



**ISLE OF MAN
FINANCIAL SERVICES AUTHORITY**

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Beneficial Ownership Act 2017

Guidance

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1. Introduction

This Guidance about the meaning of certain terms used within the Beneficial Ownership Act 2017 (“the Act”) is issued by the Isle of Man Financial Services Authority (“the Authority”) under section 4(4) of the Act.

The Act and Guidance apply to those legal entities set out in section 5(1) of the Act. The provisions contained within the Act and this Guidance do not remove or in any way reduce the obligations placed upon a legal entity which is subject to any other statutory provision concerning beneficial ownership information including, but not limited to, a business in the regulated sector (as defined in Schedule 4 of the Proceeds of Crime Act 2008) to comply with the provisions of the Anti-Money Laundering and Countering the Financing of Terrorism Code 2015.

The Authority issues guidance for various purposes including to illustrate best practice, to assist persons in complying with legislation and to provide examples or illustrations. It is, however, beyond the scope of this Guidance to try to provide for every possible circumstance.

The Guidance is not law; however, it is persuasive and section 4(5) of the Act requires regard to be had to this Guidance in interpreting references in the Act to the various

definitions (see paragraph 2). Where a person follows this Guidance, this would tend to indicate compliance with the legislative provisions and vice versa.

2. Definitions

Section 4(4) of the Act provides that the Authority may issue guidance about the meaning of the following terms:

- beneficial ownership;
- ownership;
- control;
- legal ownership; and
- registrable beneficial ownership.

The definition of beneficial owner is set out at section 4(1) of the Act and provides that *“**beneficial owner**” means a natural person who ultimately owns or controls a legal entity to which the Act applies, in whole or in part, through direct or indirect ownership or control of shares or voting rights or other ownership interest in that entity, or who exercises control via other means, and **beneficial ownership** is to be construed accordingly.*”

This definition is intentionally extremely broad and seeks to capture **all** of those individuals who hold **any** defined interest through whatever means in the legal entity concerned or who are able to exercise control over the entity concerned. It is essential that all such beneficial owners are identified at the outset so that those individuals who are registrable beneficial owners can be determined.

As set out in section 4(2) of the Act, the term “beneficial owner” applies regardless of whether an individual holds an interest solely, jointly or severally.

The term **“ownership”** is not defined in the Act, but should be construed as including beneficial ownership and/or legal ownership of the entity concerned.

The term **“control”** is also not defined in the Act, but again should be construed broadly, as including all those individuals who, by whatever means, hold a right in respect of or are able to exercise significant influence over the decision-making process of the entity. A person may hold such a right as a result of a variety of circumstances including the provisions of the entity’s constitution, the rights attached to the shares or securities which the person holds, a shareholders agreement, some other agreement or otherwise. Whether a person holds such a right is a matter of fact and law, which must be determined in the case of each entity.

The term **“legal owner”** is defined in section 3 of the Act as meaning a natural or legal *“person who directly owns or controls shares or voting rights or other ownership interest in that entity or who exercises direct control via other means whether or not that person is also the beneficial owner of that interest”*. This includes corporate shareholders and nominee shareholders holding shares on behalf of others.

The term “**registrable beneficial owner**” is defined in section 3 of the Act as meaning “*a beneficial owner who owns or controls more than 25% of the beneficial ownership of a legal entity to which the Act applies and “registrable beneficial ownership” is to be construed accordingly*”. It is important to note that a registrable beneficial owner can only be a natural person whose ownership interest or control can be **quantified** at more than 25% so in practice a registrable beneficial owner can only be a natural person who exercises ownership or control by direct or indirect shareholding. This will exclude such individuals as the beneficiaries of any discretionary trust which itself owns an interest in the legal entity concerned. It will also exclude settlors of any trust (unless the trust is a revocable trust) and may exclude protectors, depending on whether any powers they are given under the trust deed confers quantifiable control of over 25%. It will also exclude those who exercise control via other means unless this can be quantified as more than 25%.

Whilst the Act imposes an obligation on a legal owner to ascertain and maintain information on the beneficial owner(s) of the interest he or she holds, regardless of size, the Act only requires information regarding registrable beneficial ownership of the legal entity to be submitted to the Isle of Man Database of Beneficial Ownership (“Database”) which is maintained by the Department of Economic Development. Under section 20(5)(b) of the Act, if the entity has no registrable beneficial owner, confirmation of this fact must be provided to the Database.

To avoid unnecessary complexity, all of the examples given in this Guidance involve the same class of shares with equal ownership and voting rights. The examples are **not** intended to be exhaustive, but simply illustrative of the principles which should be considered. The rights attached to shares and different classes of shares must be considered in all cases and, where the constitution of the legal entity is particularly complicated, specific advice should be taken.

3. Requirement to look through the structure of the legal entity to determine the beneficial owners with illustrative examples

In order to identify its beneficial owners, it is essential that the structure of the legal entity is fully understood.

3.1. Companies to which the Companies Acts 1931 to 2004 or the Companies Act 2006 apply (except companies limited by guarantee)

In all structures, the legal ownership should be fairly clear. In the case of these companies, the legal owner(s) will be the person or persons entered as shareholders on the register of members or shareholders.

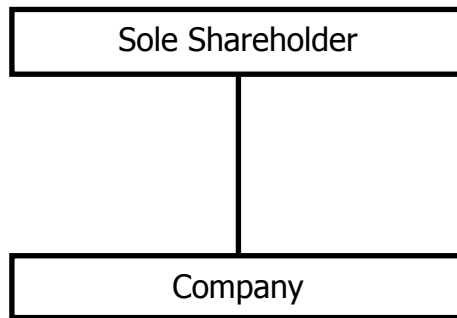
In the simpler structures, these are likely to be natural persons who hold their shares for themselves and those persons will, therefore, be both the legal and beneficial owners of the company. Any such person who holds a shareholding of more than 25% of the issued share capital or voting rights would therefore be the legal owner of that interest, the beneficial

owner of that interest, a registrable beneficial owner of the company and a person with control of the company for the purpose of the Database.

Example 1 – Diagram 1

The simplest structure of all is where a company has one shareholder who is a natural person, who holds that share for him or herself. That person is therefore the legal owner, beneficial owner and a registrable beneficial owner and controller.

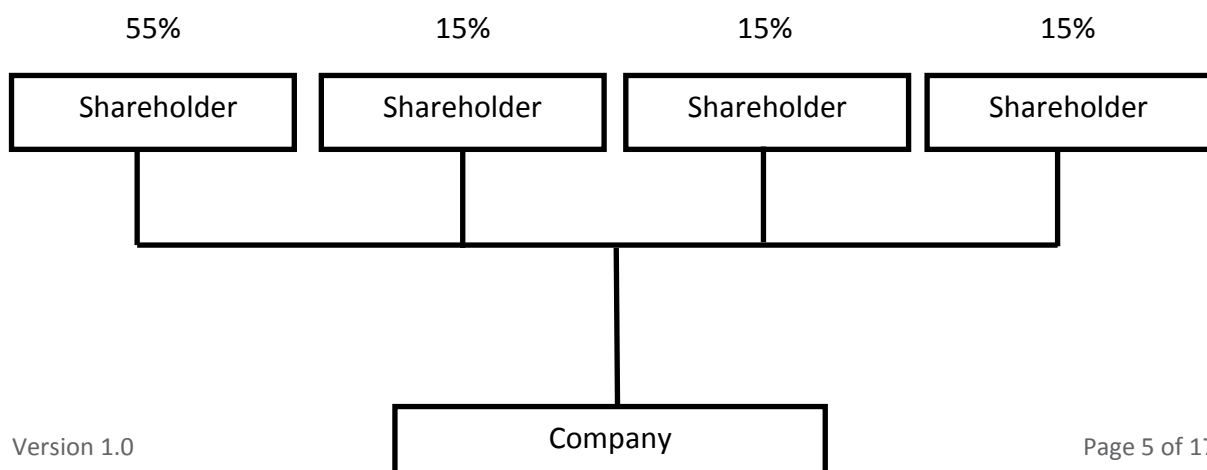
Diagram 1



Example 2 – Diagram 2

In another simple structure, a company has several shareholders, each of whom are natural persons who hold the shares for themselves. In this case, these persons are again both legal and beneficial owners. Whether any of them are registrable beneficial owners depends on the percentage of the issued shareholding each of them holds. In the example illustrated below in Diagram 2, the company has 4 shareholders with one individual holding 55% of the issued shares and the other 3 holding 15% each. Here, only the beneficial owner of 55% of the shares is a registrable beneficial owner and a controller, because that individual is the only person holding over 25% of the issued shares. It is important to note that, where shares are owned jointly by more than one individual, this must be taken into account in determining those individuals' total ownership. For example, if two or more shareholders own shares jointly, they both own all of the shares and their percentage ownership will include their joint holding and any other shareholding.

Diagram 2

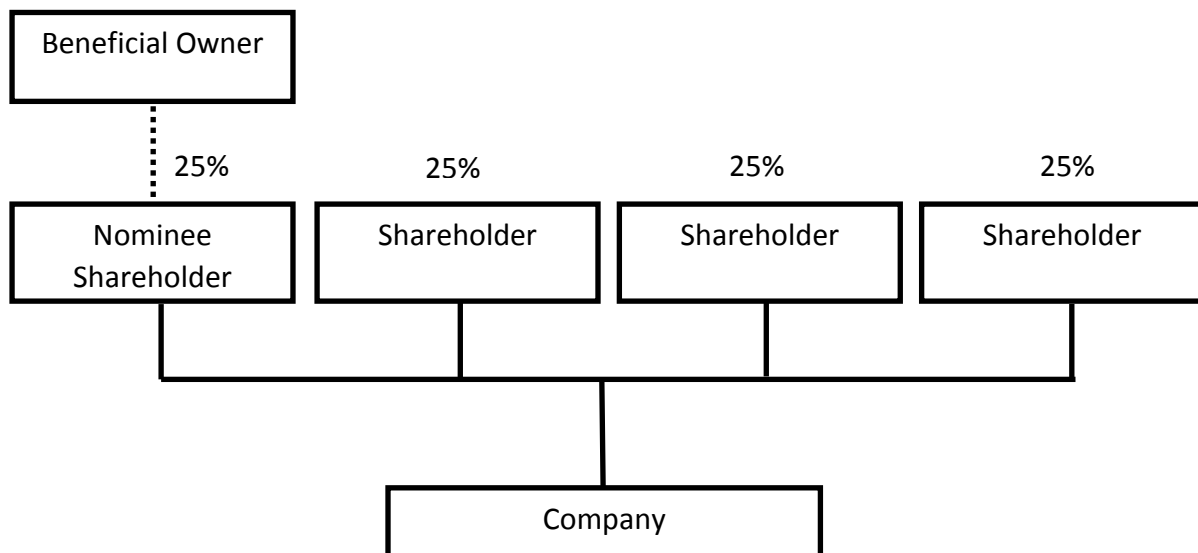


Example 3 – Diagrams 3A & 3B

A slightly more complicated structure is found where a company has one or more shareholders who are natural persons, but one or more of them hold the shares as nominee for another natural person. In this situation, the person holding the shares essentially holds them on trust for that underlying natural person. The person holding the shares in this situation is the legal owner and the person for whom they hold the shares is the beneficial owner. Whether that beneficial owner is a registrable beneficial owner or controller depends on their total percentage shareholding of the issued shares of the company.

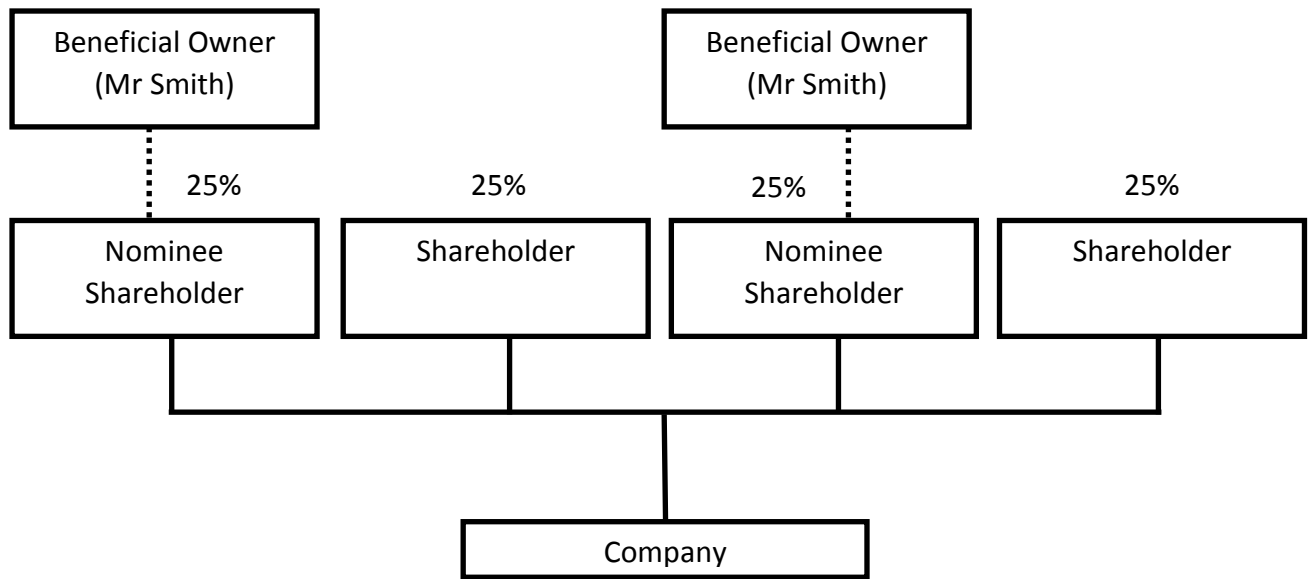
In the example in Diagram 3A, the company has 4 shareholders, 3 of whom hold the shares for themselves, whilst the fourth holds the shares for someone else. All the shareholders are legal owners, but the 3 who hold the shares for themselves are beneficial owners, as is the individual for whom the nominee shareholder holds shares.

Diagram 3A



In Diagram 3A, there is no registrable beneficial owner, as no person is a beneficial owner or controller of more than 25% of the issued shares.

Diagram 3B



In Diagram 3B above, Mr Smith is a registrable beneficial owner because his total shareholding is 50%, despite being held by 2 different nominee shareholders.

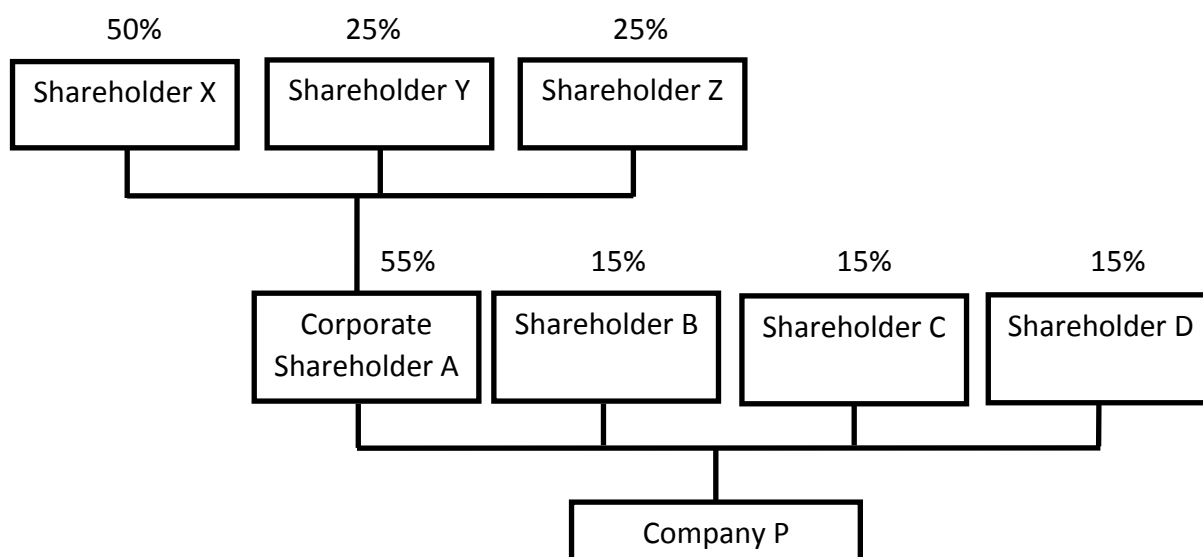
Example 4 – Diagram 4

A more complex structure might involve a company which has one or more shareholders, one or more of which are themselves corporate entities (legal persons). These legal persons themselves have shareholders who either hold their share for themselves or as nominees for others. In the scenario illustrated in Diagram 4 below, all of the shareholders in Company P are legal owners. Those who are natural persons who hold the share for themselves are also beneficial owners and may, depending on their shareholding, also be registrable beneficial owners.

Where a shareholder in Company P is itself a legal person, its shareholders are beneficial owners of Company P and may, depending on their apportioned shareholding in Company P, also be registrable beneficial owners.

In the example illustrated here, Corporate Shareholder A holds 55% of the shares in Company P. A itself has 3 shareholders, one of which, Shareholder X, holds 50% of the shares in A, i.e. 27.5% (being half of the 55% shareholding in Company P). Here, Shareholders A, B, C and D are all legal owners of Company P. Shareholders B, C and D are beneficial owners of Company P, as are Shareholders X, Y and Z, but only Shareholder X is a registrable beneficial owner of Company P by virtue of being a beneficial owner of Company P owning and controlling more than 25%.

Diagram 4



Example 5 – Diagrams 5A & 5B

Matters may become more complicated when trusts form part of the ownership structure. It is important to note that section 102 of the Companies Act 1931 and section 63 of the Companies Act 2006 provide that no notice of any trust is to be entered on the company's register of members.

However, whilst a trust is not a legal entity to which the Act applies (see section 5(1) of the Act), the involvement of a trust in the ownership structure does not remove or in any way dilute the requirement to look through the structure to determine its beneficial owners and/or controllers.

An example would be where some or all of the shares in a company are owned by the trustees of an express trust to be held on trust for the beneficiaries of that trust. The trustees could be natural persons or could be a single corporate trustee. In either case, the trustee(s) will be the legal owners of the company and will (if natural persons) also be beneficial owners.

As, by operation of law, the trustees of a trust are joint legal owners of the trust assets, they will, when natural persons, be registrable beneficial owners of the company. In the case of a corporate trustee, the beneficial owners will be the shareholders of the corporate trustee. Where the trust concerned is a fixed trust and its beneficiaries have a fixed entitlement to the trust property, those beneficiaries will be beneficial owners of the company and, depending on whether that entitlement translates to more than 25% shareholding of the company, may also be registrable beneficial owners. As a fixed interest in a trust will be dependent on the nature of the arrangement (e.g. a life interest in part of the trust income

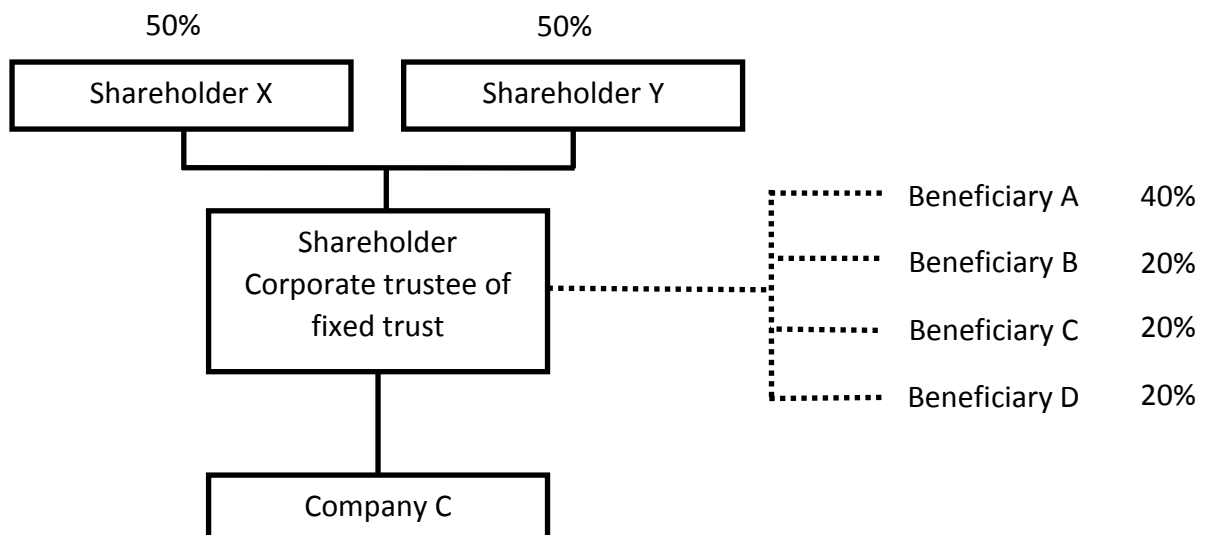
only) the quantifiable entitlement of the beneficiaries will need to be considered and determined on a case by case basis. It is therefore important that the basis for calculating the quantifiable element and basis for determining whether the beneficiary needs to be disclosed as having more than 25% ownership of the company is recorded and available for independent review. Advice should be taken where appropriate.

If, however, any of the beneficiaries of the fixed trust only hold a contingent interest, their interest is not quantifiable until that contingent event materialises and until that time they cannot be registrable beneficial owners.

Where the trust is a discretionary trust, its beneficiaries do not have an absolute right to any of the trust property, but only a right to be considered, as any benefit they receive is at the discretion of the trustees. In such circumstances, the beneficiaries of the discretionary trust cannot be beneficial owners and therefore cannot be registrable beneficial owners of the company. In that case, the registrable beneficial owners will, in the case of trustees who are natural persons, be those trustees. Where the trustee is a legal person, the registrable beneficial owners may be the trust company's shareholders, if their apportioned shareholding in the company is over 25%.

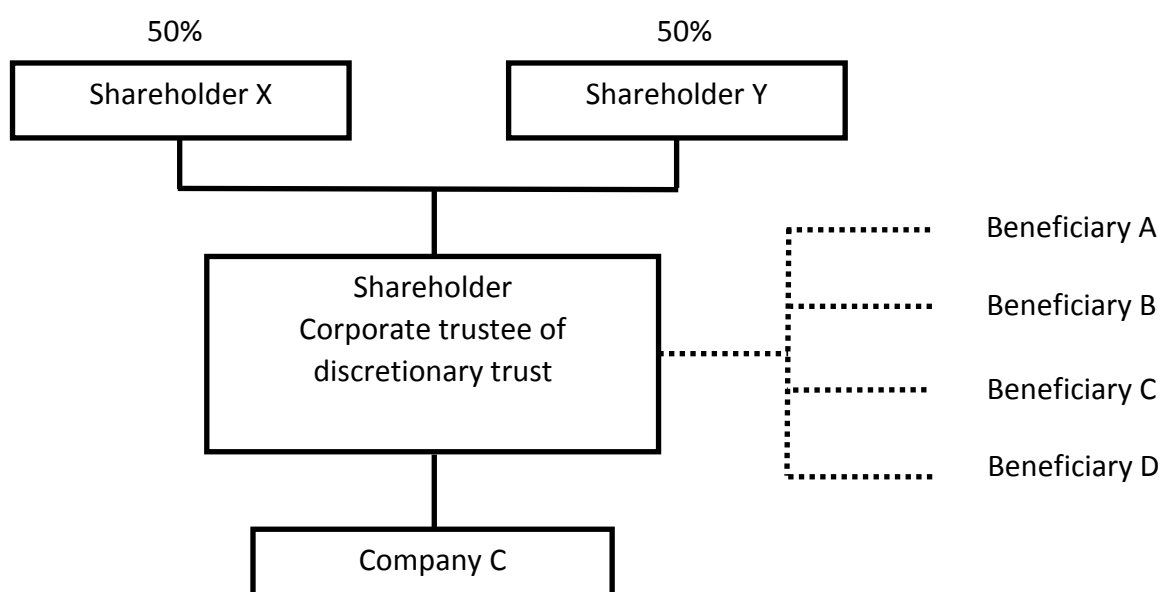
In the example illustrated below at Diagram 5A, Company C has one shareholder which itself is a corporate entity. This corporate entity has 2 shareholders, X and Y, who are natural persons, but the corporate entity is the corporate trustee of a fixed trust with 4 beneficiaries, A-D. Here, the corporate entity is the legal owner of Company C. Its shareholders are beneficial owners of Company C and may also be registrable beneficial owners of Company C depending on their shareholding. In this example, Beneficiary A of the trust is entitled to 40% of the trust distributions, whilst the other beneficiaries are entitled to only 20% each. All of the beneficiaries are beneficial owners of Company C, as are Shareholders X and Y. A is also a registrable beneficial owner as are X and Y.

Diagram 5A



In Diagram 5B below, Company C again has one shareholder which itself is a corporate entity. This corporate entity has 2 shareholders who are natural persons, but the corporate entity is the corporate trustee of a discretionary trust with 4 beneficiaries. Here, the corporate entity is the legal owner of Company C. Its shareholders are beneficial owners of Company C and in this case are also registrable beneficial owners of Company C, because of their shareholding. The beneficiaries of the trust, however, are neither registrable beneficial owners nor beneficial owners of Company C.

Diagram 5B



3.2. Companies Limited by guarantee to which the Companies Acts 1931 to 2004 or the Companies Act 2006 apply

In general terms, companies limited by guarantee have members, but do not have shareholders. The members *guarantee* the company's liabilities, that is, they may be required to pay money into the company if a claim is made against the company, but they do not receive dividends and any profit made by the company is retained by the company. The traditional use of such companies in the Island has been for Non-Profit Organisations including charities. There are three different types of companies limited by guarantee which may be incorporated in the Island:

3.2.1. 1931 Act Companies limited by guarantee

If a 1931 Act incorporated company is limited by guarantee, it only has guarantee members (which may be natural or legal persons) and these members are entitled to one vote each regardless of how much they guarantee to the company. Guarantee members therefore

exercise control and through this control are beneficial owners by virtue of their voting rights and may be registrable beneficial owners through their voting rights if the company has 3 or fewer members (each member then having more than 25% of voting rights). They will also become beneficial owners or registrable beneficial owners through ownership interest if the company resolves to make a distribution of any assets to its members either during the life of the company or at winding-up. At this point, the company ceases to be a company limited by guarantee and becomes a company limited by shares. At this point, the company has the same characteristics as set out in the various scenarios detailed above and the beneficial owners will be those natural persons who, either directly or through nominees or corporate or trust structures, ultimately hold those shares. The registrable beneficial owners will be those natural persons who ultimately hold over 25% of those shares.

3.2.2. 2006 Act Companies limited by guarantee

There are two types of 2006 Act companies which are relevant here, namely, 2006 Act companies limited by guarantee and 2006 Act hybrid companies.

2006 Act companies solely limited by guarantee are rather different to 1931 Act companies. Whilst guarantee members are still only entitled to one vote per member, there are no statutory restrictions on distribution. If the company decides to make a distribution either during its lifetime or at winding-up, it does not cease to be a company limited by guarantee. If a guarantee member is entitled to a distribution, then the guarantee member (if he or she is a natural person) or the natural person ultimately benefiting from that distribution (if the member is a nominee, corporate entity or the trustee or trustees of a trust) is a beneficial owner and, if entitled to more than 25% of the company's assets, a registrable beneficial owner of the company.

There are 2006 Act companies which can be limited by guarantee and have a share capital (so-called hybrid companies). These can have guarantee members and shareholder members. As with other 2006 Act companies limited by guarantee, each guarantee member is entitled to one vote and there are no restrictions on distribution. If the company decides to make a distribution either during its lifetime or at winding-up, it does not cease to be a company limited by guarantee. A natural person who is a shareholder member, either directly or indirectly through a nominee, corporate or trust structure, is a beneficial owner of the company. If that natural person is entitled to more than 25% of the issued share capital of the company, he or she is a registrable beneficial owner. With regard to guarantee members, if a member is entitled to a distribution, then the member (if he or she is a natural person) or the natural person ultimately benefiting from that distribution (if the member is a nominee, corporate entity or the trustee or trustees of a trust) is a beneficial owner and, if entitled to more than 25% of the company's assets, a registrable beneficial owner of the company.

3.3. Protected Cell Companies

A company may be incorporated as a Protected Cell Company (“PCC”) under the Companies Acts 1931 to 2004 and must be a company limited by shares. A PCC is a company with an internal structure which allows for the legal separation of assets and liabilities into different cells and a central core. It is important to note that the PCC is a single legal entity and, whilst the cells and core have segregated liabilities and assets, they are **not** legal entities. The application of the Act to a PCC is to the company, not to its constituent cells and core.

A PCC may create core shares and cell shares thereby providing two classes of share capital, core shares which are attributable to the core, and cellular which are attributable to an individual cell. A PCC can create an unlimited number of cells and new cells can be added at any point. Creditors of a cell have recourse to the assets of that cell and to core assets, but do not have recourse to the assets of other cells.

Each cell has its own share of the PCC’s overall share capital allowing a shareholder to be the sole owner of one cell whilst only having a small interest in the PCC as a whole. All those natural persons who hold core shares or cell shares, whether directly or indirectly through nominees, corporate or trust structures, will be beneficial owners of the PCC. Whether they are registrable beneficial owners will depend on whether their shareholding, whether core or cellular, amounts to more than 25% of the total issued share capital of the PCC as a whole.

3.4. Limited liability companies to which the Limited Liability Companies Act 1996 applies

These are broadly similar to 2006 Act companies in terms of the way they function, with some differences in terminology, in that the “directors” of an LLC are referred to as managers, whilst the “shareholders” are referred to as members. The scenarios set out above are as applicable to these entities as they are to 1931 and 2006 Act companies.

3.5. Limited Partnerships to which section 48B of the Partnership Act 1909 (legal personality) applies

In the case of limited partnerships, the partnership will have legal personality if the provisions set out in section 48B(1) of the Partnership Act 1909 are met. The limited partnership will then be caught by the provisions of the Act. In terms of ownership and control, a limited partnership has general and limited partners. The limited partners always have an ownership interest in the partnership, but generally have no control or voting rights, unless so permitted under the partnership agreement. The general partners always have controlling rights over the partnership.

The Act is, however, interested in ownership and control. A limited partner which owns more than 25% of the ownership interest in the partnership will be a registrable beneficial owner, despite having no control or voting rights. A general partner which controls over 25% will be a registrable beneficial owner, despite having no ownership rights.

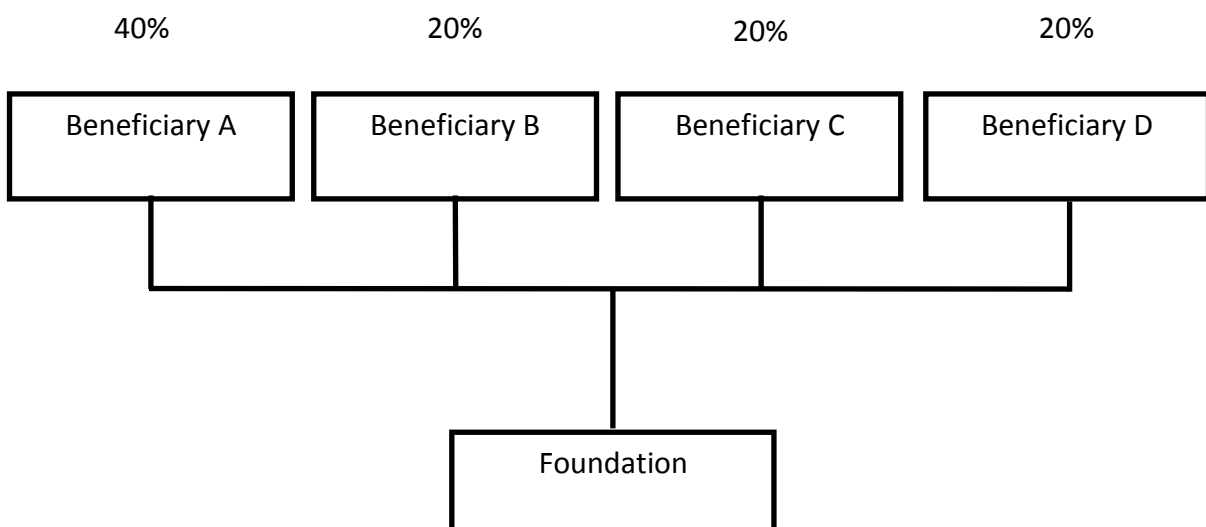
3.6. Foundations within the meaning of the Foundations Act 2011

Example 6 – Diagrams 6A, 6B, 6C & 6D

Foundations have legal personality. Their objects may be to carry out a specified purpose or to benefit a person or class of persons. Members of the council of the foundation control the operation of the foundation. This is similar to the “control” exercised by the directors of a company or trustees of a trust, although the members of the council may not have a beneficial ownership interest in the foundation. The founder (and an enforcer, if one is appointed) may also exercise control by virtue of powers retained under the foundation instrument and foundation rules, similarly to the settlor and enforcer of a trust.

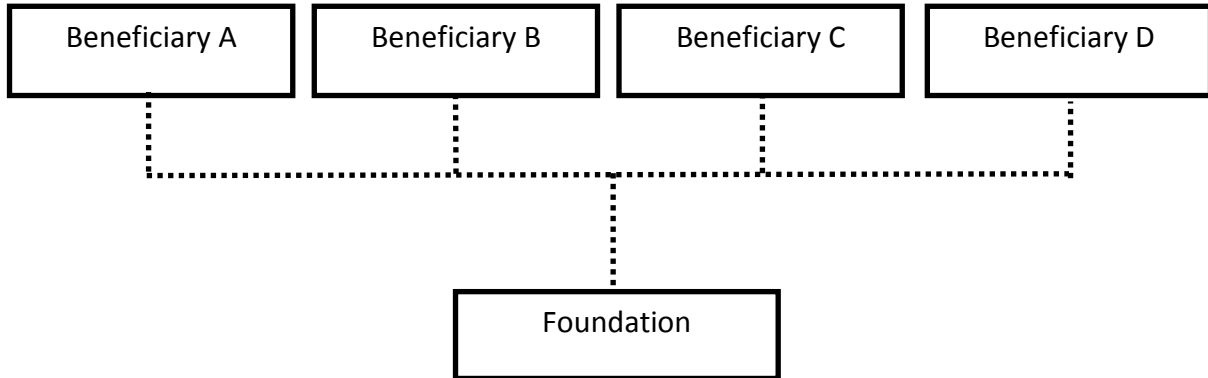
When the objects of a foundation are a person or class of persons, it will be necessary to consider the rights of those parties as detailed in the establishing instrument and foundation rules. It is recognised that a beneficiary of a foundation may have no interest in the foundation assets unless a right is granted within the rules or by the persons empowered to grant such rights. The rationale for determining whether a person associated with a foundation should be disclosed on the register should be recorded and retained. Foundations therefore have some of the characteristics of a company and some of a trust. In Diagram 6A below, the foundation has fixed interests and all of the beneficiaries are beneficial owners, but only Beneficiary A is a registrable beneficial owner.

Diagram 6A



In Diagram 6B below, the foundation only has beneficiaries that benefit at the discretion of the foundation council. None of the beneficiaries is therefore a beneficial owner and none is a registrable beneficial owner.

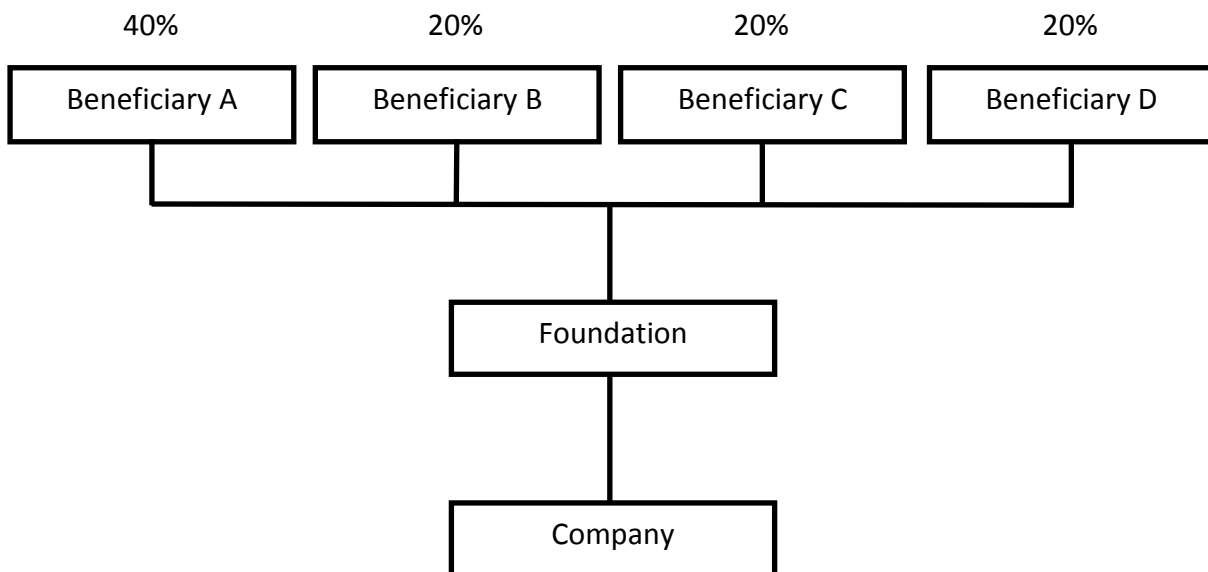
Diagram 6B



Similar provisions apply where a company is owned by a foundation as apply where a company is owned by the corporate trustee of a trust. The legal owner of the company will be the foundation and whether that foundation’s beneficiaries are beneficial owners of the company will depend on whether they have fixed or discretionary interests.

In Diagram 6C below, the company is legally owned by the foundation which has beneficiaries with fixed interests. All of the beneficiaries are beneficial owners of the company, but only Beneficiary A, with a 40% interest, is a registrable beneficial owner.

Diagram 6C

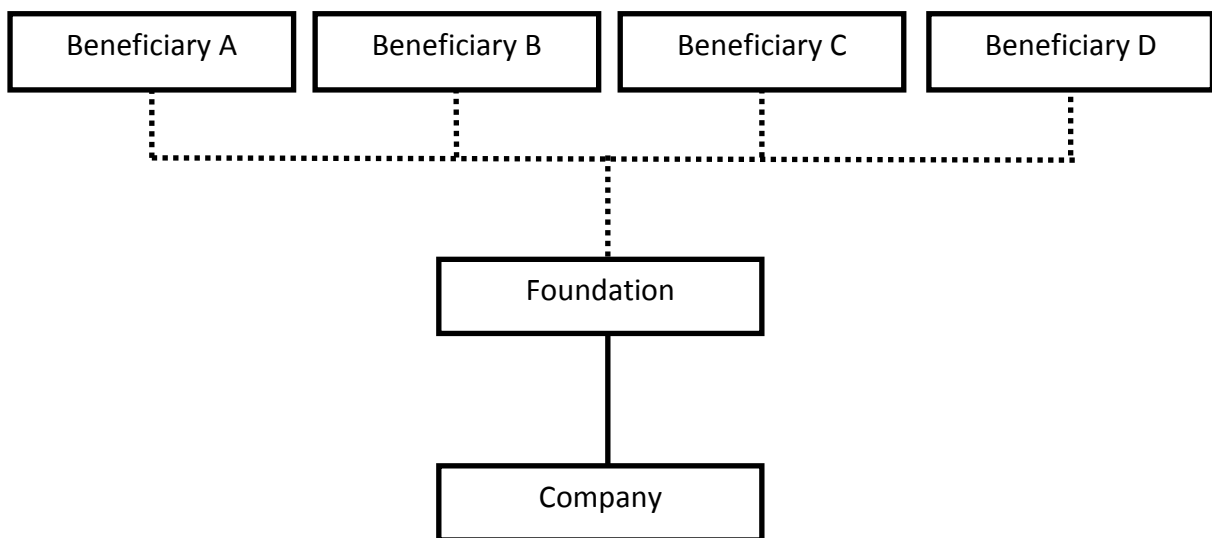


Finally, Diagram 6D below illustrates the situation where a company is owned by a foundation with discretionary beneficiaries. Again, the foundation is the legal owner of the

company. However, as the beneficiaries only have discretionary interests, the beneficiaries are not beneficial or registrable beneficial owners.

In this situation (similar to that of a trust in which the beneficiaries do not (yet) have a fixed interest), if the foundation is the legal owner of a more than 25% interest in the legal entity and the foundation does not yet have beneficial owners, the details of the council members and any other founder or dedicator who retains control of the interest should be provided. In addition, in the event that any founder or dedicator of the foundation retains control of more than 25% of the interest, their details should also be provided.

Diagram 6D



4. Control

In order to be a registrable beneficial owner of a legal entity, a natural person must own or control more than 25% of the legal entity. Whilst control by way of shareholding whether directly or indirectly held is relatively simple to quantify, as has been discussed above, control “via other means” is more problematic.

A person would exercise significant control over a legal entity in a number of situations. Firstly, as set out above, if the person owns more than 25% of the beneficial ownership of the legal entity and so is a registrable beneficial owner, then, provided their shareholding confers voting rights, they would be able to block a special resolution of the members of the company and would therefore be able to exercise negative control over the company. If the shares which they beneficially own or control do not confer voting rights, then they would not be able to exercise control over the company, but would still be registrable beneficial owners as the Act captures those who own or control more than 25% of the company.

In a different scenario, a person may hold shares which confer voting rights, but not ownership. If that person's voting rights amounted to over 25% of the total voting rights, then they would be a registrable beneficial owner by way of control.

It is important to emphasise that, unless the degree of control a natural person can exercise over a legal person can be quantified at over 25%, they cannot be registrable beneficial owners by way of control. This is rather different to the concept of "significant influence or control" found in the United Kingdom.

The following is a non-exhaustive list of roles and relationships which would **not**, on their own, result in that person being considered to be exercising control for the purposes of the Act.

Where the person provides advice or direction in a professional capacity; for example, as:

- a) a lawyer;
- b) an accountant;
- c) a management consultant;
- d) an investment manager;
- e) a tax adviser; or
- f) a financial adviser.

Where the person deals with the legal entity under a third party commercial or financial agreement; for example, as:

- a) a supplier;
- b) a customer; or
- c) a lender.

Where the person exercises a function under an enactment; for example, as:

- a) a regulator; or
- b) a liquidator or receiver.

Where the person is an employee acting in the course of their employment and as nominee for their employer, including an employee, director or CEO of a third party (such as a corporate director company), which has significant influence or control over the legal entity.

Where the person is a director of a company, including, as:

- a) a managing director;

- b) a sole director; or
- c) a non-executive or executive director who holds a casting vote.

A person who makes recommendations to shareholders on an issue, or set of issues, on a one-off occasion, which is subject to a shareholder vote.

Rights held by all or a group of employees, for the purpose of representing the employees' interests in an employee-owned entity.

Any relevant person or entity of significance in relation to any association, professional standards organisation or network of companies or firms which promulgates common rules, policies or standards to be adopted by the members of the association, organisation or network, but does not otherwise have control of members of the network.

A person who has a role or relationship of the kind listed above with the entity may, however, be a person with significant control over the entity either:

- a) if the role or relationship differs in material respects or contains significantly different features from how the role or relationship is generally understood; or
- b) if the role or relationship forms one of several opportunities which that person has to exercise significant influence or control.