

# AML/CFT

Anti-money laundering and countering financing of terrorism

## Beneficial Ownership Guideline

April 2024



## Introduction

1. This guideline is to support reporting entities in meeting the requirement to conduct customer due diligence (**CDD**) on the beneficial owner(s) of their customer under sections 11-26 of the Anti-Money Laundering and Countering Financing of Terrorism (**AML/CFT**) Act 2009 (the **Act**).
2. This guideline has been updated following a new regulation<sup>1</sup> that took effect on 31 July 2023 relating to the definition of beneficial owner under the Act. The new regulation was implemented following recommendations made in the Ministry of Justice's [Statutory Review](#) of the Act.
3. This guideline applies primarily in relation to customers who are legal persons or legal arrangements. The guideline provides information on how to identify the individual(s) (i.e. the natural person(s)) that meet the definition of beneficial owner and the steps that must be taken to verify their identity and be satisfied that they are the beneficial owner(s).
4. You should keep in mind that the AML/CFT regime is risk-based. A risk-based approach allows you flexibility in the measures you take to verify the identity of the beneficial owner(s) of your customer. Your evaluation of the money laundering and terrorism financing (**ML/TF**) risks associated with your customer must be based on your risk assessment as detailed in your AML/CFT programme. Refer to the AML/CFT supervisors Risk Assessment Guideline<sup>2</sup> and AML/CFT Programme Guideline<sup>3</sup> for further information.
5. This guideline is based on the requirements of the Act and has been produced by the AML/CFT supervisors under section 132(2) of the Act. This guideline does not constitute legal advice.
6. Examples provided in this guideline are suggestions to help you meet your obligations under the Act. They are not exhaustive and are illustrative in nature.
7. Section 57(2) of the Act requires you to have regard to this guideline, it is important that you have read and taken this guideline into account when developing your AML/CFT programme. After reading this guideline, if you still do not understand any of your obligations you should contact your AML/CFT supervisor or seek legal advice.

### Why is identifying the beneficial owner important?

8. Knowing the underlying person(s) that owns or controls your customer enables you to make informed decisions about the associated level of ML/TF risk. A key task when conducting CDD is to identify and according to the level of risk involved, verify the identity of the beneficial owner(s) of your customer.<sup>4</sup>

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<sup>1</sup> [Regulation 5AA AML/CFT \(Definitions\) Regulations 2011](#)

<sup>2</sup> [Risk Assessment Guideline](#)

<sup>3</sup> [AML/CFT Programme Guideline](#)

<sup>4</sup> Note you are not required to check beneficial ownership for a customer eligible for simplified CDD. This only applies in limited circumstances for types of customers that are already subject to transparency and public disclosure. Refer to s18-21 of the Act for these types of customers.

9. Sometimes identifying and verifying who your customers' beneficial owner(s) are may be difficult. This could be because the ownership structure is complex but legitimate. However, a criminal enterprise may also deliberately try to hide the true owners and controllers of its business and its assets.
10. Difficulties in identifying and verifying the identity of a beneficial owner(s), may indicate there is an attempt to conceal this from you.

## Who is the beneficial owner?

11. The definition of **beneficial owner** under section 5 (1) of the Act is:

Beneficial owner means the individual who—

- (a) has effective control of a customer or person on whose behalf a transaction is conducted; or
- (b) owns a prescribed threshold of the customer or person on whose behalf a transaction is conducted.

12. Effective 31 July 2023, Regulation 5AA of the AML/CFT (Definitions) Regulations 2011 states that the beneficial owner-

- (a) includes a person with ultimate ownership or control of the customer, whether directly or indirectly;
- (b) includes a person on whose behalf a transaction is conducted that is a customer of a customer, but only if the person meets the requirement set out in paragraph (a).

13. Your task is to determine all of the individual(s) who are the beneficial owner(s) of your customer. A beneficial owner is always an individual (i.e. a natural person), not a company, partnership, trust or other organisation. The individual may be an individual in a personal or professional capacity. There may be layers of ownership (for example holding companies) that you need to look through to determine the beneficial owner. Your customer may have more than one beneficial owner.

14. You must obtain information on the identity of all beneficial owners and according to the level of risk involved, verify this information. Our view of what this means is set out in paragraphs [16] to [28] below.

15. Note that if your customer is an individual, section 11(2) of the Act allows you to treat that person as the beneficial owner unless there are reasonable grounds to make you suspect that they are acting on behalf of another person. Where there are grounds to suspect this, you will need to establish the identity of all parties - the person who is being acted for (who is the customer), any beneficial owner(s) of the customer and the person acting on their behalf – noting that “acting on behalf of” is not part of the beneficial ownership definition. Refer to paragraphs [45] to [49] below for more information.

## The test to identify beneficial ownership

16. Each time you apply the test of beneficial ownership to a customer you must consider both elements (a) and (b) of the definition of beneficial owner in the Act, in combination with Regulation 5AA. These elements are:
- a) who owns more than 25 percent of the customer.<sup>5</sup> Regulation 5AA clarifies that a beneficial owner includes a person who ultimately owns the customer, whether directly or indirectly. Examples are set out in paragraph [29] to [38] below.
  - b) who has effective control of the customer. Regulation 5AA clarifies that a beneficial owner includes a person who ultimately controls a customer, whether directly or indirectly. "Effective control" is not defined in the Act, however we provide some examples at paragraph [39] to [40] below.
17. Regulation 5AA also clarifies that a customer of a customer, being a person on whose behalf a transaction is conducted (sometimes referred to as "POWBATIC"), will only be a beneficial owner in limited circumstances, as outlined in paragraphs [41] to [44] below.
18. 'Ownership' and 'control' are not mutually exclusive. A beneficial owner is an individual who satisfies either or both of the above elements.
19. There are also overlaps between 'ultimate ownership', 'ultimate control' and 'effective control'. The use of the term 'ultimate' in Regulation 5AA clarifies that the individual's ownership or control may be indirect, for example through a nominee arrangement (formal or informal) or through several layers of ownership. A beneficial owner may be an individual that is not the legal owner of more than 25 percent of the customer and/or for whom there is no formal record of being a person with decision making powers.

### Obtaining information relating to the beneficial owner(s)

20. If you want to conduct business with a customer, you must always identify and verify the identity of the beneficial owner(s).
21. To determine who the beneficial owner(s) are, you must obtain information on any person who owns more than 25 percent of the customer and any person who has effective control of the customer. This includes any individual with ultimate ownership or control, such as indirectly through formal or informal arrangements (refer paragraph [19] above). You must obtain information on all persons that meet the definition of beneficial owner.
22. You should establish the customer's ownership structure and understand the ownership at each layer. In many cases, your customer will be readily and quickly able to provide information regarding its beneficial owner(s). In other cases, you may need to inquire further into a complex ownership or control structure and understand the ownership or control at each layer. When there are complex ownership layers and no reasonable explanation for them you should consider the possibility that the

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<sup>5</sup> Regulation 5 of the AML/CFT (Definitions) Regulations 2011.

structure is being used to hide the beneficial owner(s).

### **Applying a risk-based approach to verification**

23. Once you have obtained information on the beneficial owner(s) of your customer, you must then take reasonable steps to verify their identity (including name and date of birth) so that you are satisfied you know who the beneficial owner(s) is.<sup>6</sup>
24. You must obtain information to identify the beneficial owner(s) of a customer, regardless of the level of risk associated with that customer.
25. However, when deciding what steps to take to correctly verify the identity of the beneficial owner(s) and satisfy yourself you know who they are, the Act permits you to take a risk-based approach commensurate with the level of ML/TF risk they pose.
26. The extent of your verification process may vary according to the level of risk involved. However, if you do not take reasonable steps to verify the beneficial owner's identity so that you are satisfied according to the level of risk involved that you know who the beneficial owner(s) is, CDD has not been completed. In such cases, you must not establish a business relationship or conduct an occasional transaction or occasional activity for the customer, you must terminate any existing business relationship and consider whether to make a suspicious activity report (section 37 of the Act).
27. Your process for assessing customer risk and deciding how to identify and verify beneficial ownership should be set out in your AML/CFT programme. There should be procedures, policies and controls (**PPCs**) to ensure you apply consistent steps depending on the level of risk. These steps may vary depending on the different types of legal person or legal arrangement you have as a customer. Where you consider the level of ML/TF risk requires it (based on your risk assessment and AML/CFT programme), you should conduct enhanced CDD.
28. Your PPCs should be based on your risk assessment. For a lower risk customer, the verification you undertake can be less extensive. However, if a customer is higher risk, the extent of the verification you undertake of its beneficial ownership must be robust. There should be controls in your AML/CFT programme to ensure this occurs. This could include escalating decisions to a higher level for sign off, including prior to establishing a new business relationship or undertaking an occasional transaction or occasional activity.

### **Ownership or control**

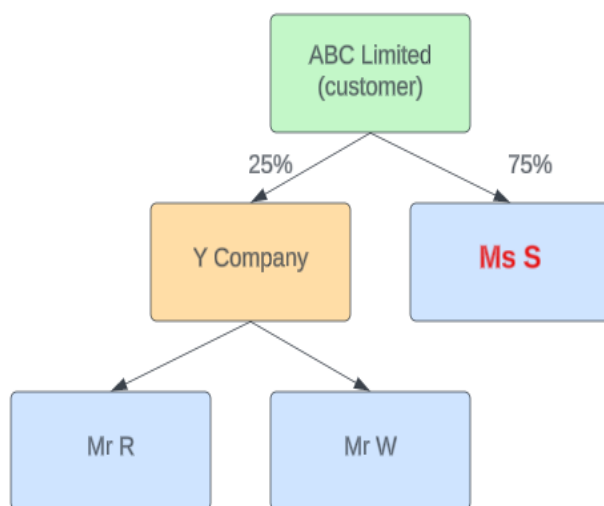
29. To determine the beneficial owner(s) of your customer, you will need to understand the ownership and control structure (i.e. the legal structure of any corporate vehicles such as companies, partnerships and trusts):<sup>7</sup>

<sup>6</sup> Refer to the Identity Verification Code of Practice 2013 for best practice relating to standard CDD verification of a person's name and date of birth. A more rigorous approach may be required for higher risk persons.

<sup>7</sup> Note that effective 1 June 2024, there are specific requirements in Regulation 11 and 11A of the AML/CFT (Requirements and Compliance) Regulations 2011 to obtain and verify information regarding the legal form and proof of existence, ownership and control structure and powers that bind and regulate legal persons and legal arrangements (that are customers), and relating to the settlor(s) and protector(s) of trusts. This extends existing requirements to obtain information and verify the existence and name of a nominee director or nominee shareholder (for companies), and a nominee general partner (for limited partnerships).

30. **Companies** – For a customer that is a company, your starting point should be the percentage allocation of shares to shareholders. You should note ownership can be split into parcels of 25 percent or less, but relationships between the parties may give an individual aggregated ownership that amounts to more than 25 percent. This may occur through multiple layers of ownership.

**Diagram 1 – Ownership of company**



ABC Limited (the customer) has two shareholders - an individual, Ms S, who owns 75% and Y Company, which owns 25%.

Y Company is owned equally by two individuals – Mr R and Mr W. Ms S is the only individual who owns more than 25% of ABC Limited. You determine that Ms S is not a nominee shareholder.

Only Ms S is a beneficial owner based on the ownership test.

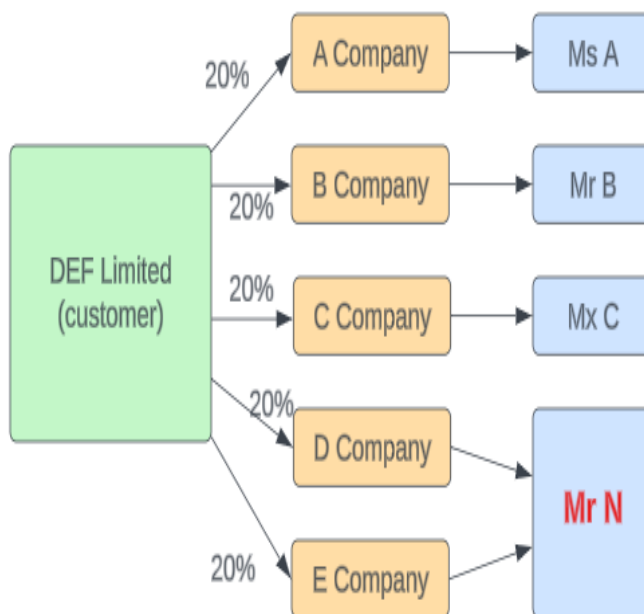
**Diagram 2 – More complex ownership of company**

DEF Limited (the customer) has five direct owners each owning 20% shareholding.

All five owners are companies. Two of them (D Company and E Company) are wholly owned by Mr N. The other three companies (A Company, B Company and C Company) are respectively owned by Ms A, Mr B and Mx C.

You determine there are no nominee shareholders in this structure.

Only Mr N is a beneficial owner based on the ownership test.



31. For a company, you also need to consider if there are formal or informal arrangements, such as nominee director or shareholder agreements. A person whose instructions or directions a nominee director or nominee shareholder follows, or is accustomed to follow, is likely to be a beneficial owner (due to being a person with ultimate ownership and/or control).

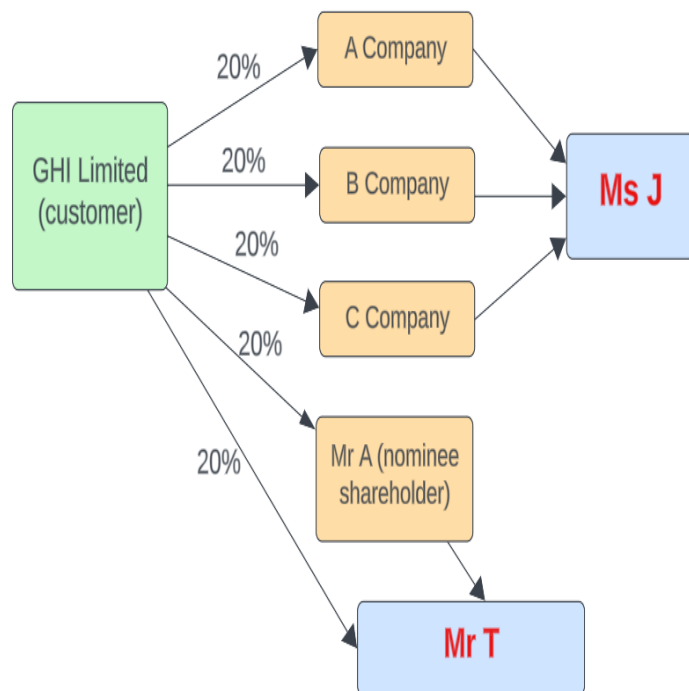
**Diagram 3 – Company ownership with nominee shareholder<sup>8</sup>**

GHI Limited (the customer) has five owners each owning 20% shareholding.

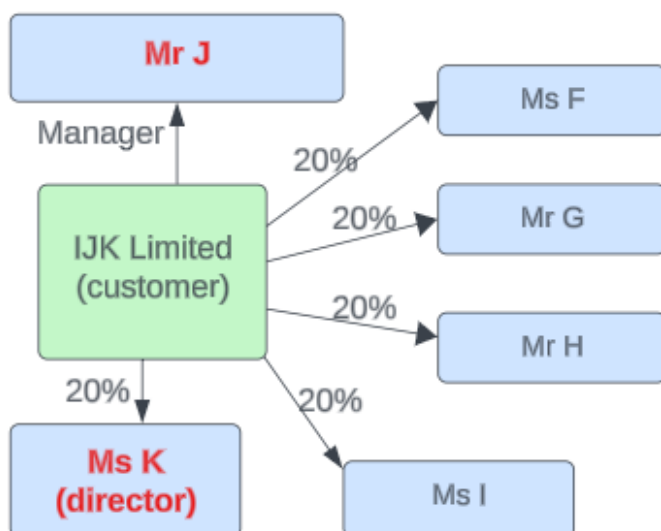
Three of the owners are companies (A Company, B Company and C Company). All three companies are owned by Ms J.

The other two owners are Mr T and Mr A. You determine Mr A is nominee shareholder, accustomed to following the instructions of Mr T. This means that Mr T has direct ownership of 20% and indirect ownership of a further 20% of the customer (through the nominee agreement).

Both Ms J and Mr T are beneficial owners based on the ownership test.



**Diagram 4 – Company ownership with multiple shareholders**



Mr J is employed as the manager of IJK Limited (the customer) and responsible for all managerial decisions.

IJK Limited has five direct owners, each owning 20%. One of these shareholders, Ms K, is also the director and able to appoint the manager.

There are no owners with more than 25% shareholding and therefore no beneficial owners based on the ownership test.

However, both Ms K (as director) and Mr J (as the manager) are beneficial owners on the basis of effective control.

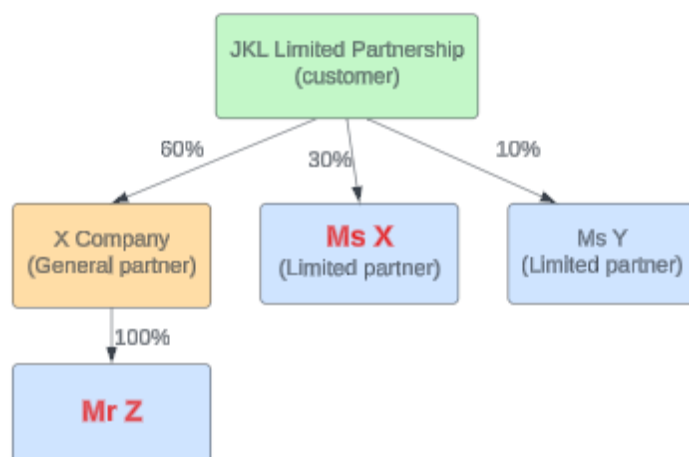
**32. Partnerships** – Most partnerships have simple and transparent structures, and the beneficial owner(s) are likely to be easily identifiable. However, a limited partnership is a separate legal person, and can have a more complex structure with two types of partners, general and limited partners. As with companies, limited partnerships

<sup>8</sup> Note that CDD requirements apply to nominee shareholder also – refer Companies Guideline.



may also have formal or informal arrangements and a nominee general partner.<sup>9</sup> Again, a person whose instructions the nominee general partner follows, or is accustomed to follow, is likely to be a beneficial owner of the partnership as they will be a person with ultimate control.

**Diagram 5 – Limited partnership structure**



JKL Limited Partnership (the customer) has one general partner and two limited partners.

The general partner, X Company, has 60% ownership of assets/distribution and voting rights of the limited partnership. You determine X Company is not a nominee general partner. Mr Z is the 100% shareholder in X Company. Ms X has 30% assets/distribution and voting rights in JKL Limited Partnership. Ms Y has 10%.

Both Mr Z and Ms X are beneficial owners based on the ownership and effective control test.

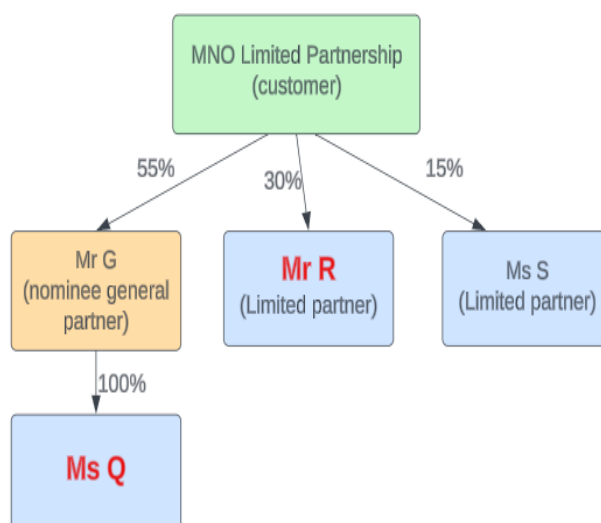
**Diagram 6 – Limited partnership with nominee general partner<sup>10</sup>**

MNO Limited Partnership (the customer) has one general partner and two limited partners.

The general partner, Mr G, has 55% ownership of assets/distribution and voting rights of the limited partnership. You determine Mr G is a nominee general partner, accustomed to following the instructions of Ms Q. This means that Ms Q has indirect ownership of 55% of the limited partnership as well as indirect effective control.

Mr R has 30% assets/distribution and voting rights in MNO Limited Partnership. Ms S has 15%.

Both Ms Q and Mr R are beneficial owners based on the ownership and effective control test.



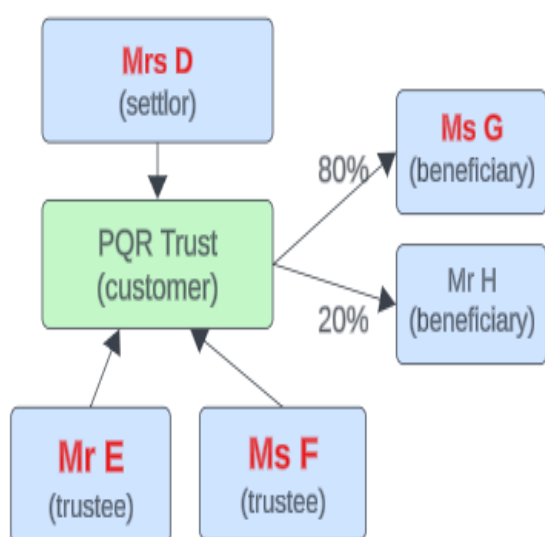
<sup>9</sup> There are also specific requirements in the AML/CFT (Requirements and Compliance) Regulations 2011 to obtain information and verify the existence and name of a nominee general partner.

<sup>10</sup> Note that CDD requirements apply to nominee general partners also – refer Limited Partnership Guideline.



33. **Trusts** – Trusts do not usually have a legal personality. However, a trust is a legal arrangement.<sup>11</sup> In addition the Act and associated regulations prescribe requirements in various circumstances in which the customer is a trust, as well as prescribing the trust or a legal arrangement as the customer in other circumstances.<sup>12</sup>
34. Therefore, when providing services captured by the Act to a trust, the trust (and not the trustees) is your customer for the purpose of the Act.
35. For a customer that is a trust, various individuals may meet the definition of beneficial owner for different reasons. First and foremost, the trust deed should be analysed to assist to determine the beneficial owner(s) (whether due to ownership or control). Any trustee that has control element over the trust is a beneficial owner. In addition, any beneficiary of the trust that has a vested interest of more than 25 percent in the trust property is a beneficial owner.
36. Other individuals may also be a beneficial owner due to the control element, depending on the terms of the trust. This may include an individual (other than a trustee) who has effective control over the trust, specific trust property, or with the power to amend the trust's deeds, or remove or appoint trustees. This might also include a settlor, a protector or special trustee, or one or more beneficiaries of the trust.

**Diagram 7 – Trust structure**



PQR Trust (the customer) has two trustees, Mr E and Ms F, that have authority over trust property and to make disbursements by the trust.

The settlor, Mrs D, has the power to amend the trust deed and to remove or appoint trustees.

The trust has two beneficiaries, Ms G who has a vested interest of 80% in the trust property, and Mr H who has a 20% vested interest.

Mr E and Ms F are beneficial owners as they have effective control of the trust. You also determine that Mrs D has effective control as she has the power to amend the trust deed and to remove or appoint trustees.

Ms G is a beneficial owner on the basis of the ownership test.

<sup>11</sup> As defined in s5(1) of the Act.

<sup>12</sup> Refer s22(1) of the Act, Regulation 11A of the AML/CFT (Requirements and Compliance) Regulations 2011. Also Regulations 5E and 5G of the AML/CFT (Definitions) Regulations 2011.

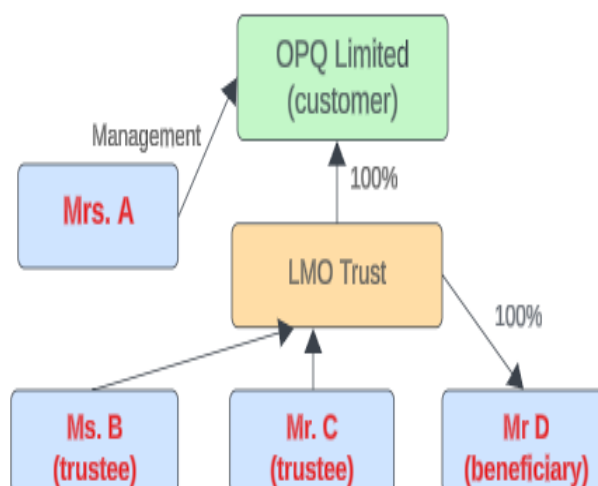
## Diagram 8 – Company ownership structure with a trust<sup>13</sup>

Mrs A is employed as the manager of OPQ Limited (the customer) and responsible for all managerial decisions

OPQ Limited is 100% owned by LMO Trust. LMO Trust has two trustees, Ms B and Mr C, who have effective control of the trust and its voting rights in relation to OPQ Limited. This includes being able to appoint the manager.

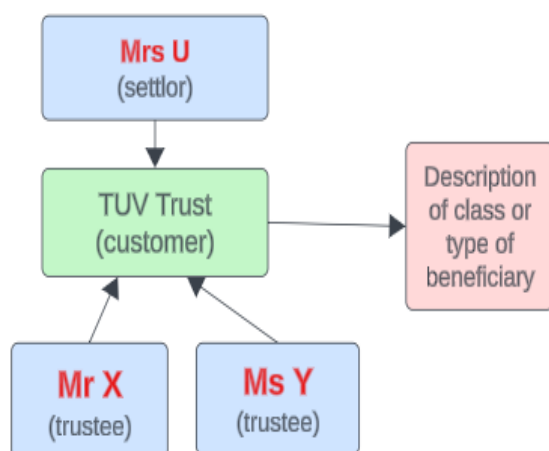
LMO Trust has one beneficiary Mr D, who has 100% vested interest in trust property.

Mrs A, Ms B and Mr C are all beneficial owners of OPQ Limited as they have effective control of the company. As the only beneficiary of LMO Trust, Mr D is a beneficial owner based on the ownership test.



37. A common type of trust used in New Zealand is a discretionary trust. When a trust is a discretionary trust, the trustees decide who of the discretionary beneficiaries to benefit from the trust and when distributions of a trust's income or capital are made. Therefore, a beneficiary of a discretionary trust does not have a vested interest in trust property until the trustees exercise this discretion. In turn, this means a beneficiary of a discretionary trust cannot be a beneficial owner based on the ownership test until the trustees exercise this discretion (although a beneficiary could still be a beneficial owner if they have effective control). This is consistent with the requirements of the Act in relation to a customer that is a discretionary trust, which only require you to obtain a description of each class or type of beneficiary.<sup>14</sup>

## Diagram 9 – Discretionary trust



TUV Trust (the customer) has two trustees, Mr X and Ms Y that have authority over trust property and to make distributions by the trust. The settlor, Mrs U, has the power to amend the trust deed and to remove or appoint trustees.

Mr X, Ms Y and Mrs U are beneficial owners of the trust as they have effective control of the trust.

The trust is a discretionary trust. There are no named beneficiaries and therefore no beneficial owners based on the ownership test (when you establish the business relationship with the trust).

<sup>13</sup> If a trust is part of the ownership structure of a company and there is a higher level of ML/TF risk, for example there is no apparent economic or lawful purpose, enhanced CDD may be required under section 22(1)(c) or (d).

<sup>14</sup> Section 23(2)(b)(i)

38. **Note** - For some types of customers, when you apply the beneficial ownership test in relation to ownership, it will become clear this is spread over a large number of individuals with no one person owning more than 25 percent. For example, a co-operative with a large number of members is likely to have no individual owning more than 25 percent. In this case, the effective control element of the beneficial ownership test will determine the beneficial owner(s).

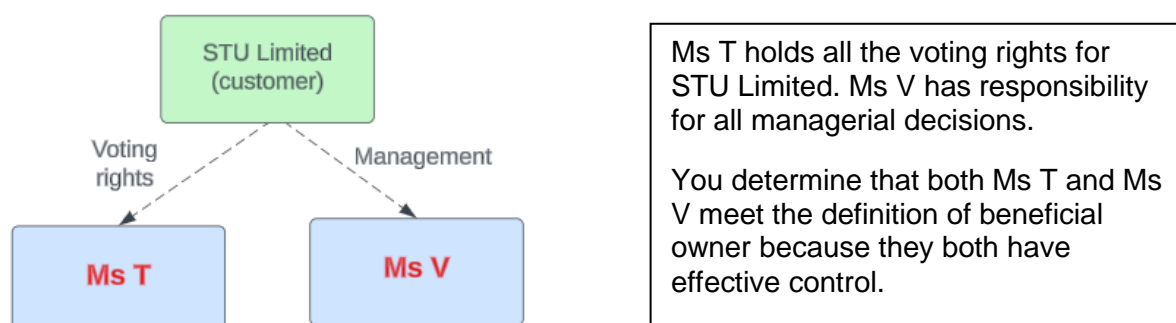
## Effective control

39. Regardless of whether there is a person that meets the ownership element of the beneficial ownership test, an individual can still be a beneficial owner solely because of their control over the customer. An example is an individual who exercises responsibility for senior management decisions, or similar.

40. Understanding the management and governance structure of your customer will assist you to establish those individual(s) with effective control of the customer. In deciding the effective controller(s), you should consider the following:

- those individuals with the ability to control the customer and/or dismiss or appoint those in senior management positions,
- those individuals holding more than 25 percent of the customer's voting rights,
- those individuals (for example, the CEO) who hold senior management positions, and
- trustees, settlors and protectors of trusts (where applicable).

**Diagram 10 – Effective control**



## Person on whose behalf a transaction is conducted (POWBATIC)

41. Effective 31 July 2023, regulation 5AA clarifies when a person on whose behalf a transaction is conducted is a beneficial owner of a customer.

42. This is particularly important for those circumstances where your customer has underlying customers and conducts transactions for them through your reporting entity. Under the new regulation, it is now clarified that a customer of your customer is only a beneficial owner in limited circumstances.

43. As a result, there is no requirement that you obtain and verify the identity of your customer's underlying customer as part of your CDD obligations for beneficial owners, **except** when *that underlying customer is a person who (directly or indirectly) has ultimate ownership or control of your customer*. In practice, this could only occur in circumstances when your customer is conducting a transaction for its ultimate owner (direct or indirect) or a person with ultimate control of it. Therefore you should already have determined this person as a beneficial owner. Your AML/CFT programme should have PPCs to identify a beneficial owner that meets this threshold.<sup>15</sup>

**Example:** Trust and Company Services – Your customer may be a legal person or legal arrangement formed to provide a service (including conducting transactions) for its underlying owners or controllers. It may be part of a wider, and potentially complex, legal structure operating specifically for this purpose. There may be a law firm, accounting practice or other professional acting with you on your customer's behalf.

44. Note that the new regulation does not remove the requirement to obtain and verify information relating to the underlying customer of your customer when enhanced CDD is triggered (for example under s22(1)(c) or (d) of the Act). However, in these circumstances, this is because the underlying customer is the potential source of funds (or wealth) of the particular transaction (and/or situation) that has triggered enhanced CDD. It is not because they are a beneficial owner. For further information regarding enhanced CDD, refer to our **Enhanced CDD Guideline**.

## Acting on behalf of a customer

45. Acting on behalf of a customer is not part of the beneficial ownership definition; it is part of your other CDD obligations under the Act. The distinction is important because in many instances the person acting on behalf of a customer is not a beneficial owner of the customer. Information on 'acting on behalf' is included in this guideline to help reporting entities understand this distinction.

46. Acting on behalf of the customer is when a person is authorised to carry out transactions or other activities with you on behalf of the customer. That does not mean, and is entirely distinct from, a person who owns or has effective control of your customer. 'Authority to act' should therefore not be confused with effective control. Sections 16(1)(c) and 20(1) of the Act refer to acting on behalf of a customer.

47. An example of acting on behalf of a customer is when an individual has authority to sign on accounts or authorise financial transactions or the sale or purchase of assets

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<sup>15</sup> Separate and distinct from the question of beneficial ownership, if you provide a facility to the underlying customer of your customer, so that the underlying customer is your customer, you will have CDD obligations in respect of that underlying customer unless an exemption applies. CDD obligations arise in these circumstances because you are providing a facility to the underlying customer, and not because the underlying customer is a beneficial owner.

owned by the customer. Further examples of a person acting on behalf of a customer are included in the [acting on behalf of a customer fact sheet](#).

48. The Act requires you to obtain the name, date of birth and address of any person acting on behalf of your customer and their relationship to the customer. You must then, according to the level of risk involved, take reasonable steps to verify this information so that you are satisfied you know who the person is and that they have authority to act on behalf of your customer.
49. Where you have an existing business relationship with a customer and you have previously conducted CDD on that customer, the Act allows simplified CDD on any new person acting on behalf of the customer. You must obtain the full name and date of birth of the new person, and their relationship to the customer and according to the level of risk, verify this information so you are satisfied you know who the person is and that they have authority to act for the customer.<sup>16</sup>

## Record keeping

50. You should keep records of all decisions and retain CDD and relevant records in a readily auditable manner. It is important for you to record the rationale behind any decision that you make. Anyone reading the notes years later should be able to understand how and why you made a risk-based decision. You must keep your records for a minimum of five years after an occasional transaction or occasional activity has been completed or a business relationship has ended (whichever is later).<sup>17</sup>

## Further information

51. This guideline only covers the key concepts relating to beneficial ownership. Examples of the application of these key concepts to particular situations, or types of customers, are available as individual guidelines.

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<sup>16</sup> Section 18(3), 19-20.

<sup>17</sup> Section 49-52 of the Act.

## Revision History

December 2012	Original version
April 2024	Updated following new regulations clarifying the definition of beneficial owner.

*Disclaimer: This guideline has been produced by the AML/CFT supervisors under section 132(2)(c) of the Act. It is intended to assist reporting entities to understand their customer due diligence obligations under the Act in relation to beneficial owners of customers. This guideline does not constitute legal advice.*

*Where AML/CFT Guidelines are referenced, they can be accessed at the following websites:*

**Department of Internal Affairs** <http://bit.ly/2gQ3lev>

**Reserve Bank of New Zealand** <http://bit.ly/2n6RYdp>

**Financial Markets Authority** <https://bit.ly/3fjcKlD>