



இலங்கை மத்திய வங்கி  
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CENTRAL BANK OF SRI LANKA

இலங்கை மத்திய வங்கி

நிதியியல் உளவறிதற் பிரிவு

Financial Intelligence Unit

Ref: 037/07/006/0004/018

Guidelines – 04/2018

19 April 2018

To: CEO's of All Financial Institutions

Dear Sir / Madam

**Guidelines on Identification of Beneficial Ownership  
for Financial Institutions, No. 04 of 2018**

The above Guidelines will come into force with immediate effect and shall be read together with the Financial Transactions Reporting Act, No. 6 of 2006 and the Financial Institutions (Customer Due Diligence) Rules, No. 01 of 2016.

Yours faithfully

**D M Rupasinghe  
Director  
Financial Intelligence Unit**

Cc : Compliance Officer

# **Guidelines for Financial Institutions on Identification of Beneficial Ownership, No. 04 of 2018**

## **I. Introduction**

1. This Guideline is issued pursuant to section 15(1)(j) of the Financial Transactions Reporting Act, No. 06 of 2006 (FTRA).
2. The Financial Intelligence Unit of Sri Lanka (FIU), acting within the powers vested with it under the FTRA, issued the Financial Institutions (Customer Due Diligence) Rules, No. 01 of 2016 (CDD Rules) by Gazette Extraordinary No. 1951/13, dated January 27, 2016, effective from the date of issue, applicable to institutions that engage in “finance business” as defined under Section 33 of the FTRA.
3. Rules 28-31, 48-50 of the CDD Rules established, inter alia, provisions requiring Financial Institutions (FIs) identified under the Rules to take appropriate measures to identify and verify the natural person(s) who are the ultimate “beneficial owners” of a customer that is a legal person or legal arrangement, as defined in Rule 99 of the CDD Rules.
4. This Guideline is provided as an aid to interpret and apply CDD Rules. The Guideline is not intended to be exhaustive and it does not impose legally binding practices on any FIs, and it does not constitute legal advice from the FIU. Nothing in this Guideline should be construed as releasing FIs from any of their obligations under the CDD Rules or the FTRA.

## **II. Background/Context**

### **Who is a beneficial owner?**

5. As per the Rule 99 of the CDD Rules, the “beneficial owner” of the legal person or legal arrangement is a natural person who ultimately owns or controls a customer or the person on whose behalf a transaction is being conducted including the person who

exercises ultimate effective control over a legal person or a legal arrangement. According to Rule 49, controlling ownership interest means an interest acquired by providing more than ten percent (10%) of the capital of a legal person.

6. It is an FI's obligation to determine the natural person(s) who is/are the ultimate beneficial owner(s). The ultimate beneficial owner must be a natural person and cannot be a company, an organization or a legal arrangement. There may be more than one beneficial owner associated with a customer.
7. If the customer is a natural person, the person can be treated as the beneficial owner unless there are reasonable grounds to show that he is acting on behalf of another or if another person is the beneficial owner of the property of the customer.

#### **Why is it important to identify the beneficial owner?**

8. Corporate entities such as companies, trusts, foundations, partnerships, and other types of legal persons and arrangements conduct a wide variety of commercial and entrepreneurial activities. However, despite the essential and legitimate role that corporate entities play in the economy, under certain conditions, they have been misused for illicit purposes, including money laundering (ML), bribery and corruption, insider dealings, tax fraud, terrorist financing (TF), and other unlawful activities. This is because, for criminals trying to circumvent anti-money laundering (AML) and countering the financing of terrorism (CFT) measures, corporate entities provide an attractive avenue to disguise the ownership and hide the illicit origin.
9. Various studies conducted by Financial Action Task Force (FATF), World Bank, United Nations Office on Drugs and Crime (UNODC) have explored the misuse of corporate entities for illicit purposes, including for ML/TF. In general, the lack of adequate, accurate and timely beneficial ownership information facilitates ML/TF by disguising:
  - a) the identity of known or suspected criminals,
  - b) the true purpose of an account or property held by a corporate entities, and/or

- c) the source or use of funds or property associated with a corporate entities.

### **Ways in which beneficial ownership information can be hidden/obscured**

10. Beneficial ownership information can be obscured through various ways, including but not limited to;
  - a) use of shell companies<sup>1</sup> (which can be established with various forms of ownership structure), especially in cases where there is foreign ownership, which is spread across jurisdictions,
  - b) complex ownership and control structures involving many layers of ownership, sometimes in the name of other legal persons and sometimes using a chain of ownership that is spread across several jurisdictions,
  - c) bearer shares and bearer share warrants,
  - d) use of legal persons as directors,
  - e) formal nominee shareholders and directors where the identity of the nominator is undisclosed,
  - f) informal nominee shareholders and directors, such as close associates and family,
  - g) trust and other legal arrangements, which enable a separation of legal ownership and beneficial ownership of assets,
  - h) use of intermediaries in forming legal persons, including professional intermediaries such as accountants, lawyers, notaries, trust and company service providers,

## **III. Establishing the Beneficial Owner**

### **A) Beneficial owner of Legal Persons**

11. As per Rule 99 of the CDD Rules, "legal person" means any entity other than a natural person that is able to establish a permanent customer relationship with a financial institution or otherwise owns property and includes a company, a body corporate, a foundation, a partnership or an association.

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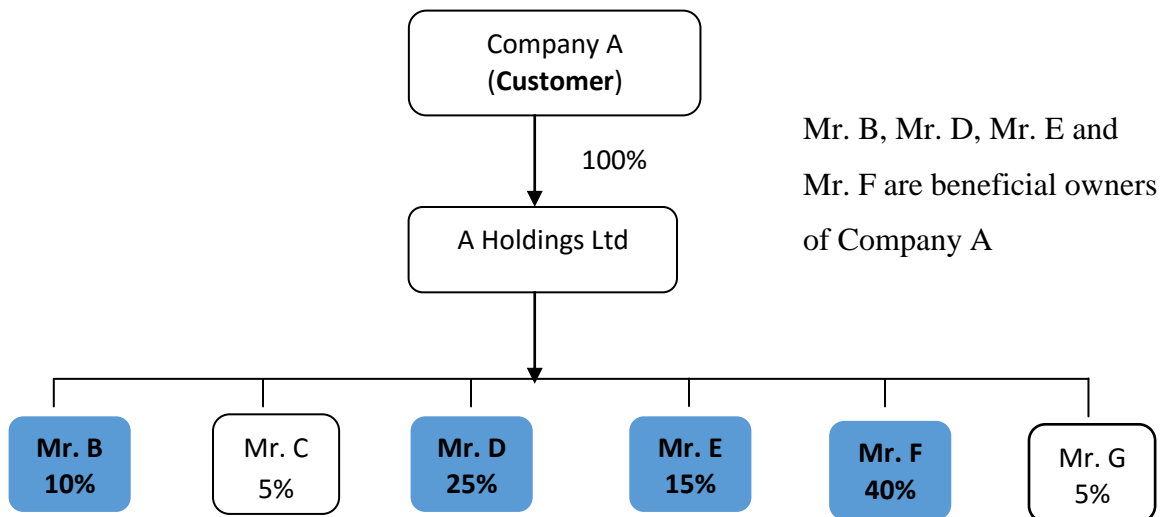
<sup>1</sup> Shell companies are companies that are incorporated with no significant operations or related assets, including an absence of physical presence

12. In the process of identifying beneficial owner(s) of a legal person, FIs have to consider three main elements:
- Which natural person(s) owns or controls more than ten percent (10%) of the customer's equity?
  - Which natural person(s) has "effective control" of the legal person?
  - On behalf of which natural person(s) the transaction is being conducted?
13. The beneficial owner(s) of a customer (legal person) may satisfy one or more of the three elements identified above. Accordingly, it would not be sufficient to simply apply only the ownership element in determining beneficial ownership.

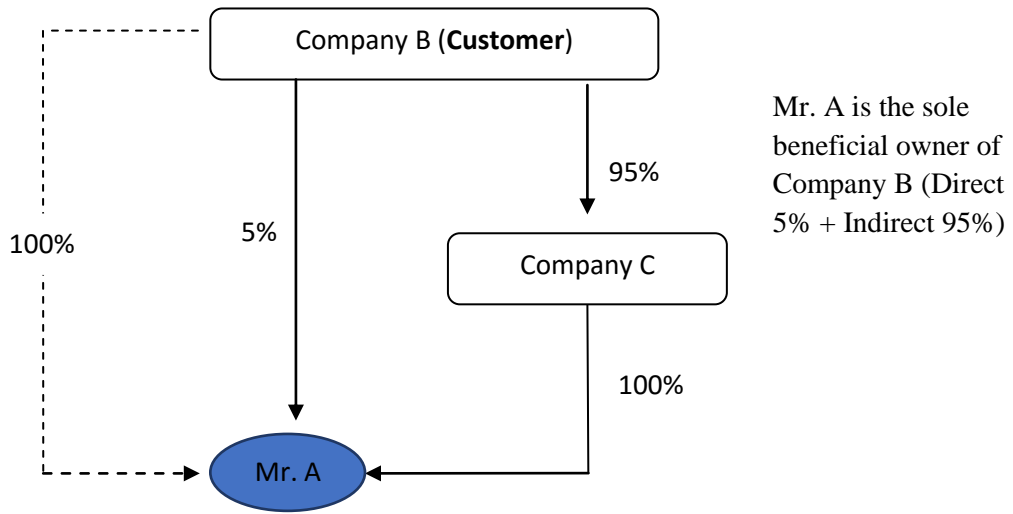
### Ownership

14. As per Rules 28 and 48, FIs are required to understand the ownership and control structure of their customers when the customer is not a natural person. According to Rule 49, the prescribed threshold for controlling interest is interpreted as owning more than ten percent (10%) of the customer. The ownership could be direct as well as indirect through aggregated ownership as illustrated below.

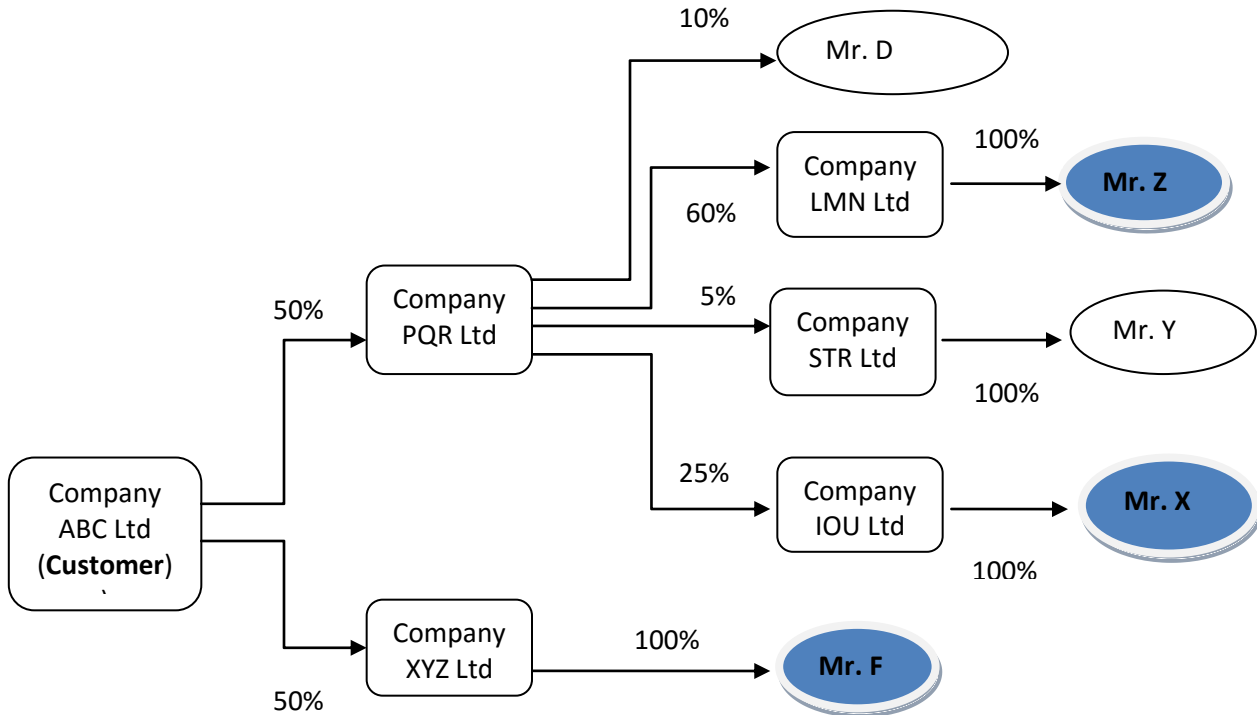
**Figure 1: Simple Indirect Shareholding**



**Figure 2: Direct and Indirect Share Holdings**



**Figure 3: Multi-level indirect shareholdings**



Mr. F, Mr. X and Mr. Z are beneficial owners of Company ABC through indirect shareholding

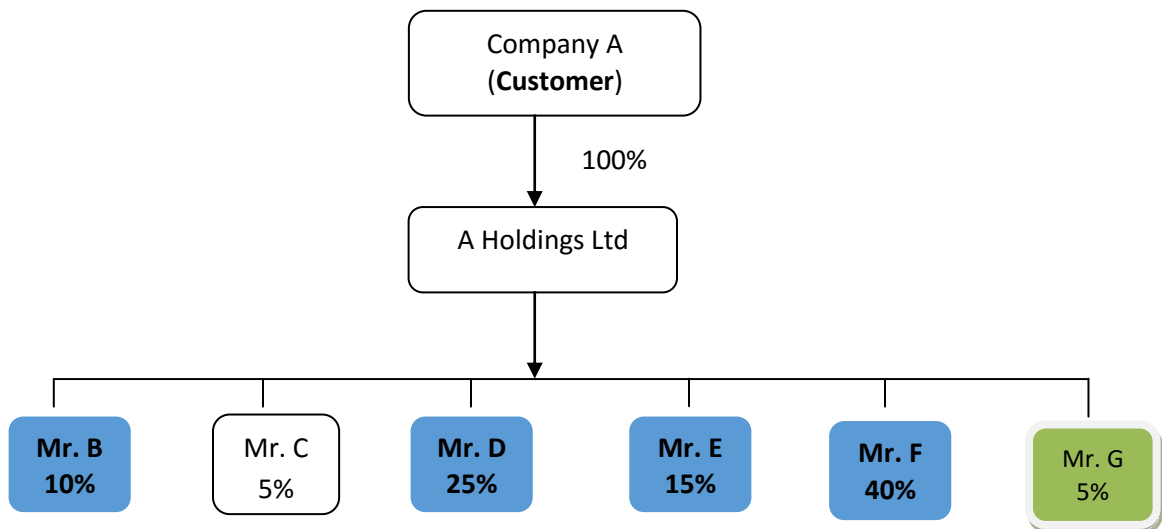
15. A natural person that exercises control over a controlling portion of equity interest, either directly, via nominees or via family members or close associates (whether disclosed or undisclosed) who nominally own or control the shares, can be considered as a beneficial owner. A majority shareholder or a majority formed by some combination of shareholders that are nominees for a natural person is also a beneficial owner.
  
16. For some customers, ownership may be spread over a large number of individuals with all individual owning less than ten percent (10%). In such instance, because no individual(s) owns more than ten percent (10%), the effective control element outlined below would be more appropriate to determine the beneficial owner(s)/controller(s).

### **Effective Control**

17. Effective control of a legal person is an important component that determines the beneficial ownership. Such control can be direct or indirect, formal or informal. At a direct and formal level, it is essential to understand the customer's governance structure as an aid in identifying those natural persons that exercise effective control over the customer. In deciding the effective controller(s) in relation to a customer, FIs should consider,
  - a) a natural person who can hire or terminate a member of senior level management;
  - b) a natural person who can appoint or dismiss Directors;
  - c) Senior managers who have control over daily/regular operations of the legal person/arrangement (e.g. a CEO, CFO or a Managing Director).
  
18. Natural persons may also control the legal person through other means such as:
  - a) Personal connections to persons in positions such as Executive Directors/ CEOs/ Managing Director or that possess ownership;

- b) Significant authority over a legal person’s financial relationships (including with financial institutions that hold accounts on behalf of a legal person) and the ongoing financial affairs of the legal person;
- c) Control without ownership by participating in the financing of the enterprise, or because of close family relationships, historical or contractual associations, or if a company defaults on certain payments;
- d) Use, enjoyment or benefiting from the assets owned by the legal person even if control is never exercised.

**Figure 4: Effective Control**



Mr. G is the managing director of the ABC Bank, which is the main financing source of the company A. In such a situation even if Mr. G holds less than ten percent (10%) of Company A, he has effective control over the company A through ABC Bank and should be considered as a beneficial owner through effective control.

**Person on whose behalf a transaction is being conducted**

19. Another aspect of the definition of beneficial ownership is a person on whose behalf a transaction is conducted. This may be the individual who is an underlying client of the customer. An example is, if a FI knows that person ‘A’ is conducting an



- occasional transaction on behalf of person 'B', and then person 'A' and person 'B' should be identified and verified along with any other beneficial owners that may be a party to transaction.
20. Acting on behalf of the customer is when a person is authorized to carry out transactions or other activities on behalf of the customer. However, 'Authority to act' should not be confused with effective control.
  21. There are instances where persons are acting on behalf of a customer may not necessarily be the beneficial owners of that customer.
  22. As per Rule 29, the FI has to identify the natural persons that act on behalf of the customer and verify the identity of such persons. The authority of such person to act on behalf of the customer also should be verified through documentary evidence including specimen signatures of the persons so authorized.

**B) Beneficial owner of legal arrangements**

23. As defined under Rule 99, legal arrangement includes an express trust, a fiduciary account or a nominee.
24. All trusts have the common characteristic of causing a separation between legal ownership and beneficial ownership. Legal ownership always rests with the trustee. Beneficial ownership can rest with the author of trust, trustees or beneficiaries, jointly or individually.
25. As per Rule 50, FIs should identify and take reasonable measures to verify information about a trust, including, the identities of the author of the trust, the trustees, the beneficiary or class of beneficiaries and any other natural person exercising ultimate effective control over the trust (including those who control through the chain of control or ownership).

26. FIs are required to obtain trust documents (e.g. deed of trust, instrument of trust, trust declaration, etc.) and the provisions of the trust document must be fully understood within the context of the laws of the governing jurisdiction. The FIs should take reasonable measures to verify trust document through independent means (e.g. Registry of Trust, Notary)

**Example:**

Person ‘A’ is the author of a trust for the benefit of his child. The trustee seeks to establish a relationship with a financial institution to help manage the assets of the trust. Even though the trustee is the controller of the assets of the trust he may not be the ultimate beneficial owner and the main focus of CDD should include person ‘A’” as well.

**IV. Identification and Verification of beneficial ownership information**

27. As per Rule 30, FIs should obtain information to identify and take reasonable measures to verify the identity of the beneficial owner(s) of the customer using relevant information or data obtained from a reliable source, adequate for the FIs to satisfy itself that it knows who the beneficial owner(s) is.

28. Accordingly, the identification of beneficial owner is mandatory. Once the FI establishes who the beneficial owner(s) of a customer is/are, the FI must collect at least the following information in relation to each individual beneficial owner:

- a) full name;
- b) official personal identification or any other identification number;
- c) permanent/ residential address.

29. As per Rule 31, FI is required to verify the identity of the beneficial owner before or during the course of entering into a business relationship with, or conducting a transaction for an occasional customer.

30. Accordingly, once the identity is established, the FIs have to take reasonable measures to verify the identity of the beneficial owner(s). The reasonable measures for verification should be determined subject to the risk and complexities of the ownership and control structure of the legal person or arrangement.
31. Simplified verification procedures can be applied for verification of beneficial ownership of legal persons that are already subject to rules regarding corporate governance and transparency such as those that apply to firms with shares that publicly trade on a well-regulated exchange, or with simple and locally-familiar ownership structures or legal persons who are expected to conduct low risk transactions.
32. For the verification of beneficial ownership, some of the documentation that FIs can rely on may include (but not limited to) the following:
- a) Share register,
  - b) Annual Returns,
  - c) Trust deed,
  - d) Partnership agreement,
  - e) The constitution and/or certificate of incorporation for an incorporated association,
  - f) The constitution of a registered co-operative society,
  - g) Minutes of the board of directors meetings,
  - h) Information available through open-source search or commercially available databases.
33. In case of foreign legal persons and arrangements FIs may also has to take additional measures such as verification through mother company or branches, correspondence bank, other agents of the bank, corporate registries etc.
34. As per Schedule I of the CDD Rules, in the case of companies listed on the Stock Exchange of Sri Lanka licensed under the Securities and Exchange Commission of

Sri Lanka Act, No. 36 of 1987 or any other stock exchange subject to disclosure requirements ensuring adequate transparency of the beneficial ownership, FIs can use relevant identification information available from reliable sources (e.g. a public register) to identify the Directors and major Shareholders.

35. As per Rule 49 (d), FIs have to identify the natural persons holding senior management positions as beneficial owners when FIs are unable to determine the beneficial owner as there is no person owning more than ten percent (10%) of the customer's equity or no individual exercising control over the customer.

### **Periodic Review of Information**

36. As per Rule 40, FIs should periodically review the adequacy of information obtained in respect of beneficial owners to ensure that the information is up to date. The review period and procedures thereof should be decided by each FI in its internal AML/CFT Policy according to the risk-based approach.

37. Any material/significant change in customer circumstances may necessitate a review of beneficial ownership. Some examples of material/significant changes include:

- a. a public company is taken private;
- b. a shareholder or group of shareholders takes effective control of voting shares;
- c. a new partner is added, or an existing partner is removed;
- d. change in management positions;
- e. new trustees are appointed;
- f. a trust is dissolved;
- g. a new account is opened for the same customer;
- h. transactions are attempted that are inconsistent with the customer's profile.

### **Delayed Verification**

38. As per Rules 31 and 32, FIs are allowed to delay the verification of identity of beneficial owners when,

- a. risk level of the customer is low and verification is not possible at the point of entering into the business relationship,
  - b. there is no suspicion of money laundering or terrorist financing risk involved,
  - c. delay will not interrupt the normal conduct of business.
39. As per Rule 33, when delayed verification is allowed, FIs should adopt risk management procedures relating to the conditions under which the customer may utilize the business relationship prior to verification. These procedures should include a set of measures, such as a limitation of the number, types and/or amounts of transactions that can be performed and the monitoring of large or complex transactions being carried outside the expected types of transactions for that relationship.
40. As per Rule 36, FIs should not establish a business relationship or conduct any transaction with a customer who poses a high money laundering and terrorist financing risk, prior to verifying the identity of the beneficial owner.
41. As per Rule 35, when an FI is unable to comply with CDD measures as required in CDD Rule including identification and verification of beneficial ownership information, the FI should not enter into the business relationship or perform the transaction with new customers and terminate the business relationship with existing customers and consider making a suspicious transaction report in relation to the customer.

## **V. Other Requirements**

### **Declaration of beneficial ownership by the customer**

42. FIs may obtain beneficial ownership information either by obtaining the required information on a standard certification form (Certification Form (Appendix I) or by any other means, up to the satisfaction of the FIs with regard to the identification of the beneficial owner(s).

43. Use of the form is optional and FI may substitute this form with a version that is suitable, whether paper or electronic, so long as the required information is collected, protected, preserved and made available to competent authorities upon request and records are maintained in accordance with the CDD Rules and FTRA.
44. FIs are required to document the procedure to be followed in the identification and verification of beneficial ownership requirements relating to legal persons and arrangements in the AML/CFT Policy approved by the Board of Directors.

### **Record Keeping Obligations**

45. The FIs are required to maintain records of identification and verification information relating to beneficial ownership as prescribed under Part V of the CDD Rules and FTRA.

### **Beneficial owners who are Politically Exposed Persons (PEPs)**

46. As per Rule 59, FIs are required to implement appropriate internal policies, procedures and controls to determine if the beneficial owner is a politically exposed person. Through such process if the FI identifies any beneficial owner as a PEP, the relationship should be considered as high risk and subject to enhanced due diligence as required in the CDD Rules.

### **Sanctions**

47. Failure to comply with the beneficial ownership requirements as required under the CDD Rule will be a violation of the Section 2 (3) of the FTRA and will be punishable under Section 19 of FTRA.

## **VI. Examples**

### **Example 1: Record for ownership and control structure of a legal person**

ABC Company Ltd. is a private limited liability company registered under the Companies Act, No. 7 of 2007. Mr. A owns 25% of the shares and BC Company Ltd. owns the balance 75% of shares of ABC. Mr. S is Managing Director of ABC

Company and; the Board of Directors consists with his wife, Mrs. S, ABC's Chief Financial Officer; and their three children.

In this example, FIs required to record:

- the ownership of the Company - shared by Mr. A (25% of the shares) and BC Company Ltd. (75% of the shares);
- the ownership structure of the entity - ABC Company Ltd. is a privately traded.
- the identification of all members the Board of Directors (Mr. S's Family) as they are having effective control;
- Identification of Mr. A as he is having more than 10% of ownership
- identification of all of the individuals who own or control, directly or indirectly, 10% or more of the shares of BC Company Ltd since it owns 75% of the shares, it also exercises control. However, in a case like this, FI must research further to determine whether any individual owns enough shares of BC Company Ltd. that would constitute 10% of ABC Company Ltd., or until FI determine that there is no such individual;
- the manner in which FI obtained this information; and
- the measures taken to verify accuracy of information.

### **Example 2**

#### **Record for ownership and control structure of partnership**

Rainbow Property Developers is a partnership engaged in buying and selling of real estate in Western Province owned by two partners (Mr. T and Mr. J). Mr. T and Mr. J have signed a partnership agreement stating that Mr. T will invest Rs. 5,000,000 in the partnership to rent space for the Rainbow Property Developers and other administrative expenses, and Mr. J will be solely responsible for operations of the business. All decisions related to the partnership must be unanimous; in case of a disagreement, either partner can decide to end the partnership. Mr. T & Mr. J will split the profits from the business 50/50. If they decide to end the partnership, Mr. T

will get 55% of the proceeds of the sale of the business assets, while Mr. J will get 45%.

In this example FI, is required to record:

- the ownership structure of the entity, including the details of the partnership between Mr. T & Mr. J;
- identification of Mr. T and Mr. J as both control the partnership;
- the manner in which, the FI obtained this information; and
- the measures taken to confirm accuracy of information.

*Note:* The business structure is important in this example as the ownership and control of the partnership is shared between Mr. T & Mr. J. The FI needs to retain a copy of the partnership agreement to meet record keeping requirements as well as confirm the accuracy of the beneficial ownership information obtained. In the absence of such agreement it should be recorded that the partnership exists between Mr. T and Mr. J without having a written agreement.

**Issued on April 19, 2018**



## APPENDIX I – Beneficial Ownership Form

| <b>Declaration of Beneficial Ownership</b>   |  |
|--|--|
| <p><i>This form has been issued under the Financial Institutions (Customer Due Diligence) Rules, No. 1 of 2016 issued in terms of the Section 2(3) of the Financial Transactions Reporting Act No 6 of 2006. This form, or an approved equivalent, is required to be completed by customers of financial institutions designated under the Act to the best of their knowledge. The original completed and signed and witnessed version of this form must be retained by the financial institution and available to the competent authorities upon request.</i></p> |  |
| <b>Customer Identification:</b>  |  |
| Name and Designation of Natural Person Opening Account   |  |
| Name, Reg. No. and Address of Legal person for Which the Account is Being Opened   |  |
| Name, Deed No., Trustee and Address of Legal arrangement for Which the Account is Being Opened   |  |
| I declare that I:  |  |
| <input type="checkbox"/>   | am the sole beneficial owner <sup>2</sup> of the customer for this account.  |
| <input type="checkbox"/>   | am not the beneficial owner* of the customer of this account. Complete identifying information for all beneficial owners that own or control 10% or more of the customer’s equity, beneficial owners on whose behalf the account is being operated, and at least one person who exercises effective control of the legal entity regardless of whether such person is already listed. |

<sup>2</sup> beneficial owner as “a natural person who ultimately owns or controls a customer or the person on whose behalf a transaction is being conducted and includes the person who exercises ultimate effective control over a person or a legal arrangement.”

| Name | NIC or<br>Passport #<br>/Country of<br>Issue/Country<br>of Citizenship | Date<br>of<br>Birth | Current Address | Source of Beneficial<br>Ownership<br>(1=Equity (indicate %),<br>2=Effective Control,<br>3=Person on Whose Behalf<br>Account is Operated) | Check if<br>Politically<br>Exposed<br>Person<br>(PEP) <sup>3</sup> |
|------|--|---------------------|-----------------|--|--|
|      |  |                     |                 |  | <input type="checkbox"/>   |
|      |  |                     |                 |  | <input type="checkbox"/>   |
|      |  |                     |                 |  | <input type="checkbox"/>   |
|      |  |                     |                 |  | <input type="checkbox"/>   |
|      |  |                     |                 |  |  |

**Details of the Natural person Authorized to Act on Behalf of the Customer**

Name :

NIC/Passport :

Date of Birth :

Signature :

(By signing you attest to the veracity of all information contained herein)

**Verification of Beneficial Ownership**

**Authorized Financial Institution Official**

Name :

Title :

Date :

Signature and Seal:

(by signing, you attest that you have identified the Customer whose signature is on this form and have witnessed said signature)

<sup>3</sup> politically exposed person" means an individual who is entrusted with prominent public functions either domestically or by a foreign country, or in an international organization and includes a Head of a State or a Government, a politician, a senior government officer, judicial officer or military officer, a senior executive of a State owned Corporation, Government or autonomous body but does not include middle rank or junior rank individuals