Mauritius Institute of Professional Accountants

Identification of Beneficial Ownership (BO)

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<u>Ultimate Beneficial Ownership</u>

The starting point: Dirty Money and the Obfuscation of its Origin

You have some money that is the proceed of a crime. And you want to use it without having the authorities being able to identify/ suspect its origin and you do not want anyone to know about it. You want to obfuscate the ownership of the money as well as its origin. You can use cash but its not convenient. You can use bank accounts, but it is easily traceable if the account is in your name. So, you will try to have a movable/immovable asset that you own or control, but that no one can link to you- or at least only with the greatest difficulty.

Example:

- Multiple legal persons and arrangements
- Spanning several jurisdictions
- Note use of:
  - Trusts
  - Nominee Arrangements
  - Bearer Shares
  - (Potential) shell/shelf company

- Enables the UBO to:
  - Legitimate the money
  - Obfuscate the origin of the money and the identity of the UBO
  - Complicate or compromise any investigation

What is a UBO?

General definition and requirements: Recommendation 24 and Recommendation 25 of FATF

A beneficial owner is a natural person who owns or controls a legal person or arrangement and/ or the natural person on whose behalf a transaction is being conducted.

Technical requirements:

- Information on the UBOs must be adequate, accurate and up to date
- UBO information should be timely accessible (to competent authorities)

3 Key Features:

- Natural person, who owns or controls, a Legal Person/ Legal Arrangement

For legal persons: 3 categories of UBOs and the cascade approach

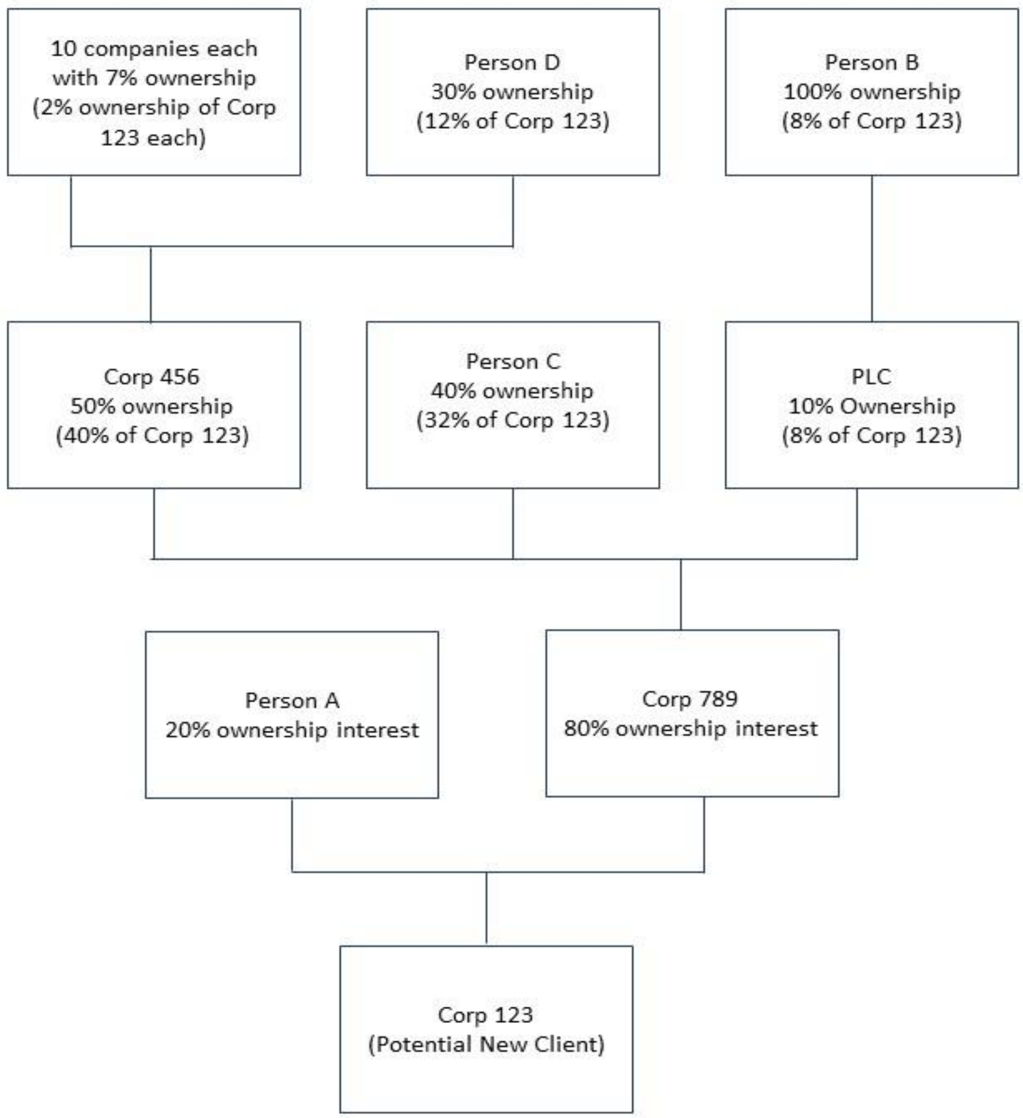
1. The natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity
2. Or through control via other means
3. If no one here above can be identified, after having exhausted all possible means and provided there are no grounds for suspicion.

Example 1: UBO Identification in multi layered entities process

Multi -layered entities, or businesses with multiple layers of ownership, can involve more complex routes to identification of the natural person(s) that qualify as UBOs. The ownership chain can involve a number of tiers, and there may be several different qualifying owners identified as the chain is worked through.

It is important to understand that the ownership percentages are aggregate threshold. For example, an individual may own less than 10% of the client entity at any single level of the ownership chain, but if the ownership comprises 10% more in aggregate, such an individual is considered a UBO. Therefore, when reviewing the ownership chain in a multi-layered entity or account, it is imperative to track the ownership at each level in the chain.

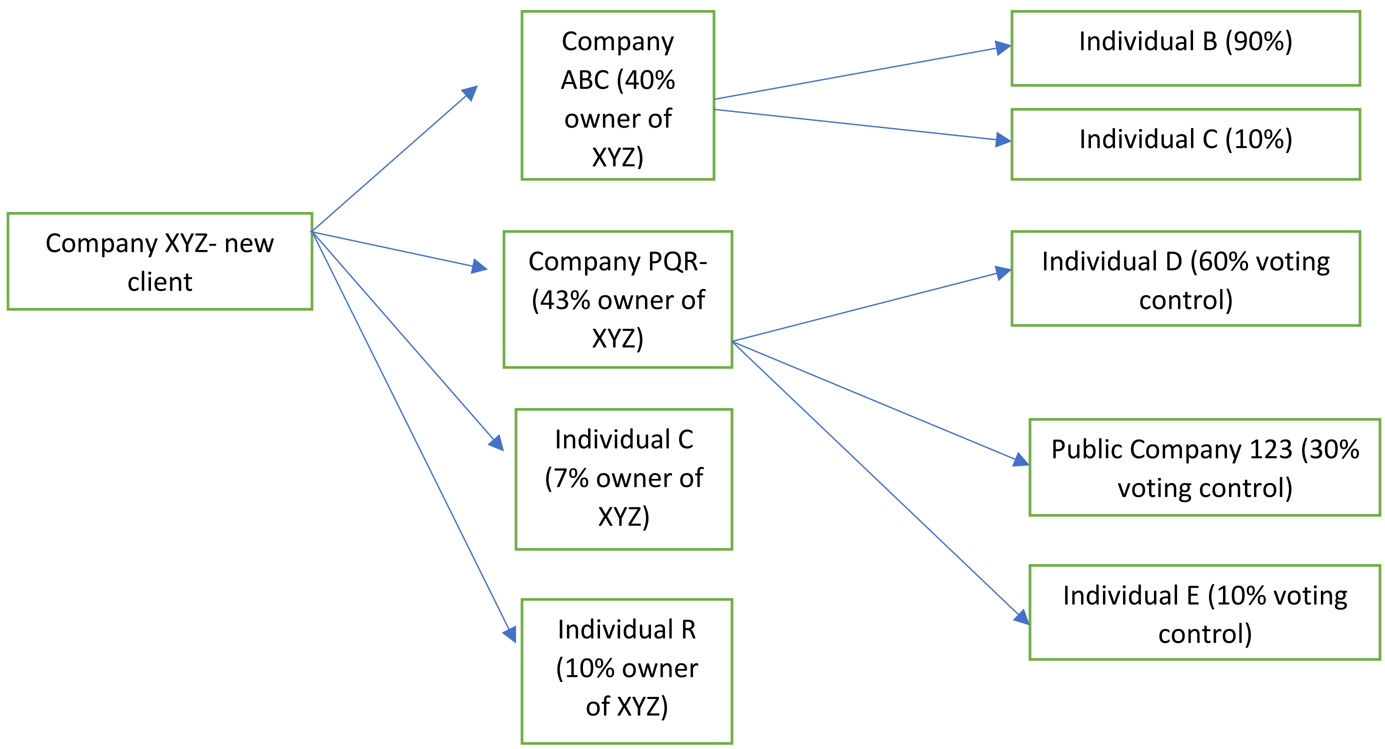
The chart below provides an example of how beneficial ownership is determined for a multi layered entity:


10 companies each with 7% ownership (2% ownership of Corp 123 each)
Person D 30% ownership (12% of Corp 123)
Person B 100% ownership (8% of Corp 123)
Corp 456 50% ownership (40% of Corp 123)
Person C 40% ownership (32% of Corp 123)
PLC 10% Ownership (8% of Corp 123)
Person A 20% ownership interest
Corp 789 80% ownership interest
Corp 123 (Potential New Client)

- Corporation 123 is not a natural person, therefore further inquiry must be made as to its controlling interests, and identification and documentation must be recorded for all owners with 10% or more ownership.
- Person A is an UBO of client Corporation123, as he or she has a 10% or more controlling interest.
- Person B is not an UBO of Corporation 123, as her or she has only 8% ownership of Corporation 123 (Person B owns 100% of PIC who owns 10% of Corp 789, which owns 80% of 123 (1x.10x.80=.08, or 8%)
- Corporation 789 is a beneficial owner of client Corporation 123, but further inquiry must be made to identify the natural person(s) who is the UBO(s) of the 80% interest in Corporation 123.
- Corporation 789 is a beneficial owner of client corporation 123, but further inquiry must be made to identify the natural person(s) who is the UBO(s) of the 80% interest in Corporation 123. INQUIRY CONTINUES INTO CORPORATION 789.
- PIC in not an UBO of Corporation 123, since its ownership equates to only 8% of Corporation 123 (PIC owns 10% of Corp 789, which owns 80% of 123 (.10 x .80 = .08, or 8%))
- Person C is an UBO of Corporation 123, since his or her ownership equates to 32% of Corporation 123 (C owns 40% of Corp 789, which owns 80% of Corp 123 (.40 x .80 = .32 or 32%)). INQUIRY CONTINUES FOR REMAINING SHARES OF CORPORATION 789.
- Corporation 456 is a beneficial owner of Corporation 123, since its ownership equates to 40% of Corporation 123, (Corp 456 owns 50% of Corp 789, which owns 80% of Corp.123 (.50 x .80=.40, or 40%)). INQUIRY CONTINUES FOR REMAINING SHARES OF CORPORATION 456.
- The remaining 10 companies each with 7% shareholding in Corporation 456 are not beneficial owners of Corporation 123, since their ownership levels are each 2.8% and less than 10% of Corporation 123 (.07 x .50 x .80 = .028 or 2.8%) INQUIRY IS COMPLETE FOR Corporation 123. However, if there is actual knowledge of an individual (s) with ownership in multiple companies within ownership structure which aggregates to the equivalent of 10% or more of ownership in Corporation 123, this individual (s) must be identified as an UBO(s).

UBO of Corporation 123 are Person A (20%), Person C (32%) and Person Z (12%). THE OWNERSHIP CHAIN REVIEW IS COMPLETE.

Another example of working through a chain of ownership is set forth below:



The calculation of beneficial ownership for the structure depicted above is worked out as follows:

Ownership Structure of Company XYZ				
Column A Direct Owner of XYZ	Column B Indirect Owner of XYZ	Direct Ownership % age (Column A)	Indirect Ownership % age (Column B)	Effective Control (A x B)
Company ABC	Individual B	40%	90%	36%
Company ABC	Individual C	40%	10%	4%
Individual C		7%		7%
Individual R		10%		10%
Company PQR	Individual D	43%	60%	25.8%
Company PQR	Individual E	43%	10%	4.3%
Company PQR	Public Company 123	43%	30%	12.9%

In this example, since Company XYZ is a new client, individuals B, C and R each own 10% or more of Company XYZ (either directly or indirectly) and are therefore deemed as UBOs, and accordingly, full identification information is required and must be obtained and documented in the KYC Profile. The complete chain of ownership from Company XYZ to beneficial owners B, C, D and R must also be documented in the KYC Profile.

While individual C directly owns just 7% of Company XYZ, C also owns 4% of Company XYZ indirectly through Company ABC. Therefore, the aggregate ownership is 11% exceeding the threshold for beneficial ownership.

The ownership of Company PQR (direct owner of client Company XYZ) must be examined to identify its beneficial owners (individuals D and E, Public Company 123), and to determine which individual(s) owns 10% or more of client Company XYZ.

Since Company 123 is publicly held company on a covered exchange, beneficial ownership information is not required for the KYC Profile. In such cases, evidence that the company us listed on the exchange must be obtained and included in the KYC Profile.

Individual D is an indirect beneficial owner or Company XYZ through its controlling interest in Company PQR, as his or her ownership of 25.8% (indirectly through Company PQR) exceeds the 10% qualifying threshold.

Identification information is not required for individual E since his or her ownership percentage in Company XYZ of 4.3% (indirectly through Company PQR) is below the qualifying threshold.

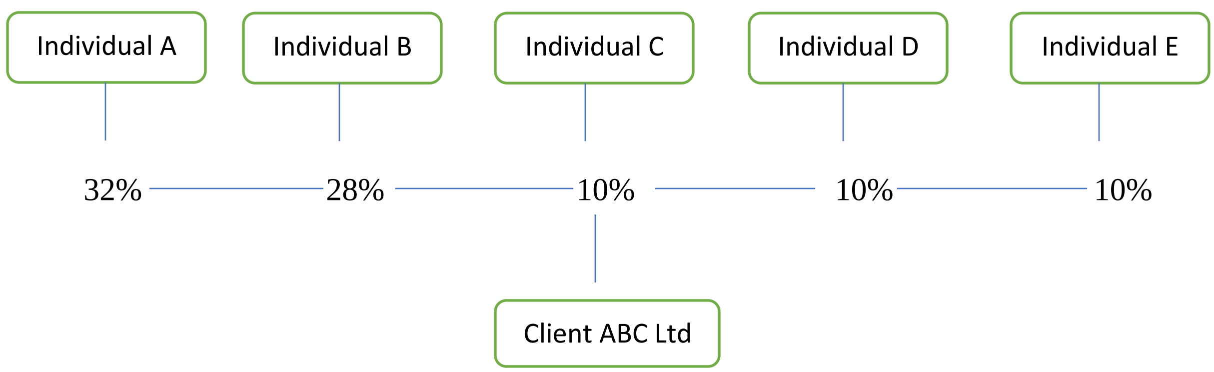
Additional examples for the determination of the Ultimate Beneficiary Owner (UBO)

Note: These examples are presented under the these following assumptions:

- Assumption 1: Identify all individuals that direct and/or indirect owns (in conjunction) 25% or more of the property ownership of the client.
- Assumption 2: Identify the ultimate beneficiary owners (UBOs) of the client until it has been identified at least 51% of the equity interest of the client.

Direct Property

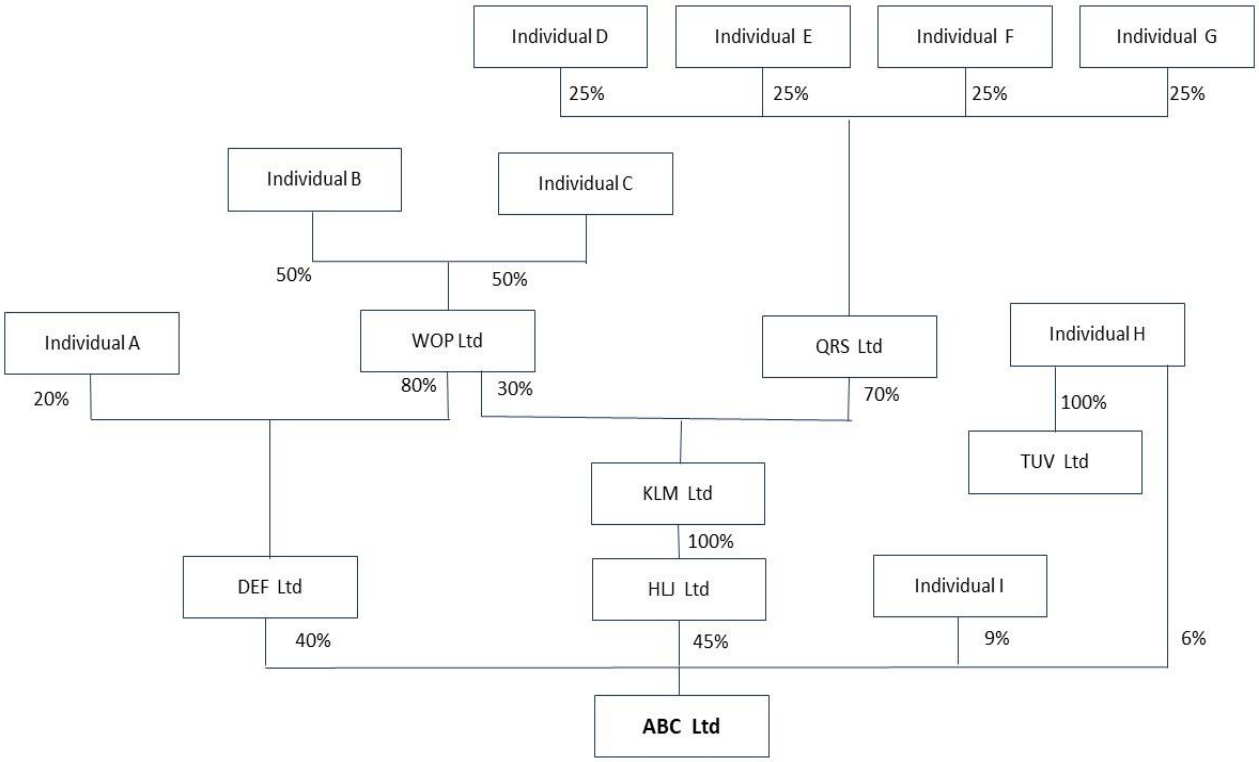
For those clients that are owned directly by individuals, the determination of the final ownership is relatively simple, as illustrated in the following example:



In this example, **Individual A** (32%) and **Individual B** (28%) would have to identify themselves as they directly own or control 25% or more of the customer (assumption 1). It would not be necessary to identify additional individuals to achieve the minimum of 51% of the final ownership (assumption 2), as the identified persons already account for 60% of the customer's final ownership.

Indirect Property

To determine indirect ownership, it is first necessary to calculate the aggregate ownership of each individual actual owner, then apply the same rules, as the following example illustrates:



To calculate the capital interest of each individual in the client, multiply the ownership interest of each entity in the property chain to that individual and add the results where an induvial rest at end of more than one property chain:

- Individual A x 50% (DEF Property) x 40% (customer's DEF property) = 20% aggregate customer ownership.
- Individual B = [50% (DEF property) x 40% (customer's DEF property) = 20% customer ownership] + [50% (NOP property) x 20% (KLM NOP property) x 100% (HIJ- owned KLM) x 60% (customer HIJ property) x 6% customer property] = 26% aggregated customer property]
- Individual C = 50% (NOP property) x 20% (KLM NOP property) x 100% (HIJ KLM property) x 60% (customer HIJ property) = 6% aggregate customer ownership
- Individual D = 90% (QRS property) x 50% (KLM QRS property) x 100% (HIJ KLM property) x 60% (customer HIJ property) = 27% aggregate customer ownership
- Individual E= 10% (QRS property) x 50% (KLM QRS property) x 100% (HIJ KLM property) x 60% (customer HIJ property) = 3% aggregate customer ownership
- Individual F= 100% (TUV property) x 30% (KLM TUV property) x 100% (HIJ KLM property) x 60% (customer HIJ property) = 18% aggregate customer ownership

Calculations can be verified by adding up all indirect aggregated property percentages. [20% (Individual A) + 26% (Individual B) + 6% (Individual C) + 27% (Individual D) + 3% (Individual E) + 18% (Individual F) = 100%]

Therefore, in the example, individual B (26%) and individual D (27%) would have to be identified as they indirectly own or control 25% or more of the customer (assumption 1). It would not be necessary to identify additional individuals to achieve the minimum of 51% of the final ownership (assumption 2), as the identified persons already account for 53% of the customer's final ownership.

Ownership of Trusts, Foundations, Funds, Government or Publicly Traded Companies

For certain types of entities, it not always possible or practical to determine actual ownership based on individual capital interest. Where these entity types are part of the ownership structure, they should be treated as an effective actual owner in their own right and a representative or representatives with control over that entity identified as substitutes:

- For publicly traded companies that hold 25% or more of a customer's share interest (calculated through the property chain), there is no need to identify any substitute individuals.
- For Government entities that hold 25% or more of a client's shareholding (calculated through the chain of ownership), the individual head of the government entity or agency (i.e Director, Secretary, Commissioner, etc) must be identified.
- For grouped investment vehicles (pension fund, mutual fund, hedge fund, private equity fund or foundation) that hold 25% or more of a client's capital interest (calculated though the chain of ownership), the individual exercises control/discretion over vehicle matters (fund manager) must be identified.
- For trusts that hold 25% or more of a client's capital interest (calculated though the chain of ownership), trustees and beneficiaries of the trust must be identified.

Legal entity ownership structures may include publicly traded companies, government entities, collective investment vehicles, or trusts.

For certain types of entities, it is not always possible or practical to determine actual ownership based on individual capital interest. Where these types of entity are part of the ownership structure, they should be treated as an effective beneficiary in their own right and get a representative with control over that entity identified as substitutes:

To calculate the equity share of each individual (or entity) in the client, multiply the ownership stake of each entity in that individual's or entity's property chain and add the results where an individual maintains at the end that one property chain:

1. Publicly traded company 123= 100% (DEF property) x 30% (customer's DEF property) = **30%** aggregate customer property.

2. Trust **456**= 90% (owned by KLM) x 100% x 65% (customer HIJ property) = **58.5%** aggregate customer ownership.