

# International Considerations on Beneficial Ownership - FATF Standards & the AML Package

Presented by

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# Revision of the FATF BO-Related Recommendations



# FATF – Revision of R. 24 & R.25

- May 2022 – Revisions to R. 24 are officially adopted by the FATF:
  - Risk understanding of foreign legal persons with sufficient links to the country.
  - Express reference to the multi-pronged approach.
  - Information to be available in a timely manner & has to be adequate, accurate and up-to-date
  - Prohibition of bearer shares and greater transparency re nominee arrangements.
- October 2022 – Revisions to R. 25 are officially adopted by the FATF.



# Determination of the Beneficial Owner(s)



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Beneficial ownership of corporate entities and other legal entities is to be determined based on the following components:

a. The natural person having direct or indirect ownership interest in the corporate entity;
b. The natural person having direct or indirect control through an ownership interest; or
c. The natural person having direct or indirect control via other means.

*Control via other means shall be identified independently of and in parallel to the existence of an ownership interest or control through ownership interest.*



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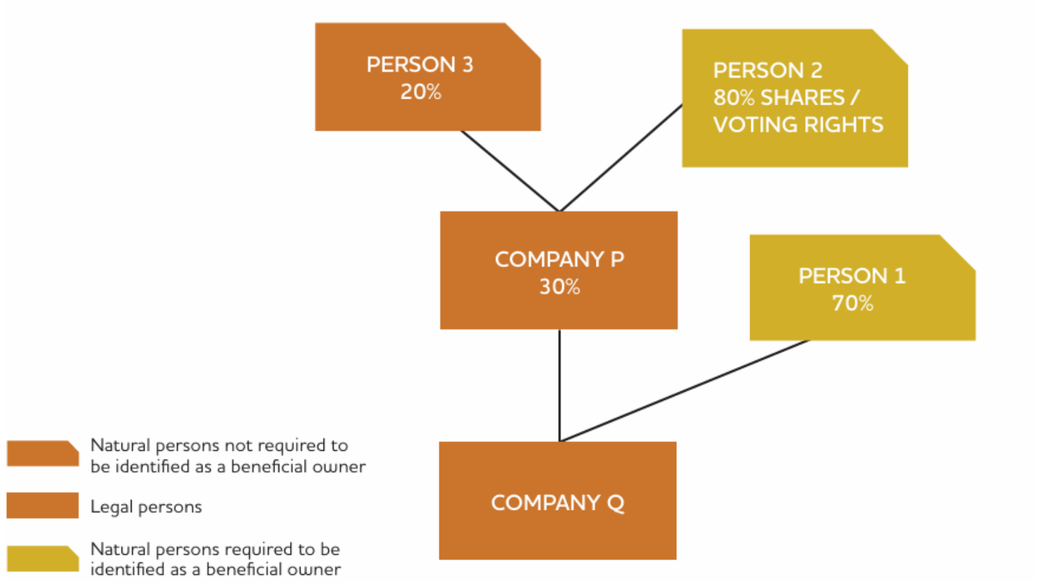
# A) THE NATURAL PERSON HAVING DIRECT OR INDIRECT OWNERSHIP INTEREST IN THE CORPORATE ENTITY

- A natural person can have **beneficial ownership through ownership interest**, meaning having **direct or indirect ownership of 25% or more of the shares or voting rights or other ownership interest in the corporate entity**.
- Threshold decreased to 25% and may be decreased further where the categories of corporate entities are associated with higher ML/TF risks.
- The term ‘other ownership interest’ also includes rights to a share of profits, other internal resources, or liquidation balance.



# B) THE NATURAL PERSON HAVING DIRECT OR INDIRECT CONTROL THROUGH AN OWNERSHIP INTEREST

Figure 4 – This scenario is illustrated in the example below:



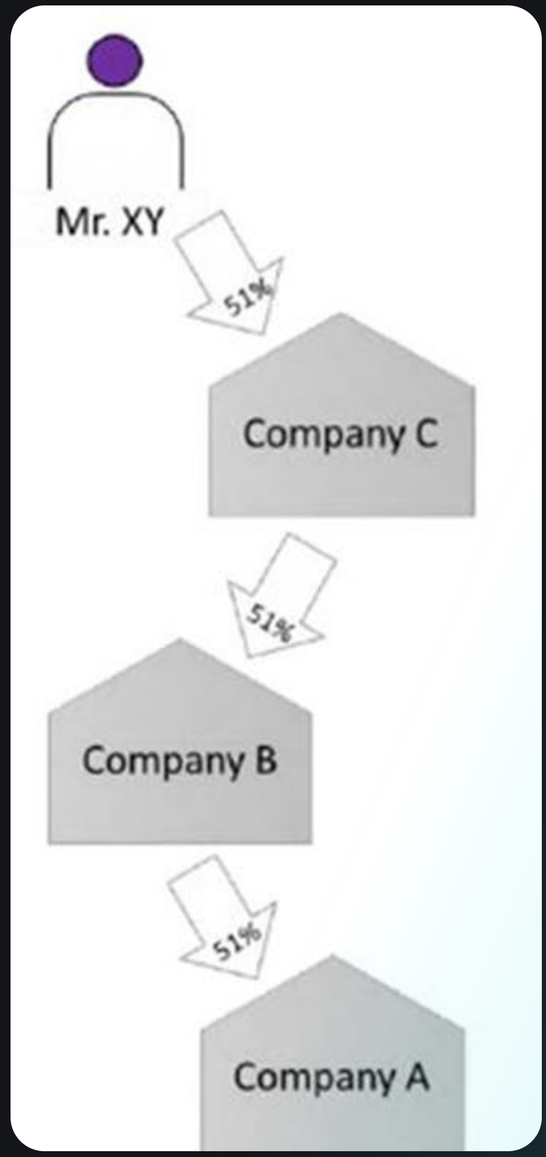

Person 1 owns 25% plus one or more of the shares in Company Q, making him/her a beneficial owner.

Person 2 does not ultimately own 25% plus one or more of the shares in Company Q but, through the ownership of a majority of voting rights in Company P, Person 2 is able to control certain important decisions in Company P, such as who is to sit on the company's board of directors, and, in turn, influence decisions within Company Q.

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# B) THE NATURAL PERSON HAVING DIRECT OR INDIRECT CONTROL THROUGH AN OWNERSHIP INTEREST

- Control through ownership interest of the corporate entity means **direct or indirect ownership of 50% plus 1 of shares or voting rights or other ownership interests**.
- Situations when multiplying the ownership interest of the shareholders, the resulting ownership interest would be less than 25% but control would still be actually exercised through a majority shareholding of 50% plus 1 of shares or voting rights or other ownership interest in the corporate entity at every level of the structure.

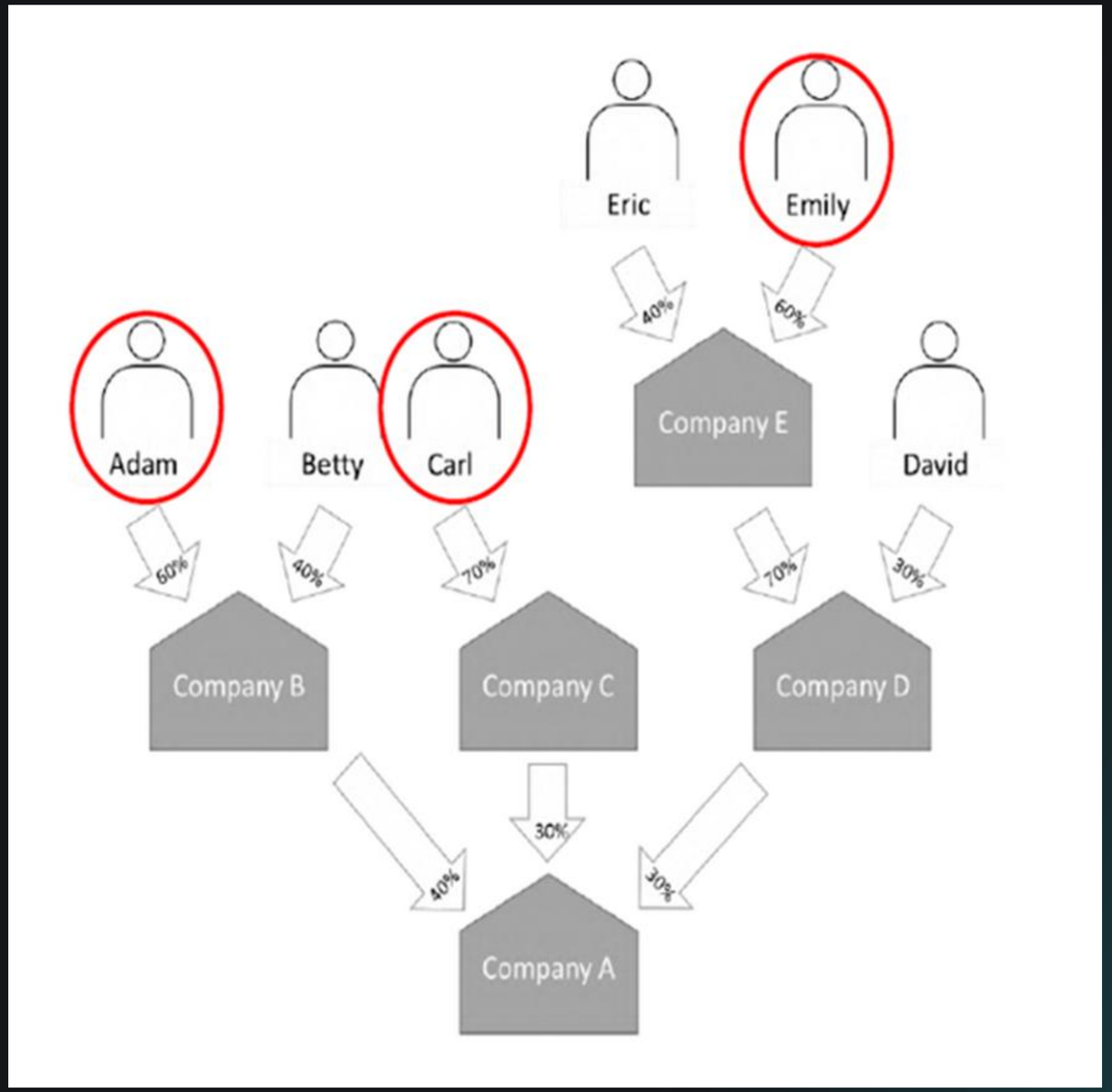


BOs of Company A are according to Art. 54(a) **Adam, Carl and Emily because each of them controls a direct shareholder of company A who has an ownership interest (25% or more).**

Adam controls Company B which has 40% share.
Carl controls Company C which has 30% share.
Emily indirectly (through the control of company E) controls Company D which has 30% share.

None of the BOs or other persons in the illustration control Company A or have indirect ownership.

- Adam: (0.4 x 0.6 = 24%)
- Betty: (0.4 x 0.4 = 16%)
- Carl: (0.3 x 0.7 = 21%)
- Eric: (0.3 x 0.7 x 0.4 = 8.4%)
- Emily: (0.3 x 0.7 x 0.6 = 12.6%)
- David: (0.3 x 0.3 = 9%)



# C) THE NATURAL PERSON HAVING DIRECT OR INDIRECT CONTROL VIA OTHER MEANS

## CONTROL FURTHER DEFINED

**Control of the legal entity shall in any case include** the possibility to exercise:

- the majority of the voting rights
- relevant veto rights or decision rights attached to the share and any decisions regarding distribution of profit of the legal entity or leading to a shift in assets
- the right to appoint or remove a majority of the members of the board or similar officers of the legal entity;

**Depending on the particular situation of the legal entity and its structure, other means of control may include:**

- formal or informal agreements with owners, members or the corporate entities, provisions in the articles of association etc.
- relationships between family members; or
- use of formal or informal nominee arrangements

# Senior Managing Officials

- Where no beneficial owner can be identified or there are doubts as to the beneficial owners so identified – identify and verify the identity of the senior managing officials [Art 22(7) AMLR].
- Although they are identified in those situations, the senior managing officials are not the beneficial owners (Recital 125 AMLR)
- Can provide the legal person's own address instead of the official's actual residential address.



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# UNIVERSAL LOOK-THROUGH APPROACH

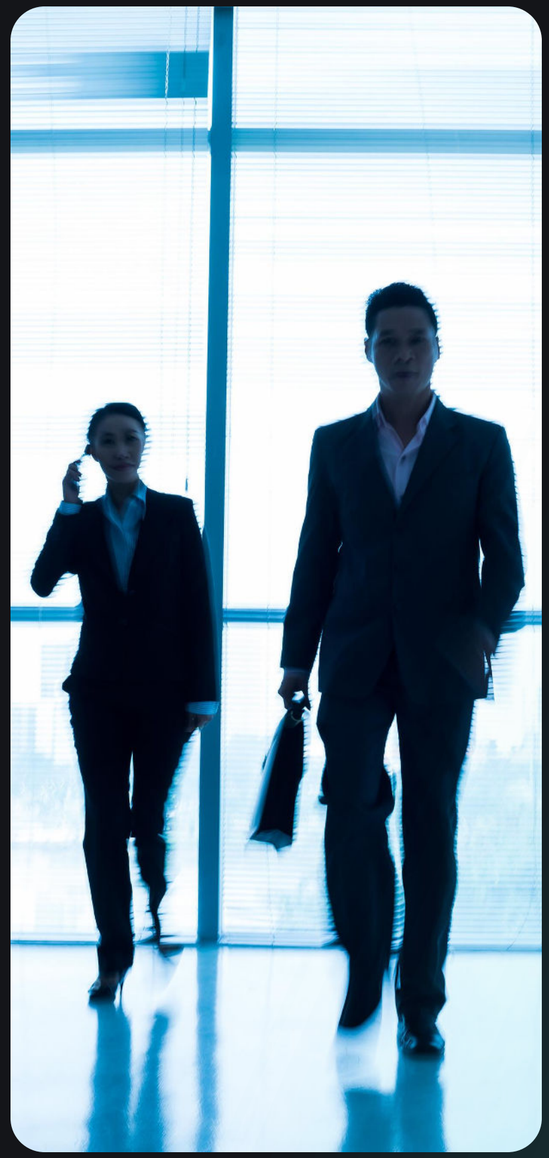
- Identifying and verifying BOs in the case of trusts or similar legal arrangements where these feature in a body corporate's structure.
- Also applicable to foundations.
- Article 55 of the AMLR.
- **Universal look-through approach.**
- **BOs are determined on the basis of the rules applicable to trusts (rather than those applicable to corporate entities).**



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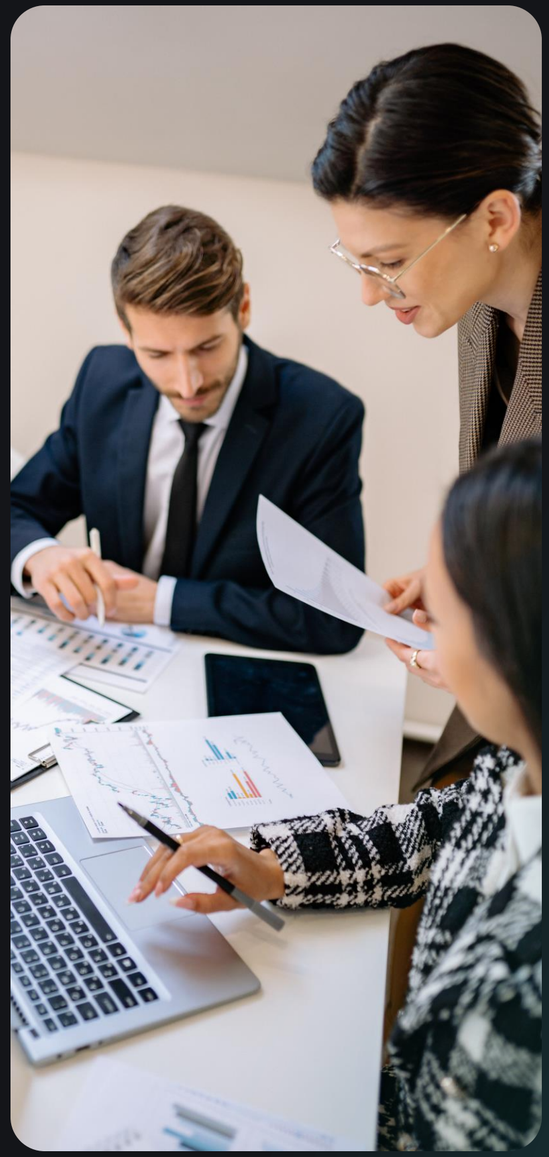
# FOUNDATIONS

- a. The Founders;
- b. The members of the management body in its management function;
- c. The members of the management body in its supervisory function;
- d. The beneficiaries;
- e. Any other natural person, who controls directly or indirectly the legal entity.



# EXPRESS TRUSTS AND SIMILAR LEGAL ARRANGEMENTS

- a. The settlors;
- b. The trustees;
- c. The protectors, if any;
- d. The beneficiaries;
- e. Any other natural persons exercising ultimate control over the express trust by means of direct or indirect ownership or by other means, including through a chain of control or ownership.



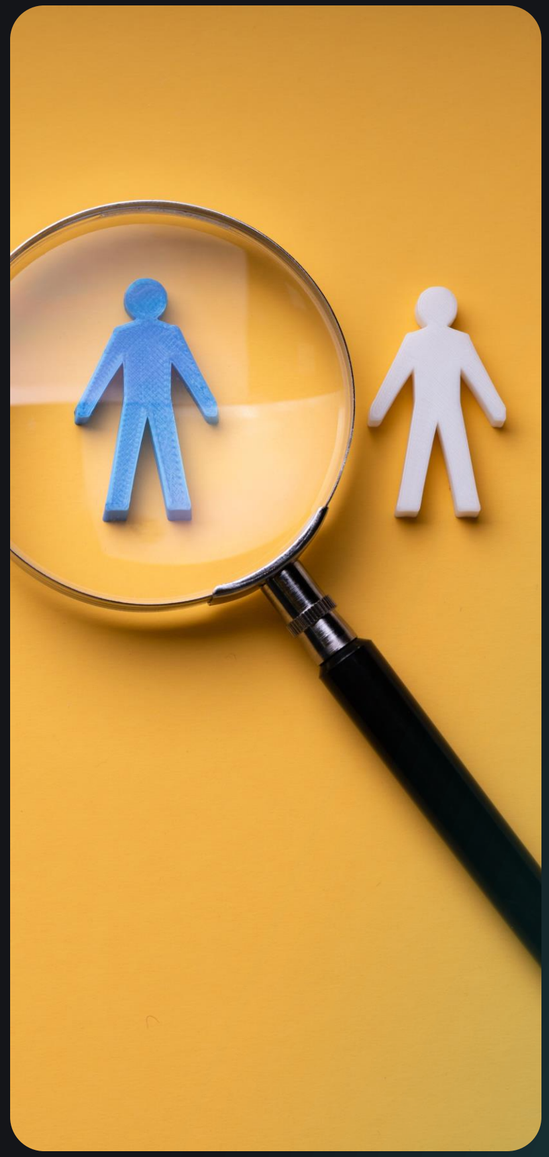
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# IDENTIFICATION OF A CLASS OF BENEFICIARIES

- Where beneficiaries have yet to be determined ➤ class of beneficiaries and general characteristics to be identified.
- Beneficiaries within the class shall be beneficial owners as soon as they are identified or designated.
- Instances where only class of beneficiaries and characteristics shall be identified and not the individual beneficiaries within the class:

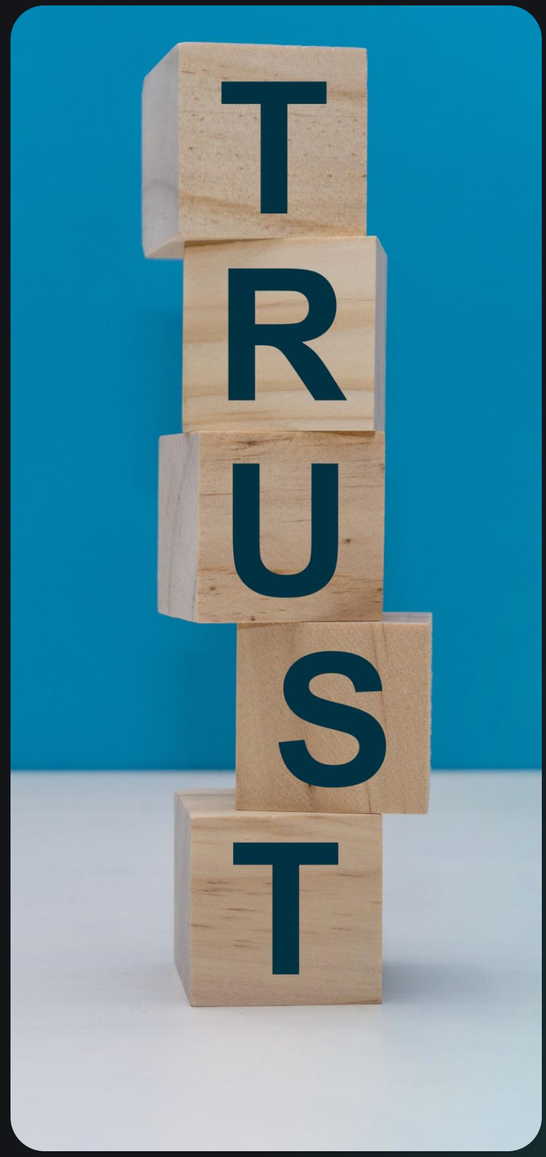
  a. Pension schemes
  b. Employee financial ownership or participation schemes (low risk)
  c. Foundations, express trusts etc. when:

     i. Legal entity or arrangement is set up for non-profit or charitable purpose; and
     ii. Low risk of misuse for ML/TF.



# DISCRETIONARY TRUST

- Where the beneficiaries have yet to be selected, the objects of a power and default takers shall be identified.
- Beneficiaries among the objects of a power shall be BOs as soon as they are selected.
- Default takers shall be BOs when the trustees fail to exercise their discretion.



# COLLECTIVE INVESTMENT SCHEMES

Article 61 of the AMLR provides that where CISs are set up in the form of a legal arrangement => BOs = natural person who fulfil one or more of the following conditions:

- a. holding directly/indirectly 25% or more of the units held in the undertaking;
- b. ability to define or influence the investment policy of the undertaking;
- c. control its activities through other means.



# Identification & Verification



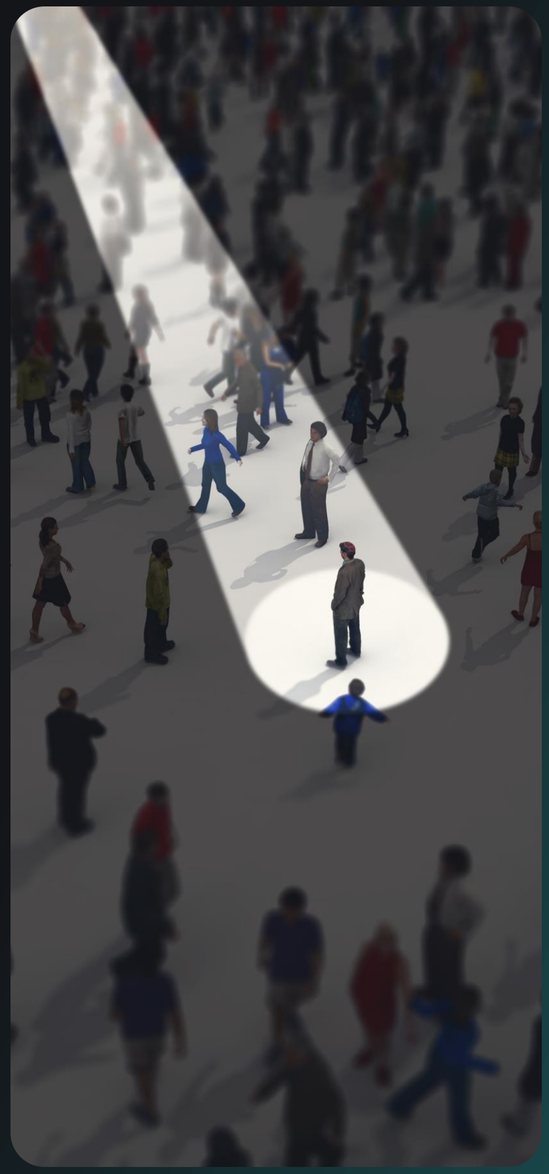
# IDENTIFICATION & VERIFICATION

- Additional data point – ‘unique personal identification number … and general description of the source of such number’ [Art 62(1)(a) AMLR].

- Verification of identity – ‘by taking reasonable measures to obtain the necessary information, documents and data from the customer or other reliable source, including public registers other than the central registers’ [Art 22(7) AMLR]:

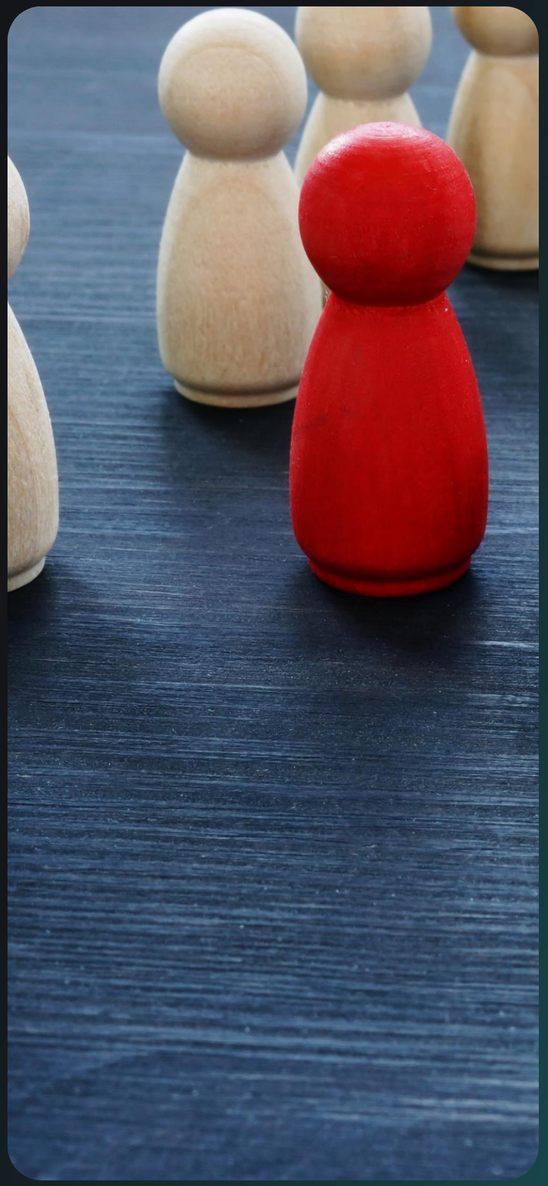
  - Public registers or other similar national systems
  - Reputable data services providers
  - Credit or financial institutions
  - Obliged entities within the group
  - Certified documentation

  [Art 10 Draft RTS on CDD – non-exhaustive]



# IDENTIFICATION & VERIFICATION

- Use of the Beneficial Ownership Registers:
  - An additional step at verification of identity stage [Art 22(7) AMLR].
  - Reporting discrepancies within fourteen (14) calendar days – provide ‘information they have indicating the discrepancy and whom they consider to be the beneficial owners and, where applicable, the nominee shareholders and nominee directors to be and why’ [Art 24(1) AMLR].
  - Foreign legal persons or legal arrangements – disclosure of BO information with an EEA Member State Beneficial Ownership Register in specific scenarios [Art 67 AMLR].



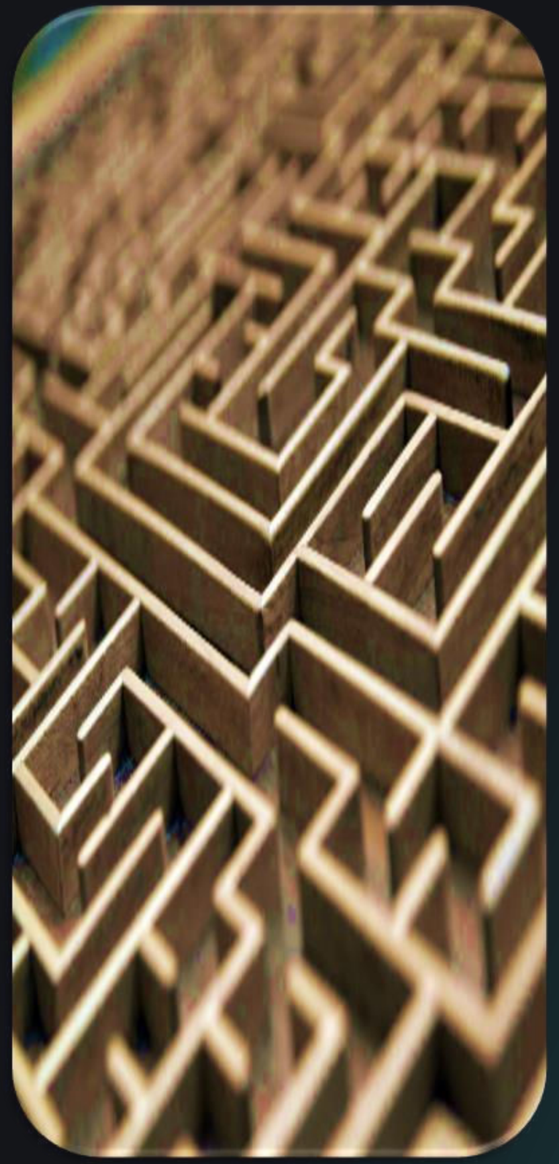
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# Ownership & Control Structure

- Specific information in cases where '*the customer's ownership and control structure contain more than one legal entity or legal arrangement between the customer and their beneficial owners*' [Art 11(2) RTS on CDD].

- Indicators of complexity:

  - the number of intermediate layers between the customer and the beneficial owner;
  - the presence of legal arrangements or similar legal entities in any of those layers;
  - entities registered in high-risk jurisdictions;
  - the involvement of nominee shareholders or nominee directors in the structure.






# TRUSTS

- Class of beneficiaries / Objects of Power / Default Taker:

  - Relative information to allow their identification.
  - Documentation to ensure the information is correct and up-to-date.

- Discretionary Trust:

  - Information about how and in which ways the power of discretion can be exercised.
  - Establish whether trustees have exercised their power of discretion or whether the default takers have become beneficiaries due to the trustees' failure to exercise their power of discretion.

- Take risk-sensitive measures to be aware of material events.

- A recent copy of the trust deed or an extract thereof, together with any other document that determines the exercise of any powers by the trustees, certified by an independent professional



# Questions?

# Thank you!

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