

GUIDELINES FOR FOUNDATIONS AND ASSOCIATIONS

UNDERSTANDING THE CONCEPT OF BENEFICIAL OWNER/BENEFICIARY

- September 2023

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FILES FOR FILING INFORMATION ON BENEFICIAL OWNERS FOR ASSOCIATIONS AND FOUNDATIONS

QUESTIONNAIRE AND EXCEL FILE FOR ASSOCIATIONS AND FOUNDATIONS

Introduction and background

1. Legal structures are fundamental to commercial and entrepreneurial activities, and play an essential role in the global economy. In most cases, legal entities serve legitimate and significant purposes, and are the cornerstone of international trade and the provision of services. However, under certain conditions, legal entities can be, and in practice are, used for illicit purposes such as money laundering, bribery, insider trading, tax fraud and terrorist financing. Criminals wishing to circumvent anti-money laundering and terrorist financing (AML/CFT) measures have in the past used, and continue to use, legal entities to conceal their ownership or control over financial assets, and to integrate the proceeds of crime into the global financial system through the use of bank accounts and financial instruments belonging to a legal entity they control.
2. The international community's growing concern about the misuse of legal structures for criminal purposes dates back to the early 2000s. Numerous international money laundering cases have revealed that criminals frequently use various types of legal structures to conceal their illegal assets. These include the use of front companies and the creation of companies, partnerships, foundations, trusts and other types of corporate means with complex ownership and control structures to avoid detection by the authorities. The lack of transparency regarding beneficial owners (BEs), i.e. the natural person or persons who hold or ultimately exercise effective control over a legal entity, is an obstacle for governments worldwide as regards their efforts to effectively combat criminal activities.
3. To address this problem, a growing number of jurisdictions have created a centralised beneficial ownership register to record accurate information about the beneficial ownership of legal entities: Monaco is one of those jurisdictions. All legal entities created under Monegasque law are required to register their beneficial ownership information with a government authority. This enables the competent authorities to have timely access to suitable, accurate and up-to-date information on the end BEs of all legal entities.
4. In Monaco, this obligation applies both to commercial entities, which must register their beneficial ownership information with the Division of Economic Development, and to foundations and associations, which must register their beneficial ownership information with the Ministry of Interior. Active commercial and non-commercial companies must keep their BE entries up to date at all times.
5. This guidance document aims to assist foundations and associations, and their management, in the process of identifying their beneficial owners, and provides guidance on how to file this information with the Ministry of Interior.

International requirements

1. The concept of beneficial ownership and the implementation of national measures to ensure that beneficial ownership information is retained for all legal entities are the focus of multiple international transparency initiatives.[[1]](#footnote-2) For all legal entities, irrespective of where they are incorporated, the general objective is to ensure that it is possible to quickly and reliably determine who the natural person or persons are who ultimately own or exercise effective control over that legal entity, and therefore to whom the activities and assets of the legal entity are attributable.
2. The definition of "beneficial owner" applies to all countries worldwide, and is set out in the Financial Action Task Force (FATF) international standards on combating money laundering and terrorist financing (AML/CFT). It states follows:

***In the context of legal persons, the term "beneficial owner" refers to the natural person or persons who ultimately exercise effective control over a legal person.***

1. Only a natural person can be the end beneficial owner. It is possible for more than one individual to have or exercise ultimate effective control over a legal entity, and therefore be the beneficial owner.
2. In accordance with FATF Recommendation 24, the term "beneficial owner" also covers any individual who exercises effective control or ultimate ownership over a legal entity through a chain of title, or by means other than direct control.ultimate ownership of a legal entity *through a chain of ownership*, or by means of control other than direct control. The notion of *control* refers to the ability to make relevant decisions within the legal entity, and to impose these decisions.

Monegasque legal framework

1. Section V of Law no. 1.362 of August 2009, as amended, requires all legal entities created under Monegasque law to obtain and retain information on their beneficial owners, and to register them either with the Division of Economic Development (DED) for commercial and non-trading companies, or with the Ministry of Interior (DI) for associations and foundations. The associated Sovereign Ordinance clarifies the obligations set out in the main law, and provides more operational framework for how beneficial owners are to be identified in practice.
2. With specific regard to associations, federations of associations and foundations created under Monegasque law, the various obligations set out in section V of Law no. 1,362 can be summarised as follows:
3. Articles 21, 22 and 22-1 **require Monegasque associations, federations of associations and foundations** to:
   * Appoint a person responsible for maintaining adequate, accurate and up-to-date information and documentation on beneficial owners, and for communicating this information and updates to the Ministry of Interior.
   * Obtain and maintain adequate, accurate, up-to-date information and supporting documentation on their beneficial owners.
   * Keep information and documents relating to their beneficial owners for ten years after the association, federation of associations or foundations ceases activity, and keep this information and documents at their registered office in Monaco, with their appointed Monegasque service provider, or in another place in Monaco, and inform the Ministry of Interior of such address.
   * Provide all relevant, accurate and up-to-date information on beneficiaries to the Ministry of Interior, for inclusion in its register.
   * Keep the Ministry of Interior informed of any change in beneficial ownership within one month of its occurrence.
4. Article 21 also establishes the **obligation for the beneficial owners of Monegasque associations, federations of associations and foundations** to provide the association, federation of associations or foundation with all the information necessary to enable the association, federation of associations or foundation to comply with its obligation to obtain and keep information on the BE.
5. With regard to associations, federations of associations and foundations, Law 1,355 of 23/12/2008 on associations and federations of associations and Law 56 of 29 January 1922 on foundations, as amended, personalise the obligations set out in Law 1,362 as follows:
   * Articles 7 and 7-1 of Law 1,355 require associations and federations of associations to provide the Ministry of Interior with:

* the identity of the person or persons who are responsible for its administration or management, in any capacity whatsoever.
* the identity of the person appointed as responsible for providing the basic and beneficial ownership information to the Ministry of Interior.
* the identity of the beneficial owner(s) of the association or federation of associations.
  + Article 6 of Law 56 requires foundations to disclose the following to the Ministry of Interior:
* the identity of each founder or co-founder.
* the identity of persons entrusted with administration or management of the foundation.
* the identity of the beneficial owner(s) of the foundation.
* Article 7-2 of Law 1,355 and Article 6 of Law 56 specify that for associations, federations of associations and foundations, the term **"beneficial owner"** covers **"any natural person(s), third party or members, who ultimately exercise effective control over the association, in particular over its activities, or who have entered into contracts enabling a third party to obtain indirect control over the association".**

1. The two laws state that each association, federation of associations and foundation must appoint a person responsible for keeping and providing suitable, accurate and up-to-date basic and beneficial ownership information to the Ministry of Interior, for keeping registers, and providing any other form of assistance to the competent authorities in Monaco. In the case of foundations, this appointed person may be chosen from amongst the chairman and directors who reside in Monaco. Associations and federations of associations may appoint a natural person who is a member of the association's management, or staff who reside in Monaco. Associations, federations of associations and foundations may also appoint a person authorised to perform the work of a company service provider, legal adviser, multi-family office, chartered accountant, notary or lawyer in Monaco.
2. The penalties for foundations, associations and federations of associations that fail to comply with any of the above obligations include an administrative fine of between €5,000 and €100,000 for associations, and between €20,000 and €100,000 for foundations. Additional criminal penalties may be imposed on the natural person or persons authorised to act on behalf of an association or foundation for failure to comply with the obligations to declare the beneficial ownership of the association or foundation.

Identifying the beneficial owner in practice

1. On the basis of the legal provisions set out above, foundations, associations and federations of associations in Monaco have the following main obligations:
2. Appointing of a competent person in Monaco, responsible for filing basic and beneficial ownership information with the Ministry of Interior, to keep this information accurate and up-to-date at all times, and to cooperate with the competent authorities if necessary.
3. Identify the beneficial owner(s).
4. File information on beneficial owners with the Ministry of Interior.
5. Maintain registers of beneficial owners, keep these registers in a specific place in Monaco, and ensure that these registers are accessible upon request.
6. Keep up-to-date registers of beneficial owners, and inform the Ministry of Interior of any changes.

Appointing of a competent person

1. Each foundation, association and federation of associations in Monaco is required under Monegasque law to appoint a person responsible for keeping information on beneficial owners, to provide this information and any updates to the Ministry of Interior, to keep the documents for ten years from the date on which the foundation or association ceases to exist, and provide the competent authorities with any assistance they require, including the provision of information on beneficial owners.

1. With the agreement of the person appointed to perform their job within the association or foundation, the name and contact details of this person must be communicated to the Ministry of Interior.
2. The appointed person must be one or more natural persons, residents in Monaco, who are also members of the staff or management of the foundation or association.
3. The appointed person may also be a person authorised pursuant to Article 1(6), (13), (19), (20) or Article 2(1) or (3) of the AML/CFT Law, which includes business service providers, legal advisors, multi-family offices, chartered accountants, notaries and lawyers. This means that in limited circumstances, a contractual service provider in Monaco may be chosen by the association, federation of associations or foundation to act as its appointed person. It is important to note that the service provider must be approved in Monaco. Lawyers and other service providers approved in other countries, such as France, cannot be the appointed person unless they are also members of the management of the association or foundation and are a natural person.
4. If the appointed person changes, or if any of the registered person's details change, the Ministry of Interior must be informed.
5. For the first filing, the forms included in the last section of this guidance should be used to inform the Ministry of Interior of the details of the appointed person. **The files must be completed by the associations and foundations, and returned to the Ministry of Interior by the deadline set by the Ministry of Interior itself.**

Identifying the beneficial owner

1. The various types of legal entity that can be created in Monaco each have different ownership and control structures; as a result, the methodology for identifying BEs also differs.
2. Foundations and associations do not have shareholders; they are often run by a board of directors rather than individual managers, and it can be difficult to identify the individual beneficiaries of their activities. It is therefore often difficult to determine who meets the definition of "beneficial owner".
3. Foundations are usually set up by one or more founders, are managed by a foundation board, and operate for the benefit of a specific cause or objective. For foundations, any natural person who is a founder or a beneficial sponsor, whether or not they exercise control over the foundation, as well as any natural person who is a member of the board of directors, and any natural person who is a beneficiary of the foundation, is considered a beneficial owner and must be identified.
4. Monegasque foundations may not have a founder or board member who is a legal entity. However, in the very rare case where a foundation receives funds from a legal entity, the concept of "beneficial owner" also requires the identification of the natural person(s) who ultimately own(s) or exercise(s) effective control over the donating legal entity.
5. Associations are usually formed by a certain number of their members, and serve a specific purpose rather than as identified or identifiable individuals. Identifying the beneficial owner of an association must involve identifying the members of the association's executive function. Additionally, if there are one or more natural persons who do not sit on the board of directors of the association, but who directly or indirectly own or ultimately control the association, its activities or its funds in one way or another, this person or persons will also be considered as beneficial owner/s, and must be identified. For federations, a separate declaration is required for its members and for members of the federation's board of directors.
6. The data that associations, federations of associations and foundations must obtain and retain for each of their beneficial owners includes the first names and surnames, nationality, dates of birth, occupation, residential addresses and roles within the association.
7. To verify the accuracy of the information obtained, official documents such as passports must be obtained for each beneficial owner, and copies of these documents must be retained for the duration and in the manner set out below.

Keeping records

1. The obligation to keep records covers not only information on beneficial owners, but also supporting documents. This means that the verification documents used by the foundation, association or federation of associations must also be recorded and updated. Passports, address registration certificates, etc. must be valid.
2. Records must be kept by the foundation, association or federation of associations either at its registered office, at the address of the appointed person, or at another location in Monaco. The address where the records are kept must be communicated to the Ministry of Interior so that it knows where it can locate and access information and documents on beneficial owners at all times.
3. The obligation to keep registers applies for a period of ten years from the date on which the foundation, association or federation of associations ceases to exist, i.e. well beyond its operational viability.
4. Information and records relating to beneficial owners must be kept in such a way that the Ministry of Interior can access them in a timely manner. It is advisable to keep a searchable electronic database of electronic files, or a detailed register of paper files. Files must be stored in such a way that they can be retrieved quickly if requested by the Ministry of Interior.

Keep information and records up to date, and the Ministry of Interior informed

1. Once a foundation, association or federation of associations has succeeded in identifying its beneficial owners, it has a legal obligation to keep this information accurate, adequate and up-to-date at all times. This implies an obligation to ensure that the foundation, association or federation of associations is informed of any change in beneficial ownership, and that it amends its own registers accordingly. It is recommended that each foundation, association or federation of associations actively verify the accuracy, appropriateness and validity of information at regular intervals, such as on a yearly basis.

Filing information on beneficial owners with the Ministry of Interior

1. The Ministry of Interior is responsible for collecting information on beneficial owners from all associations and foundations in Monaco. To this end, the Ministry of Interior has drawn up a questionnaire and an excel file, which are used to collect information in accordance with the new requirements of the AML/CFT Law, the Law on Foundations and the Law on Associations, respectively.
2. The questionnaires are due to be distributed in mid-October 2023, and the deadline for responses is **six weeks after receipt**.The questionnaire will be distributed in the form of an electronic link to an online template, which can be completed by the person responsible in an association or foundation. Responses will be automatically submitted to the Ministry of Interior for inclusion in its register.
3. Upon expiry of the filing deadline, the Ministry of Interior has the power to impose sanctions on foundations, associations and federations of associations that have not provided the information requested correctly, or on time. The type of sanctions applicable range from administrative sanctions in the form of monetary fines, to criminal sanctions against the individuals responsible for administration of the foundation or association, which may include dissolution of the association or foundation in serious cases.
4. For all questions and requests relating to associations, foundations, and beneficial ownership, please contact the Ministry of Interior at the following e-mail address: [OBNL@gouv.mc](mailto:OBNL@gouv.mc)
5. For any newly created foundation, association or federation of associations, information on beneficial ownership will be required during the declaration of incorporation process and will therefore be available to the Ministry of Interior from its establishment, and as soon as a foundation, association or federation of associations is officially registered.

files for filing information on beneficial owners for associations and foundations

To gather information on your group's beneficial owners and bring it into line with legal requirements of the law, please complete two documents, a questionnaire and an excel file, accessible via the following link.

<https://monservicepublic.gouv.mc/thematiques/associations-et-fondations/groupementsassociatifs/acceder-au-questionnaire-des-obnl-association,-federation-ou-fondation>

1. Of note is the Global Forum on Transparency and Exchange of Information for Tax Purposes, the United Nations Convention against Corruption and the Partnership against Corruption initiative. [↑](#footnote-ref-2)