MONEY LAUNDERING & THE FINANCING OF TERRORISM

GUIDELINES FOR FINANCIAL INSTITUTIONS

Amendment

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NOTICE

To: Financial Institutions under the Money Laundering (Prevention) Act

TAKE NOTICE: The Money Laundering & Financing of Terrorism Guidelines for Financial Institutions are hereby amended pursuant to the powers of the Supervisory Authority under sections 11(1)(c) of the Money Laundering (Prevention) Act 1996 [as amended by section 7 of the Money Laundering (Prevention) Act 2018].[1]

Amendment

- Section "2.3 Transparency of Beneficial Ownership" is repealed and replaced.

Changes to note:

- The new version of Section 2.3 focuses on clarifying the following:
  (a) the 3-Stage test as a cascading series of tests to identify beneficial owners of Legal Persons
  (b) identification of the senior management official as the final stage of the cascading test
  (c) clarification of the difference between Legal Persons and Arrangements
  (d) deletion of section "D.1 Relevant Legal Entities and Arrangements"
  (e) Renumbering of the sections.

4 March 2025

Lt. Col. Edward Croft
Director of the ONDCP

[1] Financial institutions have 14 days from the date of publication in which to raise with the Supervisory Authority in writing any concerns about the amendments or any other issue prompted by this guidance that relates to their ability to effectively follow the guidance.

AMENDMENT

The Money Laundering & Financing of Terrorism Guidelines for Financial Institutions (herein "the MLFTG") are hereby amended as follows:

1. Section 2.3 TRANSPARENCY OF BENEFICIAL OWNERSHIP is repealed and substituted as set out below.

2.3 TRANSPARENCY OF BENEFICIAL OWNERSHIP

2.3.1. OVERVIEW These Guidelines provide guidance on the identification and verification of beneficial ownership of legal persons and legal arrangements. They point out the need to use a multi-pronged approach to identifying beneficial owners, and employing the three pillars of information collection, that is, to be adequate, accurate and up-to-date. They apply to determining beneficial ownership of all legal persons and legal arrangements both those created domestically and those created abroad.

The guidance and recommendations provided in this section apply to all financial institutions and DNFBPs. Insofar as this might be useful for entities other than financial institutions and DNFBPs, it should only be used as a minimum guide for how to identify beneficial owners. Separate guidance would be needed for entities outside this scope.

(1) **Definition of Beneficial Owner**

In these Guidelines, unless the context otherwise requires:

"beneficial owner" refers to the natural person or natural persons who ultimately own or control a customer, legal person or legal arrangement; or the natural person on whose behalf a transaction is being conducted; or the natural person or persons who exercise ultimate effective control over a legal person or arrangement. The term "beneficial ownership" shall carry like meaning in the particular circumstances.

Only a natural person can be an ultimate beneficial owner, and more than one natural person can be ultimate beneficial owners of a given legal person or arrangement.

The terms **"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*. The concept of control refers to the ability to take relevant decisions within a legal person or arrangement and to impose those decisions.

In the context of beneficial ownership, the term **"legal person"** refers to any entities other than natural persons that can establish a permanent customer relationship with a financial institution or otherwise own property, such as companies, other bodies corporate, partnerships, or associations and other similar entities. The term **"legal arrangement"** refers to express trusts and other similar arrangements.

"senior managing official" refers to the natural person(s) who exercises executive control over the daily or regular affairs of the legal person through a senior management position, such as a chief executive officer (CEO), chief financial officer (CFO), managing or executive director, or president; or the natural person(s) who has significant authority over a legal person's financial relationships (including with financial institutions that hold accounts on behalf of a legal person) and the ongoing financial affairs of the legal person.

(2) Key considerations: Particular attention should be paid to homing in on information that reflects legally or by other means the person or persons exercising **ultimate control** of a legal person or legal arrangement as this leads to an understanding of who is an ultimate beneficial owner. The application of any definition of beneficial owner should take into consideration the various permutations by which the actual person in control is identified.

The following permutations, if not explicit in a definition are implicit and should be considered if the actual beneficial owner, that is the person exercising control, is to be determined:

(a) Ownership

(i) **directly or indirectly:** Ownership must be assessed to determine if it is held directly or indirectly; control must be assessed to determine if it is exercised directly or indirectly. It is counterintuitive and ineffectual to simply record A as a legal owner when A acts on the instructions of B either because he holds ownership rights on behalf of B or has agreed to exercise those rights on B's instructions, thereby ceding to B actual control.

(ii) **individually or jointly:** Ownership interest must be assessed to determine if it is held by an individual or by individuals acting jointly by agreement or

arrangement; the same goes for control of ownership. It is counterintuitive and ineffectual to simply record several individuals as each having 5% of shares or interest when these persons exercise their shareholder or interest voting rights jointly by agreement or arrangement, so that the effective exercise of shares is 5% x the number of persons acting jointly. Otherwise, the understanding of how an entity is controlled is not reflective of the reality of the situation and therefore misassigns and inaccurately records ultimate control.

(b) Effective control

(i) **directly or indirectly:** Control of a legal person or legal arrangement can be exercised through means other than ownership of shares or legal interest. For example, a legal person A may be a substantial debtor to an individual B who has secured the debt through a right to shares should the debt not be paid off or has a right to call for the immediate payment of the debt; or A the owner on record could be acting in accordance with the wishes of B, an influential relative whose name appears nowhere in the chain of ownership. Nonetheless B should be determined to exercise effective control of the legal person or arrangement, directly or indirectly, making him the beneficial owner. It is counterintuitive and ineffectual to simply record A as in effective control.

(ii) **individually or jointly:** Even where it is determined that an individual exercises effective control by other means of a legal person or arrangement, it is still necessary to determine if in addition there are several such individuals who act jointly by agreement or arrangement and thereby are capable of asserting a larger measure of effective control over a legal person or arrangement.

(3) Beneficial ownership transparency refers to the legal requirement to establish the individual or individuals who are the ultimate beneficial owners or controllers of legal persons and arrangements and is **not** restricted to persons who are legal owners.

Financial institutions and DNFBPs are required to apply such Customer Due Diligence procedures as are necessary to enable them to discover in addition to overt owners, all underlying (including cloaked) owners and controllers of legal persons and arrangements and to remove the anonymity of any natural person in the ownership structure or natural person actually controlling a legal person or arrangement even though that individual may neither be a legal owner nor appear in the ownership structure.

The insistence on transparency is made necessary by the potential for persons with intent to engage in illegal financial activity to distance themselves from their illegal activity by arranging for the ownership of assets used in illegal transactions to be attributed to someone or some entity other than themselves; these may be companies, legal persons, legal arrangements, trust-like entities or natural persons, thereby separating or distancing the ultimate beneficial owners or the actual controllers from the illegal transactions in which they wish to engage; or to evade or avoid suspicion from innocuous-seeming accounts and

relationships by obscuring their connection with the individuals whose criminal antecedents would raise red flags.

A systematic approach should be taken for reviewing or peeling back layers of ownership of legal persons or arrangement until a natural person or persons exercising **actual control** are identified. Multiple sources of information should be used as necessary to achieve this end. Successive stages of analysis are useful starting with review of shareholding or membership records, as well as formation and governance documents, through which the person/s with controlling legal ownership interest, if any, can be identified. If doubt remains as to whether control of the legal person is actually exerted by the natural person or group of persons who hold a controlling ownership interest, then additional steps should be taken to determine the identity of the natural person(s) who exercise actual control over the legal person by other means, evidenced by them making and imposing decisions upon or within the legal person. Various operational records, minutes of Board meetings and other documentation and open source information may be required. If no such natural person exercising control through ownership or by other means can be identified, then further measures should be taken to identify, from the records, the natural person holding the position of senior managing official.

2.3.2 Identifying the Ultimate Beneficial Owner

(1) The ultimate beneficial owner is always a natural person or natural persons acting jointly by agreement or arrangement, whether formal or informal, who exercises legal rights or effective control over a legal person or legal arrangement.

(2) Ownership or controlling interest includes holding:

- shares
- interest
- voting rights
- right to appoint or remove any member of a board of directors or governing council

(3) Effective control includes formal or informal ability:

- to effect the appointment or removal of any member of a board of director or governing council
- to exercise significant influence or control over decisions relating to the running or activities of a legal person or legal arrangement.

(3) Where:

- **unable to identify a natural person(s) who owns a controlling interest,** or
- **there is doubt about whether a natural person with a controlling ownership interest in a legal person is the ultimate beneficial owner,** or
- **no natural person exerts control through ownership interests**

then the identity of the ultimate beneficial owner should next be done by determining:

- **the natural person or persons (if any) exercising control of the legal person or legal arrangement *through other means*.**

(4) Where no natural person is identified as exercising control *through other means* then

- **the natural person who holds the position of senior managing official should be identified and recorded as holding this position.**

(5) Consideration should be given to various ways of exercising control over a legal person. This includes but is not limited to:

- Voting rights
- Economic rights
- Convertible stock
- Outstanding debt that is convertible into voting equity.

Consideration should also be given to ways not grounded in law for achieving similar outcomes.

(6) The identity of ultimate beneficial owners should be verified.

(a) Need for a Multi-Pronged Approach to Beneficial Ownership

(i) To address the situations outlined above, determining beneficial owners in high-risk complex ownership structures is best done through a multi-pronged approach, using several sources of information. The different sources supplement each other, help mitigate accuracy problems and lead ultimately to better quality information.

(ii) It can include information provided by the legal person or arrangement itself and information held by or on behalf of public authorities.

(b) The Three Pillars of Information Collecting

There are three equally important considerations that must be made when collecting information on beneficial ownership (often referred to as "the three pillars"), as follows:

Ensure that beneficial ownership information is:

- **adequate,**
- **accurate and**
- **up-to-date**

Up-to-date collection of information should be consistent with the requirements for ongoing due diligence as defined under section 2 of the definition of Customer Due Diligence in the Money Laundering (Prevention) Regulations 2007[2]. Also check using triggers/circumstances set out in those regulations.

[2] **"customer due diligence"** includes: *(a)* undertaking the following measures— (i) identifying and verifying the identity of the customer; (ii) identifying and verifying the identity of the beneficial owner; (iii) obtaining information on the purpose and intended nature of a business relationship; and (iv) establishing, as appropriate, the source of funds and source of wealth of a customer or beneficial owner. (v) applying (i) and (iv) above to existing customers on the basis of materiality and risk; also at such appropriate times taking into account whether and when these measures had previously been applied to the customer and the adequacy of the data collected. *(b)*

None of these pillars should be prioritized at the expense of the other.

To effectively implement the multi-pronged approach, it is important to ensure that the responsibilities of persons executing the functions are clearly set out.

2.3.2.1 Beneficial ownership of LEGAL PERSONS by Shareholding/Voting Rights[3]

Holding shares in a legal person means holding shares or voting rights in the entity or holding a legal interest in the entity. It also represents voting rights in relation to running of a Legal Person. For example, holding 15% percent of the shares in a legal person means holding a right to 15% percent of the capital or, as the case may be, profits of that legal person. It also entitles the holder to have his vote tallied as 15% of the total of votes that may be cast in shareholder decisions on the running of the legal person.

Voting rights — Voting rights refers to the rights conferred on shareholders in respect of their shares or, in the case of a legal person or legal arrangement not having a share capital, on members or officers, to vote at general meetings of the legal person or legal arrangement on all or substantially all matters.

Differential voting rights — Different classes of shares may give certain classes of shareholders more control over a legal person by conferring more voting rights even though they have fewer shares. For this reason, it is important to check whether the shareholding can result in the shareholder having larger voting rights than ascertained by the number of shares of the class held.

In absence of general meetings — In relation to a legal person or legal arrangement that does not have general meetings at which matters are decided by the exercise of voting rights of shareholders—(a) exercising voting rights means to exercise rights in relation to a person or persons that are equivalent to those of a person entitled to exercise voting rights in a company; and (b) exercising a certain percent or more of the voting rights in the legal person or legal arrangement means to exercise the right under the constitutional document of the legal person or legal arrangement to effect changes to the overall policy of the legal person or legal arrangement.

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conducting ongoing monitoring of a business relationship and scrutiny of transactions throughout the course of the relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, the business and risk profile, including where necessary, the customer's source of funds and source of wealth, and keeping the information obtained up to date and relevant, especially for high risk customers and PEP. The measures in *(a)* and *(b)* above relate to the following circumstances— *(a)* when establishing business relationships, *(b)* carrying out one-off transactions at or above the applicable threshold, *(c)* carrying out wire transfers *(d)* when there is a suspicion of money laundering or terrorist financing, or *(e)* when doubts arise about the veracity or adequacy of previously obtained customer identification data. — (See regulation 2 of the MLPR)

[3] The Table at 2.3.4 below under Legal Persons sets out the cascading 3-Stage tests for identifying beneficial ownership of Legal Persons. The Stage 1 Test is applicable to determining ownership/control where a natural person or persons are the beneficial owners by virtue of exercising control through their ownership interests.

(1) NOMINEES

(a) True ownership of a legal person can easily be shrouded by nominee shareholders, that is, persons who act on behalf of others, allowing the others to indirectly own or control a legal person. It is therefore important to know if shareholders are nominees and who they act for in exercising their voting rights.

Therefore, a person who legally owns a Legal Person should be required to declare if the person owns the Legal Person in his/her own right or in the capacity of a nominee for someone else (a nominator). The nominee should be required to identify who he acts for. A separate test should be applied to determine if that person, the nominator, is indeed a beneficial owner or is himself the nominee of someone else and so forth until the ultimate beneficial owner is uncovered.

Nominees can be explained as follows:

- **"Nominee"** is an individual or legal person who is officially the legal owner but who is an agent of and is instructed by another individual or legal person ("the nominator") to act on behalf of the nominator in a certain capacity in a company/legal person. The nominator has a more substantive claim to control and/or ownership of the company through the nominee. The nominator may or may not be the beneficial owner of the legal interests in the legal person.
- **"Nominator"** is an individual (or group of individuals) or legal person that issues instructions (directly or indirectly) to a nominee to act on their behalf in the capacity of a director or a shareholder.

Nominators may sometimes be referred to as: **"Principle"**, **"shadow director"** or **"silent partner"**.

- **"Nominee Director"** is an individual or legal entity that routinely exercises the functions of a director in the company on behalf of and subject to the direct or indirect instructions of the nominator. A Nominee Director is never the beneficial owner of a legal person.

Nominee directors may be: a legal professional; a corporate service provider; or any other person; a resident director or local director may be a nominee.

- "**Nominee Shareholder"** exercises the associated voting rights according to the instructions of the nominator and/or receives dividends on behalf of the nominator. A nominee shareholder is never the beneficial owner of a legal person based on the shares he holds as a nominee.

Nominee shareholders may be a licensed service provider; professional party representative; or any other person.

(b) It is not unlawful to be or use nominees and many types of nominee arrangements have legitimate business purposes and pose minimal or no ML of FT risks. However, nominees can pose an obstacle to transparency, and for that reason may be deliberately used to facilitate the misuse of legal persons for money laundering

and other crimes.

(c) **In other jurisdictions:** The relationship between the Nominator and the Nominee may take various forms and have a variety of different terminology which you will need to make yourself aware of.

(2) Nominee Arrangements

(a) **Nominees may exist in law,** often the product of formal legal arrangements, such as with a Trust and Company Service Provider, notary, lawyer or tax advisor. Their behaviour may make them nominees in the eyes of the law.

(b) **Nominees may exist informally**, without any form of written (legal) contract. For example, based on loose forms of control where a family member, friend, employee or associate stands in for the **nominator**, who can be the beneficial owner.

(c) Take note that such nominees may exist in jurisdictions that do not have legal provisions for them.

(3) Types of Legal Persons (non-exhaustive list)

Below is a non-exhaustive list of Legal Persons. Not all of them may exist in this jurisdiction, but it is still necessary to be able to identify their beneficial ownership where they are created abroad and need to be taken into consideration.

(a) Limited Liability Companies

(b) Corporations

(c) Non-Profit Companies

(d) Partnerships

(e) Foundations

(f) Cell Companies[4]

You should obtain documents that provide clarity on these entities.

2.3.2.2 Beneficial ownership of LEGAL PERSONS through Control by Other Means[5]

In considering beneficial ownership through control by other means, the following should be considered:

- **Power to appoint the majority of senior management** — Control over a legal

[4] A cell company is a corporate body that can create one or more cells with distinct assets and liabilities that are distinct from its own assets and liabilities and those of any other cell. These cells can be used to carry out separate and distinct businesses. The cells are not subsidiaries of their cell company. A cell may only change its constitution by way of a special resolution of its members and of the cell company.

[5] The Table at 2.3.4 below under Legal Persons (companies) sets out the cascading 3-Stage test for identifying beneficial ownership. The Stage 2 Test is applicable to determining ownership/control by means other than legal ownership.

person may be exercised if an individual has the power to appoint the majority of senior management. For avoidance of doubt, the reference of right to appoint or remove majority of board of directors of a legal person in these guidelines refers to the right to appoint or remove directors holding majority of the voting rights at the meetings of the board on all or substantially all matters

- **Control through debt instruments** — Control could be exercised through debt instruments or other financial arrangements; for example, where a lender or creditor can control a legal person via the provisions of the lending agreement. Rights attached to shares held by way of security provided by a person shall be treated, as held by that person —(a) where apart from the right to exercise them for the purpose of preserving the value of the security, or of realizing it, the rights are exercisable in accordance with that person's instructions only; and (b) where the shares are held in connection with the granting of loans as part of normal business activities and apart from the right to exercise them for the purpose of preserving the value of the security, or of realizing it, the rights are exercisable only in that person's interest only.

- **Control through position held within a legal person** — Natural persons who exercise substantial control over a legal person and are responsible for strategic decisions that fundamentally effect the business practices or general direction of the legal person may be considered a beneficial owner under appropriate or unavoidable circumstances.

  Where a person controls a right, the right shall be treated as held by that person and not by the person who in law holds the right, unless. Example: Person A controls a right if, by virtue of any arrangement between Person A and Person B (or other persons), the right is exercisable only - (a) by Person A; (b) in accordance with Person A's directions or instructions; or (c) with Person A's consent or concurrence.

  The following are non-exhaustive examples of possible other means of control that may exist and thus individuals exercising such control should be identified and verified:

  - if there is another legal person(s) (Legal Person B) that holds or has controlling legal ownership in the company A, then an individual(s) who exercises significant influence/control over legal person B and consequently over company A, may be the beneficial owner of company A.

  - if there is an individual who exercises or who has legal rights to exercise significant influence/control over a group of individuals or legal persons who together meet or exceed the threshold ownership/voting criteria, and through this means exerts control over the company, that controlling individual is the beneficial owner of the company.

- **Control through informal means** — Control over a legal person may be exercised through informal means such as through close personal connections to relatives or associates.

When an individual is using, enjoying, or benefiting from the assets owned by a legal person, that might call for further investigation if such an individual is in the position to exercise control over the legal person.

Example: look at persons who have made a loan to a legal person. Consider for example, details buried in a loan agreement, where companies or natural persons have loaned the legal person money to be repaid on a certain date, which is secured, for example, by a certain threshold of or majority shares in the company. Check to see if the repayment date has passed and if there is proof of repayment; if there is no proof of repayment, then the Loan Agreement may be the source of information to suggest that the lender may be the real and therefore the beneficial owner.

Example: Look for natural persons who take advantage of capital or assets of the legal person, as well as those who really exert effective control over it (whether or not they occupy formal positions within the legal person), rather than just the natural or legal persons who are legally on paper entitled to do so.

2.3.2.3 Where Beneficial ownership in LEGAL PERSONS cannot be identified[6]

Control through senior managing official — Where no natural person is identified with a controlling ownership interest or exercising control by other means (see 2.3.2.1 and 2.3.2.2 above) then the natural person who holds the position of senior managing official should be identified. See definition of senior managing official.

2.3.2.4 Beneficial ownership of Foundations

Foundations[7] — These straddle a grey area in that foundations are listed as legal persons but, in their operations, they function similarly to trusts.

Foundations are legal persons created by a charter or similar document by which a founder makes a disposition of rights, title or interest in property to the foundation for a specific purpose. Upon disposition and acceptance by the foundation council, the property ceases irrevocably to be a part of the estate of the founder and becomes the exclusive property of the foundation as its endowment, (See The International Foundations Act, 2007)

A Foundation is a body corporate with separate legal personality and owning its own property. It is controlled by a council in accordance with its charter and regulations. However, like a trust, it has a settlor (founder) and purpose for the benefit of beneficiaries. Persons who should be considered to exercise control over a foundation, include:

- Founders
- Beneficiaries
- Members of management
- Individual who has the right to exercise (or actually exercises) significant influence

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[6] The Table at 2.3.4 below under Legal Persons sets out the cascading 3-Stage tests for identifying beneficial ownership. The Stage 3 Test is applicable to where beneficial ownership cannot be established.

[7] The Table at 2.3.4 below under Legal Persons sets out the applicable test to be applied when dealing with foundations.

over the running of the activities of the foundation, for example, the right to:

- appoint or remove any of the board members;
- direct or veto the distribution of the foundation funds or assets or its investment decisions;

wind up or convert the foundation.

2.3.2.5 Beneficial ownership in TRUSTS[8] and Similar Legal Arrangements

(a) Trusts

"Trust" refers to an express trust, clearly created by a settlor, usually in the for of a written document, eg. a written deed of trust, where a person (known as "a trustee") holds or has vested in him, property which does not form, or which has ceased to form part of the settlor's estate, and holds it (a) for the benefit of any person (known as "a beneficiary") who must be ultimately ascertainable, or (b) a defined class of named of as yet undetermined beneficiaries, whether or not that person presently exists, is ascertainable or exist only as an "object of a power", that is, someone who becomes entitled as a beneficiary to income or capital on the expiry of a defined period (known as the accumulation period)[9]*. In* some *trusts, such as discretionary trusts, there may be a "protector" (generally named by the settlor) who oversees the trustee's actions.*

Ownership by parties and within parties to a trust must be determined. Where necessary, it requires looking behind the corporate structure to identify individuals who are the actual beneficial owners.

(1) A jurisdiction may provide for express trusts created pursuant to law. However, it may be that trusts do not have to be registered in a jurisdiction in order to be legally valid. Trusts and other arrangements have much more complex structures because they usually do not have owners but parties with different roles, rights, and obligations.

Note: In some jurisdictions, an individual in Country X can create a trust according to the laws of Country Y even if no party to the trust (i.e. settlors, trustee or beneficiary) nor any of its assets are located in Country Y.

(2) With trusts (unlike with legal persons), it is generally the trustee of a trust that must keep the trust information whether the trustee be a professional or non-professional.

(3) A trust and company service provider should have the trust information for purpose of complying with customer due diligence requirements.

(5) The transparency requirement for these arrangements goes beyond focusing on a beneficial owner and requires the trustee (or similar agent or a trust service provider) to obtain information on a settlor (the person donating assets), other trustees, the protector (an intermediary between the settlor and trustee), beneficiaries (and class of persons benefiting from or in whom the trust property ultimately vests) and objects of power[10], and any other

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[8] The Table at 2.3.4 below under Legal Arrangements sets out the applicable test to be applied when dealing with trusts.

[9] See section 3 of the International Trust (Amendment) Act 2021:

[10] Objects of power are beneficiaries who become entitled to income upon expiration of a defined time period.

natural person exercising ultimate effective control over the arrangement. Thus, no threshold can be applied to exempt beneficiaries from being identified as a beneficial owner.

(5) In identifying the beneficial ownership of a trust all parties of the trust should be identified, including:

- Settlor
- Trustee(s)
- Protector (if any)
- Beneficiaries, and where applicable, classes of beneficiaries and objects of a power
- Any other person exercising effective control of the trust.

Note: These persons are always identified as *beneficial owners* regardless of whether or not any of them exercises control over the trust.

(6) There may also be confidential documents such as a letters of wishes with the settlor's instructions, a circumstance that can make it very difficult to determine who really has effective control of the trust. Requiring all parties to the trust to be identified would resolve this problem.

(7) Financial institutions and DNFBPs must keep their beneficial ownership information up-to-date by conducting ongoing due diligence over the course of the relationship, as required by the definition of customer due diligence in section 2(1) of the MLPR.

(b) Other arrangements similar to trusts

In other countries there exist arrangement with trust-like structures. Example of these are certain type of Truehand, fideicomiso and Waqf. Laws in those countries should provide for identifying the different types, forms and basic features. They should provide for the setting up of those legal arrangements and the obtaining of basic beneficial ownership information and making it public available.

2.3.2.6 Beneficial ownership of Life Insurance and Investment Related Insurance Policies

See the Update to the MLFTG of 11 May 2021 relating to insurance (presently paragraph 2.1.14A). It requires:

"Identification and verification of the beneficiary under life insurance business and investment related policies should take place as soon as the beneficiary is identified or designated, and in all cases at or before the payout or the time when the beneficiary intends to exercise vested rights under the policy."

2.3.2.7 Beneficial Ownership where there are Complex Ownership Structures

A trust may have ownership of a company, with the trustee holding the shares or other rights as the titled legal owner. In such situations, the trustee or settlor may be a legal person itself (such as a "corporate trustee"). When a party to a trust (such as the trustee) is not a natural person (such as a company or foundation), the beneficial owners of that legal person (not just the legal person itself) should be identified as beneficial owners of the

trust. In other words, non-natural persons who are party to a trust should be looked through to identify the natural persons who are their beneficial owners.

2.3.2.8 Verification of Beneficial Ownership

(1) Verification of beneficial ownership requires documentary proof which must be obtained and be kept updated. These are usually governing documents of the legal person or legal arrangement. Examples of these are:

- share purchase agreements
- share certificates
- nominee shareholders agreements
- debt instruments
- partnership agreements
- foundation charters
- trust deed of settlement
- powers of attorney
- operating agreements

(2) Sources of beneficial ownership information of trusts are generally three potential sources of information:

- the trustee,
- financial institutions/DNFBPs doing business with the trust/trustee (with the consent of the trust), and
- registries or other government authorities such as the tax authorities.

2.3.3 TESTS TO DETERMINE BENEFICIAL OWNERSHIP

It is crucial to determine who controls the decision making of a Legal Person or Legal Arrangement, explicitly or implicitly, directly or indirectly.

(a) Legal Persons

The 3-Stage Cascading test: To determine the beneficial ownership of any Legal Persons, the 3-Stage cascading test must be used: Start with the Stage-1 test; if Stage-1 does not yield the identity of a beneficial owner(s), or there is doubt that an individual is actually the beneficial owner, then proceed to apply the Stage-2 test; if the Stage-2 test does not yield the identity of the beneficial owner then proceed to apply the Stage-3 test.

Stage 1: Control through legal ownership — Does any individual or individuals acting jointly through agreement or arrangement, directly or indirectly, exercise control of the legal person through ownership by holding or having the right to exercise one or more of the following (whether directly or indirectly) in relation to the company:

- 15% or more of the share capital;

- 15% or more of the voting rights;
- any percentage of legal interest that is capable of exercising control;
- the right to appoint or remove a majority of the board of directors or governing council (whether directly or indirectly)

Stage 2: Where there are doubts that the natural person with controlling interest is the beneficial owner or if no natural person exerts control through ownership interest — If no individual meets the Stage 1 criteria, whether due to no natural person meeting any of the threshold ownership/voting criteria, or no natural person exercising control based on such criteria, then it should be determined whether any other individuals exercise control through other means. Any natural person who exerts control over a company or other Legal Person through formal or informal mechanisms is the beneficial owner and should be identified and verified. The following are non-exhaustive examples of possible other means of control that may exist and thus individuals exercising such control should be identified and verified:

- if there is another legal person(s) (Legal Person B) that holds or has controlling legal ownership in the company A, then an individual(s) who exercises significant influence/control over Legal Person B and consequently over company A, may be the beneficial owner of company A.

- if there is an individual who exercises or who has legal rights to exercise significant influence/control over a group of individuals or legal persons who together meet or exceed the threshold ownership/voting criteria in Stage 1, and through this means exerts control over the legal person, that controlling individual is the beneficial owner of the company.

Stage 3: Where no natural person is identified by the Stage 1 and Stage 2 tests, then identify and verify the identity of the person who holds the position of senior managing official as defined in section 2.3.1(1).

Companies on a Stock Exchange

When determining the owner of the controlling interest in a company listed on a stock exchange and subject to disclosure requirements (either by stock exchange rules or through other legal means) which impose requirements to ensure adequate transparency of beneficial ownership, the owner/shareholder can be identified from a public register or the customer.

(b) Legal Arrangements

(i) Trusts

1. In the case of a Trust or other similar types of legal arrangements, identify and verify the identity of all parties to the trust, including parties that are legal persons.

2. Where the customer is a trust, or a trust exists within the chain of ownership of a customer, reasonable measures should be taken to identify and verify the identity of all beneficial owners of the trust, which comprises the following categories of persons, namely:

   (a) the settlor,
   (b) the trustee(s),
   (c) the protector (if any),
   (d) the beneficiaries, and where applicable, any class of beneficiaries and objects of a power specified in the trust. For beneficiaries of trusts that are designated by characteristic or class, sufficient information should be obtained concerning the beneficiary to be able to establish the identity of the beneficiary at the time of the payout or when the beneficiary intends to exercise vested rights.; and
   (e) any other natural person exercising ultimate effective control over the trust, including where they may exercise such control of the trust through a chain of ownership/control. If a legal person, appears to exercise such control over the trust, then the beneficial owner(s) of that legal person must be identified and verified, using the 3-Stage Test that applies to that type of legal person, as described above.

3. All beneficial owners of a trust must be identified regardless of whether they hold a controlling ownership interest in any part of the trust property.

4. A starting point to identifying these beneficial owners, would be to look at the trust deed or declaration.

5. If any of the beneficial owners of the trust, namely, the settlor, protector, beneficiaries, etc., are themselves legal persons or legal arrangements, the identification and verification of the beneficial owners of the trust will involve identification and verification of the identity of the natural person/(s) who are the beneficial owners of any such legal person or arrangement, using the applicable test.

(ii) Foundations
See 2.3.2.4 above and the comment concerning foundations straddling both the category of Legal Persons and Legal Arrangements.

2.3.4 Summary of Tests for Beneficial Ownership

The series of tests set out below in the Table of Tests for Identifying Beneficial Ownership, can help in the task of identifying the beneficial owners of legal persons and legal arrangements.

Table of Tests for Identifying Beneficial Ownership

Tests for Beneficial	LEGAL PERSONS

Ownership of:	
	These include but are not limited to: **Companies, Foundations**
Stage 1	• **Identify the person or persons who individually or acting jointly by agreement or arrangement, directly or indirectly, exercise control through ownership or voting rights.** • **<u>Additionally</u>,** it must be made clear if a person who legally owns a company or other legal person owns the company or other legal person in his own right or acts in the capacity of a nominee for someone else. If he is a nominee, then the nominator should be identified and a further test applied to determine the beneficial owner of the nominator. **Type of information normally needed for this:—** • **Review a company or entity's Register of Shareholders or persons with voting rights of 15% or more; or individual or individuals holding any percentage of shares who nonetheless are able to exercise control over the company or legal person.** • **Review a Foundation's Charter and regulations to determine who has legal authority to exercise control.** • **Where the shareholding or voting interest of 15% or more; or any percentage capable of exercising control in the Legal Person is that of a Legal Person or Arrangement, ascertain the shareholders of that entity (and if necessary, any parent entities) of control of the Legal Arrangement to determine whether a natural person or persons acting jointly, directly or indirectly, holds a controlling interest.** • **Review the company's Register of Members and Articles of Association (or equivalent); an LLC's register of members or managers and LLC Agreements to identify individuals with voting rights (attached to shares, interest or right to surplus assets) of 15% or any controlling percentage .** • **Review the governing documents of a company or Legal Person to identify any individual with direct or indirect rights to appoint or remove a majority of the board of directors or governing board.**

Stage 2	**If the Stage 1 test does not uncover a natural person exercising a legal or controlling interest or there is doubt that the person with the legal or controlling interest is actually the beneficial owner, then proceed to do the following:** • **Identify the natural person (if any) exercising control of the company through other means.** **Type of information normally needed for this:—** • **Examine the entity's governing document, including any Articles of Association, Agreements, and 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 with decision making powers from which a beneficial owner can be identified.** • **Determine if 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	**If the Stage 1 and Stage 2 tests do not uncover a beneficial owner, then proceed to do the following:** • **Identify the natural person who holds the position of senior managing official.**
	Companies listed on a stock exchange
	Where the customer or the owner of the controlling interest is a company listed on a stock exchange and subject to disclosure requirements (either by stock exchange rules or through law or enforceable means) which impose requirements to ensure adequate transparency of beneficial ownership, or is a majority-owned subsidiary of such a company, it is not necessary to identify and verify the identity of any shareholder or beneficial owner of such companies. **Type of information normally needed for this:—** **The relevant identification data should be obtained from a public register or from the customer.**
	PARTNERSHIPS
Stage 1	• **Identify all partners in the partnership. Look for natural persons who individually or acting jointly, directly or indirectly, exercise control through holding 15% or more interest or voting rights in the**

	partnership or any percentage capable of exercising control of the partnership. • **Instruments and records that can be examined to determine ownership/voting control include: Partnership Agreements;**
Stage 2	**If the Stage 1 test does not uncover a natural person exercising a controlling interest or there is doubt that the person with a controlling ownership interest is actually the beneficial owner, then:** • **Identify the natural person (if any) exercising control of the partnership through other means.** **Type of information normally needed for this:—** • **Examine the partnership's governing document, including any Partnership Agreements, Articles of Association, Agreements, and Memorandums; Debt instruments of the partnership 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 with decision making powers from which a beneficial owner can be identified.** • **Determine if a partner acts on the instructions of a particular individual.**
Stage 3	**If the Stage 1 and Stage 2 tests do not uncover a beneficial owner, then proceed to do the following:** • **Identify the natural person who holds the position of senior managing official.**
	Foundations

	Identify, and verify the identity of the parties to the foundation, namely the:
	
	• **founders,**
	• **beneficiaries,**
	• **members of management,**
	• **individuals with the right to exercise (or who actually exercise) significant influence over the running of the activities of the foundation, for example: persons having the right to:**
	  • **appoint or remove any of the board's members;**
	  • **direct or veto the distribution of the foundation funds or assets or its investment decisions;**

	• **wind up or convert the foundation** **Apply the cascading 3-Stage Test as described above for Legal Persons where the party is a Legal Person or the test for Legal Arrangements (trusts) where the party is a Legal Arrangement.** **Note: All of these persons are always identified as beneficial owners, whether or not any of them exercises effective control over the foundation.** **Type of information normally needed for this:—** • **Charter instruments** • **regulations**
NB:	If any of the parties to the Foundation listed above (i.e. the founders, beneficiaries, members of management, etc) is a legal person, or include legal persons within their chain of ownership, steps should be taken to identify the beneficial owner(s) of every such legal person, using the applicable 3-stage test described above, depending on the type of legal person in question.
	LEGAL ARRANGEMENTS
	Trusts
	• Identify and verify the identity of all parties to the trust, namely: o the Settlor, o Trustees, o Protector (if any), o Beneficiaries, where applicable, any classes of beneficiaries and objects of power, and o any other person exercising effective control over the trust. • Where beneficiaries are designated by characteristic or class: Obtain sufficient information concerning the beneficiary to be able to establish the identity of the beneficiary at the time of the payout or when the beneficiary intends to exercise vested rights. **Note: All of these persons are always identified as beneficial owners, whether or not any of them exercises effective control over the trust.** **Type of information normally needed for this:—** • The Trust Deed or deed of settlement, letter of wishes, etc
NB:	If any of the parties to the Trust (i.e. the settlor, trustees, protector, beneficiary, etc) is a legal person, or include legal persons within their chain of ownership,

	steps should be taken to identify the beneficial owner(s) of every such legal person, using the applicable 3-stage test described above, depending on the type of legal person in question.
	Other Types of Legal Arrangements
NB:	The process for identifying the parties to legal arrangements other than trusts is similar to that described above for trusts, in that steps should be taken to identify, and verify the identity of, all parties to the legal arrangement who are in equivalent or similar position to the parties described above for trusts. The instruments and records to be used to identify such persons in other types of legal arrangements, should be the equivalent instruments, documents or records described above for trusts.