



# **Revised Implementing Procedures Part I**

## **Section 4.2.2 – The Beneficial Owner**

Clara Borg Bonaci  
Legal Affairs

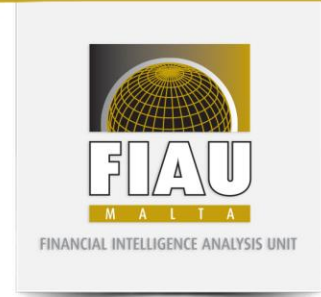
The Revised FIAU Implementing Procedures Part I – 18 October 2019

## Requirement under Reg 7(1)(b)



*Identify, where applicable, the beneficial owners, and take reasonable measures to verify their identity so that the subject person is satisfied of knowing who the beneficial owners are*

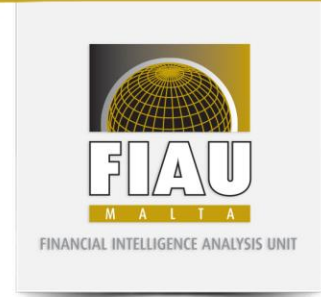
## Definition – Part 1



*‘Beneficial owner means any natural person or persons who ultimately own or control the customer and, or the natural person or persons on whose behalf a transaction is being conducted, and ...’*

BO must be a **natural** person  
There may be **more than one** BO

## Definition – Part 2



### **BODY CORPORATE, BODY OF PERSONS**

- Ownership of shares or voting rights
- Control through other means
- Senior managing officials

### **TRUST**

- Settlor
- Trustee(s)
- Protector
- Beneficiaries/  
class of
- Other natural  
person exercising  
control

### **FOUNDATION, LEGAL ARRANGEMENT**

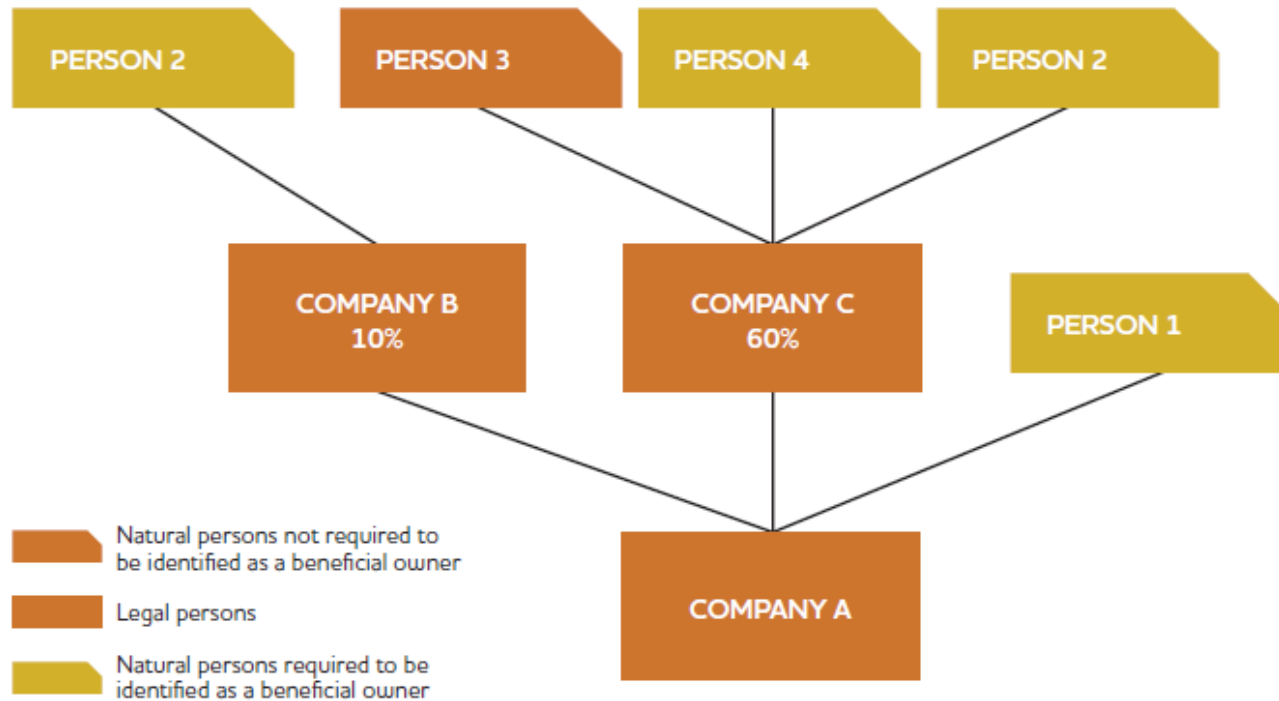
Persons holding  
equivalent or similar  
positions

# Body Corporate or Body of Persons

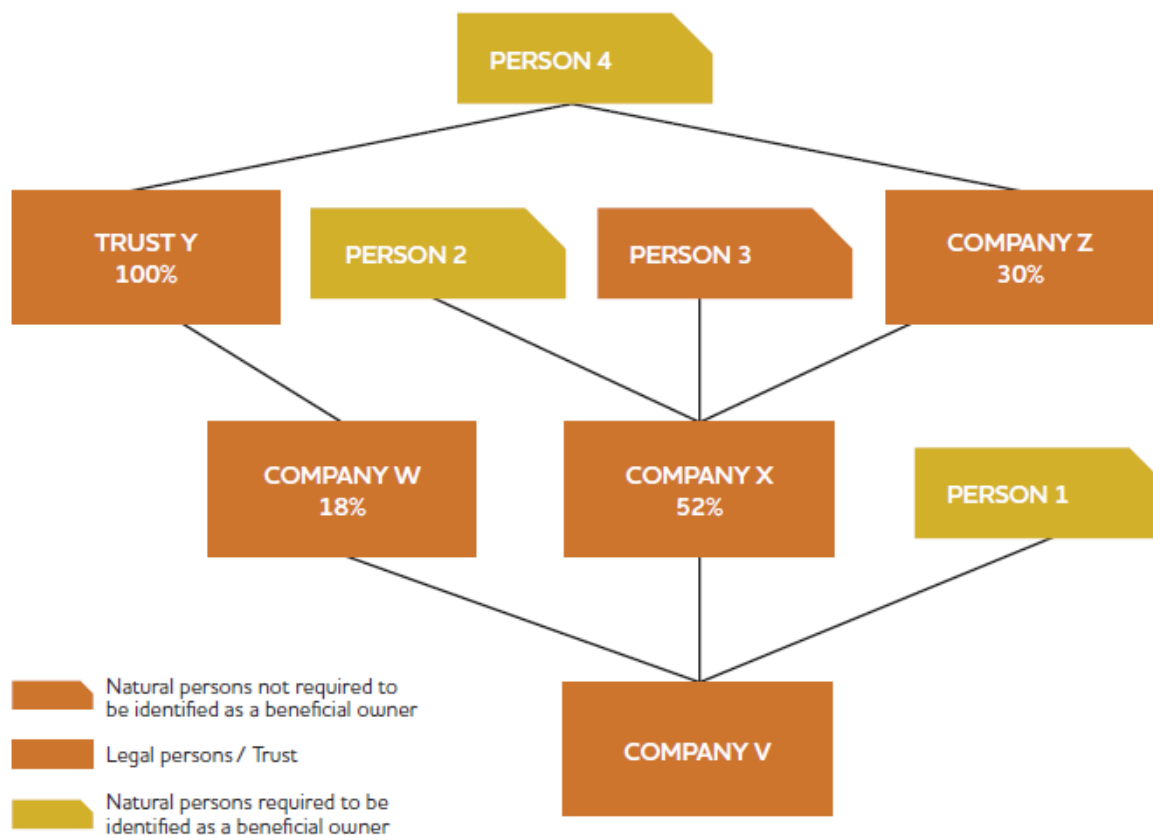


<b>TIER ONE</b>	<b>Direct or indirect ownership:</b> <ul style="list-style-type: none"><li>• 25%+1 or more of the shares</li><li>• 25%+1 or more of the voting rights</li><li>• an ownership interest of more than 25% Including through bearer share holdings</li></ul>
<b>TIER TWO</b>	<b>Control through other means</b>
<b>TIER THREE</b>	<b>Senior managing officials</b>

## Direct or Indirect Ownership – Figure 1

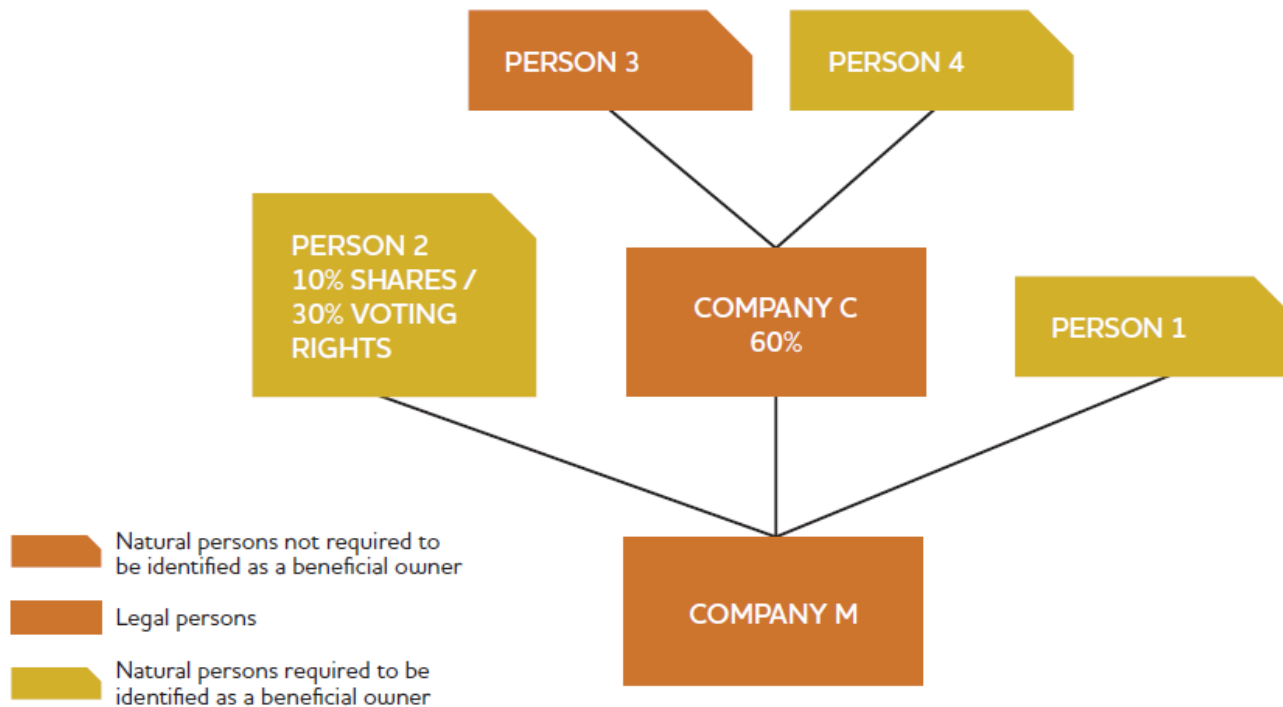


## Direct or Indirect Ownership – Figure 2



Body Corporate or Body of Persons

## Direct or Indirect Ownership – Figure 3





## Bearer Shares/Warrants to Bearer



- Higher risk of ML/FT – undertake additional measures to mitigate risk
- When **customer** or **any entity within the structure** is a company with bearer shares

### Documents issued in a jurisdiction that requires notification and registration of shareholders in a register:

- True copy of register, signed and certified by the company secretary, director, registered agent
- and**
- Written undertaking from company secretary, director, registered agent that SP will be notified immediately if bearer share certificate is transferred

### Bearer share certificates are deposited with a regulated FI or custodian:

- Copy of bearer share certificate;
  - Written declaration certifying on whose behalf document is held, signed by FI or custodian;
- and**
- Written undertaking by FI or custodian that SP will be notified immediately if bearer share certificate is transferred

Body Corporate or Body of Persons

## Companies listed on a regulated market

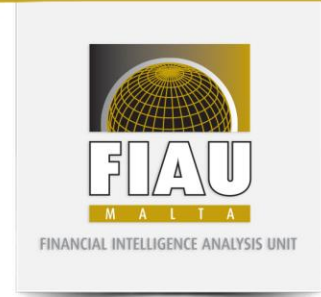


- BO of company that has **its securities listed on a regulated market**
- Subject to disclosure requirements consistent with:
  - EU legislation; or
  - International standards ensuring adequate transparency of ownership information
- Company is a majority-owned subsidiary of such listed companies (and there can be no other BO)

Transparency of ownership information  
=  
No need to identify and verify the beneficial owner(s)

Body Corporate or Body of Persons

## Control through other means



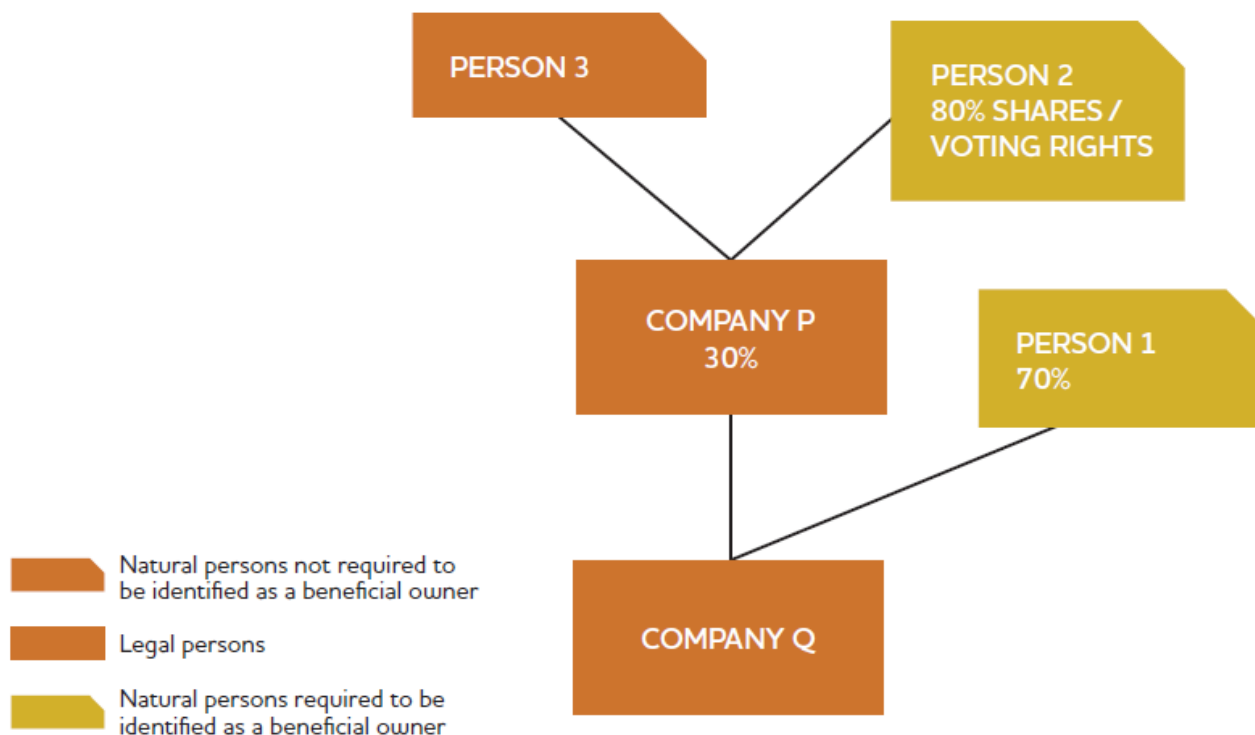
Assess and determine whether anybody controls the entity through other means:

- Where **nobody** has been identified through Tier One; or
- There is **reason to believe** that another person is exercising ultimate control over the running or management of the entity, regardless of any ownership of shares or voting rights

Directors: not considered to fall under this definition solely by virtue of their position

Case-by-case assessment when there are circumstances that indicate that a person is exercising control over the management

## Direct or Indirect Ownership – Figure 4



Body Corporate or Body of Persons

## Senior managing officials



Consider senior managing official(s) of the customer as BO(s)

After having exhausted all possible means

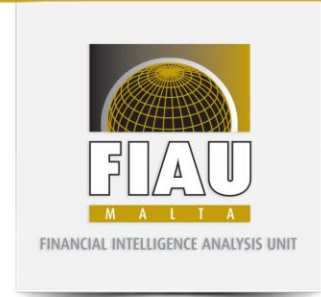
**No grounds of suspicion**

**Document the actions taken** to try and identify the BO(s)

Last resort – **not a default measure**

Body Corporate or Body of Persons

## Senior managing officials

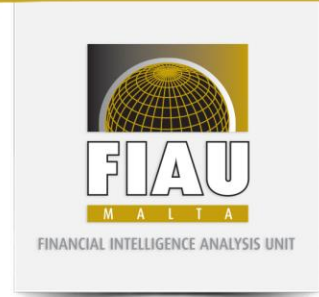


Who are the senior managing officials?

Depends on the type of body corporate or body of persons

- a) Those persons responsible for taking strategic decisions affecting the business operations or general direction of the entity;
  - Directors
  
- b) Those persons exercising executive control over the daily or regular affairs of the entity through senior management positions
  - Executive functions
  - Executive directors
  - CEOs
  - CFOs

# Trusts



- Settlor (**initial and subsequent**)
- Trustee(s)
- Protector (where applicable)
- Beneficiaries/class of beneficiaries
- Any other natural person exercising ultimate control over the trust through direct or indirect ownership or by other means, e.g.:

Power, under trust deed or by law, to:

- Dispose of, advance, lend, pay, apply trust property
- Vary or terminate trust
- Add or remove beneficiary
- Add or remove person to or from class of beneficiaries
- Appoint/remove trustees
- Give another individual control over trust
- Direct/withhold consent the exercise of the above powers

Look at the persons who occupy specific roles

## Legal entities (such as foundations), Arrangements similar to trusts

E.g.: Treuhands/Fiducie, other structures that mimic trusts (assess on a case-by-case basis)

Persons undertaking equivalent roles:

- Founder (settlor): **initial and subsequent**
- Administrator (trustee)
- Member(s) of supervisory council (protector)
- Beneficiaries in whose interest the foundation is set up or operates
- Any other natural person ultimately exercising control

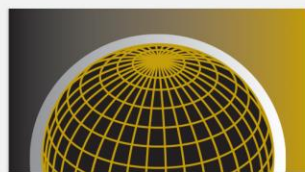
Purpose trusts: Set up for a cause or a purpose.

- No beneficiaries to identify;
- Determine the cause or purpose for which the entity is set up

Look at the persons who occupy specific roles



- ✓ Understand who your customer is acting for
- ✓ Look at the definition which applies to your direct **customer**
- ✓ Assess the **entire structure**, then aggregate ownership
- ✓ Grounds for suspicion? Consider **STR**
- ✓ Document your actions



**FIAU**

**M A L T A**

FINANCIAL INTELLIGENCE ANALYSIS UNIT

Clara Borg Bonaci

[clara.borgbonaci@fiumalta.org](mailto:clara.borgbonaci@fiumalta.org)

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65C, Tower Street, Birkirkara BKR 4012, Malta

T. (+356) 21 231 333 F. (+356) 21 231 090 E. [info@fiumalta.org](mailto:info@fiumalta.org) W. [fiumalta.org](http://fiumalta.org)

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