

EXPLANATORY NOTES

UBO stands for 'ultimate beneficial owner'. This ministerial regulation provides a further elaboration and extension of the definition of 'ultimate beneficial owner' as contained in Article 1(3) of the State Ordinance for the Prevention and Combating of Money Laundering and Terrorist Financing (*Landsverordening voorkoming en bestrijding witwassen en terrorismefinanciering*) (AB 2011 No. 28), hereinafter also referred to as the AML/CFT State Ordinance. This ensures that the definition of ultimate beneficial owner is in line with the current recommendations of the Financial Action Task Force (FATF).

Elaboration of the definition of 'ultimate beneficial owner'

Article 1(3) of the AML/CFT State Ordinance provides that the definition of 'ultimate beneficial owner' can be specified in further detail. A UBO is a natural person who ultimately owns or exercises control over a legal person. The definition of 'UBO' is after all related to customer due diligence and the need to be aware at all times for which persons the financial transactions are ultimately carried out. In this ministerial regulation the further elaboration of the definition of 'ultimate beneficial owner' distinguishes between:

- (i) companies and legal persons, with the exception of foundations;
- (ii) trusts; and
- (iii) other legal arrangements, including foundations.

A person who directly or indirectly holds more than 25% of the shares in a company or legal person, or can directly or indirectly exercise more than 25% of the voting rights, qualifies as a UBO of this company or legal person (see Article 1.a). However, a person who can exercise actual control in another manner can also qualify as a UBO (see Article 1.b). In Article 1.c the option has been added of designating the person or persons charged with the client's overall management as the UBO in certain specific cases. These are cases in which the person or persons who qualify as UBO through shares or voting rights or who exercise control in another manner cannot be identified. It must be clear in that case that all possible means have been employed to identify the UBO(s). This requirement has been included to prevent a person charged with the overall management from being designated too readily as a

UBO. Service providers are therefore required to document this carefully, so that it can be verified whether a service provider has complied with this obligation.

In addition, Article 2 includes a definition of the UBO of a trust which is in line with the FATF recommendations. For other legal structures the FATF recommendations prescribe that a definition of UBO is used that is in line with the UBO definition of a trust.

Other legal arrangements also include foundations (see Article 3). Foundations are treated differently from other legal persons because foundations do not have a capital divided into shares or other participation rights, and by their nature bear more resemblance to trusts than to other legal persons.

Finally, it is important to note that with the overall revision of the AML/CFT legislation¹ the definition of UBO has been changed with which the amendments to the AML/CFT State Ordinance have come into force on 8 September 2021².

The minister of Finance, Economic Affairs and Culture,

¹ See the State Ordinance of 27 August 2021 (AB 2021 No. 143) amending the State Ordinance for the Prevention and Combating of Money Laundering and Terrorist Financing (AB 2011 No. 28), the Criminal Code of Aruba (*Wetboek van Strafrecht van Aruba*) (AB 2012 No. 24), the Sanctions State Ordinance 2006 (*Sanctieverordening 2006*) (AB 2007 No. 24), the State Ordinance on the Duty to Report the Import and Export of Cash (*Landsverordening meldplicht in- en uitvoer contant geld*) (AB 2000 No. 27), the State Ordinance Free Zones 2000 (*Landsverordening vrije zones 2000*) (AB 2000 No. 28), the State Ordinance on the Supervision of the Credit System (*Landsverordening toezicht kredietwezen*) (AB 1998 No. 16), the State Ordinance on the Supervision of the Securities Business (*Landsverordening toezicht effectenverkeer*) (AB 2016 No. 53) and the State Ordinance on Procurement (*Aanbestedingsverordening*) (AB 2019 No. 39) (overall revision of the AML/CFT regulations).

² See the State Decree of 7 September 2021 No. 1, (AB 2021 No. 147) providing for the entry into force of the State Ordinance of 27 August 2021 (AB 2021 No. 143) amending the State Ordinance for the Prevention and Combating of Money Laundering and Terrorist Financing (AB 2011 No. 28), the Criminal Code of Aruba (AB 2012 No. 24), the Sanctions State Ordinance 2006 (AB 2007 No. 24), the State Ordinance on the Duty to Report the Import and Export of Cash (AB 2000 No. 27), the State Ordinance Free Zones 2000 (AB 2000 No. 28), the State Ordinance on the Supervision of the Credit System (AB 1998 No. 16), the State Ordinance on the Supervision of the Securities Business (AB 2016 No.53) and the State Ordinance on Procurement (AB 2019 No. 39) (overall revision of the AML/CFT regulations), with which the amendments to the State Ordinance for the Prevention and Combating of Money Laundering and Terrorist Financing have come into force on 8 September 2021.