اللجنة الوطنية لمكافحة
غسل الأموال وتمويل الإرهاب
NATIONAL COMMITTEE
FOR AML & CFT

SUPERVISORY GUIDANCE ON
BENEFICIAL OWNERSHIP

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Index

1. Introduction

1. Numerous reports acknowledge the money laundering (ML) and terrorism financing (TF) risks associated with Legal Entities and Legal Arrangements. Corporate Vehicles, including companies, trusts, foundations, and partnerships, engage in diverse commercial activities globally. Despite their mostly legitimate economic role, these entities are still also susceptible to misuse in complex schemes aimed at concealing true beneficial ownership and the underlying reasons for holding assets. Illicit activities, such as money laundering, bribery, corruption, insider trading, tax fraud, terrorist financing, and sanctions evasion, can be facilitated by manipulating corporate vehicles.

2. A common method of misuse is the utilization of legal persons and arrangements to conceal ownership and control rights. By creating a legal entity or legal arrangement, a criminal can create a layer of distance between himself and his/her illicit assets to complicate their detection and hinder any criminal investigations. While many companies are legitimate, the outlined scenario can be exploited to evade tax obligations, conceal illicit funds, and to facilitate money laundering.

3. To prevent misuse of Kuwaiti legal entities and legal arrangements, a number of obligations exist with regards to beneficial ownership, which can be broadly categorized into three types:

4. First, legal entities created under Kuwaiti law are under an obligation to register their beneficial ownership information with the Ministry of Commerce and Industry (MOCI) within 60 days of April 1, 2023, for existing entities, or within 60 days of the creation of a new company, and to keep this information accurate and updated at all times. Additionally, companies in Kuwait are required to maintain accurate and up-to-date records of their beneficial owners. These records must include essential details such as the name, nationality, date and place of birth, address, and identification documents like civil ID or passport. The requirements in this regard are set out in:

- Companies Law No. 1 of 2016: This law governs the registration and management of companies in Kuwait. The Ministry of Commerce and Industry (MOCI) is responsible for the oversight of legal persons and for ensuring that basic and beneficial ownership information is maintained for all legal entities in Kuwait.

- Ministerial Resolution No. 287/2016: This resolution supplements the Companies Law and provides further regulations on the establishment and management of legal entities. It reiterates the obligations of companies to maintain accurate and up-to-date beneficial ownership information.

- Ministerial Decision 4/2023 and its amendments: This regulation introduced a more robust framework for maintaining beneficial ownership information. Under this decision, companies are required to register their beneficial owners with MOCI, providing key details such as name, nationality, date of birth, and the legal basis for qualifying as a beneficial owner. The law also specifies that companies have 60 days from April 1, 2023, to comply with the registration requirements.

5. Secondly, FIs and DNFBPs licensed or registered in Kuwait are under an obligation to identify and verify the identity of the beneficial owners of their customers, to record this information, and provide it to authorities upon request, as per the requirements set out in the AML/CFT

legislative framework. The legal requirements for FIs and DNFBPs in this regard are set out in:

- Law 106/2013: Kuwait's Anti-Money Laundering and Counter-Terrorist Financing (AML/CFT) law requires FIs and DNFBPs to apply comprehensive customer due diligence, record keeping, STR reporting and other preventive measure and as part of those, to identify and verify the identify the beneficial owners of their customers. Supervisory authorities are mandated to verify compliance by FIs/DNFBPs with these obligations.
- Ministerial Resolution 37/2013: The Executive Regulation on AML/CFT underpins and further details the requirements introduced by Law 106/2013.

6. Third, endowers, when creating the only type of legal arrangement that exists in Kuwait, which are the Awqaf, must submit documentation to the Ministry of Justice (MOJ), which includes detailed information about the Waqf's assets, the endower's identity, the Wakeel's identity, and the beneficiaries. The latter three functions all qualify as "beneficial owners" under the FATF standards. This beneficial ownership information is then maintained by the MOJ in its records. If the Waqf Authority is appointed as the Wakeel, it also maintains electronic records of the Waqf's details. It is worth noting at the outset that unlike legal entities, Waqf in Kuwait pose a low risk for money laundering and terrorist financing due to the restrictions on foreign involvement and the predominant use of Waqfs for local real estate or family purposes.
7. While the three categories of obligations vary quite significantly in terms of their scope and nature, the concept of beneficial ownership that underpins them is the exact same.
8. The first purpose of this guidance document is thus to explore and explain the concept of beneficial ownership, to ensure that companies and legal arrangements are clear on what their registration and record keeping obligations entail, and that FIs and DNFBPs understand on how the term is to be interpreted for purposes of applying AML/CFT preventive measures.
9. The second purpose of this document is to offer guidance to FIs and DNFBPs in Kuwait for the operational application of beneficial ownership (BO) requirements in a compliance context. The guidance is structured to assist entities in understanding and fulfilling their obligations under national regulations and international standards, particularly the FATF Recommendations. Reference is made to FATF Recommendations 24 and 25, which focus on the transparency of legal persons and legal arrangements, and Recommendation 10 which focuses on identification and verification requirements for beneficial owners.
10. The efforts are part of Kuwait's broader compliance with FATF standards to safeguard the financial system from misuse.

2. The Concept of Beneficial Ownership

11. The definition of beneficial ownership is enshrined in Article 1 of Law 106/2013 and further defined in Article 5 of Ministerial Decision N4/2023 with its amendments. Article 1 of Law 106/2013 extends the concept to cover "any natural person who ultimately owns or exercises direct or indirect control over a customer or the person on whose behalf a transaction is being conducted, including those persons who ultimately exercise control over a legal person or legal arrangement."

12. Article 5 of Ministerial Decision 4/2023 further specifies that the term is to be applied to cover:

a) the natural person(s) who, ultimately owns or controls 25% or more of the customer's capital or voting rights.

b) If there is doubt as to whether the person(s) under criterion (a) is the beneficial owner or where no natural person is identified under (a), the natural person(s), who exert control over the legal person through other means, such as holding a position of significant influence within the company.

c) If no individual meets criteria (a) or (b), then the natural person(s) holding the senior management position.

13. Kuwait's definition of beneficial ownership aligns with the FATF standards, particularly Recommendation 24, which focus on the transparency and beneficial ownership of legal persons. According to FATF standards, a beneficial owner is defined as a natural person who ultimately owns or controls a legal entity, either through direct ownership of a threshold percentage of shares (usually 25% or more) or through control by other means, such as exercising significant influence over the legal entity's decision-making process.

14. Kuwait's Ministerial Decision N4/2023 with its amendments define beneficial ownership using a 25% threshold for ownership or control of a legal entity, like the FATF threshold. Additionally, the Kuwaiti framework requires that if no individual directly or indirectly owns or controls 25% or more of a company, then the senior management person is considered the beneficial owner, which aligns with FATF's emphasis on identifying the natural person who exercises control over the legal entity.

15. The only type of legal arrangements that exist in Kuwait is the Waqf, which is a Sharia-based legal arrangement where assets are endowed into the ownership of an administrator (known as a Wakeel) to manage and administer the assets for the benefit of specific beneficiaries, either for a public, private, or mixed purpose. FIs and DNFBPs are under an obligation to identify and verify the beneficial owners also of customers that are Waqf. While the definition of the term set out in Ministerial Resolution 2/2023, and Ministerial Decision N4/2023 with its amendments is not fully fitting for the concept of Waqf, Article 1 of Law 106/2013 does extend the concept of beneficial ownership also to Waqf, and it should be understood to cover in all cases the natural persons holding any of following function:

Endower (Settlor Equivalent): The individual who creates the Waqf and contributes assets.

Wakeel (Trustee Equivalent): The person or institution (such as the Waqf Authority) appointed to manage the Waqf's assets.

Beneficiaries: Individuals or groups who benefit from the Waqf, either explicitly named or defined by a class of beneficiaries.

16. Understanding the difference between legal ownership and beneficial ownership is essential for ensuring transparency and accountability in the management of assets, whether in the form of legal entities like companies, or legal arrangements such as a Waqf. While these concepts are often used interchangeably, they hold distinct legal meanings and implications,

particularly in the context of compliance with international standards set by bodies such as the Financial Action Task Force (FATF). The Ministry of Commerce and Industry (MOCI) defines the term to cover anyone who ultimately owns or controls at least 25% of the shares or voting rights, or otherwise has significant control over a company, so regulators can keep track of who is really in charge.

17. Legal ownership for Joint Stock Companies, Limited Liability Companies, sole proprietorships, or partnerships refers to whoever's name is officially listed as the owner in government records, like the company registry. A legal owner can be a natural person, a legal entity such as a company, or even a legal arrangement such as a trust or a Waqf, and it is the legal owner that legally holds the title and often has rights to the company's assets, profits, and key decisions. In a business, for example, a shareholder would be considered a legal owner—they can vote on company matters, receive dividends, or sell their shares. Being the legal owner does however not always mean that the shareholder has actual ownership of, or any claim to the benefits of a legal entity.

18. In contrast, the beneficial owner is the person who ultimately exercises control over or owns a legal entity or Waqf even though this person is not officially named in the legal entity's or Waqf's records. Only a natural person can be a beneficial owner, and a beneficial owner is always the natural person or persons who has/have the actual power to influence decisions or enjoy a company's financial rewards. The concept of beneficial ownership is not about holding shares but about ultimately owning, or exercising control, directly or indirectly, over a legal person or a Waqf.

19. In scenarios where a company's legal ownership is split between several shareholders that are themselves legal entities, the legal entities would be listed as shareholders and thus legal owners of the company. The ultimate control over the company could just rest with just one person or a small group, which are those natural persons who ultimately control or legally own the legal entity shareholders. The natural persons are the beneficial owners, even though their names don't appear in any public documents of the company.

20. A Waqf is an endowment where the waqif (or endower) gives up ownership of an asset to the Waqf, which is then managed by the Wakeel, or trustee. The assets are set aside to serve either specific people or a charitable cause. In the context of a Waqf, the legal owner of the Waqf assets is the Wakeel, who simply holds the assets on behalf of the beneficial owner. The beneficial owner holds a right to the income from the property. Accordingly, for Awqaf the standards require that any of the following should be identified as beneficial owners:
    a. The Waqif;
    b. The Wakeel;
    c. Beneficiaries or classes of beneficiaries; and
    d. any other person(s) who exercising effective control of the Waqf.

21. In contrast to complex corporate structures, where beneficial ownership can sometimes be hidden, the beneficiaries of a Waqf are usually clearly named when the Waqf is established. The Wakeel might control the assets, but they must act in the interests of those beneficiaries. While the Wakeel has the legal power to manage the assets, the benefits flow transparently to the intended recipients.

22. Like in the case of legal entities, making sure that the real beneficiaries of a Waqf are clear and documented is key to maintaining trust in the system and preventing misuse. While Waqfs tend to be more straightforward, ensuring that the actual beneficiaries are known is just as important as it is for legal entities, where complex structures can sometimes be used to obscure who really controls or benefits from an arrangement.

23. To summarize, the key distinction between legal and beneficial ownership in both legal entities and Waqfs lies in the control and benefit elements:

- Legal ownership is about holding legal title or being registered in official records of a legal entity or Waqf as the formal owner or decision maker, which grants formal rights to manage or dispose of assets of a legal entity or legal arrangement.
- Beneficial ownership goes beyond formal title and identifies the person or persons who ultimate owner or control a legal entity or Waqf, whereby this ownership and control can be exercised either directly or indirectly.

24. In the context of combating money laundering and terrorist financing, identifying the beneficial owner is more important than merely identifying the legal owner, as it is the beneficial owner who may have hidden motives or influence that could pose risks to the integrity of the financial system.

25. By requiring transparency in beneficial ownership for both legal entities and Waqfs, Kuwait aligns itself with FATF standards and ensures that regulators and authorities can look beyond the formal structures to identify the individuals who truly hold power or stand to benefit from these arrangements. This distinction is critical for ensuring that neither legal entities nor Waqfs are misused for illicit purposes such as hiding proceeds from crime, facilitating money laundering, or funding terrorist activities.

3. Regulatory Requirements for Financial Institutions and DNFBPs

26. In Kuwait, financial institutions (FIs) and designated non-financial businesses and professions (DNFBPs) have comprehensive obligations to identify and verify the beneficial owners (BOs) of their customers as part of their customer due diligence (CDD) processes. These obligations are grounded in Law No. 106 of 2013 on Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) and reinforced by Ministerial Resolution 37/2013 and sector-specific guidance.

27. The foundation for the identification and verification of beneficial ownership by FIs and DNFBPs lies in Article 5 of Law No. 106/2013, which requires FIs and DNFBPs to identify and verify the identity of their customers and beneficial owners using reliable, independent source documents, data, or information. This must be done before establishing a business relationship or conducting a significant transaction. The verification of the beneficial owner must be done through reliable documentation or data sources, and it applies to both legal persons and legal arrangements (such as Waqfs, where relevant).

28. Article 5 and 11 of Law No. 106/2013 and provides further clarity on the specific steps that FIs and DNFBPs must follow. It emphasizes the obligation to maintain adequate and up-to-date information on beneficial owners, which should be readily accessible to competent authorities, such as the Kuwait Financial Intelligence Unit (KwFIU). It also requires FIs and DNFBPs to maintain all records, including those related to beneficial ownership, for at least five years after the business relationship ends.

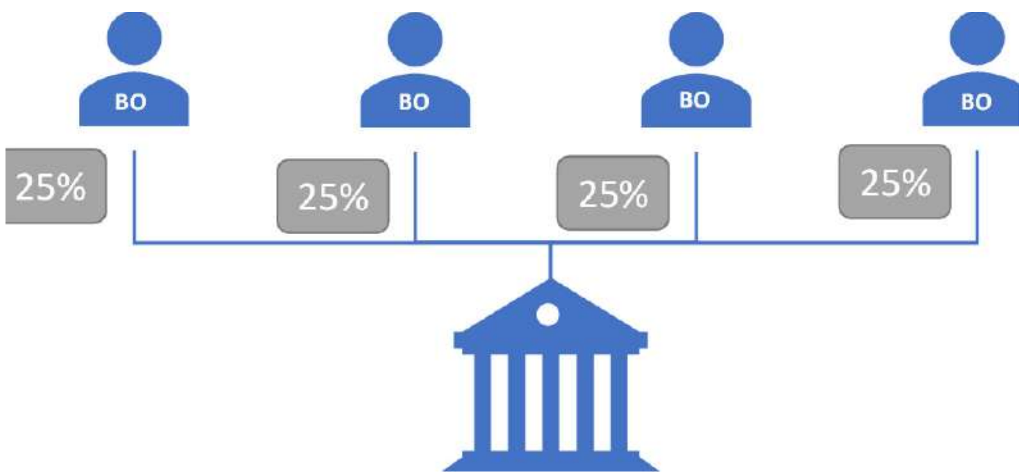
Identifying the Beneficial Owner

29. To identify and verity the beneficial owners of their customer, FIs/DNFBPs should follow the three-step approach required by FATF in recommendation 24, the definition included in the AML/CFT Law and its resolution and the ministerial decision N4/2023 with its amendments.

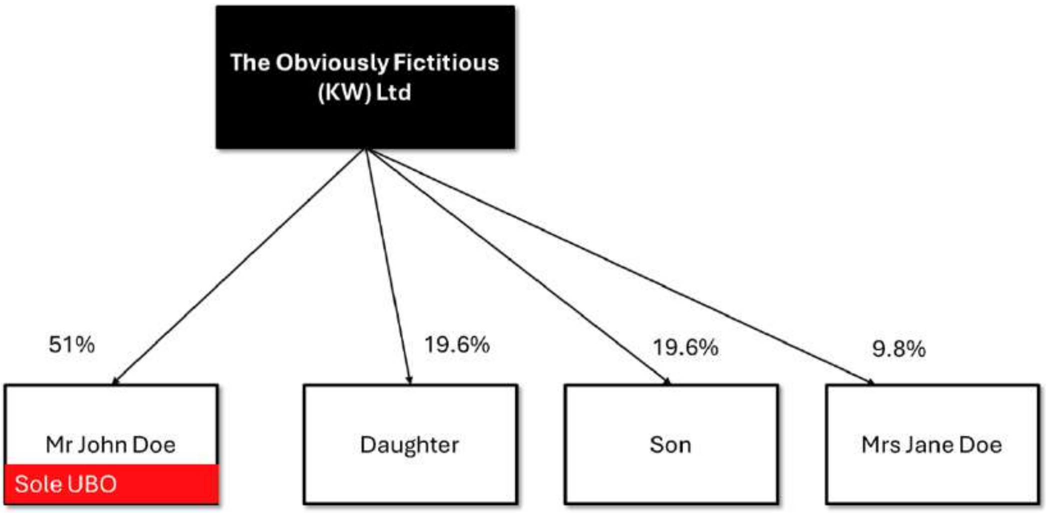
Step 1 - Notion of Ultimate Ownership or Control Rights of 25% or More

30. In the chain of identifying natural person beneficial owners, the first step for the FIs/DNFBPs is to determine whether there is one or more natural persons that directly or indirectly owns 25% or more of the customer's capital or voting rights.

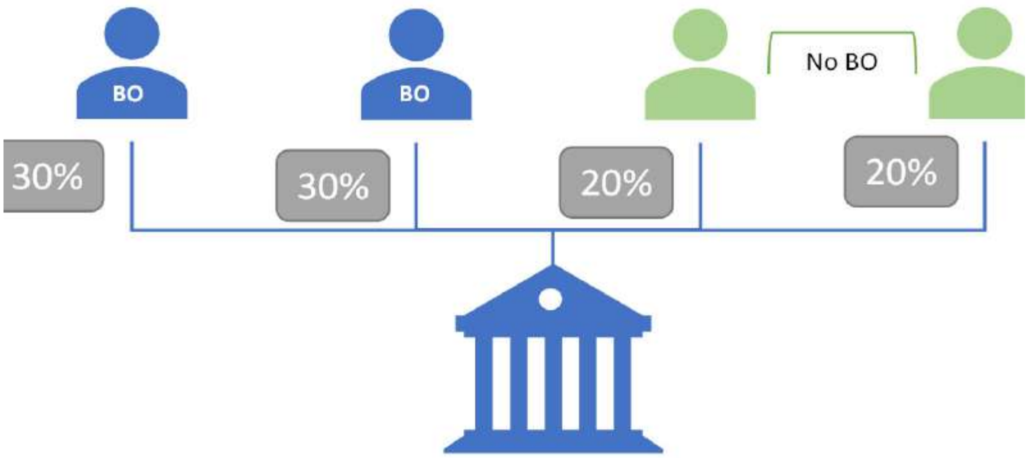
31. 32.31. Example 1 illustrates simple direct ownership, where the company is beneficially up toowned by four natural persons, each with a 25% ownership right.



32. Example 2 illustrates a simple ownership structure, where Mr. John Doe is the only beneficial owner of The Obviously Fictious (KW) Ltd company due to his 51% ownership interest.



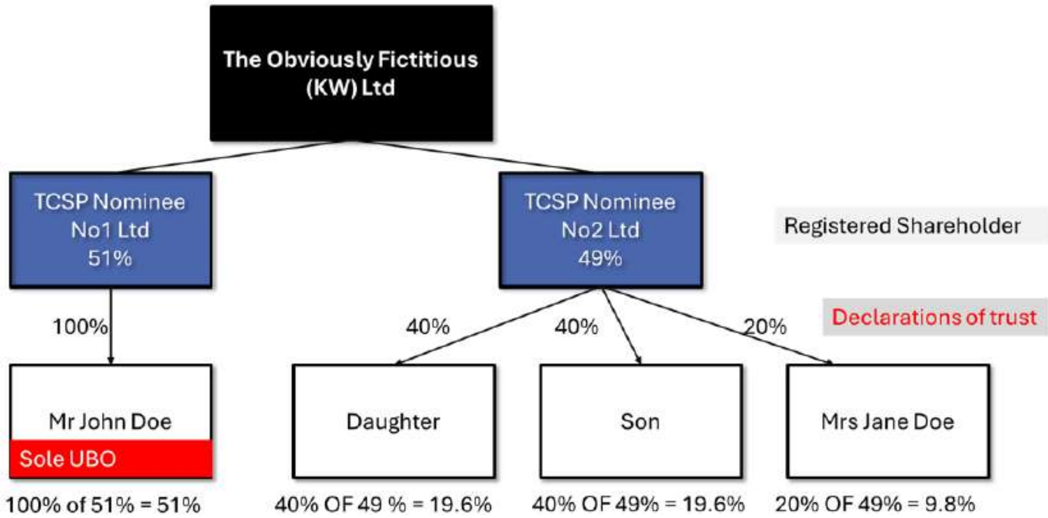
33. Example 3 illustrates a legal entity with 4 natural persons who are the direct owners but where only 2 natural persons own 25% and more of the company and are thus beneficial owners.



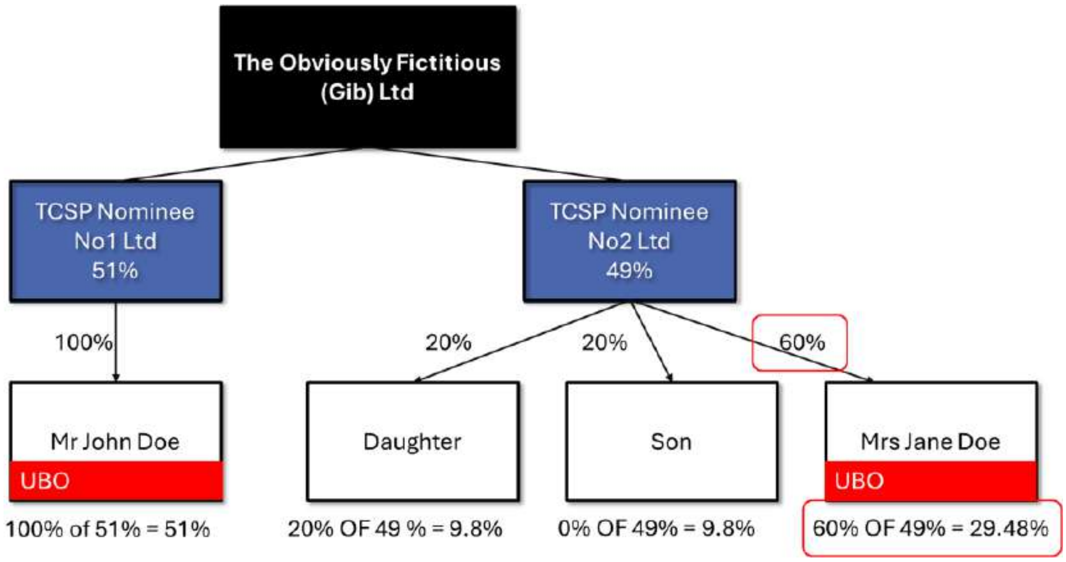
34. Example 4 illustrates a simple structure of direct and indirect ownership, where company A is owned 50% by the natural person directly and 50% by the natural indirectly through company B. In sum, the natural person owns 100% of company A.

35. When counting ownership rights, relationships between different parties must be examined to determine whether direct and indirect ownership rights exist that meet the 25 % threshold. This means, in the first instance all individuals, including those who directly or indirectly hold a minimum percentage of ownership interest in the legal entity, should be taken into account.

36. **Example 5** illustrates another case with indirect ownership rights but where the relationships between different parties matter. Two corporate nominees are the formal shareholders of The Obviously Fictious (KW) Ltd, holding 51% and 49% of the voting rights, respectively. The nominees themselves are "owned" by a corporate service provider – an accountant, legal practice or similar intermediary. Looking behind the ownership of the corporate nominee shareholders thus has no value for identifying the BO of The Obviously Fictious (KW) Ltd. Beneficial owners of the Obviously Fictious (KW) Ltd are Mr John Doe, his daughter and his son based on the percentages shown below.

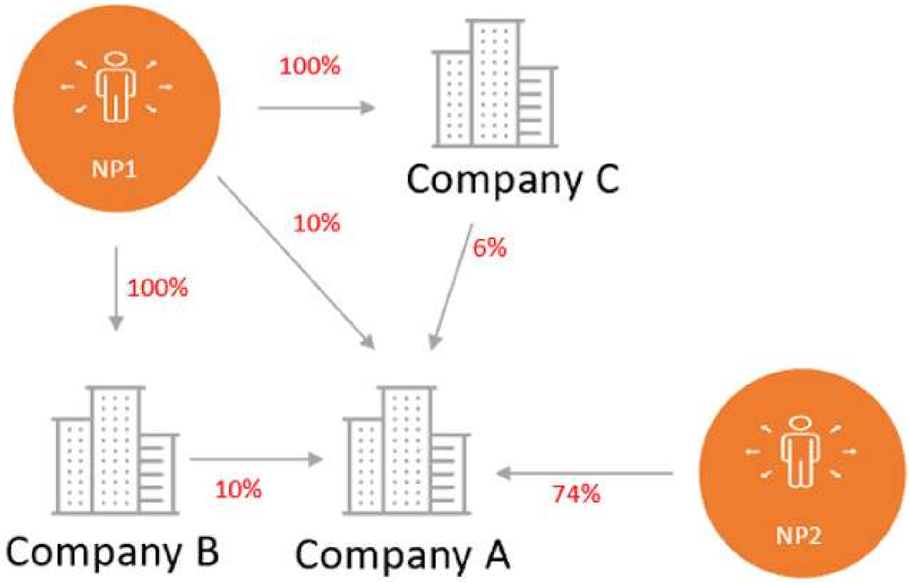


37. **Example 6:** If the voting rights held on behalf of Mrs Jane Doe was to be changed to 60% of the 49% then Mrs Jane Doe would have 29.48% of the voting rights and also become a BO of The Obviously Fictious (KW) Ltd.

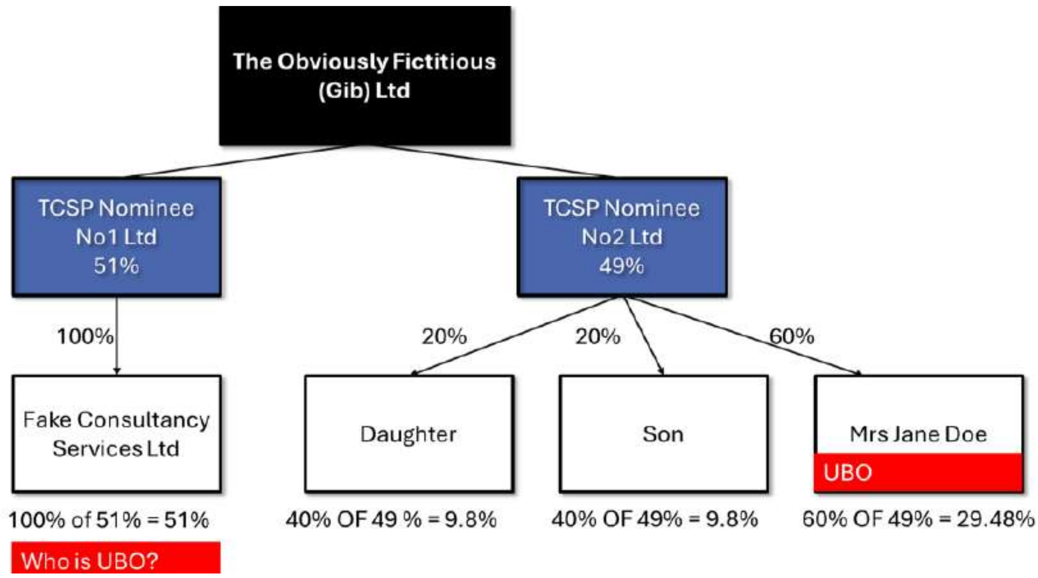


38. Ownership rights of every natural person must be aggregated to determine whether direct and indirect ownership or control rights exist that meet the 25 % threshold. Where the proportion of capital held must be determined via several successive levels of indirect ownership, the total percentage of capital ultimately held by each individual is the mathematical result of these different proportions held indirectly - a calculation of the percentages of capital shares held. In this illustrated case, the indirect owner holds 50% of the Company A (100% x 50% = 50%).

39. **Example 7** illustrates a case where company A is directly and indirectly owned by 26% by natural person 1, and 75% by natural person 2. Both natural persons 1 and 2 are thus beneficial owners of company A.



40. **Example 8** illustrates a case where a legal entity holds 51% of controlling ownership interests to Obviously Fictitious Ltd. To consider Fake Consultancy Services Ltd as the beneficial owner of Obviously Fictious (KW) Ltd would be incorrect as the beneficial owner has to be a NATURAL PERSON and can never be a corporate. FI and DNFBP in this case would need to determine who the beneficial owner(s) of Fake Consultancy Serviced Ltd and if voting rights need to be added onto any of the existing shareholders before a final assessment of BO can be determined.



Step 2 - Notion of Control Through Other Means

41. When FIs/DNFBPs have gone through the Step 1 and have not been able to identify any natural person who, directly or indirectly, owns or controls 25% or more of the legal entity, or where the FIs/DNFBP has doubts as to whether the person(s) identified through step 1 are indeed the beneficial owner(s), FIs/DNFBPs must determine whether there exists a natural person who directly or indirectly exercises ultimate effective control of the legal entity through means other than ownership.

42. The concept of control refers to the ability to take relevant decisions within the legal person or arrangement and to impose those decisions. Under step 1, FIs/DNFBPs seek to identify natural persons who exercise control based on their ownership rights. In Step 2, the focus is on identifying natural persons that exercise ultimate effective control through means other than ownership rights. Understanding the customer's management and governance structure aids in identifying individuals with such ultimate effective control through other means.

43. When determining the effective controller(s) of a legal entity through means other than ownership, attention should be paid to individuals who control the customer, appoint or dismiss senior management, individuals in senior management positions (e.g., CEO), and trustees where applicable. This comprehensive approach ensures a granular understanding of the control structure of a legal entity.

44. The following Diagram illustrates notions of control based on which a natural person should be considered as a beneficial owner.

45. Examples of natural persons who could qualify as beneficial owners on the basis that they exercise ultimate control of the legal person through means other than ownership interests are:

(a) **Minority shareholders who exercise control** alone or with other shareholders on the basis of a contract, informal understanding, a specific relationship, including where control is exercised through another corporate vehicle or a nominee. Minority shareholders may also collaborate to enhance control through formal or informal agreements, including the use of nominee shareholders.

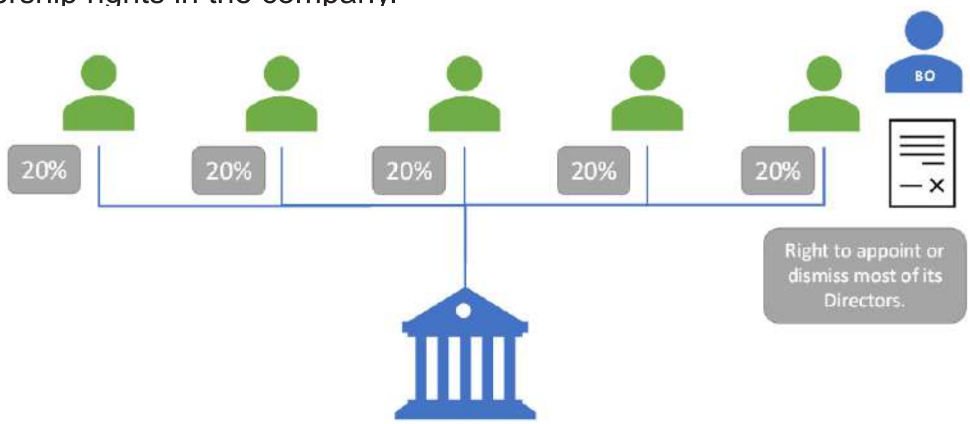
(b) Loan Covenants, where a lender imposes conditions that limit the financial and operational decision-making powers of the company's management, and de-facto transfer much of this power to the lender.

(c) Contractual associations or personal connections with a company's management or directors could result in the transfer of control rights. For example, where a company's management places advisors or consultants in strategic roles and allow them to steer decision-making, the advisor or consultant could be exercising ultimate effective control.

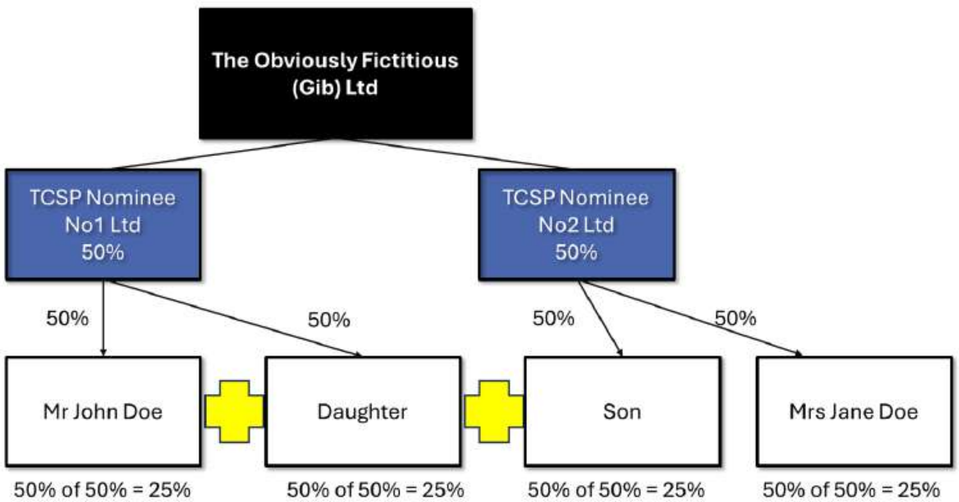
(d) Control through Positions Held covers individuals responsible for strategic decisions affecting the legal entity's practices or direction, such as directors or executives. Directors may or may not actively control the entity, and their information may be limited if nominee directors represent unidentified interests.

(e) Executive Control: Natural persons exercising executive control over daily affairs through senior management positions like CEO, CFO, managing/executive director, or president are essential. These individuals hold significant authority over financial relationships and ongoing financial affairs of the legal entity, including dealings with financial institutions holding accounts on behalf of the entity.

46. Examples 9 illustrates a case where a company has no beneficial owners based on ultimate control rights, but where an external natural person qualifies as beneficial owner based on the fact that this person can appoint or dismiss the company's directors despite not having any ownership rights in the company.



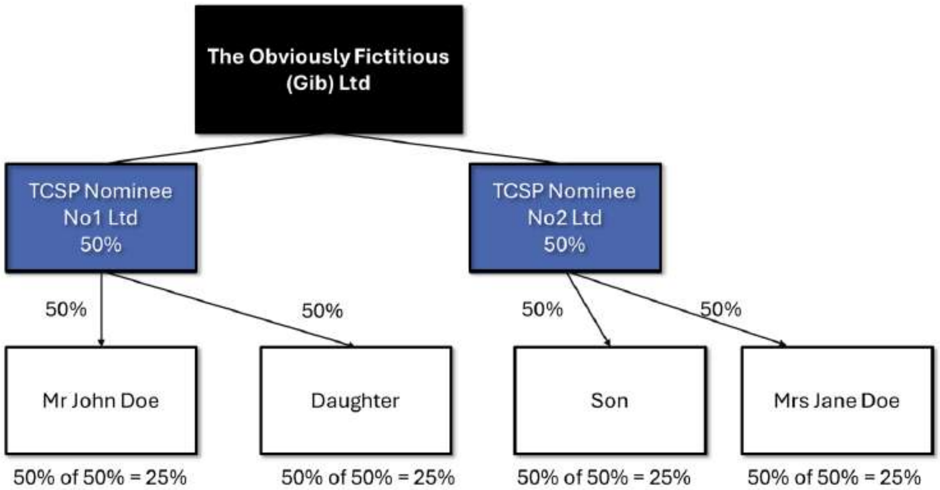
47. **Example 10** illustrates another case of indirect control through other means. In the case below, Son and Daughter are only 5 and 9 years old. These children are not able to exercise independent judgement of their financial affairs let alone run a company, so their voting rights are exercised by their father. Mr John Doe is directly and indirectly controlling 75% of the voting rights of The Obviously Fictious (KW) Ltd through means other than ownership and is the company's beneficial owner.



Step 3 – Identify natural person on whose behalf transaction is conducted

48. As a last step of the process, if no beneficial owner(s) could be identified through steps 1 and 2, FIs/DNFBPs must identify and verify the identity of the natural person or persons who hold the position of senior managing official of the legal entity and consider those persons to be the beneficial owners.

49. 50.49. Example 11 illustrates a case where no beneficial owner can be identified based on steps 1 and 2. The legislation is then very clear, that the beneficial wwner(s) are the Senior Managers. In this case the Senior Managers of TCSP Nominee No1 Ltd and TCSP Nominee No2 Ltd are the Beneficial Owners of The Obviously Fictious (KW) Ltd.



Identifying Ownership and Controls for Complex Structures

50. A key method to disguise beneficial ownership involves the use of legal entities and arrangements to create complex ownership chains, which allows the beneficial owner to distance himself/herself from the company's assets in a very effective manner. For the purpose of this guideline the Complex structure refers to customers with 3 or more layers between the customer and the beneficial owner, or structures that are less than 3 layers of ownership but that are difficult to verify the beneficial owner due to obscurity or obfuscation, such as when information is not publicly accessible, lacks transparency, involves a foreign company or trust.

51. Complex structures often combine direct and indirect control through chains of legal entities that span multiple jurisdictions. Complex legal structures can and are being created and exist for legitimate purposes but typically the more complex a legal structure is, the more difficult it is to identify the actual beneficial owner(s). Complex ownership structures, undisclosed agreements, and variations in voting rights contribute to the complexity. Examples of instruments often used as part of complex structures include:

52. Circular ownership – where companies own a legal entity and there is no natural person with a significant shareholding. Such ownership is difficult to identify when it involves number of layers incorporated in various jurisdictions and involve ownership loops, where companies hold interests in other companies within the same loop and it becomes possible for companies to own shares of themselves.

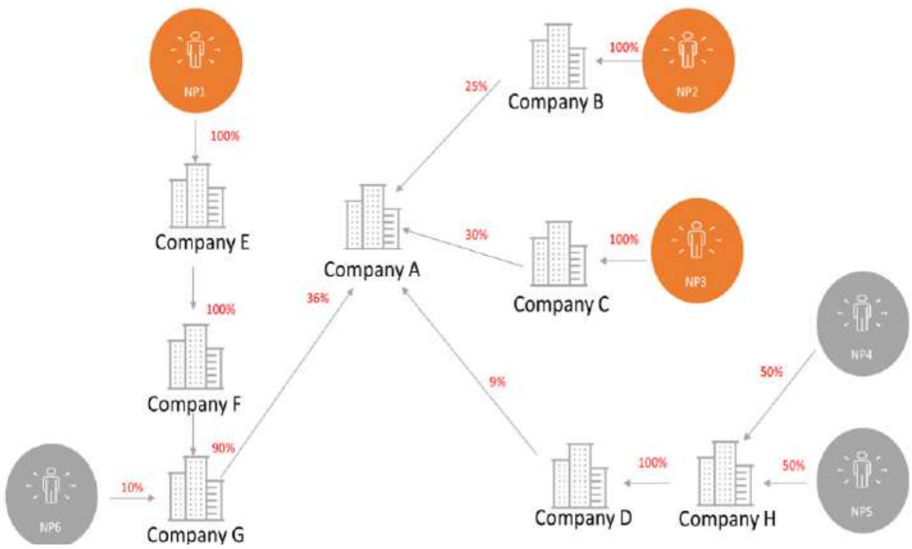
53. Control with fragmented ownership - where no individual passes the 25 percent threshold but a natural person who owns less than 25% of direct shares can be considered as a beneficial owner due to ultimate effective control through other means.

54. Trust Structures – created in one jurisdiction and used in another to hold assets across jurisdictions to disguise the origin of funds. Trusts are often used to enhance anonymity by disconnecting the beneficial owner from the trustee, settlor, protector, or beneficiary.

55. 56.55. Complex trust structures – involve cases where a party to the trust is a company, for example where a trustee is a company or beneficiaries have interests in the trust through a company. In such cases, the standard approach to identify all parties of the trust would not suffice to identify the beneficial owners, who are hiding being a legal entity. Rather, every individual who holds at least one share or vote in the legal entity that is a party to the trust should also be considered a beneficial owner of the trust.

56. Nominee shareholders and directors - legal entities that have nominees to represent shareholders and directors. Some nominee arrangements are used primarily to conceal the beneficial owner's identity.

57. Example 12 illustrates a case of a complex corporate structure. Company H is beneficially owned by natural persons 1, 2, and 3. All three have indirect ownership rights of 25% or more to company A. Natural persons 4 and 5 are not beneficial owners of company A. Natural person 4 holds only 4.5% of A, natural person 5 holds 4.5%, and natural person 6 holds 3.24 of company A. Natural person 1 owns his shares in company A through 4 layers, thus company A is part of a complex corporate structure.



Verifying the Identity of the Beneficial Owner

58. FIs and DNFBPs should consider whether the information provided regarding the beneficial ownership is adequate to establish the beneficial owner's identity and can be considered to meet the legal requirement of being "reliable, independent source documents, data, or information."

59. Adequate information to identify a beneficial owner includes, for example, the full name, nationality or nationalities, the full date and place of birth, residential address, nationality, national identification number and document type.

60. Beneficial ownership information should be verified to determine whether it is accurate. The degree of verification should be based on a risk-based approach. Simple corporate structures would require verification that the documents presented are authentic and valid. More complex ownership structures require more sources for verifying the information presented, including a greater focus on the types and the veracity of the documents provided to establish a beneficial owners' status (for example, shareholder documents and other agreements providing natural persons with control over the legal entity or the legal arrangement).

61. For complex corporate structures, documents that may help to verify the beneficial ownership may include: a certificate of incorporation of a company, an extract of a shareholder registry showing ownership, a trust deed, a partnership agreement, the constitution and/or certificate of incorporation for a legal entity, any nominee agreement that shows who exercises real control behind a shareholder arrangement, a shareholders' agreement that shows a natural person controlling the shares of more than one shareholder, effectively giving control, documentary evidence that a natural person is able to exercise a dominant influence over a legal person, documentary evidence that a natural person has the power to appoint senior management, documentary evidence (for example, an employment contract) that a director or employee can influence a legal person, or documentary evidence of exercise of dominant influence over the transactions of a legal entity/arrangement.

62. The list is not exhaustive but illustrative. The more complex or opaque a complex corporate structure is, and the less plausible or explainable the need for its existence, the more verification steps should be undertaken until the FI/DNFBP is satisfied it knows who the true beneficial owner(s) are.

Record-Keeping

63. The legal requirements governing the retention, updating, and timely communication of beneficial ownership (BO) information in Kuwait are outlined in several key pieces of legislation, primarily focused on ensuring transparency and compliance with international standards.

64. Under Article 11 (a) of Law 106/2013, FIs and DNFBPs are required to maintain all records obtained through the customer due diligence (CDD) process, including documents that demonstrate the identities of beneficial owners. These records must be kept for at least five years after the business relationship has ended or after the date of the occasional transaction.

Importance of Ongoing Monitoring for Identifying Beneficial Owners

65. The ongoing monitoring of beneficial ownership is crucial for accurately identifying the individuals who ultimately control or benefit from an entity. Over time, beneficial ownership interests can change, particularly in complex corporate structures where shares or control rights are divided among various stakeholders and are typically exercise indirectly. New investors might take a significant role in the company, or current owners might transfer control. These changes can occur frequently, making it essential for FIs and DNFBPs to continuously review and monitor transactions to ensure that their understanding of the true beneficial owners remains current.

66. Criminals often exploit complex ownership structures or use nominees to disguise the true controllers of an entity, making it easier for them to carry out illicit activities undetected. Without proper monitoring, these efforts to conceal ownership might go unnoticed, allowing funds to be moved illicitly without raising any alarms. Through diligent monitoring of financial flows and reviewing changes in ownership, institutions can identify irregular patterns such as unexpected transactions, transfers to high-risk countries, or discrepancies in ownership records and actual activities taking place. Detecting such anomalies early can help prevent the misuse of the financial system for illegal activities.

67. In line with FATF standards, FIs must adopt a risk-based approach to customer due diligence (CDD), which includes the need for ongoing monitoring. Entities identified as higher risk—due to factors such as their involvement in sensitive sectors or links to jurisdictions with weaker AML/CFT measures—should be subject to more frequent and detailed scrutiny. This allows institutions to adjust their CDD measures based on the evolving risk profile of a customer or beneficial owner, ensuring that any emerging risks are addressed promptly.

68. Additionally, continuous monitoring is vital for mitigating the risks associated with money laundering and terrorist financing. It allows institutions to detect unusual transactions, whether they be large transfers or a series of smaller transactions designed to avoid detection (commonly known as structuring). These irregularities can prompt further investigation or reporting to authorities, potentially preventing the completion of illegal financial activities.

69. From the case studies above it is clear how quickly the situation can change and a lot depends on the documentation held to correctly verify and validate information which may not be available from the records at the companies registry alone. Record keeping and KYC processes go beyond simple paper or check-box ticking exercises as determination of the BO often requires an in-depth analysis.

4. Sanctions and Enforcement

70. In Kuwait, non-compliance with beneficial ownership (BO) obligations can lead to serious consequences for financial institutions (FIs) and designated non-financial businesses and professions (DNFBPs). The authorities overseeing BO compliance, such as the Central Bank of Kuwait (CBK), Capital Markets Authority (CMA), Insurance Regulatory Unit (IRU), and Ministry of Commerce and Industry (MOCI), have the power to enforce penalties. These enforcement measures include administrative fines and penalties to ensure that institutions meet their anti-money laundering (AML) and counter-terrorist financing (CFT) obligations.

71. Supervisory bodies can issue warnings, require corrective actions, or impose fines based on the severity of the non-compliance. In extreme cases, they can revoke or suspend operating licenses, which could force non-compliant institutions out of the financial market.

72. These enforcement actions are based on Kuwait's Law No. 106 of 2013, which provides the legal framework for combating money laundering and terrorist financing, granting authorities the power to impose both administrative and criminal sanctions for violations of AML/CFT rules, including BO obligations.

73. Key provisions of Law No. 106 of 2013 include Article 14 of the law authorizes supervisory authorities to impose administrative penalties on non-compliant institutions. These penalties include warnings, suspensions, and the revocation of licenses. This legal basis enables authorities like the Central Bank of Kuwait (CBK), Capital Markets Authority (CMA), the Insurance Regulatory Unit (IRU) and Ministry of Commerce and Industry (MOCI) to take action against FIs/DNFBPs that fail to comply with BO obligations.

74. The overall effectiveness of these enforcement mechanisms is crucial to Kuwait's compliance with the Financial Action Task Force (FATF) standards, particularly in relation to Immediate Outcome 5, which assesses the transparency and beneficial ownership of legal persons and arrangements.