



Beneficial Ownership in the Context of Legal Entities

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The Fundamentals

- Legal ownership v Beneficial Ownership
- Basic elements of any definition of beneficial ownership
 - One or more natural persons
 - Ultimately owns or controls the legal entity
 - Otherwise exercises control
- Nature abhors a vacuum – Senior Managing Officials
- Once determined pass onto identification and verification of the beneficial owner/s
- Beneficial Ownership may change throughout the business relationship – consider changes and information obtained



The Definition of Beneficial Ownership under the PMLFTR

TIER 1A	Direct or indirect ownership: <ul style="list-style-type: none">• 25%+1 or more of the shares• 25% + of the voting rights• an ownership interest of more than 25% Including through bearer share holdings
TIER 1B	And/or Control through other means
TIER 2	Senior managing officials

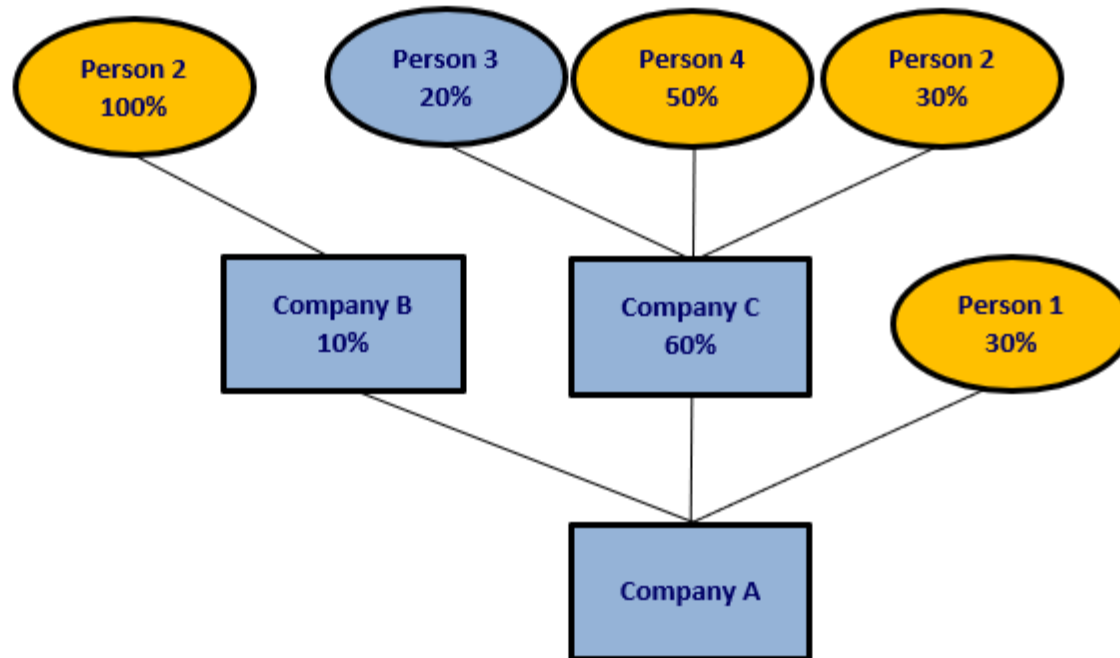


Shares and Voting Rights (1)

- Determination on the basis of the issued share capital.
- Shares held and voting rights have to be looked at separately:
 - ✓ Not all shares may have voting rights associated with them
 - ✓ Some shares may carry more voting rights with them
- Consider both direct and indirect shareholdings:
 - ✓ Importance of having a correct understanding of the corporate structure to detect individuals with multiple direct and indirect shareholdings
- Indirect shareholdings – corporate entities, trusts, foundations etc.



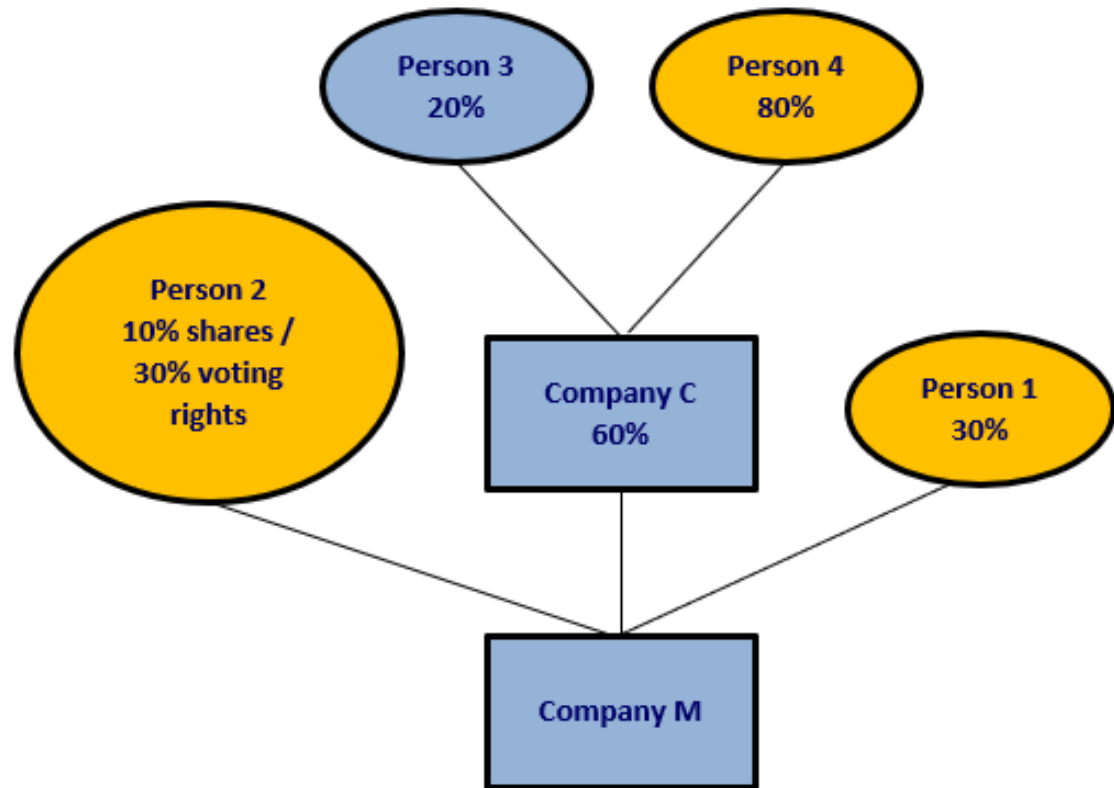
Shares and Voting Rights (2)






- Natural persons not required to be identified as a beneficial owner
- Legal persons
- Natural persons required to be identified as a beneficial owner



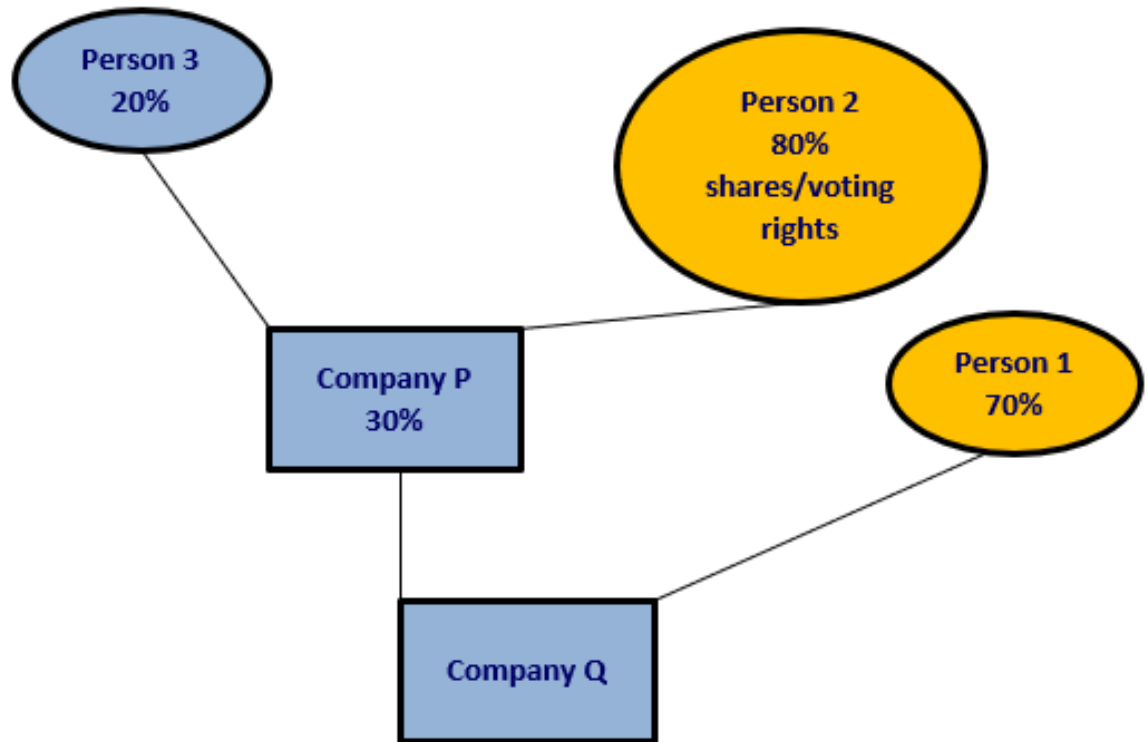
Shares and Voting Rights (3)






-  - Natural persons not required to be identified as a beneficial owner
-  - Legal persons
-  - Natural persons required to be identified as a beneficial owner



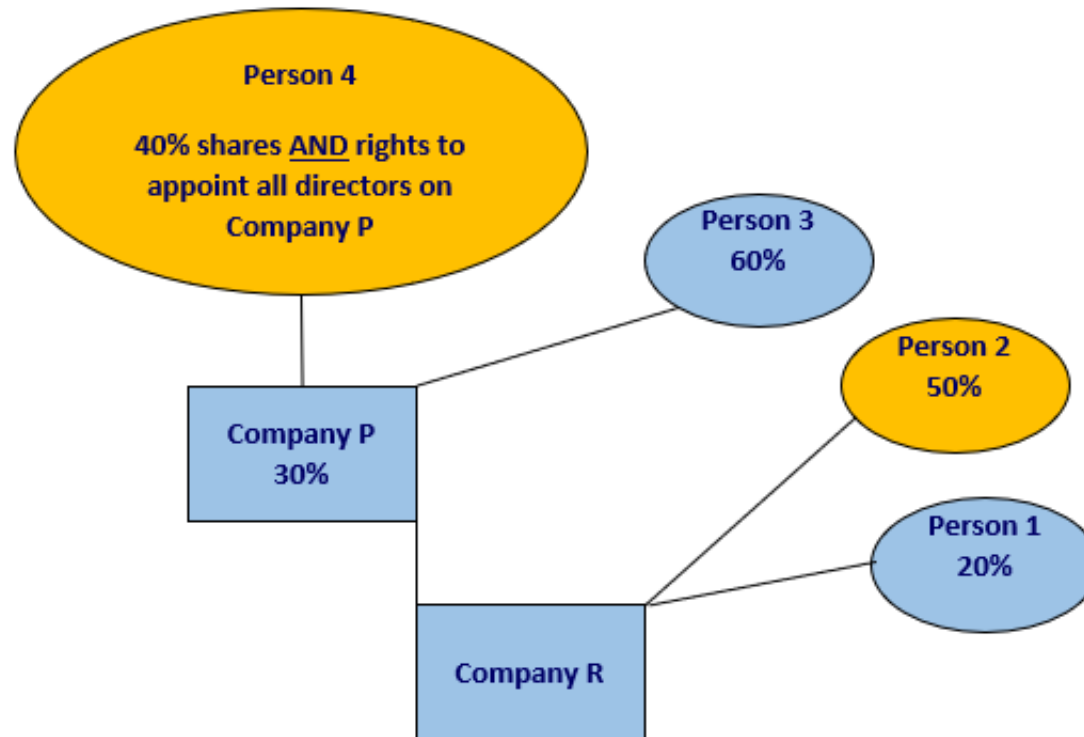
Shares and Voting Rights (4)






-  - Natural persons not required to be identified as a beneficial owner
-  - Legal persons
-  - Natural persons required to be identified as a beneficial owner



Shares and Voting Rights (5)



-  - Natural persons not required to be identified as a beneficial owner
-  - Legal persons
-  - Natural persons required to be identified as a beneficial owner

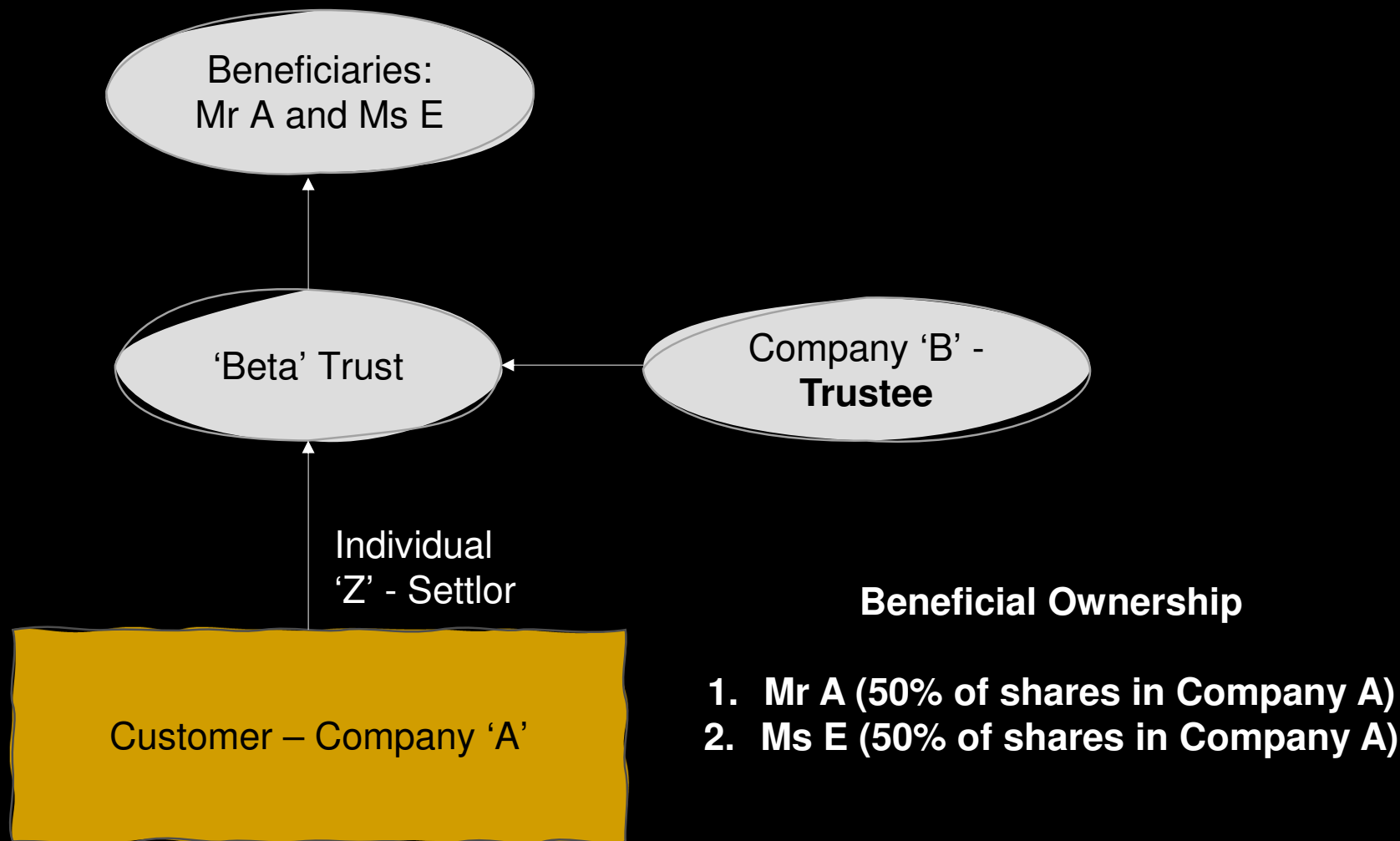


Shares and Voting Rights (6)

- What happens where there is a trust at the top of a corporate structure?
 - ✓ One still needs to apply the definition of beneficial owner applicable to body corporates or bodies of persons, i.e. as a general rule one is to focus on the trust beneficiaries as the corporate customer's beneficial owners.
 - ✓ Individuals named as beneficiaries are identifiable, entitled to benefit from the trust assets and are therefore the structure's beneficial owners.
 - ✓ Purpose trust/Class of beneficiaries – there is no single identifiable individual that is to benefit from the trust assets and, unless there is someone otherwise exercising control, one would have to look at the senior managing officials.



Shares and Voting Rights (7)





Control Through Other Means (1)

- Is there reason to believe that someone is exercising control over the customer's management, direction, activities etc. even though the individual does not have the necessary shareholding or voting rights?
- It is a test that can be carried out even if someone has already been identified as a beneficial owner on the basis of shares or voting rights held:
 - The two forms of beneficial ownership can be present together.
 - Is the apparent beneficial owner a front/strawman?
- An assessment that need to be kept 'live' as the business relationship progresses on the basis of information accessible to the subject person.



Control Through Other Means (2)

- The question of shares settled on trust – can the trustee be considered as exercising control through other means?
- Questions to ask to avoid possible distorted results, especially in the case of corporate trustees that act in this capacity by way of business:
 - What is the role of the settlor under the trust deed?
 - What is the role of the protector under the trust deed?
 - What powers have they reserved for themselves?
 - Have they actually exercising them?
 - How have they exercised them?
- Obtain information on how the trust (or foundation) is to function.



Concealment through companies incorporated in the name of spouses/partners



Facts



Suspicion





- Wife was unable to answer any basic questions about the business and its finances
- **Adverse Media:** the husband had a number of international convictions

Wife was holding shares in such company on behalf of her spouse, in order not to generate suspicion.





Red Flags

-  The **beneficial owner and director** of the company was **unable to answer any questions** related to the company
-  **Adverse media** on the partner of the ‘supposedly’ beneficial owner of the company





Apparent transfer of ownership and retainment of BO through control

Involved persons : Mr. A and Mr. C
Company's declared activity: International trading

Mr. A



- > Held 100% of the shares
- > **Local fiduciary service provider held shares on his behalf**

Mr. C



- > **Replaced Mr. A as beneficial owner**
- > The same **local fiduciary service provider held shares on his behalf**



Facts of the Case

Mr.C



Signed a general Power of Attorney in favour of the former beneficial owner, i.e. Mr. A.



The Company



- **Changed its registered address to Mr. A's residential address.**
- **Traded with only two parties**



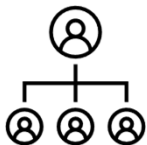


Facts of the Case (2)



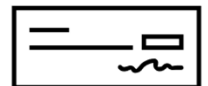
There was also a **significant spike in revenue which no one questioned.**

Mr. A, who was just an employee was also signatory on the bank accounts of the company.



Mr. A's daughter was appointed as the director and judicial and legal representative.

Mr. C was receiving half of the amount in salary compared to Mr. A.





Red Flags



- ⊗ The **company was supposed to be an international trading company yet it was only trading with 2 companies.**
- ⊗ **A normal employee was granted a general power of attorney and was also signatory on the bank accounts of the company.**
- ⊗ **Spike in revenue which no one questioned**
- ⊗ **Mr. A's residential address was used as the company's registered address**
- ⊗ **The declared BO was receiving less salary than a normal employee**



The Senior Managing Official (1)

- Two cumulative conditions have to be met:
 - i. Exhaust all possible means and no one can be identified as beneficial owner; and
 - ii. There are no grounds to suspect ML/FT.
- Implies that one understands how a corporate structure works.
- Keep a record of the how determination arrived at.
- Only one case of automatic determination - State-owned enterprises or public administration authorities as *per* EBA Risk Factor Guidelines.



The Senior Managing Official (2)

- Who are the senior managing officials?
 - ✓ Persons responsible for taking strategic decisions (e.g. directors)
 - ✓ Persons exercising executive control over the daily or regular affairs of the corporate entity (e.g. executive directors, CEO, CFO)

- Corporate Service Providers as Senior Managing Officials

... the subject person should understand whether in such scenarios there are persons who would be considered as beneficial owners because they are ultimately controlling the company through other means.



Other Points on Beneficial Ownership

- Proof of Beneficial Ownership Disclosure where applicable

- Can one exercise reliance on the records held by the Malta Business Register?
 - CDD process separate and distinct from the requirements of the MBR
 - Important to refer thereto to double-check and report discrepancies

- What to do if a customer is trying to conceal who is the actual beneficial owner?
 - Highly unlikely that this is being done for legitimate purposes
 - Submit a Suspicious Transaction Report



Bearer Shares/Warrants to Bearer

- Higher risk of ML/FT – undertake additional measures to mitigate risk
- When customer or any company within the structure of the customer is a company with bearer shares

Documents issued in a jurisdiction that requires notification and registration of shareholders in a register:

- True copy of register, signed and certified by the company secretary, director, registered agent
- and**
- Written undertaking from company secretary, director, registered agent that SP will be notified immediately if bearer share certificate is transferred

Bearer share certificates are deposited with a regulated FI or custodian:

- Copy of bearer share certificate;
 - Written declaration certifying on whose behalf document is held, signed by FI or custodian;
- and**
- Written undertaking by FI or custodian that SP will be notified immediately if bearer share certificate is transferred



Companies listed on a regulated market

- Company listed on a regulated market
- Subject to disclosure requirements consistent with:
 - EU legislation; or
 - International standards ensuring adequate transparency of ownership information
- Company is a majority-owned and consolidated subsidiary of such listed companies

No need to identify and verify the beneficial owner(s)



Thank you!

If you need us, we're here to help you!