

Gap Analysis: Beneficial Ownership in the Fisheries Sector in the Republic of Seychelles

FINAL REPORT

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The views expressed in the report are those of the consultant, and do not present an official view of the Ministry of Fisheries and the Blue Economy.

ABBREVIATIONS AND REFERENCES

AML	Anti Money Laundering
AML/CFT ACT	Anti-Money Laundering and Countering the Finance of Terrorism Act, 2020
BO	Beneficial Ownership
BO ACT	Beneficial Ownership Act, 2020
BO REGULATIONS	Beneficial Ownership Regulations, 2020
COMESA	Common Market for Eastern and Southern Africa
EEZ	Exclusive Economic Zone
ESAAMLG	Eastern and Southern Africa Anti Money Laundering Group
EU	European Union
FATF	Financial Action Task Force
FAO	Food and Agriculture Organization
FIU	Financial Intelligence Unit
FISHERIES ACT	Fisheries Act, 2014
FiTI	Fisheries Transparency Initiative
FSA	Financial Services Authority
IBC	International Business Company
IMO	International Maritime Organisation
ISM CODE	International Safety Management Code
ICSP	International Corporate Service Providers
IOTC	Indian Ocean Tuna Commission
IUU	Illegal, Unreported and Unregulated
JV	Joint Venture
OECD	Organisation for Economic Co-operation and Development
RFMO	Regional Fisheries Management Organization
SADC	Southern African Development Community
SFA	Seychelles Fishing Authority
SLA	Seychelles Licensing Authority
SWIOFISH3	Third South West Indian Ocean Fisheries Governance and Shared Growth Project
SMSA	Seychelles Maritime Safety Authority
ToRs	Terms of Reference
UBO	Ultimate Beneficial Owner
UN	United Nations
WB	World Bank

TABLE OF CONTENTS

ABBREVIATIONS AND REFERENCES	3
I – INTRODUCTION AND OVERVIEW	6
II – LEGAL FRAMEWORK	7
A – Beneficial Ownership and AML/CFT Regime	7
B – Fisheries and Ship Registration Regime	9
1. Fisheries Act	9
2. Fishing Vessel Definitions	10
3. Ship Registration	11
C – Relevance of Beneficial Ownership in the Fisheries Sector	13
1. Fishing Licences	13
2. Fishing/Shipping Agents	14
3. Ship Registration	16
4. Indian Ocean Tuna Commission	16
5. FAO Global Record	17
III – GAP ANALYSIS	18
A – Definition of Beneficial Ownership	18
1. Applicable Rules	18
2. Assessment	19
B – Collection of BO Information for all Relevant Legal Persons in the Fisheries Sector	20
1. Applicable Rules	20
2. Assessment	21
C – Obligated Entities	21
1. Applicable Rules	21
2. Assessment	22
D – Regularity of Review of Information	22
1. Applicable Rules	22
2. Assessment	23
E – Record Keeping Regarding Historical Information	23
1. Applicable Rules	23
2. Assessment	24
F – Registers	24
1. Applicable Rules	24
2. Assessment	24
G – Access to Information	25
1. Applicable Rules	25
2. Assessment	26
H – Supervision, Enforcement and Penalties	26
1. Applicable Rules	26

2. Assessment	27
I – Training and Guidance	28
IV – CONCLUSIONS AND RECOMMENDATIONS	29
A – Principal Gaps	29
1. Lack of systematic collection of BO information	29
2. Gaps by Type of Fishing Vessel	29
B – Recommendations for addressing identified gaps	30
1. Systematic Recommendation	31
2. Specific Issues	32

I – INTRODUCTION AND OVERVIEW

- 1 Reliable and comprehensive Beneficial Ownership (**BO**) information is important in the fisheries context for at least three distinct reasons:
 - such information is a precondition for the development, application and enforcement of any economic development policy in the fisheries sector that aims to institute a national preference: if one cannot determine who is a local, it is impossible to promote locals;
 - such information is essential for combating Illegal, Unreported and Unregulated (**IUU**) fishing and international legal obligations moreover require Seychelles to collect this information and make it available to international bodies, such as the Indian Ocean Tuna Commission (**IOTC**); and
 - such information increases the confidence of businesses entering into contracts with new counterparties, including banks when issuing loans, and improves the investment environment.
- 2 Seychelles benefits from a comprehensive Beneficial Ownership regulatory regime based on Organisation for Economic Co-operation and Development (**OECD**)/Financial Action Task Force (**FATF**) best practices tailored to the needs of the financial services sector. It is evident that the needs of the fisheries sector were not a focus area of those reforms and our Terms of Reference developed under the Third South West Indian Ocean Fisheries Governance and Shared Growth (**SWIOFish3**) Project already identified some evident gaps as regards the collection of beneficial ownership information in the fisheries sector.
- 3 This Gap Analysis Report starts with a survey of the legal framework in Seychelles as it applies to BO as well as the fisheries and ship registration regimes, before providing an overview of the legal relevance of BO in the fisheries sector under the existing framework.
- 4 We then apply a modified version of the beneficial ownership gap analysis tool developed by the OECD and the Inter-American Development Bank (**IADB**) to map gaps and existing provisions capable of improvement and strengthening. We also provide some immediate concrete recommendations on the extent to which the applicable legal framework (as notably defined by the Beneficial Ownership Act, 2020, and the Fisheries Act, 2014) and practice can be adjusted.
- 5 In summary, the principal gaps identified relate to the practical application of existing rules (rather than necessarily to a need to adopt new ones) as well as structural or institutional overlap where at least three different Seychelles authorities operate under sometimes conflicting legal frameworks (and notably different definitions of the notion of “beneficial ownership”).
- 6 We conclude by making one overarching structural recommendation concerning the interaction between the various responsible authorities as well as a series of ten specific recommendations to address individual issues identified.

II – LEGAL FRAMEWORK

- 7 The legislative drive to collect accurate information about beneficial ownership has in recent years been spurred worldwide by OECD/FATF efforts in the financial and tax fields concerning Anti-Money Laundering and Countering the Financing of Terrorism (**AML/CFT**) as well as fighting tax evasion. The most prominent organisation in that field is the Financial Action Task Force, whose Recommendations 24 and 25¹ hone in on beneficial ownership of legal persons and legal arrangements, respectively. Those Recommendations as well as the definition of “beneficial ownership” they refer to underlie the recent legal reforms in Seychelles and are the accepted international point for reference for best practices.
- 8 Regarding more specifically the fisheries field, both the Food and Agriculture Organisation (**FAO**)² and the OECD have argued for ensuring increased availability of information about the beneficial owners of vessels,³ in particular to verify that authorised operators have no legal, personal, financial or other ties to those sanctioned for illegal fishing.⁴ Seychelles has been at the forefront of implementing the Fisheries Transparency Initiative (**FiTI**) Standard⁵, which contains a section on beneficial ownership.
- 9 In addition, the availability of accurate beneficial ownership information is recognised as essential for designing and enforcing policies aimed at fostering national economic development and ensuring that the scarce national resources in the fisheries sector are used for the benefit of the local population. It is only once one can detect and prevent “fronting”, i.e. the practice whereby foreign entities conceal their involvement behind an apparently genuine Seychellois identity, that national preferences and reserved activities will be capable of having their desired effect.⁶
- 10 In Seychelles, BO is determinative of legal rights in the fisheries sector in a number of ways. Most prominently, the Seychelles or non-Seychelles ownership will have direct repercussions on the applicable fishing licence regime as well as the ship registration regime, which in turn may have repercussions for the possibility of accessing fishing rights under international fisheries agreements. There are moreover reporting obligations to the Indian Ocean Tuna Commission as well as specific enforcement measures regarding the Illegal, Unreported and Unregulated fishing which require access to BO information.

A – Beneficial Ownership and AML/CFT Regime

- 11 The principal applicable statute is the Beneficial Ownership Act, 2020 (**BO Act**),⁷ which came into operation on 28 August 2020,⁸ and has been amended twice, by respective Beneficial Ownership (Amendment)

¹ Available at: <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Fatf-recommendations.html>

² International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (2001) Food and Agriculture Organization (FAO), available at: <https://www.fao.org/3/y1224e/y1224e.pdf>, p.6.

³ Combating Illegal, Unreported and Unregulated Fishing: Where Countries Stand and Where Efforts Should Concentrate in the Future (OECD) TAD/FI(2017)16/FINAL, available at: [https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=TAD/FI\(2017\)16/FINAL&docLanguage=En](https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=TAD/FI(2017)16/FINAL&docLanguage=En). See also: Ben Freitas “Beneficial Ownership in the Fishing Sector and Links to Corruption” (December 2021) World Wildlife Fund, available at: <https://www.worldwildlife.org/pages/tncr-topic-brief-beneficial-ownership-in-the-fishing-sector-and-links-to-corruption>; Alexandria Reid, Jessa Rose Dury-Agri, Austin Brush and Duncan Copeland “The Role of Beneficial Ownership in Combating IUU Fishing” (4 June 2021) RUSI, available at: <https://shoc.rusi.org/blog/the-role-of-beneficial-ownership-in-combating-iuu-fishing>; Duncan Copeland, Mary Utermohlen, Austin Brush “Spotlight on: The Exploitation of Company Structures by Illegal Fishing Operators” (10 December 2020) Trygg Mat Tracking (TMT)/C4ADS, available at: <https://www.tm-tracking.org/post/illegal-fishing-operators-exploit-company-structures-to-cover-up-illegal-operations>

⁴ *Supra*, p.13.

⁵ The FiTI Standard (27 April 2017) Fisheries Transparency Initiative (FiTI), available at: https://www.fiti.global/wp-content/uploads/2020/07/FiTI_Standard_2017_EN_1.1.pdf, p. 27.

⁶ See for example Jon Henley “Bribery allegations over fishing rights rock Iceland and Namibia” (15 November 2019) The Guardian, available at: <https://www.theguardian.com/world/2019/nov/15/bribery-allegations-over-fishing-rights-rock-iceland-and-namibia>

⁷ Act 4 of 2020, published in Supplement to Official Gazette on 6 March 2020, p. 66.

⁸ Beneficial Ownership Act (Commencement) Notice, 2020, (S.I. 105 of 2020) published in Supplement to Official Gazette on 28 August 2020, p. 455.

Acts of 2021⁹ and 2022.¹⁰ Pursuant to Section 17 of BO Act, the Minister responsible for Finance is empowered in the usual wide terms to make regulations to provide for a wide range of matters. The Minister made use of that power by adopting the Beneficial Ownership Regulations, 2020, amended most recently in 2023 (**BO Regulations**).¹¹

- 12 According to the statement of Objects and Reasons accompanying the introduction of the Bill that led to the adoption of the BO Act,¹² the Act is intended to bring Seychelles legislation into line with recommendations of the Financial Action Task Force¹³ as well as the Eastern and Southern Africa Anti Money Laundering Group (**ESAAMLG**).¹⁴ The ESAAMLG evaluated the Anti Money Laundering and Countering Financing of Terrorism measures in place in Seychelles in September 2018.¹⁵
- 13 FATF Recommendations¹⁶ Nos 24 and 25¹⁷ relate to transparency and beneficial ownership of, respectively, legal persons and legal arrangements. The ESAAMLG observed in its 2018 report¹⁸ that Seychelles is Largely Compliant (LC) in respect of Recommendation 24 and Partially Compliant (PC) in respect of Recommendation 25. There have been follow-up reports notably in 2020,¹⁹ 2021²⁰ and 2023.²¹ As of April 2023, Seychelles' rating in respect of Recommendation 25 was upgraded from Partially Compliant (PC) to Largely Compliant (LC).²²
- 14 The BO Act defines “beneficial ownership” as:
- “one or more natural persons who ultimately own or control a customer or the natural person or persons on whose behalf a transaction is being conducted and includes those natural persons who exercise ultimate effective control over a legal person or a legal arrangement”.*²³
- 15 The BO Regulations contain a further detailed definition and methodologies for the identification of beneficial owners. The BO Regulations in effect reproduce the cascading measures mapped out in the Interpretative Note to FATF Recommendations. There is a relevancy threshold²⁴ of 10% so that, in relation to

⁹ Act 6 of 2021, published in Supplement to Official Gazette on 5 March 2020, p. 343.

¹⁰ Act 38 of 2022, published in Supplement to Official Gazette on 30 December 2022, p. 683.

¹¹ S.I. 107 of 2020, published in Supplement to Official Gazette on 28 August 2020, p. 459, amended by the Beneficial Ownership (Amendment) Regulations, 2023, S.I. 32 of 2023, published in Supplement to Official Gazette on 28 April 2023, p. 178.

¹² Beneficial Ownership Bill, 2020, Bill 3 of 2020, published in Supplement to Official Gazette on 4 February 2020, p. i.

¹³ The Financial Action Task Force (FATF; www.fatf-gafi.org/en/the-fatf/what-we-do.html) is an inter-governmental body established in 1989 by the Ministers of its Member jurisdictions. It currently has 37 member states, currently not including Seychelles, as well as the European Commission and the Gulf Co-operation Council. The mandate of the FATF is to set standards and to promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and the financing of proliferation, and other related threats to the integrity of the international financial system.

¹⁴ The ESAAMLG (www.esaamlg.org) is a regional body founded in August 1999 that has been tasked to oversee the member countries of the Group in combating money laundering and terrorist financing by implementing the FATF recommendations.

¹⁵ Anti-money laundering and counter-terrorist financing measures – Seychelles (2018) ESAAMLG Second Round Mutual Evaluation Report, available at: <http://www.esaamlg.org>

¹⁶ The original FATF Forty Recommendations were drawn up in 1990 as an initiative to combat the misuse of financial systems by persons laundering drug money. In 1996, the Recommendations were revised for the first time to reflect evolving money laundering trends and techniques, and to broaden their scope well beyond drug-money laundering. In October 2001 the FATF expanded its mandate to deal with the issue of the funding of terrorist acts and terrorist organisations. The FATF Recommendations were revised a second time in 2003, have been endorsed by over 180 countries, and are universally recognised as the international standard for anti-money laundering and countering the financing of terrorism (AML/CFT).

¹⁷ International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation (2012-2023) FATF, as updated February 2023, available at: www.fatf-gafi.org/recommendations.html

¹⁸ The evaluation was based on the 2012 FATF Recommendations and was prepared using the 2013 Methodology.

¹⁹ Anti-money laundering and counter-terrorist financing measures – Seychelles (2020) ESAAMLG 1st Enhanced Follow-up Report & Technical Compliance Re-Rating.

²⁰ Anti-money laundering and counter-terrorist financing measures – Seychelles (2021) ESAAMLG 5th Enhanced Follow-up Report & Technical Compliance Re-Rating.

²¹ Anti-money laundering and counter-terrorist financing measures – Seychelles (2023) ESAAMLG 8th Enhanced Follow-up Report & 3rd Technical Compliance Re-Rating.

²² Anti-money laundering and counter-terrorist financing measures – Seychelles (2023) ESAAMLG 8th Enhanced Follow-up Report & 3rd Technical Compliance Re-Rating, paragraph 28.

²³ Section 3 of the BO Act.

²⁴ The Interpretative Note to FATF Recommendation 24 contemplates thresholds of up to 25%, determined based on the jurisdiction's determination of risk.

legal persons, it is only natural persons who ultimately own or control more than 10% of ownership interest that qualify as beneficial owners.²⁵ Conversely, ownership interests below 10% are not taken into account.

- 16 On the same day as the BO Act, the Anti-Money Laundering and Countering the Finance of Terrorism Act, 2020 (**AML/CFT Act**)²⁶ came into operation.²⁷

B – Fisheries and Ship Registration Regime

1. Fisheries Act

- 17 The Fisheries Act, 2014 (**Fisheries Act**)²⁸ provides the legislative basis for the regulation of the fisheries sector in Seychelles. It applies to all fishing and related activity in Seychelles waters as well as Seychelles-registered fishing vessels, irrespective of where they are.
- 18 The principal authority regulating fisheries is the Seychelles Fishing Authority (**SFA**).²⁹ Its functions include to promote, organise and develop fishing, fishing industries and fishing resources in Seychelles, to assist in the formulation of national policy and to conduct negotiations concerning fisheries, at both national and international levels.³⁰ The SFA thus has the responsibility of ensuring compliance of Seychelles with international agreements, notably as regards the provision of information concerning fishing vessels.
- 19 Under the Fisheries Act, the SFA has the objective to provide for the effective management and sustainable development of fisheries.³¹ The SFA is specifically tasked with establishing fisheries management plans, as part of which it may set out licensing measures to be applied.³² The SFA is moreover responsible for issuing fishing licenses for fishing in Seychelles waters and authorisations for fishing in other waters.³³ It is required to maintain a Record of Fishing Vessels that have been granted a license or authorisation.³⁴
- 20 The Fisheries Act distinguishes between four types of fishing vessel, depending on the degree of Seychelles or foreign beneficial ownership: (i) local fishing vessels; (ii) joint venture fishing vessels; (iii) Seychelles fishing vessels; and (iv) foreign fishing vessels. Beneficial ownership must be 100% Seychellois for “local fishing vessels” and 51% Seychellois for “joint venture fishing vessels”, whereas “Seychelles fishing vessels” are – somewhat counterintuitively – required to be 100% foreign owned. These three categories of vessel all must be Seychelles-registered, by contrast to “foreign fishing vessels”, which is a catch-all for vessels not registered in Seychelles.
- 21 Some marked differences flow from the particular category a vessel belongs to.
- 22 The requirements for the grant of a fishing licence differ depending on whether the vessel is registered in Seychelles or abroad. Foreign fishing vessel licences are governed by ss. 11-12 of the Fisheries Act and are largely predicated on an applicable fishing agreement being in place. Seychelles-registered vessels can be granted a fishing licence by the Seychelles Fishing Authority under simplified conditions to fish in Seychelles

²⁵ Regulation 3(2) of the BO Regulations.

²⁶ Act 5 of 2020, published in Supplement to Official Gazette on 6 March 2020, p. 85.

²⁷ Anti-Money Laundering and Countering the Finance of Terrorism Act (Commencement) Notice, 2020, S.I. 106 of 2020, published in Supplement to Official Gazette on 28 August 2020, p. 457. Section 34 of the Act concerning the appointment of compliance officers was retroactively deemed to have come into operation only from 1 January 2021, see Anti-Money Laundering and Countering the Financing of Terrorism Act (Commencement) Notice (Amendment) Notice, 2020, S.I. 138 of 2020, published in Supplement to Official Gazette on 28 September 2020, p. 599.

²⁸ Act 20 of 2014, published in Supplement to Official Gazette on 27 October 2014, p. 547.

²⁹ Established by the Seychelles Fishing Authority (Establishment) Act, 1984, Act 10 of 1984, published in Supplement to Official Gazette, 31 August 1984, p. 49.

³⁰ Section 6 of the SFA Act.

³¹ Section 4 of the Fisheries Act.

³² Section 5(2)(g) of the Fisheries Act.

³³ Sections 11, 16 and 25 of the Fisheries Act. The SFA is also responsible for issuing permits for sport fishing pursuant to s. 18 of the Fisheries Act.

³⁴ Section 8(1) of the Fisheries Act.

waters,³⁵ and are required to obtain an authorisation for fishing elsewhere.³⁶ Local fishing vessels “not exceeding seven metres in overall length of any size but not mechanically propelled” are exempt from the licensing requirement.³⁷

- 23 Both Seychelles and foreign fishing vessels (i.e., essentially foreign-owned vessels) must have an agent in order to be granted a fishing licence,³⁸ whereas none is required for local and joint venture fishing vessels.
- 24 There are also some differences regarding the offences and levels of penalties defined by the Fisheries Act depending on the category of fishing vessel involved. Violations by foreign fishing vessels are governed by s. 58 and s. 59(2) and (4) of the Fisheries Act. Joint venture and Seychelles fishing vessels are dealt with in s. 59(5) and (6). Local fishing vessels are covered by s. 62. There are resulting differences as regards both who is liable and the level of penalty.³⁹ In respect of foreign and local fishing vessels, both the owner and the master are held liable, while in the case of joint venture and Seychelles fishing vessels, it is only the master who commits an offence.

2. Fishing Vessel Definitions

- 25 Local fishing vessels are, according to the legal definition:

“local fishing vessel” means a fishing vessel which is

- (a) *registered or identified as such under the Merchant Shipping Act; and*
- (b) *wholly beneficially owned by one or more citizens of Seychelles or by a company established under any written laws of which all of the shares are beneficially owned by citizens of Seychelles*

- 26 Joint venture fishing vessels are, according to the legal definition:

“joint venture fishing vessel” means a fishing vessel which –

- (a) *is registered in Seychelles under the Merchant Shipping Act;*
- (b) *exceeds 18 metres in length overall;*
- (c) *is to be licensed for tuna and tuna-like species, and other species as per condition of the licence;*
- (d) *is wholly beneficially owned by a company established under any [tbe]⁴⁰ written law of which at least 51 per cent of the actual effective shares are beneficially owned by a citizen of Seychelles and having a place of business in Seychelles*

- 27 Seychelles fishing vessels are, according to the legal definition:

“Seychelles fishing vessel” means any fishing vessel which is –

- (a) *registered in Seychelles under the Merchant Shipping Act;*
- (b) *to be licensed for tuna and tuna-like species; and other species as per condition of the license; and*
- (c) *wholly beneficially owned by one or more foreign citizens only or by a company established under the written laws of Seychelles of which all of the shares are beneficially owned by foreign citizens*

- 28 Foreign fishing vessels are defined as follows:

“foreign fishing vessel” means a vessel not registered in Seychelles;

³⁵ Section 17(a) of the Fisheries Act restricts the grant of licences to the three categories of vessel which are registered in Seychelles. Section 22(2) of the Fisheries Act provides that any licence will lapse where a vessel ceases to be registered under the Merchant Shipping Act.

³⁶ Section 25 of the Fisheries Act.

³⁷ Regulation 3 of the Fisheries Regulations, 1987.

³⁸ See, respectively, sections 11(6)(a) and 17(b) of the Fisheries Act.

³⁹ See also s. 65 of the Fisheries Act.

⁴⁰ The inclusion of the word “the” here seems to be in error.

3. Ship Registration

- 29 Section 12 of the Merchant Shipping Act, 1992 (**Merchant Shipping Act**)⁴¹ establishes a Register of Ships (**Register of Ships**) to be kept at Victoria, Seychelles. The Register is to be accessible by the public⁴² and is to contain “particulars of all ships registered” under the Act.
- 30 The Merchant Shipping (Amendment) Act 2019⁴³ also made provision for Seychelles to comply with the International Maritime Organisation’s (**IMO**) International Safety Management Code (**ISM Code**).⁴⁴ It introduced a requirement for the Seychelles Maritime Safety Authority (**SMSA**) to keep a register of each owner or operator⁴⁵ of a ship having responsibility imposed by the ISM Code.⁴⁶
- 31 The principal responsible authority for the purposes of the Merchant Shipping Act is the Seychelles Maritime Safety Authority.⁴⁷ The Authority is the focal point of contact for Seychelles with the International Maritime Organization and hence has an international obligation to implement the provisions of relevant IMO instruments.

Legal Bases for Ship Registration

- 32 For a ship to be Seychelles-registered under Part III of the Merchant Shipping Act, it in principle has to be wholly “owned” by Seychelles citizens or corporations. That is the joint effect of sections 15, 16 and 19 of the Merchant Shipping Act, read in the context of the other provisions of that Act.
- 33 Section 15 defines the term “qualified person” as Seychelles citizens or corporations. Section 16 establishes a default obligation for ships owned by qualified persons to be registered in Seychelles if they are not registered in any other country.
- 34 Section 19 provides that ships shall only be registered pursuant to specified sections of the Act, i.e., sections 13, 16, 17 and 18:
- *Section 13*, in this respect, is not an independent registration provision but merely specifies that, for the purposes of registration, the property in a ship is required to be divided into 64 shares,⁴⁸ without this affecting the beneficial ownership⁴⁹;
 - *Section 18* of the Act concerns Government ships;
 - *Section 17*, on the other hand, establishes a special regime for “designated ships”. This initially gave the Minister (responsible for Maritime Affairs) and now, since 2020,⁵⁰ the Seychelles Maritime Safety Authority the power to designate specific ships and enable them to register in the Seychelles Register of Ships, irrespective of their foreign ownership. We have been told that this provision is rarely, if ever, made use of.

⁴¹ Act 13X of 1992.

⁴² Section 12(2) of the Merchant Shipping Act.

⁴³ Merchant Shipping (Amendment) Act, 2019, Act 3 of 2020, published in Supplement to Official Gazette of 10 February 2020, p. 31.

⁴⁴ International Management Code for the Safe Operation of Ships and for Pollution Prevention adopted by the IMO on 4 November 1993 by resolution A.741(18), as amended. This forms part of the 1974 International Convention for the Safety of Life at Sea (SOLAS), ratified by Seychelles in 1997.

⁴⁵ The definition of “ISM Company” in section 3 of the Merchant Shipping Act corresponds to point 1.1.2 of the ISM Code and applies to “the owner of the ship or any other organisation or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ship from the ship owner and who, on assuming such responsibility, has agreed to take over all duties and responsibility imposed by the ISM Code”. According to point 5.3.1 of the ISM Code, if the entity that is responsible for the operation of the ship is other than the owner, the owner must report the full name and details of such entity to the flag state administration, i.e. in the case of Seychelles, the SMSA.

⁴⁶ Section 50(3) of the Merchant Shipping Act, as amended.

⁴⁷ Originally created as the Seychelles Maritime Safety Administration in 2004, the Administration became a legal entity with the enactment of the Merchant Shipping (Amendment) Act, 2014 and transformed into the Seychelles Maritime Safety Authority on the 1 April 2020.

⁴⁸ Section 13(a) of the Merchant Shipping Act.

⁴⁹ Section 13(b) of the Merchant Shipping Act.

⁵⁰ Amendment of section 17 by the Merchant Shipping (Amendment) Act, 2019, Act 3 of 2020, published in Supplement to Official Gazette of 10 February 2020, p. 31, section 2(h).

35 By way of consequence, in the absence of a “designation” by the SMSA, s. 16 of the Merchant Shipping Act is the only available legal basis for registration of (non-Government) ships in Seychelles.

Legal v Beneficial Ownership of Ships

36 It is clear from our interviews with the SMSA and overview of practice that Section 16 of the Merchant Shipping Act is consistently interpreted and applied as fixing on legal rather than beneficial ownership. Section 16(1)(a) requires a ship to be “owned” only by persons each of which is a “qualified person” under s. 15 of the Act, i.e., a Seychelles citizen or a corporation established under, and subject to, the laws of Seychelles.

37 The term “owner” is defined in the Merchant Shipping Act as meaning, in relation to a ship, as encompassing “(i) the person to whom the ship or shares in the ship belongs; (ii) the charterer of a bare boat which is chartered for a definite period of not less than 12 months; (iii) the agent of the owner of the ship”.⁵¹

38 Given that, by virtue of s. 15, s. 16(1)(a) and its definition of the term “owner”, the Merchant Shipping Act only fixes on legal ownership, it is plainly a pure formality for foreign natural or legal persons to establish a corporation in Seychelles to obtain a right to register a ship in Seychelles. All indications are, that it is a widespread and accepted practice for foreigners (mainly corporate entities) to establish a Seychelles International Business Company (IBC) and through this IBC acquire and register ships, including fishing vessels, as Seychelles ships.

39 At the same time, there are a number of conflicting references to “beneficial interest” in the relevant legislation and standard forms that could be taken as indications that the legislator actually intended to ensure that Seychelles registered ships (apart from designated ships) would be not only wholly legally, but also wholly beneficially owned by Seychelles citizens.

40 For example, the declaration prescribed to be made under s. 35(1)(b) of the Merchant Shipping Act by the transferee having acquired a registered ship suggests that both legal and beneficial ownership are intended to be Seychellois. The transferee is under that provision required to make a signed declaration stating that only Seychellois citizens or companies are “*entitled as owners to any legal or beneficial interest in the ship or a share in the ship*” (underlining supplied). In other words, it has to be certified that also the beneficial interest lies wholly with Seychellois persons. This declaration is faithfully reproduced in item 4 of the standardised “Declaration of Transfer” form (RS 08) which we have been provided with.

41 Substantially the same declaration also features on the standard form (RS 01) required to be filled in on application for registration of a ship as a Seychelles ship:⁵²

DECLARATION

I, certify that to the best of my knowledge and belief no person or corporation other than a person or corporation that is qualified to own a Seychelles Ship (as defined in the Act) is entitled as owner to any legal or beneficial interest in the Ship or any share therein. I undertake to inform the Registrar of Ships of any changes in the particulars mentioned in this application.

42 Likewise, s. 43 of the Merchant Shipping Act contains a stark threat to any foreigner acquiring a beneficial ownership interest in a Seychelles registered ship (underlining supplied):

⁵¹ Section 2 of the Merchant Shipping Act. The definition of “Seychelles ship” originally contained in the Merchant Shipping Act encompassed not only ships registered under that act, but also ships owned by a qualified person.

⁵² Application for Registration of Ship as Seychelles Ship, Official Number and Call Sign.

“If a person, other than a qualified person, acquires as owner any interest, either legal or beneficial, otherwise than by such transmission as is provided for in this Act, in a ship (other than a designated ship) registered under this Part, that interest is liable to forfeiture.” (underlining supplied)

- 43 It appears likely to us that the drafters of these provisions and standard forms were not aware of the full normal meaning and implications of the term “beneficial interest”, or were operating under a different definition of that term – which is however not reflected in the definitions section of the Merchant Shipping Act. Based on the normal meaning of the notion of “beneficial interest”, it is clear that the owners of a company (including thus and IBC) have a beneficial interest in the assets of that company. By way of consequence, if any of the shareholders of an IBC that owns a ship are foreigners, those foreigners will be entitled to a beneficial interest in the ship.
- 44 That would then in turn make it impossible to truthfully make the declarations required, as set out above, in the registration form RS 01 or the legally required declaration on transfer of ownership under s. 35(1)(b) of the Merchant Shipping Act. Section 43 of the Merchant Shipping Act also casts certain doubts on the legal situation where a Seychelles IBC (i.e., a “qualified person” for the purposes of the Act) is itself owned by foreign persons, who themselves then fall foul of s. 43 by virtue of having acquired *through* the Seychelles corporation a beneficial ownership of a ship.
- 45 There are some other provisions dealing with ownership transfers in a similar fashion. Sections 37 and 38 of the Merchant Shipping Act make provision for transfers by operation of law on death or bankruptcy. Where such a transfer bestows ownership on a non-Seychellois person, there is a possibility of applying to the court to have the ship sold, failing which the ship is liable to forfeiture.⁵³ This harsh legal consequence demonstrates an intention to reserve ownership to Seychellois persons. Section 231(2) of the Merchant Shipping Act contains a similar legal consequence as regards intentional false statement in relation to being a qualified person for the purposes of a ship, in which case the ship in respect of which that false statement has been made is also liable to forfeiture. Forfeiture is regulated by section 234 of the Merchant Shipping Act, which provides for the SMSA⁵⁴ to cause the ship to be seized and detained and may bring the ship for adjudication before the court, which in turn may order that the ship be forfeited to the Republic on such terms and conditions as it thinks just.

C – Relevance of Beneficial Ownership in the Fisheries Sector

1. Fishing Licences

- 46 As already set out above, the Fisheries Act attaches some marked differences to the particular category a vessel belongs to, which is in turn predicated on the ownership structure (100% or 51%+ Seychellois, foreign-owned).
- 47 The Fisheries Act as currently drafted arguably already provides that a change in beneficial ownership so that the 100% or 51%+ ownership requirements for, respectively, local and joint venture fishing vessels, are no longer satisfied, invalidates the fishing licence. Section 22(1)(b) of the Fisheries Act provides that a fishing licence automatically terminates “where a fishing vessel in respect of which the licence or permit has been granted ceases to be such a fishing vessel”. As the respective beneficial ownership requirements are constituent components of the definition of the different categories of fishing vessel, where those ownership requirements cease to be met, that would mean that the fishing vessel in question ceases to belong to the category it belonged to when the licence was granted. The consequence prescribed by s. 22(1)(b) is that the licence automatically terminates. Section 26(b) of the Fisheries Act contains an equivalent provision for authorisations to fish outside Seychelles waters.
- 48 Beneficial ownership is also relevant in the context of the assessment of applications for fishing licences where the fishing vessel in respect of which the licence is sought has a record of noncompliance with

⁵³ Section 38(4) of the Merchant Shipping Act.

⁵⁴ See the amendment by s. 2(jjjj) of the Merchant Shipping (Amendment) Act, 2019, Act 3 of 2020, published in Supplement to Official Gazette of 10 February 2020, p. 31. Previously, the Minister.

international fisheries conservation and management measures. Where that is the case, ss. 11(6)(b) and 17(f) of the Fisheries Act in principle preclude the grant of a fishing licence. That is however subject to an exception where the ownership of the fishing vessel has subsequently changed and the new owner provides sufficient evidence to the satisfaction of the Authority demonstrating that the previous owner or master has no legal, beneficial or financial interest in, or control of, the fishing vessel.

- 49 The Fisheries Act provides for a Record of fishing vessels to be maintained by the Seychelles Fishing Authority.⁵⁵ Pursuant to s. 8(2)(r) of the Fisheries Act, the Record must contain “*the name, address and nationality of any person with beneficial ownership of the fishing vessel*”.
- 50 The SFA thus needs access to beneficial ownership information in respect of both Seychelles-registered and foreign fishing vessels in a wide range of contexts in order to be able to discharge its duties.
- 51 It can at the same time be observed that the standard application forms for foreign fishing licences issued by the SFA do not request information on beneficial ownership of vessels. There merely is a field requesting, in addition to the name of the Applicant, the “Name of vessel owner or chartered if different from above”⁵⁶, “Owner of the vessel or Chartering entity if different from above”⁵⁷, or “Ship-owner or chartering entity if different from above”⁵⁸. No address or other identification data is requested in respect of the (legal) owner. This is reflected for example in a list entitled “Large-scale Fishing Licenses Issued in 2021” published by the SFA on its website,⁵⁹ where the names indicated as “owners” are virtually all foreign corporate entities, and the accompanying addresses in many cases appear to be those of agents in Seychelles.
- 52 The question then arises whether information about beneficial ownership of foreign fishing vessels is gathered by, or can be obtained from, resident agents in Seychelles.

2. Fishing/Shipping Agents

- 53 Foreign-owned fishing vessels must have an agent in order to be granted a fishing licence,⁶⁰ and fisheries agreements tend to specify that applicants for fishing licences are to be represented by their agent.⁶¹ The agent must be approved by the SFA and authorised to accept legal and financial responsibility and service of any notice summons or other document, on behalf of the licensee in relation to activities of the vessel.⁶²
- 54 The regulatory framework applicable to agents, and the scope of the overlapping notions of fishing and shipping agents currently appears imprecise. No details of the approval mechanism required by the legal framework⁶³ appear on the SFA website.⁶⁴ Neither the Fisheries Act nor the Fisheries Regulations place any obligations on the agent to collect beneficial ownership information on their principals.
- 55 For the purposes of some fisheries agreements, it is specified that the agent must be a company duly incorporated under the Companies Act of Seychelles and with “a valid license under the Licenses Act of

⁵⁵ Section 8 of the Fisheries Act.

⁵⁶ See Sustainable Fisheries Agreement between the Government of the Republic of Seychelles and Taiwan Deep Sea Tuna Longline Boatowners and Exporters Association, Appendix 1: Seychelles fishing licence application form for Association fishing vessels to fish in Seychelles fishing zone, p. 16 and the identical form in Appendix 1 to the Sustainable Fisheries Agreement between the Government of the Republic of Seychelles and Top Fortune Marine International Ltd, p. 16.

⁵⁷ See the Agreement between the Government of the Republic of Seychelles and the Government of the Republic of Mauritius on Fishing in Seychelles Waters of 20 February 2017, Appendix 1, p. 19.

⁵⁸ See Appendix 1 (p. 35) of the Annex to the Sustainable Fisheries Partnership Agreement between the European Union and the Republic of Seychelles, OJ L 60 of 28.2.2020, p. 5.

⁵⁹ Available at: <https://www.sfa.sc/index.php/services1/fishing-licence/large-scale-fisheries-licence/summary/59-large-scale-fisheries-licence/188-large-scale-fishing-licenses-issued-in-2021>, accessed 29 July 2023.

⁶⁰ Sections 11(6)(a) and 17(b) of the Fisheries Act.

⁶¹ See e.g., Article 4(12) of the Taiwan Deep Sea Tuna Longline Boatowners and Exporters Association Agreement, Article 4(12) of the Top Fortune Agreement, Part III, Section 1, point 3 of the Annex to the Seychelles-Mauritius Agreement, Chapter I, Section 2, points 4 and 9 of the Annex to the Sustainable Fisheries Partnership Agreement between the European Union and the Republic of Seychelles, OJ L 60 of 28.2.2020, p. 5.

⁶² Section 71(2) of the Fisheries Act and Section 6(c) of the Fisheries Regulations, 1987, S.I. 35 of 1987.

⁶³ Section 71(2) of the Fisheries Act and Section 6(c) of the Fisheries Regulations.

⁶⁴ The SLA also does not list the activity of “fishing agent” as subject to SFA licensing: <https://www.sla.gov.sc/other-licensing-agencies>, accessed 29 July 2023.

Seychelles”.⁶⁵ While there does not ever seem to have been any regulation of fishing agents under the Licences Act, the activities of shipping agents have been regulated.

56 For the purposes of the Merchant Shipping Act, agents of the owner of a ship are assimilated under the notion of “owner” of the ship, so that in principle not only all rights under that act can be exercised by the agent but, at the same time all obligations are also directly and equally incumbent on the agent.

57 A peculiar situation arises in this regard with respect to the position of shipping agents under secondary legislation.⁶⁶ Their activities used to be regulated by the Licences (Shipping Agents) Regulations, 2000⁶⁷ adopted under the Licences Act, 1986. The Licences Act, 1986 was however repealed by the Licences Act, 2010,⁶⁸ which seems to have had the effect of repealing the regulations covering shipping agents.

58 By virtue of s. 29(2) of the Interpretation and General Provisions Act, 1976,⁶⁹ where an Act is repealed, any statutory instrument made under the repealed Act is repealed as well, unless and to the extent that the statutory instrument is saved in the repealing Act. Section 20(3) of the Licences Act, 2010 provided in this respect that the regulations governing a range of activities listed in Part II of a Schedule to the Act continue to apply until amended or replaced by regulations made under the Act. The Licences (Shipping Agents) Regulations however did not feature in the Schedule, and were thus (apparently unintentionally) repealed by the Licences Act, 2010.

59 An (apparently unsuccessful) later attempt to save the unintentionally repealed statutory instruments is recorded in a Note to section 20(3) of the Licences Act, 2010, worded as follows:

“Clause 3 of SI 32 of 2011 attempted to retrospectively save a number of statutory instruments by adding them to the Schedule to [the Licences Act, 2010]. Those instruments did not appear in the Schedule at the time the Act was gazetted and could not therefore be saved by section 20(3) of the Act (refer section 29(2) of the Interpretation and General Provisions Act). The relevant statutory instruments, which are not in force, are as follows:

[...]

** Licences (Shipping Agents) Regulations, 2000*

[...]”.⁷⁰

60 The Licences Act, 2010 establishes the Seychelles Licensing Authority (**SLA**) and requires a range of activities specified in a Schedule to be licensed.⁷¹ The activity of shipping agent does not feature in that Schedule.

61 The Licences (Shipping Agents) Regulations currently continue to be referred to on the SLA website,⁷² which lists the activity of shipping agent on the list of licensable activities,⁷³ specifying a 5-year⁷⁴ license fee of R5000. A list of “Active License Holder” Shipping Agents is also published on the SLA’s website,⁷⁵ containing 12 entries.

⁶⁵ See e.g., Article 4(12) of the Taiwan Deep Sea Tuna Longline Boatowners and Exporters Association Agreement.

⁶⁶ Defined in s. 2 of the Licences (Shipping Agents) Regulations as “a person who, acting as a representative in Seychelles of an owner or a charterer of a ship, performs functions including the preparation of shipping documents, arranging shipping and insurance, dealing with Customs and Ports authorities, attending to administrative matters and needs of the ships and servicing in the Port of call”.

⁶⁷ S.I. 41/2000 of 8 June 2000.

⁶⁸ Act 23 of 2010, published in Supplement to Official Gazette on 27 September 2010, see s. 30(1).

⁶⁹ Act 22 of 1976.

⁷⁰ Available at: <https://seylia.org/akn/sc/act/2010/23/eng@2017-07-05>, accessed 29 July 2023.

⁷¹ Section 20(1) of the Licensing Act.

⁷² Available at: <https://www.sla.gov.sc/docs/licences-shipping-agents-regulations>, accessed 29 July 2023.

⁷³ Available at: <https://www.sla.gov.sc/wp-content/uploads/2021/05/Licencesable-Activities-Fees.pdf>, accessed 29 July 2023.

⁷⁴ The five-year term for a license fee indicated seems at odds with regulation 9 of the Licences (Shipping Agents) Regulations, which specifies that licences can be granted of terms of either one or three years.

⁷⁵ See: <https://www.sla.gov.sc/wp-content/uploads/2022/11/Shipping-Agent.pdf>, accessed on 29 July 2023, and <https://www.sla.gov.sc/docs/shipping-agent>

- 62 The SLA on its website moreover has an application form⁷⁶ for a range of activities of agents, including Shipping Agents, which is expressed to be in accordance with Licences (Miscellaneous Services) Regulations, 2011.⁷⁷ While those Regulations do cover the other agents which the form applies to (aircraft agents, commission agent, patent and trade mark agents and advertising agents),⁷⁸ they however do not mention shipping agents, so that the basis for the SLA to regulate them could be usefully clarified.⁷⁹ From contacts with the SLA it appears that legislative amendments are underway in this regard, which we have not seen.
- 63 A policy choice under the BO Act and BO Regulations has been to place obligations on legal persons and legal arrangements themselves, and no specific requirements are consequently imposed on agents of fishing licence holders to collect beneficial ownership information. While extensive requirements are imposed on the “resident agent”, that term is legally defined as relating to a range of specific legal entities,⁸⁰ not comprising foreign corporations that might hold fishing licences (under s. 11 of the Fisheries Act) or register ships (under s. 17 of the Merchant Shipping Act) in Seychelles.

3. Ship Registration

- 64 As already set out above, the legal position for ship registration as set out in the Merchant Shipping Act appears self-contradictory in that only the legal ownership (e.g. by a Seychellois corporation) appears to be relevant for registration under Section 16 of the Act, while at the same time transmission to foreign beneficial ownership may lead to forfeiture of the ship under a number of provisions.
- 65 The lack of clarity on this point is liable to have significant consequences in particular for fishing rights under international fisheries agreements in the Exclusive Economic Zone (**EEZ**) of other States, as these usually define Seychelles vessels by reference to registration and flag, irrespective of (beneficial) ownership.⁸¹ In other words, if the SMSA is to play a role in this regard, in order to limit the benefit of international fisheries agreements to nationals, it is necessary for the SMSA to have at its disposal and apply beneficial ownership information in respect of Seychelles registered fishing vessels.
- 66 Also, in accordance with s. 49 of the Merchant Shipping Act, persons holding a beneficial interest in a ship are jointly and severally liable with the registered owners all pecuniary penalties imposed by that Act on the owners of ship. This provision can only properly be applied if the SMSA has the relevant beneficial ownership information at its disposal.

4. Indian Ocean Tuna Commission

- 67 Seychelles, as an IOTC Member Country, is under various obligations to ascertain beneficial ownership of fishing vessels. The SFA is the lead authority in this regard and would need access to the relevant information in order to ensure compliance by Seychelles.
- 68 IOTC Member Countries are required to submit annually a list of their fishing vessels that are authorised to fish for tuna and tuna-like species in the IOTC Area, and to keep this record updated.⁸² The list should include, among other information, the name of the vessel, the flag state, the owner and operator. IOTC Member Countries are also required to report annually a list of their fishing vessels that were active in the IOTC Area during the previous year. The list should also include, among other information, the name of the vessel, the flag state, the owner and operator.

⁷⁶ Available at: <https://www.sla.gov.sc/wp-content/uploads/2021/09/AIRCRAFT-COMMISSION-SHIPPING-TRADE-PATENT-AGENT-APPLICATION.doc>, accessed 29 July 2023, and <https://www.sla.gov.sc/docs/aircraft-commission-shipping-trade-patent-agent-application>

⁷⁷ S.I. 64 of 2011.

⁷⁸ Regulation 3(1).

⁷⁹ Regulation 4(1) and Schedule 2.

⁸⁰ Section 3 of the BO Act.

⁸¹ See e.g. the Agreement between the Government of the Republic of Mauritius and the Government of the Republic of Seychelles on Fishing in Mauritius Waters of 20 February 2017, Article 2(e), and the Agreement between the European Union and the Republic of Seychelles on access for Seychelles fishing vessels to the waters of Mayotte, OJ L 83, 22.3.2023, p. 9, Article 2(b).

⁸² Resolution 19/04 Concerning the establishment of an IOTC record of vessels authorised to operate in the IOTC area.

- 69 IOTC Member Countries are required to cooperate with each other and with the Commission to prevent, deter and eliminate illegal, unreported and unregulated fishing activities in the IOTC Area. This includes exchanging information on vessels involved or suspected of being involved in IUU fishing activities.⁸³
- 70 Finally, IOTC Member Countries are required to implement a scheme for minimum standards for inspection in port of foreign fishing vessels, which includes verifying the identity of the vessel and its owner and operator.⁸⁴

5. FAO Global Record

- 71 The FAO's Global Record of Fishing Vessels, Refrigerated Transport Vessels and Supply Vessels, or (**Global Record**), was created following the adoption of the 2005 Rome Declaration on IUU Fishing. In 2018, a public version was launched, for which all vessels with an International Maritime Organisation number became eligible for inclusion. The primary objective of the Global Record is to provide a database which can be used by stakeholders across the seafood supply chain, NGOs and civil society organisations to "help combat IUU fishing by enhancing transparency and traceability."⁸⁵
- 72 Seychelles has submitted information concerning two of the seven information modules contained in the Global Record, namely concerning Vessels and Ports. This is consistent with the majority of States having submitted information to the Global Record.

⁸³ The Establishment of an IOTC Record of Vessels over 24 metres Authorized to Operate in the IOTC Area; Recommendation 02/05 (2002).

⁸⁴ IOTC Resolution 16/11 on port State measures to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing.

⁸⁵ <https://www.fao.org/global-record/en/>

III – GAP ANALYSIS

- 73 The relevant existing legal framework in Seychelles bears the strong imprimatur of seeking to achieve FATF compliance and thus an emphasis on financial and ancillary services. Seeing that the Seychelles legal framework is inspired by FATF and financial services/tax considerations, the beneficial ownership gap analysis tool developed by the OECD and the Inter-American Development Bank,⁸⁶ combined with the FATF Best Practices⁸⁷ provides an obvious starting point for the present gap analysis. That toolkit has been adapted to the particularities and needs of the Seychelles fisheries sector in the light of interviews conducted with some of the key stakeholders. The FiTI Standard was an obvious additional source in tailoring a gap analysis tool to fisheries, though some of the premises underlying the FiTI Standard also need to be tested.
- 74 This Gap Analysis is thus based on the Beneficial Ownership Gap Analysis Tool developed by the OECD and the Inter-American Development Bank,⁸⁸ combined with the FATF Best Practices.⁸⁹ It builds in its assessment wherever possible on the ESAAMLG’s Mutual Evaluation Reports, supplementing them with a fisheries-specific lens.

A – Definition of Beneficial Ownership

1. Applicable Rules

- 75 As set out above, the BO Act defines “beneficial ownership” as:

*“one or more natural persons who ultimately own or control a customer or the natural person or persons on whose behalf a transaction is being conducted and includes those natural persons who exercise ultimate effective control over a legal person or a legal arrangement”.*⁹⁰

- 76 The BO Regulations contain a detailed definition and methodologies of identification of beneficial owners for both legal persons and legal arrangements in Regulation 3. Concerning legal persons, regulation 3(1) in effect reproduces the cascading measures mapped out in paragraph 5(b)(i) of the Interpretative Note to FATF Recommendation 10, to which the Interpretative Note to Recommendation 24 refers. For trusts and legal arrangements, regulations 3(6) and 3(7) contain detailed provisions consistent with paragraph 5(b)(ii) of the Interpretative Note to FATF Recommendation 10, to which the Interpretative Note to Recommendation 25 refers.
- 77 There is a relevancy threshold⁹¹ of 10% so that, in relation to legal persons, it is only natural persons who ultimately own or control more than 10% of ownership interest that qualify as beneficial owners.⁹² Where 10% or more of any ownership interest is held jointly, then each joint owner is treated as a separate beneficial owner.⁹³ Conversely, ownership interests below 10% are not taken into account.
- 78 The Fisheries Act defines “beneficial owner” as:

“the person who exercises ultimate dominion without the consent of any other person, or who is able to secure that consent by arrangement or as of right, and in the case of a trust, agency, nominee or other such arrangement (whether

⁸⁶ Building Effective Beneficial Ownership Frameworks - A Joint Global Forum and IDB Toolkit (2021) OECD/IDB, available at: https://www.oecd.org/tax/transparency/documents/effective-beneficial-ownership-frameworks-toolkit_en.pdf

⁸⁷ Best Practices on Beneficial Ownership for Legal Persons (October 2019) Financial Action Task Force, available at: <https://www.fatf-gafi.org/en/publications/Methodsand Trends/Best-practices-beneficial-ownership-legal-persons.html>

⁸⁸ Building Effective Beneficial Ownership Frameworks - A Joint Global Forum and IDB Toolkit (2021) OECD/IDB, available at: https://www.oecd.org/tax/transparency/documents/effective-beneficial-ownership-frameworks-toolkit_en.pdf

⁸⁹ Best Practices on Beneficial Ownership for Legal Persons (October 2019) Financial Action Task Force, available at: <https://www.fatf-gafi.org/en/publications/Methodsand Trends/Best-practices-beneficial-ownership-legal-persons.html>

⁹⁰ Section 3 of the BO Act.

⁹¹ The Interpretative Note to FATF Recommendation 24 contemplates thresholds of up to 25%, determined based on the jurisdiction’s determination of risk.

⁹² Regulation 3(2) of the BO Regulations.

⁹³ Regulation 3(8) of the BO Regulations.

*formal, or in writing, or otherwise) and includes the ultimate beneficiary, the principal or the person represented by the nominee respectively and cognate words shall be construed accordingly*⁹⁴.

- 79 There is no express definition of beneficial ownership in the Merchant Shipping Act, where merely the term “owner” is defined in relation to a ship in very broad terms, as encompassing “(i) the person to whom the ship or shares in the ship belongs; (ii) the charterer of a bare boat which is chartered for a definite period of not less than 12 months; (iii) the agent of the owner of the ship”.⁹⁵
- 80 The International Business Companies Act (**IBC Act**) contains the following definition of “beneficial owner”:

“beneficial owner” means, subject to subsections (2), (3) and (4), any individual (excluding a nominee who acts on behalf of another) who in respect of a company —

(a) ultimately owns (directly or indirectly and whether alone or jointly with another person or entity) more than 25% of the shares in the company;

(b) exercises (directly or indirectly and whether alone or jointly with another person or entity) ultimate control over more than 25% of the total voting rights of members in the company;

(c) is entitled (directly or indirectly and whether alone or jointly with another person or entity) to appoint or remove a majority of the directors of the company; or

*(d) is otherwise entitled to exercise or actually exercises control over the company or its management;*⁹⁶

2. Assessment

- 81 The BO Act and Regulations contain what can be described as the “gold standard” in terms of international best practices regarding beneficial ownership definition and identification mechanisms.
- 82 The definition in the Fisheries Act is in principle adequate, in particular when read together with the definitions of the different categories of fishing vessel for which the beneficial ownership is relevant. For the sake of consistency, and for the avoidance of any doubts as regards potential discrepancies, it would nevertheless be desirable to expressly align the definition applicable in the fisheries context with that applied, notably, by the Financial Intelligence Unit (**FIU**) under the BO Act. This would be all the more important if the SFA was going to rely on data contained in the BO Database. It could at the same time be worthwhile to introduce a relevancy threshold similar to the one applicable under the BO Act whereby beneficial ownership interests below 10% need not be recorded.
- 83 The provisions of the Merchant Shipping Act are insufficient to systematically capture beneficial ownership information on registered vessels, or event to ensure that Seychelles registered (fishing) vessels are beneficially owned by Seychelles citizens.
- 84 As the regulatory framework for both fisheries and ship registration contemplates fishing vessels being owned by natural persons and corporate bodies, but not by legal arrangements (principally: trusts), it does not seem necessary in the fisheries context to replicate the part of the beneficial ownership framework applicable to legal arrangements. To the extent that a company owning a fishing vessel is in turn owned by a trust or other legal arrangement, the relevant definitions of the BO Act and BO Regulation will normally come into play in any event. In the rare instances that a foreign fishing vessel owned by a trust or other legal arrangement (rather than by a company) applies to the SFA for a fishing licence, it would seem sufficient if both the relevant agent and the SFA would apply the applicable definitions from the BO Act framework by analogy.

⁹⁴ Section 3 of the Fisheries Act.

⁹⁵ Section 2 of the Merchant Shipping Act.

⁹⁶ S. 355(1) of the IBC Act.

B – Collection of BO Information for all Relevant Legal Persons in the Fisheries Sector

1. Applicable Rules

- 85 The Record of fishing vessels to be maintained by the SFA⁹⁷ must, pursuant to s. 8(2)(r) of the Fisheries Act, contain “*the name, address and nationality of any person with beneficial ownership of the fishing vessel*”. As the Record of fishing vessels is to capture all fishing vessels that have been granted a licence, it necessarily also covers foreign-owned vessels, in respect of which beneficial ownership information needs to be obtained to comply with s. 8(2)(r).
- 86 As already observed, the standard application forms for foreign fishing licences issued by the SFA do not request information on beneficial ownership of vessels. There merely is a field requesting the name of the vessel owner or charterer.
- 87 In practice, this would seem to mean that if a fishing vessel is chartered, the name of the owner will not appear at all, let alone the beneficial owner. At the same time, if a vessel is chartered, the name of the charterer will be reported to the SFA, but not necessarily the beneficial owner of the charterer.
- 88 The Register of Ships to be maintained by the Registrar of Shipping under the Merchant Shipping Act is required to comprise “particulars” of all ships registered.⁹⁸ There is no indication whether the particulars are to comprise beneficial ownership information.
- 89 To the extent that fishing vessels are owned by Seychelles companies, the framework set up by the BO Act and its interaction with the Companies Act⁹⁹ and International Business Companies Act, 2016¹⁰⁰ will apply.
- 90 The principal limitation of the BO Act is that, by virtue of its s. 2, the provisions of the Act only apply to Seychelles incorporated or registered companies. Companies incorporated or registered under the Companies Act and IBCs are expressly covered by s. 2(1)(a)(i) and (iii). At the same time, s. 2(2)(b) expressly excludes from the scope of the BO Act legal persons “formed, incorporated or established outside of Seychelles”, excluding only overseas companies registered under the Companies Act.
- 91 Section 9(1) of the BO Act provides that a legal person or legal arrangement shall identify and verify its beneficial owners. Section 35(2)(c) of the AML/CFT Act also requires a reporting entity to obtain and verify BO information in accordance with the BO Regulations.¹⁰¹
- 92 Section 5 of the BO Act requires that a register of beneficial owners be kept by any legal person. The register to be kept at the principal place of business of its resident agent. The register should contain information such as: (a) the name, residential address, service address, date of birth and nationality of each beneficial owner; (b) details of each beneficial owner’s beneficial interest, (c) the date on which a person became a beneficial owner; and (d) the date on which a person ceased to be a beneficial owner; (e) in case of a nominee holding interest on behalf of a BO, then (i) the name, residential address, service address, date of birth and nationality of each nominee holding the interest on behalf of the BO and the particulars and details of the interest held by the nominee; and (ii) the identity of the nominator, and where the nominator is a legal person, the identity of the natural person who ultimately owns or controls the nominator.¹⁰²
- 93 The Companies Act itself does not have requirements for information on beneficial ownership to be obtained during the registration of a domestic company. Some requirements are applicable based on the

⁹⁷ Section 8 of the Fisheries Act.

⁹⁸ Section 12(2) of the Merchant Shipping Act.

⁹⁹ Companies Ordinance, 1972, Chapter 40.

¹⁰⁰ Act 15 of 2016.

¹⁰¹ Anti-money laundering and counter-terrorist financing measures – Seychelles (2023) ESAAMLG 8th Enhanced Follow-up Report & 3rd Technical Compliance Re-Rating, paragraph 20.

¹⁰² *ibid.*

provisions of the AML/CFT Regulations,¹⁰³ but those are in some instances optional and in any event do not apply systematically as at registration.¹⁰⁴

- 94 When incorporating International Business Companies, the mechanism to ensure that BO information is collected and maintained rests on the International Corporate Service Providers (**ICSPs**) as reporting entities. ICSPs are required to perform customer due diligence, which in terms of the AML Regulations, requires identifying and verifying the identities of the beneficial owners of their customers. However, although ICSPs are required to collect beneficial ownership information at the time of being engaged to incorporate an IBC, where a foreign national does not act as a director or a shareholder and appoints a nominee, BO information is not recorded (s. 356(4) of the IBC Act). IBCs are required to keep at their registered office (registered ICSP offices) in Seychelles a register of beneficial owners with full information on each beneficial owner of the company (s. 356(1) of the IBC Act). Companies are further required to identify each beneficial owner of the company (s. 359(2) of the IBC Act).¹⁰⁵

2. Assessment

- 95 For the principal purposes of issuing fishing licences and registering ships, the relevant authorities (SFA, SMSA/Registrar) do not need access to complete beneficial ownership information, it being sufficient to be able to identify whether the beneficial owner (whatever their specific identity) is Seychellois or not.
- 96 There are however a number of situations, as set out above, where further information is required, such as for reporting to the IOTC and for imposing effective sanctions in respect of IUU fishing.
- 97 A particular difficulty arises in this regard as regards chartered fishing vessels. For the purposes of fishing licences as well as for IUU purposes, where a fishing vessel is chartered and thus operated for the immediate benefit of somebody other than the beneficial owners, beneficial information on the charterers will become relevant. Otherwise, a significant loophole would be liable to arise whereby a foreign-owned entity might charter a genuinely Seychelles-owned (i.e. also beneficially owned by Seychelles citizens) fishing vessel, thereby taking the benefit of Seychelles flag and fishing access.
- 98 It is possible to draw useful comparisons with the implementation of the equivalent framework within the European Union under Article 39 of Regulation 2017/2403, which establishes a database for fishing authorisations comprising the identities of “up to five main beneficial owners”.¹⁰⁶ Likewise, the interrelationship between the Regulation 2017/2403 and the Anti-Money Laundering Directive in the EU¹⁰⁷ are a useful comparator for the relationship between the Record of fishing vessels and the FIU data compiled under the Beneficial Ownership Act 2020. One of the points of tension identified in the EU, which appears applicable in Seychelles as well, concerns the territorial scope of application, as the AML regime only applies to entities based in the EU.

C – Obligated Entities

1. Applicable Rules

- 99 Domestic Seychelles companies are required to maintain company records which include information on the names and addresses of current directors, accounting records and share registers at their registered

¹⁰³ Anti-Money Laundering and Countering the Financing of Terrorism Regulations, 2020. Verification of the identity of the customer and the beneficial owner after the establishment of the business relationship is a measure that simplified customer due diligence may include under r. 15(4)(a).

¹⁰⁴ The Seychelles (2018) ESAAMLG Second Round Mutual Evaluation Report, pp. 157-158 appears incomplete on this point..

¹⁰⁵ Anti-money laundering and counter-terrorist financing measures – Seychelles (2023) ESAAMLG 8th Enhanced Follow-up Report & 3rd Technical Compliance Re-Rating, paragraph 23.

¹⁰⁶ Regulation (EU) 2017/2403 of the European Parliament and of the Council of 12 December 2017 on the sustainable management of external fishing fleets [“SMEFF”], and repealing Council Regulation (EC) No 1006/2008, OJ L 347, 28.12.2017, p. 81–104.

¹⁰⁷ https://finance.ec.europa.eu/financial-crime/eu-context-anti-money-laundering-and-counteracting-financing-terrorism_en#legal

office. S. 102 of the Companies Act¹⁰⁸ provides that every company should keep a register of its members detailing the names and addresses of the members and a statement of the shares held by each member. This register should be kept at the registered office address of the company in Seychelles. Section 192(1) of the Companies Act foresees a procedure for the Registrar of Companies to establish beneficial ownership. If there is good reason to do so, they may of their own motion, or at the request of any person, appoint one or more competent inspectors to investigate and report on the ownership of beneficial interests in any shares or debentures of any company, and otherwise with respect to the company “for the purpose of determining the persons who are or have been financially interested in the success or failure (real or apparent) of the company, or able to control or materially to influence the policy of the company”.

- 100 IBCs are required under s.104 of the IBC Act to keep a register of members at their registered office in the Seychelles with the name and address of: the shareholders; the member of each class and series of classes held; guarantee member of the company and the date of any changes in the register. This information must be kept accurate and up to date.¹⁰⁹
- 101 Section 162(1) of the Companies Ordinance provides that every company is to have at least two directors in Seychelles. IBC companies must have at least one director, not necessarily resident in Seychelles. An IBC however must have a registered agent and must have its registered office at the principal place of business of its agent.¹¹⁰ The obligation to keep basic information and information related to the beneficial owner is on the ICSPs as reporting entities in terms of the AML/CFT Act. Also, such information is kept at the registered office of the IBC in the Seychelles.¹¹¹ The following information is kept on the register of beneficial owners: (a) the name, residential address, date of birth and nationality of each beneficial owner of the company; (b) particulars of each beneficial owner’s beneficial interest and how it is held; (c) the date on which a person became a beneficial owner of the company; and (d) the date on which a person ceased to be a beneficial owner of the company. All of the above information is required to be kept updated and accurate.¹¹²
- 102 As mentioned above, there is no obligation on fishing/shipping agents to maintain beneficial ownership information regarding those they represent.

2. Assessment

- 103 Regarding Seychelles companies owning fishing vessels, the beneficial ownership framework covers the required entities. A gap arises however as regards foreign-owned (or chartered) vessels.

D – Regularity of Review of Information

1. Applicable Rules

- 104 The BO Regulations impose an annual review and verification of beneficial ownership. S. 5(1) of the BO Act creates an obligation on legal persons to maintain a register of beneficial owners at the principal place of business of their resident agent. S. 5(2) of the BO Act requires that such information obtained under 5(1) above is accurate and up to date. S. 9(1a) provides that every legal person or legal arrangement must periodically review and verify its beneficial owners at such intervals as may be prescribed by the Minister. This is a modification apparently introduced to meet a criticism previously voiced in the ESAAMLG review.¹¹³

¹⁰⁸ Companies Ordinance, 1972.

¹⁰⁹ Anti-money laundering and counter-terrorist financing measures – Seychelles (2018) ESAAMLG Second Round Mutual Evaluation Report, p. 156.

¹¹⁰ Sections 161(1) and (2) of the IBC Act.

¹¹¹ S. 356 of the IBC Act

¹¹² Anti-money laundering and counter-terrorist financing measures – Seychelles (2018) ESAAMLG Second Round Mutual Evaluation Report, p. 158.

¹¹³ Anti-money laundering and counter-terrorist financing measures – Seychelles (2023) ESAAMLG 8th Enhanced Follow-up Report & 3rd Technical Compliance Re-Rating, paragraph 21.

- 105 Moreover, there is a range of obligations to update beneficial ownership information through declarations foreseen in s. 10 of the BO Act. Every person on becoming a beneficial owner in relation to a legal person must within 21 days submit a declaration to the legal person in question. That legal person must then, within 14 days, furnish the resident agent with a copy of the declaration and update the register of beneficial owners. The resident agent is then in turn obliged, within 14 days of effecting any change to the register of beneficial owners, to have the information uploaded on the BO Database.¹¹⁴
- 106 Companies are required to inform the Registrar of any change in the particulars, change in directorship, company secretary or any other particulars contained in its register within 15 days.¹¹⁵ For companies under the IBC Act, section 104(2) provides that the company shall ensure that the information with respect to its register of members is kept up to date and accurate. The responsibility for checking the accuracy of basic information rests on the ICSPs that are regulated and supervised by the Financial Services Authority (FSA). The effect of this requirement is to ensure that adequate, accurate and current basic information is available on a timely basis.¹¹⁶
- 107 IBCs are required to keep information on beneficial ownership provided in their registers of beneficial owners, accurate and up-to-date.¹¹⁷ S. 360 creates an obligation on a person who has become a beneficial owner in an IBC to notify the IBC within 30 days, and beneficial owners are also obligated to notify the IBC of any changes in their status. Under the AML/CFT Act and Regulations, reporting entities are required to maintain information on beneficial owners, accurate and up-to-date.¹¹⁸
- 108 Fishing licences and authorisations granted to Seychelles-registered fishing vessels are valid for a maximum of twelve months¹¹⁹ and not subject to renewal.¹²⁰ Accordingly, a new application, providing all required information is required annually, so that (beneficial) ownership information can in principle be updated annually.
- 109 In the event of a significant change of beneficial ownership from Seychellois to non-Seychellois, section 22(1)(b) of the Fisheries Act provides that a fishing licence automatically terminates.

2. Assessment

- 110 The legislative provisions enable sufficiently frequent and regular reviews of the beneficial ownership situation.

E – Record Keeping Regarding Historical Information

1. Applicable Rules

- 111 Section 8(1) of the BO Act prescribes relevant beneficial ownership information in respect of covered legal persons to be maintained during seven years. The obligation is incumbent on resident agents and ceases even after no longer acting as agent for a particular entity only once another agent is appointed and records transferred to them. The same applies where the legal entity ceases to exist. BO information obtained as a result of customer due diligence measures are required to be kept for a period of 7 years under the

¹¹⁴ Sections 10(2) and (3a) of the BO Act.

¹¹⁵ S. 22(1) of the Companies Act.

¹¹⁶ Anti-money laundering and counter-terrorist financing measures – Seychelles (2018) ESAAMLG Second Round Mutual Evaluation Report, p. 156.

¹¹⁷ S. 356(2) of the IBC Act.

¹¹⁸ Anti-money laundering and counter-terrorist financing measures – Seychelles (2018) ESAAMLG Second Round Mutual Evaluation Report, p. 158.

¹¹⁹ Sections 22(1)(a) and 26(a) of the Fisheries Act.

¹²⁰ Sections 23(1) and 27(1) of the Fisheries Act.

AML/CFT Act,¹²¹ and some financial institutions are also required to keep records for 30 years in digital form.¹²²

- 112 Domestic companies are required to keep information for six years after its dissolution.¹²³ While companies have to maintain information required under the IBC Act for as long as they are active, the Act does not require that the information must be kept for a minimum of five years after a company is dissolved, winds up or ceases to exist. Under the IBC Act, s. 356(5) requires information on beneficial ownership to be maintained for seven years from the date the person ceased to be a beneficial owner. There are also extensive provisions for the maintenance of accounting and other records and registers during the lifetime of a company for a period of seven years from the date of the completion of the transactions or operations to which they each relate.¹²⁴ The Financial Institutions Act provides that every financial institution shall maintain records in the Seychelles for a period of at least 7 years which state clearly and correctly the state of its business affairs.¹²⁵

2. Assessment

- 113 The record-keeping rules appear adequate.

F – Registers

1. Applicable Rules

- 114 The Fisheries Act provides for a Record of fishing vessels to be maintained by the Seychelles Fishing Authority.¹²⁶ Pursuant to s. 8(2)(r) of the Fisheries Act, the Record must contain “*the name, address and nationality of any person with beneficial ownership of the fishing vessel*”.
- 115 The Merchant Shipping Act establishes a Register of Ships. The Register is to contain “particulars of all ships registered” under the Act.
- 116 Seychelles has two Registrars of Companies, the Registrar of Companies under the Companies Act and the CEO of the Financial Services Authority under the IBC Act. Information regarding ownership with respect to domestic entities, notably companies incorporated under the Companies Act, is available from the Registrar of Companies whereas information regarding IBCs is available from the CEO of the FSA.¹²⁷
- 117 The BO Act establishes a BO Database. S. 13(1) provides that the Financial Intelligence Unit is to be the nodal agency to maintain the BO Database containing the beneficial ownership information. Responsibility for the accuracy of the information being uploaded on the BO Database is with the legal person concerned.

2. Assessment

- 118 There currently is a certain degree of duplication between registers. It would seem desirable to streamline beneficial ownership information in such a way as to ensure that it is recorded once only, most likely in the BO Database. To be workable, this would however require granting access to all authorities who need that information, i.e. in particular the SFA and SMSA.

¹²¹ Section 47(2) of the Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020, Act 5 of 2020.

¹²² Section 47(3) of the AML/CFT Act.

¹²³ S. 7A of the Insolvency Act 2013.

¹²⁴ S. 175(4) of the IBC Act.

¹²⁵ Anti-money laundering and counter-terrorist financing measures – Seychelles (2018) ESAAMLG Second Round Mutual Evaluation Report, pp. 158-159.

¹²⁶ Section 8 of the Fisheries Act.

¹²⁷ See the summary in Anti-money laundering and counter-terrorist financing measures – Seychelles (2018) ESAAMLG Second Round Mutual Evaluation Report, pp. 154-155.

G – Access to Information

1. Applicable Rules

119 Section 13(4) of the BO Act limits access to the BO Database to the entities specified in the Second Schedule to that Act, i.e.:

1. *Anti Corruption Commission of Seychelles*
2. *Central Bank of Seychelles*
3. *Financial Crime Investigation Unit or any other Unit as may be designated by the Commissioner of Police within the Seychelles Police Force*
4. *Financial Intelligence Unit*
5. *Financial Services Authority*
6. *Office of the Attorney General*
7. *Registrar of Associations*
8. *Registrar of Companies*
9. *Seychelles Revenue Commission*

120 S. 14 of the BO Act creates an obligation on a resident agent, where a request in writing has been made, to provide information or make the beneficial ownership register available. Any competent authority, law enforcement agency, Registrar of Companies, Registrar of Associations, Seychelles Licensing Authority, or Central Bank of Seychelles may request for information on legal arrangements.¹²⁸ Section 57(3) of the AML/CFT Act provides for that any person who fails to comply with a direction or request made by a supervisory authority within such timeframe as may be specified by the supervisory authority, commits an offence and is liable on conviction to a fine not exceeding SCR200,000.¹²⁹

121 The SFA and SMSA currently have no access to the BO Database and no way of compelling information concerning beneficial ownership in relation to Seychelles companies required to upload information to that database, even where the company in question applies for a fishing licence or to register a ship.

122 Given their different purviews outside the AML/CFT area, it is understandable that the SFA/SMSA were not included among the authorities listed in the Second Schedule to the BO Act as being entitled to access the BO Database pursuant to section 13(4) of that Act.

123 The Fisheries Act is not clear as to who should be entitled to access the Record of Fishing Vessels that have been granted a licence, permit or an authorisation under that Act.¹³⁰ As a matter of practice, the SFA has been regularly publishing information regarding holders of fishing licences on its website, including in the form of easily-accessible summaries and detailed spreadsheets.¹³¹

124 The Register of Ships is to be accessible by the public¹³² and is to contain “particulars of all ships registered” under the Merchant Shipping Act. The SMSA has not been registering local fishing vessels operating exclusively within the EEZ, according to the Fisheries Comprehensive Plan published in November 2019, the SMSA will be required to register vessel owners including beneficial owners of all fishing vessels based in Seychelles. This is evidently a narrower ambit than the SFA’s Record as it would not comprise vessels licenced to fish within the Seychelles EEZ, and the question of duplication of work possibly arises again.

¹²⁸ Anti-money laundering and counter-terrorist financing measures – Seychelles (2023) ESAAMLG 8th Enhanced Follow-up Report & 3rd Technical Compliance Re-Rating, paragraph 25.

¹²⁹ Anti-money laundering and counter-terrorist financing measures – Seychelles (2023) ESAAMLG 8th Enhanced Follow-up Report & 3rd Technical Compliance Re-Rating, paragraph 24.

¹³⁰ Section 8(1) of the Fisheries Act.

¹³¹ Available at: <https://www.sfa.sc/index.php/services1/fishing-licence>

¹³² Section 12(2) of the Merchant Shipping Act.

2. Assessment

- 125 An important structural concern will be the need to avoid duplication and, if possible, achieve a degree of integration between the Record of Fishing Vessels maintained by the SFA, Register of Ships maintained by the SMSA, and the BO Database for which the FIU is the nodal agency.
- 126 As a starting point in that regard, it seems worthwhile including the SFA and the SMSA among the authorities listed in the Second Schedule to the BO Act as being entitled to access the BO Database pursuant to section 13(4) of that Act.
- 127 Certainly not all entities captured under the BO Act fall within the purview of the SFA and/or the SMSA. It seems that all the authorities permitted access to BO information are also part of the National AML/CFT Committee. However, where legal persons own fishing vessels, apply for fishing licences or register ships, beneficial ownership information will be required by the SFA/SMSA in order for them to be able to discharge their statutory duties. The alternative, then, is between a duplication of information streams and information collection duties, or an organised cooperation between all authorities concerned with collecting and using beneficial ownership data.
- 128 A key question in this respect may be how to handle beneficial ownership information concerning foreign entities that is required by the SFA/SMSA but not ordinarily kept in the BO Database as currently set up. The options would be expanding the ambit of the BO Database or distinguishing, for SFA/SMSA purposes between domestic entities (where beneficial ownership information is centralised by the BO Database) and foreign entities (where the SFA/SMSA would be required to maintain separate partial registers). In the latter case, it may also be simpler to duplicate the domestic beneficial ownership information to ensure that the SFA/SMSA have complete records to consult.
- 129 Another question that arises is whether beneficial ownership information held in registers is to be accessible only by public authorities or a wider circle, such as those being able to demonstrate a legitimate interest, or even the public at large.
- 130 Some of the objectives underlying the FITI Standard may also be achieved if, rather than making the register of beneficial ownership open to the public, it is made available to only certain bodies and agencies. Indeed, the BO Act 2020 in its current version does not allow for public access to beneficial ownership information. Access is limited only to specific persons as provided under section 11(1) of the BO Act. By way of further example, case-law has recently been emerging in the EU requiring a balancing exercise to be undertaken between the interest of transparency and the protection of personal data.¹³³

H – Supervision, Enforcement and Penalties

1. Applicable Rules

- 131 The Companies Act provides the Registrar of Companies with powers to impose dissuasive and proportionate sanctions on domestic companies that do not comply with the Act, with the most serious sanction being striking off of the domestic company from the companies' registry.
- 132 The IBC Act has provisions creating sanctions for different violations of this particular Act. The sanctions apply to both IBCs and the directors. Although there are sanctions for breaches of keeping appropriate records with respect to beneficial ownership for the IBCs and their directors,¹³⁴ given the nature of the business in the offshore sector, the sanctions initially applied (US\$ 500 and an additional penalty fee of US\$ 50 for each day the contravention continues for both the IBCs and their directors) would not seem dissuasive or proportionate. There have been repeated amendments to the IBC Act, increasing the levels of

¹³³ See Judgment of the Court of Justice of the European Union of 22 November 2022 in Case C-37/20 *Luxembourg Business Registers*.

¹³⁴ S. 356(7) of the IBC Act

finer.¹³⁵ It is not clear to what extent the – sometimes significant – increases are sufficient to achieve a dissuasive effect.

- 133 An example where this issue does not appear to arise in the IBC Act is regarding disclosure of beneficial ownership information to the IBC by a new beneficial owner within 30 days. A person failing to comply with these requirements can be subject upon conviction to a fine of up to US\$ 50,000 and may also face other administrative punitive measures such as voting and distribution rights attached to the relevant shares or guarantee membership being suspended until such time there has been full compliance with the contravened provisions, and right to transfer or redeem the relevant shares or guarantee membership being suspended pending full compliance with the contravened provisions. These sanctions can clearly be considered dissuasive and proportionate.¹³⁶
- 134 S. 14(2) of the BO Act provides that a resident agent who fails to comply with subsection 14(1) regarding the provision of beneficial ownership information is to be liable to a penalty of up to SCR150,000 for each such failure while ss. 57 and 60 of the AML/CFT Act, though specific to supervisory authorities, it provides a wide range of enforcement actions which includes imposing dissuasive administrative sanctions on the reporting entity, the directors and senior management of the reporting entity for non-compliance with the provisions of the Act.¹³⁷
- 135 A resident agent intentionally furnishing wrong information onto the BO Database relating to a legal person commits an offence and is liable on conviction, to imprisonment for a term not exceeding 2 years or to a fine not exceeding SCR150,000 or to both.¹³⁸
- 136 The powers of the Competent Authorities under the BO Act to issue guidelines and directions are moreover reinforced by sanctions for non-compliance in the form of fines of up to SCR150,000.¹³⁹
- 137 The procedure for the imposition of penalties is laid down in some detail in s. 14C of the BO Act.

2. Assessment

- 138 There is a question as to the extent to which problems as regards beneficial ownership identification relate not to the content of the (existing) rules, but to their practical application and enforcement.
- 139 Section 8(2)(r) of the Fisheries Act 2014 is a striking example in this regard: as the Terms of Reference themselves note, this provides that the SFA is to maintain a Record of fishing vessels that have been granted a licence, which is required to contain notably “*the name, address and nationality of any person with beneficial ownership of the fishing vessel*”. The Terms of Reference mention that this requirement “*is rarely complied with*”. This is also recorded as a criticism in the 2020 FiTI Report, which moreover noted that “very few of the Seychelles-flagged vessels in the IOTC Record of Currently Authorised Vessels had actual beneficial owner information listed”.¹⁴⁰
- 140 An obvious line of enquiry is to identify the root causes as well as to examine not only whether appropriate sanctions exist but also whether the resources are available to apply them consistently in practice. The SFA is in this respect reported as stating in the 2020 FiTI report that the Fisheries Act 2014 does not make it an offence for vessel operators not to divulge the name of beneficial owners and does not impose any penalties for not reporting such information. The National MSG in the 2020 FiTI Report moreover recommended “to put penalties in place for operators not providing beneficial ownership information for vessels licenced to fish in Seychelles’ waters”.

¹³⁵ See most recently International Business Companies Act and Other Related Laws (Amendment) Act, 2021, Act 63 of 2021.

¹³⁶ Anti-money laundering and counter-terrorist financing measures – Seychelles (2023) ESAAMLG 8th Enhanced Follow-up Report & 3rd Technical Compliance Re-Rating, p. 160.

¹³⁷ ESAAMLG (2023), *Anti-money laundering and counter-terrorist financing measures - Seychelles*, 8th Enhanced Follow-up Report & 3rd Technical Compliance Re-Rating, ESAAMLG, Dar es Salaam, paragraph 26.

¹³⁸ Section 14(3) of the BO Act.

¹³⁹ Sections 17A(3) and 17B(4) of the BO Act.

¹⁴⁰ Seychelles’ Report to the Fisheries Transparency Initiative (FiTI) – Calendar Year 2020 (15 December 2021), p.57, available at: <https://www.sfa.sc/index.php/fisheries-report-other-document?task=download.send&id=165&catid=33&m=0>

- 141 The judgments in *Kanapathi v The Republic* (CR SCA MA 3 of 2021) [2021] SCCA 52 (17 August 2021)¹⁴¹ and *R v Kanapathi* (CR 62 of 2021) [2021] SCSC 488 (4 August 2021)¹⁴² have cast some doubts over the effectiveness of enforcement in the fisheries sector, even as regards minimum penalties.

I – Training and Guidance

- 142 As there currently is no comprehensive beneficial ownership regime in place in the fisheries and ship registration sector, there are naturally no training programmes in place at this stage. Relevant persons would need to be trained on the beneficial ownership obligations, through training to be developed, binding guidelines, forms, guidance, etc. to be issued.
- 143 The FIU having just rolled out a comprehensive training and information campaign¹⁴³ should be well placed to provide institutional support to the SFA in designing a similar effort for the fisheries sector.

¹⁴¹ <https://seylia.org/akn/sc/judgment/scca/2021/52/eng@2021-08-17>

¹⁴² <https://seylia.org/akn/sc/judgment/scsc/2021/976/eng@2021-08-04>

¹⁴³ <https://www.seychellesfiu.sc/FIU>

IV – CONCLUSIONS AND RECOMMENDATIONS

- 144 In these conclusions, we first set out the principal gaps identified and then venture some suggestions as to how those gaps might be most conveniently addressed, providing options where appropriate.
- 145 We start by what we perceive as the principal gaps identified and summarise their repercussions in relation to the different types of fishing vessels. We then provide a systematic recommendation concerning the institutional and organisational approach to BO information, before dealing with ten more specific areas where gaps have been identified, suggesting an approach to their resolution.

A – Principal Gaps

1. Lack of systematic collection of BO information

- 146 The principal gap that we have identified results from the fact that BO information is not systematically required when fishing licences are issued. The requisite legal basis in this respect appears to have been in force already since 2014 with the entry into force of the Fisheries Act, s. 8(2)(r) of which requires the Record of Fishing Vessels to contain the name, address and nationality of any person with beneficial ownership of the fishing vessel. As set out above, that requirement is not complied with in practice.¹⁴⁴
- 147 The non-enforcement of s. 8(2)(r) of the Fisheries Act appears to be due to a combination of factors which include: (i) the design of fishing license application forms, including those specified by international fishing agreements entered into by Seychelles, which do not request the information required; (ii) a lack of understanding of what a beneficial owner is and why BO information is required at all; and (iii) an absence of (dissuasive) sanctions for failure to provide BO information.

2. Gaps by Type of Fishing Vessel

- 148 The principal gaps differ to some extent depending on the type of fishing vessel concerned, as set out below:

Foreign fishing vessels

- 149 Foreign fishing vessels,¹⁴⁵ licenced to fish in Seychelles waters pursuant to the Fisheries Act are not registered in the Register of Ships and will also typically have an ownership structure outside the scope of application of the BO Act. Moreover, no beneficial ownership information is currently collected or required to be provided as part of the fishing licence application procedures.
- 150 Beneficial ownership information is however required in respect foreign fishing vessels:
- to enable the SFA to verify compliance with s. 12(6)(b) and (f) of the Fisheries Act before issuing a fishing licence;
 - to enable Seychelles, through the SFA, to comply with IOTC obligations; and
 - to enable the SFA to comply with its obligations under s. 8(2)(r) of the Fisheries Act.

Seychelles fishing vessels

- 151 Seychelles fishing vessels,¹⁴⁶ are licenced to fish in Seychelles waters, or authorised to fish outside Seychelles waters pursuant to the Fisheries Act. As in respect of other categories of fishing vessel, no beneficial ownership information is currently collected or required to be provided as part of the fishing licence application procedures. These fishing vessels are required to be registered in Seychelles under the Merchant Shipping

¹⁴⁴ See paragraphs 49-52, 0-86 and 0-139.

¹⁴⁵ As defined in s. 2 of the Fisheries Act.

¹⁴⁶ As defined in s. 2 of the Fisheries Act.

Act and in most circumstances will be owned through a company established in Seychelles.¹⁴⁷ While beneficial ownership information appears in principle relevant for registration under the Merchant Shipping Act, none is currently collected in a systematic and reliable way by the SMSA. To the extent that beneficial ownership information in respect of a Seychelles company owning a fishing vessel is collected pursuant to the BO Act, neither the SFA nor the SMSA currently have access to that information, by reason of notably not being included in the Second Schedule to the BO Act.

- 152 Beneficial ownership information is however required in respect of Seychelles fishing vessels:
- to enable the SMSA to properly enforce penalties in accordance with s. 49 of the Merchant Shipping Act;
 - to enable the Registrar of Shipping to include in the Register of Ships complete particulars of all ships registered;
 - to enable the SFA to verify compliance with s. 17(a) and (f) of the Fisheries Act before issuing a fishing licence;
 - to enable Seychelles, through the SFA, to comply with IOTC obligations; and
 - to enable the SFA to comply with its obligations under s. 8(2)(r) of the Fisheries Act.

Local fishing vessels and Joint venture fishing vessels

- 153 Local or Joint venture fishing vessels,¹⁴⁸ are licenced to fish in Seychelles waters, or authorised to fish outside Seychelles waters pursuant to the Fisheries Act. As in respect of other categories of fishing vessel, no beneficial ownership information is currently collected or required to be provided as part of the fishing licence application procedures. In the same way as Seychelles fishing vessels, these fishing vessels are at the same time required to be registered in Seychelles under the Merchant Shipping Act and, unless owned directly by one or more natural persons (citizens of Seychelles), will usually be owned through a company established in Seychelles.¹⁴⁹ Beneficial ownership information is required in respect of local and joint venture fishing vessels for the same reasons as those listed immediately above in relation to Seychelles fishing vessels.

Small vessels

- 154 Small vessels are exempt from the requirement of obtaining a fishing licence if shorter than seven metres and not mechanically propelled,¹⁵⁰ and are exempt from the registration requirement under the Merchant Shipping Act if shorter than ten metres.¹⁵¹ There was an attempt to regulate these vessels under the Seychelles Maritime Safety Authority (Identification of small vessels) Regulations, 2023,¹⁵² which were however repealed shortly afterwards.
- 155 It appears indicated to ascertain beneficial ownership information in respect of small vessels as well in order to prevent “fronting” in respect of some valuable fisheries reserved for small-scale fisheries, such as sea cucumbers. In addition, beneficial ownership information would help combat IUU fishing as well as money laundering (although the latter is not within the purview of the SFA or SMSA).

B – Recommendations for addressing identified gaps

- 156 In addition to ensuring that reliable BO information is available whenever it is required by a public authority, it is desirable for the legal definition of BO as well as its application to be consistent across different contexts in which it is used, and to avoid – to the extent possible – duplication of both declarations by operators and data recording by the various public authorities involved.

¹⁴⁷ There is also a theoretical possibility for the vessels in question to be directly owned by one or more foreign citizens – see part (c) of the definition in s. 2 of the Fisheries Act.

¹⁴⁸ As defined in s. 2 of the Fisheries Act.

¹⁴⁹ There is a possibility for these fishing vessels to be owned through foreign companies.

¹⁵⁰ Regulation 3 of the Fisheries Regulations.

¹⁵¹ Section 16(3)(a) of the Merchant Shipping Act.

¹⁵² S.I. 4 of 2023.

- 157 With these overarching objectives in mind, it is useful to map the interactions between operators and the main different stakeholder authorities. The situation can be conveniently summarised in the following table indicating, for each type of legal owner wishing to engage in fishing activity, which of the Seychelles authorities that type of entity will need to be in contact with by virtue of the applicable legal framework:

AUTHORITY	SFA (RECORD OF FISHING VESSELS)	SMSA (REGISTER OF SHIPS)	FIU/FSA (BO DATABASE)
LEGAL OWNER			
Natural Person	✓	✓	
Seychelles Co.	✓	✓	✓
Seychelles IBC	✓	✓	✓
Foreign Co. (foreign flag)	✓		

- 161 As can be seen, the SFA is the only authority with which all operators wishing to engage in fishing activity in Seychelles will necessarily need to be in contact, by virtue of the requirement of obtaining a fishing licence. The Record of Fishing Vessels kept by the SFA will thus in principle need to contain information of all types of operators. By contrast, the SMSA will not normally have contact with owners of foreign flagged vessels (which by definition are not registered in the Seychelles Register of Ships), and the BO Database is currently restricted to Seychelles companies.
- 162 At the same time, the BO Database corresponds (in contrast to the Record of Fishing Vessels) to the international state of the art and has moreover just been phased in, accompanied by significant efforts invested in training and fostering cooperation across different authorities in Seychelles. For BO information within its remit – i.e. Seychelles companies – it can be considered the “gold standard”. In addition, the amount of expertise required to competently assess the effect of beneficial ownership structures underlying complex corporate arrangements should not be underestimated. This is expertise which the FIU, as the nodal agency for the BO Database, possesses, and which it would be both difficult and expensive to duplicate.
- 163 There are, then, three principal systematic questions for the “governance” of BO information that arise against this backdrop, namely:
- 1) Which authority is to be responsible for collecting BO information in respect of fishing vessels and operators (charterers)?
 - 2) Which authority is to be responsible for verifying that information?
 - 3) Which authority is to be responsible for maintaining the (authoritative) record of BO information?

1. Systematic Recommendation

- 164 As regards collection of BO information, the fact that the SFA will be the only authority with complete coverage of all operators engaged in fishing activities militates in favour of ensuring that it should be the SFA that collects BO information in respect of every applicant when fishing licence applications are made. This would moreover serve to ensure equal treatment of operators. It is true that, as regards fishing vessels owned by Seychelles companies, which are under a separate duty to maintain a Register of beneficial owners and upload information to the BO Database, this will inevitably lead to a certain duplication at least at the time when the licence is applied for. That should however not be overly burdensome in practice as it should merely be a matter of supplying the exact same data set twice. This duplication moreover gives rise to a consistency check that data in the BO Database and the Record of Fishing Vessels matches.
- 165 Regarding verification of BO information, we consider that given the specialist expertise routinely required to navigate at times complex corporate structures, it would be unwise to seek to duplicate this competence, which is present in the FIU/FSA, within the SFA. We therefore recommend that the verification task be

assigned to the FIU/FSA in respect of information contained in the BO Database, and that the FIU/FSA should likewise assist the SFA in carrying out verifications in respect of foreign companies. A strengthening of cooperation and knowledge exchange between the SFA and the FIU/FSA would seem desirable in any event and could be based on an MoU or, as the case may be, section 13(4) of the BO Act.

- 166 Finally, as regards the “data home”, i.e. the authoritative record of BO information, an important concern will be the need to avoid duplication and, if possible achieve a degree of technical integration between the Record of Fishing Vessels maintained by the SFA and the Beneficial Ownership Database, for which the FIU is the nodal agency.
- 167 As the OECD Report on Combatting IUU Fishing¹⁵³ notes, good communication between different authorities can on its own reduce the overall cost of opposing IUU fishing by avoiding duplication of effort and enhancing enforcement capacity. As fisheries authorities’ mandates are often limited, the involvement of other government bodies can enhance the tracking of illicit trade and beneficial owners of IUU fishing activities, helping reveal the scale of tax evasion and speed up prosecution. For such inter-agency information sharing to occur, there must be legal gateways to do so that at the same time respect the confidentiality of information and the integrity of the work carried out by each agency.
- 168 We recommend making the fullest use possible of the state-of-the-art BO Database. Consequently we recommend that the BO Database should be the point of reference for the SFA as regards entities whose information is kept in that database. A prerequisite to this approach is giving the SFA access to the BO Database, probably by adding it (alongside the SMSA) to the list in the Second Schedule to the BO Act.
- 169 In order to further build on the framework established by the BO Act and the BO Regulations, agents of foreign companies that might hold fishing licences (under s. 11 of the Fisheries Act) could be brought within their remit by adding them to the range of specific legal entities¹⁵⁴ in the legal definition of the term “resident agent”. This would then ensure that those agents are under an obligation to collect beneficial ownership information, and moreover make that information available through the framework established by the BO Act. As a corollary, it would seem desirable to place the regulation of fishing/shipping agents on a more certain legal footing.
- 170 Our above recommendations would result in what can be termed a “hybrid approach” to these two questions, which can be summarised as follows:
- 1) The SFA should (continue to) be responsible for the collection of BO information in respect of every fishing vessel applying for a fishing license.
 - 2) Verifications should be carried out depending on the type of legal entity:
 - The SFA should verify natural persons.
 - The FIU should verify Seychelles companies.
 - The FIU/FSA should assist the SFA in verifying foreign companies.
 - 3) The authoritative BO data record should be maintained also depending on the type of legal entity:
 - The BO Database for Seychelles companies (the Record of Fishing Vessels may contain a copy of the relevant information, but there should in that case be a procedure for the copy to be updated automatically whenever the information in the BO Database changes).
 - The Record of Fishing Vessels for all entities not recorded in the BO Database.

2. Specific Issues

¹⁵³ Combatting Illegal, Unreported and Unregulated Fishing: Where Countries Stand and Where Efforts Should Concentrate in the Future (OECD) TAD/FI(2017)16/FINAL, available at: [https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=TAD/FI\(2017\)16/FINAL&docLanguage=En](https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=TAD/FI(2017)16/FINAL&docLanguage=En), at p. 53.

¹⁵⁴ Section 3 of the BO Act.

- 171 A number of specific recommendations for – in some instances quite isolated and piecemeal – modification of legislation in force have resulted from our gap analysis. We appreciate that the modification – in particular of primary legislation – is an onerous process which it would be difficult to accomplish in the short term. We nevertheless here record some of the improvements that seem to us desirable when an opportunity arises.

Definition of “beneficial owner”

- 172 The Fisheries Act contains a definition of “beneficial owner” which is different from the one contained in the BO Act and BO Regulations.¹⁵⁵ It would seem desirable to align these, and we would in the light of the complex nature of the definition, recommend doing this by a direct cross-reference in the Fisheries Act to the BO Act, along the lines of:

“beneficial owner” has the same meaning as in the Beneficial Ownership Act;

- 173 This sort of “dynamic” cross-reference should ensure that the definitions remain aligned, and in particular that the relevant regulations as well as any case law concerning the definition in the BO Act are also taken into account in the fisheries context.
- 174 There is a similarly inconsistent definition of “beneficial owner” in the IBC Act and we suspect in other items of legislation, which it would also be desirable to align.

Lacuna concerning charterers

- 175 An approach needs to be found to ensure that not only beneficial ownership information for vessel owners, but also for vessel charterers is recorded and available, in particular for IUU verification purposes. As identified above,¹⁵⁶ for the purposes of fishing licences as well as for IUU purposes, where a fishing vessel is chartered and thus operated for the immediate benefit of somebody other than the beneficial owners, beneficial information on the charterers will become relevant. Otherwise, a significant loophole would be liable to arise whereby operators engaging in IUU fisheries could attempt to charter and operate fishing vessels owned by other as a way of avoiding IUU sanctions.
- 176 The standard application forms for foreign fishing licences issued by the SFA to some extent already reflect this perspective and request, in addition to the name of the Applicant, the name of the vessel owner or charterer.¹⁵⁷ This concern also is reflected in the definition of “owner” contained in both the Fisheries Act and the Merchant Shipping Act, which defines that term very broadly. In the Fisheries Act, the notion of owner encompasses also a “charterer, whether bareboat, time or voyage” and “a person who acts in the capacity of a charterer”. Likewise, the Merchant Shipping Act definition comprises “the charterer of a bare boat which is chartered for a definite period of not less than 12 months”.¹⁵⁸
- 177 In practice, this will mean that, in respect of fishing vessels owned by a Seychelles company but chartered out, the SFA will not be able to rely purely on the BO Database to the extent that the charterer is not itself a Seychelles company. The only way of dealing with this situation would be for the SFA to keep its own records of the charterer.

Approach of the Merchant Shipping Act to “beneficial interest”

- 178 As set out above,¹⁵⁹ a number of provisions of the Merchant Shipping Act at least lend themselves to conflicting interpretations in their references to “beneficial interest” and are thus a source of legal uncertainty.

¹⁵⁵ See paragraphs 0-80.

¹⁵⁶ Paragraph 97.

¹⁵⁷ See paragraph 51 above.

¹⁵⁸ Section 2 of the Merchant Shipping Act.

¹⁵⁹ Paragraphs 39-45.

- 179 Assuming there is no intention of barring foreigners from registering ships in Seychelles, as long as they do so through a company (most likely and IBC), this should be reflected in the declarations required for registration and transfers of ownership by deleting the reference to “beneficial interest”. This would notably require amendments to sections 35(1)(b) and 43 of the Merchant Shipping Act as well as consequent modification of the standard forms used, in particular RS 01 and RS 08.
- 180 In our view, it is possible to avoid the need for the SMSA to become involved in the collection of BO information. This is because complete BO information is in any event required to be kept in the BO Database concerning IBCs and other forms of Seychelles companies. It will in that case merely be necessary to make the BO Database accessible to the SMSA, which is something we would recommend in any event.
- 181 Against this background, it is not a problem that there is currently no beneficial ownership definition in the Merchant Shipping Act and only a requirement to ensure legal ownership information is collected. If it were nevertheless intended to introduce a definition of beneficial ownership into the Merchant Shipping Act, we recommend to follow the same approach as that suggested in relation to the Fisheries Act.

Definition of “joint venture fishing vessel”

- 182 In the definition of “joint venture fishing vessel” in s. 3 of the Fisheries Act, the fourth limb of the test (d) is confusing. It is likely that this is due to a typographical error or omission and that the word “the” in the second line should be deleted. The provision is currently worded as follows:

558

Supplement to Official Gazette

[27th October 2014]

- (d) **is wholly beneficially owned by a company established under any the written law of which at least 51 per cent of the actual effective shares are beneficially owned by a citizen of Seychelles and having a place of business in Seychelles;**

Lacuna regarding Seychellois minority ownership of fishing vessels

- 183 The typology of fishing vessels operated by the Fisheries Act currently does not admit the possibility of a fishing vessel having a Seychellois minority ownership. Local fishing vessels are wholly beneficially owned by Seychellois, Joint venture fishing vessels must have at least 51% Seychellois ownership, and Seychelles fishing vessel are required to be wholly beneficially owned by foreigners. Assuming there is no deliberate policy choice behind this lacuna, we suggest amending the definition to read, in its limb (c) as follows:

“(c) beneficially owned by one or more foreign citizens only or by a company established under the written laws of Seychelles of which less than 51 per cent of the actual effective shares are beneficially owned by a citizen of Seychelles;”

Access to the BO Database for the SFA and the SMSA

- 184 In order to avoid duplication and provide an authoritative point of reference for BO information, it is desirable for BO information concerning companies (and notably IBC) owning fishing vessels to be centralised in the BO Database.
- 185 For that approach to function, the SFA and the SMSA would need to be given access to the BO Database, which can most conveniently be achieved by including them in the Second Schedule to the BO Act. Some issues in relation to this have been highlighted at paragraph 126 and following above.

Sanctions

- 186 There need to be transparent, proportionate and dissuasive sanctions in place regarding failures to comply with BO information requirement.
- 187 As regards Seychelles corporate entities required to upload information to the BO Database, the BO Act lays down a number of penalties, which were for the greater part increased by the Beneficial Ownership (Amendment) Act 2022. As amended, the BO Act provides notably that any person who intentionally provides false or misleading information required to be provided in relation to a change in ownership commits an offence punishable by 1 year imprisonment or to a fine not exceeding SCR 150,000, or both.¹⁶⁰ There are fines not exceeding SCR 150,000 for failures in maintaining the Register of beneficial owners¹⁶¹ and for impeding inspections in relation thereto by the FIU/FSA,¹⁶² or a fine of up to SCR 50,000 where a resident agent refuses access to the Register to a corporate officer or beneficial owner.¹⁶³ Resident agents intentionally furnishing wrong information onto the BO Database commit a legal offence punishable with up to two years' imprisonment or a fine not exceeding SCR 150,000, or both.
- 188 As these sanctions would only be applicable to fishing vessels owned by Seychelles companies, it is desirable – not least for the sake of equal treatment – to apply the same sanctions also to foreign fishing vessels owned by foreign companies where they (or their agent) intentionally furnish incorrect information to the SFA in connection with an application for a fishing licence. At the same time, care would have to be taken not to duplicate penalties so as to comply with fundamental rights and avoid contravening the ne bis in idem principle. Appropriate wording to be inserted into the Fisheries Act could conveniently cross-refer to the BO Act, also to ensure that any future increase in the maximum amounts of fines in the BO Act automatically translates across to the regime applicable regarding fishing vessels.
- 189 A wider concern would relate to the question of whether the penalties set in the BO Act are sufficiently comprehensive and dissuasive also in the fisheries context, notably in the light of the amounts of profit that can be generated through a fishing licence. Two options appear to us worthwhile considering in this context:
- First, it may be desirable to also impose sanctions for merely negligent failures to provide and update BO information, not least because it can in practice be difficult to establish intent.
 - Second, and more importantly, there are good reasons to tie the validity of a fishing licence to the BO information supplied to obtain it (and to the condition of maintaining that information up to date. The consequence of such a condition would be that any vessel owner (and their agent) intentionally providing incorrect BO information would be liable not only to a fine but also in effect engage in IUU fishing, with all the legal consequences.
- 190 Care will need to be taken to stay within the confines of the restrictive case law of the Seychelles courts in relation to minimum in the judgments in *Kanapathi v The Republic* (CR SCA MA 3 of 2021) [2021] SCCA 52 (17 August 2021) and *R v Kanapathi* (CR 62 of 2021) [2021] SCSC 488 (4 August 2021). At the same time, this could be seen as an opportunity for placing the sanctions regime on a clearer and thus plainly constitutional basis, reinforcing the ability to impose not only minimum sanctions.

Clarification of the position concerning fishing/shipping agents

- 191 As set out above, the legal framework concerning fishing/shipping agents could be usefully clarified.¹⁶⁴ The reform of the legislative framework currently underway could be used to notably create a harmonised approach to fishing and shipping agents, bearing in mind the responsibilities of agents under the Fisheries Act and the Merchant Shipping Act, respectively.

¹⁶⁰ Section 10(7) of the BO Act.

¹⁶¹ Section 5(3) and (4) of the BO Act.

¹⁶² Section 4(3) of the BO Act.

¹⁶³ Section 11(4) of the BO Act

¹⁶⁴ Paragraphs 53-62 above.

- 192 In respect of foreign fishing vessels, it should be considered placing an explicit duty on the fishing agent to collect beneficial ownership information on fishing licence holders. The model for this could be the “resident agent” under the BO Act and BO Regulations.¹⁶⁵

Registration of short vessels

- 193 The lack of registration requirement for short vessels presents a source of legal uncertainty and an obvious lacuna from an AML point of view. All fishing vessels (even short ones), being valuable assets, should in our view be subject to registration, at least in the SMSA’s register.
- 194 Considering the types of operators involved in artisanal fisheries, a lighter framework subject to gradual phase-in would at the same time be indicated and justified.

Public access to beneficial ownership information

- 195 The question of whether the public at large – or members of the public being able to point to a legitimate interest – should have access to BO information once that information has been collected by one or several public authorities is the subject of diametrically opposing views and has been extensively discussed with stakeholders. Ultimately, it is a question that goes beyond identifying any “gaps” in the existing legal framework, and rather relates to policy issues susceptible to a range of approaches, which will be mapped here without expressing any preference.
- 196 The traditional default position regarding ownership information, in particular in the financial services sector, has been to treat this as personal data which is to be kept private, being shared only on a need to know basis within a strictly confined circle of public authorities.
- 197 At the same time, particularly in the context of extractive industries, a different approach, pleading in favour of more transparency has been taking root. This approach is based on the idea that those active in extractive industries are (even if a licence payment is involved) benefiting from a common, or public, good. Consequently, it is argued that the public at large has an interest in knowing the identity of those exploiting that public good and, as the case may be, verifying that profits are not excessive.
- 198 Another consideration that is frequently brought up relates to the enforcement of binding norms, such as for example the fight against IUU fishing, which can be helped if not only public enforcement authorities but also investigative journalists or other private parties are able carry out verifications. While, in an ideal world, it would be thought that this sort of “private enforcement” would be unnecessary if public enforcement is functioning properly, it is a fact that public resources are not unlimited and assistance from the private sector can help bring about compliance.
- 199 Public access to BO information is suggested by FiTI on the above bases. It can be observed that Seychelles’ existing commitments in the IOTC framework would also, in principle, lead to making BO information of fishing vessels collected in Seychelles public through the IOTC Record of Currently Authorised Vessels, which is accessible via the internet.¹⁶⁶
- 200 An intermediate solution would consist in limiting access to individuals able to demonstrate a legitimate interest. This is the approach pursued – not only in relation to fisheries or extractive industries, but in relation to all businesses – in the European Union.¹⁶⁷

¹⁶⁵ See paragraph 63 above.

¹⁶⁶ <https://iotc.org/vessels/current>

¹⁶⁷ See Judgment of the Court of Justice of the European Union of 22 November 2022 in Case C-37/20 *Luxembourg Business Registers*.