



FINANCIAL INTELLIGENCE AUTHORITY

The AML/CFT/CPF Supervision Unit

**Guidance to Financial Institutions and Other Business  
Activities on the Identification and Verification of  
Beneficial Owners**

**(May 2022)**

## **Overview**

The power to issue guidelines is conferred onto the Financial Intelligence Authority (the Authority) by Section 6 (1) (f) of the Money Laundering (Prevention) Act, Cap 12.20 of the Laws of Saint Lucia (the MLPA). The purpose of these guidelines is to assist reporting entities in ensuring compliance with Section 17 (4) (b) of the MLPA which requires reporting entities to identify the beneficial owner of a legal entity, and take reasonable measures to verify the identity of the beneficial owner such that the reporting entity is satisfied that it knows who the beneficial owner is.

The definition of beneficial owner was inserted by the 2021 MLPA Amendment Act. Therefore, this Guidance document is to advise reporting entities of the conditions to be applied in adequately identifying and verifying the beneficial owner of legal persons/legal arrangements.

## **Scope of the Guidelines**

The guidelines are being issued to all reporting entities listed in Schedule 2, Parts A and B of the Money Laundering (Prevention) (Amendment) Act No. 16 of 2021.

These guidelines reflect best practice internationally and implement the recommendations of the Financial Action Task Force (FATF). The FIA recognises that reporting entities may have procedures in place to identify beneficial owners which, whilst not identical to those outlined in these Guidelines, nevertheless impose procedures, that are equal to or higher than those contained in these Guidelines.

## **Glossary of Terms**

**Competent Authority** refers to the following bodies in Saint Lucia; the Financial Services Regulatory Authority, the Inland Revenue Department, the Customs and Excise Department and the Royal Saint Lucia Police Force.

**Control by Other Means** includes the right to appoint or remove a majority of the board of directors or general partners or managers (as the case may be) of a company and the exercise of control over a company by any means other than control by ownership of any interest;

**Corporate Vehicles** means legal persons and legal arrangements

**Senior Manager** means the chief executive, managing or executive director or president of a company, general partner (as the case may be), a person held liable by law for the action of a legal person or arrangement or other persons holding such senior positions in the company by whatever title known.

**Ultimately Own and Control** means a direct or an indirect ownership or control of twenty-five per cent (25%) or more of the shares, voting rights or ownership interest in a company or a legal arrangement

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## 1.0 Introduction

- 1.1 There has been growing concern over the years regarding legal persons and legal arrangements being misused to conceal assets gained illegally while maintaining a legitimate front. This includes, the use of shell companies and the creation of companies, trusts and other legal persons/arrangements with complex ownership and control structures to avoid detection by authorities. The lack of transparency and inability to identify ultimate beneficial owners has become a hindrance in effectively combatting criminal activities.
- 1.2 The Financial Action Task Force (FATF), in its efforts in leading the global fight against money laundering (ML), terrorist financing (TF) and proliferation financing (PF), issued two (2) recommendations (FATF Recommendations 24 and 25) that require countries to ensure adequate, accurate and timely information on beneficial ownership is available, which can be accessed by competent authorities in a timely manner. This includes the requirement to identify and verify beneficial ownership information.

The FATF has also published guidance in this area to further supplement the recommendations and these include the “*Guidance on Transparency and Beneficial Ownership*”<sup>1</sup> published in October 2014 and the “*Best Practices on Beneficial Ownership for Legal Persons*”<sup>2</sup> in October 2019.

- 1.3 Reporting Entities play a crucial role by obtaining beneficial ownership information which assists in preventing the misuse of legal persons/arrangements in the financial system.
- 1.4 The obligations of reporting entities with regard to beneficial ownership identification are set out in Section 17 (4) (b) of the MLPA and are as follows:
- (a) Identify the beneficial owner of a legal entity
  - (b) Take reasonable measures to verify the identity of the beneficial owner such that the reporting entity is satisfied that it knows who the beneficial owner is
  - (c) Take reasonable measures to understand the ownership and control structure of the customer

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<sup>1</sup> <http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf>

<sup>2</sup> <https://www.fatf-gafi.org/media/fatf/documents/Best-Practices-Beneficial-Ownership-Legal-Persons.pdf>

## **2.0 Who is a Beneficial Owner?**

- 2.1 A beneficial owner is **always** a natural person who ultimately owns or controls a legal entity.

The 2021 MLPA Amendment Act defines a beneficial owner as an individual or individuals (being a natural person or persons) who meet the following criteria:

- (a) Who ultimately owns or controls a company or legal arrangement;
- (b) Who exercises ultimate effective control over a legal person or a legal arrangement, such as a senior manager or signatory; or
- (c) On whose behalf a transaction or activity is being conducted.

- 2.2 Beneficial owner identification is relevant to the following types of customers:

### **Legal Persons**

Domestic Companies

International Business Companies

Partnerships

Cooperative Societies

Non-Profit Organisations (such as clubs, societies, charities, associations, religious organisations and foundations)

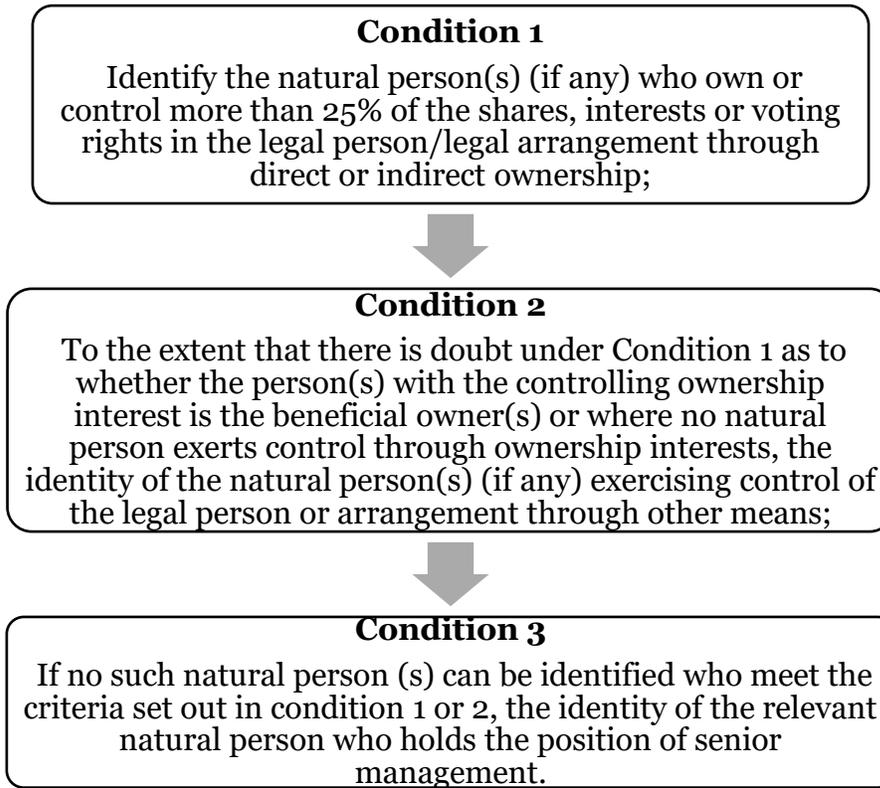
### **Legal Arrangements**

Domestic Trusts

International Trusts

Other Similar Arrangements

- 2.3 In order to effectively identify a beneficial owner, the following conditions must be applied:



Condition 1 is self-explanatory<sup>3</sup>, however if Condition 1 is not satisfied, then you proceed to Condition 2 and finally if Condition 2 is not satisfied, you move to Condition 3.

- 2.4 For customers that are legal arrangements, the reporting entity must identify the beneficial owners through the following information:

#### Trusts

Identify the following persons:

- (a) Settlor (s)
- (b) The Trustee(s)
- (c) The Protector (if any)
- (d) The Beneficiaries or Class of Beneficiaries
- (e) Any Other Natural Person exercising ultimate effective control over the trust (including through a chain of control/ownership)

#### Other Types of Legal Arrangements

Identify Persons in Equivalent or Similar Position.

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<sup>3</sup> All reasonable measures must be taken to identify the beneficial owner under Condition 1. Accordingly, reporting entities are required to document the measures taken in an attempt to identify the beneficial owner under Condition 1.

### 3.0 How to Identify the Beneficial Owner

#### 3.1 Identifying the Beneficial Owner of a Legal Person

**Condition 1: Identify the natural person(s) (if any) who own(s) or control(s) more than 25% of the shares, interests or voting rights in the legal person/legal arrangement through direct or indirect ownership**

##### (a) Scenario 1: Direct Ownership vs Indirect Ownership

Ultimate controlling ownership interest over an entity includes having more than 25% ownership or equity interest in an entity which may be observed, among others, through share capital or voting rights. The ownership may either be direct ownership (or indirect ownership).

What is Direct Ownership?

An interest or voting right held and controlled by a natural person in his/her own name is directly owned by that natural person. Direct ownership is generally recorded in a share register, register of members or partners, or other register of ownership interests. An interest or right held jointly by natural persons may also be considered directly owned.

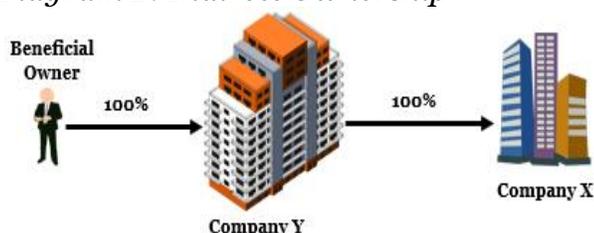
*Diagram 1: Direct Ownership*



What is Indirect Ownership?

Indirect ownership may occur through a chain of companies or through a nominee shareholder arrangement. Where a share or right is held indirectly, the chain of ownership or nominee arrangement must be analyzed to identify the underlying natural persons with a controlling ownership interest.

*Diagram 2: Indirect Ownership*

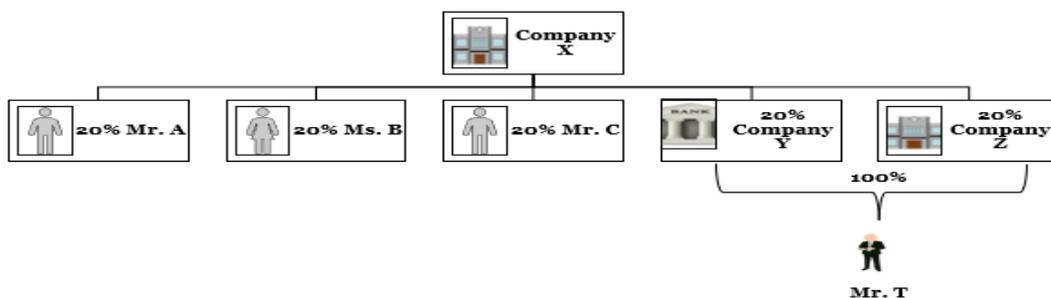


As illustrated by Diagrams 2, if Company X is legally owned by Company Y (according to its corporate registration information), the beneficial owners are the natural persons behind Company Y (or behind the ultimate holding company in the chain of ownership).

(b) Scenario 2: Indirect and Aggregated Ownership

Circumstances may exist where a natural person owns less than 25% direct shareholding in a legal entity but may be identified as the beneficial owner through his indirect and aggregated ownership of the legal entity.

*Diagram 3: Beneficial Owner with Indirect and Aggregated Ownership*



All direct shareholders of Company X each own 20% of the shares, however Mr. T has an aggregated ownership of Company Y and Company Z, which makes him the indirect owner of 40% of Company X.

(c) Scenario 3: Power to Take Action and Make Decisions

Even if there is no natural person meeting the controlling ownership interest threshold, there may be control through other ownership means. Shareholders may collaborate to increase a person's level of control through formal or informal agreements. If no natural person meets the 25% threshold, or if there is doubt as to whether a natural person meeting the threshold is the true "beneficial owner," any shareholder agreements, powers to appoint/remove directors and senior management, convertible stock, or outstanding debt that is convertible into voting equity should be considered.

A natural person exercising indirect control over the legal entity through one or more of these other ownership means may be considered a "beneficial owner."

- (d) If Condition 1 has been met, the natural person identified as fulfilling the Condition 1 shall be identified as the beneficial owner. However, where there is doubt that the person identified under Condition 1 is not the beneficial owner; or where no natural person has ultimate controlling ownership interest over the legal person, the reporting entity shall apply Condition 2.

**Condition 2: Identity of the natural person(s) (if any) exercising control of the legal person or arrangement through other means.**

- (e) A natural person may exercise effective control over an entity if he has the powers and authority to take actions and make decisions for the entity, including on matters relating to its financial affairs, financial relationships, operations or other matters that may fundamentally affect the company, without having ownership interest over the entity. Such powers may be attained through other means, such as:
- (i) Having dominant influence to appoint or remove directors/senior management;
  - (ii) Having the power of attorney over the entity;
  - (iii) Owning stocks or rights over outstanding debts that are convertible into voting equity;
  - (iv) Participating in the financing of the company; or
  - (v) Having control through trusts, agreements, arrangements, understandings, policies or practices, close and intimate family relationships or if a company defaults on certain payments.

A natural person demonstrating control may be, among others, the entity's senior management, directors or an authorised signatory.

In addition, there may be a presumption of control, even if not exercised, where a natural person uses, enjoys, or benefits from the assets of the legal person.

- (f) A natural person identified as meeting any of the criteria under Condition 2, shall be identified as the beneficial owner. However, where, through Condition 1, no natural person is identified to have ultimate ownership interest over the legal person and through Condition 2, no natural person is identified to have and exercise, either directly or indirectly, control over the entity, the reporting entity shall apply Condition 3.

### **Condition 3: Identity of the relevant natural person who holds the position of senior management within the legal person**

- (g) If no natural person exerts control through Condition 1 or Condition 2, the natural persons who exercise control through management may be regarded as the beneficial owner. Natural persons who may exercise control through positions held within a legal person include those responsible for strategic decisions fundamentally affecting the entity's business practices or strategic direction and those with executive control over the entity's daily affairs. These may include directors (but not nominee directors), managers, or executive officers, deputy directors, Board members, chief executive officer, chief financial officer, chief operating officer, or any other person performing similar management functions.
- (h) In applying the conditions as set out above, reporting entities should ensure that they have identified either:
  - (i) the lack of a natural person as set out in Condition 1, as the ultimate beneficial owner of an entity
  - (ii) the lack of natural person as set out in Condition 2, who exercises ultimate control over the entity
- (i) As a matter of good practice, reporting entities should record and keep documentations (including structure charts on the shareholders identified throughout the chain of ownership), reflecting all findings in applying the three conditions, leading to the ultimate beneficial owner.

### **3.2 Identifying the Beneficial Owner of Legal Arrangements**

In respect of legal arrangements, persons with "ultimate control" over the legal arrangement shall be identified as the beneficial owners.

With regard to a trust, such persons may include, among others the:

- (a) Trustee (person who manages the trust)
- (b) Settlor (the person who creates the trust)
- (c) Protector (person appointed by settlor to oversee the trustee)
- (d) Beneficiary (person who benefits from the trust)

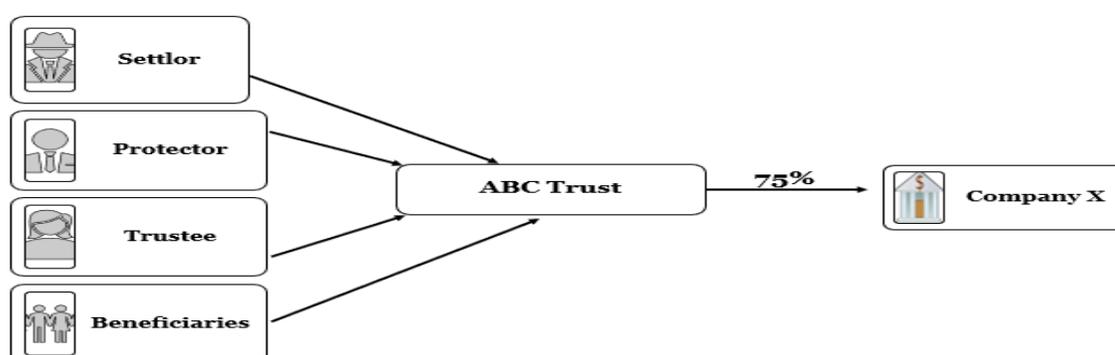
In determining the natural persons who have control over a trust, the following can be considered:

- (a) A settlor with power to revoke the trust and return property of trust back to the settlor;
- (b) A protector with power to remove or appoint a trustee;
- (c) An investment manager with power to direct the trustee's action; and
- (d) A person who benefits from the trust .

### 3.3 Identifying the Beneficial Owner When Legal Persons and Legal Arrangements Are Combined

A trust may have ownership of a company, with the trustee holding the shares or other rights as the titled legal owner. In some such situations, the trustee or settlor may be a legal person itself (such as a “corporate trustee”). When a party to a trust (such as the trustee) is not a natural person, the beneficial owner of that legal person (but not the legal person itself) should be identified as beneficial owners of the trust. In other words, non-natural persons who are party to a trust should be looked through to identify the beneficial owners.

*Diagram 4: Legal Persons and Legal Arrangements Combined*



In diagram 4 above, ABC Trust holds more than 25 per cent of the shares of Company X. The beneficial owner of Company X however, is not ABC Trust, but rather would be the natural persons that are parties to ABC Trust (e.g., the settlor, protector, trustee, and beneficiaries) and any other person exercising effective control of the trust.

### 3.4 Who is not a Beneficial Owner?

A legal person or arrangement **cannot** be considered as a beneficial owner. Only a natural person may be a beneficial owner.

A nominee cannot be considered as a beneficial owner. Shares held by a nominee on behalf of another person must be treated as belonging to that other person, not the nominee. Similarly, persons acting on behalf of another person as a nominee director is not a beneficial owner.

## 4.0 Where Can Reporting Entities Obtain Beneficial Ownership Information?

4.1 Reporting entities may utilise the following source documents to determine the ownership structure and governance of a legal person/arrangement. The list is non exhaustive and reporting entities may utilise other source documents.

<b>Type of Legal Person/Legal Arrangement</b>	<b>Information Relating to Beneficial Ownership</b>	<b>Source Documents</b>
<b>Domestic Companies, International Business Companies</b>	<ul style="list-style-type: none"> <li>• Corporate Vehicle</li> </ul>	<ul style="list-style-type: none"> <li>• Certificate of Incorporation</li> <li>• Certificate of Registration</li> <li>• Filed Annual Return</li> <li>• Board Resolutions/ Minutes of Board Meeting</li> <li>• Articles of Association or Bye laws</li> <li>• Authorised Signatory listing</li> <li>• Copies of Powers of Attorney or other authorities given by the directors in relation to the company</li> </ul>
<b>Partnerships</b>	<ul style="list-style-type: none"> <li>• Corporate Vehicle</li> </ul>	<ul style="list-style-type: none"> <li>• Partnership Agreements</li> <li>• A copy of the Partnership Mandate</li> <li>• List of Authorised signatories</li> </ul>
<b>Non-Profit Organisations</b>	<ul style="list-style-type: none"> <li>• Governing Rules</li> </ul>	<ul style="list-style-type: none"> <li>• Copy of Constitution/ Charter/Rules</li> <li>• Minutes of Meetings</li> <li>• List of Committee Members</li> <li>• Registration Form</li> </ul>
<b>Cooperatives</b>	<ul style="list-style-type: none"> <li>• Management of the Cooperatives</li> <li>• Governing Rules</li> </ul>	<ul style="list-style-type: none"> <li>• Registration Form</li> <li>• Minutes of General Meetings</li> <li>• Bye Laws</li> </ul>
<b>Trusts</b>	<ul style="list-style-type: none"> <li>• Parties to the Trust</li> </ul>	<ul style="list-style-type: none"> <li>• Trust Deed</li> <li>• Trust Registration documents</li> </ul>

	<ul style="list-style-type: none"> <li>• Persons involved in establishing the Trust</li> <li>• Persons transferring assets into trust</li> <li>• Trust Administrator</li> <li>• Type of Trust</li> </ul>	
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4.2 Depending on the type of legal person or legal arrangement, the identity of the beneficial owners may be determined based on the following relationships:

<b>Type of Legal Person/Legal Arrangement</b>	<b>Relationship</b>
<b>Domestic Companies and International Business Companies</b>	<ul style="list-style-type: none"> <li>• Shareholders</li> <li>• Senior management</li> <li>• Persons with voting rights</li> <li>• Nominee directors/ nominee shareholders</li> <li>• Persons with power to appoint or remove directors</li> <li>• Other persons with interest within the company</li> </ul>
<b>Partnership</b>	<ul style="list-style-type: none"> <li>• Partners within the partnership</li> <li>• Other natural persons with effective control over the partnership</li> </ul>
<b>Non-Profit Organisations</b>	<ul style="list-style-type: none"> <li>• President, Secretary, Treasurer or other committee</li> <li>• Senior management/ management team</li> <li>• Other member with effective control over the club/societies/ charities/ foundations/religious organisation</li> </ul>
<b>Cooperatives</b>	<ul style="list-style-type: none"> <li>• President, Secretary, Treasurer or other committee</li> <li>• Senior management/ management team</li> <li>• Other member with effective control over the Cooperatives</li> </ul>
<b>Trusts</b>	<ul style="list-style-type: none"> <li>• Settlor</li> </ul>

	<ul style="list-style-type: none"><li>• Trustee</li><li>• Protector</li><li>• Beneficiaries or class of beneficiaries</li><li>• Other natural persons with effective control over the trust</li></ul>
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4.3 If a reporting entity is unable to identify, or further verify, the information of beneficial owners, including those who are foreign natural persons, it is recommended that the reporting entity **document** that they have exhausted all reasonable measures that may be taken to obtain such information. This may include obtaining a statutory declaration from the customer on the identification of the foreign beneficial owner.

## 5.0 How can the Identity of the Beneficial Owner Be Verified?

- 5.1 Reporting entities should identify and take reasonable measures to verify all the information of the beneficial owner by using reliable and independent source documents. **This obligation must be satisfied regardless of the level of risk associated with the customer and the beneficial owner.**
- 5.2 Reporting entities should ensure that they have taken all reasonable measures to verify the identity of the beneficial owner(s) of their customer. This may include, but is not limited to:
- (a) Conducting verification through independent documents provided by the customer
  - (b) Reliance on public registries or government bodies
  - (c) Researching publicly available information
  - (d) Arranging a face-to-face meeting with the beneficial owner to corroborate the undertaking or declaration provided by the customer
- 5.3 In the case of foreign beneficial owners, where there is no existing independent and reliable document submitted on the beneficial owner, reporting entities may verify the identity of the beneficial owners through available open sources. Reporting entities must however, reflect and document that they have exhausted all reasonable measures that may be taken to verify the foreign beneficial owners' identity.
- 5.4 Where the customer is a publicly traded company, the reporting entity is not required to verify their directors or shareholders. Notwithstanding this, information relating to the identity of the directors and shareholders must still be obtained from public registers, reliable sources or other information provided by the customer.

## 6.0 Other Resources

Further information and guidance on beneficial ownership identification and verification can be obtained from the following documents published by the FATF:

- (a) “Guidance on Transparency and Beneficial Ownership” published in October 2014

<https://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf>

- (b) “Best Practices on Beneficial Ownership for Legal Persons” in October 2019

<https://www.fatf-gafi.org/media/fatf/documents/Best-Practices-Beneficial-Ownership-Legal-Persons.pdf>

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