



Beneficial Ownership



Issue No. 53

April 2017

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INTRODUCTION

The information herein is provided to assist regulated entities in meeting the requirement to perform customer due diligence on beneficial owners or controllers of entities.

A key task of any regulated entity is to identify and verify their customers' beneficial ownership arrangements. It is important for regulated entities to know who the beneficial owner(s) of all entities that are incorporated/formed so that appropriate and informed decisions can be made regarding the level of money laundering and terrorist financing risk associated with that customer(s).

WHO IS A BENEFICIAL OWNER?

Section 2 of the Anti-Money Laundering Regulations, 2011 outlines the definition of beneficial owner or controller.



It states in part that **“a Beneficial Owner or Controller (a) means a natural person who (i) ultimately owns or controls a customer or other person**

on whose behalf a transaction is being conducted; or (ii) exercises ultimate, effective control over the management of a legal person or other entity; and (b) includes ultimate ownership or control whether it is direct or indirect.”

A regulated entity's obligation is to determine the individual who is the beneficial owner. **A beneficial owner is an individual.** Therefore the beneficial owner can be only be a natural person, not a legal person, i.e. a company or organisation. Regulated

entities should pay close attention to complex ownership structures or arrangements as these may make it difficult to identify and verify the beneficial owner/controller. Additionally, in some instances, there may be more than one beneficial owner. The regulated entity must stay alert and in all instances is tasked with the responsibility to identify and verify the beneficial owner(s).



The FATF definition of beneficial owner refers to the natural person(s) who ultimately owns or controls and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.

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

THE RELATIONSHIP BETWEEN THE REGULATORY STANDARDS AND THE TAX AGENDA

There has long been a close relationship between regulatory standards created under FATF AML/CFT regulations and international tax agenda. Significantly, the beneficial ownership definitions used in the tax transparency standards are linked to the definitions in the AML/CFT standards. The requirement to make available the beneficial ownership information of legal persons and arrangements has been a feature of the AML/CFT regulations since 2003. Notwithstanding this, the increased attention on beneficial ownership as a consequence of the reporting following the release of the ‘Panama Papers,’ and the call by the G20 for both the FATF and the Global Forum to develop proposals to improve implementation of beneficial ownership standards is likely to increase the scrutiny on a jurisdiction's capacity to meet these standards, both in relation to tax transparency and AML/CFT.

THE TEST TO IDENTIFY BENEFICIAL OWNERSHIP FOR VERIFICATION PURPOSES



Regulation 40(a) of the Financial Services (Implementation of Industry Standards)

Regulations, 2011 stipulates that **a regulated business shall primarily carry out verification in respect of the parties operating the account or carrying out one-off transactions. Where there are underlying principals, however, the true nature of the relationship between the principals and the account signatories must be established and appropriate enquiries performed on the former, especially if the signatories are accustomed to acting on their instruction. In this context "principals" should be understood in its widest sense to include, for example, beneficial owners, settlors, controlling shareholders, directors, major beneficiaries, etc....**

INDIVIDUALS

The beneficial owner/controller may be the account holder himself or one of the principals of the account.

PARTNERSHIPS

All partners of a firm which is an applicant for business who are relevant to the application and have individual authority to operate a relevant business account or otherwise to give relevant instructions should be treated as verification subjects. The verification process should be conducted as if the partners were directors and shareholders of a company in accordance with the principles applicable to non-quoted corporate applicants. In the case of a limited partnership, the general partner should be treated as the verification subject. The partners of a partnership should be regularly monitored, and verification carried out on any new partners the identity of whom have come to light as a result of such monitoring or otherwise.

COMPANIES (INCLUDING CORPORATE TRUSTEES)

Unless a company is quoted on a recognised stock exchange or is a subsidiary of such a company, steps shall be taken to verify the company's underlying beneficial owner(s) – namely those who ultimately own or control the company.

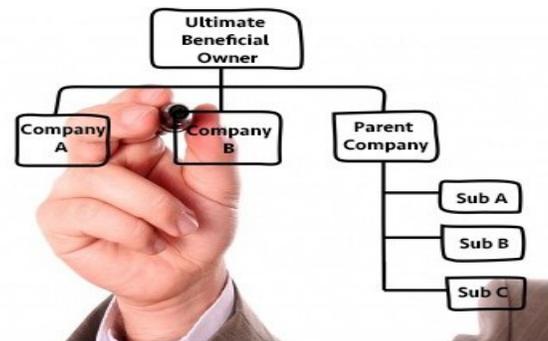
The expression "underlying beneficial owner(s)" includes any person(s) on whose instructions the signatories of an account, or any intermediaries instructing such signatories, are for the time being accustomed to act.

The following three (3) elements may be helpful in aiding regulated entities to apply the test of beneficial ownership:

- 1) Individuals who own more than five percent (5%); therefore regulated entities need to fully understand the ownership structure of their customers;
- 2) Individual(s) who exercise effective control – Consider also those individual(s) who exercise responsibility for senior management decisions, or similar; and
- 3) Business transactions/activities are being conducted on that person's behalf.

A beneficial owner is an individual who satisfies any one element, or any combination of the three elements.

Beneficial owners ought to be regularly monitored and verification carried out on any new beneficial owners the identity of whom have come to light as a result of such monitoring.



Sources

Financial Services (Implementation of Industry Standards) Regulations, 2011

Anti-Money Laundering Regulations, 2011

The FATF Methodology, February 2013

The Commonwealth Economic Policy Brief, December 2016

