



GOVERNMENT OF ANTIGUA AND BARBUDA

Ministry of Finance

Inland Revenue Department

Woods Centre, Friars Hill Road

St. John's, Antigua, W.I.

Telephone: 1(268)468-9475.

Fax no: 1(268)462-3175.

INLAND REVENUE DEPARTMENT, COMPETENT AUTHORITY FOR TAX TRANSPARENCY
GUIDANCE NOTES ON COMPLYING WITH BENEFICIAL OWNERSHIP OBLIGATIONS FRAMEWORK IN
ANTIGUA AND BARBUDA

ISSUED BY THE COMPETENT AUTHORITY

EFFECTIVE 1st NOVEMBER 2022

The Beneficial Ownership Framework (the "Framework") in Antigua and Barbuda has been constructed with stakeholder input and reference to international standards and best practices, including but not limited to the Global Forum On Transparency And Exchange Of Information For Tax Purposes. The purpose of the Framework is to support the preservation of the integrity of the financial sector as well as strengthen the co-operation and information sharing by public authorities and the Competent Authority in fostering of tax transparency and the fight against tax evasion and illicit financial flows.

The Competent Authority for exchange of tax information on request, is the Commissioner of the Inland Revenue Department pursuant to *Section 2(2) of the Antigua and Barbuda Tax Information Exchange Agreement Act 2002*. The Competent Authority notes that the global standards for transparency and sharing of information with respect to beneficial ownership continues to evolve, and remains steadfast in performing its functions given the purpose of the Framework.

This Guidance on Complying with Beneficial Ownership Obligations in Antigua and Barbuda ("Guidance Notes"), provides guidelines that should be adopted by domestic companies, external companies, international business corporations, insurance companies, money service businesses, cooperative societies, corporate management and trust service provider, international trust, international foundations, and international limited liability companies that are all In-Scope Entities and Arrangements for the provision of the Required Particulars and other information related to beneficial ownership obligations under the respective statutes. These Guidance Notes should not be relied upon in respect any point of law and reference for that purpose should be made to the appropriate statutory provisions.

1. BACKGROUND TO BENEFICIAL OWNERSHIP REGISTRY'S

1.1 The OECD, Global Forum Secretariat on tax transparency assesses jurisdictions for the effective implementation of the tax transparency standard, based on three components:

1.1.1. Availability of information in the jurisdiction, this is to say, the existence, creation and establishment of legal and beneficial ownership and accounting information, which may be in possession of banking and other financial institutions, public authorities and taxpayers;

1.1.2. Access to information by the Competent Authority, this is to say, the retrieval powers of the Competent Authority, in respect of legal and beneficial ownership and accounting information, to be retrieved from banking and other financial institutions, public authorities and the taxpayer;

1.1.3 Exchange of information mechanisms, this is to say, the existence of domestic legislation and international instruments (both bilateral and multilateral) to authorise the Competent Authority to submit requested information to the relevant Competent Authority treaty partners.

1.2. The issue of BO has evolved over time which has result in a multipronged approach (to be elaborated on further in the guidance note) but includes the following:

- AML/CFT Approach: where BO information is maintained by FIs and DNFBPs and involves Corporate Management Trust Service Providers (CMTSP) pursuant to CDD obligations under the AML/CFT legislative framework.

- Central Registry Approach: a register of beneficial owners is held by public authorities.

1.3. Under the Central Registry approach, the jurisdiction has experienced another evolution with the result of Two (2) central Beneficial Ownership Registry (BOR); this accounts for two sectors of the financial service sector as follow:

1.3.1- FSRC-BOR: established in 2017 by virtue of an amendment to the International Business Corporations Act Cap. 222; the Insurance Act 2007; the Cooperative Societies Act 2010; the Money Services Business Act 2011; the International Trust Act 2007; the International Foundations 2007; the International Limited Liability Companies Act 2007; and the Corporate Management and Trust Services Providers Act 2007, requires the submission of an annual attestation on beneficial ownership and control;

1.3.2 - IPO-BOR: established in 2022 by virtue of the amendment to the Companies Act 1995, requires the submission of an annual attestation on beneficial ownership and control for both domestic and external companies;

1.4. Access to both the FSRC-BOR and the IPO-BOR by the Competent Authority is fundamental, and this guidance note issued to brings together and consolidate the issue of BOR from the position of the Competent Authority.

2. OVERVIEW

2.1. These Guidance Notes provide a point of reference for In-Scope-Entities and Arrangements, above mentioned, under the respective laws, and must be read in conjunction with the Legislative Framework.

2.1.1- Beneficial ownership transparency is a success factor in demystifying underlying owners of In-scope entities and arrangements and unmasking anonymity which may encourage illegal activities including: tax evasion and illicit financial flows.

2.1.2.- Under the Legislative Framework, entities are required to identify their Beneficial Owners (BOs) and Relevant Entity and Arrangements (RLEA) and provide the Required Particulars. These Required Particulars may be accessed by the Competent Authority and shared internationally under Tax Information Exchange Agreements (TIEA), in accordance with legislation, agreements, treaties, and memorandums of understanding agreed between Antigua and Barbuda and Competent Authority of other jurisdictions.

3. WHO IS A BENEFICIAL OWNER?

3.1. To determine any BO, entities, arrangements must use the BO Test.

The BO Test for Companies:

o **Stage 1:** Does any individual hold, directly or indirectly, one or more of the following in relation to the entities, arrangements:

- o 5% or more of the shares;
- o 5% or more of the voting rights;
- o the right directly or indirectly, individually or jointly to appoint or remove a majority of the board of directors

o **Stage 2:** If no individual meets the conditions in Stage 1, X is a beneficial owner of company Y if X has the absolute and unconditional legal right to exercise, or actually exercises, significant influence or control over company Y through the ownership structure or interests described in Stage 1, other than solely in the capacity of a director, professional advisor or professional manager.

o **Stage 3:** If no individual meets the conditions in Stage 1 and Stage 2 but the trustees of a trust (or the members of a partnership or other entity that, under the law by which it is governed is not a legal person) meet one of those conditions in relation to company Y in their capacity as such, X is a beneficial owner of company Y if X has the absolute and unconditional legal right to exercise, or actually exercises, significant influence or control over the activities of that trust (or partnership or other entity), other than solely in the capacity of a director, professional advisor or professional manager.

The BO Test for Partnerships

o **Stage 1:** Does any individual hold, directly or indirectly, one or more of the following in relation to the Limited Liability Partnership:

- o A partnership interest representing a right to a share in more than 5% of any surplus limited liability partnership property on the winding up of the limited liability partnership;
- o A partnership interest representing more than 5% of the rights to vote on those matters that are decided by a vote at meetings of the partners of the limited liability partnership;
- o The right to appoint or remove a majority of the managing partners of the limited liability partnership or those persons who hold a majority of the voting rights at meetings of the partners.

o **Stage 2:** If no individual meets the conditions in stage 1, X is a beneficial owner of limited liability partnership Y, if X has the absolute and unconditional legal right to exercise, or actually exercises, significant influence or control over the partnership, through the interests described in stage 1 other than where that influence or control is solely in the capacity of a professional advisor or professional manager.

o **Stage 3:** If no individual meets the conditions in stage 1 or 2 but the trustees of a trust (or the members of a partnership or other entity that under the law by which it is governed is not a legal person) meet one of those conditions in relation to limited liability partnership Y in their capacity as such, X is a beneficial owner of Y if X has the absolute and unconditional legal right to exercise, or actually exercises, significant influence or control over the activities of that trust (or partnership or other entity) other than where that influence or control is solely in the capacity of a professional advisor or professional manager.

The BO Test for Limited Liability Companies

o **Stage 1:** Does any individual hold, directly or indirectly, one or more of the following in relation to the LLC:

- o An LLC interest in the LLC representing a right to share 5% or more of the capital, or as the case may be, the profits of the LLC;
- o An LLC interest in the LLC representing 5% or more of the voting rights in the LLC or;
- o The right, to appoint or remove a majority or the managers of the LLC.

o **Stage 2:** If no individual meets the conditions at stage 1, X is a beneficial owner of a limited liability company Y if X has the absolute and unconditional legal right to exercise, or actually exercises, significant influence or control over Y through the ownership structure or interests described in stage 1, other than solely in the capacity of a manager or a professional advisor.

o **Stage 3:** If no individual meets the conditions in stages 1 and 2 but the trustees of a trust (or the members of a partnership or other entity that, under the law by which it is governed is not a legal person) meet one of those conditions in relation to a limited liability company Y in their capacity as such, X is a beneficial owner of Y if X has the absolute and unconditional legal right to exercise, or actually exercises, significant influence or control over the activities of that trust (or partnership or other entity), other than solely in the capacity of a manager or a professional advisor.

3.2. Where no BO is identified under Stage 1, a determination then has to be made as to whether either Stage 2 or Stage 3 applies. In-scope entities or arrangements need to ascertain the legal entity's ownership structure chart and understand the ownership at each layer. The BO is not necessarily one individual, there may be several BOs in a structure.

3.3. The overriding objective of the regime is to ensure transparency of the beneficial ownership of Antigua and Barbuda entities and arrangements. In circumstances where the first tier in the ownership chain is a legal entity, it is a requirement to pierce through the structure and determine the details for the natural persons who ultimately own and control the entity. In situations where a trust is the owner of that entity, the trust deed or declaration of trust should be consulted and the relevant particulars for persons exercising effective control over the trust, which may include the trustee, settlor, vested beneficiaries, enforcer or protector, should be entered in the BOR.

3.4. Some recommendations for how to identify a BO in accordance with the BO Test, are noted in Table 1 below.

Table 1

| BO Test | Recommendations |
|----------------|---|
| Stage 1 | <ul style="list-style-type: none"> ▪ Review the entity's Register of Members (or equivalent) and identify shareholdings (or equivalent) of 5% or more in the company; 5% or more of interest in the LLC; ▪ Where the shareholding, interest or surplus of 5% or more is a legal entity, ascertain the shareholders of that entity (and, if necessary, any parent entities) to determine whether a natural person indirectly holds 5% or more of the shares of the company in question. ▪ Review the company's Register of Members and Articles of Association (or equivalent); the LLC's register of members or managers, LLC Agreements to identify persons with voting rights (often attached to shares, interest or right to surplus) of 5% or more. ▪ Review the governing documents of the company, LLC or Partnership to identify any individual with director or indirect rights to appoint or remove a majority of the board of directors |
| Stage 2 | <ul style="list-style-type: none"> ▪ Examine the entity's governing document, including any Articles of Association, Agreements, and Offering Memorandums and identify whether anyone has absolute and unconditional legal right to exercise, or actually exercises, significant influence or control. Ascertain whether there are any Powers of Attorney in effect decision making powers from which a BO can be identified. ▪ For instance, do the directors act on the instructions of a particular individual who acts in a capacity other than a director, professional advisor or professional manager. |
| Stage 3 | <ul style="list-style-type: none"> ▪ Consider the entity's constitution and structure, including the Articles of Association and any other formal or informal governing arrangement applicable to LLC, and identify whether there is a trust (or other entity that, under the law by which it is governed is not a legal person) in the ownership |

structure that may have influence or control over the entity.

4. RELEVANT LEGAL ENTITY AND ARRANGEMENTS

4.1. The relevant legislation being; the Companies Act 1995; the International Business Corporations Act Cap. 222; the Insurance Act 2007; the Cooperative Societies Act 2010; the Money Services Business Act 2011; the International Trust Act 2007; the International Foundations 2007; the International Limited Liability Companies Act 2007; and the Corporate Management and Trust Services Providers Act 2007: all provide for a legal entity or arrangement that is incorporated, formed or registered (either by way of continuation or as a foreign company) in Antigua and Barbuda, under the laws of Antigua and Barbuda; and would be a beneficial owner of the Company, Limited Liability Company if it were an individual.

4.2. The key issue for consideration is that the entity or arrangement must be incorporated, formed or registered under the laws of Antigua and Barbuda.

4.3. Where a legal entity "X" would be a beneficial owner if it were an individual, but X is not formed or registered in Antigua and Barbuda, X is not an RLEA and therefore cannot be included on the BOR. Instead, the individual/s or RLEA/s that are the BOs of X must be included on the BOR.

5. THE MULTI-PRONGED APPROACH

5.1. The availability and access to BO information by the Competent Authority, in Antigua and Barbuda is based on a Multi-Pronged Approach, whereby the Competent Authority would rely on different parties performing specific roles and responsibilities in identifying the BO and Relevant Legal Entity and Arrangements, verifying the relevant information, maintaining the BOR and retaining accurate, adequate and current Required Particulars for access by the Competent Authority.

5.2. This approach involves the following parties:

5.2.1. The FSRC-BOR: Central Registry Approach whereby; as per the International Business Corporations Act cap. 222 : the Insurance Act 2007; the Cooperative Societies Act 2010; the Money Services Business Act 2011; the International Trust Act 2007; the International Foundations 2007; the International Limited Liability Companies Act 2007; the Corporate Management and Trust Services Providers Act 2007: all the relevant entity and arrangements are mandated to take the necessary measures to ascertain and hold up-to-date and accurate information on BO and relevant legal entities and arrangements, as well as identify relevant changes. Once those particulars have been ascertained, to maintain the same for access by the Competent Authority.

5.2.2. The IPO-BOR- Central Registry Approach - Companies Act 1995: the relevant entities and arrangement, domestic and external are mandated to take the necessary measures to ascertain and hold up-to-date and accurate information on BO and relevant legal entities as well as identify relevant changes. Once those particulars have been ascertained, to maintain the same for access by the Competent Authority.

5.2.3. The AML/CFT Approach: where financial institutions captured under Schedule I of the Money Laundering Prevent Act are mandated to obtain and hold current information on relevant entities and arrangements including Ultimate Beneficial Ownership; verify that the information held for the relevant legal entity and arrangement is correct; continually monitor the information to ensure it is current; and, where the information is no longer current or valid, notify the company or arrangement and request the updated information for access by the Competent Authority.

5.3. The Competent Authority in the multi-pronged approach has the following roles::

- respond to lawful requests for information as per Tax Information Exchange Agreements;
- where suspected breaches are discovered, escalates to the Central BOR authority for enforcement; and
- provides technical support and training as necessary.

6. FILING OF BENEFICIAL OWNERSHIP REGISTERS AND REQUIRED PARTICULARS

6.1. In-scope entities and arrangements are all required to submit BO to either the IPO or FSRC or AML authority.

6.2. Manual Procedure for submission

- (a) Domestic and External Companies provide their BO directly to the Registrar of Companies (IPO) manually however an electronic portal submission will be the next stage of the evolution.;
- (b) International business corporations, Insurance companies, Money Service Business, Cooperative Societies, Corporate management and Trust Services Providers, International Trust, International Foundations, International Limited Liability Companies, provide their BO directly to the Financial Service Regulatory Commission (FSRC). manually however an electronic portal submission will be the next stage of the evolution.

6.3. The Required Particulars to be entered into the BOR are as follows: -

6.3.1 IPO-BOR as per Companies Act 1995, Section 194A(2) and 356(B):

- (a) the name and address of any person who owns five percent or more of the total voting rights of the company;
- (b) where there is a nominee, the name and address of the ultimate beneficial owner for whom a person holds the shares or their ownership interest;
- (c) the name and address of any person who controls the company acting directly or indirectly, and acting individually or jointly;
- (d) the name of all of the directors and officers; and
- (e) any other information as the Commission may determine.

6.3.2 FSRC-BOR:-

6.3.2.1 - As per section 6(A) of the International Business Corporations Act Cap. 222:

- (1) A corporation shall submit annually an attestation report to the Commission on beneficial ownership and control of the corporation which shall include the following:
 - (a) the name and address of any person who owns five percent or more of the total voting rights of the corporation;
 - (b) where there is a nominee, the name and address of the ultimate beneficial owner for whom a person holds the shares or their ownership interest;
 - (c) the name and address of any person who controls the corporation acting directly or indirectly, and acting individually or jointly;
 - (d) the name of all of the directors and officers; and
 - (e) any other information as the Commission may determine.

6.3.2.2 - As per section 14(A) of the Insurance Act 2007:

- (1) An insurance company shall submit annually an attestation report to the Commission on beneficial ownership and control of the insurance company which shall include the following:
 - (a) the name and address of any person who owns five percent or more of the company;
 - (b) the name and address of any person who controls the company acting directly or indirectly, and acting individually or jointly;
 - (c) the name of all of the directors and officers; and
 - (d) any other information as the Commission may determine.

6.3.2.3- As per section 21(A) of the Cooperative Societies Act 2010:

- (1) A co-operative society shall submit annually an attestation report to the Commission on beneficial ownership and control of the co-operative society, which shall include the following:
 - (a) the name and address of any person who owns five percent or more of the shares of the co-operative society;
 - (b) the name and address of any person who controls the cooperative society acting directly or indirectly, and acting individually or jointly;
 - (c) the name of all of the directors and officers; and
 - (d) any other information as the Commission may determine.

6.3.2.4- As per section 15(A) of the Money Services Business Act 2011:

- (1) A licensee shall submit annually an attestation report to the Commission on beneficial ownership and control of the licensee, which shall include the following:
 - (a) the name and address of any person who owns five percent or more of the licensee;
 - (b) the name and address of any person who controls the licensee acting directly or indirectly, and acting individually or jointly;
 - (c) the name of all of the directors and officers; and
 - (d) any other information as the Commission may determine.

6.3.2.5- As per section 18(A) of the International Trust Act 2007:

- (1) A trust corporation shall submit annually an attestation report to the Commission on beneficial ownership and control of the trust corporation, which shall include the following:
 - (a) the name and address of any person who owns five percent or more of the trust corporation;
 - (b) the name and address of any person who controls the trust corporation acting directly or indirectly, and acting individually or jointly;
 - (c) the name of all of the directors and officers; and
 - (d) any other information as the Commission may determine.

6.3.2.6- As per section 18(A) of the International Foundations 2007;

- (1) A foundation shall submit annually an attestation report to the Commission on beneficial ownership and control of the foundation, which shall include the following:
- (a) the name and address of any person who owns five percent or more of the foundation;
 - (b) the name and address of any person who controls the foundation acting directly or indirectly, and acting individually or jointly;
 - (c) the name of all of the directors and officers; and
 - (d) any other information as the Commission may determine.

6.3.2.7- As per section 18(A) of the International Limited Liability Companies Act 2007; and

- (1) A limited liability company shall submit annually an attestation report to the Commission on beneficial ownership and control of the limited liability company, which shall include the following:
- (a) the name and address of any person who owns five percent or more of the limited liability company;
 - (b) the name and address of any person who controls the limited liability company acting directly or indirectly, and acting individually or jointly;
 - (c) the name of all of the directors and officers; and
 - (d) any other information as the Commission may determine.

6.3.2.8- As per section 18(A) of the Corporate Management and Trust Services Providers Act 2007;

- (1) A corporate management and trust service provider shall submit annually an attestation report to the Commission on the beneficial ownership and control of their clients, which shall include the following:
- (a) the name and address of any person who owns five percent or more of the their clients;
 - (b) the name and address of any person who controls the clients acting directly or indirectly, and acting individually or jointly;
 - (c) the name of all of the directors and officers; and
 - (d) any other information as the Commission may determine.

7. RELEVANT CHANGE

7.1. It is the duty of the relevant entity or arrangement (in practice being the director(s) or company officer(s)), when it becomes aware of a relevant change with respect to the BO or has reasonable cause to believe that a change has occurred, to give notice to the IPO-BOR or the FSRC-BOR as soon as reasonably practicable, requesting confirmation of the change and updated particulars and documentation.

7.2. Relevant changes should be identified where:

- a registrable person's required particulars change (the registrable person should proactively provide those updated particulars to the company);
- where the government issued document included in the required particulars submitted to the Authority has expired;
- the company has reason to believe that a change has taken place and requests the updated information from the registrable person; and
- through ongoing monitoring, the CMTSP becomes aware of the change and seeks the updated information from the company.

7.3. The effectiveness of the access by the Competent Authority for the exchange of information and documentation is dependent on having access to relevant changes.

8. REPORTING PERIODS FOR BENEFICIAL OWNERSHIP REGISTERS

8.1 Reporting periods for In-Scope Entities and Arrangements on an annual basis, once per year to submit annual attestation.

9. COMPETENT AUTHORITY ACCESS POWERS

9.1 Section 5 of the Antigua and Barbuda Tax Information Exchange Agreement Act 2002, provides for the following:

9.2 Section 5. (4) The Competent Authority shall provide the Competent Authority of the requesting State copies of publicly available records, including documents or information in any form which relates to tax information covered by this Act and in the possession of a government department or agency of the Government in Antigua and Barbuda.

9.3 Section 5(5) The Competent Authority may provide to the Competent Authority of the requesting State copies of any records, including documents or information in any form which relates to tax information covered by the Agreement, and which are in the possession of a government department or agency in Antigua and Barbuda, but which are not publicly available, to the same extent and under the same conditions as such copies would be available to the Commissioner under the Income Tax Act.

9.4 Section 5(6) Subject to this section, where the Commissioner receives a request that complies with the requirements of section 4, he shall provide information to the Competent Authority of the requesting State in the form and manner specified in regulations.

10. ADMINISTRATIVE FINE PROCESS

10.1. Both the IPO and FSRC are responsible for imposing administrative fines for breaches as per section 194(A) of the Companies Act 1995; as per section 6(A) of the International Business Corporations Act Cap. 222; as per section 14(A) of the Insurance Act 2007; as per section 21(A) of the Cooperative Societies Act 2010; as per section 15(A) of the Money Services Business Act 2011; as per section 18(A) of the International Trust Act 2007; as per section 18(A) of the International Foundations Act 2007; as per section 18(A) of the International Limited Liability Companies Act 2007; and as per section 18(A) of the Corporate Management and Trust Services Providers Act 2007;

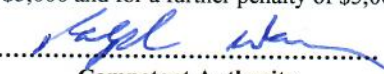
10.2. The respective administrative fines are as follows:

10.2.1 - IPO-BOR administrative fine:

- (a) \$5,000.00 *plus* – (domestic companies) Section 194(A)(3) Any company that wilfully fails to file an attestation report on beneficial ownership is liable to an administrative penalty of \$5,000 and for a further penalty of \$5,000 for each day of default.
- (b) (External Companies) Section 356B (3) and (4) (3) If a company fails to comply with subsection (1), the company shall pay to Registrar a penalty of \$100.00 for late filing and thereafter the Registrar shall levy on the company \$100.00 for every ninety days or part thereof during which the company remains in default. (4) The Registrar may strike off the register the name of an external company that remains in default of filing annual returns after giving thirty days' notice to the company, and the name of such company may be reinstated in the register on payment of the prescribed fee for reinstatement of the company, and all the unpaid fees and penalties.

10.2.2 - FSRC-BOR- administrative fine:

- (a) \$5,000.00 *plus* - Section 6(A)(2) International Business Corporations Act Cap. 222, any company that wilfully fails to file an attestation report on beneficial ownership is liable to an administrative penalty of \$5,000 and for a further penalty of \$5,000 for each day of default.
- (b) \$5,000.00 *plus* - Section 14(A)(2) Insurance Act 2007, any company that wilfully fails to file an attestation report on beneficial ownership is liable to an administrative penalty of \$5,000 and for a further penalty of \$5,000 for each day of default.
- (c) \$5,000.00 *plus* - Section 21(A)(2) Cooperative Societies Act 2010, any cooperative society that wilfully fails to file an attestation report on beneficial ownership is liable to an administrative penalty of \$5,000 and for a further penalty of \$5,000 for each day of default.
- (d) \$5,000.00 *plus* - Section 15(A)(2) Money Services Business Act 2011, any licensee that wilfully fails to file an attestation report on beneficial ownership is liable to an administrative penalty of \$5,000 and for a further penalty of \$5,000 for each day of default.
- (e) \$5,000.00 *plus* - Section 18(A)(2) International Trust Act 2007, any trust corporation that wilfully fails to file an attestation report on beneficial ownership is liable to an administrative penalty of \$5,000 and for a further penalty of \$5,000 for each day of default.
- (f) \$5,000.00 *plus* - Section 18(A)(2) International Trust Act 2007, any licensee that wilfully fails to file an attestation report on beneficial ownership is liable to an administrative penalty of \$5,000 and for a further penalty of \$5,000 for each day of default.
- (g) \$5,000.00 *plus* - Section 18(A)(2) International Foundation Act 2007, any foundation that wilfully fails to file an attestation report on beneficial ownership is liable to an administrative penalty of \$5,000 and for a further penalty of \$5,000 for each day of default.
- (h) \$5,000.00 *plus* - Section 18(A)(2) International Limited Liability Companies Act, any limited liability company, that wilfully fails to file an attestation report on beneficial ownership is liable to an administrative penalty of \$5,000 and for a further penalty of \$5,000 for each day of default.
- (a) \$5,000.00 *plus* - Section 18(A)(2) Corporate Management and Trust services Provider Act 2008, any service provider, that wilfully fails to file an attestation report on beneficial ownership is liable to an administrative penalty of \$5,000 and for a further penalty of \$5,000 for each day of default.


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