



# **BENEFICIAL OWNERSHIP**

AFRICA ACADEMY FOR TAX AND FINANCIAL CRIME INVESTIGATION

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# EXPECTED OUTCOME

By the end of this presentation, participants will be expected:

1. To differentiate legal owners from beneficial owners, direct ownership from indirect ownership.
2. To select beneficial owners in complex corporate ownership and control structures.
3. To appreciate the risks of uncertain beneficial ownership, and apply the concept of beneficial ownership in their investigations.
4. To effectively navigate the murky path of beneficial ownership information collection.



# ABBREVIATIONS & ACRONYMS

- BO Beneficial Owner/(ship)
- DTA Double Taxation Agreements
- FATF Financial Action Task Force
- FSRB FATF Style regional bodies
- MAA A Mutual Administrative Assistance Agreements
- MLA Mutual Legal Assistance
- TIEA Tax Information Exchange Agreement
- UBO Ultimate Beneficial owner/(ship)

# THE STRAW MAN DANCER

## Key Concerns?

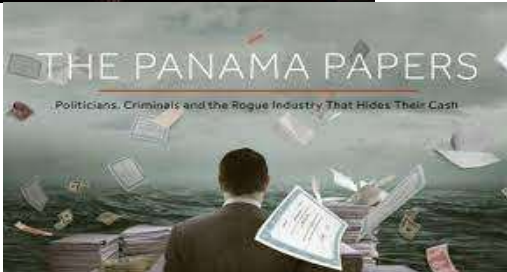
1. When, where, how and why were they created? Were any expert/specialist professional enablers involved in their creation?
2. Is their creation, existence, ownership/control, and activities legal?
3. Who owns them?
4. Who controls their dance in terms of when, where and how to dance?  
Who pulls the strings?
5. Who benefits from their performances?



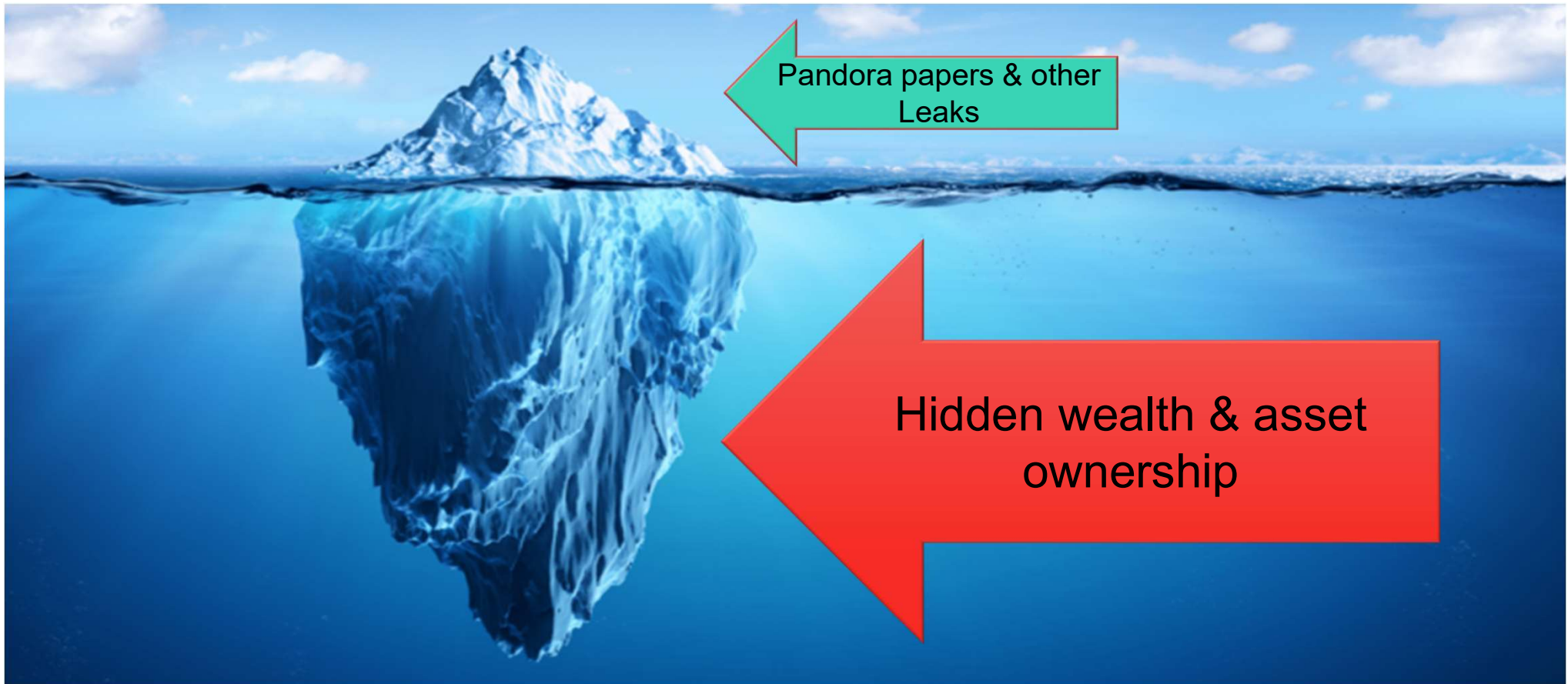


- Remember **Pandora Papers**, October 2021?
  - International Consortium of Investigative Journalists (ICIJ)
  - Biggest leak ever of offshore data exposes (2.9 terabytes of data) with 11.9 million leaked documents.
  - Dubbed the “Pandora Papers” because the findings opened the Pandora’s Box on the previously hidden dealings of the elite and the corrupt, shedding light on how they have used offshore accounts to shield assets collectively worth trillions of dollars.
  - Pierced the corporate veil and revealed how **trusts** are prolifically used as a vehicle in conjunction with **offshore companies** set up for the sole purpose of holding investments and other assets by business families and ultra-rich individuals.
  - Exposed the secret offshore accounts of 35 world leaders, including current and former presidents, prime ministers, and heads of state as well as more than 100 billionaires, celebrities, and business leaders.





# JUST A TIP OF THE ICEBERG





# WHAT'S OUR INTEREST?

**Unmasking the faceless man calling the shots, pulling the strings.**



**Identifying the man owning/controlling wealth and assets from the shadows.**





# WHO IS THE BENEFICIAL OWNER?

- **The natural person**

- who ultimately owns or controls a legal person or arrangements or,
- on whose behalf a transaction is conducted, and
- who exercises ultimate effective control over a legal person or arrangement.

## Ultimately Owns or Controls?

A situation in which ownership is exercised through a chain of ownership or by means of control other than direct control.



## Arrangement?

An artificial entity, without legal personality, associating one or more natural or legal persons together in an ownership or control relationship.

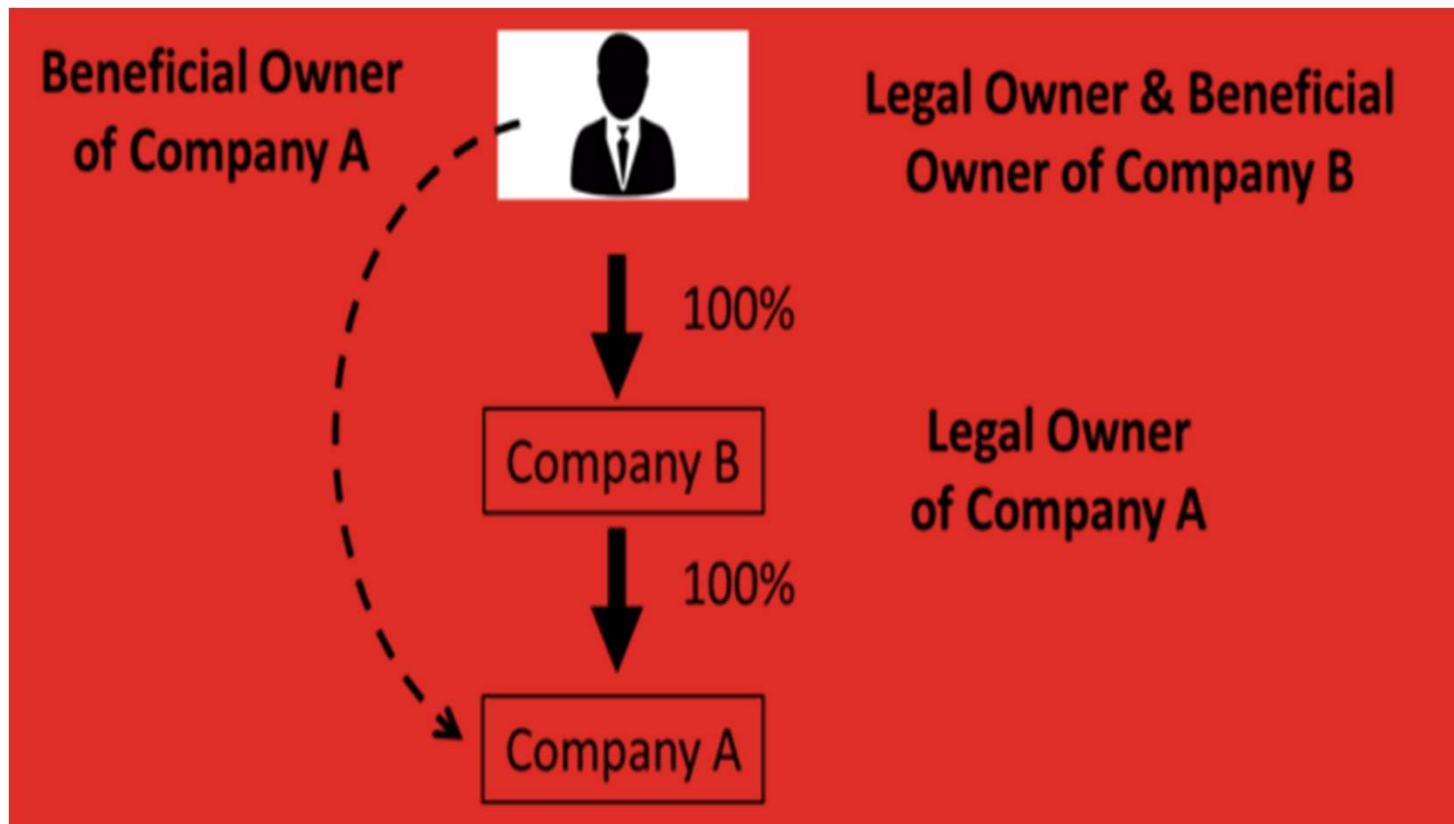
## Significant Influence or Control?

Participation in the finances and financial policies of a company without necessarily having full control over them

# BENEFICIAL CONTROL RELATIONSHIP

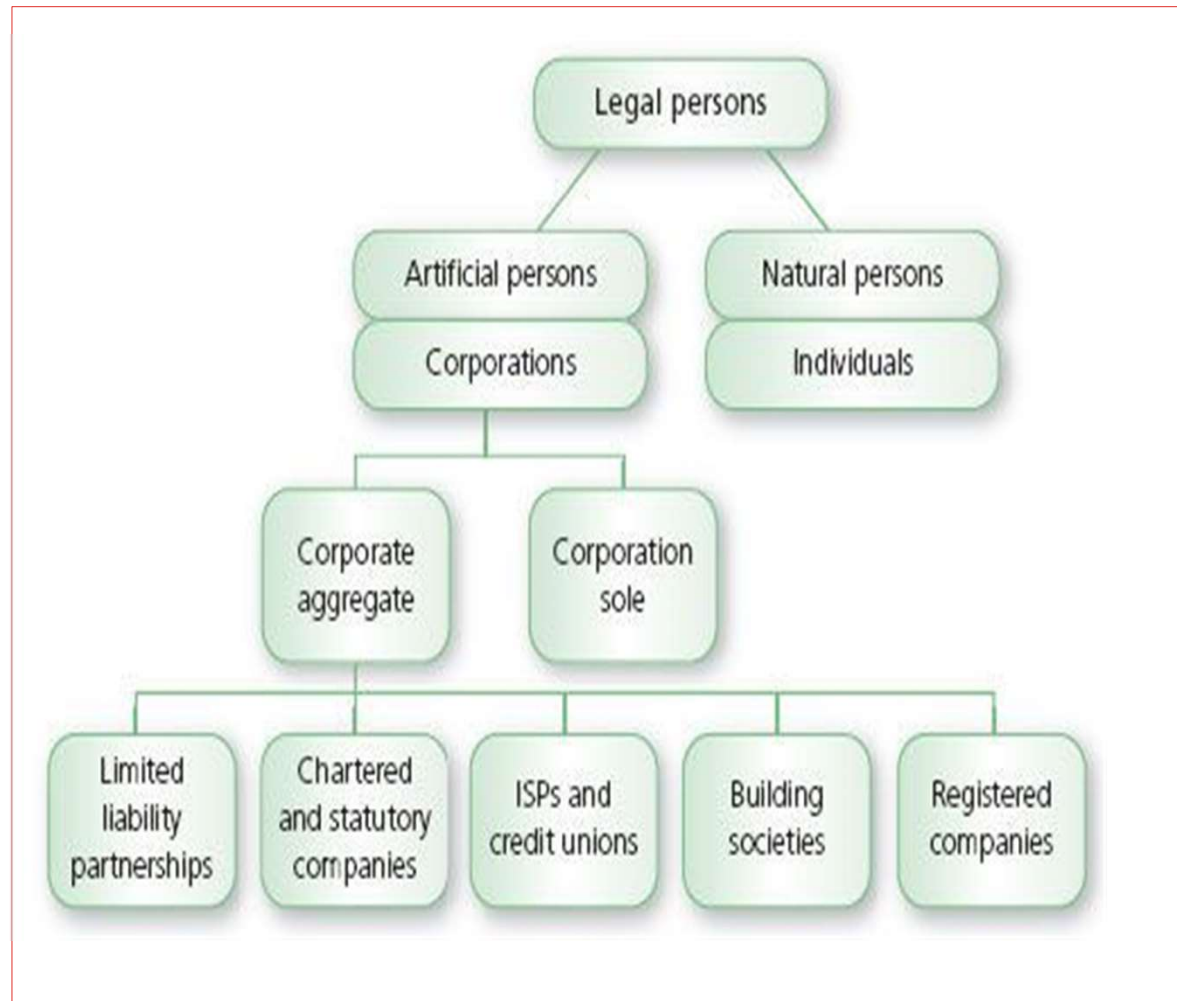


# LEGAL OWNER VS BENEFICIAL OWNER



## WHO IS A LEGAL PERSON?

- Beings and things which are treated as persons by law.
- An individual, company, or other entity which has legal rights and is subject to obligations.
- Legal personality is the attribute feature of **being the subject of rights and duties before the eyes of the law.**





# TWO-PRONGED TEST

Ownership

Identify  
“Natural Persons”  
with 25% or more  
Ownership of the  
“Legal Entity”



Control

Identify  
at least One Individual  
with Responsibility to  
Control, Manage or  
Direct the  
“Legal Entity”

# CASCADING THE TESTS

## Test (1)

- Identify the natural persons who ultimately have **controlling ownership interest** in a legal person by shares, voting, property, or any other right.

## Test (2)

- If there is doubt under (1), identify the natural person **exercising control** of the legal person through other means

## Test (3)

- Where no natural person is identified under (1) or (2) above, identify the natural person who holds the position of **senior managing officer**.

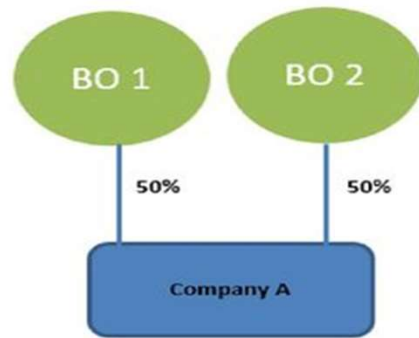
# WHAT IS THE CONTROLLING OWNERSHIP INTEREST?

country?

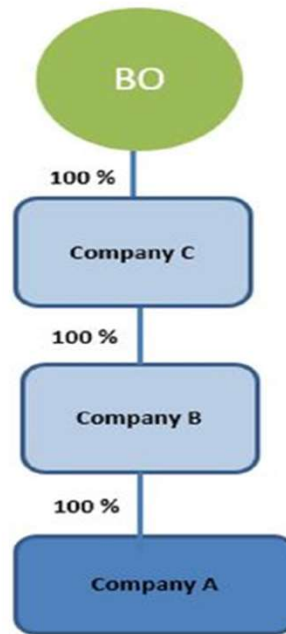
- The FATF assessment has found 25% controlling ownership threshold to be acceptable.
- As a result, “25 per cent” or more than 25 per cent” is used in many BO definitions.
- What is the threshold in your



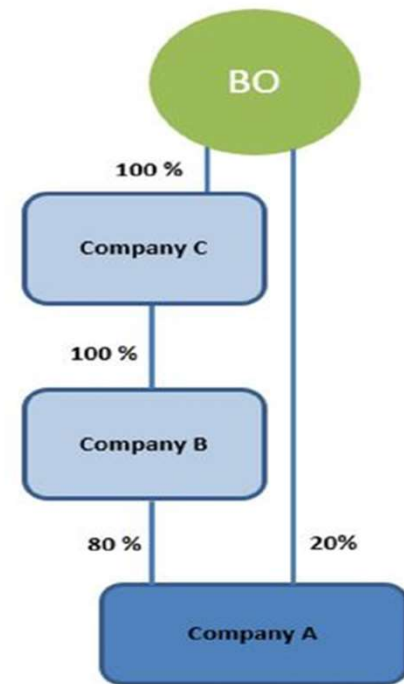
Ownership can be *direct* or *indirect*:



Example 1: Direct



Example 2: Indirect

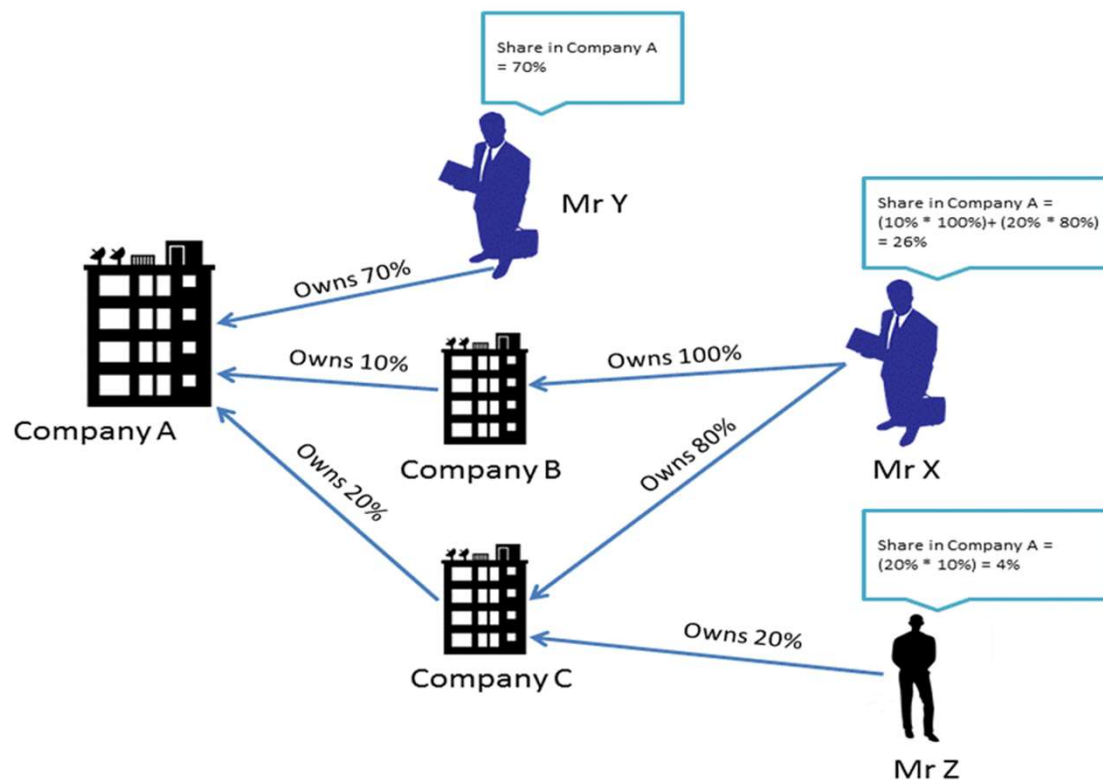


Example 3: Direct and indirect



# OWNERSHIP STRUCTURES

## -CONNECTING THE DOTS: CASE 1

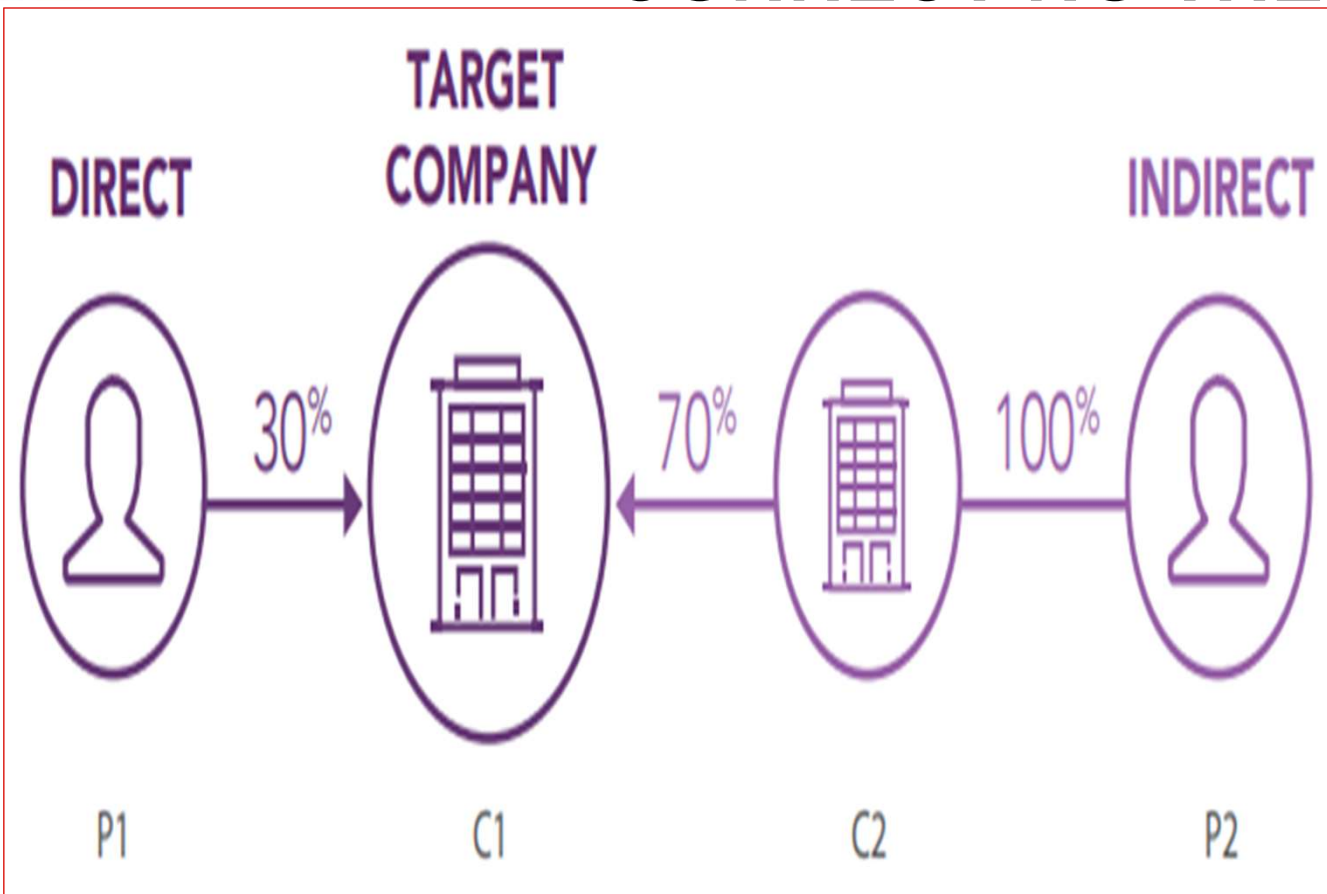


### Direct and indirect shareholding

- Mr. Y is a direct beneficial owner of Company A
  - Why? owns 70% shareholding
- Mr. X is an indirect beneficial owner of Company A.
  - Why? Indirectly owns 26% shareholding
- Mr. Z is not a beneficial owner of Company A.
  - Why? Indirectly owns 4% shareholding

# OWNERSHIP STRUCTURES

## -CONNECTING THE DOTS: CASE 2

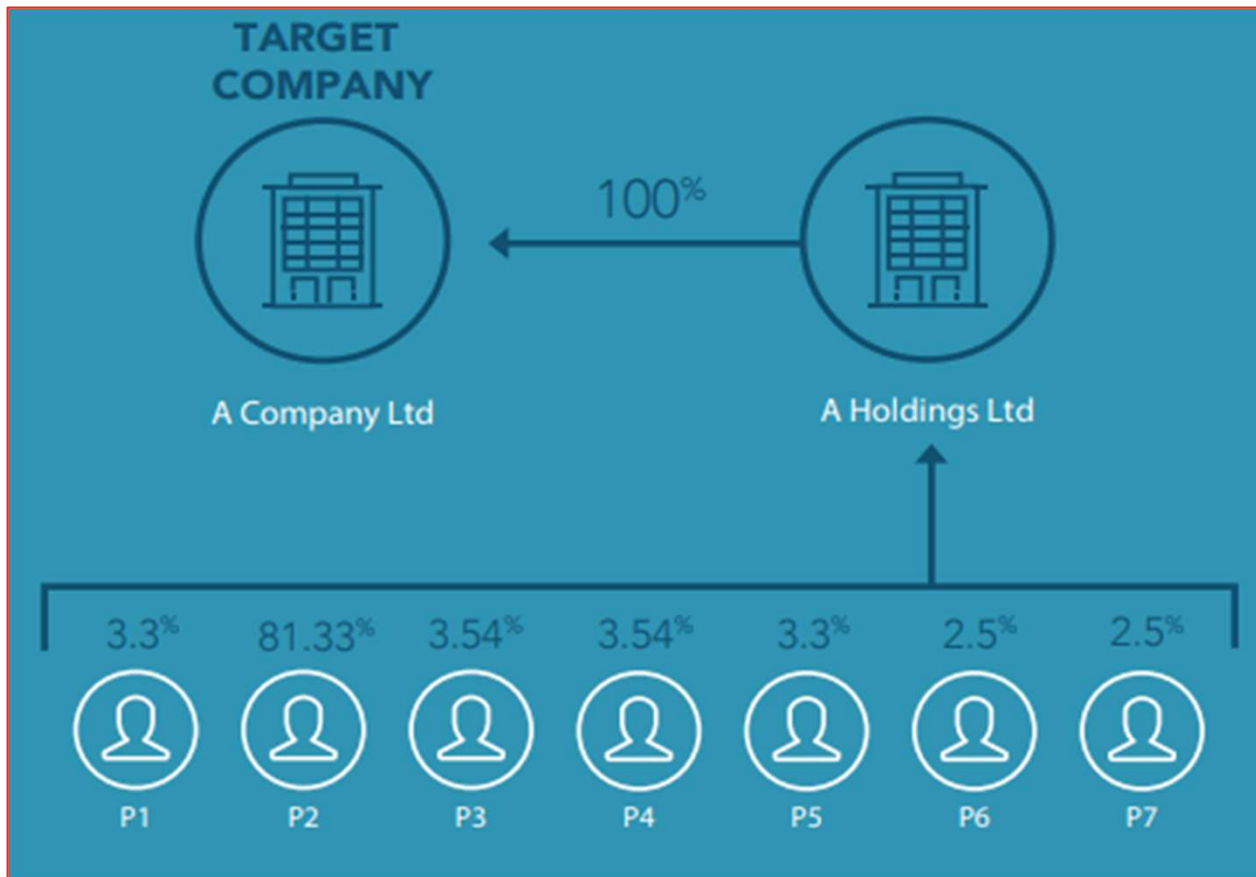


Another case of direct and indirect ownership

- Person P1 is a direct beneficial owner of Company C1
  - Owns 30% shareholding.
- Person P2 is an indirect beneficial owner of Company C1
  - Owns 70% shareholding.

# OWNERSHIP STRUCTURES

## -CONNECTING THE DOTS: CASE 3

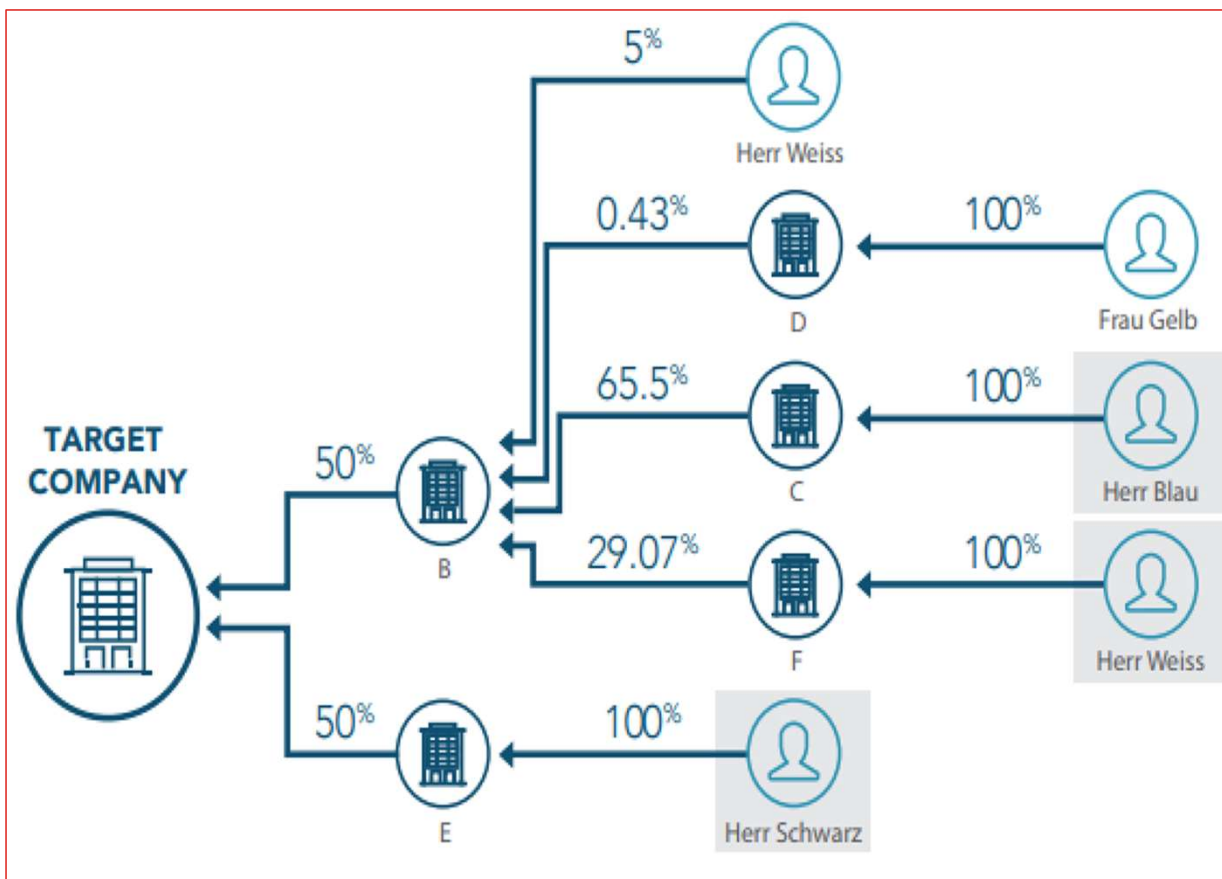


### Simple indirect shareholding

- The shares are owned by multiple people.
- Person 2 is indirect beneficial owner of target Company A
  - Has 81.33% ownership of A Holding Ltd, which fully owns Target Company A.

# OWNERSHIP STRUCTURES

## -CONNECTING THE DOTS: CASE 4



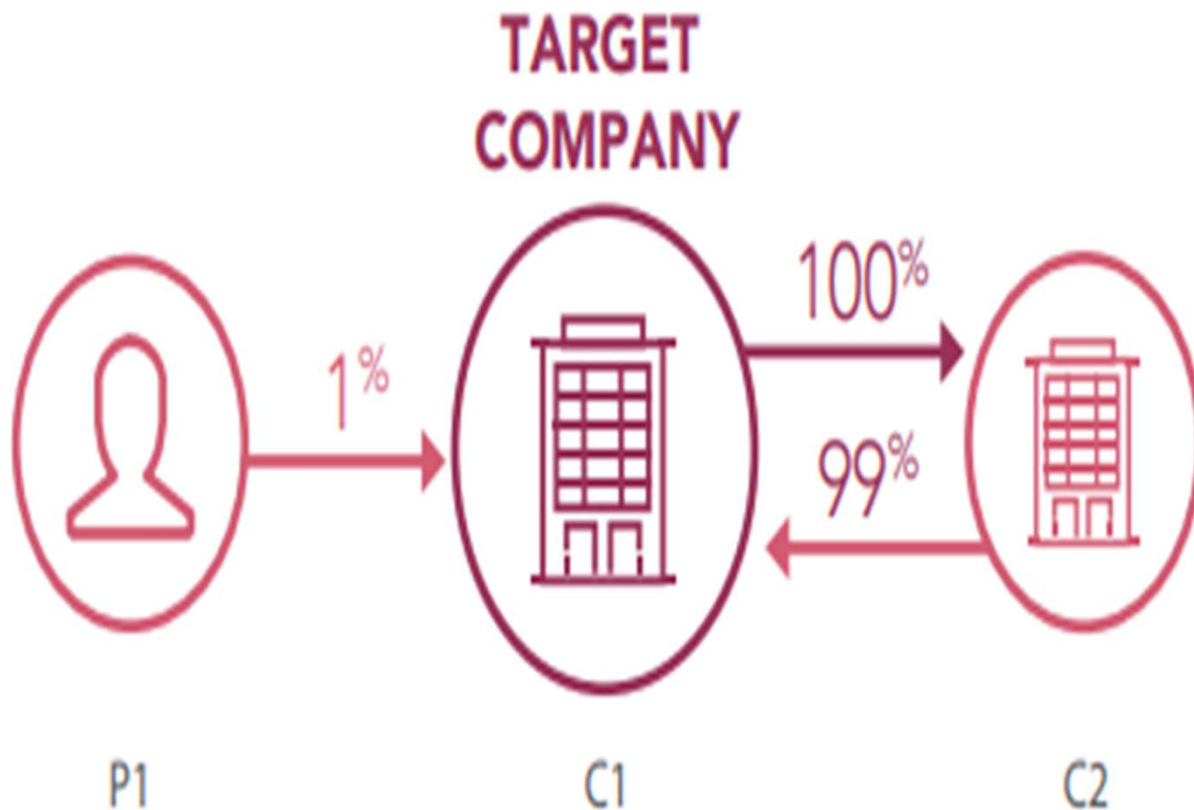
### Multiple levels of indirect ownership

- Herr Schwarz is an indirect beneficial owner of Target Company
  - Has 50% shareholding interest
- Herr Blau is also an indirect beneficial owner of Target Company
  - Has 32.75% shareholding interest
- Herr Weiss is not a beneficial owner of Target Company
  - Has 17.035% shareholding interest
  - Note direct and indirect interest in Company B
- Frau Gelb is also not a beneficial owner of Target Company
  - Has insignificant 0.215% indirect shareholding interest



# OWNERSHIP STRUCTURES

## -CONNECTING THE DOTS: CASE 5



### Looping relationships

- Multi-level indirect shareholding
- In this example, we have a seemingly unimportant 1% owner.
- In reality, this individual is the only UBO, with all the profits being delivered to the UBO in 1% shares.
- For example, if the company makes a \$10 profit, the UBO will receive full profit, but in 1% increments.

# BREAK OUT SESSION 1- SELECT THE BENEFICIAL OWNERS

## CORPORATE STRUCTURE

A	B	C	D
Shareholder A owns 85% of the shares in the BVI HoldCo.	Shareholder B owns 2% of the shares and has weighed voting rights giving him at least 10% of the voting rights.	Shareholder C owns 4% of the shares and has the right to appoint and remove a single director.	Shareholder D owns 9% of the shares, has the right to approve the annual budget and has reserved rights over the additional borrowings and creation of security.
BVI Holding Company (BVI HoldCo)			
Mauritius Holding Company (Mau Co)			
Kenyan Company			



# **BREAK OUT SESSION 1**

## **- REQUIRED**

- Using the Kenya beneficial ownership thresholds below, identify the beneficial owners in the Corporate structure in the previous slide.
- Kenya beneficial ownership thresholds:
  - a) Hold at least ten percent of the issued shares in the company either directly or indirectly;
  - b) Exercise at least ten percent of the voting rights in the company either directly or indirectly;
  - c) Hold a right, directly or indirectly, to appoint or remove a director of the company; or
  - d) Exercise significant influence or control, directly or indirectly, over the company.
- NOTE:
  - Group 1 to consider issued shares.
  - Group 2 to consider voting rights
  - Group 3 to consider right to appoint or remove a director
  - Group 4 to consider the exercise of “significant influence or control” over a company

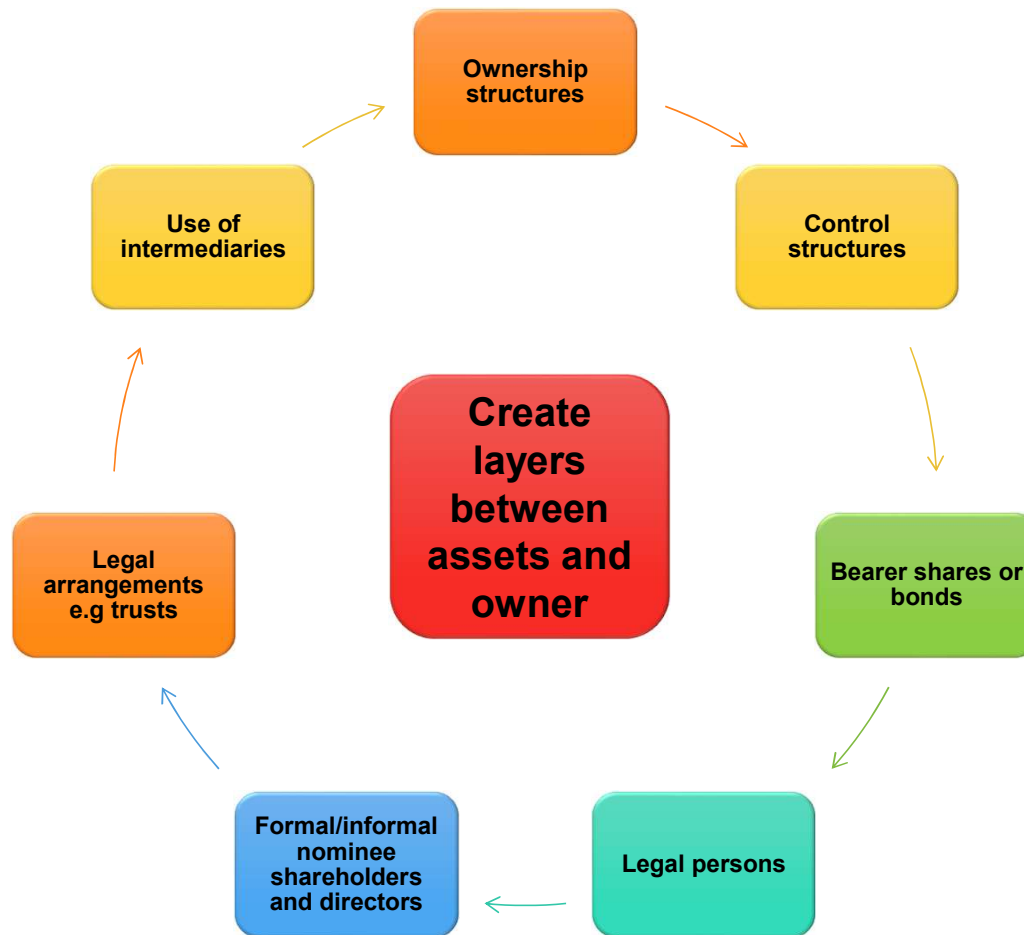
# BREAK OUT SESSION 1-

## THE SELECTED BENEFICIAL OWNERS

BO THRESHOLD	SELECTED BO	REASON FOR SELECTION
The holding directly or indirectly of at least 10 percent of the issued shares	Shareholder A	Owns 85 percent of the shares capital in the BVI HoldCo.
The holding directly or indirectly of at least 10 percent of the voting rights	Shareholder B	<ul style="list-style-type: none"> <li>• Due to the fact of the weighted voting rights in his favour even though he beneficially owns only 2 percent of the shares in the BVI HoldC</li> <li>• How about shareholder A??</li> </ul>
The right to appoint or remove a director	Shareholder C	<ul style="list-style-type: none"> <li>• Has the right to appoint and remove a director even though he beneficially owns only 4 percent of the shares in the BVI HoldCo</li> <li>• Shareholder A??</li> </ul>
The exercise of “significant influence or control” over a company	Shareholder D	<ul style="list-style-type: none"> <li>• Has the right to approve the annual budget and has reserved rights over the additional borrowings and creation of security, even though he beneficially owns only 9 percent of the shares in the BVI HoldCo.</li> <li>• Shareholder A??</li> </ul>

**LESSON LEARNT: USE ALL TESTS, CASCADE THE TESTS**

# INSTRUMENTS USED TO OBSCURE BENEFICIAL OWNERSHIP



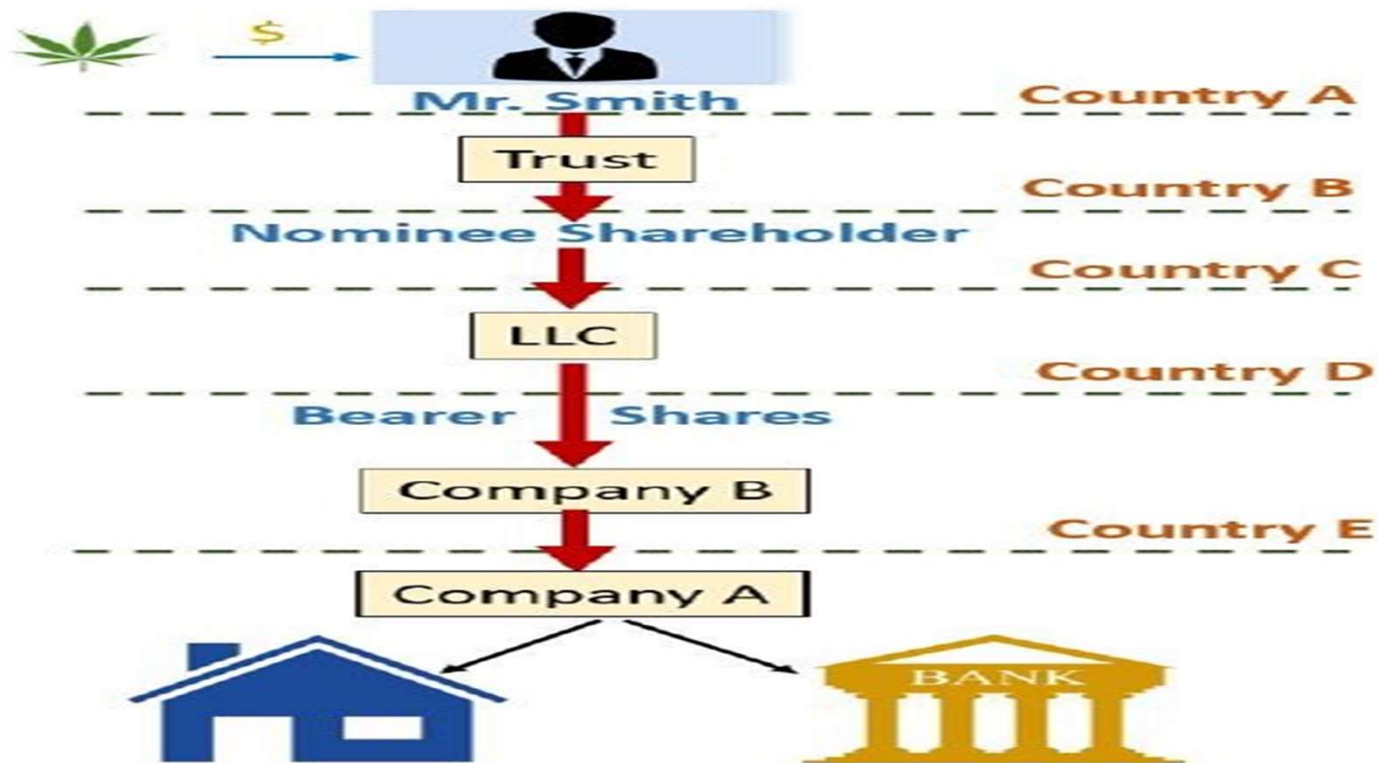




## **INSTRUMENTS USED TO OBSCURE BENEFICIAL OWNERSHIP CONTD...**

- Various forms of ownership structures, especially in cases where there is foreign ownership which is spread across jurisdictions
- Complex 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 nominee shareholders and directors where the identity of the nominator is undisclosed
- Informal nominee shareholders and directors, such as close associates and family
- Legal arrangements such as trusts which enable a separation of legal ownership and beneficial ownership of assets.
- Use of intermediaries, including professional intermediaries, in forming legal persons

# USE OF MULTIPLE LEGAL VEHICLES



# THE OFFSHORE COMPANY MENACE



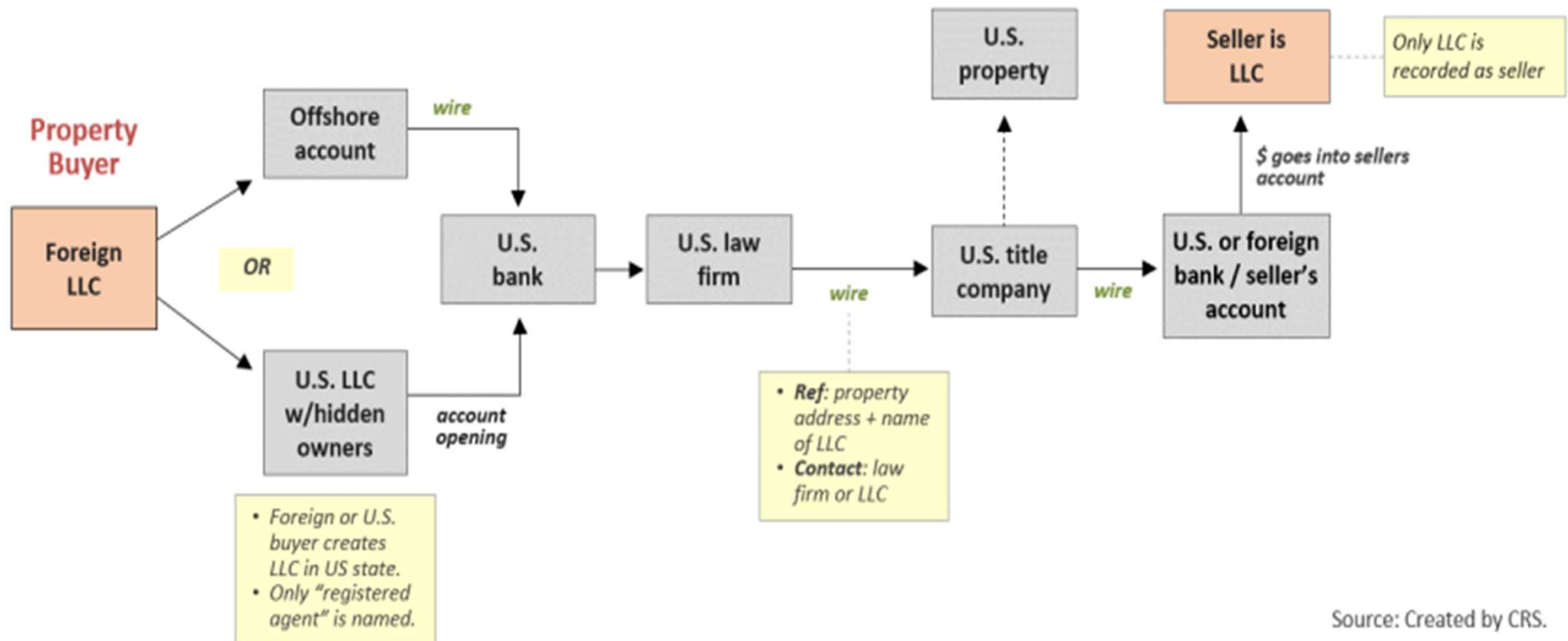


# OFFSHORE WEALTH ESTIMATES

- Estimates vary widely about how much money is out there, but loosely speaking, it's a lot: from \$1 trillion to more than \$25 trillion.
- The most common type of estimate is based on national economic figures on investment, and such estimates generally come in the range of \$5 trillion to \$8 trillion.
- Roughly, that corresponds to about 10 percent of global gross domestic product.
- It is estimated 30% of Africa's wealth is held offshore



# FACELESS PROPERTY SALES

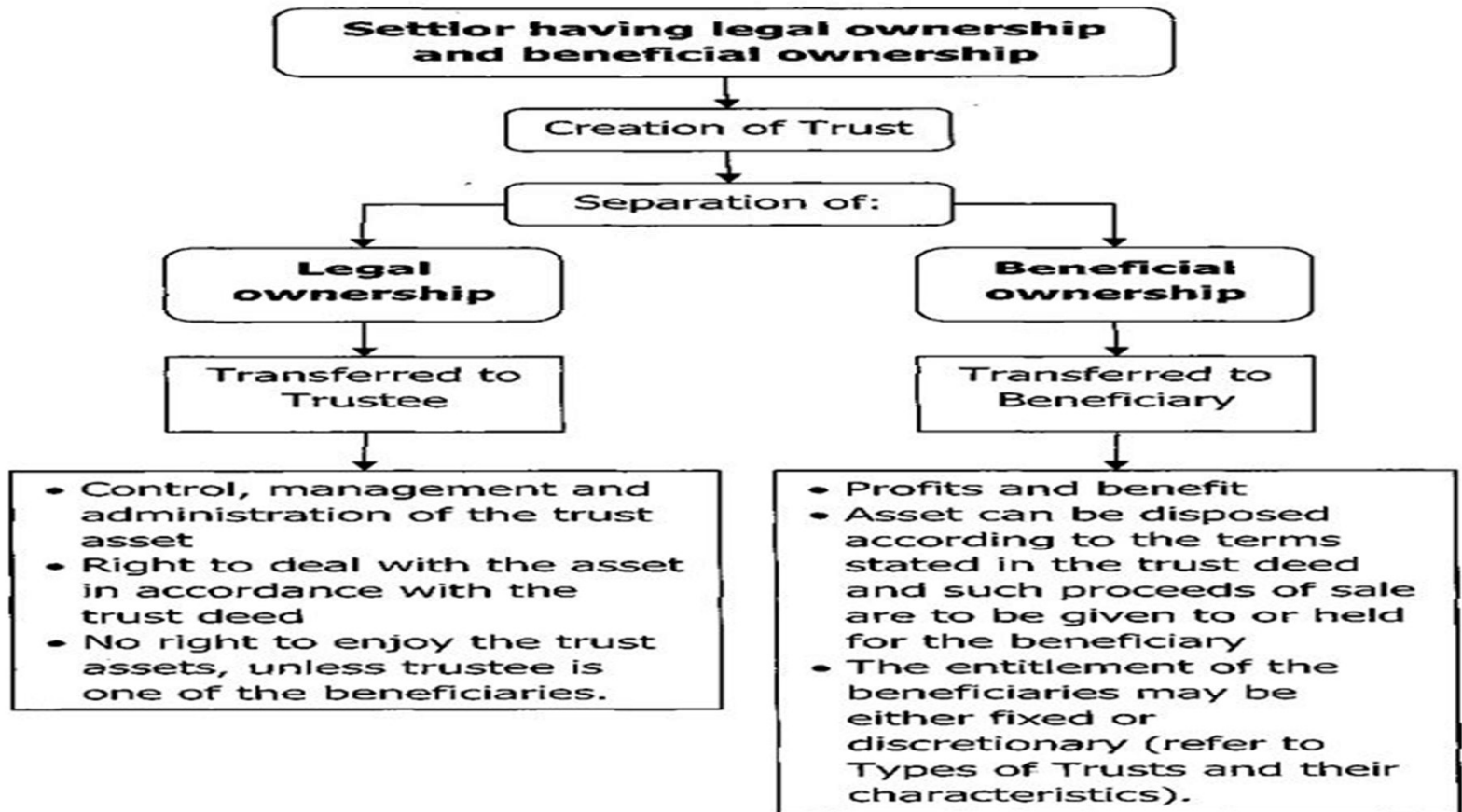


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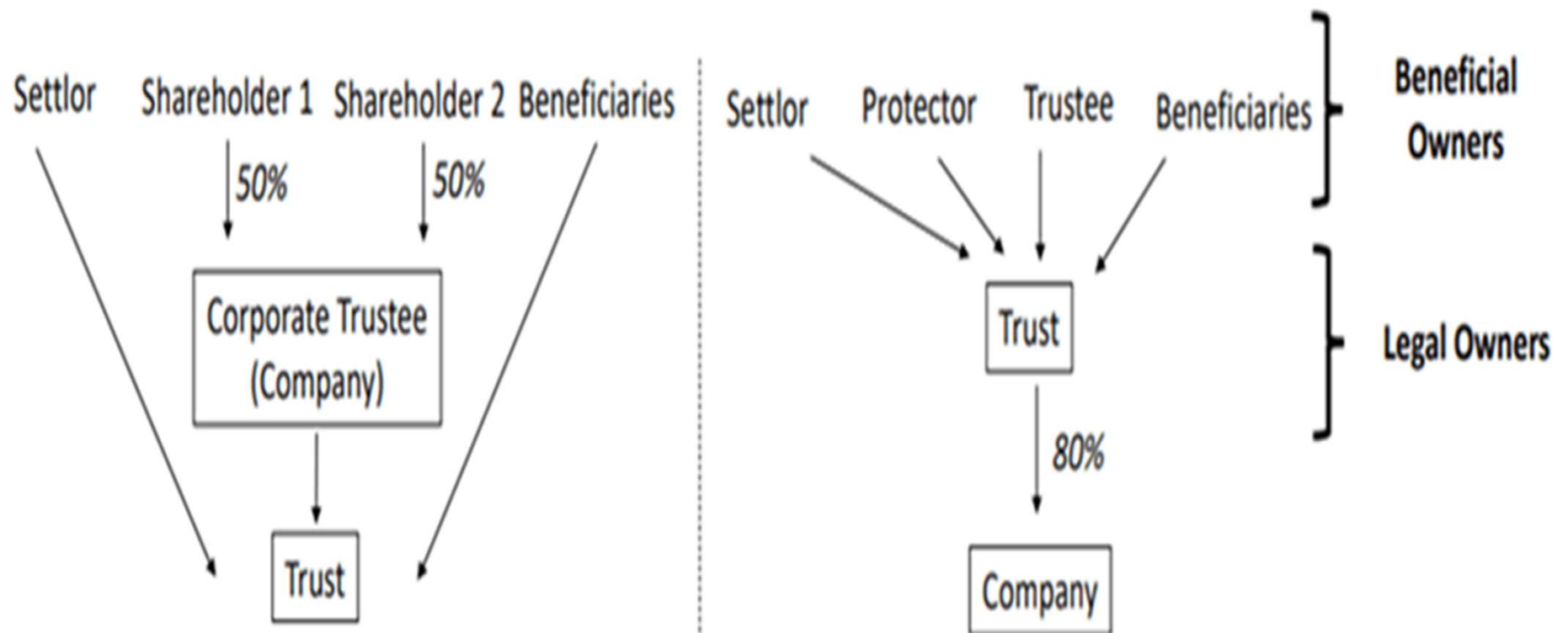




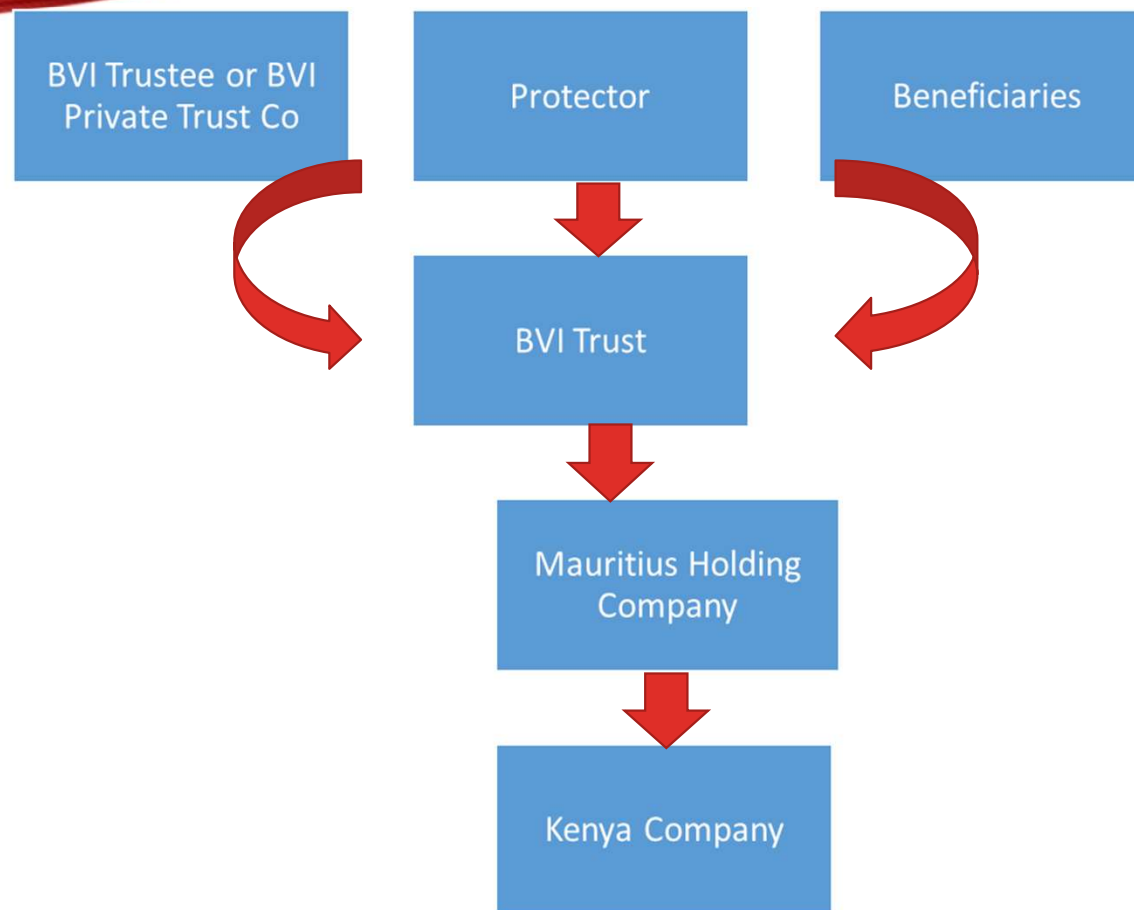
# (MIS)TRUSTED TRUSTS



# WHY THE (MIS)TRUST IN TRUSTS?



# EXAMPLE OFFSHORE TRUST STRUCTURE



The BVI Trustee and the protector may be reportable under the Kenyan Regulations in the following circumstances:

- The BVI Trustee would be reportable by virtue of the fact that he holds as legal and beneficial owner all the shares in Mauritius Holding Company.
- The protector might be reportable depending on the terms and conditions of the trust deed. For example, if the protector has rights to appoint or remove a director of the Kenyan company or if he enjoys "significant influence" by virtue of having the right to make key financial decisions.