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INDUSTRY GUIDANCE NOTE NO.1 OF 2015

ON

IDENTIFICATION & VERIFICATION OF BENEFICIAL OWNERSHIP INFORMATION

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1. INTRODUCTION

1.1 General

The Financial Intelligence Centre (FIC) is responsible for administering the Financial Intelligence Act, 2012 as amended (Act No.13 of 2012) (FIA). The FIC aims to Combat Money Laundering (ML), the Financing of Terrorism (TF) and Proliferation Funding (PF) Activities and supervise and monitor compliance of Accountable Institutions and Reporting Institutions with the FIA and its complementing regulations.

All Institutions are thus hereby requested to take into account this guidance in reviewing their Customer Acceptance Policies (CAP) and overall FIA Compliance Program to ensure alignment with the FIA and to avoid any fines and penalties for non-compliance with the provisions of the FIA.

1.2 Definitions

“Beneficial Owner” means - a natural person who owns or effectively controls a client, including the natural person on whose behalf a transaction is conducted;

“Effective Control” refers to when a person owns or controls, directly or indirectly, including through trusts or bearer share holdings for any legal person, 20% or more of the shares or voting rights of the entity; the ability to control the customer and/or, those individuals holding more than 20% of the customer’s voting rights, or who hold senior management positions, e.g. CEO.

“Customer Due Diligence (CDD)” means a process which involves establishing the identity of a client, the identity of the client’s **beneficial owners** in respect of legal persons and monitoring all transactions of the client against the client’s established profile;

“FATF” means the Financial Action Task Force;

“Act” or **“FIA”** refers to the Financial Intelligence Act, 2012 (Act No .13 of 2012) as amended;

“Cash” coin and paper money of Namibia or of another country which coin or paper money is designated as legal tender and which circulates as, and is customarily used and accepted as, a medium of exchange in the country of issue;

“FIC” means the Financial Intelligence Centre;

“POCA” refers to the Prevention of Organized Crime Act, 2004 (Act No.29 of 2004) as amended;

“Reasonable Steps” means appropriate measures which are commensurate with the Money Laundering, Terrorist Financing or Proliferation Funding Risks identified;

“Accountable and Reporting Institution” refers to institutions that offer or provide services as per Schedule 1 and 3 of the FIA;

“STR or SAR” refers to a Suspicious Transaction Report or a Suspicious Activity Report submitted to the FIC in terms of Section 33 of the Act.

1.3 Application of this Guidance Note

The FIC has prepared this Guidance Note to assist Accountable and Reporting Institutions to perform Customer Due Diligence (CDD) on customers and beneficial owners as per the requirement FIA.

The guidance provided by the FIC in this Guidance Note, although authoritative, is provided as general information only, in assisting Accountable and Reporting Institutions to enhance the quality of their implemented Anti-Money Laundering, Combating Financing of Terrorism and Proliferation Funding obligations.

It should be noted that failure to comply with the provisions of the Act, any regulation, guideline, circular, notice, directive, determination or undertaking issued in terms of this Act constitutes an offence as defined in **Section 63 of FIA**.

2. BENEFICIAL OWNERSHIP OVERVIEW

2.1 General Overview

Corporate vehicles—such as companies, trusts, 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 vehicles play in the global and domestic economy, evidence have shown that under certain conditions, they have been misused for illicit purposes, including Money Laundering (ML), Bribery and Corruption, Insider Dealings, Tax Fraud, Terrorist Financing (TF), Proliferation Financing (PF) and other illegal activities.

2.2 The Misuse of Legal Persons and Arrangements

The lack of adequate, accurate and timely beneficial ownership information facilitates ML/TF & PF risk by disguising:

- The identity of known or suspected criminals;
- The true purpose of the corporate vehicle, an account or property held by a corporate vehicle; and/or
- The source or use of funds or property associated with a corporate vehicle.

For example, beneficial ownership information can be obscured through the use of:

- a) **Shell companies** (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 shares registered in the name of other legal persons;
- c) Unrestricted use of legal persons as directors;
- d) Formal and informal nominee shareholders and directors where the identity of the nominator is undisclosed, such as close associates and family;
- e) **Trusts and other legal arrangements** which enable a separation of legal ownership and beneficial ownership of assets; and
- f) **Use of intermediaries in forming legal persons**, including professional intermediaries.

2.3 What is a Beneficial Owner?

Beneficial owner refer to the **natural person(s)** who ultimately owns or control a legal person and/ or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control¹. (*Refer 4.2 effective control*) over a legal person or arrangement.

Your obligation is to identify the individual(s)/natural person(s) who meet the beneficial ownership test and then perform the required customer due diligence measures.

A beneficial owner is an individual (a natural person) and therefore the beneficial owner can only be an individual, not a company or organization. There may be more than one beneficial owner associated with your customer.

¹ the ability to control the customer and/or dismiss or appoint those in senior management positions, those individuals holding more than 20% of the customer's voting rights those individuals (for example, the CEO) who hold senior management positions

3. BENEFICIAL OWNERSHIP INFORMATION

This guideline provides information on how to determine beneficial ownership by identifying the individual(s) that satisfies any **one** element, or **any combination** of the following three elements.

- (a) Own 20% or more shareholding of the legal person;*
- (b) Those with effective control of the same legal person; and*
- (c) Persons on whose behalf a transaction is conducted.*

3.1 Establishing the identity of the Legal Person

- The AI/RI must take reasonable steps to first establish a legal person's identity through establishing its legal existence and structure. This includes obtaining the following:
 - a) Name, Legal form, and proof of existence of the legal person;
 - b) Names of relevant senior management;
 - c) The **principal owners**² and **beneficial owners**; and
 - d) The powers that regulate and bind the legal person or arrangement.

The AI/RI is further required to obtain an understanding of the nature of the customer's business and its ownership and control structure.

It is required that the AI/RI **obtains an ownership and control structure of the client**. As there is currently no mechanism in place to independently verify the accuracy and reliability of this information, it is advised that this be obtained by means of a **client declaration**. Using this ownership and control structure, the AI/RI identifies if any natural person meets criteria of a beneficial owner as detailed above.

² That is the main owner of the entity, also known as the majority shareholder. The principal owner is the person that owns the greatest percentage of a company's shares or has the largest stake in the company.

3.2 Beneficial ownership information of legal persons should be determined as follows:

- a) Obtain the identity (Name, Surname, Date of Birth, Nationality and Identification Number) of the natural person(s) (if any, as ownership interests can be so diversified that there are no natural persons, whether acting alone or together, who exercise control of the legal person through ownership) who ultimately have a **controlling ownership interest** in a legal person; **and**
- b) To the extent that there is doubt as to whether the person(s) with the controlling ownership interest are the beneficial owner(s), or where no natural person exerts control through ownership interests, the id+ of the natural person(s) (if any) exercising control of the legal person through other means.

Where no natural person is identified under (a) or (b) above, financial institutions should:

- c) Identify and take reasonable measures to verify the identity of the relevant natural person(s) who holds the position of senior managing official (MD, CEO, Trustees, etc.).

AI's/RI's are required to verify the identity of the beneficial owner(s) **before or during** the course of establishing a business relationship or conducting transactions for occasional customers; or (if permitted) may complete verification after the establishment of the business relationship, provided that:

- a) This occurs as soon as reasonably practicable;
- b) This is essential not to interrupt the normal conduct of business; and
- c) The ML/TF/PF risks are effectively managed.

AI's/RI's are required in terms of section 39(1) of the FIA to adopt risk management procedures to determine the conditions under which a customer may utilize the business relationship prior to verification.

The following are some examples of natural persons who could be considered as beneficial owners on the basis that they are the ultimate owners/controllers of the legal person, either through their ownership interests, through positions held within the legal person or through other means:

Natural persons who may control the legal person through ownership interests

- a) The natural person(s) who directly or indirectly holds a minimum percentage of ownership interest in the legal person (the threshold approach); and/or
- b) Shareholders who exercise control alone or together with other shareholders, including through any contract, understanding, relationship, intermediary or connected entity (a majority interest approach).

Natural persons who may control the legal person through other means

- a) The natural person(s) who exerts control of a legal person through other means such as personal connected persons³, who is duly authorised to act in any way on behalf of the customer/client; and/or

³ A person is connected with an individual if that person is the individual's wife or husband, or is a relative, or the wife or husband of a relative, of the individual or of the individual's wife or husband; and An entity is connected with another person if that person has control of it or if that person and persons connected with him together have control of it.

- b) The natural person(s) who exerts control without ownership by participating in the financing of the enterprise, or because of close and family relationships, historical or contractual associations.

Natural persons who may exercise control through positions held within a legal person

- a) The natural person(s) responsible for strategic decisions that fundamentally affect the business practices or general direction of the legal person; and/or
- b) The natural person(s) who exercises executive control over the daily or regular affairs of the legal person through a senior management position, such as a chief executive officer (CEO), chief financial officer (CFO), managing or executive director, or president.

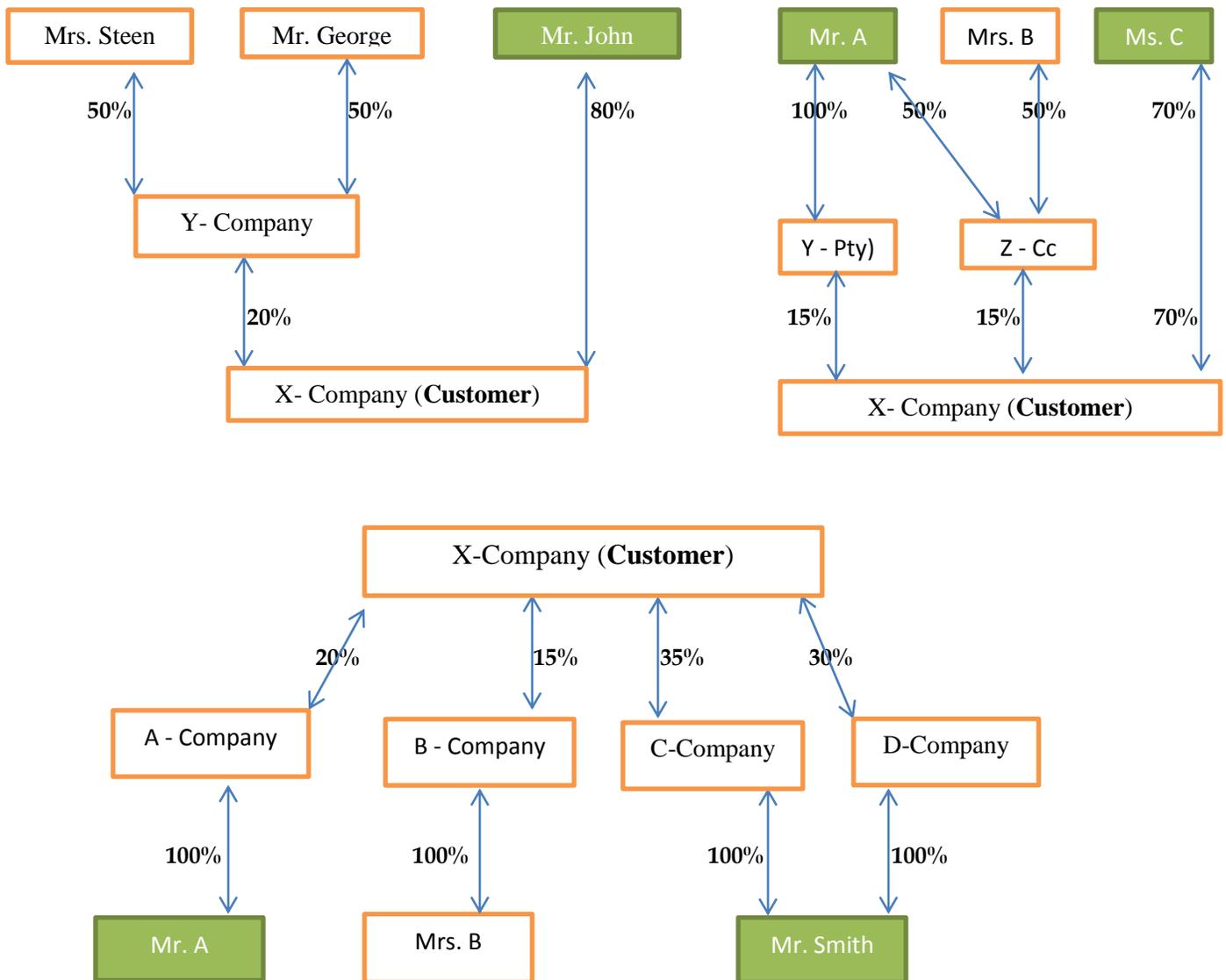
If a natural person is acting on behalf of a legal person, that does not necessarily form part of the beneficial ownership definition, however the Act in terms of Section 21(2) (c) and Section 22(1) (c) requires that AI's/RI's should also identify and verify those persons. Information on 'acting on behalf' is included to help AI's/RI/s to understand the distinction between a beneficial owner and a person acting on behalf of a legal person.

3.3 Illustration on determining beneficial owner(s)

The AI/RI needs to obtain and to understand the ownership and control structure of its customer. It must also adopt a Risk Based Approach, in determining Beneficial Owners.

Diagram 1 - Ownership

(Natural Persons indicated in **GREEN** meets the definition of Beneficial Ownership).



In situations where no individual(s) owns 20% or more shares, the AI/RI must still identify a beneficial owner(s) in relation to the effective control element.

3.4 Effective Control

Effective control of a customer is part of the beneficial ownership definition. An example is an individual who exercises responsibility for senior management decisions, or similar, of the legal person.

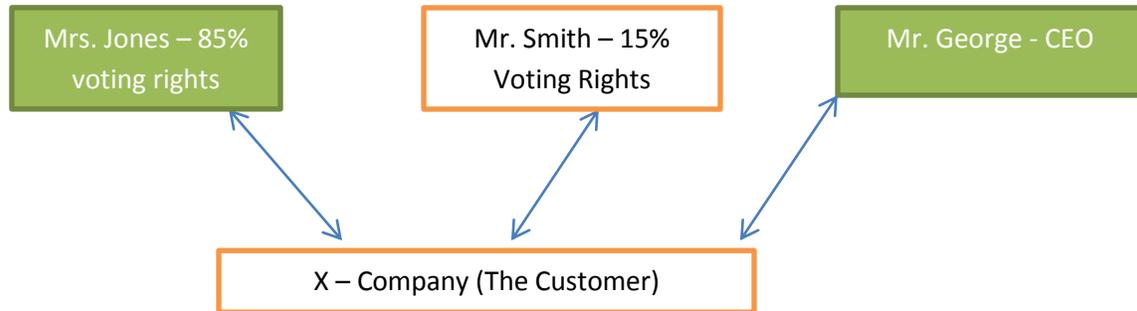
NB: Do not confuse “acting on behalf of the legal person” with “exercising effective control over the legal person”.

Understanding the management and governance structure of an AI /RI’s customer will assist the AI/RI to establish those persons with effective control of the customer. In deciding the effective controller(s) in relation to a customer who is not an individual, AIs/RIs should consider:

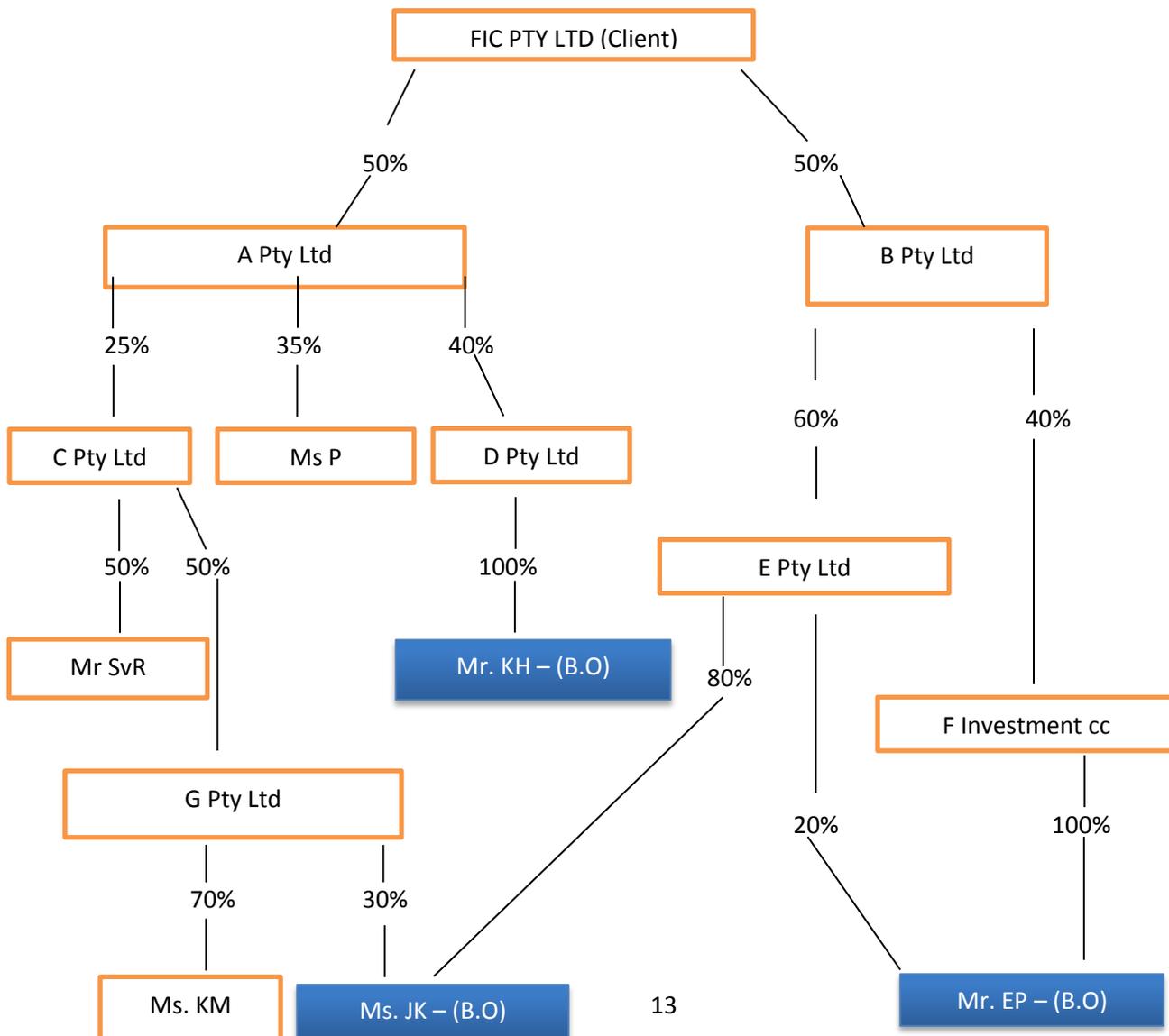
- those individuals with the ability to control the customer and/or dismiss or appoint those in senior management positions;
- those individuals holding 20% or more of the customer’s shares and/ or voting rights; or
- those individuals (e.g., the CEO, Directors or Trustees) who hold senior management positions.

Diagram - Effective control

(Natural Persons indicated in **GREEN** meets the definition of Beneficial Ownership).



Effective Control and Ownership



Shareholder	Calculation	%	Shareholder	Calculation	%
A Pty Ltd	0.50×1	50%	Mr. KH	$1. \times 0.40 \times 0.50$	20%
B Pty Ltd	0.50×1	50%	Ms. KM	$0.70. \times 0.50 \times 0.25 \times 0.50$	4%
C Pty Ltd	0.25×0.50	13%	Ms. JK	$(0.30. \times 0.50 \times 0.25 \times 0.50) + (0.80. \times 0.60 \times 0.50)$	28%
D Pty Ltd	0.40×0.50	20%	Mr. EP	$(0.20. \times 0.60 \times 0.50) + (1.0 \times 0.40 \times 0.50)$	26%
E Pty Ltd	0.60×0.50	30%			
F Investment cc	0.40×0.50	20%			
G Pty Ltd	$0.50 \times 0.25 \times 0.50$	6%			
Ms. P	0.35×0.50	18%			
Mr. SvR	$0.50 \times 0.25 \times 0.50$	6%			

4. ACTING ON BEHALF OF A CUSTOMER

In situations where a person(s) acts on behalf of a customer of an AI/RI, same does not form part of the beneficial ownership concept, but form part of the customer due diligence obligations under the Act. There are instances where persons are acting on behalf of a customer, but are not necessarily beneficial owner(s) of that customer.

Acting on behalf of the customer is when a person is authorized to carry out transactions or other activities on behalf of the customer. 'Authority to act' should not be confused with 'effective control'. Sections 21 and 22 of the Act refer to 'acting on behalf of the customer'. The Act requires you to identify and verify any person who has authority to act on behalf of a customer.

E.g. where a customer has one or more individuals who have authority to sign on accounts or authorize the transfer, sale or purchase of assets owned by the customer.

Section 21 and 22 of the FIA Act 2012 (the Act) requires a reporting entity to complete customer due diligence (CDD) on:

- a) A customer;
- b) Any beneficial owner of a customer; and
- c) Any person acting on behalf of a customer.

5.1 Person Acting on Behalf of a Customer

A person is *acting on behalf of* a customer when that person is operating or transacting on an account or facility that is held by another party (the customer).

This may include:

- a person with authority to sign, amend account holder details, transfer and spend in the customer's name (e.g. a signatory or second cardholder on a spouse's account);
- a person granted authority because they are the legal guardian of a minor or the holder of an operational power of attorney, or similar;
- an individual who is authorised to represent any legal person appointed as a professional third party to act for the customer;
- a person who is authorised to use a password (or similar) to log into an account or facility held by the customer (e.g. internet or mobile banking); or
- an employee of the customer who undertakes daily banking duties for the customer.

A board resolution, member's resolution or a letter on the legal person's letterhead should be provided as proof that the person is authorized to act on behalf of that entity.

6. APPLYING A RISK BASED APPROACH

The Act allows the AI/RI's to adopt a risk-based approach to verify beneficial ownership of a legal person. Identifying beneficial ownership of a customer is an obligation that must be satisfied, in relation to the level of risk associated with that customer.

The CDD measures to be followed are as follows:

- Identify the customer and verify the customer's identity using reliable, independent source documents, data and information;
- Identify the beneficial owners and take reasonable measures to verify the identity of the beneficial owner;
- Understanding and as appropriate, obtaining information on the purpose and intended nature of the business relationship; and
- Conducting ongoing due diligence on business relationship and transactions to ensure consistency in client profile and source of funds with institution's knowledge derived from information obtained during account opening or solicited through the course of the business relationship.

A risk-based approach allows AIS/RIs some flexibility in its obligation to use data, documents or information obtained from a reliable and independent source to verify the identity of the beneficial owner(s) which can be done before or during the course of the relationship considering the mitigation of ML/TF/PF risks.

7. EXAMPLES OF BENEFICIAL OWNERS

- **Individuals** - Natural person as an account holder, signatories and any other person having control of the account (*e.g. internet banking*);
- **Sole Proprietorship** - Natural person as an account holder, and business owner, signatories and any other person having control of the account or business;
- **Partnerships** - Members of the partnership as stipulated in the Partnership agreements or founding statements, signatories and any other person having authority and control of the account or business;
- **Close Corporation (Cc)** - Members of the Cc as stipulated in the founding statements, signatories and any other person having authority and control of the account or business;

- **Private Companies (*including foreign owned*)** - Members of the company including shareholders and directors as stipulated in the founding statements as per CM 2C, CM 2D, CM 44C and CM 29 as per the companies registration founding statements, all signatories (*company resolution*) and any other persons having authority and control of the account or business;
- **Listed Companies** - No requirement to obtain beneficial ownership information except for listing information and profiling;
- **Trust** - The founder of the trust, all beneficiaries and trustees as stipulated by the trust deed, all signatories (*company resolution*) and any other persons having authority and control of the account or business; or
- **Body corporate** - representatives of the body corporate, all signatories and any other individual who owns or controls 20% or more of shares and voting rights or otherwise exercise control over the management of the corporate.

8. COMMENTS

This Guidance Note shall be reviewed from time to time. If you have any comments or suggestions to help improve this Guidance Note, please send your comments to the FIC by using the particulars provided herein below.

9. HOW TO CONTACT THE FIC

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