the definition of beneficial owner is a “person on whose behalf a transaction is conducted”. This may be the individual who is an underlying client of the customer and conducts transactions for them through the reporting entity. This concept is important when considering the relationship between managing intermediaries and their underlying clients.

An example: If a reporting entity knows that someone (person A) is conducting an occasional transaction on behalf of another person (person B), then person A and person B shall be identified and verified along with any other beneficial owner(s).

3.3.2 Acting on behalf of a customer

- a. Acting on behalf of a customer is not part of beneficial ownership; it is part of the customer due diligence process. The distinction is important because in many instances a person might act on behalf of a customer, without being the beneficial owner of that customer.
- b. An example of acting on behalf of a customer is when an individual has authority to sign on accounts or authorise financial transactions or the sale or purchase of assets owned by the customer. Authority to act’ should not be confused with effective control. Reporting entities are required to identify and verify any person who has authority to act on behalf of a customer.
- c. In some instances, funds from an unidentified third party entering and then exiting an account may be reasonable grounds to suspect that a customer is acting on behalf of another.
- d. Reporting entities will need to ask questions where the reporting entity suspects the customer is acting on behalf of another. Suspicion can emerge when a reporting entity initially engages with the individual or it can become apparent over time.

3.4 Conditions to apply to identify a beneficial owner as laid out in AML/CFT Rules and Regulation 2022:



3.4.1 However, where, through Condition 1, no natural person is identified to have ultimate ownership interest over the legal person and through Condition 2, no natural person is identified to have and exercise, either directly or indirectly, control over the entity, the reporting institution shall carry out Condition 3. Please note that the natural person identified as a senior managing official should be recorded and identified as holding this position, **but not identified as the beneficial owner.**

3.4.2 There should be little to no excuse as to why reporting entities cannot identify the beneficial owner. If customers are unwilling to share this information, reporting entities are required to not open accounts, commence business relationships, or perform transactions or terminate business relationships if they are unable to comply with relevant CDD measures.

3.4.3 For customers that are legal arrangements, the reporting entity must identify the beneficial owners through the following information:

a. *Trusts*

Identify the following persons:

- i. Settlor (s)
- ii. The Trustee(s)
- iii. The Protector (if any)
- iv. The Beneficiaries or Class of Beneficiaries
- v. Any Other Natural Person exercising ultimate effective control over the trust (including through a chain of control/ownership)

b. *Other Types of Legal Arrangements*

Identify Persons in Equivalent or Similar Position.

4. Key Concepts of Beneficial Ownership: Adequacy, Accuracy and Up-to-date⁶

Reporting entities should ensure that the beneficial information that they collect remains adequate, accurate and up to date.

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.

The definition of adequate information could include, for example, the full name, nationality or nationalities, the full date and place of birth, residential address, national identification number and document type, and the tax identification number or equivalent in the country of residence.

In addition, it is also important to understand why or how they are the beneficial owner(s) (BO) for example an indication of percentage of shares, voting rights or other form of control of the beneficial interest. information on more than one form of beneficial ownership (e.g., through both ownership and control, if applicable) information on whether the beneficial owner is involved in any nominee relationship and information on whether the beneficial owner's interest in the customer is held directly or indirectly.

Accurate information is information which has been verified to confirm its accuracy by verifying the identity and status of the beneficial owner using reliable, independently sourced/obtained documents, data, or information. The extent of verification measures may vary according to the specific level of risk.

In the identity verification processes, appropriate steps should be taken to prove that a natural person, who has been identified as a BO, actually exists and is who they claim to be, eg., through reviewing of government issued identity documents. Steps should also be taken to verify the basis of identification of a person as a BO, that means asking questions such as does the identified beneficial owner meets the BO definition, or is the BO actually exercising the rights purported? This could typically involve a review of documents submitted (e.g., share certificates, shareholder register, articles of incorporation and corporate bylaws, board meeting resolutions, and power of attorney documents, shareholding and voting agreements, cross-checking with relevant government and other available databases)

A risk- based approach to verification is helpful to ensure that beneficial ownership is accurate. At minimum, information should be validated against original source documents. Higher risk legal structures (e.g., companies with complex structures, or the existence of nominee directors or shareholders or where sufficient documentation may not be obtained) could require more sources of verifying the information presented and the extent and/or frequency of verification measures should be enhanced. In other cases, such as a small company whose legal owner, director and beneficial owner are all the same person, would not require more detailed verification checks, aside from ensuring that the documents presented are authentic and up to date.

Up- to- date information is information which is as current and up-to-date as possible and is updated within a reasonable period (e.g., within one month) following any change

Reporting entities should have processes in place to ensure that beneficial ownership information they hold for their customers remains up to date as part of their ongoing customer relationship monitoring which includes updating the documents, data or information collected as part of their CDD process. (for example, by requiring the relevant customer to file know your customer (KYC) documents regularly).

⁶The information has been captured from the "FATF Guidance on Beneficial Ownership of Legal Persons".

5. Risk Based Application

5.1 Applying a risk-based approach

- 5.1.1 Identifying beneficial ownership of a customer is an obligation that must be satisfied, regardless of the level of risk associated with that customer. However, when deciding what reasonable steps to take to satisfy yourself that the customer's identity and information is correct, reporting entities may vary your approach depending on the risk assessment of the customer. The process for assessing customer risk and deciding how to identify and verify beneficial ownership shall be set out in reporting entity's AML/CFT programme. This must be based on AML/CFT risk assessment of the reporting entity.
- 5.1.2 Where there are reasonable grounds for suspicion of money laundering or terrorist financing, reporting entity should apply enhanced customer due diligence and make a suspicious transaction report to the Financial Intelligence Department (FID).
- 5.1.3 A risk-based approach allows reporting entity some flexibility in reporting entity's obligation to use data, documents or information obtained from a reliable and independent source to verify the identity of the beneficial owner(s) of the customer. This is applied on a case-by-case basis.
- 5.1.4 It is appropriate for reporting entity's beneficial ownership identification process to include measures to ensure that reporting entity make consistent decisions about customers. This process should be in line with AML/CFT risk assessment. If the customer is associated with higher risk factors, internal controls of AML/CFT programme should set out when to escalate decisions to a higher level.
- 5.1.5 For foreign beneficial owners, the reporting entity should take steps to verify the authenticity of legal documentation provided from abroad. Where there is no existing independent and reliable document submitted on the foreign beneficial owner, reporting entities may verify the identity of the beneficial owners through open available sources. Reporting entities should reflect that they have exhausted all reasonable measures that may be taken to verify the foreign beneficial owners' identity.
- 5.1.6 The reporting entity should also determine whether foreign beneficial owner is a citizen from high-risk jurisdiction or whether they fall within the sanctions list. If foreign beneficial falls under the category of high-risk customers requiring enhanced CDD, the reporting entity should also determine, among others, the sources of funds and wealth.
- 5.1.7 The reporting entity has the option to choose not to establish or continue business relationship with the customer if it is deemed that foreign beneficial owner is not within the reporting entity's risk appetite or if the reporting entity believe it does not have the capacity to appropriately manage the increased risk in relation to the customer, in accordance with the institution's business decision.

6. Record keeping.

6.1 Section 67 of the AML/CFT Act 2018 requires reporting entities to:

- i. Maintain all books and records with respect to its customers and transactions in accordance with Section 68 of this Act; and
- ii. Ensure that such records and the underlying information are available on a timely basis to the Financial Intelligence Department and its Supervisor as and when they are required to be disclosed under this Act.

6.2 Section 68 of the AML/CFT Act 2018 states that the books and records shall include:

- iii. Records obtained through customer due diligence measures, including account files, business correspondence, and copies of all documents evidencing the identities of customers and beneficial owners, and records and the results of any analysis undertaken in accordance with this Act, such books and records shall be maintained for not less than ten years after the business relationship has ended;
- iv. Records of transactions, both domestic and international, that are sufficient to permit reconstruction of each individual transaction for both account holders and non-account holders, which shall be maintained for not less than ten years from the date of the transaction;
- v. The record of any findings resulting from customer risk analysis and related transaction information undertaken in accordance with internal policies, procedures and rules and regulations, and which shall be maintained for at least five years from the date of the transaction;
- vi. Copy of suspicious transaction reports or other reports made to the Financial Intelligence Department including any accompanying documentation, which shall be maintained for at least ten years from the date the report was made; and
- vii. Copy of records relating to risk assessments undertaken under this Chapter, which shall be maintained for at least ten years from the date that the assessment was completed.

Annexure

Identifying beneficial ownership can be complex, that's why it's common practice for a Reporting Entity to ask each account holder to complete and sign a 'beneficial owner declaration form,' as outlined in the table below. This form is provided as a sample, and the Reporting Entity may adjust it to fit their requirements.

BENEFICIAL OWNERSHIP DECLARATION FORM							
To: [Name of Designated Institution Official]							
Dear Sir/Madam:							
Company Name							
Account Number							
Registration Number							
Current Address							
Country of Incorporation							
Complete the following information for all beneficial owners that own or control 25% or more of the customer's interest (shares or voting rights), beneficial owners on whose behalf the account is being operated, and at least one person who exercises effective control of the legal entity.							
I/We declare that the beneficial owner(s) of the customer for this account are as follows:							
Name	Designation	Passport number/ CID No	Country of Issue & Citizenship	Date of Birth	Current Address	Source of Beneficial Ownership Select (A, B or C or any combination of the three)	(PEP) (Tick if applicable)
[1] A=Equity (indicate %), B=Effective Control, C=Person on Whose Behalf Account is Operated [2] Please refer Notes in the next page for more information on beneficial ownership							
I/ We hereby declare and confirm all details provided herein are complete, valid and accurate disclosure of the Ultimate Beneficial Owner(s) of the above account and effective and binding. Further I/we undertake to notify the Bank immediately in writing of any change in the beneficial owners of the account.							
(Shall be signed as per operating instructions of the account with rubber stamp)							

Bank Use Only;	
Name	
Title	
Date	
Signature and the Bank	
<p>Notes</p> <p>The AML/CFT Act 2018 defines a beneficial owner as</p> <ol style="list-style-type: none"> (1) a natural person who ultimately owns or controls the rights to or benefits from property, including the person on whose behalf a transaction is conducted; or (2) a person who exercises ultimate effective control over a legal person or a legal arrangement. <p>As per the AML/CFT Act 2018, a natural person is deemed to ultimately own or control rights to or benefit from property within the meaning of the above definition when that person</p> <ol style="list-style-type: none"> (1) owns or controls, directly or indirectly, whether through trusts or bearer shareholdings for any legal entity 25% or more of the shares or voting rights of the entity; or (2) otherwise exercises control over the management of the entity. <p>A natural person is considered to exercise “effective control” of a legal entity customer if that person can elect a majority of the board of directors, supervisory board, or any equivalent body, of a legal entity; or exert a “dominant influence” over the financial, economic, or management policies of the entity, regardless of the amount, if any, of share ownership or voting rights in that entity. This is the case, for example, if a majority of the members of the entity’s board of directors, supervisory board, or any equivalent body are used to or obliged to act in accordance with that person’s directions, instructions, or wishes in conducting the affairs of the entity. Such an obligation may be formal or informal, written or unwritten.</p> <p>If no such natural person fits the above description, the natural person identified as a senior managing official should be recorded and identified as holding this position, but not identified as the beneficial owner.</p> <p>Property, or an interest in property, may be subject to the effective control of a person within the meaning of the AML/CFT Act whether the person has</p> <ol style="list-style-type: none"> (1) a legal or equitable estate or interest in the property; or (2) a right, power, or privilege in connection with the property. <p>Regard may be had to</p> <ol style="list-style-type: none"> (1) shareholdings in, debentures over, or directorships of any company that has a direct or indirect interest in the property; (2) a trust that has a relationship to the property; and (3) family, domestic, and business relationships between any person having an interest in the property, or in companies or trusts described above. 	

