

# Beneficial Ownership Guidelines



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## 1. INTRODUCTION

The International Standards set by Financial Action Task Force (“FATF”) and Organisation for Economic Cooperation and Development (“OECD”) require jurisdictions to maintain beneficial ownership information which shall be accessible and made available upon request to competent authorities, for the administration or enforcement of their relevant legislations in order to fight financial crimes. The Seychelles has committed and continues to strive to meet these standards.

Legal persons and legal arrangements conduct a wide variety of commercial and entrepreneurial activities. However, despite the essential and legitimate role that legal persons and legal arrangements contribute to the global economy, under certain conditions, they have been misused for illicit purposes such as, money laundering, bribery and corruption, insider dealings, tax fraud, terrorist financing and other illegal activities by disguising:

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

Beneficial ownership has come to the forefront for anti-money laundering (“AML”) compliance professionals around the world. Beneficial ownership information is essential in view of the following:

- Money Laundering concerns;
- Global safety concerns; and
- Tax avoidance issues.

The misuse of legal persons and legal arrangements could be significantly reduced if information regarding both the legal owner and the beneficial owner, the source of funds / assets, and its activities were readily available to the authorities. Legal and beneficial ownership information can assist law enforcement and other competent authorities by identifying those natural persons who may be responsible for the underlying activity of concern, or who may have relevant information to further an investigation.

Whilst these Guidelines apply to the obligations of legal persons and legal arrangements under the BO Act, reporting entities listed in the First Schedule of the Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020 (“AML/CFT Act”) may use the guidance provided herein to aid in complying with their obligations to identify beneficial owners under AML/CFT Act. In such circumstances, the 10% threshold should be disregarded, as reporting entities are required to identify all beneficial owners.

## 2. SCOPE

These guidelines are jointly issued by the Financial Services Authority and the Financial Intelligence Unit (“FIU”) (herein after referred jointly as “the Authorities”), in collaboration with the Registrar of Companies and Associations, in aid to provide guidance in respect to the identification of Beneficial Owners of the following legal persons and legal arrangements to ensure compliance with the relevant regulatory requirements;

- a company, including an overseas company incorporated or registered under the Companies Act;

- an association registered under the Registration of Associations Act;
- an international business company incorporated, continued or converted under the International Business Companies Act;
- a protected cell company incorporated under the Protected Cell Companies Act or the International Business Companies Act;
- a company incorporated under the Companies (Special Licences) Act;
- a partnership under the Civil Code of Seychelles Act;
- a foundation established under the Foundations Act;
- a resident trustee of an international trust under the International Trusts Act; and
- a general partner of a limited partnership under Section 4 of the Limited Partnerships Act.

These Guidelines set out and clarifies the minimum standards that the Authorities will use to assess the compliance of all legal persons and legal arrangements under the administration of their respective resident agents with their obligations under the Beneficial Ownership Act (“BO Act”) and the Beneficial Ownership Regulations, 2020 (“BO Regulations”). As such, these Guidelines should be read in conjunction with both the BO Act and BO Regulations.

The Authorities emphasise that the contents of these Guidelines and the examples provided herein are neither intended to, nor should be construed as, an exhaustive treatment of the subject.

### **3. STATUTORY REQUIREMENTS AT A GLANCE**

Legal persons and legal arrangements have a statutory and regulatory obligation with respect to beneficial ownership. As a result, legal persons and legal arrangements are required to:

- identify and verify beneficial owners of legal persons and legal arrangements;
- maintain an accurate and up to date Register of Beneficial Owners at the principal place of business of its resident agent; and
- upload this information on the Beneficial Ownership database maintained by the FIU.

### **4. WHO IS A BENEFICIAL OWNER?**

As per section 3 of the BO Act, the term beneficial owner means one or more natural persons who ultimately own or control a customer or the natural person or persons on whose behalf a transaction is being conducted and includes those natural persons who exercise ultimate effective control over a legal person or a legal arrangement.

This is further clarified in the BO Regulations where regulation 3(1) provides that a beneficial owner in relation to a legal person or legal arrangement is:

- one or more natural persons who ultimately has a controlling ownership interest in a legal person or legal arrangement; and
- to the extent that there is doubt under paragraph 3 (1) (a), the natural person or persons, if any, exercising control of the legal person or arrangement through other means; or
- if no such person exists or can be identified under paragraph 3 (1) (a) and (b), the natural person or persons who holds the position of a senior managing official of the legal person or legal arrangement.

A beneficial owner shall always be a natural person. This differs from legal owners who may be corporate structures, legal arrangements or legal persons holding shares, other rights or interests on

behalf of other persons. It is of crucial importance to distinguish between beneficial ownership and legal ownership.

In these Guidelines and as per the BO Regulations, the definition of beneficial owner varies in context for each legal person and legal arrangement.

As such, it is imperative to understand that the controlling ownership interest threshold of at least 10% applies only for the identification of the beneficial owners in the case of legal persons except for foundations. The 10% threshold therefore, does not apply when identifying the beneficial owners of legal arrangements and foundations.

In the case of legal arrangements and foundations, all beneficial owners must be identified regardless of the threshold of controlling ownership interests.

However, the noteworthy and unequivocal element in the definition is that a beneficial owner is always a natural person with ultimate effective control.

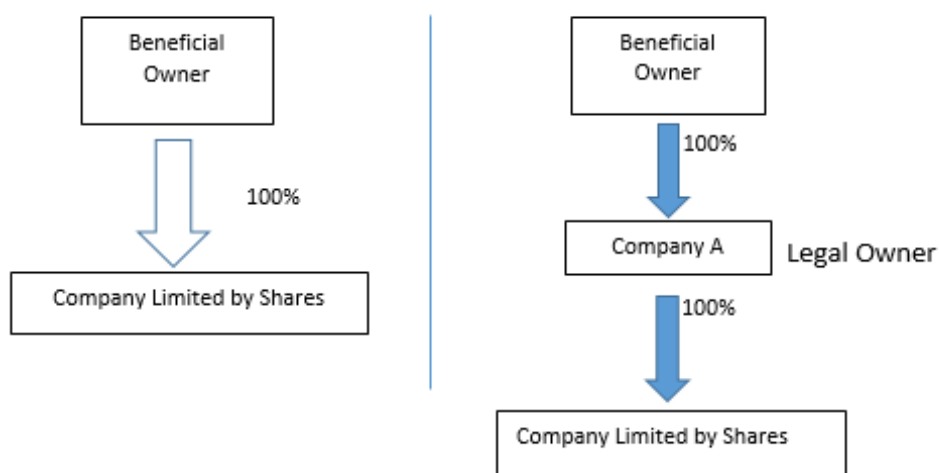
## 5. DETERMINATION OF BENEFICIAL OWNER

Given that beneficial ownership or control of shares, interest or rights can be exercised in many different ways, determining the beneficial owner of a legal person can be a complex process that must be undertaken on a case-by-case basis.

The use of a legal person or legal arrangement can obscure the identity of a beneficial owner. Where an individual is the sole shareholder of a company and controls it directly, that individual is the beneficial owner of the company. However, there may be more layers involved in the ownership structure, perhaps a chain of entities between a legal person and its beneficial owner.

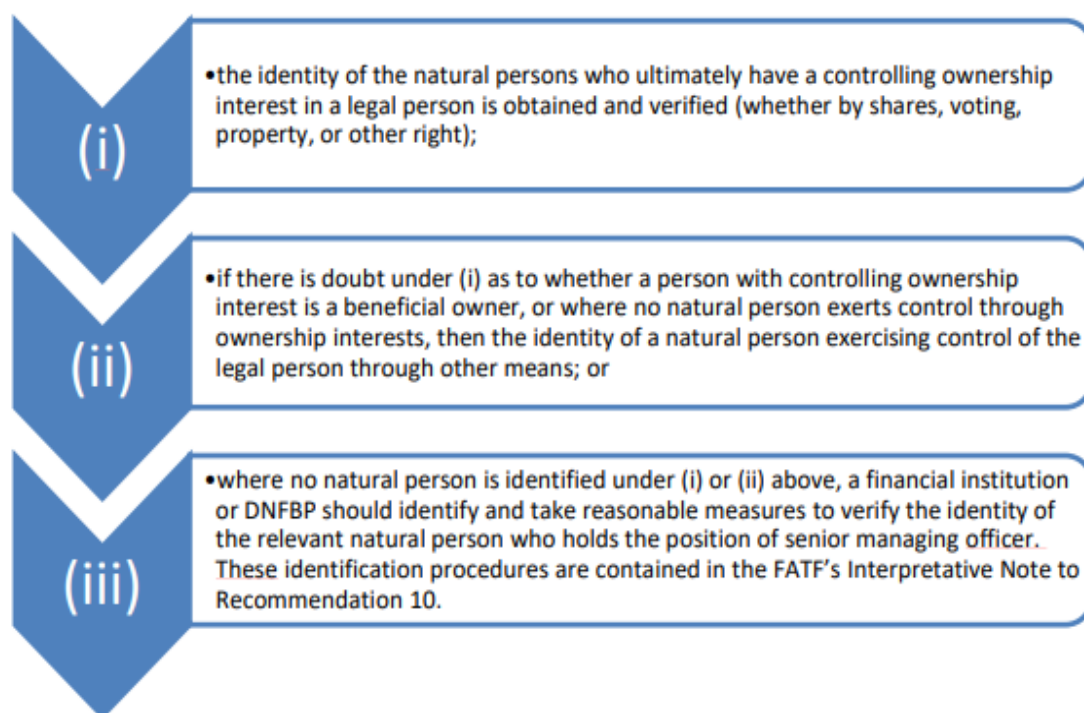
In Figure 1, the example on the right shows an additional layer (i.e. Company A) between the legal person (the company) and its beneficial owner. Company A, as the shareholder of the company, is its direct legal owner, while the beneficial owner indirectly controls the company through Company A.

*Figure 1. Difference between a BO and a Legal Owner*



## 6. THE CASCADING TEST<sup>1</sup> FOR LEGAL PERSONS

Legal persons may adopt the below Cascading Test (three tiered information-gathering approach) which mirrors the three tiered approach specified in the BO Regulations when seeking to ensure the availability of beneficial ownership information for all relevant legal persons.



It is important to note that the above measures are a cascading process, to be used in succession when a previous step has been taken but has not resulted in the identification of the beneficial owner or in instances where there is doubt with regards to the beneficial owner identified under a previous tier.

This means that measure (ii) and (iii) are not alternative options but are cascading measures, with each to be used where the previous measure has been applied and has not identified a beneficial owner or there is reason to believe that another natural person is also ultimately exercising control over the legal person by other means.

## 7. IDENTIFICATION OF BENEFICIAL OWNERS

### THE THREE TIERED APPROACH FOR LEGAL PERSONS

This part of the Guidelines follows the order of the 3-tiered approach to the definition of beneficial owner in the BO Regulations. The starting point is always whether or not any person within Tier 1 (a natural person with control through ownership) exists or can be identified. If that is the case, that person (or persons) must be treated as the beneficial owner.

If no person within Tier 1 exists or can be identified, or if a person within Tier 1 has been identified but there is reason to believe that another natural person is also ultimately exercising control over the legal person by other means, Tier 2 must be looked at. In the second situation, both the person within Tier 1 and any person within Tier 2 are the beneficial owners.

<sup>1</sup> Source: A Beneficial Ownership Implementation Toolkit issued by OECD - <https://www.oecd.org/tax/transparency/beneficial-ownership-toolkit.pdf>

If there is nobody within Tiers 1 and 2, a natural person within Tier 3 (senior managing official) will be the beneficial owner.

**(i) TIER 1 – DIRECT OR INDIRECT OWNERSHIP OR CONTROL OF SHARES, INTERESTS, VOTING RIGHTS, ABSOLUTE DECISION OR VETO RIGHTS**

*a) ESTABLISHING BENEFICIAL OWNERSHIP*

A beneficial owner can only be a natural person. A legal person cannot be a beneficial owner and must determine the identity of its beneficial owners. Moreover, there may be more than one beneficial owner of a legal person that owns or controls, through direct or indirect ownership, at least 10% of the shares in a legal person or other controlling interests.

Beneficial ownership must be determined in relation to another person in certain situations including, but not limited to:

- shares or voting rights that are held jointly by two or more persons, each person must be treated as holding the entirety of the shares or rights;
- shares or voting rights that are not held jointly but are subject to an arrangement between the people who hold them (whether or not the arrangement is in writing) that they will exercise their rights in the same way, each person who is party to the arrangement must be treated as holding the entirety of the shares or rights that are covered by the arrangement; this applies to voting rights attached to shares or any other rights; or
- if a person who holds a right has to act entirely as directed by another person, only that other person directing the actions should be treated as holding the right.

If an individual feature within an ownership structure in more than one way, the value of each of that individual's holdings must be looked at in the aggregate in order to assess the overall holding, for the purpose of determining whether an individual is a beneficial owner.

If no individual's holding meets the threshold of at least 10% of controlling ownership interests including shares or voting rights, that individual will still be a beneficial owner if he or she has the right to appoint or remove a majority of company directors or managers or meets the beneficial owner definition in Tier 2 and Tier 3.

*b) COMPANIES LIMITED BY GUARANTEE*

Companies limited by guarantee means a company under the International Business Companies Act, whose memorandum limits the liability of all its members to a fixed amount which each member thereby undertakes, by way of guarantee and not by reason of holding any share, to contribute to the assets of the company if it is wound up.

Unless the memorandum or articles otherwise provide, a guarantee member is entitled to one vote on any resolution on which he is entitled to vote. Guarantee members therefore exercise control and through this control are beneficial owners by virtue of their voting rights and are deemed as beneficial owners through their voting rights.

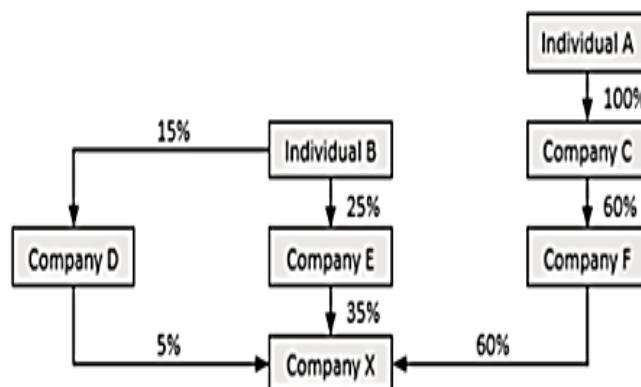
The registrable particulars will be the particulars of those natural persons who ultimately hold at least 10% of the controlling ownership interests or rights.

Companies limited by guarantee with share capital should apply the requirements of both paragraphs 3 (1) (a) and (b).

### c) JOINTLY HELD INTERESTS

If two or more people jointly hold shares, voting rights or interests, each of them is treated as holding the total number of shares, interests or voting rights held by all of them. So, if two or more people hold jointly and severally at least 10% or more of the shares, interests or voting rights, the minimum required information in respect of each of them must be separately entered on the register of beneficial owners.

The interests in a legal person or legal arrangement is arrived at by pooling the direct holding in that legal person or legal arrangement with any indirect holdings (i.e. holdings through an intermediary person). The following example illustrates how the “interest” in company X is determined.



Interest of A in X =  $100\% \times 60\% \times 60\% = 36\%$ . A being a natural person, has to declare himself as a beneficial owner of Company X  
 Interest of B in X =  $(25\% \times 35\%) + (15\% \times 5\%) = 9.5\%$ . B need not declare himself as a beneficial owner of Company X

### d) EXAMPLES OF IDENTIFYING BENEFICIAL OWNER - TIER 1

A person holding a share or voting right in his or her own name holds that right directly. This may be held by the person alone or jointly with another person. Direct holdings will generally be recorded in the constitutional documents of a legal person such as the share register, but the information there will not be definitive as it is also necessary to consider the factors stipulated in Regulation 3 of the BO Regulations.

This is illustrated in the following examples.

#### Holding Shares or Voting Rights Directly

**Diagram A**

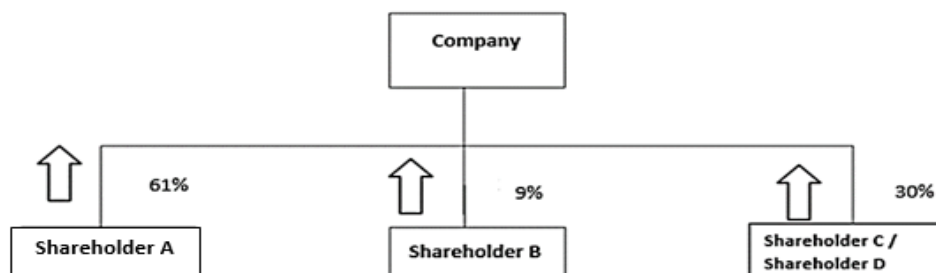




Diagram A is an illustration of a Company in which Shareholder A holds 61% of the shares, B holds 9% of the shares and C and D jointly hold 30% of the shares. As A holds at least 10% of the shares in the Company, A is a beneficial owner of the Company. B holds less than 10% of the shares in the Company, so B is not a beneficial owner of the Company. C and D jointly hold at least 10% of the shares in the Company, and, as jointly held shares are to be treated as belonging in their entirety to each person who holds them, both C and D are beneficial owners of the Company.

**Diagram B**

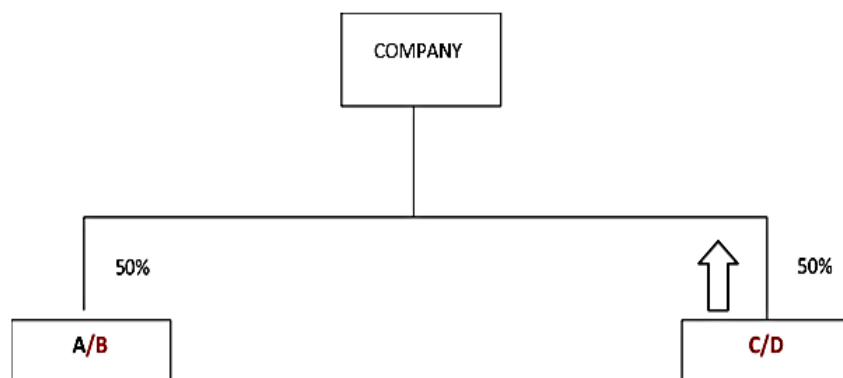


Diagram B illustrates a company in which A and C each hold 50% of the voting rights, so each has a holding of at least 10%.

Both have made agreements with third parties about the way in which their voting rights are exercised.

Under an agreement which A has made with B, A must exercise those rights in the way that B directs. This means that B, not A, controls the rights held by A. So, for registrable purposes, B must be treated as holding the right, not A, and therefore B is a beneficial owner of the company.

The position is different with C and D. C is not obliged to act at D's direction but is nevertheless bound to obtain the consent of D before exercising the rights he holds. Therefore, C and D both control the exercise of C's rights so for the registrable purposes, both must be treated as holding the right and therefore both are beneficial owners of the company.

**Diagram C**

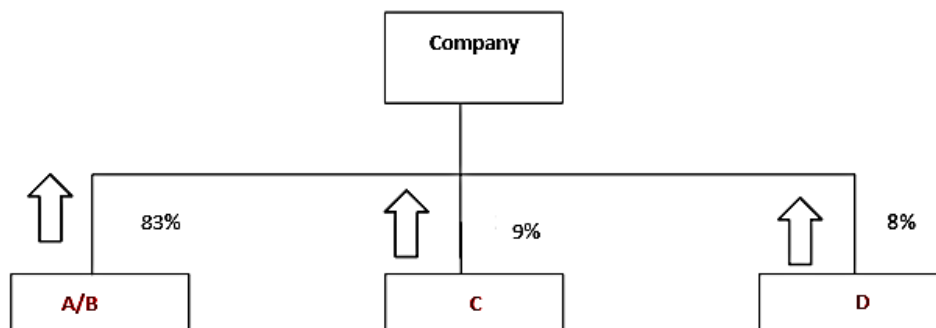


Diagram C illustrates a company in which A and B jointly hold 83% of the voting rights, C holds 9% of the voting rights and D holds 8% of the voting rights.

As A and B must be treated as holding all of their jointly owned rights for registrable purposes, each holds at least 10% of the voting rights and therefore both are beneficial owners of the company.

Although neither C nor D holds at least 10% of the voting rights in the company, they have a long-standing arrangement under which they always exercise the rights they hold in the same way. As all rights subject to the arrangement must be treated as belonging to them both for registrable purposes, each is treated as holding 17% of the voting rights. C and D are therefore both beneficial owners of the company.

**Diagram D**

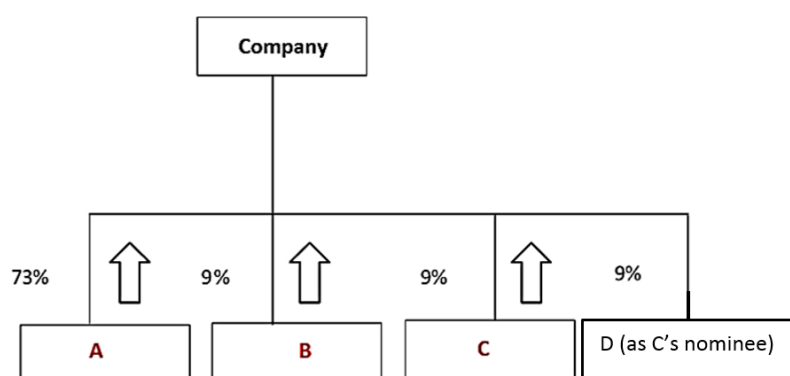


Diagram D illustrates a company in which A holds 73% of the shares, B and C each hold 9% of the shares and D holds 9% of the shares as nominee for C.

As A holds at least 10% of the shares in the Company, A is a beneficial owner of the company.

B holds less than 10% of the shares in the Company so is not a beneficial owner of the company.

Although C only holds 9% of the shares in his own name, D holds a further 9% of the shares as C's nominee. As shares held by one individual on behalf of another individual must be treated for registrable purposes as belonging to that other individual, D's shares must be treated as belonging to C, not D. This means that C holds at least 10% of the shares in total so C is a beneficial owner of the company.

#### *e) HOLDING SHARES OR RIGHTS INDIRECTLY*

Indirect holdings will occur where the ownership structure of the legal person involves one or more entities (i.e. a chain of ownership). Legal persons must therefore look through the chain of ownership at all of the different ownership interests to ensure that all natural persons (including corporate beneficial owners for these purposes) with an indirect holding of shares or rights in the legal person with at least 10% threshold are identified.

An indirect holding within an ownership chain may arise in one of two ways.

The first is when an entity holds at least 10% of the shares or rights in the legal person, and an individual has a majority stake (i.e. a 51% + shareholding or similar) in that entity and therefore can control those shares or rights. The majority stake may be held directly, but it may also be held through a chain of ownership with the individual holding a majority stake in each intervening entity.

The second is where the overall value of an individual's holding in shares or rights in the legal person, when quantified back through the ownership chain, amounts to at least 10%. This is referred to in the examples below as the quantification test.

An individual who has indirect ownership in either or both of these ways is a beneficial owner of the legal person.

This is illustrated in the following examples.

**Diagram E**

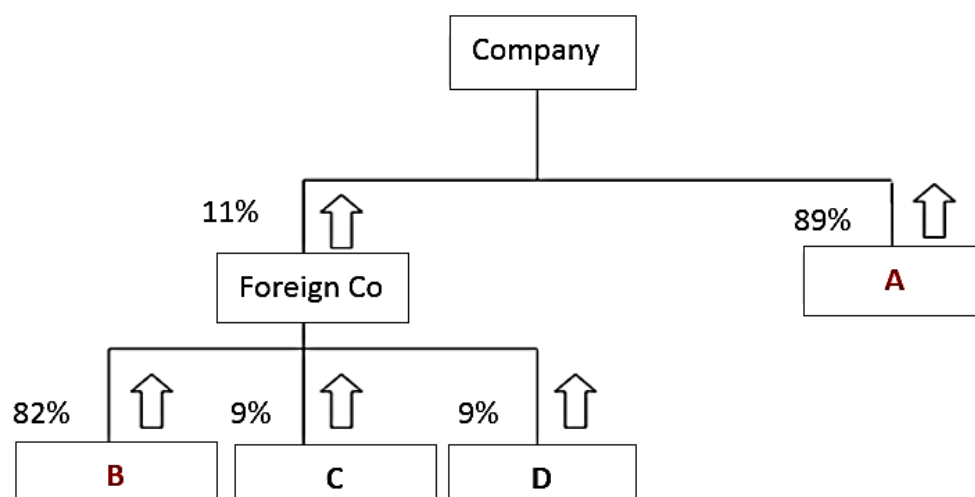


Diagram E is a company in which 11% of the shares are held by Foreign Co (a foreign company) and A holds the remaining 89%. Therefore, A has a direct holding of at least 10% and is a beneficial owner of the company.

B holds 82% of the shares in Foreign Co so has an indirect holding in the company quantified at 9% overall (i.e. 82% of 11%). Based on the quantification test B does not have an overall holding in the company of at least 10%, but does hold a majority stake in an entity which holds at least 10% of the voting rights in the company. Therefore, by virtue of the majority stake held B is a beneficial owner of the company.

C and D each hold 9% of the shares in Foreign Co, so each has an indirect holding in the shares in the company of 0.99% overall (i.e. 9% of 11%). As they have neither an overall holding in the company of at least 10% under the quantification test, nor a majority stake in an entity which holds at least 10% of the voting rights in the company, they are not beneficial owners of the company.

**Diagram F**

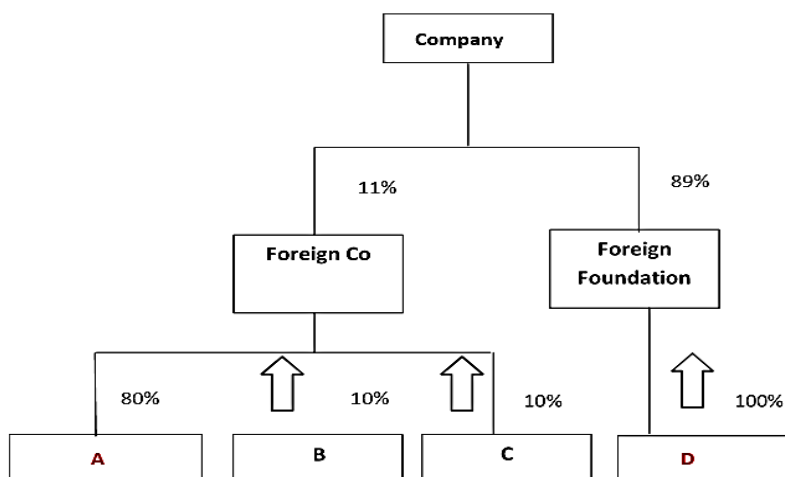


Diagram F illustrates a company in which 11% of the voting rights are held by Foreign Co, a foreign company, and a foreign foundation, holds the remaining 89%.

A holds 80% of the shares in Foreign Co so has an indirect holding in the Company quantified at 8.8% overall (i.e. 80% of 11%). Based on the quantification test A does not have an overall holding of 10% or more, but does hold a majority stake in an entity, which holds at least 10% of the voting rights in the Company. Therefore, A is a beneficial owner of the Company by virtue of the majority stake held. B and C each hold 10% of the shares in Foreign Co so both have an indirect holding in the voting rights in the partnership of 1.1% overall (i.e. 10% of 11%). As they have neither an overall holding in the voting rights in the company under the quantification test of at least 10% nor a majority stake in an entity which holds at least 10% of the voting rights in the partnership, they are not beneficial owners of the company.

D has a vested beneficial interest in 100% of the assets of the Foreign Foundation so has an indirect holding in the voting rights in the company of 89% overall (i.e. 100% of 89%). This means that D holds both a majority stake in an entity that holds at least 10% of the voting rights in the company and has an overall holding in the voting rights in the company under the quantification test of at least 10%. Therefore, D is a beneficial owner of the company under both tests.

#### *f) OWNERSHIP HELD BY A TRUST*

Where the ownership structure of a legal person includes a legal arrangement that is a trust, the beneficial owners of the legal person would be the settlor, protector, trustee, named beneficiaries and any individual that meets conditions set out in Tier 2.

#### *g) HOLDING THE RIGHT TO APPOINT OR REMOVE DIRECTORS*

The right to appoint or remove a majority of the board of directors of a legal person under the BO Regulations refers to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all or substantially all matters.

Rights to appoint or remove company directors or foundation officials (i.e. councilors) are unlikely to be quantified in a legal person's constitution or other legal documents in the same way that shareholdings or voting rights are. Therefore, a threshold in relation to the right of appointment or removal itself is not specified.

## (ii) TIER 2 – CONTROL THROUGH OTHER MEANS

The starting point is always whether or not any person within Tier 1 exists or can be identified. If that is the case, that person (or persons) must be treated as the beneficial owner.

Tier 2 must be looked at in two situations.

- The first is where no person within Tier 1 exists or can be identified.
- The second is where a person within Tier 1 has been identified but there is reason to believe that another natural person is also ultimately exercising control over the legal person by other means.

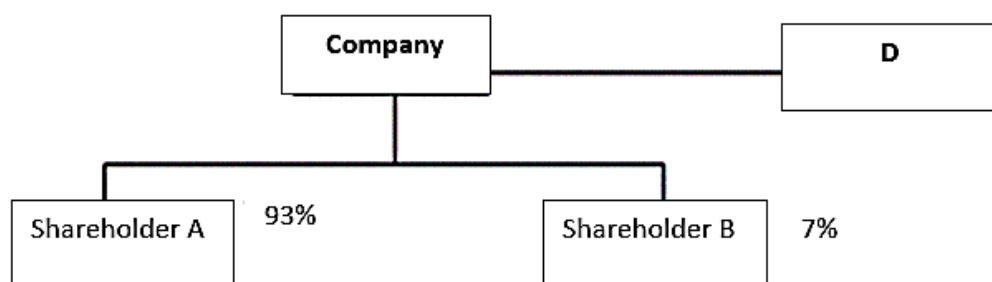
In other words, even though there is an identified person with a controlling ownership interest as set out in the examples in Tier 1 above, there is reason to believe that this controlling ownership interest does not reflect the full extent of actual control of the legal person in practice. In that situation, both the person with the controlling ownership interest and the other person believed to be ultimately exercising control over the legal person (i.e. persons within both Tier 1 and Tier 2) are the beneficial owners.

Whether or not this situation arises will depend on the specific facts of every case. By way of illustration, it might arise where the person with the controlling ownership interest is dominated by another because of a familial or employment relationship, or where another person holds certain powers in relation to the legal person which are being or are likely to be used in practice to affect decisions taken by the person with the controlling ownership interest.

It is not possible to give an exhaustive definition of this as this will depend on the particular circumstances of each specific legal person. As defined in the BO regulations, exercising control through other means includes, but is not limited to:

- the right to appoint or remove a majority of the board of directors or general partners (as the case may be) of a legal person or legal arrangement;
- where the person with controlling ownership interest is dominated by another person because of a familial or employment relationship;
- where another person holds certain powers in relation to the legal person or legal arrangement which are being or are likely to be used in practice to affect decisions taken by the person with the controlling ownership interest; or
- any control over a legal person or legal arrangement other than control by ownership of any interest.

**Diagram G**



In Diagram G, Shareholder A holds 93% of the voting rights and Shareholder B holds the remaining 7%. This means Shareholder A controls the company through ownership and Shareholder A is therefore a beneficial owner of the company. Shareholder A is the son of Shareholder B. Although Shareholder B holds less than 10% of the voting rights (so does not have control through ownership), Shareholder B has control through other means as Shareholder A invariably does what Shareholder B wants in respect of all matters relating to the running of the company. Shareholder B is therefore also a beneficial owner of the company.

D is the company's accountant. In addition to preparing the company's accounts, D sometimes provides the company with advice about tax planning but this does not go beyond the standard relationship between client and accountant. Therefore, D is not a beneficial owner of the company.

### **(iii) TIER 3 – CONTROL BY OFFICIAL POSITION**

Individuals who exercise executive control over the daily or regular affairs of a legal person or a legal arrangement through a senior management position, such as a chief executive officer (CEO), chief financial officer (CFO), managing or executive director, those who have 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 company are classified as beneficial owners under Tier 3.

In situations where there is more than one official of a legal person with strategic decision-making powers and none is senior to the others, all should be treated as senior managing officials. Hence, all shall be considered as beneficial owners.

## **8. LEGAL PERSONS OR LEGAL ARRANGEMENTS IN INSOLVENT LIQUIDATION, ADMINISTRATION OR RECEIVERSHIP**

Where a legal person or legal arrangement is in any insolvency proceedings, the insolvent liquidator, administrator or receiver as the case may be shall also be considered a beneficial owner. However, as provided by the OECD standards, the steps for identifying the beneficial owner follows the same cascading approach discussed in Paragraph F and G. Therefore, the same requirements would continue to apply where for instance a company is under liquidation. That means under the cascading method, one would need to first check whether there are any natural persons who have a controlling ownership interest (For example natural persons who directly or indirectly owns 10% or more of shares in the company). If no person can be identified or if there are no persons who exercise control through ownership, then natural persons exercising controls by other means must be identified. If no one can be identified again, then natural persons that are senior management officials must be identified.

In principle, a liquidator, administrator or receiver when appointed to discharge its functions could be amongst persons who exercise control by other means or could be considered as holding a position of senior managing official depending on the circumstances. One needs to identify first if there are shareholders who hold a controlling interest of 10% or more and who will still be entitled to make decisions related to the company as well as other senior managing officials who will continue to exercise control during the liquidation process.

In cases where there are corporate liquidators, one needs to consider that a beneficial owner is always a natural person. Therefore, the information on the natural persons controlling that corporate liquidator shall be required. Identifying only the corporate liquidator shall not be sufficient.

## **9. IDENTIFICATION OF BENEFICIAL OWNERS OF ASSOCIATIONS**

Section 2 of the BO Act identifies associations registered under the Registration of Associations Act as legal persons. This means that all associations are required to identify their beneficial owners.

The requirement to identify beneficial owners apply to all associations established:

- for a private interest; or
- for the achievement of a social purpose or for the carrying on of any lawful activity on a non-profit making basis including but not limited to co-operative societies, sports organisations and voluntary organisations in the form of association.

When identifying the beneficial owners of an association, the three-tiered approach as discussed above should be applied.

## **10. IDENTIFICATION OF BENEFICIAL OWNERS OF TRUSTS**

The responsibility to collate, update, record and maintain the required information and documentation, as specified herein, lies with the Resident Trustee of an International Trust under the International Trusts Act, 1994 referred to as the resident agent under the Beneficial Ownership Act.

In respect to the identification of beneficial owners of trusts, the resident agent should identify all parties of the trust including:

- Settlor;
- Trustees;
- protector (if any);
- beneficiaries or classes of beneficiaries; and
- any other individual exercising ultimate and effective control over the trust by any means as specified under BO Regulation 3(6)(e) and (f).

### **(i) CLASSES OF BENEFICIARIES**

Where the individuals (or some of the individuals) benefiting from the trust have yet to be determined, a description of the class of beneficiaries can be provided. In this context 'determined' should be interpreted to mean 'identified' or 'named' in a written document from the settlor (not restricted to the trust deed) as someone who should benefit from the trust. When a beneficiary can be clearly identified by his or her name, then the identity information needs to be provided, even if such beneficiary is a discretionary beneficiary who has not yet received any financial payment or has been provided with a non-financial benefit by the trustee.

When a beneficiary forms part of a class of beneficiaries who are not named (ex. the grandchildren of the Settlor), then a description of the class of beneficiaries shall be provided instead. Similarly, a description of the class of beneficiaries is to be provided where the beneficiaries are yet to be born. If an individual from the class of beneficiaries can be identified, then the beneficial ownership details must also be provided. The same principle applies to individual beneficiaries within a class of beneficiaries who are named and can be identified, even if such individuals have not received any financial payment or been provided with a non-financial benefit by the trustee.

Where a description of a class of beneficiaries is provided in the register of beneficial owners, the Trustee shall nonetheless update the information and provide the beneficial ownership details of any

individual forming part of that class who subsequently receives any financial payment or is provided with a non-financial benefit by the trustee.

Where an individual beneficiary has not yet received any financial payment or been provided with a non-financial benefit, or the beneficiary may not be aware of his entitlement under the trust, and verification of identity may therefore not have been carried out on the said beneficiary, it shall be sufficient to provide the identification details which are available on the trust instrument or on any other written document by the settlor wherein such beneficiary is named.

Provided that nothing shall affect the interpretation of a trust deed or any other instrument indicating the beneficiaries of the trust, or any entitlements of persons who may or may not be beneficiaries or have any entitlements as governed by the trust deed or any such other instrument, class of beneficiaries can be defined as but is not limited to:

- the "family" of a person, the class is considered to be made up of the person, his direct ascendants, his spouse, his direct descendants, and unless excluded, their respective spouses;
- when a child is born or a marriage takes place, unless stated otherwise, such child and spouse shall be declared within three months of the birth or marriage;
- "children" include children born out of wedlock, adopted children and children declared or acknowledged by their fathers whether or not sharing the paternal family name;
- "spouse" includes the person who the relevant person is married to at the relevant time and not persons who they have divorced or separated from, and also includes persons with whom there is a civil union or a cohabitation or a de facto arrangement recognized by law in the country where they are habitually resident, including where permitted, of the same gender.

In instances where the beneficiaries of a trust are a class of beneficiaries, the entry in the register of beneficial owners shall be a concise description of the class of beneficiaries (For example: the children and grandchildren of Mr. and Mrs. Smith).

## **(ii) CHARITABLE TRUSTS**

Where a trust is set up solely for a charitable purpose as defined in the International Trust Act, 1994, and which trust does not have any beneficiaries, the trustee shall only be required to provide the beneficial ownership information relating to the settlor, trustee, protector (if any) and any other person exercising ultimate and effective control over the trust by any means, as defined below.

## **(iii) DISCRETIONARY TRUSTS**

In the case of a discretionary trusts one is not considered a beneficial owner until such time that interest is vested to the relevant person.

## **(iv) WHEN THE BENEFICIARY OF A TRUST IS A TRUSTEE OF ANOTHER TRUST**

In instances where the beneficiary of the trust is, in turn, the trustee of another trust, beneficial ownership information should be provided about both the trustee and the trust and the beneficiaries of the said trust.

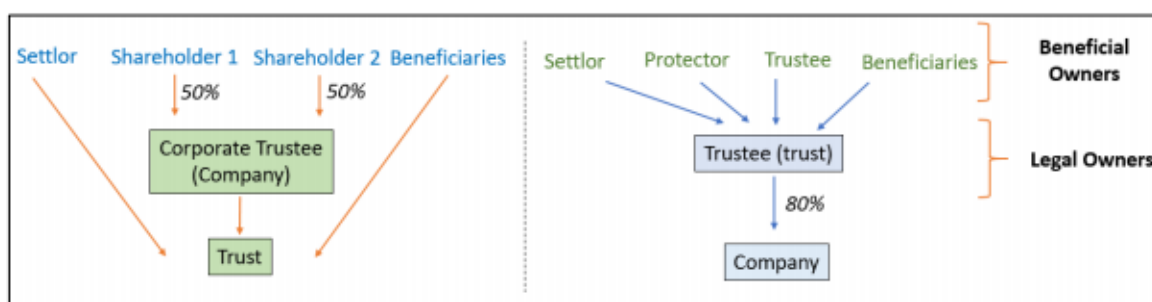


**(v) ANY OTHER PERSON EXERCISING ULTIMATE AND EFFECTIVE CONTROL OVER THE TRUST BY ANY MEANS**

The trustee shall identify and verify all persons falling within this category and provide details of the role of these persons in the trust and the manner in which control is exercised.

**(vi) CORPORATE TRUSTEES**

The general principle is that the beneficial owner is always a natural person. Therefore, if the trustee is a corporate trustee the standard would require that the natural persons behind the corporate trustee are identified. In other words, when a party to a trust is not a natural person, the beneficial owners of that legal person (for example: the corporate trustee) should be identified as the beneficial owners of the trust.



**11. IDENTIFICATION OF BENEFICIAL OWNERS OF FOUNDATIONS**

Foundations have legal personality. Their objects may be to carry out a specified purpose or to benefit a person or class of persons. Members of the council (i.e. councilors) of the foundation usually control the operation of the foundation. This is similar to the “control” exercised by the board of directors of a legal person or trustees of a trust, although the members of the council may not have a beneficial ownership interest in the foundation. The founder may also exercise control by virtue of powers retained under the foundation charter, similarly to the settlor and protector of a trust.

When the objects of a foundation are a person or class of persons, it will be necessary to consider the rights of those parties as detailed in the foundation’s charter or regulations. It is recognised that a beneficiary of a foundation may have no interest in the foundation’s assets unless a right is vested within the charter or, regulations, or by the persons empowered to grant such rights.

**a) ABSOLUTE DECISION OR VETO RIGHTS**

Any person who holds, whether directly or indirectly, absolute decision in the conduct and management of the foundation means they have the power to decide on the following material actions or any other actions achieving the same result:

- the amendment of the charter;
- the addition or removal of any beneficiary, or any person from a class of beneficiaries of any action affecting the entitlement of a beneficiary;
- the appointment or removal of administrators or protectors or members of the council;
- the acceptance of new founders;
- the continuation of the foundation in another country;
- the assignment or transfer of all or the majority of the assets of the foundation; or

- the termination or revocation of the foundation,

such person(s) shall also be considered as beneficial owners of the foundation.

Veto rights refers to the power or right vested to cancel, reject or postpone any decision in the conduct or management of the foundation. Persons with veto rights are also deemed as beneficial owners of the foundation.

*b) MEANING OF “ANY OTHER PERSON WHO BENEFITS FROM A FOUNDATION”*

Categories of person who would fall within this definition will depend on the specific circumstances of the foundation. As such, individuals who under the terms of the foundation charter have a future entitlement to a substantial benefit from the foundation would fall within the meaning of “any other person who benefits from a foundation”. In other words, it is not intended that, where a foundation’s official documents anticipate the provision of benefits to a potentially large group (e.g. providing funds to supply food to the inhabitants of a flooded village) members of that group should be treated as beneficial owners.

Also, in instances where a person is benefitting from a salary whilst being employed by a foundation does not make them a beneficial owner of the foundation. Beneficiaries of a foundation who should be defined as beneficial owner are natural persons in whom an interest has been vested.

## **12. IDENTIFICATION OF BENEFICIAL OWNERS OF PROTECTED CELL COMPANIES**

A Protected Cell Company (“PCC”) is a company with an internal structure, which allows for the legal separation of assets and liabilities into different cells and a central core. The PCC is a single legal entity and, whilst the cells and core have segregated liabilities and assets, they are not legal entities. In Seychelles, a PCC can be created either under the IBC Act or under the Protected Cell Companies Act.

A PCC may create core shares and cell shares thereby providing two classes of share capital, core shares which are attributable to the core, and cellular shares which are attributable to an individual cell. A PCC can create an unlimited number of cells and new cells can be added at any point. Creditors of a cell have recourse to the assets of that cell and to core assets, but do not have recourse to the assets of other cells.

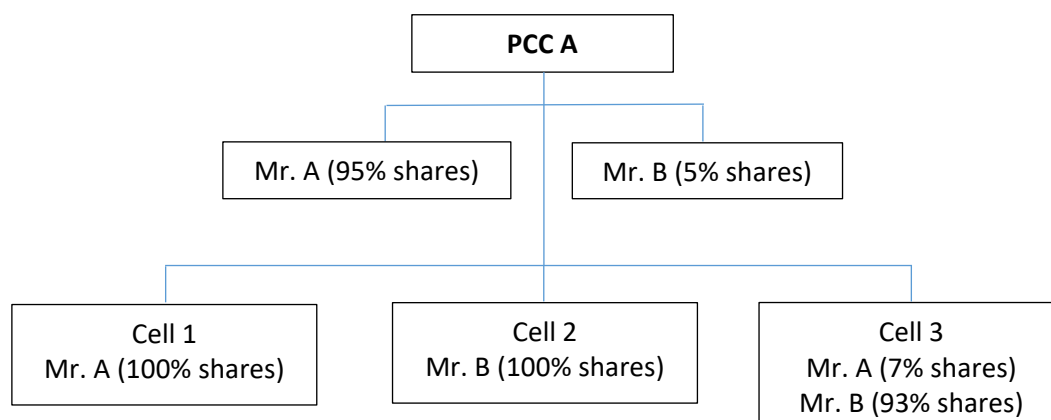
Each cell has its own share of the PCC’s overall share capital allowing a shareholder to be the sole owner of one cell whilst only having a small interest in the PCC as a whole. All those natural persons who hold core shares or cell shares, whether directly or indirectly through nominees, corporate or trust structures will be beneficial owners of the PCC. The identification of the beneficial owners of a PCC will depend on whether the person’s shareholding interest (at core level or cellular level) amounts to:

- (a) at least 10% of the total issued share capital of the PCC as a whole; and/or
- (b) at least 10% of the total issued share capital of any of its cells.

Therefore, the beneficial owners of a PCC will be the beneficial owners identified at core level and the beneficial owners identified separately at cellular level as if each of the cells is being regarded as a separate company.

The above paragraph clarifies the application of the first tier of the cascading approach when identifying the beneficial owners of a PCC. However, where applicable, the PCC should also apply tiers 2 and 3 when determining its beneficial owners.

Below is an example for the identification of beneficial owners of a PCC using the first tier of the cascading approach.



PCC A has 3 cells. Mr. A holds 95% interest of PCC A and is therefore the beneficial owner of the core of the PCC. Mr. A wholly owns Cell 1 and is therefore considered a beneficial owner of Cell 1. Mr. B is not a beneficial owner of the core of the PCC since his shareholding interest falls below 10%. However, Mr. B is considered a beneficial owner of both Cell 2 and Cell 3 since his shareholding interests exceed 10% in each cell.

As stated above, it is also important to apply tier 2 of the cascading approach to establish whether there are any other persons exercising control through other means at the core level or at the cell level. And, if necessary, to also apply tier 3 of the cascading approach accordingly.

### 13. CHAIN OF NOMINEES

The BO Act captures instances where there is a “chain of nominees”. In such cases, the details of all nominees must be included in the register of beneficial owners.

For example, A is the beneficial owner of shares legally held by D in Company X.

A nominates B as his nominee. B nominates C as his nominee and C nominates D as his nominee.

Therefore, the register of beneficial owners must capture A, B, C and D as follows:

Name of Beneficial Owner	If interest is held by nominee		
	Name, residential address, service address, date of birth and nationality of each nominee	Particulars and details of the interest held by nominee	Identity of the nominator
A	B, of address B, etc.	100% share in X	A, of address A, etc.

	C, of address C, etc.	100% share in X	B, of address B, etc.
	D, of address D, etc.	100% share in X	C, of address C, etc.

## 14. STATUTORY OBLIGATIONS

### (i) REGISTER OF BENEFICIAL OWNERS

Every legal person and legal arrangement is required to maintain a register of beneficial owners at the principal place of business of its registered agent in the tabular form set out in the First Schedule of the BO regulations.

The register of beneficial owners is to be kept in magnetic, electronic or other data storage form and should contain the following information:

- (a) the name, residential address, service address, date of birth and nationality of all beneficial owners;
- (b) details of each beneficial owner's beneficial interest consisting of:
  - (i) type and nature of the interests held; and
  - (ii) numerical value of interest held or management position held.
- (c) the date on which a person became a beneficial owner;
- (d) the date on which a person ceased to be a beneficial owner;
- (e) where a nominee holds interest on behalf of the beneficial owner
  - (i) the name, residential address, service address, date of birth and nationality of each nominee holding the interest on behalf of the beneficial owner and the particulars and details of the interest held by the nominee; and
  - (ii) the identity of the nominator, and where the nominator is a legal person, the identity of the natural person who ultimately owns or controls the nominator.

The registrable particulars required above shall only be entered into the register of beneficial owners only if all the required fields (i.e. registrable particulars) in relation to the particular beneficial owner has been provided in full and have been confirmed. If the particulars have not been provided in full it shall not be entered in the register of beneficial owners.

In instances where there is a bona fide legal dispute in regards to the beneficial ownership in a legal person or legal arrangement and the matter is being adjudicated by a court, no change should be recorded in the register of beneficial owners pending the determination or order of the court.

### (ii) DECLARATION OF BENEFICIAL OWNERSHIP

Every person, on becoming a beneficial owner, is required to submit to the relevant legal person or legal arrangement a declaration of beneficial ownership detailing the registrable particulars of the person as set out in Second Schedule of the BO Regulations.

#### a) DECLARATION OF BENEFICIAL OWNERSHIP FOR EXISTING BENEFICIAL OWNERS

Upon the coming into force of the BO Act, existing beneficial owners will not be required to submit the Declaration of Beneficial Ownership.

The responsibility to identify and verify the existing beneficial owners will be on the legal person or legal arrangement directly. Where the legal person or legal arrangement knows or has reasonable grounds to believe that a person is a beneficial owner, under section 9(2)(b) of the BO Act, the legal person or legal arrangement shall require the beneficial owner to provide, confirm or correct the registrable particulars.

Every person who becomes a new BO after the coming into force of the BO Act must submit the Declaration of Beneficial Ownership.

*b) REQUIREMENT ON IBCs TO UPDATE REGISTER OF BENEFICIAL OWNERS*

Every IBC must ensure that its register of beneficial owners is updated to capture all persons falling within the scope of the new meaning of beneficial owner. One important feature of the definition is the reduction in threshold for identification of beneficial owners for legal persons from 25% (the IBC Act) to 10% (under the BO Regulations).

In cases where the legal person or legal arrangement already have possession of the registrable particulars and can ascertain its accuracy (especially in terms of newly introduced particulars in the register), there is no need to request confirmation from the beneficial owners. The legal person or legal arrangement can update the register accordingly. If a legal person or legal arrangement has certain doubt regarding the registrable particulars in its possession or does not hold the required registrable particulars on a beneficial owner, Section 9(2)(b) of the BO Act allows the legal person or legal arrangement to require a beneficial owner to provide, confirm or correct the registrable particulars.

**(iii) DUTY TO MAINTAIN AND UPDATE REGISTER OF BENEFICIAL OWNERS**

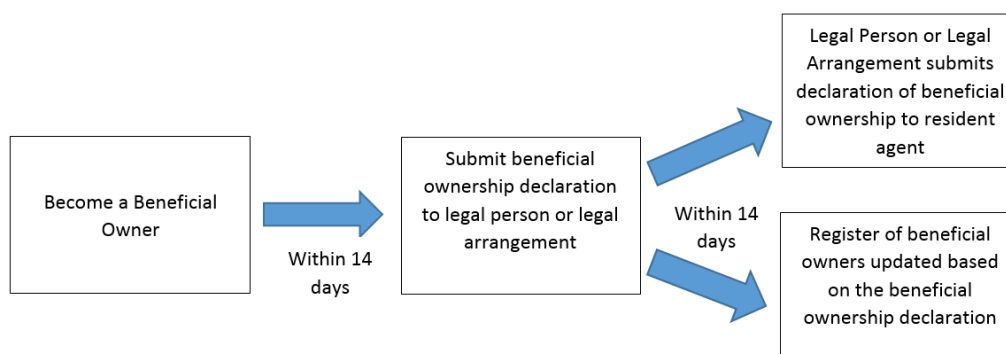
Every legal person and legal arrangement shall maintain accurate and up to date information in the register of beneficial owners.

If circumstances change and any information entered on the legal person's or legal arrangement's register of beneficial owners is no longer correct, then it must be updated.

A person who fails to maintain accurate and up to date a register of beneficial owners commits an offence and is liable to a penalty not exceeding SCR 50,000 for each such failure. This sanction also extends to every director, councilor, partner or general partner of the legal person or legal arrangement.

**(iv) DISCLOSURE OF CHANGE OF BENEFICIAL OWNERSHIP INFORMATION**

Every person on becoming a beneficial owner in relation to legal person or legal arrangement is required to submit a declaration of beneficial ownership containing the registrable particulars relating to the person within 14 days from the date of becoming the beneficial owner to the legal person or legal arrangement. Upon receiving the information, the legal person or arrangement shall submit the declaration to the resident agent who shall update the register of beneficial owners.



In regards to relevant changes that may occur in relation to a beneficial owner, the beneficial owner shall give notice within 14 days to the legal person or legal arrangement providing details required under Section 10(3) of the BO Act for changes to be made to the register of beneficial owners.

Where a relevant change is not disclosed, a legal person or legal arrangement may take any action as provided under Section 10(4) of the BO Act.

#### **(v) RECTIFICATION OF REGISTER OF BENEFICIAL OWNERS**

If any beneficial owner finds that the information that is required to be entered in the register of beneficial owners is omitted from the register or is inaccurately entered in the register or there is unreasonable delay in entering the information in the register, the beneficial owner may request the legal person or the legal arrangement, as the case may be, in writing to rectify the omission, inaccuracy or delay in entering the details in the register of beneficial owners.

The legal person or the legal arrangement shall within three days from the date of receipt of the notification as mentioned above rectify the omission, inaccuracy or delay in entering the details in the register of beneficial owners.

#### **15. OFFICIAL WORDINGS TO ENTER ON THE REGISTER OF BENEFICIAL OWNERS**

Legal persons and legal arrangements must always keep a completed and up to date register of beneficial owners. That means, a register of beneficial owners must never be empty.

Once a legal person or legal arrangement has taken the required steps and worked out its status, the following official wordings, as appropriate, must be entered on the register of beneficial owners. The official wording must be used alongside any relevant information being entered into the register, for instance, where there are unidentified beneficial owners and or unconfirmed particulars.

##### **a) LEGAL PERSON OR LEGAL ARRANGEMENT HAS NO BENEFICIAL OWNER**

*“(Name of legal person or legal arrangement) knows or has reasonable cause to believe that there is no beneficial owner in relation to the (legal person or legal arrangement)”*

##### **b) UNIDENTIFIED BENEFICIAL OWNERS**

*“(Name of legal person or legal arrangement) knows or has reasonable cause to believe that there is an unidentified beneficial owner.”*

c) **UNCONFIRMED REGISTRABLE PARTICULARS**

*“(Name of legal person or legal arrangement) has identified a beneficial owner in relation to the legal person or legal arrangement but all of the registrable particulars of that beneficial owner have not been confirmed”*

d) **TAKING REASONABLE STEPS**

*“(Name of legal person or legal arrangement) has not yet completed taking reasonable steps to find out if there is anyone who is a beneficial owner.”*

Where the above statements are no longer applicable, it must be entered on the register of beneficial owners along with the date on which the statement ceased to be true.

**16. RETENTION PERIOD AND HANDING OVER OF RECORDS TO THE AUTHORITY**

In line with Section 8(1) of the BO Act, every legal person or legal arrangement shall upon dissolution, or upon ceasing to exist in the Republic hand over all the records required to be kept under this Act, through its resident agent to its relevant competent authority for safe custody.

For the purpose of this section, upon the dissolution of a legal entity or legal arrangement or it ceasing to exist, the relevant records required to be maintained shall remain in the custody of the resident agent for the period prescribed by section 8(2) of the BO Act.

The resident agent shall submit the records being maintained by it to its relevant competent authority when it ceases to be a resident agent.

Furthermore, as provided by section 8(2) of the BO Act, an entry, relating to a former beneficial owner of a legal person or legal arrangement may be struck off the register of beneficial owner after 7 years from the date that the person has ceased to be a beneficial owner.

For the 7-year period that the name of the person remains on the register of beneficial owners, resident agents are required to maintain all relevant documents pertaining to the former beneficial owner. The relevant documentations include the documents specified in Regulation 13(1).