Revised Implementing Procedures Part I
Section 4.2.2 – The Beneficial Owner

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Legal Affairs

The Revised FIAU Implementing Procedures Part I – 18 October 2019
Requirement under Reg 7(1)(b)

Identify, where applicable, the beneficial owners, and take reasonable measures to verify their identity so that the subject person is satisfied of knowing who the beneficial owners are.
‘Beneficial owner means any natural person or persons who ultimately own or control the customer and, or the natural person or persons on whose behalf a transaction is being conducted, and ... ’

BO must be a **natural** person
There may be **more than one** BO
Definition – Part 2

**BODY CORPORATE, BODY OF PERSONS**
- Ownership of shares or voting rights
- Control through other means
- Senior managing officials

**TRUST**
- Settlor
- Trustee(s)
- Protector
- Beneficiaries/class of
- Other natural person exercising control

**FOUNDATION, LEGAL ARRANGEMENT**
Persons holding equivalent or similar positions
## Body Corporate or Body of Persons

<table>
<thead>
<tr>
<th>Tier</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Tier One</strong></td>
<td>Direct or indirect ownership:</td>
</tr>
<tr>
<td></td>
<td>- 25%+1 or more of the shares</td>
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<tr>
<td></td>
<td>- 25%+1 or more of the voting rights</td>
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<td></td>
<td>- An ownership interest of more than 25% (Including through bearer share holdings)</td>
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<tr>
<td><strong>Tier Two</strong></td>
<td>Control through other means</td>
</tr>
<tr>
<td><strong>Tier Three</strong></td>
<td>Senior managing officials</td>
</tr>
</tbody>
</table>
Body Corporate or Body of Persons

Direct or Indirect Ownership – Figure 1

- PERSON 2
- PERSON 3
- PERSON 4
- PERSON 2

COMPANY B
10%

COMPANY C
60%

COMPANY A

- Natural persons not required to be identified as a beneficial owner
- Legal persons
- Natural persons required to be identified as a beneficial owner
Body Corporate or Body of Persons

Direct or Indirect Ownership – Figure 2

- **PERSON 4**
  - **TRUST Y** (100%)
    - **PERSON 2**
      - **COMPANY W** (18%)
        - **COMPANY V**
          - **PERSON 1**
      - **PERSON 3**
        - **COMPANY X** (52%)
          - **COMPANY V**
    - **COMPANY Z** (30%)
Body Corporate or Body of Persons

Direct or Indirect Ownership – Figure 3

- PERSON 3
- PERSON 4
- PERSON 2 (10% SHARES / 30% VOTING RIGHTS)
- COMPANY C (60%)
- PERSON 1
- COMPANY M

Legend:
- Natural persons not required to be identified as a beneficial owner
- Legal persons
- Natural persons required to be identified as a beneficial owner
Body Corporate or Body of Persons

Bearer Shares/Warrants to Bearer

- Higher risk of ML/FT – undertake additional measures to mitigate risk
- When customer or any entity within the structure 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
Body Corporate or Body of Persons

Companies listed on a regulated market

• BO of company that has its securities 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 subsidiary of such listed companies (and there can be no other BO)

Transparency of ownership information

= No need to identify and verify the beneficial owner(s)
Assess and determine whether anybody controls the entity through other means:

- Where **nobody** has been identified through Tier One; or
- There is **reason to believe** that another person is exercising ultimate control over the running or management of the entity, regardless of any ownership of shares or voting rights

Directors: not considered to fall under this definition solely by virtue of their position

Case-by-case assessment when there are circumstances that indicate that a person is exercising control over the management
Body Corporate or Body of Persons

Direct or Indirect Ownership – Figure 4

COMPANY Q

COMPANY P

PERSON 3

PERSON 2
80% SHARES/VOTING RIGHTS

PERSON 1
70%

Legend:
- Orange: Natural persons not required to be identified as a beneficial owner
- Brown: Legal persons
- Yellow: Natural persons required to be identified as a beneficial owner
Body Corporate or Body of Persons

Senior managing officials

Consider senior managing official(s) of the customer as BO(s)

After having exhausted all possible means

No grounds of suspicion

Document the actions taken to try and identify the BO(s)

Last resort – not a default measure
Body Corporate or Body of Persons

Senior managing officials

Who are the senior managing officials?

Depends on the type of body corporate or body of persons

a) Those persons responsible for taking strategic decisions affecting the business operations or general direction of the entity;
   - Directors

b) Those persons exercising executive control over the daily or regular affairs of the entity through senior management positions
   - Executive functions
   - Executive directors
   - CEOs
   - CFOs
Trusts

- Settlor *(initial and subsequent)*
- Trustee(s)
- Protector (where applicable)
- Beneficiaries/class of beneficiaries
- Any other natural person exercising ultimate control over the trust through direct or indirect ownership or by other means, e.g.:
  - Power, under trust deed or by law, to:
    - Dispose of, advance, lend, pay, apply trust property
    - Vary or terminate trust
    - Add or remove beneficiary
    - Add or remove person to or from class of beneficiaries
    - Appoint/remove trustees
    - Give another individual control over trust
    - Direct/withhold consent the exercise of the above powers

Look at the persons who occupy specific roles
Legal entities (such as foundations),
Arrangements similar to trusts

E.g.: Treuhands/Fiducie, other structures that mimic trusts (assess on a case-by-case basis)

Persons undertaking equivalent roles:
• Founder (settlor): **initial and subsequent**
• Administrator (trustee)
• Member(s) of supervisory council (protector)
• Beneficiaries in whose interest the foundation is set up or operates
• Any other natural person ultimately exercising control

Purpose trusts: Set up for a cause or a purpose.
• No beneficiaries to identify;
• Determine the cause or purpose for which the entity is set up

Look at the persons who occupy specific roles
✓ Understand who your customer is acting for
✓ Look at the definition which applies to your direct customer
✓ Assess the entire structure, then aggregate ownership
✓ Grounds for suspicion? Consider STR
✓ Document your actions
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