



# **DRAFT PUBLIC COMPLIANCE COMMUNICATION**

## **121**

RELATING TO BENEFICIAL OWNERSHIP  
AND THE APPLICATION OF SECTION 21B  
OF THE FINANCIAL INTELLIGENCE  
CENTRE ACT, 2001 (ACT 38 OF 2001)

15 November 2023

## **1. INTRODUCTION**

- 1.1. The Financial Intelligence Centre (FIC) has issued this public compliance communication as guidance for accountable institutions in terms of section 42B of the Financial Intelligence Centre Act, 2001 (FIC Act).
- 1.2. The General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act, 2022 (Act 22 of 2022) (GLAA) which commenced in December 2022, amended the obligations imposed on accountable institutions regarding beneficial ownership in terms of the FIC Act. Guidance note 7s' (GN7) discussion on the identification and verification of legal persons, trusts and partnerships is yet to be updated in line with the recent amendments.
- 1.3. Trends indicate that criminals often abuse legal persons, trusts, and partnerships to obscure the ownership or control of funds derived from illegal activities or intended to be used for illegal activities. Criminals do this by creating different levels of ownership which makes it difficult to identify the ultimate beneficial owner of the legal person, trust, and partnership. Certain legal persons, trusts or partnerships are more vulnerable to being abused by criminals because of the way they are structured or because of their characteristics.
- 1.4. It is vital that accountable institutions identify the natural person/s that own or control clients that are legal persons, trusts and partnerships and ultimately benefit from the funds owned or controlled by the legal persons, trusts, and partnerships.
- 1.5. As part of establishing the **ownership and control structure** of the legal persons, trusts and partnerships in terms of section 21B(1) of the FIC Act, the accountable institution must determine all persons who own or have control over the entity. It is from understanding the structure that the accountable institution will then be able to determine which natural persons it must identify as the beneficial owners in accordance with section 21B(2), 21B(3) and 21B(4) of the FIC Act.

1.6. This PCC comprises of five parts:

Part A – Legal persons

Part B – Trusts

Part C – Partnerships

Part D – Non-profit organisations

Part E – Adequate, accurate and up-to-date information

## **2. ESTABLISHING THE BENEFICIAL OWNER OF A CLIENT**

2.1. A legal person is defined in the FIC Act as:

*“any person, other than a natural person, that establishes a business relationship or enters into a single transaction with an accountable institution and includes a person incorporated as a company, close corporation, foreign company or any other form of corporate arrangement or association but excludes a trust, partnership or sole proprietor.”*

2.2. In terms of the FIC Act beneficial owner:

- (a) *means a natural person who directly or indirectly–*
  - (i) *ultimately owns or exercises effective control of–*
    - (aa) *a client of an accountable institution; or*
    - (bb) *a legal person, partnership or trust that owns or exercises effective control of, as the case may be, a client of an accountable institution; or*
  - (ii) *exercises control of a client of an accountable institution on whose behalf a transaction is being conducted; and*
  
- (b) *includes–*
  - (i) *in respect of legal persons, each natural person contemplated in section 21B(2)(a);*
  - (ii) *in respect of a partnership, each natural person contemplated in section 21B(3)(b); and*

**FOR CONSULTATION PURPOSES ONLY**

(iii) *in respect of a trust, each natural person contemplated in section 21B(4)(c), (d) and (e);*

- 2.3. Section 21B(1) of the FIC Act requires that accountable institutions establish (a) the nature of the client's business, as well as (b) the ownership and control structure of the client.
- 2.4. The accountable institution must be able to demonstrate that it has established the ownership and control structures of a client. Reliance should be placed as far as possible on reliable and independent third-party sources.
- 2.5. The documentation indicating the ownership and control structures which the accountable institutions rely on, must provide information on the different types of ownership interest, as well as which persons owns the interest, e.g. a share certificate which indicates voting rights or no voting and names of the holders of the shares, etc.

**Consultation Note:**

Examples of documentation that may provide information on the client's ownership and control structure include, but are not limited to, an organogram approved or signed by the board or senior management, an approved prospectus, signed trust deed, signed partnership agreement, signed shareholder agreement, signed constitution document, share register, share certificate, signed letter from auditors outlining the shareholding structure, and memorandum of association etc. These examples are not a comprehensive list and accountable institutions are requested to provide further examples of documents they rely on to determine a client's ownership and control structure.

### *Beneficial owner*

- 2.6. The definition of a beneficial owner extends to the scenario where the beneficial owner is a natural person who exercises effective control of the client who can be a natural person as well.
- 2.7. Accountable institutions must identify the **natural persons** who are the beneficial owners as provided for in section 21B of the FIC Act. Where the accountable institution does not identify a natural person as a beneficial owner and only identifies a legal person as a beneficial owner, the requirement as set out in section 21B of the FIC Act will not have been fulfilled. Identifying the *natural person/s* who are the beneficial owner/s provides the required understanding as to who ultimately receives the benefits from a client.
- 2.8. **More than one natural person** can ultimately own or exercise effective control over a client. The accountable institution must identify all the natural person/s who ultimately own or exercises effective control over a client.
- 2.9. The accountable institution must identify the beneficial owner who ultimately, **directly or indirectly** owns or exercises effective control of the client. The fact that a beneficial owner, indirectly ultimately owns or indirectly exercises effective control over a legal person through multiple layers of other legal persons, partnerships, or trusts, does not affect the accountable institution's obligation to identify that beneficial owner.

### *Legal ownership versus beneficial ownership*

- 2.10. A distinction must be drawn between the beneficial owner and legal owner. A natural person may be considered a beneficial owner on the basis that he/she is the ultimate owner or controller of a legal person, either through his/her ownership interests or through exercising ultimate effective control through other means. Legal ownership means the natural or legal persons who, according to the respective jurisdiction's

## FOR CONSULTATION PURPOSES ONLY

legal provisions, owns the legal person (i.e., a shareholder). The legal owner may not always be the beneficial owner.

### *Different types of clients, including legal persons, trusts or partnerships*

- 2.11. With reference to the definition of a legal person, there are **different forms of legal persons and arrangements** with whom an accountable institution may establish a business relationship or conduct a single once-off transaction on behalf of. Accountable institutions are required, in terms of section 42(2)(f) of the FIC Act, to provide for the manner and the processes by which the institution conducts additional due diligence measures in respect of its clients.
- 2.12. The accountable institution should understand:
- 2.12.1. the different types, forms and basic features of legal persons, trusts or partnerships onboarded as their clients or potential clients,
  - 2.12.2. the manner in which the legal persons, trusts or partnerships are created,
  - 2.12.3. how to obtain beneficial ownership information per client type,
  - 2.12.4. how to determine the possible types of beneficial owners each client type could have and
  - 2.12.5. how to identify money laundering, terrorist financing, and proliferation financing risk posed by each type of client. There may be certain types of legal persons, trusts or partnerships that are inherently more vulnerable to abuse by criminals and accountable institutions must determine these types of vulnerabilities.
- 2.13. The requirement to identify beneficial owners applies in addition to the requirement as set out in section 21 and section 21A of the FIC Act. Therefore, accountable institutions must identify the legal person, trust or partnership, the person/s acting on behalf of the legal person, trust or partnership, as well as the beneficial owners.

**FOR CONSULTATION PURPOSES ONLY**

**Consultation Note:**

Accountable institutions are requested to add to the below list\* of the different types of legal persons, trusts or partnerships, that the accountable institution might establish business relationships with or conduct single transactions on behalf of:

**Example – Different forms of legal persons and classes of beneficial owners**

<b>Legal person</b>	<b>Controlling ownership interest</b>	<b>Effective control through other means</b>	<b>Management</b>
Banks	Natural person who owns controlling shares	Nominee shareholders of controlling shares, etc.	Directors
Mutual Banks	Natural person who owns controlling shares	Nominee shareholders of controlling shares etc.	Directors
Unlisted companies	Natural person who owns controlling shares	Nominee shareholders of controlling shares, bearer shares, etc.	Directors
Listed companies	Natural person who owns controlling shares	Nominee shareholders of controlling shares	Directors
Non-profit companies	Beneficiaries	Directors	Directors
Close co-operations	Natural person who owns controlling interest	Each member	Each member
Co-operatives	Natural person who owns controlling member shares	Each member or as delegated	Management
Registered non-profit organisations	(Founder and beneficiaries)	Founder	Management
Public benefit organisations	TBD (Founder and beneficiaries)	According to founding document	Management
Organs of state (state owned entities)	None	According to governing legislation	Management
Universities	None	According to governing legislation	Management
Associations /clubs /stokvels	holder of controlling ownership interest	As set out in founding document	Management

## FOR CONSULTATION PURPOSES ONLY

Unions	holder of controlling ownership interest	As set out in founding document	Management
Faith Based organisations	holder of controlling ownership interest	As set out in founding document	Management
Major public entities	None		Management
Other public Entities	None		Management
Other legal persons	None		Management
Other legal persons – National, provincial, or local government department	None		Management
Other foreign legal persons	holder of controlling ownership interest	As set out in founding document	Management
Foundations	holder of controlling ownership interest		Management

\*Illustrative guide, not conclusive.

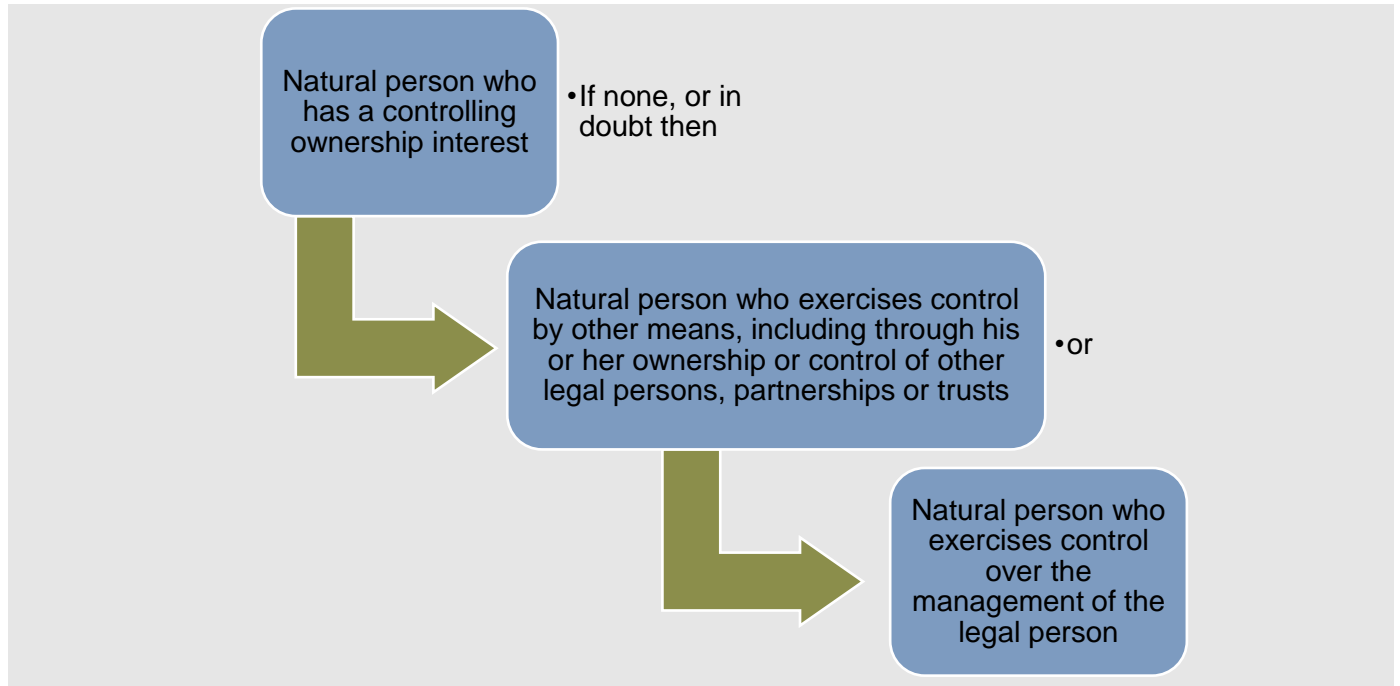
### PART A

#### ESTABLISHING THE BENEFICIAL OWNERS OF LEGAL PERSONS

2.14. Section 21B(2) of the FIC Act requires that accountable institutions establish the identity of the beneficial owners of clients that are legal persons, and take reasonable steps to verify the identity of the beneficial owners.



**SECTION 21B – BENEFICIAL OWNER PROCESS OF ELIMINATION**



2.15. When determining which natural person is the beneficial owner of a legal person in terms of section 21B(2) of the FIC Act, accountable institutions must follow a process of elimination as follows:

- 2.15.1. Identify the natural person who independently or together with another person, has controlling ownership interest in the legal person;
- 2.15.2. If in doubt, whether a natural person owns a controlling ownership interest or no natural person owns a controlling ownership interest, identify the natural person/s who exercises control by other means, including through his or her ownership or control of other legal persons, partnerships, or trusts; or
- 2.15.3. Identify the natural person/s who exercises control over the management of the legal person.

2.16. The process of elimination as stated in paragraph 2.15.1. to 2.15.3. above will be expanded on below:

***Step 1 – Controlling ownership interest***

- 2.17. The term “controlling ownership interest” as used in section 21B(2)(a)(i) of the FIC Act is not defined in the FIC Act. The Centre is of the view that “controlling ownership interest” must be interpreted to mean, *“the ability of a natural person by virtue of ownership interest in a legal person, to control and/or to take decisions regarding or influence the resolutions/decisions/business operations of that legal person.”*
- 2.18. The deciding factor when determining whether a person owns a controlling ownership interest in a legal person, is whether that natural person has influence over the decisions taken by the legal person and the operations of the legal person. This controlling ownership interest can be determined with reference to the percentage of ownership interest the natural person has in the legal person, and reference to the level of influence or control that the person can exercise over the legal person. Where a natural person can exercise decisive influence directly or indirectly over the decisions of the legal person and/or the legal person’s operations, then that natural person owns a controlling ownership interest in that legal person.

**Controlling ownership interest**

*“The ability of a natural person by virtue of ownership interest in a legal person, to control and/or to take decisions regarding and/or influence the resolutions/decisions/business operations of that legal person.”*

- 2.19. Refer to the FIC Guidance Note 7 which sets out a definition of controlling ownership interest to mean *“the ability by virtue of voting rights attached to share holdings to take relevant decisions within the legal person and impose those resolutions.”* It must be noted that this definition applies within the context of companies specifically.

***Hybrid approach to determining controlling ownership interest includes a threshold approach and an overall assessment of ownership influence***

## FOR CONSULTATION PURPOSES ONLY

- 2.20. The percentage of total ownership interest is a good indicator of controlling ownership over a legal person, as a person who holds a significant percentage of securities in most cases exercises influence and control over a legal person, and more importantly benefits from that legal person. In this context holding five percent or more of ownership interest in a legal person is usually sufficient to exercise a controlling ownership interest in the legal person. Accountable institutions must identify the persons who hold five percent or more of ownership interest in a legal person, which persons should be regarded as beneficial owners for purposes of section 21B(2) of the FIC Act.
- 2.21. The threshold of five percent was determined with reference to the following factors:
- 2.21.1. Through **alignment to other legislative requirements**, including regulation 32A to the Companies Act, 2008 (Act 71 of 2008) which requires affected companies to establish and maintain a register of persons (both natural and juristic) who hold beneficial interest equal to or in excess of five percent of the total number of securities or class of that securities. The regulations further prescribe the information that must be obtained and recorded for these persons<sup>1</sup>.
- 2.21.2. The **sector risk assessments** conducted on various sectors has highlighted the risk of legal person structures being abused by criminals who are beneficial owners.
- 2.21.3. **Emerging risks, and media reports** highlighting the abuse of the public procurement process, using illegitimate companies with criminal beneficial owners. There are numerous instances in South Africa, that highlight the concealment of criminal beneficial owners which enabled corrupt activities using complex legal structures. The abuse of legal persons within South Africa is concerning, where beneficial owners deliberately use legal entities to evade detection. The percentage threshold must therefore be set low enough to identify beneficiaries.

---

<sup>1</sup> [https://www.cipc.co.za/wp-content/uploads/2023/08/USER-GUIDELINES-BO-LEGISLATIVE-REQUIREMENTS\\_Aug-23.pdf](https://www.cipc.co.za/wp-content/uploads/2023/08/USER-GUIDELINES-BO-LEGISLATIVE-REQUIREMENTS_Aug-23.pdf)

## FOR CONSULTATION PURPOSES ONLY

- 2.22. In addition to applying a threshold of five percent ownership interest, accountable institutions must, in terms of their risk-based approach, determine whether there are other natural person/s, who exercise effective control over the legal person through their ownership even though that person does not own five percent or more ownership interest in the legal person. In this scenario the natural person owns less than the prescribed five percent ownership interest yet exercises effective control over the legal person. This is a holistic assessment of control of the legal person.
- 2.23. The concern with only applying a threshold approach is that the accountable institution might fail to identify the natural person who exercises effective control over the legal person yet owns less than five percent ownership interest in the legal person. Therefore, accountable institutions are cautioned when applying the threshold approach, to in addition conduct a holistic ownership assessment to determine if there are any other natural persons who have a controlling ownership interest over the legal person. There might be persons who own less than the set threshold, who are the actual beneficial owners because of direct or indirect control over the legal person.

**Example** – Person T owns 96 percent securities with no voting rights and Person J owns four percent securities with voting rights in company Y. Person J is the chairperson of the company, and operationally controls the company.

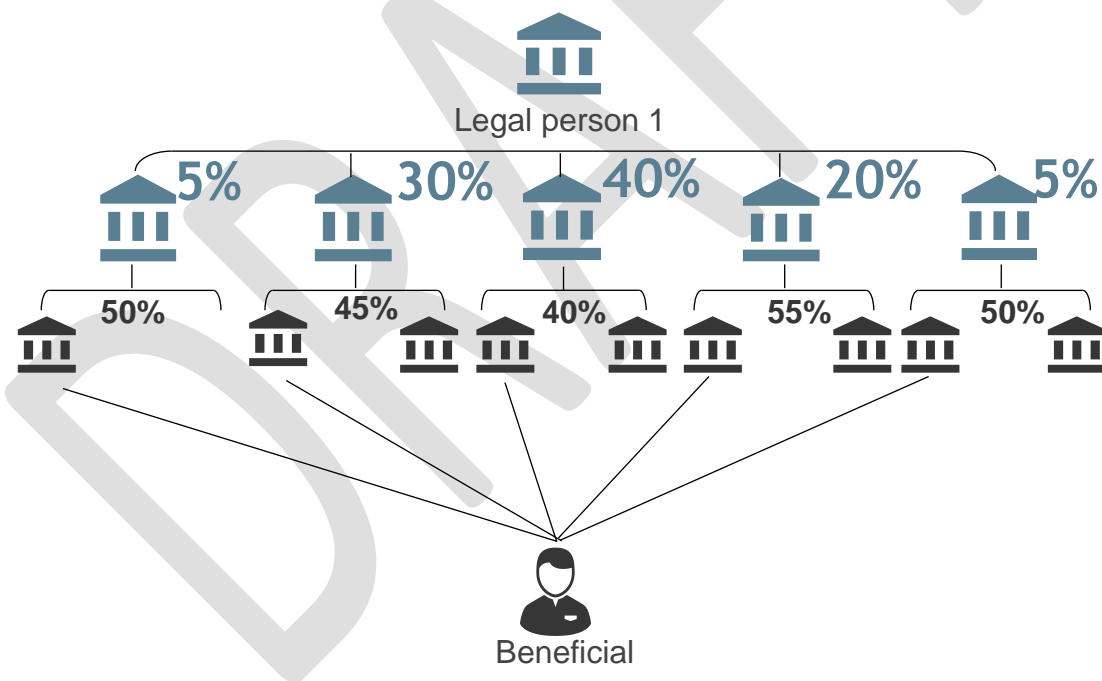
Following a threshold approach only would result in the accountable institution having to identify and take reasonable steps to verify Person T, foregoing the identification of another key beneficial owner. Accountable institutions must therefore in addition to applying the threshold approach, employ a risk-based approach, which includes identifying and taking reasonable steps to verify Person J as well.

- 2.24. In complex structures with multiple layers there may be instances where a number of legal persons form a group with a natural person holding a small percentage legal ownership interest across all entities in the structure (referred to as parallel beneficial ownership structure) which, when aggregated, equals a controlling ownership interest. This parallel beneficial ownership structure highlights the importance of an accountable institution gaining a full understanding of the legal person's ownership structure.

**FOR CONSULTATION PURPOSES ONLY**

- 2.25. It is possible for a natural person to not have any ownership interest, but still be regarded as a beneficial owner due to the fact that he/she ultimately benefits from the business relationship between the client and the accountable institution.
- 2.26. It is possible for a natural person to not have any ownership interest, but still be regarded as a beneficial owner due to the fact that he/she ultimately benefits from the business relationship between the client and the accountable institution.
- 2.27. There may be other client factors that warrant the accountable institution to identify natural persons that holds less than five percent ownership interest in a legal person:

**Example:**



- 2.27.1 The legal person is deemed to pose a high-risk of money laundering, terrorist and proliferation financing (ML, TF and PF) in terms of the accountable institutions risk-based approach;

## FOR CONSULTATION PURPOSES ONLY

- 2.27.2 The natural person is a foreign politically exposed person, high-risk domestic politically exposed person or a high-risk prominent influential person;
- 2.27.3 There is significant adverse media on the natural person;
- 2.27.4 The client or person is the subject of numerous reports, or there are suspicions that the person is linked to terrorists/terrorism financing or related activities or proliferation of weapons of mass destruction.

### **Example – Identifying the beneficial owner who has a controlling ownership interest in the legal person – voting rights**

Company X has five shareholders. The shares are owned as follows:

Natural person A – 50 percent

Natural person B – 20 percent

Natural person C – 25 percent

Natural person D – 3 percent

Natural person E – 2 percent

Natural person A has enough ownership interest to take decisions regarding and/or influencing, the resolutions/decisions/business operations of the Company. Each shareholder exercises their voting rights independently. Person D is a domestic politically exposed person. Person E has been implicated in a multi-million tender corruption case in media reports.

When establishing a business relationship with Company X, the accountable institution must, through the threshold approach, determine which natural persons owns five percent and more and then identify those natural persons. In addition to the threshold approach, the accountable institution must conduct a risk assessment on the entity. In the given example the accountable institution determined that although natural person D and E did not own five percent ownership interest, they did pose a significant risk and are regarded as beneficial owners.

*Different types of legal persons and forms of ownership interest*

- 2.28. Based on the different types of legal persons, the **forms of ownership interest would differ**, for example, companies issue shares owned by shareholders; co-operative members own interest, referred to as membership shares. In some instances, accountable institutions would have to determine from the legal person's founding documents what type of ownership interest is issued in respect of a particular legal person.
- 2.29. For legal persons, different sub-types of ownership interest may carry different weight in terms of influence or decision-making power over the legal person.

**Example – Determining the different types of ownership interest issued in respect of a legal person**

When dealing with a company as a client, the accountable institution must determine the different classes of shares the company issues, because different classes of shares afford different levels of influence or decision-making power to their holders over the legal person.

Company X issued five percent class A shares and 95 percent class B shares in terms of the memorandum of incorporation. The 95 percent class B shares are owned by natural person C and D equally. The five percent class A shares are owned by natural person A.

The five percent class A shares carry 95 percent voting rights in the company and the 95 percent class B shares only carry five percent voting rights in terms of the memorandum of incorporation.

Therefore, in the given scenario, the accountable institution determined that the holder of the class A shares is the beneficial owner who has controlling ownership interest. Scenarios will vary, and the accountable institution would have to determine this from establishing the ownership and control structure of the legal person.

- 2.30. There may be instances where beneficial owners form **coalitions** and/or enter into agreements in terms of which they take decisions regarding or exercise influence over a legal person in an aligned manner, which results in the exercising of controlling influence over that legal person. In this manner, such a **group or coalition of beneficial owners jointly hold the controlling ownership interest**. As part of

## FOR CONSULTATION PURPOSES ONLY

determining the ownership and control structure of the legal person, accountable institutions must determine whether such coalitions or agreements exist.

- 2.31. An example includes a shareholders' agreement between the shareholders of a company. It can be between all or, in some cases, only some of the shareholders (e.g. the holders of a particular class of share). Its purpose could include protecting the shareholders' investment in the company, to establish a fair relationship between the shareholders, and to govern how the company is run.

### **Example – Identifying the beneficial owners who exercise controlling ownership interest through coalitions**

Company X has five shareholders, the shares are owned as follows:

Natural person A – 5 percent

Natural person B – 4 percent

Legal person C – 20 percent

Legal person D – 20 percent

Natural person E – 2 percent

Natural person F – 49 percent

Persons A, B, C, D and E enter into a shareholder agreement in terms of which agreement they decide to vote in an aligned manner.

Because they jointly hold 51 percent and take decisions in an aligned manner, they are each deemed to be controlling owners.

The accountable institution must identify Natural persons A, B, C, D, E and F, in this scenario.

- 2.32. In instances where shareholders are so dispersed that no natural person can be regarded as having a controlling ownership interest, the accountable institution must move to the next level of elimination.

### ***Step 2 – Exercises control through other means***

- 2.33. Where an accountable institution doubts whether a natural person has controlling ownership interest, or no natural person has controlling ownership interest in the legal person, the accountable institution must establish the identity of the natural person/s



## FOR CONSULTATION PURPOSES ONLY

who exercises control of the legal person through other means. This includes through his or her ownership or control of other legal persons, partnerships, or trusts.

- 2.34. The General Law (Anti-Money Laundering and Combating Terrorist Financing) Amendment Act recently amended section 21B(2)(a)(ii) of the FIC Act. Accountable institutions must now identify the natural person that exercises control through his or her ownership or control of other legal persons, trusts or partnerships.
- 2.35. There are various ways by which a natural person can exercise effective control over a legal person by other means, including but not limited to:
- 2.35.1. Power of attorney;
  - 2.35.2. Nominee shareholders,
  - 2.35.3. Control can also be exercised through debt instruments or other financing arrangements. For example, where a lender or creditor can control a legal person via the provisions of the lending agreement (debt that is convertible into voting equity) or by a third party who can otherwise influence a shareholder by means of a financial or other relationship. However, a bank providing financing to a legal person will rarely be considered as exercising control over the legal person by the Act per se.
  - 2.35.4. Nominee directors;
  - 2.35.5. Delegations of authority;
  - 2.35.6. Delegated authority in terms of law (e.g. governing legislation and accounting officer);
  - 2.35.7. Court orders;
  - 2.35.8. Power to appoint or remove the majority of the board of directors or senior managers of a legal person. Control over a legal person may be exercised if an individual has the power to appoint the majority of senior management directly or indirectly;
  - 2.35.9. Power or influence to take decisions for a legal person or veto decisions taken, which impacts the profit of the legal person;
  - 2.35.10. Ability to exercise control over a legal person either solely or jointly with other persons, either through formal or informal contracts.

## FOR CONSULTATION PURPOSES ONLY

- 2.35.11. Use of formal or informal nominee arrangements.
- 2.35.12. The right to appoint or remove more than half of the members of the board or similar officers of the corporate entity;
- 2.35.13. The ability to exert a significant influence on the decisions taken by the corporate entity, including veto rights, decision rights and any decisions regarding profit distributions or leading to a shift in assets. Natural persons who exercise substantial control over a legal person and are responsible for strategic decisions that fundamentally affect the business practices or general direction of the legal person may be considered a beneficial owner under some circumstances;
- 2.35.14. Control, whether shared or not, through formal or informal agreements with owners, members or corporate entities, provisions in the articles of association, partnership agreements, syndication agreements, or equivalent documents, depending on the specific characteristics of the legal person, as well as voting arrangements;
- 2.35.15. Usufruct – where a beneficial owner gives a legal right to someone else to use or consume benefits from the beneficial owner’s property
- 2.35.16. Ability to exercise control through immediate family members or known close associates. 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 the legal person, it could be grounds for further investigation if such individual is in the condition to exercise control over the legal person.
- 2.35.17. While the above list exists in law through statute or legal form, it is possible for natural persons that neither hold voting rights nor hold any of the roles in the aforementioned form, to still impact decisions taken in respect of the client of the accountable institution and further benefit from this. This is usually a form of undue influence, which presents heightened ML, TF and PF risk, as criminal actors often exercise undue influence over legal persons through their close associations to beneficial owners or management etc. of the legal person. Where it becomes apparent that a legal person has taken a decision or

## FOR CONSULTATION PURPOSES ONLY

transacted in a manner which is not consistent or normal for the legal person, which outcome has the effect of unduly benefiting external parties, the accountable institution should consider whether the external party exercises control over the legal person; further whether the accountable institution has fully applied CDD in respect of the legal person including identifying the external party who exercises control through other means as a beneficial owner.

- 2.35.18. Links with family members of managers or directors or those owning or controlling the corporate entity.

### **Consultation note:**

Accountable institutions are requested to provide examples of what “through other means” entails based on their understanding.

### **Example – External persons exercising undue influence over legal person**

Where Municipality X published a “request for information” and received numerous responses which provide varying rates and charges, however, opt to award the tender to a recently established company that has little experience, which rates and charges are unreasonably high in comparison to the other persons. The accountable institutions should monitor and understand the nature of the municipality’s business dealings and transactions.

Any transactions related to tenders awarded in this fashion should raise red flags, as there may be an external party exercising undue influence to gain an undue benefit from the legal person (municipality). There is even the possibility that an employee or member of the municipality’s management is gaining a benefit from an undue influence.

The accountable institution must consider whether the external party exercises control through other means over the municipality, and therefore consider applying CDD to that person as beneficial owners.

### ***Step 3 – Exercises control over the management***

- 2.36. Where the accountable institution cannot identify the natural person/s who exercises control through other means, the accountable institution must determine who the

## FOR CONSULTATION PURPOSES ONLY

natural person/s are **who exercise control over the management of the legal person**. This may include but is not limited to:

- 2.36.1. Executive officer;
  - 2.36.2. Non-executive director,
  - 2.36.3. Independent non-executive director;
  - 2.36.4. Director; or
  - 2.36.5. Manager.
- 2.37. When identifying the natural persons who exercise control over the management of the legal person, regard must be had to the definition of “beneficial owner” which refers to “effective control”. This limits the natural persons who fall within the ambit of section 21B(2)(iii) of the FIC Act referred to as “management”, which is not meant to include management at all levels of a legal person.
- 2.38. Refer to FIC Guidance Note 7 which states that “‘effective control’ means the “ability to materially influence key decisions in relation to a legal person (e.g. the manner in which the majority of voting rights attached to shareholdings are exercised, the appointment of directors of a legal person, decisions taken by a board of directors, key commercial decisions of a legal person), or the ability to take advantage of capital or assets of a legal person.”

### **Consultation note:**

Accountable institutions are requested to advise what their understanding of “control over the management” and “effective control” entails. Further examples may include:

- Clear appointment to a position by owners or in terms of law
- Founder
- Chancellor
- Nominee director

### **Legal persons – Companies listed on exchanges**

- 2.39. When establishing a business relationship or conducting a single transaction with exchange listed companies, the accountable institution must comply with section 21B of the FIC Act. Accountable institutions are still required to follow the process of

**FOR CONSULTATION PURPOSES ONLY**

elimination when identifying beneficial owners of exchange listed companies. Exchanges may have differing requirements regarding the disclosure of beneficial owners by listed companies. Depending on whether disclosure of beneficial ownership is required by the exchange and successfully obtained, this may simplify the process for the accountable institutions. Further noting, public companies that are registered with the Companies and Intellectual Properties Commission (CIPC), are subject to a beneficial ownership enquiry before registering with the CIPC.

DRAFT

*Foreign created legal persons*

- 2.40. When establishing a business relationship or conducting a single transaction with a foreign-created legal person, the accountable institution must comply with section 21B of the FIC Act.
- 2.41. Regarding foreign-created legal persons, it may be necessary to engage the client or respective entity responsible for the creation of the foreign legal person to provide the required information on beneficial ownership.

*Legal persons – state owned entities*

- 2.42. Identifying the natural person who owns a state-owned company could prove challenging. When dealing with state owned companies, it is vital to identify the natural person that controls the legal person as the beneficial owner. The accountable institution may either follow the second stage of elimination and/or the third stage of elimination.
- 2.43. Certain organs of state are incorporated as companies and must be identified as a company. In other instances, government institutions are constituted as legal persons by statute. This category of legal persons constituted by statute can be referred to as “other legal persons”. With this category, the governing statute would provide an understanding of which natural persons exercise effective control over the legal person, e.g. the board and accounting officer.
- 2.44. There is a further type of government entity that is neither a company nor a legal person created by statute. This would include national, provincial and local government departments. When dealing with these entities, the beneficial owner would usually be the natural person/s who exercise control over the management of the legal person.

*Evidence that the process of elimination was followed*

- 2.45. Accountable institutions should be able to evidence that they followed the process of elimination as required in section 21B(2)(a) of the FIC Act, having first attempted to identify the natural person who has a controlling ownership interest, thereafter where there is no natural person who has a controlling ownership interest, or the accountable institution has doubts in this regard, only then can the accountable institution identify the natural person who exercises control through other means or identify the natural persons who exercises control over the management of the legal persons. In practice, where an accountable institution fails to follow the process of elimination, they are non-compliant with the requirement set out in section 21B(2)(a) of the FIC Act.
- 2.46. Where the legal person presents a heightened ML, TF and PF risk, it may be prudent for the accountable institutions to identify all the beneficial owner levels, thus not eliminating any level of beneficial owner.

*Scope of beneficial owner information*

- 2.47. Refer to the FIC Guidance Note 7 for guidance on the verification of natural persons who are beneficial owners. Note that the accountable institutions have the flexibility to determine what information to request and what documentation to rely on to verify the information as part of the accountable institution's risk-based approach.

PART B

3. ESTABLISHING THE BENEFICIAL OWNERS OF TRUSTS

- 3.1. An important fact to understand when establishing a business relationship with or conducting a single transaction on behalf of a trust, is that the accountable institution must identify all the natural persons linked to the trust. This requirement applies because decision-making power within a trust lies with the trustee (in terms of law). However, in practice the trustees, founders and/or beneficiaries or categories of beneficiaries can all exercise influence over the decisions or operations of a trust.
- 3.2. The beneficiary of a trust is not always the only equivalent of the beneficial owner as is the case with legal persons. Beneficiaries are not the only person/s who gain benefit from the trust. The trustees and founders also have the capacity to gain from a trust dependent on the manner in which the trust is set up and the purposes for which the trust is operated. Accountable institutions must therefore identify all natural persons who are linked to the trust.
- 3.3. Founders often use trusts as a vehicle to di-vest assets from the founder on paper and set up the beneficiary structure in such a manner that the founder ultimately can still gain the benefits through the trust. Criminals are aware that trusts may be abused for ML, TF and PF purposes by exploiting this structure.
- 3.4. When dealing with trusts it must also be noted that there are scenarios where external persons are able to exercise undue influence over and/or extract benefit from a trust without a legal link to the trust<sup>2</sup> but rather through virtue of affiliation to the trustee, founder or beneficiary. Accountable institutions should remain aware of this risk and monitor the trust's transactions or activities to determine such undue influence.

---

<sup>2</sup> Not a trustee/founder/beneficiary



## FOR CONSULTATION PURPOSES ONLY

- 3.5. In order to mitigate the ML, TF and PF risks, accountable institutions must identify the natural persons who are the founders, trustees and named beneficiaries of a trust in terms of section 21B(4) of the FIC Act.
- 3.6. Where a trustee is a legal person, such a trustee has nominal trustees who are the natural persons acting on behalf of the trustee, similar to an authorised representative. The accountable institution must identify the trustee as it would any other legal person in terms of section 21B(1) of the FIC Act. This includes identifying the authorised person who acts on behalf of that legal person trustee as the nominal trustee, the legal person trustee, as well as the beneficial owners of that legal person trustee through the process of elimination. The type of legal person holding the position as trustee will determine who to identify as the beneficial owner.
- 3.7. The same applies where a founder and/or beneficiary is a legal person. The accountable institution must identify the founder and/or beneficiary as it would any other legal person in terms of section 21B(1) of the FIC Act. That includes identifying the authorised representative, the legal person, as well as the beneficial owners of the legal person by following the process of elimination.
- 3.8. When seeking to identify the beneficial owner of a foreign trust, the accountable institution must understand the ownership and control structure requirements and apply CDD measures in a similar manner as it would with domestic trusts. In complex cases, trust company services providers and administrators may be involved and additional engagement with respective trust and company service providers may be required to obtain the beneficial ownership information required.
- 3.9. Where an entity is structured and functions in a manner similar to a trust (apart from the establishment thereof), the same principles of CDD apply as for a trust, which include identifying all the natural persons linked to the entity. For example, certain private foundations, although not registered as a trust, function in a similar manner.

## FOR CONSULTATION PURPOSES ONLY

- 3.10. Refer to South African Reserve Bank (SARB) Directive 1 of 2022 which sets out the accountable institution's obligation to conduct CDD when a life insurance beneficiary benefit accrues.
- 3.11. When dealing with a foreign trust where there are further natural persons such as a protector, the accountable institution must also identify the natural person in this instance.

### PART C

#### 4. ESTABLISHING THE BENEFICIAL OWNERS OF PARTNERSHIPS

- 4.1. The accountable institution must identify and take reasonable steps to verify each partner within a partnership, regardless of the threshold percentage of ownership that partner owns, including every member of a partnership *en commandite*, an anonymous partnership or a similar partnership.
- 4.2. Where a partnership consists of two or more legal persons, then the accountable institution must, in addition to identifying the partnership, identify each legal person that is a partner, in accordance with section 21B(2) of the FIC Act. This includes identifying the person acting on behalf of the legal person, the legal person itself and the beneficial owner, through the process of elimination, as discussed in Part A above.
- 4.3. FIC Guidance Note 7 provides guidance on what information and documents may be requested for CDD purposes. In addition, it is recommended that the accountable institution obtain the partnership agreement.
- 4.4. There may be scenarios where one partner exercises significant control over the partnership. This could include, for example, the rights (whether directly or indirectly):
  - 4.4.1. to appoint or remove any partner;

## **FOR CONSULTATION PURPOSES ONLY**

- 4.4.2. to appoint or remove the majority of the general partners of the partnership;
- 4.4.3. to direct or veto the conduct or management of the partnership including but not limited to the investment decisions, profit share or capital returns of the partnership's funds or assets;
- 4.4.4. to direct amendments to the partnership's constitutional documents (e.g. the partnership agreement);
- 4.4.5. to dissolve or convert the partnership; or
- 4.4.6. is entitled to the assets of the partnership in the event of the dissolution of the partnership.

### **PART D**

## **5. ESTABLISHING THE BENEFICIAL OWNERS OF NON-PROFIT ORGANISATIONS**

- 5.1 Accountable institutions should apply a similar approach to non-profit organisations (NPOs), as is applied with trusts, identify all the founders of the NPO, as well as the management of the NPO. Where the beneficiaries are named, identify the named beneficiaries, or where the beneficiaries are not named the process by which a beneficiary will be determined.

### **PART E**

## **6. ADEQUATE, ACCURATE AND UP TO DATE BENEFICIAL OWNERSHIP INFORMATION**

- 6.1. Through identification and taking reasonable steps to verify the beneficial owner, the accountable institution must be satisfied that it knows "who" the beneficial owner is, and "why" or "how" the person is a beneficial owner. This requires understanding of

## FOR CONSULTATION PURPOSES ONLY

the beneficial owner interest. The accountable institution should obtain accurate, adequate, and up to date beneficial ownership information.

- 6.2. **Adequate information** – which includes enough information to know who the beneficial owner is, and how that natural person has ownership or exercises control.
- 6.3. **Accurate information** – the beneficial owner information should be verified against a reliable, independent third-party source as far as possible. Identity and status of the beneficial owner must be accurate. Accountable institutions are cautioned that sole reliance on self-declared beneficial ownership information provided by the client without verifying that information against a third-party source is not adequate and should be avoided. Multiple sources should be cross-referenced to ensure information obtained is accurate. Accountable institutions are advised to rely on multiple sources (multi-pronged approach) to gather credible beneficial ownership information.
- 6.4. **Up-to-date information** – where beneficial ownership information changes, the accountable institution must update its CDD information within a reasonable period.
- 6.5. The accountable institution should adopt a risk-based approach to verify beneficial owners of a client that is a legal person, trust or partnership. It is often necessary to use a combination of public sources and to seek further confirmation from public sources that is correct and up-to-date or to ask for additional documentation that confirms the beneficial ownership and legal person, trust or partnership structure.

**Consultation note** – Accountable institutions are requested to list the sources that they rely upon to verify beneficial ownership information. Examples includes but are not limited to client self-declaration, the CIPC, the Masters of the High Court, the Department of Social Development, and the Department of Home Affairs etc.

### *Inability to identify and verify*

- 6.6. Where an accountable institution is unable to identify and take reasonable steps to verify a beneficial owner, that accountable institution must comply with section 21E of

## FOR CONSULTATION PURPOSES ONLY

the FIC Act. The accountable institution must not establish a business relationship or single transaction and must consider filing a suspicious and unusual transaction report in terms of section 29 of the FIC Act.

### *Obligation to scrutinise client information*

- 6.7. The accountable institution must scrutinise client information which includes scrutinising beneficial owner information to determine whether such beneficial owners are listed on the targeted financial sanctions list as published in terms of section 26A of the FIC Act.

### *Public procurement*

- 6.8. In the update to the Financial Action Task Force (FATF) Recommendation 24, the importance of obtaining beneficial ownership information for legal persons, trusts and partnerships that are involved in public procurement, has been highlighted.
- 6.9. Accountable institutions are cautioned to apply enhanced due diligence when establishing business relationships or conducting single transactions with legal persons, trusts or partnerships who conduct business with public entities.

## 7. CONSULTATION

- 7.1. Commentators are invited to comment on the Draft PCC 121 by submitting written comments via the [online comments submission link only](#). Any questions or requests relating to this consultation note may only be sent to the FIC at [consult@fic.gov.za](mailto:consult@fic.gov.za). Submissions will be received until close of business on Friday, 8 December 2023.
- 7.2. The FIC intends to conclude the consultation on this PCC by publishing a final version of a PCC no later than Friday, 26 January 2024.

**8. COMMUNICATION WITH THE CENTRE**

- 8.1. The Centre has a dedicated contact call centre geared to assist in understanding the obligations in terms of the FIC Act. Should you have any queries please contact the Centre's compliance call centre on 012 641 6000 and select option 1.
- 8.2. In addition, you can submit an online compliance query by clicking on: <https://www.fic.gov.za/compliance-queries/> or visiting the Centre's website and submitting an online compliance query.

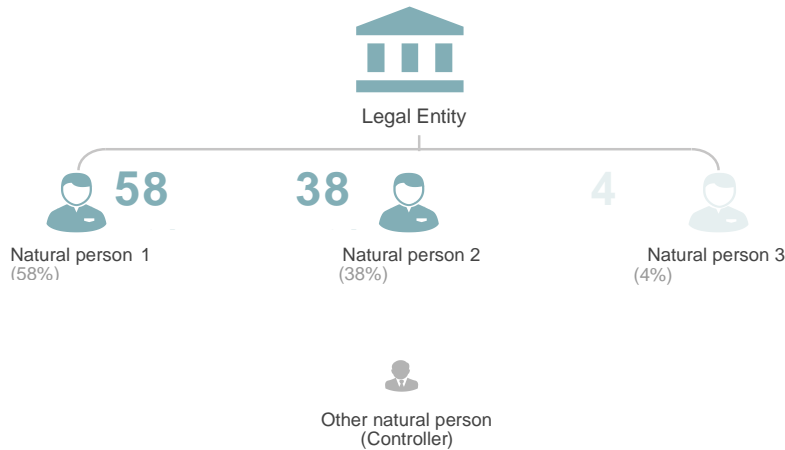
**Issued By:  
The Acting Director Financial Intelligence Centre  
15 November 2023**

ANNEXURE A

Complex examples

The following are examples of complex structures which should be considered.

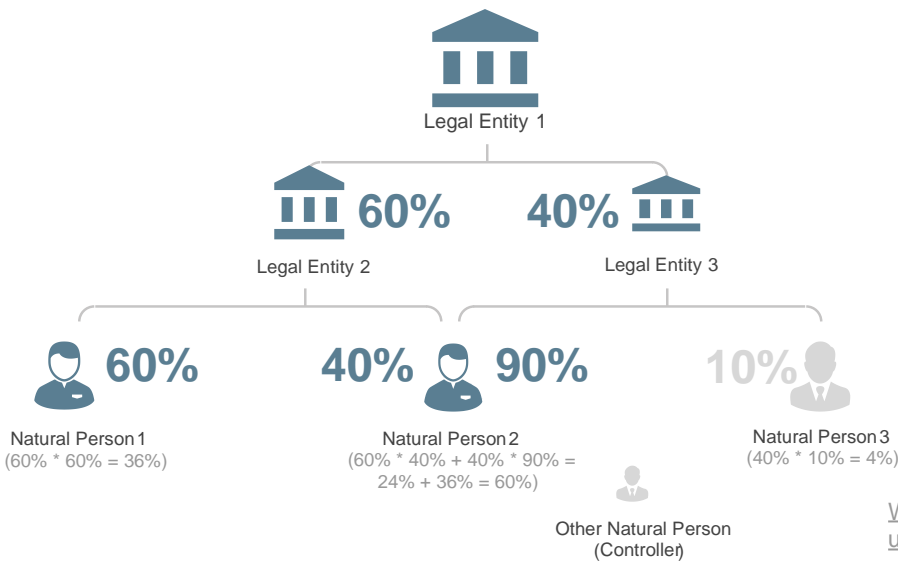
Example 1 – Simple direct shareholding



Natural Person 1 and Natural Person 2 are the only direct beneficial owners of the legal entity, if they are not the nominal owners and there are no other persons who could have an indirect influence on the company's activities.

We are in jurisdiction that uses 5% threshold.

Example 2 – Multiple indirect shareholding

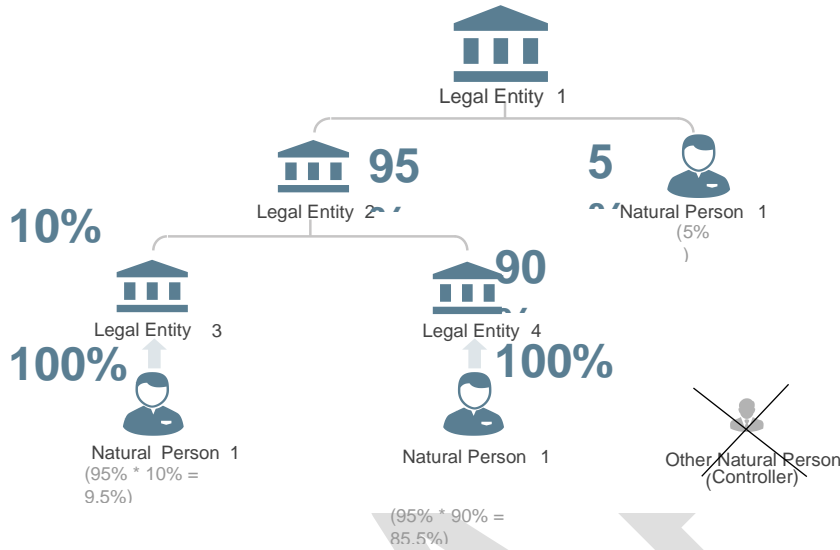


Natural Person 1 (60% \* 60% = 36%) and Natural person 2 (60% \* 40% + 40% \* 90% = 24% + 36% = 60%) are the beneficial owners, provided that they are not the nominal owners and there are no other persons who could have an indirect influence on the company's activities.

We are in jurisdiction that uses 5% threshold.

**FOR CONSULTATION PURPOSES ONLY**

**Example 3 – Combination of direct and multi-level indirect shareholding (single ownership)**

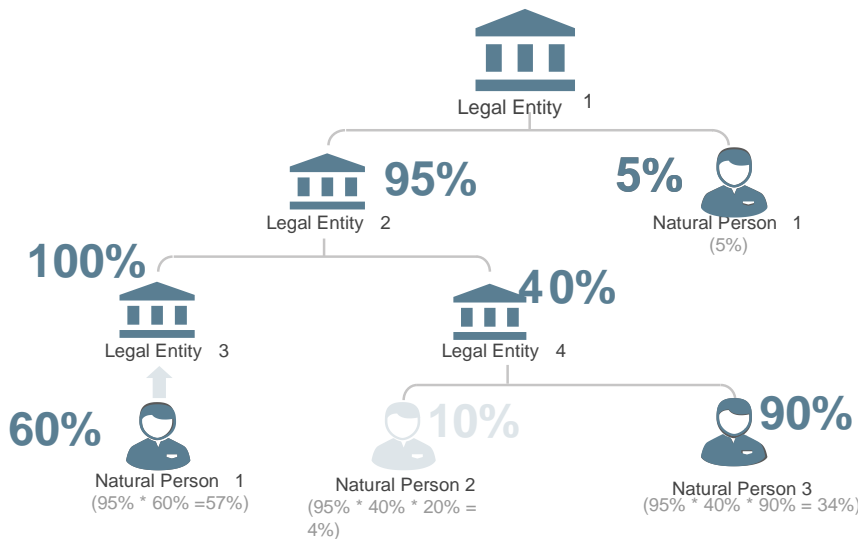


Natural Person 1 is the only beneficial owner who directly and indirectly owns stakes in the statutory capital of the Legal entity1.

Natural Person 1 is the beneficial owner who has control and 100% ownership of the company.

We are in jurisdiction that uses 5% threshold.

**Example 4 – Combination of direct and multi-level indirect shareholding (multiple ownership)**

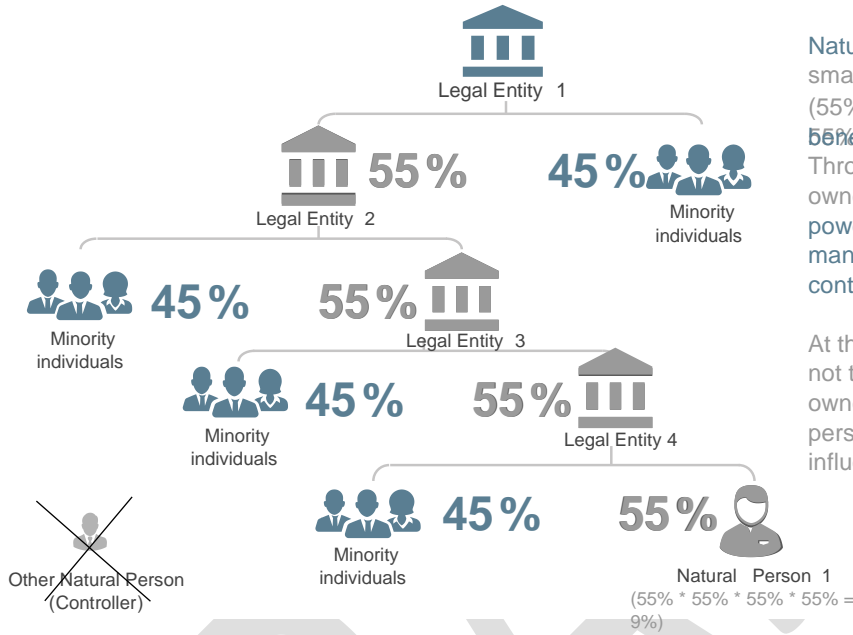


Natural person 1 (5% + 95% \* 60% = 5% + 57% = 62%) and Natural person 3 (95% \* 40% \* 90% = 34%) are the beneficial owners, provided they are not the nominal owners and there are no other natural persons who could have an indirect influence on the company's activities.

We are in jurisdiction that uses 5% threshold.



**Example 5 – Multi-level indirect shareholding (controlling ownership interest over majority ownership)**

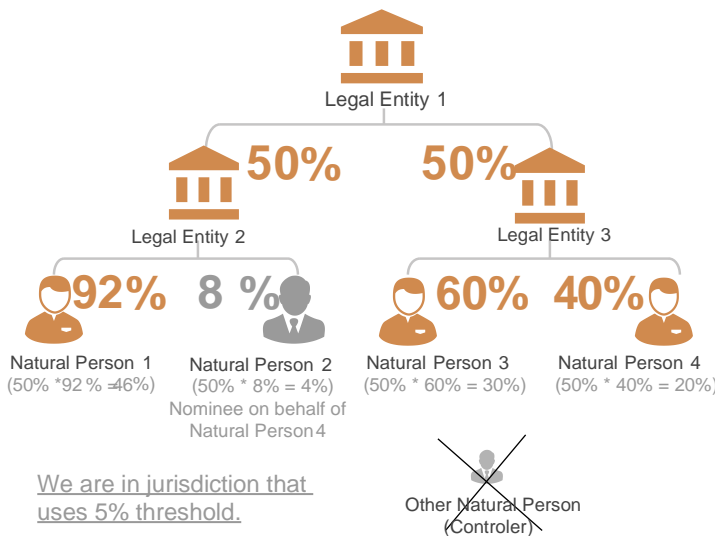


Natural person 1, despite the relatively small percentage of shareholding ( $55\% * 55\% * 55\% = 9\%$ ) is the **beneficial owner** of legal entity 1. Through the multi-level chain of ownership he has the **influence and power** to appoint the senior management of Legal entity 1 and can control over the voting results.

At the same time, Natural person 1 is not the intermediary, agent or nominal owner and there are no other natural persons who could have an indirect influence on the company's activities.

We are in jurisdiction that uses 5% threshold.

**Example 6 – formal nominee**



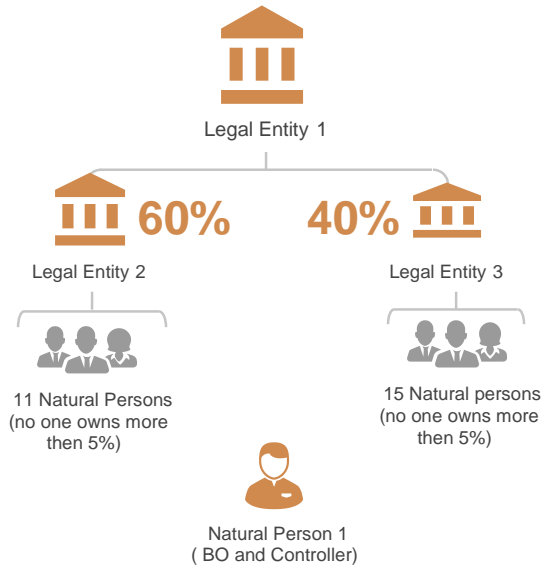
Natural person 1 ( $50\% * 92\% = 46\%$ ) and Natural person 3 ( $50\% * 60\% = 30\%$ ) are **beneficial owners**, as they both own more than 25% of Legal Entity 1.

Natural Person 4 ( $50\% * 8\% + 50\% * 40\% = 4\% + 20\% = 24\%$ ), is also the **beneficial owner** as Natural Person 2 is acting as a nominee on behalf of Natural Person 4.

There are no other nominee arrangements and other persons who could have an indirect influence on Natural Persons mentioned in the diagram.

We are in jurisdiction that uses 5% threshold.

**Example 7 – informal nominee arrangement**



On this example Legal entity 1 is owned by two legal entities. Legal entity 2 and Legal entity 3, which in turn is owned by a “football team” of unknown individuals. There is no one who owns more than 5% of shares.

At the same time Natural Person 1 is the one who can control all decisions of the management of Legal entity 1 and Legal entity 2.

**Natural Person 1** is the **ultimate beneficial owner of Legal Entity 1**. As he can control Legal entity 2 and Legal entity 3 **through other means (informal nominee arrangements)**.

We are in jurisdiction that Uses 5% threshold.

**Example 8 – Joint-securities company (control through position held)**



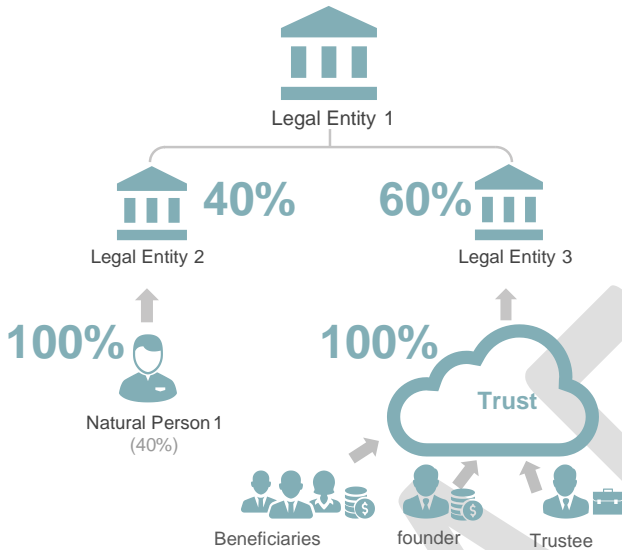
In this example, Legal Entity 1 is a subsidiary of a Joint-Stock company. Number of shareholders 10 000. The largest percentage of shareholding is 3%.

In such public company, there is no individual who owns 10% or more, and control is exercised by individual *through positions held within a legal entity*, such as a chief executive officer (CEO), managing or executive director, or president.

Such an individual is the **ultimate beneficial owner** as he can exercise executive control over the daily or regular affairs of the company

We are in jurisdiction that uses 5% threshold.

**Example 9 – Multi-level indirect shareholding (trust)**



Natural Person 1 (40% of shareholding) is the **beneficial owner** the legal entity, provided that he is not the nominal owner and there are no other persons who could have an indirect influence on the company's activities.

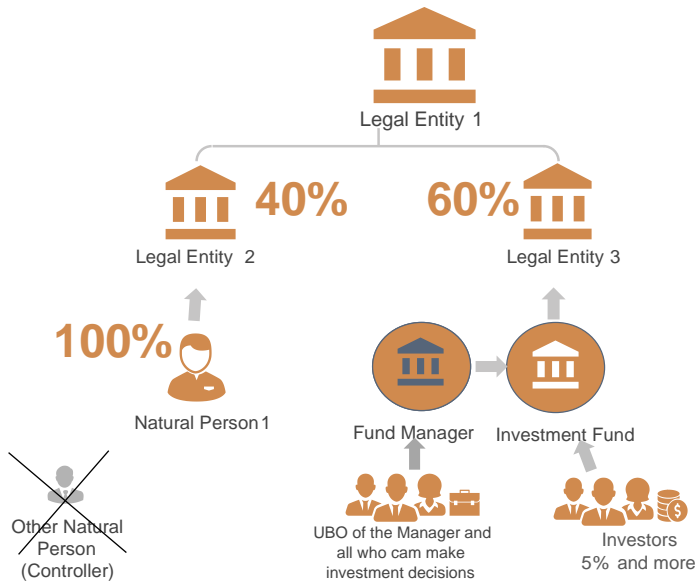
The founder, the trustee(s), the protector (if any) and the beneficiaries of a Trust, as well as any other natural person who is exercising ultimate control over the trust by means of direct or indirect ownership or by other means are the **beneficiary owners** of Legal entity 1.

We are in jurisdiction that uses 5% threshold.

( )

**Example 10 – Multi-level indirect ownership, trust and investment fund**

**Multi-level indirect shareholding (investment fund)**

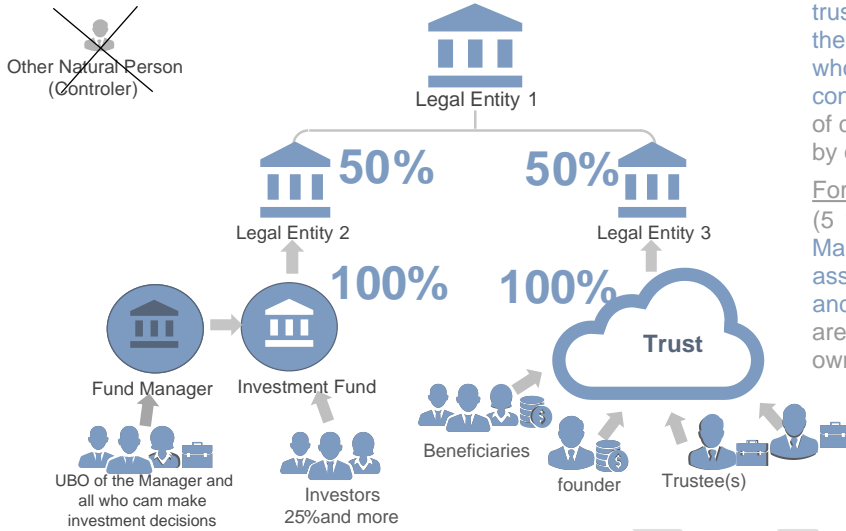


Natural Person 1 (40% of shareholding) is the **beneficial owner** of the legal entity, provided that he is not the nominal owner and there are no other persons who could have an indirect influence on the company's activities.

Investors of the Fund (5% or more), UBOs of the Fund Manager, and all who control the assets of the Investment Fund and make investment decisions are also the ultimate beneficial owners of Legal entity 1.

We are in jurisdiction that uses 5% threshold.

**Trust and investment fund**



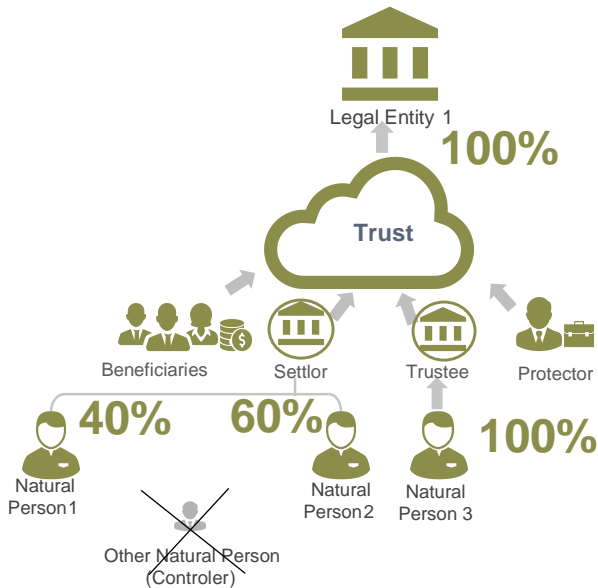
**UBO for Legal entity 1:**

For Trust: the settlor, the trustee(s), the protector (if any), the beneficiaries, and any other who can exercise ultimate control over the Trust by means of direct or indirect ownership or by other means.

For Fund: Investors of the Fund (5 %or more), UBOs of the Fund Manager, and all who control the assets of the Investment Fund and make investment decisions are the ultimate beneficial owners of Legal entity 1.

We are in jurisdiction that uses 5% threshold.

**Trust (established by legal persons)**



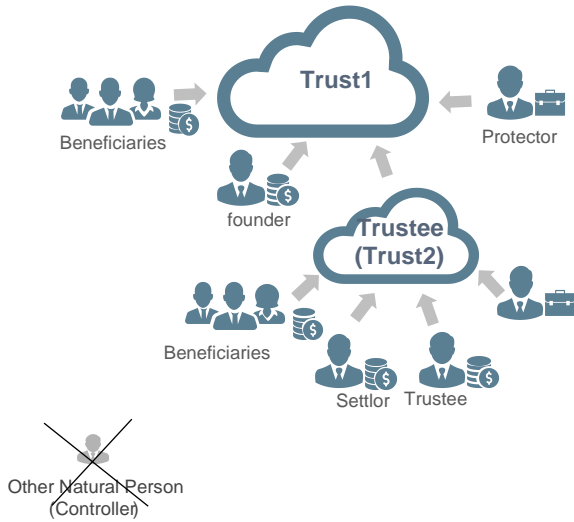
The protector (an individual) and the beneficiaries (individuals) of the Trust are the beneficiary owners of Legal entity 1.

The settlor and the trustee of a Trust are legal persons. For that reason, it's necessary to identify beneficial owners of such legal persons

Natural Person 1 and Natural Person 2 (beneficial owners of the Settlor) and Natural Person 3 (beneficial owner of the Trustee) are also the beneficial owners of the Legal entity 1.

We are in jurisdiction that uses 5% threshold.

### Trust (trustee is another trust)



The settlor, the protector (if any), the beneficiaries of Trust 1, and any other who can exercise ultimate control over the Trust1 by means of direct or indirect ownership or by other means are Beneficial owners of the Trust 1.

Trust2 is the Trustee of a Trust1. For that reason it's necessary to identify beneficial owners of Trust 2

The settlor, the trustee(s), the protector (if any), the beneficiaries of Trust 2, and any other who can exercise ultimate control over the Trust2 by means of direct or indirect ownership or by other means are Beneficial owners of the Trust 2 and are Beneficial owners of the Trust 1.

DRAFT

## **ANNEXURE B**

### **8. RISKS ASSOCIATED WITH THE BENEFICIAL OWNER**

- 8.1. The requirements set out in section 21B of the FIC Act applies as a rule and is not based upon the risk rating of the client. Further, the determination of the ML, TF and PF risk of the client is dependent on the review of the beneficial ownership. Where the beneficial owners are high-risk persons, such a factor should be considered when determining the overall risk rating of the client.
- 8.2. Where the legal person presents a heightened ML, TF and PF risk, the accountable institution may seek to identify all the beneficial owner levels, thus not eliminating any level of beneficial owner (controlling owners, effective manager, directors etc.). For examples where the legal person is deemed to be high risk, the accountable institution may identify and take reasonable steps to verify even the ultimate owner who holds one percent ownership interest.
- 8.3. The risk level of the client must be considered to determine the appropriate level of verification.
- 8.4. The lack of adequate, accurate and timely beneficial ownership information may result in disguising known or suspected criminals, the true purposes of a business relationship or single transactions or the source of funds.

#### ***Indicators of ML, TF and PF risk***

Various indicators point toward a heightened risk of ML, TF and PF. These include but are not limited to:

- Allegations of ML, TF and PF, bribery, corruption or other predicate offences that involve beneficial owner/s;
- The beneficial owner/s has a reputation of unethical conduct;
- The beneficial owner/s is associated with persons who have been convicted of ML, TF and PF, bribery, corruption and/or any other predicate offence;

## FOR CONSULTATION PURPOSES ONLY

- The beneficial owner/s has been previously charged with ML, TF and PF, corruption and/or any other predicate offence, and has not been acquitted and/or has been previously convicted thereof;
- The beneficial owner/s controls public funds and/or controls public benefits, e.g. decisions on whether to award tenders, grants, procurements and licenses etc;
- The beneficial owner/s is a foreign or domestic politically exposed person or other high-risk person;
- Where a legal entity avoids providing beneficial ownership information;
- The legal entities have been awarded large and/or numerous tenders from government or state owned companies;
- The legal entity's account activity does not align to the stated source of wealth and source of funds;
- The legal entity's assets acquired do not align with the legal entity's source of wealth and source of funds.
- The client is reluctant to provide beneficial ownership information.
- Beneficial owners are:
  - politically exposed persons, or have family or professional associations with a person who is politically exposed
  - have previously been convicted for fraud, tax evasion, or serious crimes
  - are under investigation or have known connections with criminals
  - have previously been prohibited from holding a directorship role in a company or operating a trust and company service provider (TCSP)
  - are the signatory to company accounts without sufficient explanation.

### Legal persons or legal arrangements:

- have demonstrated a long period of inactivity following incorporation, followed by a sudden and unexplained increase in financial activities
- describe themselves as a commercial business but cannot be found on the internet or social business network platforms
- are registered under a name that does not indicate the activity of the company

## FOR CONSULTATION PURPOSES ONLY

- are registered under a name that indicates that the company performs activities or services that it does not provide
- are registered under a name that appears to mimic the name of other companies, particularly high-profile multi-national corporations
- use an e-mail address with an unusual domain
- are registered at an address that does not match the profile of the company
- are registered at an address that cannot be located on internet mapping services
- are registered at an address that is also listed against numerous other companies or legal arrangements, indicating the use of a mailbox service
- where the director or controlling shareholder(s) cannot be located or contacted
- where the director or controlling shareholder(s) do not appear to have an active role in the company
- where the director, controlling shareholder(s) and/or beneficial owner(s) are listed against the accounts of other legal persons or arrangements, indicating the use of professional nominees
- have declared an unusually large number of beneficiaries and other controlling interests
- have authorised numerous signatories without sufficient explanation or business justification
- are incorporated or formed in a jurisdiction that is considered to pose a high money laundering or terrorism financing risk
- are incorporated or formed in a low-tax jurisdiction or international trade or finance centre
- regularly send money to low-tax jurisdictions or international trade or finance centre
- conduct a large number of transactions with a small number of recipients
- conduct a small number of high-value transactions with a small number of recipients
- regularly conduct transactions with international companies without sufficient corporate or trade justification



## FOR CONSULTATION PURPOSES ONLY

- maintain relationships with foreign professional intermediaries in the absence of genuine business transactions in the professional's country of operation
- receive large sums of capital funding quickly following incorporation or formation, which is spent or transferred elsewhere in a short period of time without commercial justification
- maintain a bank balance of close to zero, despite frequent incoming and outgoing transactions
- conduct financial activities and transactions inconsistent with the corporate profile
- are incorporated or formed in a jurisdiction that does not require companies to report beneficial owners to a central registry
- operate using accounts opened in countries other than the country in which the company is registered
- involve multiple shareholders who each hold an ownership interest just below the threshold required to trigger enhanced due diligence measures.
- make frequent payments to foreign professional intermediaries
- are using multiple bank accounts without good reason
- are using bank accounts in multiple international jurisdictions without good reason
- appear focused on aggressive tax minimisation strategies
- are interested in foreign company formation, particularly in jurisdictions known to offer low-tax or secrecy incentives, without sufficient commercial explanation
- demonstrate limited business acumen despite substantial interests in legal persons
- ask for short-cuts or excessively quick transactions, even when it poses an unnecessary business risk or expense
- appear uninterested in the structure of a company they are establishing
- require introduction to financial institutions to help secure banking facilities
- request the formation of complex company structures without sufficient business rationale
- have not filed correct documents with the tax authority
- provide falsified records or counterfeit documentation
- are designated persons or groups

## FOR CONSULTATION PURPOSES ONLY

- appear to engage multiple professionals in the same country to facilitate the same (or closely related) aspects of a transaction without a clear reason for doing so.
- Examination of business records indicate:
  - a discrepancy between purchase and sales invoices
  - double invoicing between jurisdictions
  - fabricated corporate ownership records
  - false invoices created for services not carried out
  - falsified paper trail
  - inflated asset sales between entities controlled by the same beneficial owner
  - agreements for nominee directors and shareholders
  - family members with no role or involvement in the running of the business are listed as beneficial owners of legal persons or arrangements
  - employees of professional intermediary firms acting as nominee directors and shareholders
  - the resignation and replacement of directors or key shareholders shortly after incorporation
  - the location of the business changes frequently without an apparent business justification
  - officials or board members change frequently without an appropriate rationale.
- Complex corporate structures that do not appear to legitimately require that level of complexity or which do not make commercial sense
- Simple banking relationships are established using professional intermediaries.
- Indicators of shell companies
- Nominee owners and directors:
  - Formal nominees (formal nominees may be “mass” nominees who are nominated agents for a large number of shell companies)
  - Informal nominees, such as children, spouses, relatives or associates who do not appear to be involved in the running of the corporate enterprise.
  - Address of mass registration (usually the address of a TCSP that manages a number of shell companies on behalf of its customers)

## FOR CONSULTATION PURPOSES ONLY

- Only a post-box address (often used in the absence of professional TCSP services and in conjunction with informal nominees)
- No real business activities undertaken
- Exclusively facilitates transit transactions and does not appear to generate wealth or income (transactions appear to flow through the company in a short period of time with little other perceived purpose)
- No personnel (or only a single person as a staff member)
- Pays no taxes, superannuation, retirement fund contributions or social benefits
- Does not have a physical presence.
- The legal person is a shell company (no business operation or no significant business operations, assets, or employees. Use of only post box address and no physical location), especially where beneficial owners are in various foreign geographic areas
- The legal person is a shelf company, with no clear beneficial ownership history
- Complex ownership structures with various layers of legal ownership
- Legal persons that issue bearer shares and warrants;
- Legal persons are directors of the legal person;
- Legal persons that have nominee directors or nominee shareholders;
- Nominators, nominee directors or nominee shareholders are not disclosed;
- Nominee directors or nominee shareholders are informal (e.g. immediate family members or known close associates)
- Complex ownership structure which includes trusts as legal owners
- Use of intermediaries to form legal persons
- The legal person operates a business with a turnover that does not make business sense, (this could include a cash intensive business or other payment methods), may be an indication of a front company. Front companies integrate illegal source funds with legitimate business funds. False invoicing for the payment of phantom expenses
- The legal person has registered in one geographic area, however, operates predominantly from another jurisdiction
- The legal person's transactions appear to be that of a Ponzi scheme

## FOR CONSULTATION PURPOSES ONLY

- The legal person's transactions are structured in a manner to avoid tax
- The name of the legal person is misleading, and may be mistaken with a more well known legitimate entity in a seemingly purposeful manner
- False loans or invoices have been used by the legal person
- False or misleading information included in the annual report, or the legal person's prospectus
- The legal person has indicated numerous beneficiaries
- The legal person has replaced a recently liquidated legal person in its business operations, which might be an indicator that the liquidated legal person has avoided contractual obligations to its debtors, through the formation of a new legal person

### ANNEXURE C

#### Sources of South African securities exchanges\*

Exchange name	Link	Relevant rules
JSE Limited	<a href="http://www.jse.co.za">www.jse.co.za</a>	JSE listing rules
A2X Markets	<a href="http://www.a2x.co.za">www.a2x.co.za</a>	
4 Africa Exchange	<a href="http://www.4ax.co.za">www.4ax.co.za</a>	Listing requirements & schedules
Equity Express Securities Exchange	<a href="http://www.eese.co.za">www.eese.co.za</a>	Listing rules

\*not comprehensive list, accountable institution to determine rules of listed companies regarding beneficial ownership and availability of beneficial ownership information