

Guidance on Beneficial Ownership of Legal Persons and Legal Arrangements

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Guidance on Beneficial Ownership of Legal Persons and Legal Arrangements

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GLOSSARY OF TERMS

AML/CFT	Anti-Money Laundering/Combating the Financing of Terrorism
AML/CFT Law	State of Qatar Law No. (20) of 2019 on Combating Money Laundering and Terrorism Financing
BO	Beneficial Owner
CDD	Customer Due Diligence
DNFBP	Designated Non-Financial Business and Profession
EDD	Enhanced Due Diligence
FATF	Financial Action Task Force
FI	Financial Institution
FIRM	A FI or DNFBP operating in the State of Qatar or the Qatar Financial Centre
IRs	Council of Ministers' Decision No. [41] of 2019 Promulgating the Implementing Regulations of Law No. (20) of 2019 on Combating Money Laundering and Terrorism Financing
KYC	Know Your Customer
ML	Money Laundering
PEP	Politically Exposed Person
POA	Power of Attorney
PF	Proliferation Financing
QFC	Qatar Financial Centre
QFIU	Qatar Financial Information Unit
STR	Suspicious Transaction Report
TCSPs	Trust and Company Service Providers
TF	Terrorist Financing
UBO	Ultimate Beneficial Owner

1. PURPOSE

The term “Firm(s)” is used throughout to denote FIs and DNFBPs.

The purpose of this guidance is to:

- indicate good industry practice through a proportionate, risk-based approach to beneficial ownership matters; and
- assist Firms to design and implement the systems and controls necessary to mitigate the risks of being used in connection with ML, TF, and PF.

The guidance cannot address every possible scenario, and is not to be interpreted as legal advice. Firms must develop AML/CFT policies, procedures, systems, and controls that are appropriate for the nature, scale, and complexity of their respective businesses.

The guidance does not replace AML/CFT legislation¹ applicable in the State of Qatar or the Qatar Financial Centre. Firms remain responsible for compliance with legislation that is relevant to their operations.

Firms will find it beneficial to consider this guidance alongside other guidance papers, in particular those on CDD and the Risk-Based Approach.

2. DEFINITIONS AND COMMENTARY

The definitions below are taken from the Glossary to the FATF Recommendations², and are consistent with the AML/CFT Law and the IRs.

Beneficial owner

Refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.

The reference above to “customer” should also be interpreted as applying to the BO, or a beneficiary under a life or other investment-linked insurance policy.

References above to “ultimately owns or controls” and “ultimate effective control” refer to situations in which ownership/control is exercised through a chain of ownership, or by means of control other than direct control.

Legal persons

Legal persons refers to any entities other than natural persons that can establish a permanent customer relationship with a financial institution or otherwise own property.

¹ Unless stated otherwise, “legislation” is to be interpreted as referring to laws, regulations, and rules.

² <http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>

This can include companies, bodies corporate, foundations, anstalt, partnerships, or associations and other relevantly similar entities.³

In the AML/CFT Law and IRs, a legal person is “any entity, other than a natural person, which is capable of conducting a permanent business relationship with a financial institution or of gaining ownership of assets. This includes companies, institutions or foundations, or any relevantly similar entity.”

While the two definitions vary slightly in their wording, their intent and effect is the same, and they apply to a very wide range of entities. The exact nature and structure of different types of legal persons will vary between jurisdictions.

Beneficial ownership of legal persons

It should be noted that the FATF, AML/CFT Law and IRs' definition of the concept of beneficial ownership of a legal person go further than the strict legal definition, to include the concept of ultimate (actual) ownership and control. That is:

- they go beyond just the (natural or legal) persons who are legally (on paper) associated with the legal person;
- they extend to the natural (not legal) persons who actually own and are entitled to take advantage of capital or assets of the legal person (UBOs); and
- they extend to those natural persons who exert effective control over the legal person, whether or not those natural persons occupy formal positions within the legal person.

For example, if a company is legally owned by a second company (according to its corporate registration information), the UBOs are actually the natural persons who are behind that second company or ultimate company in any extended chain of ownership, and those who are controlling it (if different). This process of investigating multiple layers of ownership to discover the natural persons who are the true UBOs or controllers is often described as “lifting (or piercing) the corporate veil”.

Likewise, persons listed in the corporate registration information as holding controlling positions within the company, but who are actually acting on behalf of someone else, cannot be considered BOs because they are ultimately being used by someone else to exercise effective control over the company.

Those who act on behalf of others may do so as part of their professional business activities e.g. TCSPs, but also may include those who do so informally and without it necessarily being evident to the Firm that they are acting on behalf of others. Persons acting in this capacity are sometimes referred to as front men, straw men, or benami, and often will have family, social, or business associations with the undisclosed UBOs.

Whether it is evident or not that a person may be acting as a front man for others, Firms must ask appropriate questions of the person(s) they believe to be the UBO(s) or controller(s) to try to establish whether they are actually the true UBO(s) or controller(s).

³ Ibid.

Legal arrangements

Legal arrangements refers to express trusts or other similar legal arrangements, whether in a common law or civil law jurisdiction. Examples of other similar arrangements (for AML/CFT purposes) include fiducie, treuhand, and fideicomiso.

In the AML/CFT Law, a legal arrangement is defined as “Express trusts or any other similar legal arrangements”. An express trust is defined as “A legal relationship that does not establish a legal personality, created by a written deed, whereby a person places funds under the control of a trustee for the benefit of one or more beneficiaries or for a defined purpose.”

Beneficial ownership of legal arrangements

In the context of legal arrangements, the BO is the natural person(s), at the end of the chain, who ultimately owns or controls the legal arrangement, including those persons who exercise ultimate effective control over the legal arrangement, and/or the natural person(s) on whose behalf a transaction is being conducted.

The specific characteristics of legal arrangements make it more complicated to identify the BOs in practice. For example, in a trust, the legal title and control of an asset are separated from the equitable interests in the asset. This means that different persons might own, control, and benefit from the trust, depending on the applicable trust law and the provisions of the document establishing the trust (for example, the trust deed).

In some countries, trust law allows for the settlor and beneficiary (and sometimes even the trustee) to be the same natural person. Trust deeds also vary and may contain provisions that impact where ultimate control lies over the trust assets, including clauses under which the settlor reserves certain powers, such as the power to revoke the trust and have the trust assets returned. This may help in determining the beneficial ownership of a trust and its related parties.

3. THE ML/TF RISKS OF LEGAL PERSONS AND LEGAL ARRANGEMENTS

Financial crimes are committed for monetary gain. To be able to enjoy the proceeds of his/her crimes and to reduce the risk of discovery and prosecution, a criminal will aim to use the laundering process to disguise the criminal origin of the funds, and to make it difficult for law enforcement authorities to establish that he/she is the BO of, or is connected with, the criminally-derived funds.

The motivation of terrorist financiers is to provide an adequate and uninterrupted flow of funds to finance terrorist groups and acts of terrorism. While the funding of terrorism can be from both illegal *and* legitimate sources, terrorist financiers generally use similar laundering techniques to those used by criminals e.g. to disguise the beneficial ownership, origin, destination, and use of funds.

Legal persons and legal arrangements have well-known legitimate purposes in the commercial and financial world, but they are vulnerable to abuse for ML/TF/PF purposes.

Studies by FATF in 2006⁴ and 2010⁵, and by the World Bank in 2011⁶, have shown that the lack of adequate, accurate, and timely beneficial ownership information allows ML/TF/PF to flourish by disguising:

- the identity and involvement of known or suspected criminals;
- the true purpose of an account or property held by a legal person or legal arrangement; and/or
- the source or use of funds or property associated with a legal person or legal arrangement.

Beneficial ownership can be obscured through the use of:

- shell companies;
- complex ownership and control structures involving multiple layers of share ownership in the name of other legal persons;
- bearer shares and bearer warrants;
- use of legal persons as directors;
- formal nominee shareholders and directors, where the identity of the true shareholders and directors is not disclosed;
- informal nominee shareholders and directors, such as close associates and family members;
- trusts and other legal arrangements which allow separation of legal ownership and beneficial ownership of assets; and
- intermediaries and gatekeepers in forming legal persons and legal arrangements.

It is obvious that criminals have a motive to deliberately try to hide the true ownership and control of legal persons, legal arrangements, and the assets held by them. Therefore, it is crucial that a Firm is satisfied it knows who the true UBO(s) and controller(s) are in a legal person or legal arrangement, so that it can make appropriate decisions about the level of ML/TF/PF risk associated with the customer.

Sometimes, identifying and verifying an entity customer's UBO(s) can be difficult. This could be because the ownership structure is complex but legitimate, but equally the complexity could be an attempt to conceal the identity of the UBO(s) for criminal purposes.

Firms are therefore at the forefront of the fight against ML/TF/PF due to the products and services they provide, and they play a key role in deterring, preventing, detecting, and reporting suspected or known ML/TF/PF, and in protecting the international reputation of the State of Qatar.

⁴ <http://www.fatf-gafi.org/media/fatf/documents/reports/Misuse%20of%20Corporate%20Vehicles%20including%20Trusts%20and%20Company%20Services%20Providers.pdf>

⁵ <http://www.fatf-gafi.org/media/fatf/documents/reports/Money%20Laundering%20Using%20Trust%20and%20Company%20Service%20Providers..pdf>

⁶ <https://star.worldbank.org/star/sites/star/files/puppetmastersv1.pdf>

The operation of robust AML/CFT controls by Firms is therefore vital to their ability to protect their own corporate brands and reputations, and to their ability to fulfil their legal and regulatory obligations.

4. APPLICABLE LEGAL AND REGULATORY REQUIREMENTS IN QATAR

General requirements

Article 7 of the AML/CFT Law and Article 6 of the IRs require that Firms have in place appropriate policies, procedures, systems, and controls to deliver compliance with the applicable legal and regulatory requirements, including those in relation to beneficial ownership of legal persons and legal arrangements.

Article 11 of the AML/CFT Law and Article 13 of the IRs require Firms to take reasonable measures, on a risk-sensitive basis, to understand the customer's ownership and control structure, and to establish which natural persons ultimately own and/or control the customer. Examples of what might constitute reasonable measures are contained in Appendix 1 of the guidance paper on CDD. Both Articles also contain requirements relating to understanding the purpose and nature of the business relationship.

If Firms are unable to comply with the above requirements, or they identify that the customer's data is obviously inadequate or fictitious, both Articles further require that the business relationship should not be established or maintained, that no transactions should be carried out, and that a STR should be submitted to the QFIU.

Therefore, in broad terms, Firms are required to know their customers (KYC) to an appropriate level of detail relative to each customer's risk profile, consistent with the risk-based approach to AML/CFT compliance.

This includes CDD measures for the identification of, and where appropriate (see below) the verification of identify of, relevant parties to a business relationship, including UBOs. This also extends to scenarios where the customer is acting on behalf of another person, and where the customer is a legal person or legal arrangement.⁷

Firms should note that taking measures to identify all parties to the business relationship with the customer, including UBOs, is obligatory in all circumstances. The circumstances under which measures to verify the identity of natural persons are addressed below.

Additionally, Article 13 of the AML/CFT Law and Articles 22 and 23 of the IRs require firms to apply EDD measures to customers in specific circumstances.

Requirements relating to legal persons

Article 15 of the IRs requires that reasonable measures to verify of identity of BOs must be taken where a natural person directly or indirectly owns or controls at least 20% of the shares or voting rights in a legal person.

⁷ See "Legal Persons".

Indirect control would also include situations where natural persons may be acting in concert i.e. where two or more natural persons, who each hold less than 20% of shares or voting rights in a legal person, effectively act as one. This enables each of them to avoid measures to verify their identity, but nevertheless still exercise control over the legal person through acting in concert.

Where ownership or control by a natural person is below the 20% threshold, Firms may take a risk-based approach to verification of identity. This means that a Firm may choose to not carry out verification of identity measures in relation to natural persons below the specified 20% threshold, based on the assessed risk associated with the person and the business relationship.

However, in the case of a complex corporate structure, or where acting in concert is considered a possibility or is suspected (e.g. among family members or known associates), or where other high risk factors apply, best practice would be to set a lower threshold for the application of measures to verify the identity of natural persons, for example at 5% or 10%, depending on the assessed risks.

For the avoidance of doubt, any natural persons exercising a POA issued by any natural person in a corporate structure should be considered to present an increased risk, and therefore best practice would be to apply full CDD procedures (including verification of identity measures) to the POA, even where the percentage of shares or voting rights held in the legal person by the natural person who issued the Power of Attorney is less than 20%. In the event that the natural person who issued the Power of Attorney holds 20% or more of the shares or voting rights in the legal person, verification of identity measures must be applied to the natural person exercising the POA.

Firms need to be conscious that the requirement to verify the identity of BOs and controllers is not limited to the on-boarding stage in the business relationship. Verification of identity will need to be re-performed at other stages of the customer life cycle, such as where an official identification document has expired, where there is a change to the beneficial ownership, where there is suspicion of money laundering or terrorist financing, or where there are doubts about the veracity or adequacy of previously obtained customer identification data or documents.

Firms must also take care to monitor any changes in existing shareholdings, and be aware of the implications e.g. a natural person may hold less than 20% of the shares or voting rights in a legal person and therefore may not have been subject to measures to verify their identity, but the natural person may acquire shares or voting rights that take their shareholding over the 20% threshold, triggering the need to carry out verification of identity measures.

Article 16 of the IRs provides for simplified due diligence to be conducted in specific circumstances. In the case of a customer that is a legal person listed on a stock exchange that is subject to disclosure requirements that impose adequate transparency of beneficial ownership, or a majority-owned subsidiary of such a legal person, it is permitted to obtain relevant identification data from the customer, a public register, or another reliable source. It is not necessary to identify and verify the identity of any shareholder or beneficial owner of such a customer.

Requirements relating to legal arrangements

Article 17 of the IRs requires that Firms take reasonable measures to identify and verify the identity of BOs through verifying the identity of the settlor, the trustee, the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the legal arrangement, whether directly or indirectly, or the persons in equivalent or similar positions in other types of legal arrangements.

5. KEY CONCEPTS FOR GOOD COMPLIANCE

In many situations, a legal person or legal arrangement that is a customer will have a simple ownership structure, and its officers or representatives will be cooperative in the CDD process, making compliance with the AML/CFT requirements relatively straightforward to achieve. Whether this is the case or not, the following concepts apply in all business relationships with legal persons and legal arrangements.

Customer transparency and cooperation

Transparency is a non-negotiable necessity if a Firm is to fulfil its AML/CFT legal obligations and understand the risks that a customer poses.

Firms should be wary of any customer entity whose officers or representatives are reluctant or unwilling to be transparent, based on claims that confidentiality, legal restrictions, or cultural practices prevent the identification of parties and BOs in a structure, or of natural persons associated with a transaction.

Regardless of the potential or actual profit that may be generated, a business relationship should not be established or continued if a Firm is unable to fulfil its obligations, and should submit a STR (see Article 11 of the AML/CFT Law and Article 15 of the IRs).

A STR should also be considered where there are doubts about the motivations of a staff member who applies internal pressure to try to force a deviation from established procedures to reject or terminate the business relationship. In such a scenario, Firms must exercise particular care in relation to the tipping off provisions associated with the reporting of suspicions (see Article 22 of the AML/CFT Law and Article 12 of the IRs).

Understand the structure and its justification

In ownership structures with multiple layers, consider whether the multiple layers are in place solely to complicate or frustrate the process of identifying the true beneficial ownership, or whether the layers have a legitimate purpose. Also, consider whether a proposed (or existing) business relationship is beyond the Firm's risk tolerance based on its multiple layers and complexity.

Complex ownership structures generally are less common than simple structures, and need to be justified by the customer in all but exceptional cases (see below). Logically, if a Firm cannot understand a structure and the rationale for it, it also cannot understand and properly manage the ML/TF risk that the structure poses. In such

circumstances, Firms should not establish or continue the business relationship, and should submit a STR where the circumstances are considered suspicious.

A complex structure scenario where less detailed justification might reasonably be required could be where a well-known company listed on a stock exchange in a jurisdiction with equivalent AML/CFT standards⁸ approaches a Firm to establish a business relationship. There is likely to be extensive public domain information available on the company e.g. the relevant stock exchange website, trustworthy and credible financial websites or publications, the listed company's last prospectus or audited accounts, etc. This is clearly a different risk proposition compared to a little-known or unknown privately owned company that has little or no business track record, and about which there is little or no verifiable information in the public domain.

In the case of listed companies, irrespective of the comfort that may be gained from the scope and reliability of information available, Firms must remain vigilant for suspicious activity by the listed companies and their subsidiaries and branches. There have been numerous high profile international cases and scandals involving “blue chip” companies engaging in sometimes extensive and sophisticated money laundering schemes, particularly as a cover for management-approved bribery and corruption schemes involving PEPs and substantial business contracts.

Some Firms, as a matter of internal policy, do not allow reliance on 3rd parties in relation to CDD information and verification documentation. Where a Firm does allow 3rd party reliance, it must be on the understanding that such reliance introduces an additional element of risk that must be appropriately understood and mitigated, and that responsibility and liability remains with the Firm and not with the 3rd party. For more detail on 3rd party reliance, please see the guidance paper on CDD.

Be wary where the customer is reluctant to justify the structure, or where the explanation is either vague or confusing. One possible explanation the customer may offer is that the structure relates to (sometimes foreign) taxation matters. Remember that tax evasion is a criminal offence in many countries and is a predicate offence for money laundering, and also bear in mind that the justification offered could be a convenient (but untrue) cover story to divert attention away from a structure that is designed to disguise true beneficial ownership and control.

Also, understand the rationale for the existence in the structure of any legal persons incorporated in multiple different and/or high risk jurisdictions, especially those known for lax AML/CFT standards and minimal corporate disclosure requirements, such as those identified by FATF or other competent bodies as high risk, deficient, or non-cooperative. Firms may also find it beneficial to consider other resources such as the Financial Secrecy Index⁹, the Basel AML Index¹⁰, The Wolfsberg Group Country Risk

⁸ In some jurisdictions, competent regulatory bodies issue lists of other jurisdictions deemed to operate on equivalent (high) standards. Where there is no such official list, Firms may create their own internal equivalence list, or use a Group list where they are part of a wider group of companies, on the proviso that the list used is based on an identifiable and sound documented methodology that stands up to scrutiny and is defensible as reasonable, taking account of international and national findings on AML/CFT, and using other reputable sources of AML/CFT information.

⁹ <https://www.financialsecrecyindex.com/>

¹⁰ <https://index.baselgovernance.org/>

Frequently Asked Questions¹¹, or the Transparency International Corruption Perceptions Index.¹² This is not an exhaustive list of possible resources, and Firms must choose which, if any, of them to incorporate into their methodology for assessing jurisdictional risk, particularly in relation to beneficial ownership issues.

Further information on jurisdiction risk is available in the guidance paper on the Risk-Based Approach.

Identify all persons with ownership/control

A Firm must identify all natural persons who own or control a legal person or legal arrangement, or are a party to its activities or transactions. It is important for a Firm to understand who it is dealing with as a matter of good business practice, irrespective of the AML/CFT legal requirements and those relating to targeted financial sanctions compliance.

Be aware that in some jurisdictions there is no requirement to record true beneficial ownership or control of a legal person in the national commercial register, and therefore the names of natural persons recorded in such registers are likely to be those of straw men or nominees (see below).

Be vigilant for natural persons in the structure who are family members or associates, as although they may not individually reach the 20% ownership threshold that triggers the requirement to verify their identity, they may be acting in concert with family/associates in the ownership structure, and therefore cumulatively may trigger the requirement to verify identity (see complex structure example below).

Be vigilant for natural persons who may be acting as front men or straw men for shadow BOs or controllers i.e. the natural persons who are the true BOs or controllers who want to stay in the shadows to avoid identification.

As a front man or straw man is unlikely to admit to carrying out such a role, even where the Firm asks direct questions of that nature, conclusions can be drawn from the behaviours or level of understanding and knowledge shown by a natural person acting as an undisclosed front man or straw man.

For instance, it is reasonable to expect a true BO or controller to understand the structure, business, and activities of the legal person or legal arrangement, and to be able to provide explanations or context about them to a reasonable level of detail.

If the person, when questioned, evidently has little or no understanding of or interest in the structure, business, or activities of the legal person or legal arrangement, and cannot provide explanations or context without the need to delay and/or refer to another person, the Firm should consider such circumstances to be red flags which raise doubts about the claimed beneficial ownership and control. This in turn raises doubts about the bona fides of the proposed or existing business relationship. In such

¹¹ <https://www.wolfsberg-principles.com/sites/default/files/wb/Wolfsberg%20FC%20Country%20Risk%20FAQs%20Mar18.pdf>

¹² https://www.transparency.org/news/feature/corruption_perceptions_index_2017

circumstances, Firms should not establish or continue the business relationship and should submit a STR.

A further indicator is where natural persons, operating as TCSPs, act as professional nominees for others in a structure, generally as nominee directors and/or nominee company secretary, or where there are legal entities in the beneficial ownership structure that are clearly nominees e.g. XYZ Nominees Limited. However, not all nominee shareholder entities will have such obvious and helpful corporate names, and Firms will need to conduct effective due diligence in such cases. One common approach would be to conduct web searches on, for instance, the registered office address of the shareholding entities in the structure, as this may reveal that it is one of possibly hundreds of legal entities sharing the same registered office addresses, or an address that is clearly associated with a TCSP, sometimes (but not always) in an offshore financial centre (also sometimes referred to as a tax haven).

For an extensive list of possible red flags, please see Annex E – Indicators of Concealed Beneficial Ownership at:

<https://www.fatf-gafi.org/media/fatf/documents/reports/FATF-Egmont-Concealment-beneficial-ownership.pdf>

Use reliable sources of documentation for verification of identity

Having identified the natural persons holding true beneficial ownership and/or control, Firms must verify the identity of those natural persons in accordance with Article 14 of the IRs. Further information on verification of identity can be found in the guidance paper on CDD.¹³

Ongoing monitoring and periodic CDD refresh

Beneficial ownership or control of a legal person or legal arrangement may change over time. Beneficial ownership information and records must be kept up-to-date as part of a risk-based structured CDD refresh cycle, but must also be updated at the time of trigger events, such as a change to the structure, to the beneficial ownership or control of an entity, to the registered office address, to the trustees, etc. Further information is available on this in the guidance paper on CDD.

Just as would be the case at the on-boarding stage, where a Firm is unable to understand the rationale for any change, to obtain appropriate documentation, or to verify the identity of any new beneficial owners or other persons associated with a structure, the business relationship should not be continued and a STR should be submitted.

Use a risk-based approach

It is legitimate and appropriate to apply simplified or reduced due diligence where the ML/TF risk is properly assessed to be lower, and this is provided for in Article 26 of the IRs. Examples would be when the customer entity is a domestic regulated Firm or

¹³ Please see the guidance paper on CDD, including specific situations where it may be appropriate to use a risk-based approach.

foreign regulated Firm in a jurisdiction with equivalent AML/CFT standards, is listed on a stock exchange (or is a wholly or majority-owned subsidiary of the same) in a jurisdiction with equivalent AML/CFT standards, or is government-owned. However, simplified due diligence may only be applied where a risk assessment has been conducted which justifies it, where no other higher risk factors apply, and where there is no suspicion of ML/TF.¹⁴ Firms must have appropriate systems and controls in place to ensure that they upgrade the level of due diligence applied to a legal person or legal arrangement where circumstances change, meaning that it is no longer appropriate to apply simplified or reduced due diligence measures.

Equally, it is appropriate to apply enhanced due diligence in scenarios presenting higher ML/TF risk, based on the nature of the customer (including the involvement of PEPs), its business activities, the jurisdictions involved (jurisdiction of incorporation or establishment, jurisdictions where BOs or controllers are resident, jurisdictions where transactions are to be conducted), the products or services being provided to the customer, and the nature of the customer's transactions.¹⁵

Further information is available on this in the guidance papers on CDD and on the Risk-Based Approach.

Keep good records

Firms will already appreciate the importance of maintaining records of documentation required to evidence compliance with the AML/CFT requirements, such as those relating to a customer's identity or transactions and account opening documentation, and also the importance of maintaining good written records of internal decisions and the rationale for those decisions. However, in the case of legal persons or legal arrangements, irrespective of complexity, Firms should also keep accurate written records of information provided by the customer at the application stage and during the life of the business relationship, some of which may have been obtained verbally in face-to-face meetings.

Firms should also clearly record the outcome of the risk assessment done to gauge the risk the customer poses to the Firm, as well as the rationale for proceeding with the business relationship, including evidence of senior management approval where relevant.

The above records should be reviewed (and updated if needed) in response to trigger events, or as part of the scheduled periodic risk-based review cycle.

Train your staff

Timely and effective training of staff on beneficial ownership matters is an essential aspect of a Firm's defences against ML, TF and PF. Training should be given to all staff, although the detail and complexity of the training should be tailored relative to role types and the associated ML/TF risk, e.g. staff involved in the on-boarding of

¹⁴ See Article 15 of the AML/CFT Law and Article 26 of the IRs. Also see "Understand the structure and its justification" for further context.

¹⁵ See Articles 13 and 15 of the AML/CFT Law, and Articles 18, 22, 25, 28, and 31 of the IRs.

customers, or in periodic customer reviews or the update of beneficial ownership records, should receive more in-depth training than staff who have no customer contact, such as those in IT, for instance. It is generally considered that the most effective training incorporates case studies, should address the nature of the Firm's systems and controls in relation to legal persons and legal arrangements, and should include analysis of red flags and the obligation to report suspicions of ML/TF/PF internally.

Continue to develop controls

Firms should periodically review the nature of the controls in place, and their effectiveness. The findings and lessons learned from assurance reviews, internal or external audits, internal and external STR cases, self-assessment exercises, internal compliance breach reports, or regulatory inspections, should be incorporated into revised procedures, processes, and training.

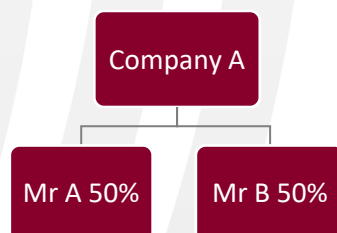
6. PRACTICAL EXAMPLES: LEGAL PERSONS

In each example, Company A is the customer.

Regardless of the simplicity or complexity of a beneficial ownership structure, the principle applies that CDD efforts must continue until the natural person(s) holding beneficial ownership or control is identified, and where relevant his/her identity is verified.

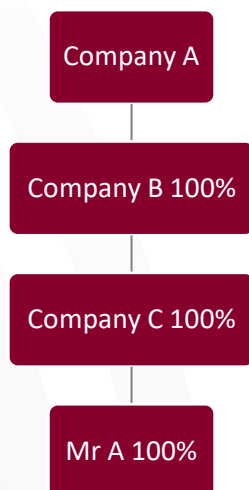
In all cases, where a Firm cannot satisfactorily establish the identity of the natural person(s) holding true beneficial ownership or control, the business relationship must not be established or continued, and a STR should be submitted.

Direct ownership



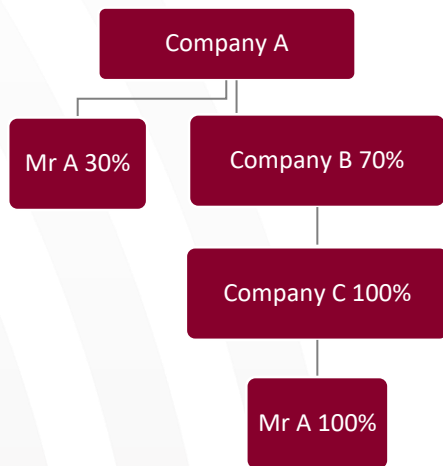
Establishing beneficial ownership is a straightforward process here, on the proviso that neither Mr A nor Mr B is acting as a straw man for shadow BOs or controllers. The Firm would need to verify the identity of both Mr A and Mr B, in addition to other required CDD steps.

Indirect ownership

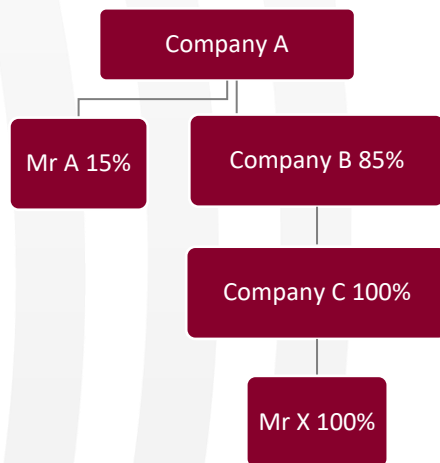


Establishing beneficial ownership here requires looking beyond Companies B and C. On the proviso that Mr A is not acting as a straw man for shadow BOs or controllers, the Firm would need to verify the identity of Mr A, in addition to other required CDD steps.

Direct and indirect ownership

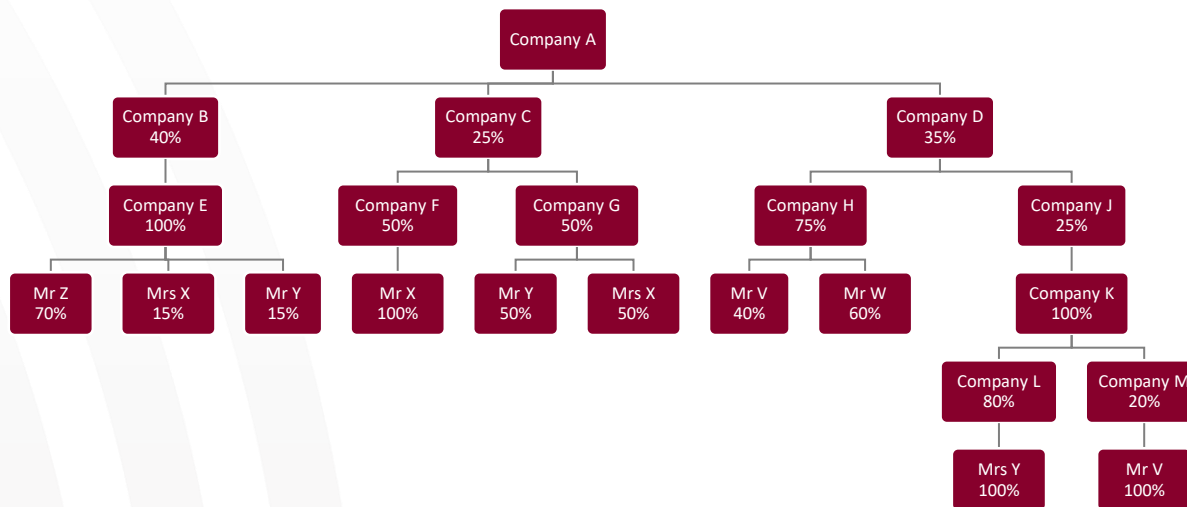


While Mr A is the 100% BO of Company A, on the proviso that he is not acting as a straw man for shadow BOs or controllers, he does so through a combination of direct and indirect ownership. The Firm would need to verify the identity of Mr A, in addition to other required CDD steps.



Mr A is a direct owner of 15%, while Mr X owns 85% indirectly through Companies B and C, on the proviso that neither is acting as a straw man for shadow BOs or controllers. The Firm would need to verify the identity of Mr X in addition to other required CDD steps, but may take a risk-based approach to verifying the identity of Mr A, considering other risk factors such as whether he is a PEP, his country of citizenship or residence, and whether there is any adverse media about him.

Complex ownership



This is clearly a much more complex and fragmented ownership structure, and it poses a logistical, administrative, and compliance challenge to understand who owns and controls Company A, the nature of CDD required for each legal person, and which natural persons, if any, require their identity to be verified in addition to other required CDD steps.

The ownership of Company A resolves as follows:

Natural Person	Ownership %	How?
Mr Z	28	Through Companies E and B
Mrs X	$6 + 6.25 = 12.25$	Through Companies E and B, and G and C
Mr Y	$6 + 6.25 = 12.25$	Through Companies E and B, and G and C
Mr X	12.5	Through Companies F and C
Mr V	$10.5 + 1.75 = 12.25$	Through Companies H and D, and M, K, J, and D
Mr W	15.75	Through Companies H and D
Mrs Y	7	Through Companies L, K, J, and D

It is notable that the structure is complicated by the fact that Mrs X, Mr Y, and Mr V exercise beneficial ownership of Company A through multiple routes. This emphasises the importance of identifying all natural persons in a corporate structure, even if verification of their identity may not always be required under a risk-based approach.

Based on the verification of identity threshold of 20% for beneficial ownership, ostensibly only Mr Z would require his identity to be verified.

However, management of risk should not be based on the blunt use of numerical thresholds, but rather should be based on an analysis and understanding of the circumstances and risks of each case.

Although individually none of the other shareholders reaches the 20% threshold for verification of identity to be required, the following are relevant considerations:

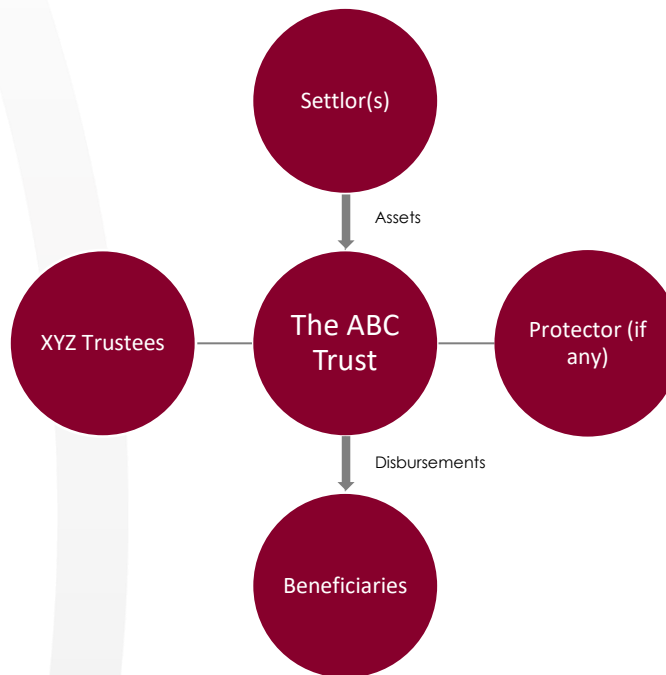
- The nature of the relationship between Mrs X and Mr X (possibly spousal or familial?);
- The nature of the relationship between Mrs Y and Mr Y (possibly spousal or familial?);
- The nature of the possible relationship between Mrs X and Mr Y, who are common owners of multiple companies;
- The possibility that each pairing above may be acting in concert, or one person acting as a front man, straw man, or benami for the other, with the intention that the nature of their relationship might not be recognised, and the need for verification of identity avoided as a result;
- Whether any of the natural persons in the structure might be related, especially where their family names are not immediately identifiable as being connected. This is an especially difficult issue in societies where members of the same family can quite legitimately have differently family names, or where family names have changed due to, for instance, marriage;
- Whether the reason for the complex structure has been explained, and is considered plausible and reasonable by the Firm;
- Whether there are any bearer shares involved;
- Whether any individual has issued a Power of Attorney to a third party;
- Whether any of the natural persons is a PEP (which includes being a relative or a close associate of a PEP);
- Each natural person's country of citizenship and residence, and whether those jurisdictions present a higher risk for any reason;
- Whether any of the natural persons holds dual citizenship, with one jurisdiction representing higher risk than the other, but only the lower risk citizenship is initially disclosed. This is a known typology in both money laundering and targeted financial sanctions evasion, and may lead to the Firm allocating a lower risk rating than is appropriate;
- The nature of the business activities of Company A, and the nature of its intended transactions;
- The jurisdiction of incorporation of each of the companies in the structure, and whether those jurisdictions present a higher risk for any reason;
- The source of funds for each legal person, and the source of wealth of each natural person; and
- The existence of any adverse media on any of the legal persons or natural persons in the structure, including connections to persons subject to local or international targeted financial sanctions requirements, or to PEPs.

This list of considerations is not necessarily exhaustive, and Firms need to apply expertise and judgment when considering the different circumstances of each case.

The extent to which a Firm would carry out verification of identity on the natural persons in the structure (beyond Mr Z, where verification of identity is an obligation) will depend on the answers to each of the above points, and to any other points that a Firm might consider relevant as per their AML/CFT policies and procedures.

Best practice would be to set a lower threshold for verification of identity, for example at 5% or 10%, for complex structures or cases where other high risk factors apply. A Firm may choose not to establish or continue a business relationship in scenarios where the complexity of a structure or the risks associated with a structure place the customer entity outside of its risk appetite, or where a Firm considers that it does not have the capacity to appropriately manage the increased risk, or where the costs of managing the risk make the relationship commercially unviable.

7. PRACTICAL EXAMPLE – LEGAL ARRANGEMENTS



It should be noted that different legal systems in different jurisdictions permit different possibilities e.g. in some jurisdictions a settlor can also be a beneficiary or even a trustee, but in other jurisdictions he may not. Some legal arrangements may be relatively straightforward, while others may be considerably more complex.

Firms considering the establishment a business relationship with legal arrangements such as trusts must therefore ensure that they fully understand the nature of the risks associated with each type of trust arrangement and the applicable rules in the jurisdiction in which the legal arrangement was established, and have the knowledge and expertise necessary to appropriately manage the risks associated with each.

In the example, the ABC Trust is established on the instruction of the settlor, who relinquishes beneficial ownership of assets or property by settling them into the ABC Trust, which is established and administered by XYZ Trustees.

XYZ Trustees are now the legal owner and controllers of the assets of the ABC Trust, and are required to act in accordance with the trust deed and in the best interests of the beneficiaries, although under their fiduciary duties trustees may exercise discretion about what constitutes the best interests of beneficiaries. For example, the trustees may consider it appropriate to make a disbursement of trust property to pay

education fees for a young beneficiary, but may decline to make a disbursement to the same young beneficiary to buy an exotic sports car.

Beneficiaries may be named at outset, or at a later date, or may be added or removed. Beneficiaries may be natural persons, legal persons, or legal arrangements (such as an incorporated charity or charitable trust, for example), or designated classes¹⁶ of persons such as children or grandchildren. Beneficiaries also may not yet be born e.g. a trust may make provision for any future children or grandchildren.

A wide variety of assets may be settled into the ABC Trust, such as cash, investments, real estate, shares in legal persons, works of art, or other high value goods. This is not an exhaustive list of possible trust property.

On behalf of the ABC Trust, the trustees may establish legal persons or acquire ownership of legal persons to be beneficially owned by the ABC Trust. In such cases, the assets of the legal person by extension become the assets of the ABC Trust.

In the example, a Firm proposing to establish a business relationship with the ABC Trust would need to perform CDD on (including verifying the identity of) the settlors, trustees, the protector (if any), the beneficiaries (including every beneficiary that falls within a designated class), and any natural person exercising ultimate ownership, ultimate control or ultimate effective control over the trust (including through a chain of control or ownership, or through a Power of Attorney).

The variety of parties involved, the fact that a trust may contain legal persons within its assets, the variable nature of and different types of permissible uses of trusts, plus the ostensible separation of ownership of assets from the settlor into the trust while potentially still affording him control over the assets, are factors which make legal arrangements such as trusts attractive to criminals. As a result, they are generally considered high risk for ML/TF, and Firms must have appropriate systems and controls in place to manage the risks.

¹⁶ A "designated class" refers to the practice of a settlor using generic descriptors for beneficiaries, rather than their specific names. For instance, "the children of settlor X" would be a designated class, whereas "daughter A and son A of settlor X" would be specifically-named beneficiaries. The use of only specifically named beneficiaries could have the unintended effect of disinheriting, for instance, daughter B and son B of settlor X, who are born after the date of establishment of the legal arrangement. The concept of designated classes includes persons not yet born who qualify to be part of the designated class at birth.

8. RESOURCES

The hyperlinks below are provided for convenience, and may be subject to change without notice by the relevant website owners.

European Union

Directive (EU) 2018/843

June 2018

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L0843&from=EN>

Financial Action Task Force

Beneficial Ownership

September 2016

<http://www.fatf-gafi.org/media/fatf/documents/reports/G20-Beneficial-Ownership-Sept-2016.pdf>

Financial Action Task Force

Best Practices on Beneficial Ownership for Legal Persons

October 2019

<https://www.fatf-gafi.org/media/fatf/documents/Best-Practices-Beneficial-Ownership-Legal-Persons.pdf>

Financial Action Task Force

Concealment of Beneficial Ownership

July 2018

<https://www.fatf-gafi.org/media/fatf/documents/reports/FATF-Egmont-Concealment-beneficial-ownership.pdf>

Financial Action Task Force

Money Laundering Using Trust and Company Service Providers

October 2010

<http://www.fatf-gafi.org/media/fatf/documents/reports/Money%20Laundering%20Using%20Trust%20and%20Company%20Service%20Providers..pdf>

Financial Action Task Force

The 40 Recommendations

June 2019

<http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>

Financial Action Task Force

The Misuse of Corporate Vehicles, Including Trust and Company Service Providers
October 2006

<http://www.fatf-gafi.org/media/fatf/documents/reports/Misuse%20of%20Corporate%20Vehicles%20including%20Trusts%20and%20Company%20Services%20Providers.pdf>

Financial Action Task Force

Transparency and Beneficial Ownership
October 2014

<http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf>

Financial Conduct Authority

Financial Crime Guide
December 2019

https://www.handbook.fca.org.uk/handbook/document/FC1_FCA_20150427.pdf

Joint Committee of the European Supervisory Authorities

The Risk Factors Guidelines
June 2017

<https://www.eba.europa.eu/documents/10180/1890686/Final+Guidelines+on+Risk+Factors+%28JC+2017+37%29.pdf>

Monetary Authority of Singapore

Effective Practices to Detect and Mitigate the Risk from Misuse of Legal Persons
June 2019

https://www.mas.gov.sg/-/media/MAS/Regulations-and-Financial-Stability/Regulatory-and-Supervisory-Framework/Anti_Money-Laundering_Countering-the-Financing-of-Terrorism/Effective-Practices-to-Detect-and-Mitigate-the-Risk-from-Misuse-of-Legal-Persons-June-2019.pdf

Monetary Authority of Singapore

Guidelines to MAS Notice 626 on Prevention of Money Laundering and Countering the Financing of Terrorism

April 2015

http://www.mas.gov.sg/~media/MAS/Regulations%20and%20Financial%20Stability/Regulatory%20and%20Supervisory%20Framework/Anti_Money%20Laundering_Countering%20the%20Financing%20of%20Terrorism/Guidelines%20to%20MAS%20Notice%20626%20%20April%202015.pdf

Organisation for Economic Cooperation and Development

A Beneficial Ownership Implementation Tool

March 2019

<https://www.oecd.org/tax/transparency/beneficial-ownership-toolkit.pdf>

Reserve Bank of New Zealand

Beneficial Ownership Guideline

December 2012

<http://www.rbnz.govt.nz/-/media/ReserveBank/Files/regulation-and-supervision/anti-money-laundering/guidance-and-publications/5080773.pdf?la=en>

Tax Justice Network

The Financial Secrecy Index

January 2018 and annually

<https://www.financialsecrecyindex.com/>

The Association of Banks in Singapore

Legal Persons – Misuse Typologies and Best Practices

May 2018

<https://abs.org.sg/docs/library/legal-persons-misuse-typologies-and-best-practice.pdf>

Transparency International

Corruption Perceptions Index

Published annually in January

<https://www.transparency.org/cpi2018>

Transparency International

Who is behind the wheel? Fixing the global standards on company ownership

October 2019

<https://www.transparency.org/whatwedo/publication/who-is-behind-the-wheel-fixing-the-global-standards-on-company-ownership>

UK Government Department for Business, Energy and Industrial Strategy

Discussion Paper on Beneficial Ownership of Corporate and Other Legal Entities

November 2016

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/565095/beis-16-38-4th-money-laundering-directive-transposition-discussion-paper.pdf

Wolfsberg Group

Beneficial Ownership FAQs

May 2012

<http://www.wolfsberg-principles.com/pdf/faq/Wolfsberg-FAQs-on-Beneficial-Ownership-May-2012.pdf>

Wolfsberg Group

Country Risk Frequently Asked Questions (FAQs)

March 2018

<https://www.wolfsberg-principles.com/sites/default/files/wb/Wolfsberg%20FC%20Country%20Risk%20FAQs%20Mar18.pdf>

World Bank

The Puppet Masters

October 2011

<https://star.worldbank.org/star/sites/star/files/puppetmastersv1.pdf>

Other relevant resources

The Financial Secrecy Index:

<https://www.financialsecrecyindex.com/>

FinCEN's FAQs on the U.S. CDD Rule:

https://www.fincen.gov/sites/default/files/2018-04/FinCEN_Guidance_CDD_FAQ_FINAL_508_2.pdf