



Guidance on Beneficial Ownership of Legal Persons & Arrangements

April 2021

Addressed to Reporting Entities mentioned in Articles 4 and 5 of AML/CFT Law no. 44 dated November 24, 2015.

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1. Introduction

The issue of beneficial ownership and control has become increasingly important internationally. It plays a central role in transparency, in maintaining the integrity of the financial sector, in sanctions compliance, as well as in the overall fight against Money Laundering (ML), associated predicate offences and Terrorism Financing (TF).

In 2003, the Financial Action Task Force (FATF) became the first international body to set international standards on beneficial ownership (BO). The FATF Recommendations are the most widely established international standards for ensuring availability of BO information.

In 2012, the FATF strengthened its standards on BO, to give more clarity about how countries should ensure information is available, and to deal with vulnerabilities such as bearer shares. Several international bodies and organizations focus on issues related to BO. An important development in recent years has been the G20's call for more integrated cooperation between organizations on this issue, including with the OECD - Global Forum, given the crucial role BO information plays.

In Lebanon, identifying BO has been a long standing regulatory requirements imposed on banks and other reporting entities since 2001. To comply with the developments in international standards, amendments to the AML/CFT legislative framework were subsequently made and several circulars were also issued:

- In 2015, AML/CFT Law no. 44 dated November 24, 2015 was amended. It widened BO CDD requirements in line with international standards, and introduced additional reporting entities (lawyers, notaries and certified accountants) who became subject to BO requirements.
- In 2016, Law no. 75 on abolishing the notion of bearer shares and shares to order, and Law no. 55 on the exchange of tax information, were issued.
- In 2018, BDL Basic Circular 83 was amended. It introduced the BO definition and identification process for legal persons and arrangements (BDL Intermediate Circular 498 dated June 13, 2018).
- In 2018, SIC Circular 24 dated June 14, 2018 was issued. It was addressed to reporting entities mentioned in article 5 of AML/CFT Law no. 44/2015, and introduced the BO definition and identification process for legal persons and arrangements.
- In 2020, BDL Basic Circular 139 dated July 21, 2017 (on Common Reporting Standard) was amended, specifying that upon identification of the "Controlling Person", the definition and the identification process of the BO, mentioned in BDL Basic Circular 83, shall apply (BDL Intermediate Circular 548 dated March 31, 2020).

BO information is required to be declared at the Commercial Register, the Ministry of Finance and at Banks and other reporting entities mentioned in Articles 4 & 5 of AML/CFT Law no. 44/2015. Information maintained at the Commercial Register is available to the general public and can be accessed also via the following link: <http://cr.justice.gov.lb/>

2. Purpose

The purpose of this guidance is to:

- Assist reporting entities mentioned in Articles 4 & 5 of AML/CFT Law no. 44 dated November 24, 2015 to design and implement systems and controls necessary to mitigate risks of being misused for ML and TF; through a proper designation of the ultimate Beneficial Owner.
- Provide guidelines to reporting entities to properly identify the ultimate Beneficial Owner and consequently perform the required due diligence as specified in AML/CFT Law no. 44/2015, and other circulars issued by Banque du Liban (BDL) and the Special Investigation Commission (SIC), and to report suspicious activity to the SIC when necessary.

Examples provided in this guidance are suggestions and are not intended as exhaustive examples. Also, this guidance does not address every possible scenario, consequently reporting entities must develop AML/CFT policies, procedures, systems and controls that are appropriate for the nature, scale and complexity of their respective businesses.

This guidance applies primarily to customers who are **legal persons or arrangements**. The guideline provides information on how to determine beneficial ownership by identifying the individual(s) that own more than 20% of a legal person, and/or those with effective control of a legal person or arrangement.

3. Importance of Identifying BO of Legal Persons & Arrangements

Understanding and determining who **ultimately** controls legal persons or arrangements plays an important role in detecting, disrupting and preventing ML, associated predicate offences and TF.

All reporting entities mentioned in Article 4 & 5 of AML/CFT Law 44/2015 must identify the beneficial owners of their customers, take reasonable measures to verify their identities, apply proper Due Diligence measures, and assess the ML/TF risk they pose.

Anonymity enables many illegal activities to take place, such as tax evasion, corruption, ML, and TF. International studies have shown that the lack of adequate, accurate, up-to-date, and timely beneficial ownership information facilitates ML/TF to flourish by disguising:

- The **identity** of known or suspected criminals,
- The **true purpose** of an account or property held by a legal person or arrangement, and/or
- The **source** or use of funds or property associated with a legal person or arrangement.

4. Obscuring BO Information

BO information can be obscured through the use of:

- **Shell companies**¹ (which can be established with various forms of ownership structure), 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 nominee shareholders and directors** where the identity of the nominator is undisclosed
- **Informal nominee shareholders and directors**, such as close associates and family,
- **Trusts and other legal arrangements** which enable a separation of legal ownership and beneficial ownership of assets.
- **Use of intermediaries in forming legal persons**, including professional intermediaries.

5. Key Concepts

The FATF standards define “beneficial owner” as: *the “natural person(s) who ultimately own(s) or control(s) 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”.*

- **Natural Person versus Legal Person:** The beneficial owner is always a **natural person**. A legal person cannot, by definition, be a beneficial owner. The definition therefore speaks of “ultimate effective control”. A legal person can never be the ultimate controller. Ownership by a legal person implies that it must be controlled by a natural person.
- **Beneficial Ownership versus Legal Ownership:** FATF standards clearly distinguish between **basic ownership information** (about the immediate legal owners of a legal person or arrangement), & **beneficial ownership information** (about the natural person(s) who ultimately own or control it). In other words, the FATF definition focuses on the natural (not legal) persons who actually own and take advantage of capital or assets of the legal person; as well as on those who really exert effective control over it (whether or not they occupy formal positions within that legal person), rather than just the (natural or legal) persons who are legally (on paper) entitled to do so. FATF Standards also clarify that having **accurate and up-to-date basic information** about a legal person or legal arrangement is a **fundamental prerequisite** for identifying the ultimate BOs.

¹ The 2014 FATF Guidance on Transparency and Beneficial Ownership defined **shell companies** to be “companies that are incorporated but which have no significant operations or related assets”

6. Definitions as per prevailing BDL and SIC circulars

- **Beneficial Owner²:** any natural person who ultimately owns or who exercises ultimate effective control, whether directly or indirectly, over the Customer and/or the natural person on whose behalf a transaction is carried out.

Indirect ownership and/or control include the situations where the ownership and/or control is exercised through a chain of ownership or by means of control other than direct control.

This expression shall also apply to the beneficial owner of the beneficiary of a life insurance policy or of any other Unit-Linked Investment and Capitalization insurance policies.

- **Customer:** any natural or legal person, whether a company or a partnership of any type, or any legal arrangement (e.g. a trust), or any body, organization or non-profit organization (mutual funds, cooperatives, welfare centers, charities, clubs, etc.).

7. Identification of Beneficial Ownership of a Legal Person

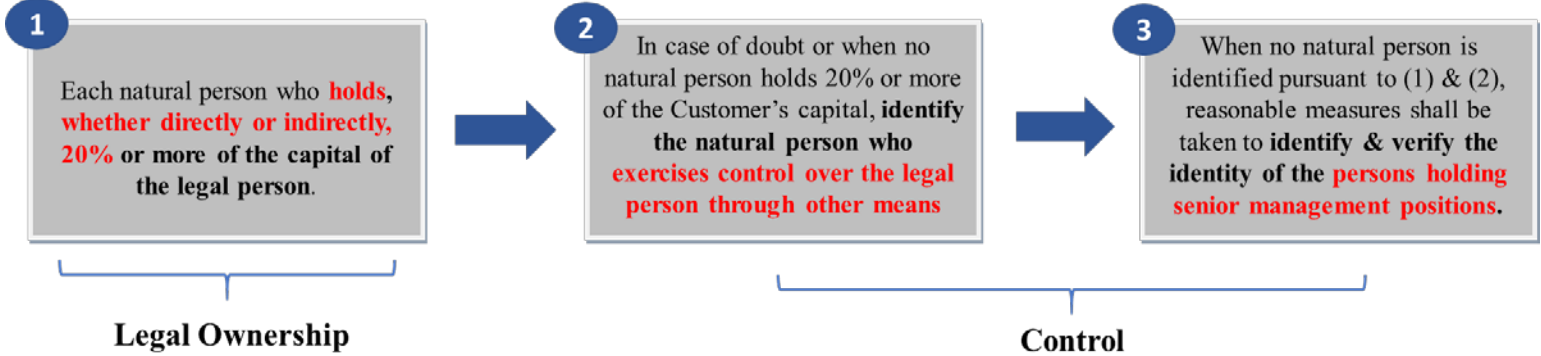
With respect to the legal person, the Beneficial Owners shall be identified and reasonable measures shall be taken to identify them through the following:

1. Identify each natural person who **holds, whether directly or indirectly, 20% or more of the capital of the legal person.**
2. In case of doubt as to whether the natural person(s) identified pursuant to Subparagraph 1 above is (are) the Beneficial Owner(s), or when no natural person holds 20% or more of the Customer's capital, **the natural person who exercises control over the legal person through other means (ex. holding a majority of voting rights or the rights to appoint or dismiss the majority of the administrative or regulatory body at affiliated entities...).**
3. When no natural person is identified pursuant to Subparagraphs (1) and (2) above, reasonable measures shall be taken in order to **identify and verify the identity of the persons holding senior management positions.**

Note: A legal person may have multiple beneficial owners.

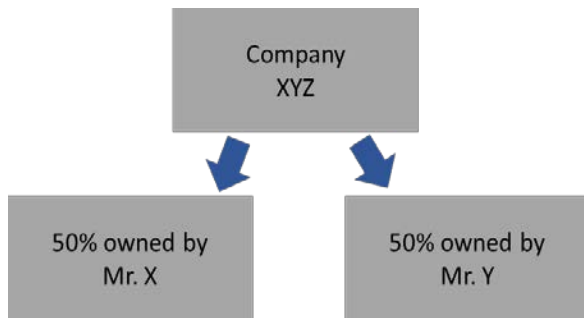
² As per BDL Basic Circular 83 dated May 18, 2001 and SIC Circular 24 dated June 14, 2018.

Three Tier Approach



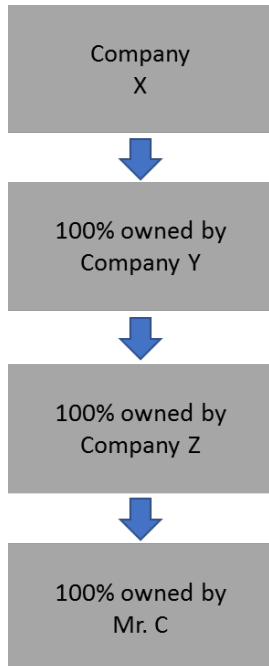
1. Stage 1: Exercise control of the legal person through ownership – Practical examples

Direct Ownership



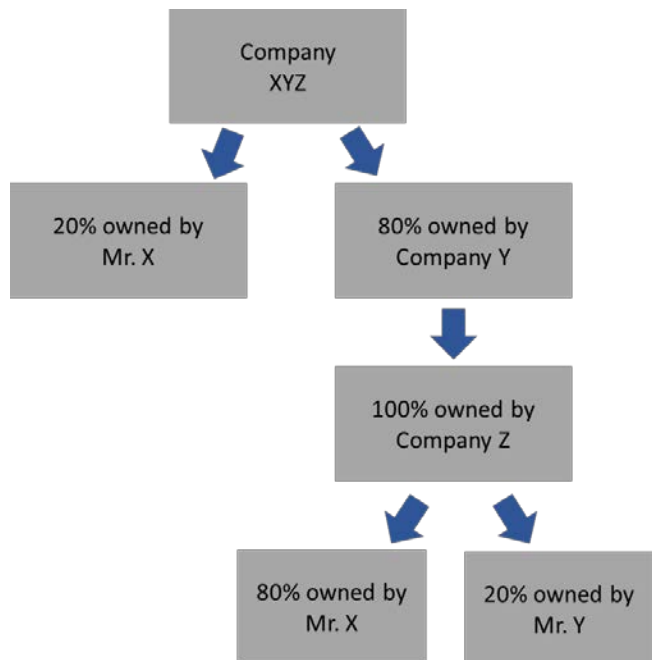
Direct Ownership: Establishing BO is simple in this example. **Mr. X and Mr. Y are both beneficial owners of company XYZ** and the reporting entity needs to verify their identities, and perform required CDD measures specified in BDL and SIC circulars, particularly BDL Basic Circular 83 and SIC Circular 24.

Indirect Ownership



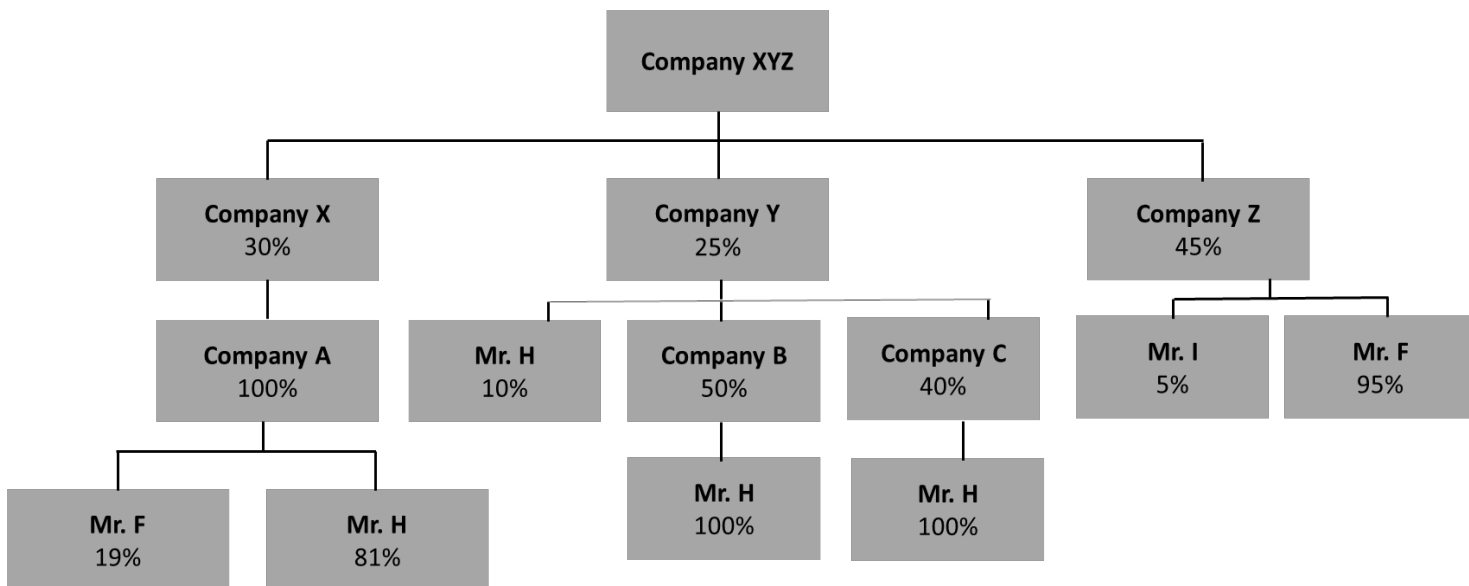
Indirect Ownership: The reporting entity needs to look beyond Company Y & Company Z. In this example, **Mr. C is the 100% BO of company X**. The reporting entity needs to verify the identity of Mr. C, and perform required CDD measures specified in BDL and SIC circulars, particularly BDL Basic Circular 83 and SIC Circular 24.

Direct & Indirect Ownership



Direct & Indirect Ownership:
Mr. X is the beneficial owner of company XYZ (holding 84% [(80%*80%)+20%]) through both direct & indirect ownership.
 The reporting entity needs to verify the identity of Mr. X and perform required CDD measures specified in BDL and SIC circulars, particularly BDL Basic Circular 83 and SIC Circular 24.

Complex Ownership



The above represents a more complex ownership structure. The two beneficial owners of Company XYZ are **Mr. F & Mr. H**, resolved as follow:

- **Mr. F** holds 5.7% [$19\% \times 30\%$] of Company XYZ through Company X and 42.75% [$95\% \times 45\%$] of Company XYZ through company Z – **hence a total ownership of 48.45% [5.7% + 42.75%]**
- **Mr. H** holds 24.3% [$81\% \times 30\%$] of Company XYZ through Company X, and 25% [$(10\% \times 25\%) + (50\% \times 25\%) + (40\% \times 25\%)$] of Company XYZ through company Y – **hence a total ownership of 49.3% [24.3% + 25%]**

The reporting entity needs to verify the identity of Mr. F and Mr. H in addition to other required CDD measures as per BDL and SIC circulars, particularly BDL Basic Circular 83 and SIC Circular 24.

2. Stage 2: Control through other means

In case of doubt as to whether the natural person(s) identified pursuant to the controlling ownership interest step is (are) the Beneficial Owner(s), or **when no natural person holds 20% or more of the legal person’s capital**, the second stage involves the concept of control and requires the identification of individual that ultimately controls the legal person by means other than ownership. These may include:

- Shareholders who exercise control alone or together with other shareholders, including through any contract, understanding, relationship, intermediary or tiered entity (a majority interest approach).
- The natural person(s) who exerts control of a legal person through personal connections to persons in 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 and intimate family relationships, historical or contractual associations, or if a company defaults on certain payments.

Furthermore, control may be presumed even if it was never actually exercised, such as using, enjoying or benefiting from the assets owned or funds possessed by the legal person. This may become apparent through ongoing monitoring of the legal person activities, including via account and transaction monitoring.

3. Stage 3: Person(s) holding senior managerial positions

This only applies when no natural person is identified pursuant to (1) and (2) above, and necessitates taking reasonable measures in order to **identify and verify the identity of the persons holding senior management positions**. These may include:

- **The natural person(s) responsible for strategic decisions that fundamentally affect the business practices or general direction of the legal person.** (ex. Directors...)
- **The natural person(s) who exercises executive control over the daily or regular affairs of the legal person through a senior management position,** (ex. CEO, CFO, managing or executive director, president, authorized signatories...)

8. Identification of Beneficial Ownership of a Legal Arrangement

With respect to legal arrangements, the Beneficial Owners shall be identified and reasonable measures taken to verify them, and to understand ownership and control structure of the trust in the following manner:

1. With regard to identifying BO of trusts, the identity of each of the below persons shall be identified and verified:
 - The Settlor
 - The Trustee
 - The Protector
 - The Beneficiary; and if the latter's identity is not determined or verified, then the class of beneficiaries in whose favor the legal arrangement was established.
 - Any other natural person exercising an effective control over the trust through direct or indirect ownership or through other means.

The definitions stated in the glossary attached to the FATF 40 Recommendations shall be adopted to identify the persons mentioned in this paragraph, as per BDL Basic Circular 83 and SIC Circular 24.

2. With respect to other types of legal arrangements, including those arrangements similar to trusts, the persons holding positions similar to the positions specified in point 1 above, shall be identified and verified. These may include legal arrangements like **fiduciaries**.

9. Beneficial Owner Due Diligence Requirements

As per prevailing local AML/CFT regulations, obligations around beneficial owners include:

(1) Determining the customers' beneficial owners. This is done at several levels, including:

- (a) Upon initiating a business relationship (ex. customer on-boarding...)
- (b) During the course of the relationship (account and transaction monitoring, update of information...)
- (c) Whenever there is doubt in the validity of previously obtained information
- (d) Whenever there is a suspicious transaction

(2) Verifying the identity of the customers' beneficial owners

Upon the identification of the Beneficial Owner, **the same Due Diligence measures applicable to Customers shall apply.**

(3) Assessing the level of ML/TF risk the beneficial owners pose to the reporting entity

(4) Keeping records of how each beneficial owner was identified and verified

The reporting entity must keep information on the customer and the beneficial owner, in particular the full name, residential address, occupation and financial status, in addition to copies of all the documents used to verify the abovementioned information and to keep the accounts files, **for at least five years after closing the account or ending the business relationship.** It must also keep all operations related documents, including business correspondence and the results of any conducted analysis, for at least five years after performing the operation, in a way that these records constitute evidence, when needed, in case of prosecution for criminal act.

(5) Documenting the procedures

The AML/CTF program must set out how obligations around beneficial owners are met.

Note:

When the due diligence measures cannot be applied to customers and beneficial owners in a satisfactory way, reporting entities are required **not to open the account, commence business relationship or perform the operation, and/or should terminate the business relationship.** The reporting entity must also consider notifying the SIC.

10. Indicators of Concealed Beneficial Ownership

The following are examples of common indicators that may point to concealed Beneficial Ownership. Many of the situations described in these examples would be reasonably normal in some business contexts, whereas in others they would seem suspicious.

It should be noted, that the existence of a single indicator is not necessarily indicative of reasonable grounds to suspect. Therefore analyzing the presence of one or more indicators, assessing the context in which the transaction occurs or is attempted, as well as your knowledge of your customers' business and financial affairs will assist you in identifying the BO, and in determining whether or not there is a need to report suspicion to the SIC.

- 1) The client is reluctant or unable to explain:
 - their business activities and corporate history
 - the identity of the beneficial owner
 - their source of wealth/funds
 - why they are conducting their activities in a certain manner
 - who they are transacting with
 - the nature of their business dealings with third parties (particularly third parties located in foreign jurisdictions).
- 2) Individuals or connected persons:
 - insist on the use of an intermediary (either professional or informal) in all interactions without sufficient justification
 - are actively avoiding personal contact without sufficient justification
 - are foreign nationals with no significant dealings in the country in which they are procuring professional or financial services
 - refuse to co-operate or provide information, data, and documents usually required to facilitate a transaction are PEPs, or have familial or professional associations with a person who is a PEP
 - are conducting transactions which appear strange given an individual's age or profession
 - are the signatory to company accounts without sufficient explanation
- 3) Legal persons or legal arrangements:
 - have demonstrated a long period of inactivity following incorporation, followed by a sudden and unexplained increase in financial activities
 - are registered under a name that does not indicate the activity of the company
 - are registered under a name that indicates that the company performs activities or services that it does not provide
 - are registered under a name that appears to mimic the name of other companies, particularly high-profile corporations
 - where the director or controlling shareholder(s) cannot be located or contacted

- where the director or controlling shareholder(s) do not appear to have an active role in the company
 - receive large sums of capital funding quickly following incorporation/formation, which is spent or transferred elsewhere in a short period of time without commercial justification
 - maintain a bank balance of close to zero, despite frequent incoming and outgoing transactions
 - exhibiting frequent change in ownership, without proper justification
 - demonstrating frequent changes in proxies, without proper justification
- 4) Complex corporate structures that do not appear to legitimately require that level of complexity or which do not make commercial sense.
 - 5) Complex corporate structures established in tax haven jurisdictions, with no legitimate explanation or justification.
 - 6) The customer is both the ordering and beneficiary customer for multiple outgoing international funds transfers.

11. References

This document is based primarily on the following:

- 1) **Financial Action Task Force
Transparency and Beneficial Ownership**
October 2014
<http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf>

- 2) **Financial Action Task Force
Beneficial Ownership**
September 2016
<http://www.fatf-gafi.org/media/fatf/documents/reports/G20-Beneficial-Ownership-Sept-2016.pdf>

- 3) **Joint Financial Action Task Force & Egmont Group
Concealment of Beneficial Ownership**
July 2018
<https://www.fatf-gafi.org/publications/methodsandtrends/documents/concealment-beneficial-ownership.html>

- 4) **A Beneficial Ownership Implementation Toolkit
OECD**
March 2019
<https://www.oecd.org/tax/transparency/beneficial-ownership-toolkit.pdf>

- 5) **Financial Action Task Force
Best Practices on Beneficial Ownership for Legal Persons**
October 2019
<https://www.fatf-gafi.org/publications/methodsandtrends/documents/best-practices-beneficial-ownership-legal-persons.html>

- 6) **AML/CFT Law No. 44 dated November 24, 2015**

- 7) **BDL Basic Circular 83 dated May 17, 2001**

- 8) **SIC Circular 24 dated June 14, 2018**