

The problem



- 1. The globalisation of beneficial ownership, aided by the complexity of legal corporate vehicles and the use of offshore financial centres, requires a forensic examination of data collected from multiple jurisdictions.
- 2. For now, transparency over ultimate beneficial ownership is still the exception, not the rule, in many jurisdictions.



The problem



There is little doubt that

- 1. confusion over multiple beneficial ownership definitions/laws/regulations,
- 2. a lack of public ownership registries (and many are not very good),
- 3. disclosure fatigue, and
- 4. deliberate non-cooperation



Represent significant challenges to organisations affected by AML/CTF regulations.

Scandals



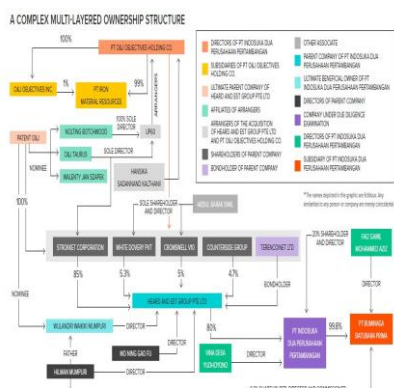
- 1. Scandals such as the Panama Papers, Unaoil, and VimpelCom not only highlight the absolute need for robust customer due diligence (CDD), but have spurred the regulatory momentum for enhanced ownership disclosure and transparency.





Developing a “Nose” for Inappropriate Complexity

Unravelling complex and often opaque ownership structures.



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The process of identifying UBOs is fraught with challenges, the most widespread of which include:

YOUR CHALLENGES

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1. Understanding differing legal requirements, as well as different methods of defining and recording ownership across jurisdictions.
2. Accessing sufficient publicly available information on UBOs and/or collecting business ownership information that is fragmented, stored in different forms and locations, or difficult to find.
3. Where a potentially higher risk relationship is identified, ascertaining whether investigating beneficial ownership to a lower ownership threshold is necessary.
4. Evaluating whether or not ownership thresholds should be aggregated and individuals considered UBOs based on, for example, family relationships, when individually they would not meet relevant thresholds.
5. Keeping information up to date in a dynamic environment.

FATF DRIVER





FATF

The "natural person(s) who

1. ultimately own(s) or control(s) a customer and/or
2. the natural person on whose behalf a transaction is being conducted.

It also includes those persons who

1. exercise ultimate effective control over a
 - legal person or
 - legal arrangement"



"beneficial owner" —

- (a) means the natural person —
- (i) who ultimately owns or controls a customer; or
 - (ii) on whose behalf a transaction is being conducted; and
- (b) includes those natural persons who exercise ultimate control over a legal person or arrangement and such other persons as specified in regulations 6 and 7;

THE FINANCIAL INTELLIGENCE AND ANTI-MONEY LAUNDERING ACT

Regulations made by the Minister under sections 17C, 17D, 17E and 35 of the Financial Intelligence and Anti-Money Laundering Act



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 - (ii) on whose behalf a transaction is being conducted; and
- (b) includes those natural persons who exercise ultimate control over a legal person or arrangement and such other persons as specified in regulations 6 and 7;

6. (1) Where the customer is a legal person, the reporting person shall identify and take reasonable measures to verify the identity of beneficial owners by obtaining information on —

7. For customers that are legal arrangements, the reporting person shall identify and take reasonable measures to verify the identity of beneficial owners by obtaining information —

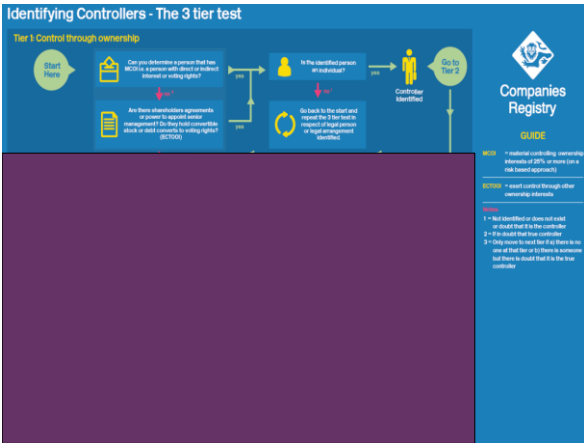




JERSEY – THE THREE TIER TEST

Who is a controller?

There are a number of interpretations. In Jersey, we follow the FATF interpretation as outlined in Section 4 of AML Handbook and if relevant the “three tier” approach set out therein. For ease of reference, the “three tier” approach relating to controllers can be located as follows:



CONTROL THRESHOLDS

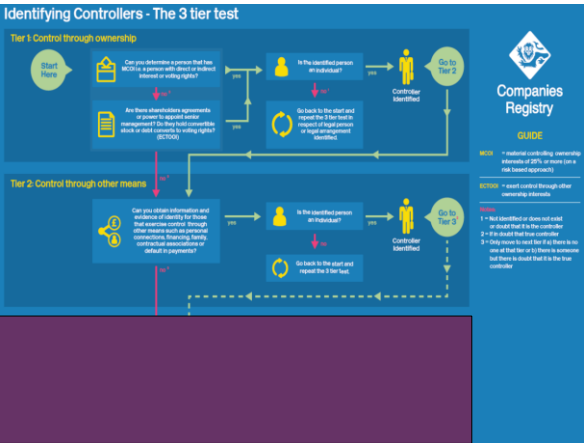
The FATF Recommendations do not specify what threshold may be appropriate.

THEY SAY

The natural person(s) who directly or indirectly holds a minimum percentage of ownership interest in the legal person (the threshold approach).
For example, Recommendation 24 allows the determination of the controlling shareholders of a company based on a threshold (for example, any persons owning more than a certain percentage of the company, such as 25%).

KEY BENEFICIAL OWNERSHIP THRESHOLDS

- 1. FATCA - a 10% ownership threshold or below for Foreign Investment Vehicles
- 2. CRS - a 10% ownership threshold
- 3. OFAC - 50% rule
- 4. FinCEN Final Rule - 25% ownership threshold
- 5. 4th EU AML Directive - 25% shares or voting rights in a corporate entity. If, after having exhausted all possible means and provided no UBO is identified, the natural person(s) holding the position of senior managing officials are, in principle, considered to be the UBO
- 6. Dodd-Frank [sections 13(d) and 13(g)] - beneficial owner of more than 5% of certain equity securities are to disclose information relating to such beneficial ownership
- 7. SEC - 506(e) disclosure requires issuers to perform due diligence on any person that is going to become a 20% beneficial owner upon completion of a sale of securities



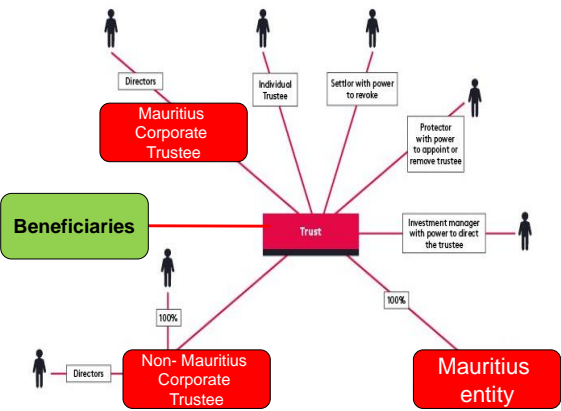
LEGAL ARERANGEMENTS



For trusts, on the identity of

- 1. the settlor,
- 2. the trustee,
- 3. the beneficiaries or class of beneficiaries,
- 4. the protector or the enforcer, and
- 5. any other natural person exercising ultimate effective control over the trust, including through a chain of control or ownership;

For other types of legal arrangements, on the identity of the persons in equivalent or similar positions.

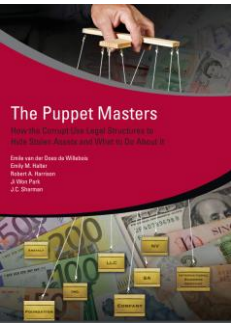


Control



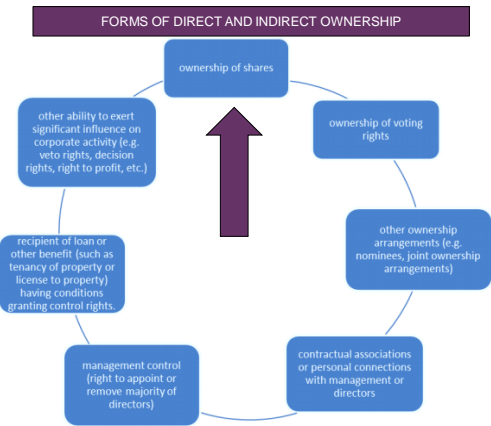
- “ultimate” control or benefit, refers to the natural person who ultimately controls or benefits from an asset or transaction through direct or indirect means.
- It is essential to determine the natural person who controls an asset, rather than the legal owner of that asset (unless of course they are both).
- Control can also be exerted via third parties, including professional intermediaries, family members, associates, nominees, and other natural persons who have been recruited or coerced to act on behalf of the ultimate beneficial owner.

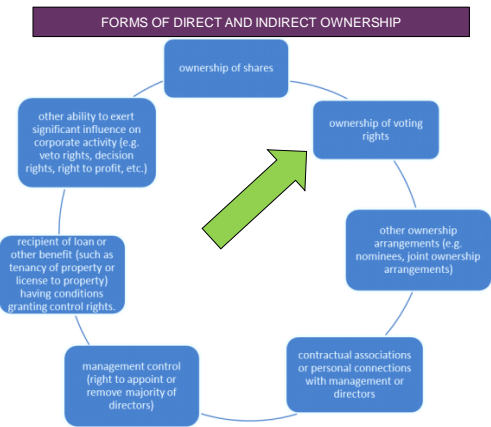
PUPPET MASTERS

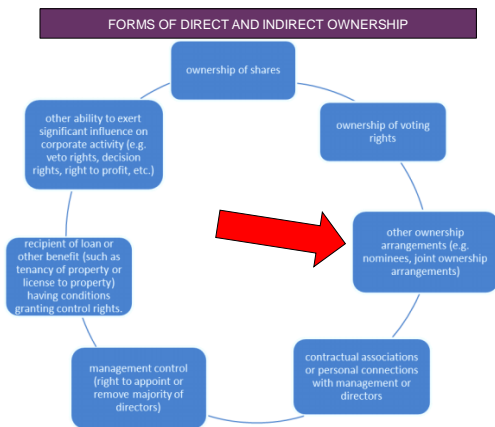


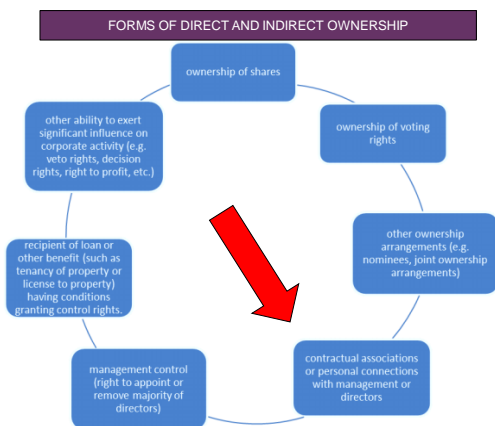
As stressed in the IBRD/The World Bank report "The Puppet Masters" (2011),

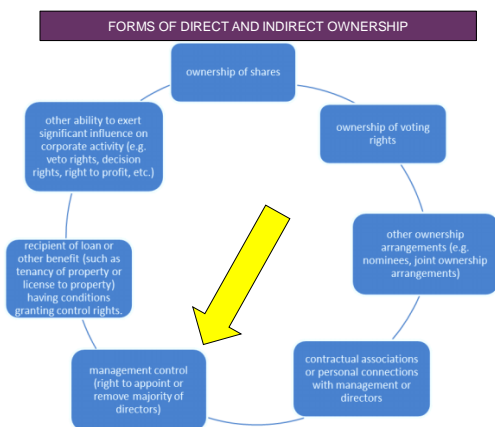
1. "[...] this approach places the emphasis on determining who actually is guiding the relevant activity [of the client - corporate vehicle], rather than who theoretically possesses enough of a legal claim to be able to do so"

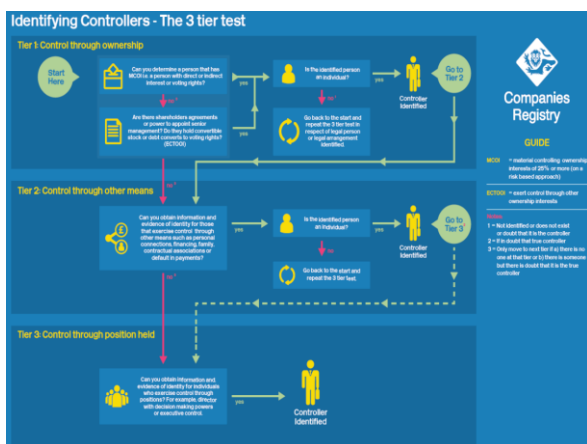
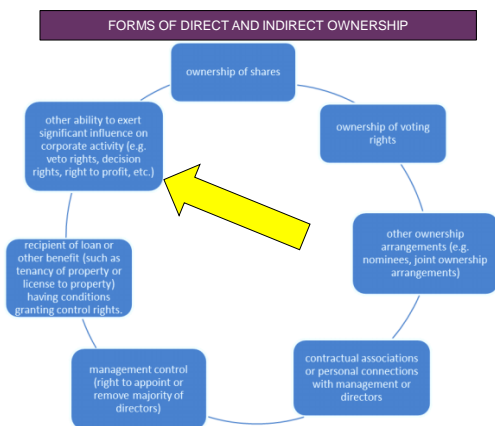
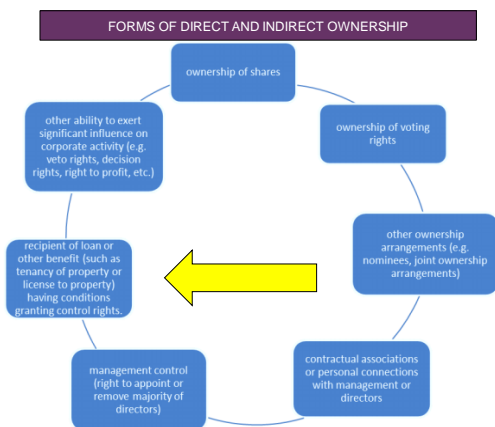










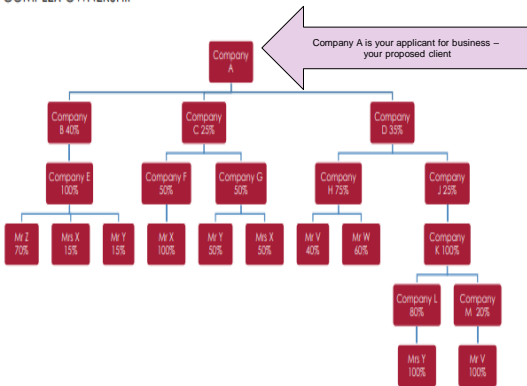


WHO are the Ultimate Beneficial Owner (“UBO”) & Ultimate Principles (UPs)

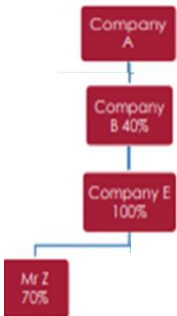
COMPLEX OWNERSHIP



COMPLEX OWNERSHIP



MR Z



$$70\% = 70 \times 40 \times 100 = 28\%$$

THE FINAL COUNT %%%%

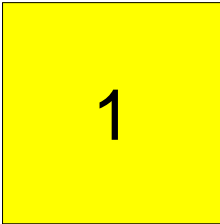
Natural Person	Ownership %	How?
Mr Z	28	Through Companies E and B
Mrs X	$6 + 6.25 = 12.25$	Through Companies E and B, and G and C
Mr Y	$6 + 6.25 = 12.25$	Through Companies E and B, and G and C
Mr X	12.5	Through Companies F and C
Mr V	$10.5 + 1.75 = 12.25$	Through Companies H and D, and M, K, J and D
Mr W	15.75	Through Companies H and D
Mrs Y	7	Through Companies L, K, J and D

JERSEY – THE SEVEN STEP TEST

Natural Person	Ownership %	How?
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Mrs X	$6 + 6.25 = 12.25$	Through Companies E and B, and G and C
Mr Y	$6 + 6.25 = 12.25$	Through Companies E and B, and G and C
Mr X	12.5	Through Companies F and C
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Mr W	15.75	Through Companies H and D
Mrs Y	7	Through Companies L, K, J and D

Identification Measure

In the case of a customer that is a legal person, a *relevant person* must understand the ownership and control structure of the customer (and provisions under which the customer can enter into contracts).

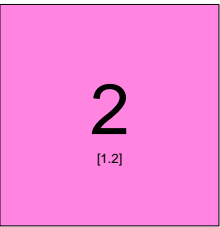


Identification Measure

In the case of a customer that is a legal person, a *relevant person* must understand the ownership and control structure of the customer (and provisions under which the customer can enter into contracts).

A *relevant person* must find out the identity of:

- the customer;
- any beneficial owners and controllers of the customer;
- any third party (or parties)¹ – including a legal arrangement - on whose behalf the customer acts, whether directly or indirectly (and beneficial owners and controllers of the third party (or parties)); and
- others listed in Article 3(2).



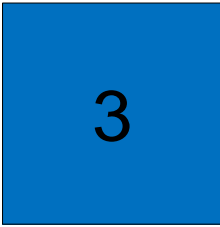
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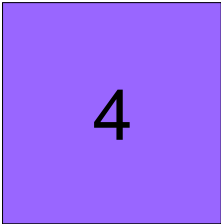
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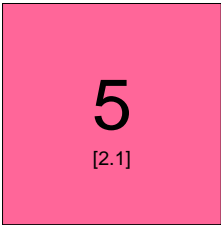
A *relevant person* must obtain information on the purpose and intended nature of the business relationship or one-off transaction.



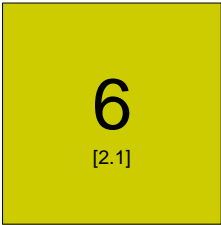
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A <i>relevant person</i> must obtain appropriate information for assessing the risk that a business relationship or one-off transaction will involve <i>money laundering or financing of terrorism</i> risk. It may be necessary to repeat this stage following an assessment of risk under stage 2.1.



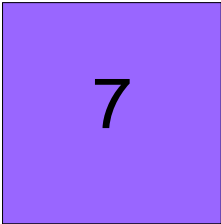
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A <i>relevant person</i> must prepare and record a customer business and risk profile.
A <i>relevant person</i> must obtain evidence of the identity of those whose identity is found out at stage 1.2.





SUMMARY

CDD

CDD	CDD measures	
	On-going monitoring	

CDD	CDD measures	ID customer
	On-going monitoring	

CDD	CDD measures	ID customer
		Risk assessment
	On-going monitoring	

CDD	CDD measures	ID customer
		Risk assessment
		ID Third parties
	On-going monitoring	

CDD	CDD measures	ID customer
		Risk assessment
		ID Third parties
		ID person acting for customer Verify authority to act
	On-going monitoring	

CDD	CDD measures	ID customer
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	On-going monitoring	Understand Ownership/control

CDD	CDD measures	ID customer	
		Risk assessment	
		ID Third parties	
		ID person acting for customer	Verify authority to act
		Where customer not individual:	Understand Ownership/control structure
		ID Beneficial Owners/Controllers	
	On-going monitoring		

CDD	CDD measures	ID customer	
		Risk assessment	
		ID Third parties	
		ID person acting for customer	Verify authority to act
		Where customer not individual:	Understand Ownership/control structure
		ID Beneficial Owners/Controllers	
	On-going monitoring	Obtain information on purpose/nature	SOF/SOW

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		Scrutinising transactions / activity	
	On-going monitoring		

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		ID Third parties	
		ID person acting for customer	Verify authority to act
		Where customer not individual:	Understand Ownership/control structure
			ID Beneficial Owners/Controllers
		Obtain information on purpose/nature SOF/SOW	
	On-going monitoring	Scrutinising transactions / activity	
		Keep documents/information up-to-date	



FINISH

ANY QUESTIONS...?





managing the risks
so you can focus
on the rewards

- Cmsure** was founded in 2005 with a view to providing comprehensive business **risk advisory services & is able to offer** your organisation a wealth of **skills and experience.**







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