GOVERNMENT OF ANTIGUA AND BARBUDA

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INLAND REVENUE DEPARTMENT

COMPETENT AUTHORITY FOR TAX TRANSPARENCY

GUIDANCE NOTES ON COMPLYING WITH BENEFICIAL OWNERSHIP OBLIGATIONS LEGAL FRAMEWORK IN ANTIGUA AND BARBUDA

ISSUED BY THE COMPETENT AUTHORITY

EFFECTIVE 1st JUNE 2024

Updated Advisory on Beneficial Ownership for Financial Institutions

Subsequent to the Advisory issued on 1st November 2022, this advisory of 1st June 2024 provides an update on recent legal and regulatory changes in Antigua and Barbuda that affect financial institutions' obligations regarding legal ownership, beneficial ownership, nominee shareholders, and the maintenance of ownership information for various legal persons and legal arrangements, including foreign companies, trusts, partnerships, and foundations.

Notably, amendments to the Companies Act and the Tax Administration and Procedures Act now require foreign companies to maintain and update shareholder details annually, while also mandating the notification of ownership changes to the Inland Revenue Department.

The introduction of clearer definitions and reporting requirements for beneficial ownership, alongside updated guidance in the Money Laundering and Financing of Terrorism Guidelines (2024) and Typologies of Legal Entities and Arrangements, reinforces the jurisdiction's commitment to enhancing transparency and compliance with international standards. Financial institutions are urged to familiarize themselves with these changes to ensure continued adherence to anti-money laundering (AML) and counter-terrorist financing (CTF) obligations.

Legislative Amendments Concerning Ownership Transparency and Nominee Arrangements

The Government of Antigua and Barbuda, through the Inland Revenue Department, the Competent Authority for tax transparency, has taken further significant steps to enhance transparency in ownership structures, particularly in the context of foreign companies, international business entities, and nominee arrangements. In line with international standards and recommendations, several amendments have been made to key legislation.

This advisory provides a summary of the relevant updates, effective immediately, that financial institutions should adhere to.

Amendments to the Tax Administration and Procedures Act

The Tax Administration and Procedures Act, as amended by the Law (Miscellaneous Amendment) Act 2024, now includes additional requirements for foreign companies. Section 11(6) of the Act mandates that foreign companies notify the Commissioner of the Inland Revenue Department (IRD) within 14 days of any change in their legal ownership or beneficial ownership details. This ensures that the IRD holds up-to-date ownership information for all registered companies.

Key Requirements:

- Foreign companies must notify the IRD of changes to their legal ownership or beneficial ownership information, business name, address, or nature of taxable activities within 14 days of any changes.
- This amendment aims to improve the timeliness and accuracy of ownership records held by the IRD.

Amendments to the Companies Act

The Companies Act (1995) has been amended by the Companies (Amendment) Act 2024 to improve the reporting of legal ownership changes for external companies.

Key Updates:

- Section 355(1)(e): External companies must now report any change in legal ownership to the Registrar within 30 days of the change, indicating a Fundamental Change of information.
- Section 356A: The Annual Return Form for external companies has been updated to include the new ownership reporting requirements.
- Section 511(1)(a): Companies failing to submit required returns, notices, or fees to the Registrar may face striking off.
- Section 511(5): The process for restoration of a company that has been struck off has been streamlined, including a provision for the restoration process to be initiated within seven years from the date of striking off.

Amendments to the International Business Corporations Act

The International Business Corporations Act was amended by the Law (Miscellaneous Amendment) Act 2024, specifically concerning the revival of dissolved corporations.

Key Amendments:

- Section 315: The Act now mandates that an application to revive a dissolved corporation must include details of the corporation's legal and beneficial owners.
- Section 335: The application for revival must be submitted using prescribed forms, and legal ownership records must be maintained at the agent's office or other locations within Antigua and Barbuda.
- Section 342: If a corporation remains dissolved for more than seven years, its name may be reassigned to another entity.

Expanded Disclosure of Nominee Information

To increase transparency, amendments have been made to various laws, including the International Business Corporations Act, International Trusts Act, International Foundations Act, and others. These amendments impose mandatory disclosure of nominee arrangements for entities subject to the legislation.

Key Amendments:

- Nominee Disclosure: Entities must now disclose the name and address of any nominee who acts as the legal owner on behalf of another individual or entity (the nominator), along with details of the nominator and the natural person on whose behalf the nominee is acting.
- The following acts have been amended:
    - International Business Corporations Act (Section 18A(e))
    - International Trusts Act (Section 18A(2)(f))
    - International Foundations Act (Section 18A(2)(d))
    - Corporate Management and Trust Services Providers Act (Section 18A(2)(e))
    - Tax Administration and Procedures Act (Section 23(3)(d))
    - Companies Act (Sections 184(A)(c)(d) and 194A(2)(b))

Clarification on Nominee Arrangements:

- Nominee: An individual or legal entity who acts as the legal owner but on behalf of a nominator.
- Nominator: The person (individual or legal entity) directing the nominee.
- Nominee Director/Shareholder: A nominee may act as a director or shareholder, but is never the beneficial owner of the entity.

These amendments will ensure that information on nominee arrangements is available to the relevant authorities, improving the transparency of ownership structures and facilitating the identification of beneficial ownership.

Money Laundering and Financing of Terrorism Guidelines

The Office of National Drug and Money Laundering Control Policy (ONDCP), in collaboration with the Eastern Caribbean Central Bank (ECCB), has issued updated Money Laundering and Financing of Terrorism Guidelines (MLFTG) in 2024, which provide additional clarification on nominee arrangements.

Key Guidelines:

- Nominees may present legitimate business purposes but can be used to obscure the true beneficial ownership of entities, posing potential risks for money laundering or terrorist financing.
- Financial institutions are encouraged to adopt robust due diligence procedures to identify the nominator behind nominee structures, ensuring that all relevant information is reported to the appropriate authorities.

Key Compliance Obligations for Financial Institutions
To ensure compliance with the updated legal framework, financial institutions must:

- Update client records to reflect changes in legal and beneficial ownership within the timeframes outlined.
- Ensure that all nominee arrangements are fully disclosed, including information on the nominator and the individual ultimately benefiting from the ownership.
- Conduct enhanced due diligence on any entity with nominee structures, in line with the latest AML/CFT guidelines.
- Work closely with the Registrar and IRD to ensure accurate and timely submission of ownership information.

Expanded Obligations Under the Tax Administration and Procedures Act (TAPA) and the Money Laundering and Financing of Terrorism Guidelines (MLFTG)

Expanded Obligations Under the Tax Administration and Procedures Act

The Tax Administration and Procedures Act (TAPA) has been amended to include additional obligations for financial institutions. Specifically, Section 23 now requires financial institutions to identify and take reasonable measures to verify the identity of beneficial owners of customers that are legal persons.

Key Amendments to Section 23 (TAPA):

- Subsection (2)(d) now mandates that in cases where a nominee is involved, the financial institution must obtain ownership information that includes:
    - The name and address of the nominee.
    - The status of the nominee.
    - The name and address of the nominator for whom the nominee acts.

- Subsection (3) further specifies that financial institutions must identify and verify the following information for legal persons:
    - The identity of the natural person(s) who ultimately have a controlling ownership interest in the legal entity.
    - The identity of the natural person(s) exercising control over the legal person or arrangement through other means when there is doubt regarding the controlling ownership.

These provisions ensure that nominees are captured in the regulatory framework, thereby improving transparency in ownership structures and reducing the risk of money laundering or financing of terrorism (ML/FT).

Combined Effect of MLFTG and TAPA

The combined impact of the MLFTG and TAPA ensures that financial institutions are required to capture the information of nominees and nominators across different systems. This integrated approach guarantees that all beneficial ownership information, including controlling ownership interests, is available and can be cross-checked by authorities as needed.

Through these legislative updates, Antigua and Barbuda has addressed the global recommendation to enhance beneficial ownership transparency, particularly in the case of legal persons.

Updated Money Laundering and Financing of Terrorism Guidelines (MLFTG)

The updated Money Laundering and Financing of Terrorism Guidelines (MLFTG) issued by the ONDCP, include detailed guidance on the identification and verification of beneficial owners, particularly with respect to legal entities and nominee arrangements.

Key Sections in the MLFTG:

- Section 2.2.15 - Transparency of Beneficial Ownership: This section provides clear guidance on how financial institutions should identify beneficial owners of legal entities. The guidelines include definitions, tests, and procedures for determining beneficial ownership, with specific emphasis on nominees and nominators.
- Identifying Beneficial Owners: Financial institutions must apply Customer Due Diligence (CDD) measures to discover not only the overt owners but also any underlying owners of legal entities. This includes identifying those who control a legal entity or arrangement, even if they are not the legal owners.

Cascade Approach to Identifying Beneficial Owners:

The MLFTG outlines a cascade approach for identifying beneficial owners of legal persons:

- **Step 1**: Identify the natural person(s) who hold controlling ownership interests in the legal person, using a threshold test if necessary.

- **Step 2**: If no clear controlling ownership interest exists, identify the natural person(s) who exercise control through other means.
- **Step 3**: If no beneficial owner is identified in the previous steps, institutions should identify and verify the senior managing official(s) of the legal entity.

This cascade approach ensures that financial institutions can identify and verify the ultimate beneficial owners of any legal person or arrangement, whether or not the ownership is hidden behind nominees or complex structures.

Guidelines on Nominee Arrangements

The MLFTG also addresses nominee arrangements, ensuring that institutions can identify both nominees and nominators:

- Nominee: A person or entity that holds legal ownership on behalf of another.
- Nominator: The person or entity instructing the nominee on behalf of whom the nominee acts.

Financial institutions are required to obtain information on the name, address, and status of the nominee, as well as the name and address of the nominator. This ensures that financial institutions are aware of the true individuals behind nominee arrangements and are not inadvertently facilitating financial crimes.

Compliance Requirements for Financial Institutions

In light of these updates, financial institutions are advised to take the following actions:

- Review and Update Customer Due Diligence (CDD) Procedures: Ensure that procedures for identifying beneficial ownership are in line with the updated TAPA and MLFTG requirements, particularly in relation to nominees and controlling ownership interests.
- Verify Nominee and Nominator Information: For customers with nominee arrangements, obtain and verify the identity of both the nominee and nominator, including their names, addresses, and status.
- Maintain Transparent Ownership Records: Ensure that the ultimate beneficial ownership of legal persons is accurately documented and accessible for regulatory review.
- Apply the Cascade Approach: Follow the steps outlined in the MLFTG to identify beneficial owners, including applying threshold tests and verifying the identity of senior managing officials when necessary.

Applicability of the MLFTG to Legal Entities and Arrangements

It is important to note that the MLFTG applies to all legal persons and legal arrangements that fall under Schedule 1 of the Money Laundering (Prevention) Act (MLPA). This includes both domestic and international entities that are subject to the AML/CFT regulations. As a result, all relevant entities must ensure compliance with the MLFTG's requirements for beneficial ownership transparency.

Implementation of Typologies, Beneficial Ownership, and Related Legal Framework Updates

The ONDCP has also issued updated guidance regarding the identification of Beneficial Ownership (BO) and related legal entities and arrangements.

Typologies: Misuse of Legal Persons and Legal Arrangements

The ONDCP, in collaboration with the Eastern Caribbean Central Bank (ECCB), has the legal authority to issue Typologies, which provide scenarios detailing how legal persons and legal arrangements may be misused for money laundering and terrorist financing activities. These Typologies serve as critical tools for financial institutions to assess and mitigate the risk posed by such entities.

- Updated Typologies (2024): The ONDCP has published the Typologies on the Misuse of Legal Persons and Legal Entities. These Typologies are not exhaustive but provide illustrative examples of how legal persons and arrangements can be exploited.
- Financial institutions are reminded to assess customer risk continuously and to identify suspicious transactions or activities in line with their legislative and regulatory obligations.

The issuance of the Money Laundering and Financing of Terrorism Guidelines (MLFTG 2024), in conjunction with the Typologies, applies to all legal persons and arrangements falling under Schedule 1 of the Money Laundering (Prevention) Act (MLPA). As a result, financial institutions must incorporate these Typologies into their customer due diligence (CDD) processes.

Beneficial Ownership: Amendments to Laws and Regulations

A key update involves the amendment of beneficial ownership thresholds and the application of cascading steps to determine ultimate beneficial owners (UBOs).

- Threshold Update: In alignment with international standards, the ownership threshold for identifying UBOs has been raised to 15%. This change ensures consistency with global practices and enhances transparency in the identification of UBOs.

The following laws have been amended to reflect the new threshold:

1. Companies Act (s. 194A(1)(a))
2. International Business Corporations Act (s.6A(10)(a))
3. Insurance Act (s.14A(1)(a))
4. Money Services Business Act (s.15A(1)(a))
5. International Trust Act (18A(1)(a))
6. International Foundation Act (18A(1)(a))
7. International Limited Liability Companies Act (18A(1)(a))
8. Corporate Management and Trust Services Providers Act (18A(1)(a))

- **Cascading Approach for Beneficial Ownership**: The three-step approach for identifying UBOs remains as follows:
    - **Step 1**: Identify natural persons with a controlling ownership interest (15% threshold).
    - **Step 2**: If no natural persons are identified in Step 1, determine those exerting control through other means.
    - **Step 3**: Identify the senior managing official if no controlling individuals are found.

Impact of the Tax Administration and Procedures Act (TAPA)

The Tax Administration and Procedures Act (TAPA) has been amended to strengthen the identification and verification of beneficial owners of legal persons and arrangements. The Act now requires financial institutions to take reasonable steps to verify the following:

- Business Details: The nature, ownership, and control structure of the business.
- Ownership Information: Financial institutions must identify and verify the identity of:
    - Natural persons with a controlling ownership interest in a legal entity.
    - Those exercising control over the entity through other means if there is doubt as to who the UBO is.
    - Senior managing officials, where no natural persons are identified under the above.
- Nominees: Where nominees are involved, financial institutions must identify the nominator and nominee details, including name, address, and status.

These changes further align Antigua and Barbuda's legal framework with international standards, ensuring greater transparency in the beneficial ownership of legal persons and arrangements.

Beneficial Ownership of Partnerships, Trusts, and Foundations

- Partnerships: Financial institutions should apply the cascading approach outlined in the MLFTG for partnerships, with specific attention to the influence or control an individual may have over the partnership's activities (e.g., capital ownership, voting rights, appointment/removal of partners, etc.).
- Trusts: The definition of beneficial ownership in relation to trusts has been clarified. Financial institutions are required to identify:
    - The settlor, trustees, protector (if any), beneficiaries, and any other individuals exercising effective control over the trust.
    - The beneficial ownership identification process for trusts is separate from the cascading ownership tests used for legal persons and legal arrangements.
- Foundations: In line with the MLFTG, financial institutions must identify the beneficial owners of foundations, focusing on founders, beneficiaries, and individuals with control over the foundation's activities. This includes identifying any individual who has the right to appoint or remove board members or influence investment decisions, or those who can wind up or convert the foundation.

Next Steps for Financial Institutions

1. Review and Update Policies: Financial institutions should ensure their internal policies and procedures are aligned with the updated legislative framework, particularly concerning the increased beneficial ownership threshold and cascading steps for identification

2. Training: Ongoing training for staff is essential to ensure compliance with the new requirements, including proper application of Typologies and adherence to the enhanced CDD obligations.

3. Customer Due Diligence: Institutions must implement enhanced due diligence (EDD) measures for customers that involve complex ownership structures, such as those with nominees, trusts, or foundations.

4. Ongoing Monitoring and Reporting: Institutions are reminded of their responsibility to conduct continuous monitoring of business relationships and report suspicious activities in accordance with their obligations under the AML/CFT framework.

ONDCP Typologies on the Misuse of Legal Persons and Arrangements

In furtherance of the above the ONDCP's ongoing supervisory efforts to combat money laundering and terrorist financing led to the development of a Typologies Document on the Misuse of Legal Persons and Arrangements (2024). This document aims to increase awareness among competent authorities and reporting entities about the methods and techniques illicit actors use to obscure beneficial ownership information.

The Typologies 2024 should be read in conjunction with the Money Laundering and Financing of Terrorism Guidelines (MLFTG 2024), both of which were promulgated by the ONDCP in collaboration with the Eastern Caribbean Central Bank (ECCB). These documents serve as important resources for financial institutions and other regulated entities, particularly those subject to Anti-Money Laundering and Counter-Financing of Terrorism (AML/CFT) obligations. The core principles for identifying beneficial ownership within corporate structures are equally relevant in the context of tax transparency.

Key Findings from the Typologies 2024:

The Typologies document highlights that complex ownership structures are the primary method used by illicit actors to conceal beneficial ownership. These structures typically involve the creation of layers of ownership across multiple legal persons and jurisdictions, making it difficult to trace the actual beneficial owner to the assets held by the corporation. Intermediaries, such as professional services providers, are often employed to retain control over these intricate structures.

Recommendations for Financial Institutions:

The Typologies document offers several best practices and recommendations to financial institutions to improve the detection of the misuse of legal entities and arrangements for illicit purposes:

1. Conduct Due Diligence:

   Financial institutions should conduct thorough due diligence to ensure the purported nature of a customer's business aligns with its actual operations. This includes understanding the corporate structure and ownership of the customer. Special attention should be given to identifying any intermediaries and scrutinizing the structure for any signs of opacity or complexity that may be indicative of attempts to conceal beneficial ownership.

2. Corroborate Transaction Details:

   Institutions should obtain corroborative evidence for transactions that appear unusual or do not align with industry norms. This helps verify the legitimacy of customer declarations and ensures that transactions are consistent with expected business practices.

3. Implement a Risk-Based Approach:

   Financial institutions should apply a risk-based approach when onboarding customers and during ongoing monitoring. This includes assessing customer information at the time of onboarding and continuing to monitor any relevant changes. Publicly available information from relevant authorities should be considered as part of this process.

4. Review Transaction Behavior Holistically:

   Institutions should implement systems that allow for the review of transaction behavior on a comprehensive basis. This will enable a more accurate assessment of the reasonableness of transactions and help identify potential red flags indicative of illicit activity.

5. Scrutinize Appointment of Authorized Signatories:

   When assessing the appointment of authorized signatories, financial institutions should investigate the rationale behind such appointments, particularly when the signatories appear to be unrelated to the company's business operations or ownership structure.

Use of Professional Intermediaries and Complex Structures:

In furtherance of the above, the Typologies issued by the ONDCP, was issued following an extensive review of its law enforcement and financial intelligence databases, along with international publications. This review identified key methods used to conceal beneficial ownership, including the use of professional intermediaries, shell and front companies, and false contracts or invoicing. The Typologies were based on sanitized case examples that highlight the common patterns of illicit financial activity.

The Typologies 2024 aim to assist regulated entities and stakeholders in identifying behaviors and patterns that may signal misuse of legal persons and arrangements for money laundering, terrorist financing, or other criminal activities. Financial institutions are reminded that while the Typologies provide valuable insight, they are not an exhaustive list of circumstances.

Ongoing Responsibilities:

- Continual Risk Assessment: Financial institutions are reminded to continually assess the risk profile of their customers. This includes identifying suspicious transactions and activities, particularly in relation to legal persons and arrangements that may be used to obscure beneficial ownership.
- Compliance with Legislative and Regulatory Obligations: Financial institutions should continue to comply with all relevant legislative and regulatory obligations, applying the appropriate customer due diligence (CDD) and enhanced due diligence (EDD) measures, particularly in cases involving complex or opaque ownership structures.

Update On The Multipronged Approach

Global Forum Working Group (January 2023 – December 2024 and Ongoing)

In early 2023, the Inland Revenue Department (IRD), with the Commissioner acting as the Competent Authority for the Global Forum on Tax Transparency, established a dedicated *Global Forum Working Group*. This group unites all relevant stakeholders within the jurisdiction focused on tax transparency, providing a platform for regular discussions on strengthening the legal framework and advancing supervisory efforts to enhance transparency, combat financial crime, and prevent tax evasion.

The working group convened on a weekly basis and transitioned to monthly meetings, where stakeholders discuss legal developments, regulatory updates, and progress on implementing tax transparency measures. Topics have included desk-based and on-site examinations, staff training programs, outreach activities, and enforcement actions taken by various authorities.

The collaborative nature of the working group has resulted in the documentation and compilation of presentations from stakeholders into an implementation table, helping to track each entity's progress while ensuring accountability in maintaining global standards.

Key participating authorities include:

- The Inland Revenue Department (IRD) (Competent Authority)
- The Financial Services Regulatory Commission (FSRC)
- The Office of National Drug and Money Laundering Control Policy (ONDCP)
- The Intellectual Property Office (IPO)
- The Office of the Attorney General

Global Forum Working Group Meetings and Key Milestones:

Several meetings with stakeholders and Cabinet officials were conducted in 2024 and will continue into 2025. Key discussions will focus on finalizing reports for the Global Forum, addressing critical issues to ensure that Antigua and Barbuda remains in compliance with global standards, and working toward the jurisdiction's removal from the EU non-cooperative list.

Beneficial Ownership Seminar

In October 2024, the IMF and the ECCB co-hosted a hybrid seminar, offering both virtual and in-person participation, to enhance understanding of beneficial ownership regulations. Stakeholders from across the jurisdiction, including IRD, ONDCP, FSRC, and IPO, attended. The seminar included valuable presentations on current practices, challenges, and regulatory improvements related to beneficial ownership, contributing to the jurisdiction's continued alignment with global best practices.

Strengthening Beneficial Ownership Verification and Best Practices Implementation

Building on insights from seminar, the jurisdiction is implementing best practices to strengthen beneficial ownership verification. Measures include:

1. Company Data Analysis – Reports on new and existing companies are reviewed to ensure compliance with beneficial ownership disclosures.

2. Verification of Identity – Directors, shareholders, and beneficial owners are validated through the Tax Information Numbers (TINs) and risk screening.

3. Ownership and Control Confirmation – Verification processes are enhanced by cross-referencing ownership data, checking reports, and analyzing shared ownership between entities.

4. External Database Searches – Comprehensive searches are conducted, including terrorist watchlist checks and reviews of public records, to ensure compliance.

5. Monthly Reporting – Discrepancies are managed and flagged for follow-up actions, including referral for sanctions when needed.

Update on Beneficial Ownership Attestation Forms

The jurisdiction continues to refine its approach to Beneficial Ownership (BO) attestation forms as issued by the Intellectual Property office (IPO) for Domestic Companies, and those issued by the Financial Services Regulatory Commission (FSRC) for International Companies.

These actions reflect the jurisdiction's ongoing commitment to strengthening beneficial ownership verification and ensuring compliance with international tax transparency standards. The collaboration among stakeholders and the adoption of best practices reinforce the jurisdiction's capacity to maintain financial integrity and meet global expectations.

Please find a copy of the relevant legislative changes together with a copy of the MLFTG and the Beneficial Ownership Typologies on the IRDs website at: ird.gov.ag;

Please be guided accordingly.

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