

Challenges Determining Beneficial Ownership

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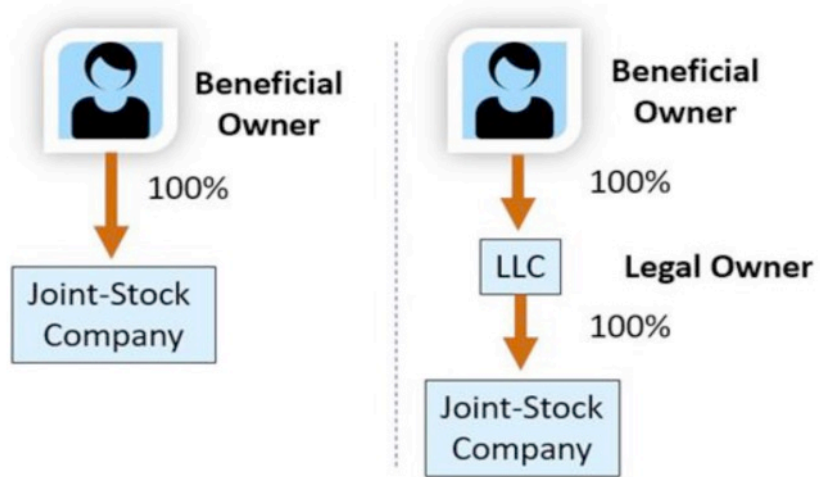
What is Beneficial Ownership:

Beneficial ownership as defined in FATF Recommendations:

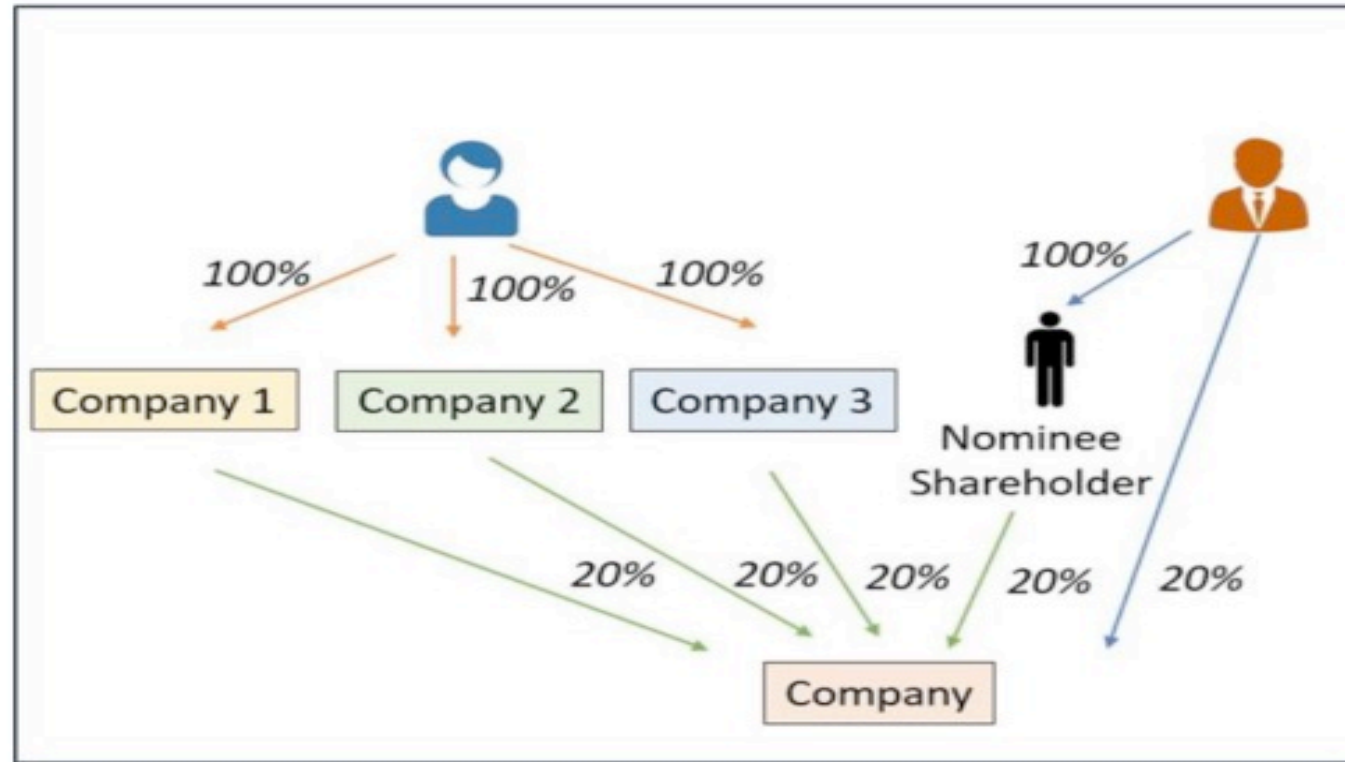
- Beneficial owners refers to the natural person(s) who *ultimately owns or controls* a customer and/or the natural person on whose behalf a transaction is being conducted.
- It also includes those persons who exercise ultimate effective control over a legal person or arrangement.
 - Reference to “ultimately 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.
 - This definition should also apply to beneficial owner of a beneficiary under a life or other investment linked insurance policy.

- The term ‘legal persons’ in accordance with the FATF Glossary definition which refers to “any entities other than natural persons that can establish a permanent customer relationship with a financial institution or otherwise own property. This can include companies, foundations, partnerships, or associations and other relevantly similar entities.
- As defined in the FATF Glossary, the term ‘legal arrangements’ to refer to express trusts and other similar legal arrangements. Examples of other similar legal arrangements include fiducia, treuhand, fidecomiso, private foundations, and waqf, which share similar features and functions as express trusts.

Beneficial Owner vs Legal Owner

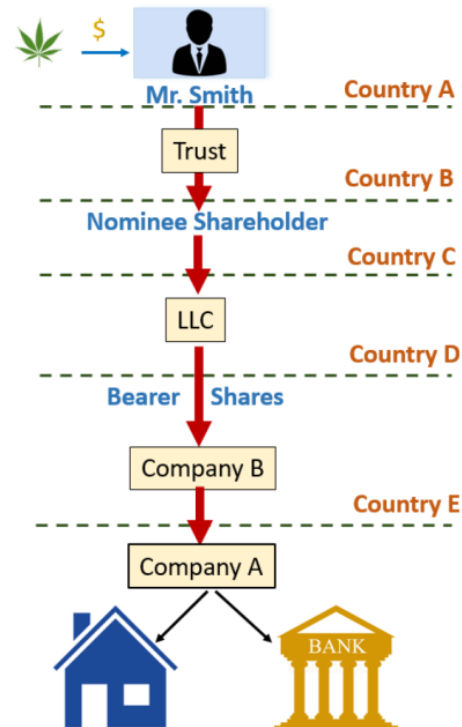


Direct and Indirect Ownership



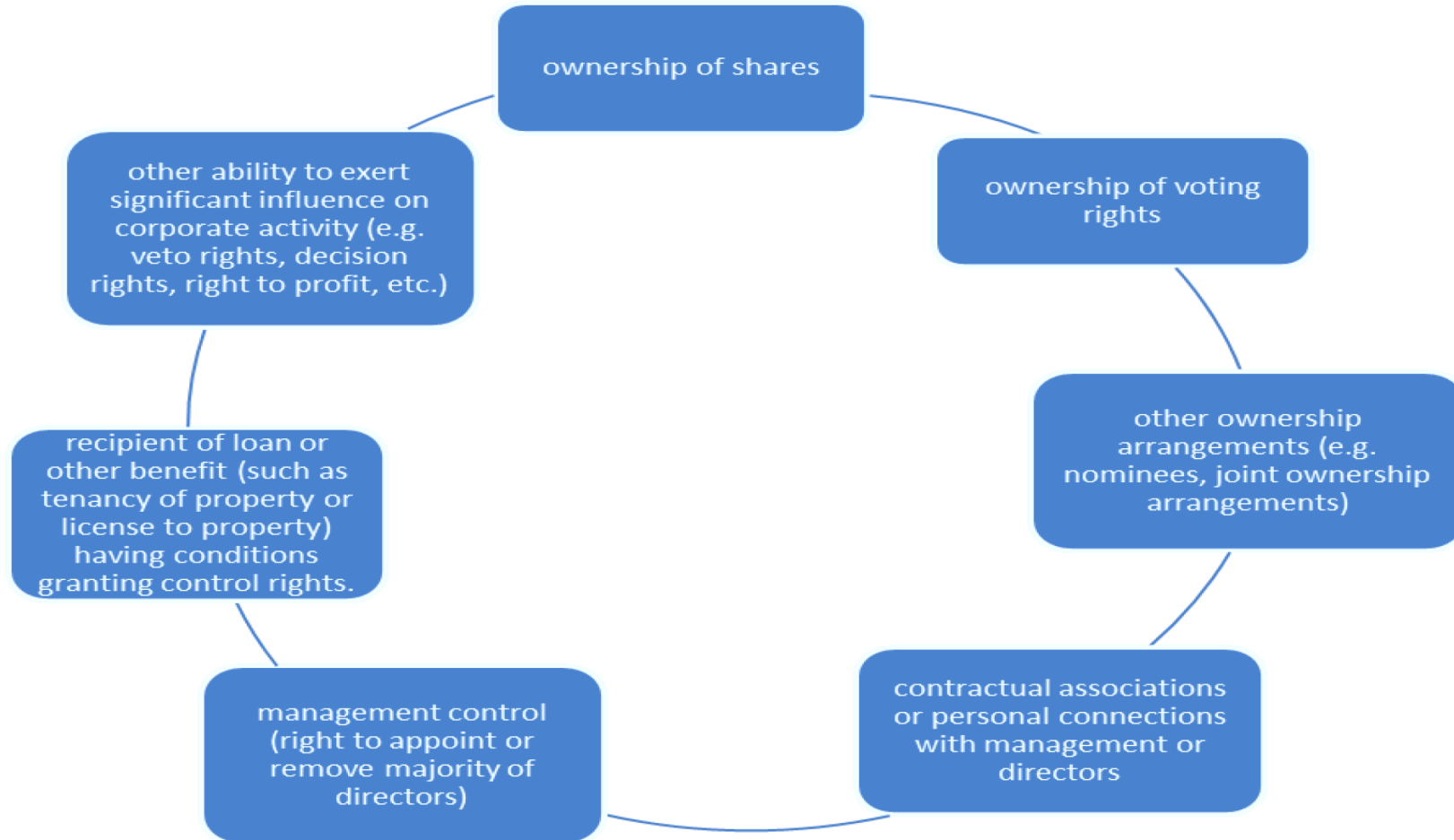
The Challenge is to find who *ultimately owns or controls* and/or *who exercises ultimate effective control*.

Figure 2. Economic Activity through a Complex System of Legal Vehicles



Determining the Beneficial Owner

Figure 3. Forms of Direct and Indirect Ownership and Control



Contd...

- Given that beneficial ownership can be exercised in many different ways ,determining the BO can be a complex process that must be undertaken on a case to case basis.A country's domestic laws and regulations usually establish the criteria for deciding who should be considered a BO.
- No jurisdiction is in a blank state in the area of beneficial ownership,because some domestic framework related to Anti money laundering and countering the financing of terrorism measures is inevitably in place.

Importance of identifying a BO

- Anonymity enables many illegal activities to prosper.
- The use of beneficial ownership information to facilitate the identification, recovery and return of proceeds of crime,
- Key requirements of International Tax transparency.(AEOI/EOIR)
- Maintaining financial integrity of jurisdiction's own tax system.
- FATF and OECD Backed Global Forum on Transparency and Exchange of Information for **TAX PURPOSE** have included Beneficial ownership requirements in their standards.
- However some inherent difference in their approach .What is it???

Practical Considerations for a BO framework

- Using a Threshold
- Availability of adequate, accurate and up to date BO information.
- Exempted Entities
- The Missing AML Link
- Bearer Shares
- Nominee shareholders
- Inactive entities
- Foreign Companies
- Critically, enforcing effective, dissuasive and proportionate sanctions is a major challenge faced by the State parties in ensuring effective BOT.
- Registers of Beneficial ownerships

THANK YOU ALL

Reference Material::

- A Beneficial Owner Implementation Toolkit by Global Forum .
- Note by Open-ended Intergovernmental Working Group on Asset Recovery