



21st December 2012

NOTICE

Corporate Service Provider (Beneficial Owner) Regulations 2012

The regulation of corporate service providers (CSPs) will require all CSPs to be licensed and subject to prudential oversight. As part of this process the CSPs will be included in the list of entities which are under the Proceeds of Crime Act 1997 and regulations and who must carry out due diligence of beneficial owners of their clients. The Proceeds of Crime Act 1997 directs that for Know Your Customer (KYC) purposes, all licensed entities must vet 25% or more of the beneficial owners of a client.

The Organisation of Economic Co-operation and Development (OECD) has reviewed global standards and has advised that for purposes of the tax reviews and peer assessments, jurisdictions which meet international standards must be able to demonstrate that their laws are robust and maintain sufficient information on beneficial owners. The OECD standard requires due diligence to be conducted on 10% beneficial ownership of entities which are formed in Bermuda, including companies and partnerships. OECD also requires that there be legislative framework in place.

With the adoption of the Corporate Service Providers Business Act 2012 (the “Act”), the issue of maintaining beneficial ownership has been addressed. Under section 66 of the Act, the Minister may make regulations directing that CSPs maintain beneficial ownership. Accordingly the attached regulations, the Corporate Service Providers (Beneficial Owner) Regulations 2012, are intended to impose a duty on a CSP licensed under the Act to maintain beneficial ownership information for all clients, including all persons who are in the chain of ownership. The definition of beneficial owner mirrors the definition under the Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) regime. If a client does not disclose the information then the CSP may refuse to form the entity, transfer shares or restrict any interest held by the client in the entity. It will be an offence to fail to respond to a CSP.

Comments on the draft Regulations are invited by 10th January 2013 and should be sent to smackenzie@bma.bm.

BERMUDA
CORPORATE SERVICE PROVIDER (BENEFICIAL OWNER) REGULATIONS 2012
BR / 2012

TABLE OF CONTENTS

- 1 Citation
- 2 Interpretation
- 3 Meaning of beneficial owners
- 4 Duties of corporate service provider
- 5 Record of beneficial owner to be maintained
- 6 Obligation for beneficial owner to report changes to corporate service provider
- 7 Notice to persons to disclose beneficial ownership
- 8 Suspension or cancellation of interest for failure to disclose beneficial ownership
- 9 Commencement

In exercise of the powers conferred upon the Minister of Finance by section 66 of the Corporate Service Provider Business Act 2012 (the “Act”), the following regulations are made:—

Citation

- 1 These Rules may be cited as the Corporate Service Provider (Beneficial Ownership) Regulations 2012.

Interpretation

- 2 In these Regulations, unless the context otherwise requires—

“beneficial owner” has the meaning set out under regulation 3;

“corporate service provider” has the meaning set out under the Act;

“record of beneficial owner” has the meaning set out under regulation 5.

Meaning of beneficial owner

- 3 (1) In the case of a body corporate, “beneficial owner” means any individual who—
 - (a) as respects any body other than a company whose securities are listed on an appointed stock exchange, ultimately owns or controls (whether through direct or indirect ownership or control, including through bearer share holdings) more than 10% of the shareholding or voting rights in the body; or
 - (b) as respects any body corporate, otherwise exercises control over the management of the body.

- (2) In the case of a partnership, “beneficial owner” means any individual who—
- (a) ultimately is entitled to or controls (whether the entitlement or control is direct or indirect) more than a 10% share of the capital or profits of the partnership or more than 10% of the voting rights in the partnership; or
 - (b) otherwise exercises control over the management of the partnership.
- (3) In the case of a trust, “beneficial owner” means—
- (a) any individual who is entitled to a specified interest in at least 10% of the capital of the trust property;
 - (b) as respects any trust other than one which is set up or operates entirely for the benefit of individuals falling within sub-paragraph (a), the class of persons in whose main interest the trust is set up or operates;
 - (c) any individual who has control over the trust.
- (4) In paragraph (3)—
- “specified interest” means a vested interest which is—
- (a) in possession or in remainder or reversion; and
 - (b) defeasible or indefeasible;
- “control” means a power (whether exercisable alone, jointly with another person or with the consent of another person) under the trust instrument or by law to—
- (a) dispose of, advance, lend, invest, pay or apply trust property;
 - (b) vary the trust;
 - (c) add or remove a person as a beneficiary or to or from a class of beneficiaries;
 - (d) appoint or remove trustees;
 - (e) direct, withhold consent to or veto the exercise of a power such as is mentioned in subparagraph (a), (b), (c) or (d).
- (5) For the purposes of paragraph (3)—
- (a) where an individual is the beneficial owner of a body corporate which is entitled to a specified interest in the capital of the trust property or which has control over the trust, the individual is to be regarded as entitled to the interest or having control over the trust; and
 - (b) an individual does not have control solely as a result of—
 - (i) his consent being required in accordance with section 24(1)(c) of the Trustee Act 1975 (power of advancement); or
 - (ii) the power exercisable collectively at common law to vary or extinguish a trust where the beneficiaries under the trust are of full age and capacity and (taken together) absolutely entitled to the property subject to the trust.
- (6) In the case of a legal entity or legal arrangement which does not fall within paragraph (1), (2) or (3), “beneficial owner” means—
- (a) where the individuals who benefit from the entity or arrangement have been determined, any individual who benefits from at least 10% of the property of the entity or arrangement;

(b) where the individuals who benefit from the entity or arrangement have yet to be determined, the class of persons in whose main interest the entity or arrangement is set up or operates;

(c) any individual who exercises control over at least 10% of the property of the entity or arrangement.

(7) For the purposes of paragraph (6), where an individual is the beneficial owner of a body corporate which benefits from or exercises control over the property of the entity or arrangement, the individual is to be regarded as benefiting from or exercising control over the property of the entity or arrangement.

(8) In the case of an estate of a deceased person in the course of administration, “beneficial owner” means the executor, original or by representation, or administrator for the time being of a deceased person.

(9) In any other case, “beneficial owner” means the individual who ultimately owns or controls the client or on whose behalf a transaction is being conducted.

(10) In this regulation—
“arrangement”, “entity” and “trust” means an arrangement, entity or trust which administers and distributes funds.

Duties of corporate service provider

4 A corporate service provider shall take all reasonable steps to ascertain the identity of all beneficial owners of a client, including the legal and intermediate owners of the client.

Record of beneficial owner to be maintained

5 Where a corporate service provider has ascertained that a person is a beneficial owner in accordance with regulation 3, the corporate service provider shall maintain a written record (“record of beneficial owner”) at its registered address of the following details—

- (a) the name of the beneficial owner and the name of the spouse of the beneficial owner;
- (b) the residential address of the beneficial owner;
- (c) the nationality of the beneficial owner;
- (d) the date of birth of the beneficial owner;
- (e) the name and residential address of any nominee of the beneficial owner;
- (f) the percentage of ownership interest held in the client by the beneficial owner; and
- (g) the name of the legal and intermediate owners of the client where applicable.

Obligation for beneficial owner to report changes to corporate service provider

6 (1) A beneficial owner shall notify a corporate service provider in writing within 28 days after there has been any change in his beneficial ownership in a client, whether such change results in an increase or a decrease in his beneficial ownership.

(2) A beneficial owner who fails to comply with the requirements of paragraph subparagraph (1) commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

Notice to persons to disclose beneficial ownership

7 (1) A corporate service provider may give notice to a person requiring that person to disclose to the corporate service provider beneficial ownership information within the time period set out in the notice.

(2) A person who fails to comply with the requirements of a notice without reasonable excuse under subparagraph (1) or who makes a material statement which is false, deceptive or misleading or who provides false information to a corporate service provider commits an offence.

Suspension or cancellation of interests for failure to disclose beneficial ownership

8 If a person has failed to comply with the requirements of paragraph 7 (1); a corporate service provider may give notice to the client which may; place such restrictions on the rights of the beneficial owner interest deemed appropriate, including without limitation; restricting any right for the beneficial owner to transfer his interest, exercise any voting rights, purchase additional interest in the client; or may cancel the beneficial owner's interest in the client.

Commencement

9 These Regulations shall come into operation on [DATE].