



# **BENEFICIAL OWNERSHIP**

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GUIDANCE FOR FINANCIAL INSTITUTIONS

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**NOVEMBER 2021**

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## I. PURPOSE, SCOPE, AND APPLICABILITY

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- This guidance paper issued by the Central Bank of Bahrain (“CBB”) should be read in conjunction with local regulations and international standards. The guidance included in this paper applies to all licensees regulated and supervised by the CBB.
- This paper aims to provide guidance to assist financial institutions in implementing the requirements in relation to beneficial ownership of legal entities and legal arrangements (such as trusts).
- This guidance paper was developed by consolidating relevant information applicable to financial institutions included in guidance papers issued by the Financial Action Task Force (“FATF”), including:
  - ‘Best Practices on Beneficial Ownership for Legal Persons’ issued in October 2019; and
  - ‘Guidance on Transparency and Beneficial Ownership’ issued in October 2014.
- In summary, this paper outlines the methods of identifying the beneficial ownership of legal entities and legal arrangements and obtaining the relevant information, as well as verification, CDD and record keeping measures. The paper also includes examples to help financial institutions in understanding the requirements in relation to beneficial ownership as stipulated in the Financial Crime Module (Module FC) in CBB Rulebook Volumes 1 to 5 or Anti Money Laundering & Combating Financial Crime Module (Module AML) in CBB Rulebook Volume 6.

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## II. INTRODUCTION

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As per the FATF Recommendations, **beneficial owner** refers to the natural person(s) who ultimately<sup>1</sup> owns or controls a customer<sup>2</sup> 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 entity (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.

### A. Legal Persons

The FATF definition of beneficial owner in the context of legal entities must be distinguished from the concepts of legal ownership and control. **Legal ownership** means the natural or legal entities who own the legal entity. On the contrary, **control** refers to the ability of taking relevant decisions within the legal entity and impose those resolutions, which can be acquired by several means (for example, by owning or controlling a block of shares).

The definition of beneficial owner extends beyond legal ownership and control to consider the notion of ultimate (actual) ownership and control. In other words, it focuses on the natural (persons who actually own and take advantage of capital or assets of the legal entity, as well as on those who really exert effective control over it (whether or not they occupy formal positions within that legal entity), rather than just the (natural or legal) persons who are legally (on paper) entitled to do so.

Another essential element of the beneficial owner definition is that it includes natural persons on whose behalf a transaction is being conducted, even where that person does not have actual or legal ownership or control over the customer. This reflects individual customers that are central to a transaction being conducted even where the transaction has been deliberately structured to avoid control or ownership of the customer but to retain the benefit of the transaction.

### B. Legal Arrangements

Beneficial ownership (“BO”) concept also applies in the context of **legal arrangements**, meaning the natural person(s), at the end of the chain, who ultimately owns or controls the legal arrangement, including those persons who exercise ultimate effective control over the legal arrangement, and/or the natural person(s) on whose behalf a transaction is being conducted. However, in this context, the specific characteristics of legal arrangements make it more

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<sup>1</sup> 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.

<sup>2</sup> This definition should also apply to beneficial owner or a beneficiary under a life or other investment linked insurance policy

complicated to identify the beneficial owner(s) in practice. For example, in a trust or a similar arrangement, the legal title and control of an asset are separated from the equitable interests in the asset. This means that different persons might own, benefit from, and control the trust, depending on the applicable trust law and the provisions of the document establishing the trust (for example, the trust deed). Therefore, FIs must establish the identity of the settler(s), trustee(s), protector (if any) and beneficiaries or class of beneficiaries (including making such reasonable enquiries as to ascertain the identity of any other potential beneficiary, in addition to the named beneficiaries of the trust) or any other person exercising control over the trust.

The objective of the applicable international standards and local rules on transparency and beneficial ownership is to prevent the misuse of legal persons and legal arrangements for money laundering or terrorist financing and to conceal the control of assets, including the proceeds of crime.

Despite the essential and legitimate role that legal persons and legal arrangement play in the global economy, under certain conditions, they have been misused for illicit purposes, including money laundering (“ML”), bribery and corruption, insider dealings, tax fraud, terrorist financing (“TF”), and other illegal activities. The risk of misuse could be significantly reduced if information regarding both the legal owner and the beneficial owner, the source of assets and activities were obtained and readily available to the authorities.

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### III. IDENTIFICATION OF THE BENEFICIAL OWNER

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- Financial institutions should ensure that there is adequate, accurate and timely information available on the beneficial ownership of all customers, and that such information is readily available for relevant authorities in a timely manner.
- Financial institutions should identify the beneficial owners of legal entities and legal arrangements through the following steps:
  1. **The identity of the natural person(s) (if any) who ultimately has a controlling ownership interest in a legal entity.** Ownership interests, however, can be so diversified that there are no natural persons, whether acting alone or together, who exercise control of the legal entity through ownership. Ownership can be either direct or indirect through multiple corporate structures.
  2. **The identity of the natural person (if any) exercising control of the legal entity through other means,** when there is doubt as to whether the persons with the controlling ownership interest are the beneficial owners, or where no natural person exerts control through ownership interests.
  3. **The identity of the relevant natural person who holds the position of senior managing official,** when no natural person is identified under steps one and two.
- The following are examples of natural persons who could be considered as beneficial owners on the basis that they are the ultimate owners/controllers of the legal entity:
  - a) Natural persons who may control the legal entity through ownership interests:
    - **The Threshold Approach:** The natural person(s) who directly or indirectly holds a percentage equal to or more than 20% of ownership interest in the legal entity. The percentage shareholding or ownership interest should be considered as a key evidential factor among others to be taken into account. It is also important to highlight that this approach includes the notion of indirect control, which may extend beyond formal ownership or could be through a chain of corporate vehicles.
    - **The Majority Interest Approach:** Shareholders who exercise control alone or together with other shareholders, including through any contract, understanding, relationship, intermediary or tiered entity. It is also important to highlight that this approach includes the notion of indirect control, which may extend beyond legal (direct) ownership or could be through a chain of corporate vehicles and through

nominees. This indirect control could be identified through various means, such as shareholder's agreement, exercise of dominant influence or power to appoint senior management. Shareholders may thus collaborate to increase the level of control by a person through formal or informal agreements, or through nominee shareholders. Other issues worth considering are whether the company has issued convertible stock or has any outstanding debt that is convertible into voting equity.

b) Natural persons who may control the legal entity through other means:

- **The natural person(s) who exerts control of a legal entity through other means**, such as personal connections to persons in senior positions or that possess ownership.
- **The natural person(s) who exerts control without ownership** by participating in the financing of the enterprise, or because of close family relationships, historical or contractual associations, or if a company defaults on certain payments. Furthermore, control may be presumed even if control is never actually exercised, such as using, enjoying or benefiting from the assets owned by the legal entity.

c) Natural persons who may exercise control through positions held within a legal entity:

- **The natural person(s) responsible for strategic decisions that fundamentally affect the business practices or general direction of the legal entity.** This includes members of the legal entity's board of directors. Identification of the directors provides useful information due to their active role over the corporate's affairs.
- **The natural person(s) who exercises executive control over the daily or regular affairs of the legal entity through a senior management position**, such as a chief executive officer (CEO), chief financial officer (CFO), managing or executive director, or president. "Senior Management" are identified under the Financial Crime Module as any individuals occupying the position of CEO or head of function. Therefore, this includes natural person(s) who has significant authority over a legal entity's financial relationships and the ongoing financial affairs of the legal entity.

**In the case of legal arrangements such as trusts**, FIs are required to understand the general purpose behind the trust structure and the source of funds in the structure. In addition, FIs are required to obtain sufficient information to enable them to identify the beneficial owners and controlling persons of the trust. FIs should verify such information through the relevant extracts from the trust deed itself to enable them to identify the settlor, trustees, protector (if any), beneficiaries or natural persons exercising effective control. This is in addition to the requirement to obtain evidence to verify the identity of such persons.

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#### IV. OBTAINING AND VERIFYING BENEFICIAL OWNERSHIP INFORMATION

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- In general, the lack of adequate, accurate and timely BO information facilitates ML/TF by disguising:
  - the identity of known or suspected criminals;
  - the true purpose of an account or property held by a legal person or a legal arrangement; and/or
  - the source or use of funds or property.
  
- For example, beneficial ownership information can be obscured through the use of:
  - **Shell companies** (which can be established with various forms of ownership structures), especially in cases where there is foreign ownership which is spread across jurisdictions;
  - **Complex ownership and control structures** involving many layers of shares registered in the name of other legal persons;
  - **Bearer shares** and bearer share warrants;
  - Unrestricted use of legal persons as directors;
  - Formal and informal nominee shareholders and directors where the **identity of the nominator is undisclosed**;
  - Trusts and other **legal arrangements**.
  
- Trusts can also be used to conceal the control of assets, including the proceeds of crime. For example, a trust may be created in one jurisdiction and used in another to hold assets across jurisdictions to disguise the origins of criminal proceeds. It may be used to enhance anonymity by completely disconnecting the beneficial owner from the names of the other parties including the trustee, settlor, protector or beneficiary.
  
- FIs must undertake verification measures on beneficial ownership information at the onboarding stage as well as throughout the business relationship (including when there are changes to the BO information).
  
- Using a single source of information is less effective in ensuring accurate and up-to-date beneficial ownership information . Instead, seeking information from several sources is often more effective in bridging BO information gaps and implementing measures that make the beneficial ownership sufficiently transparent. This may trigger the FIs to seek clarifications from their customers, and if necessary, report suspicious activities to competent authorities. The variety and availability of sources increases transparency and access to information, and helps mitigate accuracy problems with particular sources.

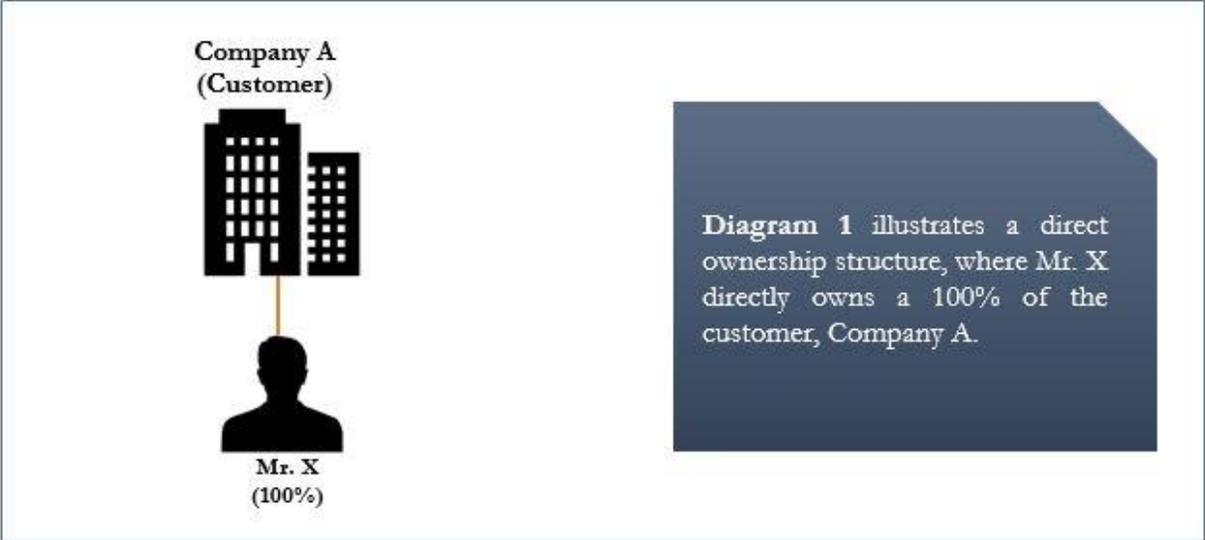
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## V. OWNERSHIP STRUCTURES

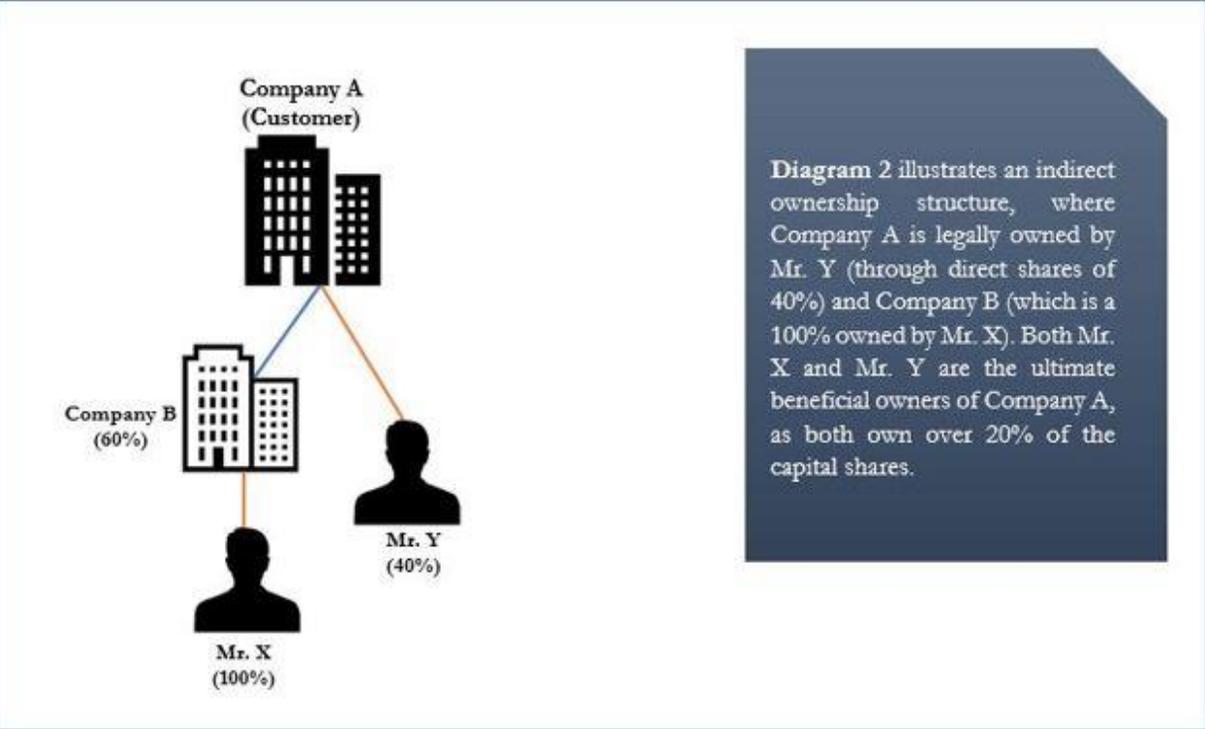
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- In practice, sophisticated schemes to launder the proceeds of crime often use a range of different corporate vehicles rather than just a single one. The same underlying principles for transparency apply to both legal persons and legal arrangements. However, the way in which measures are implemented can differ due to the particularities of the various corporate vehicles.
- As per the Financial Crime Module (Module FC) in CBB Rulebook Volumes 1 to 5 or Anti Money Laundering & Combating Financial Crime Module (Module AML) in CBB Rulebook Volume 6, FIs are required to enquire as to the structure of a customer that is a legal entity or trust to determine and verify the identity of the ultimate beneficial owner of the funds, the ultimate provider of funds (if different), and the ultimate controller of the funds (if different). Consequently, financial institutions must obtain and verify the identity of shareholders holding 20% or more of the issued capital of a legal person. As for legal arrangements, the financial institution is required to identify the beneficial owners of the legal arrangement (e.g. a trust) and verify the identity of such persons. For a trust, this would mean verifying identity of the settlor, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust (including through a chain of control/ownership). As noted above, financial institutions should understand and verify the ownership and control structure of the trust by obtaining the relevant extracts of the trust deed.
- An entity may have several beneficial owners, depending on the size and complexity of its structure and governance. FIs must also take into consideration that it is possible for ownership to be divided into percentages less than 20%; however, the relationships between the shareholders may give a single individual an aggregated ownership of the customer equal to or more than 20%.
- In accordance with the above, FIs must understand, identify and verify the ownership structure of the customer at each layer prior to customer onboarding or any disbursement of funds. Financial institutions must identify those that satisfy the definition of beneficial owners, either directly or indirectly through multiple corporate structures. The diagrams below portray examples of direct and indirect ownership structures as well as complex ownership structures.

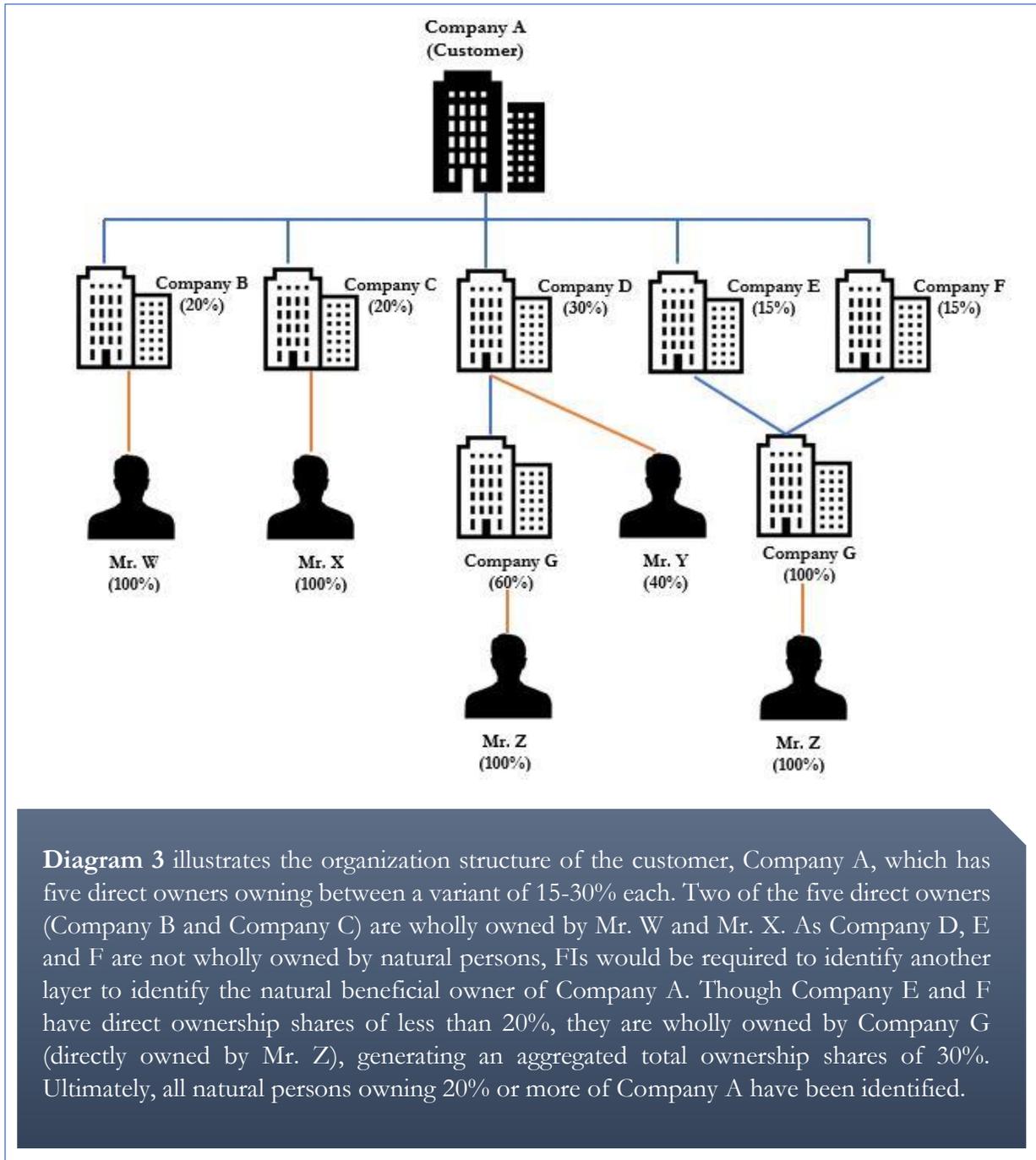
**DIAGRAM 1: DIRECT OWNERSHIP**



**DIAGRAM 2: INDIRECT OWNERSHIP**



**DIAGRAM 3: COMPLEX OWNERSHIP**



**Diagram 3** illustrates the organization structure of the customer, Company A, which has five direct owners owning between a variant of 15-30% each. Two of the five direct owners (Company B and Company C) are wholly owned by Mr. W and Mr. X. As Company D, E and F are not wholly owned by natural persons, FIs would be required to identify another layer to identify the natural beneficial owner of Company A. Though Company E and F have direct ownership shares of less than 20%, they are wholly owned by Company G (directly owned by Mr. Z), generating an aggregated total ownership shares of 30%. Ultimately, all natural persons owning 20% or more of Company A have been identified.

**DIAGRAM 4: OWNERSHIP INVOLVING A TRUST**

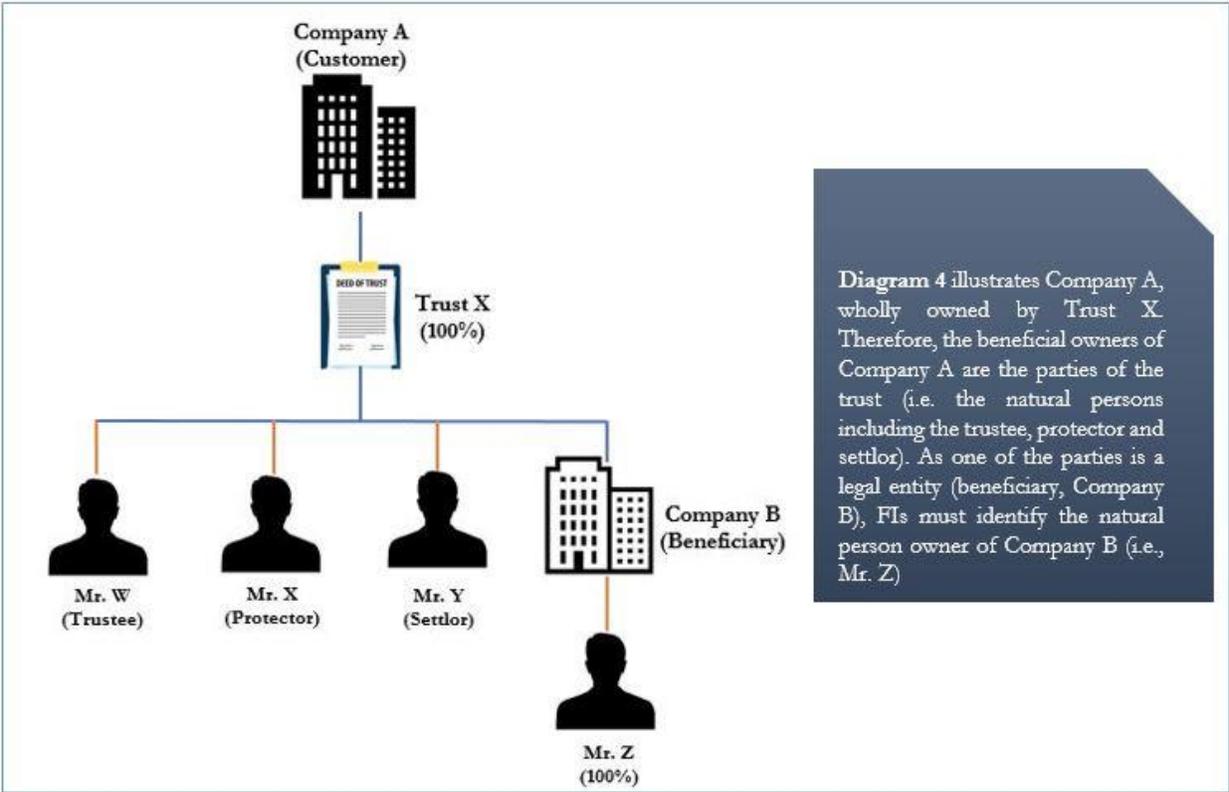


Diagram 4 illustrates Company A, wholly owned by Trust X. Therefore, the beneficial owners of Company A are the parties of the trust (i.e. the natural persons including the trustee, protector and settlor). As one of the parties is a legal entity (beneficiary, Company B), FIs must identify the natural person owner of Company B (i.e., Mr. Z)

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## VI. BENEFICIAL OWNERSHIP MEASURES

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- FIs must implement specific measures on corporate vehicles<sup>3</sup> including:
  - Identifying and managing the ML/TF risks associated with legal persons and legal arrangements; and
  - Implementing AML/CFT controls commensurate with the identified risks, including identifying the beneficial owners, applying CDD measures, ongoing transaction monitoring, reporting suspicious activities and updating records (and other applicable measures in line with the FC/AML module requirements).
  
- Financial institutions are required to implement CDD measures when:
  - establishing business relationships;
  - there is a suspicion of ML/TF;
  - the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data; or
  - performing ongoing monitoring as part of the periodic CDD reviews.
  
- Financial institutions must understand the ownership and control structure of the customer. They must conduct ongoing CDD on the business relationship, and scrutinise transactions throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer and its business and risk profiles, including, where necessary, the customer's source of funds.
  
- Financial institutions must maintain CDD records for at least 5 years, in line with the FC/AML Module of the CBB Rulebook. When accepting business through a third party introducer, financial institutions should always be sure to immediately obtain information on the beneficial ownership of the customer. In addition, FIs must obtain copies of the underlying documentation that confirm the customer and BO information.

**In conclusion**, the effective implementation of measures and controls in relation to beneficial ownership of legal persons and legal arrangements as stipulated in the FC/AML Module of the CBB Rulebook and this paper constitutes a important tool to mitigate the risk of misuse of such entities for ML/TF purposes by enhancing transparency and ensuring availability of information in a timely manner.

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<sup>3</sup> This Guidance paper uses the term corporate vehicles to mean legal persons and legal arrangements, as defined in the glossary of the FATF Recommendations.