

ANTI-MONEY LAUNDERING, COMBATTING THE TERRORIST FINANCING AND THE  
PROLIFERATION OF WEAPONS OF MASS DESTRUCTION AND CORRUPTION

PRATICAL GUIDE #5

# BENEFICIAL OWNERSHIP AND COMPLEX STRUCTURES

## GLOSSARY AND ABBREVIATIONS

AML/FT-P-C	Anti-Money Laundering and combating the Financing of Terrorism and the Proliferation of Weapons of Mass Destruction, and Corruption
Associations	For the purposes of this guidance, an association is a freely formed organization (group with members) that has acquired the legal personality and legal capacity to act; for example to open a bank account, enter contracts, appear in courts, buy estate, and receive donations. Refer to Monaco law n° 1.355 of 2008/12/23 for registered associations. Associations shall also include foreign associations with a similar capacity to act, specifically to open a bank account.
Beneficial Owner(s)	<p>Beneficial Owner is defined in Article 21 of the <a href="#">Law 1.362 of 3 August 2009 amended by law 1.503 of 23 December 2020 on the fight against money laundering, terrorist financing and corruption</a>:</p> <ul style="list-style-type: none"><li>a) the natural person(s) who, ultimately own or control the customer;</li><li>b) the natural person(s), for whom a transaction is carried out or an activity is carried out;</li><li>c) the natural person(s) who ultimately exercise effective control over a legal person or legal arrangement are also beneficial owners.</li></ul> <p>For more details, please refer to section B of this Document.</p>



Complex Ownership  
Structures

Complex Ownership Structures are structures with **3 or more layers of ownership between the Account Holder and the Beneficial Owner, or, structures that are less than 3 layers of ownership but that are difficult to verify the Beneficial Owner due to obscurity or obfuscation**, such as when information is not publicly accessible, lacks transparency, involves a foreign company or trust, requires foreign cooperation to verify, or when the recorded owner is a professional (lawyer, accountant, company services business).

Law No. 1.362 as  
amended

[Loi n° 1.362 du 3 août 2009 relative à la lutte contre le blanchiment de capitaux, le financement du terrorisme et de la prolifération des armes de destruction massive et la corruption](#)

Legal Arrangement

A relationship established by means of a contract between two or more parties that do not result in the creation of a legal personality such as Trusts or other similar arrangements. Examples of other similar arrangements (for AML/CFT purposes) include fiducie, treuhand and fideicomiso.

Legal Person

Legal persons refer to any entities other than natural persons that can establish a permanent customer relationship with a financial institution or otherwise own property. This can include companies, corporate bodies, foundations, institute, partnerships, or associations and other relevantly similar entities.

Monegasque  
Foundations

A foundation is a group of assets of private origin, in principle endowed with legal personality and managed for the general interest by a board of directors appointed by the founder(s). Refer to Monaco law n° 56 of 29/01/1922 on foundations.



Nominee shareholder or director	<p>Nominee is an individual or legal person instructed by another individual or legal person ("the nominator") to act on their behalf in a certain capacity regarding a legal person.</p> <p>A Nominee Director (also known as a "resident director") is an individual or legal entity that routinely exercises the functions of the director in the company on behalf of and subject to the direct or indirect instructions of the nominator. A Nominee Director is never the beneficial owner of a legal person.</p> <p>A Nominee Shareholder exercises the associated voting rights according to the instructions of the nominator and/or receives dividends on behalf of the nominator. A nominee shareholder is never the beneficial owner of a legal person based on the shares it holds as a nominee.</p>
Senior Management	<p>Senior management designates a manager or employee who has sufficient knowledge of the establishment's exposure to the risk of money laundering and terrorist financing and who has sufficient seniority to make decisions affecting its exposure to risk, and who needs to, not necessarily in all cases, be a member of the board of directors.</p>
Sovereign Implementing Ordinance No. 2.318 as amended	<p><a href="#"><u>Ordonnance Souveraine n° 2.318 du 3 août 2009 fixant les conditions d'application de la loi n° 1.362 du 3 août 2009 relative à la lutte contre le blanchiment de capitaux, le financement du terrorisme et de la prolifération des armes de destruction massive et la corruption</u></a></p>
Trusts	<p>A trust is a form of division of property rights and a fiduciary relationship, in which ownership of assets, transferred into a trust by a settlor, goes to a third party, known as a trustee, who has fiduciary duties to perform in the interest of the beneficiary. The beneficial enjoyment goes to the beneficiary of the trust.</p>



**This guide aims to promote the understanding by Supervised Entities (SE) of their AML/FT-P-C obligations regarding the identification of beneficial owners and complex structures, and to enable them to apply appropriate measures by addressing the provisions and practices specific to this subject.**

The scope of this Guideline is purely informative. The only legally binding documents are the legislative and regulatory texts governing the anti-money laundering, counter-terrorism and proliferation financing, and corruption framework in Monaco. All obligations and their details are therefore not addressed herein: solely applying the measures presented in this Guideline does not ensure that the institution fully complies with current legal obligations. For more information, please refer to the Generic Guidelines :

<https://amsf.mc/accompagnement/lignes-directrices-guides-et-guides-pratiques>

**The objective of these Thematic Guidelines is to provide assistance in understanding the AML/FT-P-C obligations related to beneficial ownership and complex structures as set out by Law No. 1.362 as amended and its Sovereign Implementing Ordinance No. 2.318 as amended by explaining them in a more pragmatic manner.**

This guidance takes into account the AML/FT-P-C law and regulations in force **on September 30, 2023.**



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# INTRODUCTION

## 1. Context

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Corporate vehicles, including companies, trusts, foundations, and partnerships - despite their legitimate economic role - are susceptible to misuse in complex schemes aimed at concealing true beneficial ownership and the underlying reasons for holding assets.

A common method to conceal beneficial ownership is the utilization of legal persons and arrangements to create intricate ownership chains. By introducing multiple layers of ownership across various jurisdictions and employing diverse legal structures, the beneficial owner can be distanced from the asset, complicating detection and hindering investigations. While many complex ownership structures are legitimate, they can also be exploited to obscure beneficial ownership, evade tax obligations, conceal wealth, and facilitate money laundering.

The use of shell companies in complex corporate structures designed to disguise beneficial ownership is a consistent and enduring technique used by criminal groups, corrupt individuals, and complicit professionals. The increased availability of shell companies to foreign nationals, which has been made possible by the growth of global communications and the convergence of international trade markets, has exacerbated this issue<sup>1</sup>.

Therefore, it remains crucial for Supervised Entities to identify the beneficial owners and to understand the complex structures of their clients.

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<sup>1</sup> FATF report, Concealment of Beneficial Ownership, 2018





## 2. Risks linked to legal entities

In 2020, the Principality of Monaco conducted its second National Risk Assessment (NRA) to determine the level and types of risks that the country faces in the area of money laundering (ML).

In 2021, the risk analysis was expanded through a separate, stand-alone Terrorism Financing (TF) Risk Assessment, which sought to identify the main TF risks at the national level. The NRA 2021, in particular, examined in great detail the risks every type of commercial and non-commercial company faces and assigned the highest risk rating to civil law partnerships, followed by LLCs, and joint stock companies.

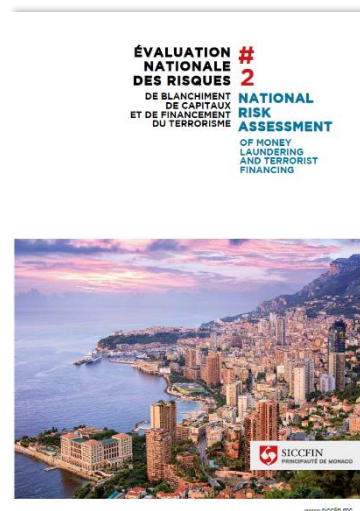
Despite positive feedback overall on these documents, MONEYVAL recommended that Monaco enriches its analysis of ML/TF risks associated with legal persons. To this end, the Strategic Committee led and coordinated this 2023 Legal Entities National Risk Assessment (the 2023 Legal Entities NRA).

The findings of this assessment can be summarized as follows:



With just over 22.000 legal entities on the registers, Monaco's corporate sector is relatively small compared to other financial centers.

From the cases analyzed in the threat section, Monegasque legal entities and their domestic bank accounts do appear to get used predominantly by domestic residents as instruments for collecting and storing proceeds of crime, rather than as a means for moving proceeds to other jurisdictions or to bank accounts held by companies abroad. Higher risk instruments such as corporate directors, nominee shareholders, and complex corporate structuring techniques involving legal entities in other jurisdictions exist but are used to a much lesser extent in Monaco compared to other financial centers and thus are posing a lesser risk. The activities carried out by Monegasque LLCs, joint stock companies, associations and foundations do not constitute high-risk ML industries and thus do not suggest any heightened risks. The vast majority of entities generates a significant percentage of revenue in Monaco, few conduct predominantly international business. For civil law partnerships, consensus indicated that civil law partnerships are created predominantly to hold assets and real estate located in Monaco and France.







The 2023 Legal Entities Risk Assessment confirms the main findings set out in the NRA 2021, which are that the risks of Monaco's corporate sector are compressed within the categories of civil law partnerships, LLCs, and joint stock companies. Other types of legal entities, as well as associations and foundations are found to carry a lower risk exposure overall. Associations and foundations are exposed to low levels of threats, a lower inherent ML risk, and are subject to strong risk mitigation measures. Taken in isolation, the residual risks associated with foundations and associations is thus much lower than for the rest of the population of legal entities.

Another finding of the 2023 Legal Entities Risk Assessment based on an analysis of shareholder/beneficial ownership data, corporate activities, and geographic data is a high level of connectedness between the corporate sector and the domestic Monegasque population and a predominantly single layered nature of the corporate sector. A large percentage of participants in Monegasque legal entities are foreign natural persons resident in Monaco. Legal entities rarely serve as shareholders or directors, which means Monaco's legal entities are not usually part of a corporate chain. While this on the one hand provides reassurance that in case of any criminal activity, there will be a person in Monaco that can be held accountable, it also increases the inherent risk associated with the sector due to the above mentioned considerations : Monaco as a country is home to many prominent, high and ultra-high net worth individuals from all parts of the globe that use Monegasque LLCs, joint stock companies and civil law partnerships to purchase or develop real estate in Monaco, or to participate in the local high value commerce or service industries. It is in this indirect manner that international ML risks are brought into the corporate sector in Monaco.

When combining the sectorial high inherent risk with the substantial risk mitigation measures in place, the residual risk level associated with Monaco's legal entities is determined to be medium-high.

### 3. Scope of law No 1.362 as amended

Pursuant to the applicable law and regulations in force<sup>2</sup>, all Supervised Entities (art.1 and 2 of the above-mentioned Law) must identify clients who are legal entities, foundations, associations, federations of associations, trusts or any other legal arrangements having a structure or functions similar to those of a trust. In addition, they must also identify the beneficial owner(s) of such clients as well as verify their identity.

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<sup>2</sup> Article 4-1 of the Law No. 1.362 of August 3, 2009, as amended; Chapters II and III of Sovereign Ordinance No. 2.318 of August 3, 2009, as amended



# PART 1: BENEFICIAL OWNERSHIP

## 1. Definition of the Beneficial Owner (BO)

In accordance with Article 21 of Law No.1.362, as amended, a beneficial owner is :

- ❖ the natural person(s) who, ultimately own or control the client ;
- ❖ the natural person(s), for whom a transaction is carried out or an activity is carried out ;
- ❖ the natural person(s) who ultimately exercise effective control over a legal person or legal arrangement are also beneficial owners.

### Concept of Beneficial Ownership

Understanding the concept of beneficial ownership involves identifying who the beneficial owner natural person is. **The beneficial owner is the natural, not legal person**, who owns and takes advantage of capital or assets of the legal person; as well as on those who exert effective control over it (whether or not they occupy formal positions within that legal person), rather than just the natural or legal persons who are legally entitled to do so. Supervised entities (SE) should understand the means by which BO(s) own or control a client which is a legal person or a legal entity. This requires a nuanced understanding of both ownership and control structure.

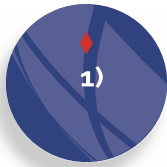
In order to identify beneficial ownership, Supervised Entities should understand the type of legal entity they are dealing with. Legal persons or arrangements have different ownership and control structures and therefore the methodology for identifying BOs will depend on the type of legal person<sup>3</sup> or legal arrangement<sup>4</sup>.

<sup>3</sup> **Legal Person:** Legal persons refer to any entities other than natural persons that can establish a permanent customer relationship with a financial institution or otherwise own property. This can include companies, corporate bodies, foundations, institute, partnerships, or associations and other relevantly similar entities.

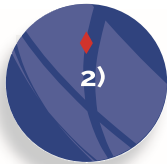
<sup>4</sup> A relationship established by means of a contract between two or more parties that do not result in the creation of a legal personality such as trusts or other similar arrangements. Examples of other similar arrangements (for AML/CFT purposes) include fiducie, treuhand and fideicomiso.



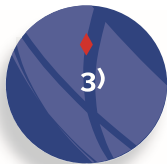
There are five types of legal persons in Monaco :



**Commercial companies in the form of sociétés à responsabilité limitée or SARLs (limited liability companies), sociétés en commandite simple or SCSs (limited partnerships), sociétés en nom collectif or SNCs (commercial partnerships), sociétés en commandite par actions or SCAs (limited partnerships with shares), sociétés anonyme monégasques or SAMs (Monegasque joint-stock companies) ;**



**Civil-law partnerships in the form of sociétés civiles immobilières or SCIs (property investment partnerships), sociétés civiles particulières or SCPs (special civil-law partnerships) and SAMs à objet civil (civil-law Monegasque joint-stock companies) ;**



**Les Groupements d'intérêt économique GIEs (economic interest groups) ;**



**Foundations ;**



**Associations and Federations of associations.**

Trusts in the form of legal arrangement cannot be incorporated in Monaco, however, Monegasque law allows for the establishment or transfer of foreign trusts in Monaco, as well as the use of foreign trusts to deal with the assets of individuals, whether during their lifetime or after their death.



## 1.1. Legal Persons

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When the client is a legal entity (joint-stock companies, limited liability companies, civil partnerships...), identifying a "beneficial owner" is a three-step approach. The term "beneficial owner" applies to :

- ❖ Natural persons who, ultimately, **hold or control directly or indirectly at least 25 %** of the capital or voting rights of the legal person (1) ;
- ❖ If there is **doubt** as to whether the natural person(s) with a controlling interest are the beneficial owner(s) or if **no natural person exercises control through a participation**, beneficial owner(s) are natural person(s) who effectively exercise, by, **any other means**, a power of control over the capital or over the management, administrative or direction bodies of the company or over the general meeting of its partners (2) ;
- ❖ When no natural person can be identified according to the criteria detailed in the paragraphs (1) and (2), and when there is no suspicion of ML/FT-P-C regarding the client, Supervised Entities should identify and take reasonable steps to verify the identity of the relevant natural person who occupies the position of **Senior Managing Official** or their equivalent under foreign law if the company is not registered in Monaco. This includes :
  - The manager(s) of general partnerships, limited partnerships, limited liability companies, partnerships limited by shares as well as civil partnerships ;
  - The managing director or general manager of public limited companies ;
  - The assignee appointed as part of a legal procedure for cessation of payments, judicial settlement or liquidation of assets.

### Distinction between legal ownership and beneficial ownership

Legal ownership and beneficial ownership over a legal person are two separate concepts. A natural person may be considered a beneficial owner on the basis that he/she is the ultimate owner/controller of a legal person, either through his/her ownership interests or through exercising ultimate effective control through other means.

The legal title or controlling shareholding of a company may be in the name of an individual or a legal person other than the beneficial owner who ultimately controls the entity, directly or indirectly.

Accordingly, individuals who exercise ultimate control over a legal person should be identified as beneficial owners, regardless of whether they own shares above any specified minimum ownership threshold.



## 1.2. Trusts and other legal arrangements

The definition of the beneficial owner applies in the context of trusts and any other legal arrangements, meaning the natural person(s), at the end of the chain, who ultimately own(s) or control(s) the legal arrangement, including those persons who exercise ultimate effective control over the legal arrangement. The legal owner of a trust property (trustee) simply holds the beneficial interest transferred by a settlor in the property on trust for the beneficial owner. The beneficial owner holds a right to the income from the property or a share in it, and a right to the proceeds of sale of the property or part of the proceeds.

Therefore, when the client is a trust, and pursuant to Article 15 of Sovereign Ordinance No. 2.318 of August 3, 2009, as amended, the term "beneficial owners" applies to :

- ❖ the settlor, who is the owner of assets who transfers their property into the trust ;
- ❖ the trustee (s), who the person who holds and administers assets of the trust in the interests of the beneficiary ;
- ❖ the person(s) acting as protector, if applicable. A protector is a person appointed under the trust instrument to direct or restrain the trustees in relation to their administration of the trust ;
- ❖ the beneficiaries or, when the persons who will be the beneficiaries of the trust or legal entity have not yet been designated, the category of persons in whose main interest the trust or legal entity has been constituted or operates. The beneficiaries or categories of beneficiaries are those who will ultimately have beneficial enjoyment over the trust's assets ;
- ❖ Any other natural person exercising ultimate control over the trust through direct or indirect ownership or other means.

### Beneficiaries of a trust

Where the beneficiary(ies) are *designated only by characteristics or categories*, Supervised Entities must obtain sufficient information to ensure that they are able to identify and verify the identity of these beneficiaries at the latest when they intend to exercise the rights over the property of the legal entity or the trust.

When the beneficiary(ies) are *named*, it is necessary to identify them as soon as possible and verify their identity at the latest when they intend to exercise their rights over the assets of the legal entity or trust.

In both cases, the identification and verification must intervene *prior* to any entry into enjoyment, in any manner whatsoever, of the property of the legal entity or the trust (i.e. **before** any distribution to one or more beneficiaries).

In the case of other legal arrangements<sup>5</sup>, beneficial owners may include: Founder, Council of members, Protector if applicable, and Beneficiaries.

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<sup>5</sup> For example, *fiducie*, *treuhand* or *fideicomiso*



### 1.3. Foundations, Associations, Federations of associations

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When the client is a Foundation, an Association or a Federation of associations, the "beneficial owner" is :

❖ ***For Monegasques Foundations***<sup>6</sup> :

- The founders ;
- The donors ;
- Any other person who, by any other means, directly or indirectly, can exercise effective control of the.

❖ ***For Associations and Federations of Associations***<sup>7</sup> :

- Natural persons who, in any capacity, are responsible for its management ;
- Natural persons who are responsible for its administration ;
- Any other person who, by any other means, directly or indirectly, can exercise effective control of the association or a federation.

According to Article 8-1 of Sovereign Ordinance No. 2.318 of August 3, 2009, as amended, when identifying clients who are associations, federations of associations or foundations, obliged entities should take the necessary measure to collect relevant and reliable documentation on the existence, nature, purposes pursued and management and representation methods of the association, of the federation of associations, or the foundation concerned. This identification also includes knowledge and verification of the list of persons authorized to exercise administration or representation of these clients.

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<sup>6</sup> Article 15-2 of Law No. 1.362, as amended.

<sup>7</sup> See footnote 9.



## 2. Practical steps in identifying beneficial owners

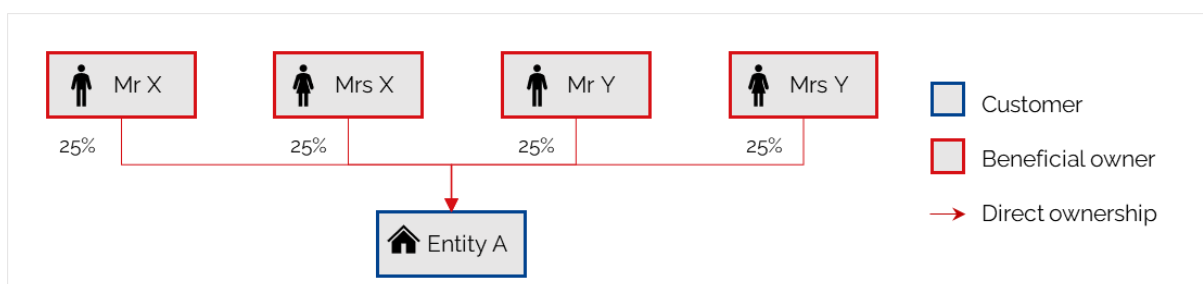
### 2.1. Notion of ownership

In the chain of identifying natural person beneficial owners, the first step for the SEs is to determine whether the customer is directly or indirectly owned by a natural person(s).

It is possible for ownership to be split into parcels of 25 percent or less, but relationships between the parties may give an individual aggregated ownership of the customer that amounts to more than 25 percent. This considers individuals who directly or indirectly hold a minimum percentage of ownership interest in the legal entity.

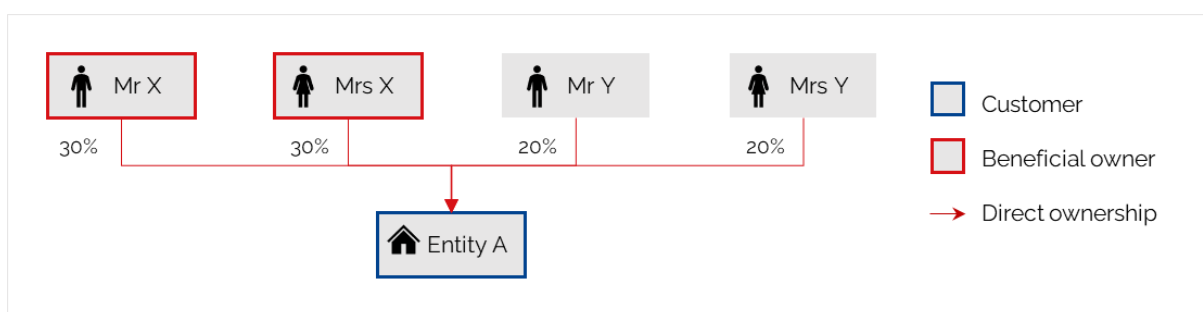
#### ❖ Example 1 – Simple Direct ownership

This example illustrates simple direct ownership, where the company is owned by four natural persons.



#### ❖ Example 2 – Complex Direct Ownership

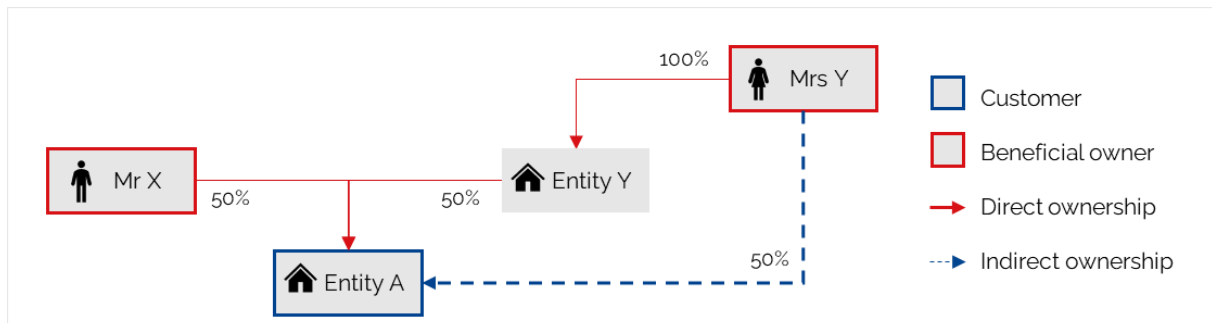
This example illustrates that there are 4 natural persons who are the direct owners of the customer, however only 2 natural persons own 25% and more of the company.





### ❖ Example 3 – Direct and Indirect Ownership

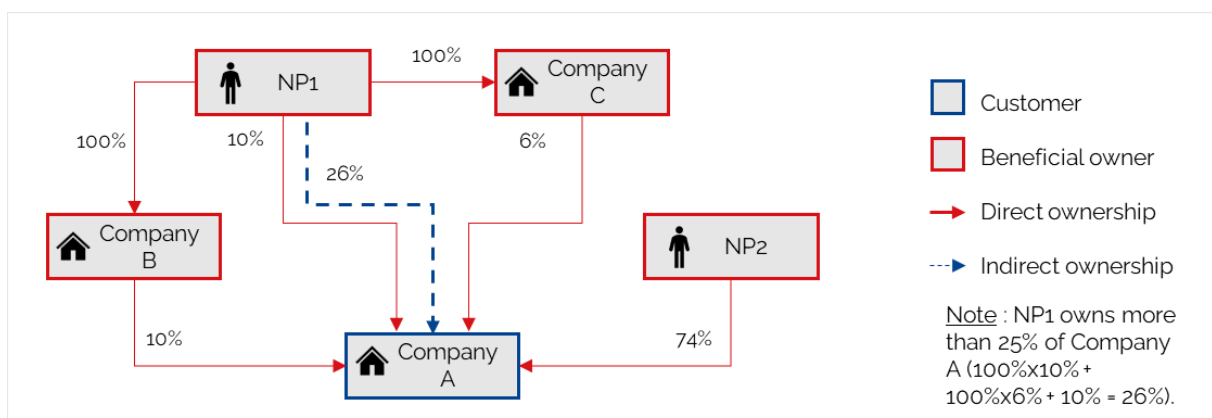
This example illustrates simple structure of direct and indirect ownership, where the entity is owned on the one hand by the natural person directly and on the other hand by the natural through another legal entity.



As part of the ownership test, the SEs should calculate the percentage of ownership. Where the proportion of capital held must be determined via several successive levels of indirect ownership, the total percentage of capital ultimately held by each individual is the mathematical result of these different proportions held indirectly - a weighted calculation of the percentages of capital shares held. In this illustrated case, the indirect owner holds 50% of the Company A ( $100\% \times 50\% = 50\%$ ).

### ❖ Example 4 – Aggregated Ownership

This example shows that NP1 has direct and indirect shareholding in Company A. When aggregated the total shareholding amounts to 26% therefore the individual is to be considered as the beneficial owner of Company 1 together with NP2.



## 2.2. Notion of Control

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The concept of control refers to the ability to take relevant decisions within the legal person or arrangement and to impose those decisions. It is important to distinguish between acting on behalf of the client and having effective control over them. The following cases are 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 positions held within the legal person or through other means.

❖ **Control through Personal Connections.**

This involves individuals who control a legal entity due to personal connections with individuals in positions of ownership or influence.

❖ **Control without Ownership.**

Natural persons can exert control without ownership by participating in the enterprise's financing or having close family relationships, historical or contractual associations. Control may be presumed even if not actively exercised, such as benefiting from the assets owned by the legal entity. Indirect control can be identified through shareholder agreements, the use of nominee shareholders, the exercise of dominant influence, or the power to appoint senior management.

❖ **Executive Control or Control through position held.**

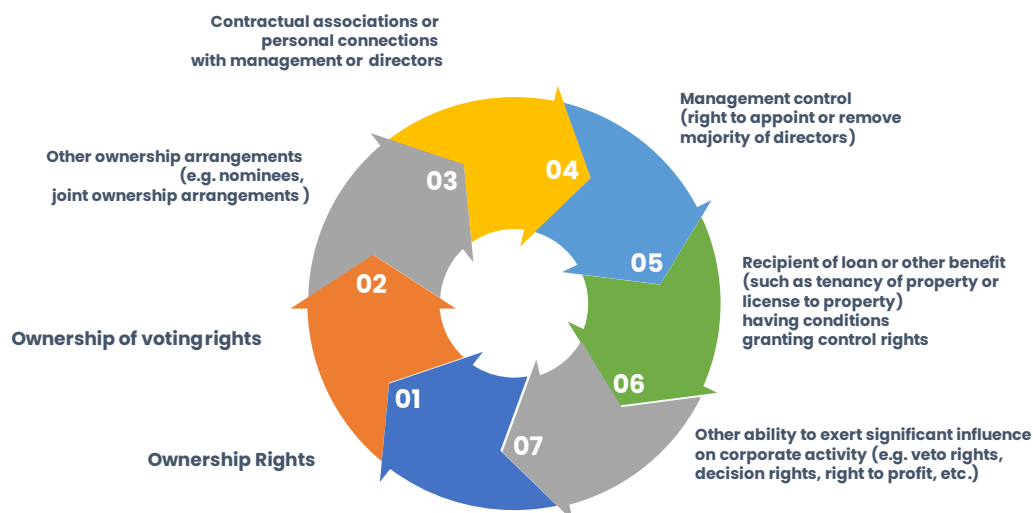
Natural persons exercising executive control over daily affairs through senior management positions like CEO, CFO, managing/executive director, or president are essential, as well as individuals responsible for strategic decisions affecting the entity's practices or direction.

❖ **Trustees**

(where applicable).

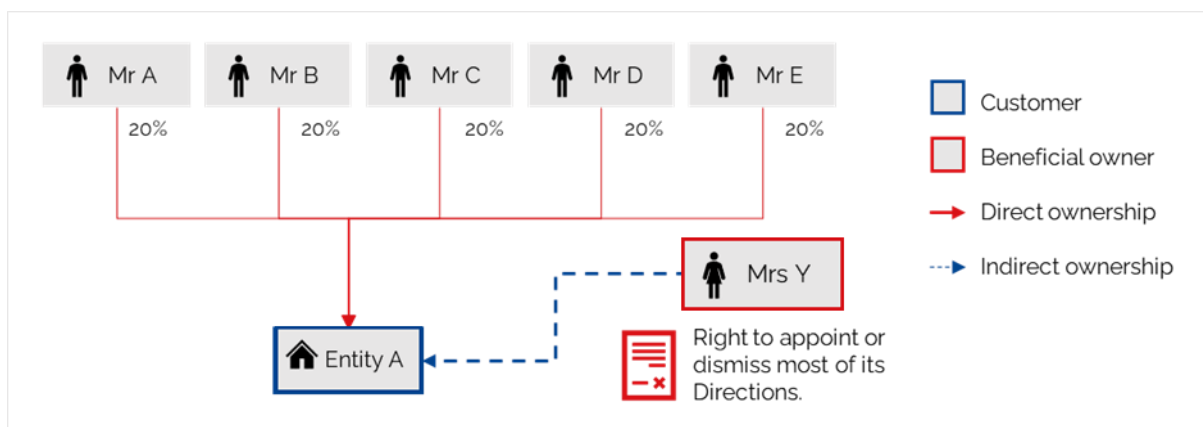


The following Diagram illustrates notions of Control based on which a natural person should be considered as a beneficial owner.



**Source :** OECD Building Effective Beneficial Ownership Frameworks A joint Global Forum and IDB Toolkit

#### Example - Indirect Control



## 2.3. Identify natural person on whose behalf transaction is conducted.

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Another part of the definition of a beneficial owner is a person on whose behalf a transaction is conducted. 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. This requirement focuses on individuals that are central to a transaction being conducted even where the transaction has been deliberately structured to avoid control or ownership of the customer but to retain the benefit of the transaction. In these cases, Supervised entities should be vigilant to identify such persons.

For additional information and case scenarios, Supervised Entities are encouraged to refer to the Generic Guidelines. They are available at the following link

<https://amsf.mc/accompagnement/lignes-directrices-guides-et-guides-pratiques>

## 3. Complex ownership structures

### 3.1. Identification of Complex Ownership Structures

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#### 3.1.1. Context

Complex Ownership structures can be created and exist for legitimate purposes, but the more complex they are (for example, multiple layers of ownership spread across jurisdictions), the more difficult it is to identify who owns and/or controls the structure.<sup>8</sup> Therefore, vigilance is necessary to detect potential attempts to hide beneficial ownership. Complex ownership structures are frequently multijurisdictional, involving a legal entity in one country controlled or owned by legal entities in one or more other countries.

#### 3.1.2. Definition of Complex Ownership Structures

Complex Ownership Structure refers to clients for which Supervised entities experiences increased effort or difficulty in independently verifying the identity of the Beneficial Owner of the client. In general, **these are structures with 3 or more layers of ownership between the Account Holder and the Beneficial Owner, or, structures that are less than 3 layers of ownership but whose Beneficial Owner(s) is difficult to identify due to obscurity or obfuscation, such as when information is not publicly accessible, lacks transparency, involves a foreign company or trust, requires foreign cooperation to verify, or when the recorded owner is a professional (lawyer, accountant, company services business).**

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<sup>8</sup> International Monetary Fund, Practical Implementation of Beneficial Ownership Requirements.



### 3.1.3. Types of Complex Structures

These include, in particular:

- ❖ **Circular ownership** – is when the companies own the entity and there is no natural person with a significant shareholding. Such ownership is difficult to identify when it involves number of layers incorporated in various jurisdictions. In this complex corporate structure, organizations establish interlinked ownership loops where they hold interests in other companies within the same loop, including the possibility of owning shares in themselves. The cumulative percentage of ownership across each company within the loop often results in a scenario where organizations appear to own 100% of their ownership back to other looped companies.
- ❖ **Control with fragmented ownership** - where no individual passes the 25 percent threshold required to be identified as a beneficial owner. However, the natural person who owns even less than 25% of direct shares can be considered as a beneficial owner.
- ❖ **Complex trust structures** - created in one jurisdiction and used in another to hold assets across jurisdictions to disguise the origin of funds; used to enhance anonymity by disconnecting the beneficial owner from the names of the other parties including the trustee, settlor, protector, or beneficiary, when a party to the trust is a company. In case the trustee is a company or if beneficiaries have interests in the trust through a company, the standard approach to identify all parties of the trust would not suffice. *Every party to the trust should be identified as a beneficial owner. If companies are parties to the trust, every individual who holds at least one share or vote in the company should also be considered a beneficial owner of the trust.*

## 3.2. Challenges of Complex structures

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Multiple complexities pose challenges in identifying beneficiaries and concealing distributions, creating potential loopholes for misuse or abuse within these Complex Trust structures.

### 3.2.1. Trust parties involved

Complex trust structures, can be highly intricate due to the various parties involved. In a trust, a “settlor” establishes the trust, and **distinctions may exist between a legal or nominee “settlor”, as mentioned in the trust deed, and the economic “settlor” who provides the assets**. The “trustee”, typically holding trust assets in their name, is not the owner but manages the assets for agreed-upon fees. **In Common Law countries, trusts are not considered legal persons, so the trust itself cannot own assets.**



The settlor may also serve as the trustee, **or a "corporate trustee" may be appointed. In such cases, control of the trustee lies with whoever owns or controls the company.** Trusts should ideally have **"beneficiaries"**, but in some jurisdictions, trusts may have **"purposes"** instead of or in addition to beneficiaries. In discretionary trusts, beneficiaries' rights depend on the trustee's discretion for distributions, allowing **discretionary beneficiaries** to remain unidentified until a distribution occurs.

Discretionary trusts often involve a **"protector" or "enforcer"** for the settlor to control the trustee. Even without a protector, **the settlor can control the trustee through ownership or control of the corporate trustee, a revocable trust, or by retaining rights such as veto power, the ability to remove or appoint trustees, and more.**

### **3.2.2. Combined ownership of legal persons and legal arrangements**

It is possible for a trust to be the owner or shareholder of a company, also, it is possible that the trustee to be a legal person. Supervised entities should pay attention to cases where there is **an entity in the trust structure**. In this case, beneficial owners encompass settlors, protectors, and beneficiaries (if natural persons), as well as individuals controlling the trustee company. **The principle is to "drill-down" entities and trusts to identify the ultimate natural persons** owning or controlling them. In such cases, the legal person should not be identified as BO of the trust, but rather the individuals that control that legal person (natural persons owning or controlling 25% and more of the shares of the entity).

### **3.2.3. Nominee shareholders and directors**

Supervised Entities should pay attention to legal entities that have **nominees to represent shareholders and directors**. Some nominee arrangements are legitimate and formal however, others can involve less formal or more opaque arrangements, in which the nominee is used primarily to conceal the beneficial owner's identity.

- ❖ **Nominee** is an individual or legal person instructed by another individual or legal person ("the nominator") to act on their behalf in a certain capacity regarding a legal person.
- ❖ **A Nominee Director** (also known as a "resident director") is an individual or legal entity that routinely exercises the functions of the director in the company on behalf of and subject to the direct or indirect instructions of the nominator. A Nominee Director is never the beneficial owner of a legal person.
- ❖ **A Nominee Shareholder** exercises the associated voting rights according to the instructions of the nominator and/or receives dividends on behalf of the nominator. A nominee shareholder is never the beneficial owner of a legal person based on the shares it holds as a nominee.



### 3.3. Example of a complex ownership structures

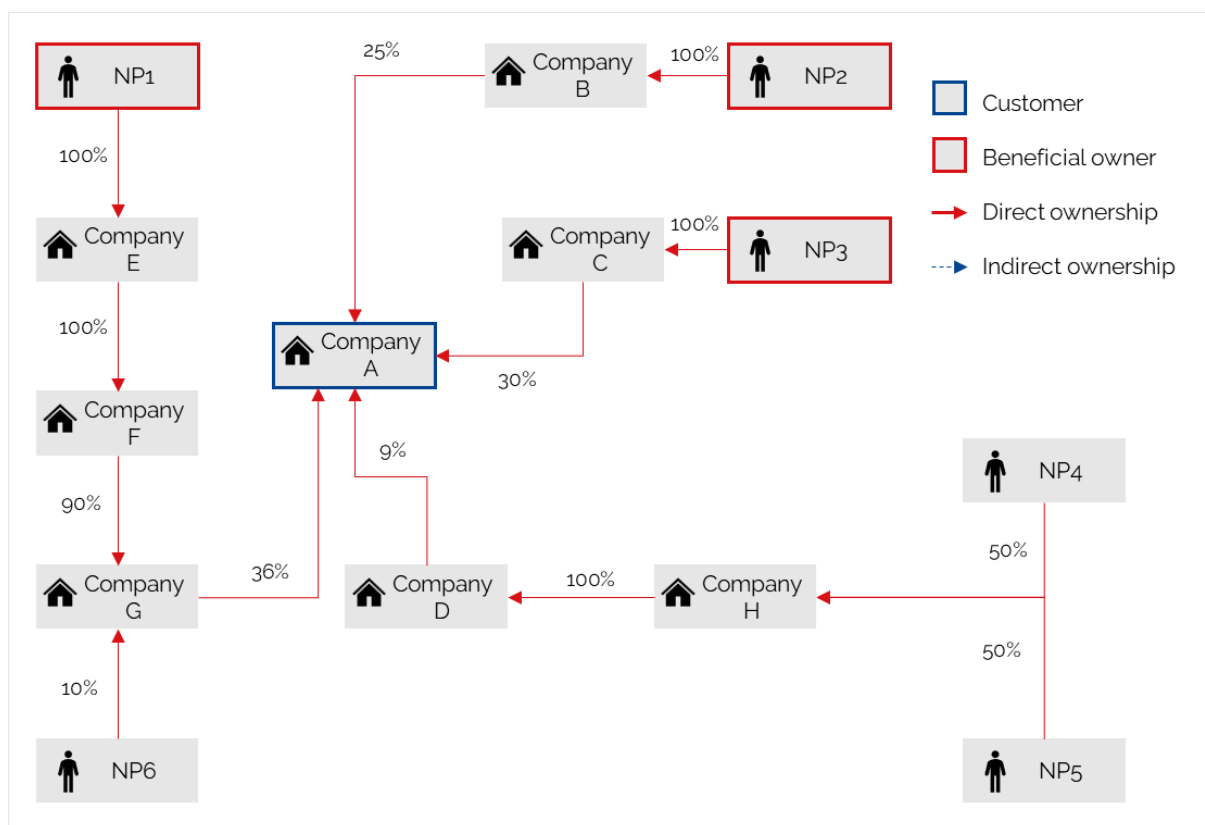


Figure 1

In this example Figure 1, all natural persons beneficial owners have indirect ownership of the company.

- ❖ NP1 has the highest shares 36% ( $90\% \times 40\% = 36\%$ )
- ❖ NP2 has 25% shareholding in Company A ( $100\% \times 25\% = 25\%$ )
- ❖ NP3 has 30% shareholding in Company A ( $100\% \times 30\% = 30\%$ )
- ❖ NP4 holds 50% of shares in company H which holds 100% of Company D which holds 9% of Company A, thus NP4 has 4.5% shareholding in Company A.
- ❖ NP 5 holds also 4.5% and NP6 holds 3.24% of Company A.

Therefore, UBOs of Company A should be considered NP 1, 2, and 3. The remaining natural persons hold less than 25%.





## PART 2: KEY REQUIREMENTS AND OBLIGATIONS

Supervised entities should comply with obligations which include, but are not limited to :

### 1. Understanding the Ownership Structure of the Client

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Supervised entities should :

- ❖ understand the type of structure the customer has (legal form, country or jurisdiction of incorporation...);
- ❖ understand whether the customer is directly owned, indirectly owned, or involves intricate legal entities or arrangements in the ownership chain;
- ❖ this crucial initial assessment enables the Supervised Entity to categorize the customer's risk level accurately and apply the appropriate due diligence measures.

### 2. Identifying the Legal Entity

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In order to identify clients who are legal persons, or entities, legal arrangements, trusts, associations or foundations, the following information and corroborating documents should be collected:

- ❖ Name of the entity;
- ❖ Address of the head office (i.e. of the trustees or the foundation board);
- ❖ Identity of the persons authorized to administer or represent the entity;
- ❖ Nature and purposes pursued;
- ❖ Management and representation arrangements;
- ❖ List of people authorized to manage or represent the client;
- ❖ Information on the ownership and control structure of the entity;
- ❖ Any other relevant information.

### 3. Verifying the identification of the Legal Entity

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The information submitted by the customer must also be verified, using documents, data and information from reliable and independent sources (refer to part 4. for examples).



## 4. Identifying the Beneficial Owner

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In order to identify a beneficial owner of a legal entity, of a trust or any other legal arrangement, of an association/federation of associations or a Monegasque foundation, the following information must be collected, along with supporting documentation :

- ❖ Name; User name, nickname or pseudonym;
- ❖ First name(s);
- ❖ Date and place of birth;
- ❖ Nationality(ies);
- ❖ Address;
- ❖ Control exercised over the entity concerned;
- ❖ Date on which the natural person became the beneficial owner of the entity;
- ❖ Any other relevant information.

Additionally, the source of wealth and source of funds of the beneficial owners should be established. The extent of the information collected and requests for relevant documents are risk-based.



## 5. Identifying the identity of the Beneficial Owner

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Much of the information provided regarding BOs can be verified by collecting documents used to identify any natural person. Additional information is available in the Generic guidelines. Documents collected to verify the identification of a legal entity are also useful in determining the ownership or control exercised by the BO over the entity as well as the date on which the natural person became the BO of the entity.

As part of establishing a business relationship, and depending on the typology of the client, Supervised Entities are required to collect an extract from the Register of Beneficial Owners or the Register of Trusts, as follows:

- ❖ In order to obtain an extract of the information entered in the Register of Beneficial owners, a declaration is required. For more information, please consult the following link : <https://monentreprise.gouv.mc/thematiques/creation-et-gestion-d%E2%80%99activite/obtention-de-documents-officiels-et-labels/documents-officiels/effectuer-une-declaration-relative-a-l-obtention-d-un-extrait-des-informations-portees-au-registre-des-beneficiaires-effectifs>
- ❖ In order to obtain an extract of the information entered in the Register of Trusts, a declaration is also required. For more information, please consult the following link : <https://monentreprise.gouv.mc/thematiques/creation-et-gestion-d%E2%80%99activite/obtention-de-documents-officiels-et-labels/documents-officiels/effectuer-une-declaration-relative-a-l%E2%80%99obtention-d%E2%80%99un-extrait-des-informations-portees-au-registre-des-trusts>

## 6. Targeted Financial Sanctions (TFS) Screening

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Supervised Entities must perform a regular screening of all parties involved into a business relationship: beneficial owners, shareholders, directors, legal representatives, nominee shareholders/directors, as well as legal entities, trusts or any other legal arrangements themselves. Supervised Entities must pay particular attention to transaction and business relationships that may be linked to activities subject to sanctions in a prohibited country or a country or person under sanctions. For more details on TFS screening, please refer to the Generic Guidelines.

## 7. Periodically updating Ownership structure & beneficial ownership data

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Supervised Entities should update information on clients and beneficial owners on the basis of their risk-based approach.



## 8. AML/CFT Policies and Procedures

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An effective AML/CFT program should clearly outline how an entity fulfils its obligations regarding beneficial owners. This involves documenting procedures for:

- ❖ Determining customers' beneficial owners.
- ❖ Collecting information about each beneficial owner.
- ❖ Verifying information about each beneficial owner and outlining the reasonable measures taken.
- ❖ Using reliable and independent documentation or data to verify the identity documents of beneficial owners.
- ❖ Updating beneficial ownership information for customers and managing changing risks throughout the business relationship.
- ❖ Establishing conditions for allowing the use of 'disclosure certificates' as a last resort.
- ❖ Identifying an 'alternative individual' when a beneficial owner cannot be identified.

These procedures should be tailored to the specific business or organization, considering its unique characteristics and the level of money laundering/terrorism financing risk it faces.

## 9. Record keeping

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SE are obliged to keep records on ownership structure and beneficial ownership information for a minimum of five years, starting from the date of an occasional transaction or the termination of a business relationship. This information should be readily available to domestic authorities upon request.

All documents, including copies of official identification (e.g., passports, identity cards,), ownership structure documents, business correspondence, and underlying documentation resulting from inquiries and analysis aimed at determining the nature of transactions are among the records to keep.



## 10. Suspicious Reporting obligation (new or existing business relationship)

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In accordance with Article 7 of Law No. 1.362 of August 3, 2009, when the obliged entities referred to in Articles 1 and 2 have been unable to fulfill their due diligence obligations prescribed in Articles 4-1 [identification and verification of the business relationship] and 4-3 [purpose and nature of the business relationship], they may neither establish nor maintain a business relationship, nor carry out any transaction.

If, exceptionally, a business relationship has already been established pursuant to Article 11-1, it must be terminated.

Furthermore, they must assess whether a declaration is necessary (as the case may be, to the financial intelligence service of the Authority or to the Council of the Bar Association), in accordance with the provisions of Chapter V of the aforementioned law.

This assessment should be approached restrictively. Thus, the failure to establish, maintain or terminate a business relationship for a reason related to the obligations provided for by Law No. 1.362 or for a reason preventing the fulfillment of said obligations constitute situations requiring the issuance of a suspicious transaction report. On the contrary, an exclusive commercial reason, in the absence of any suspicion, could be considered as a reason not requiring the submission of a suspicious transaction report.

More details are available on this topic in the STR Guidelines and Practical Guidance.



## PART 3: RED FLAGS

- ❖ Inexplicably intricate structures;
- ❖ Frequent transfers of shares between same or related parties;
- ❖ After a transfer of shares of a company, a subsequent transfer is made back to the initial holder, in a very short period after the initial transfer of shares;
- ❖ Inability to establish relationship between the beneficial owner and authorized signatory of the company;
- ❖ Company is registered at an address that is also listed against numerous other companies or legal arrangements, indicating the use of mailbox service;
- ❖ The complex formation structure that does not commensurate with nature of business activities or where legal person fails to disclose actual beneficial owner;
- ❖ Individuals or connected persons insist on the use of an intermediary (either professional or informal) in all interactions without sufficient justification;
- ❖ Legal persons or legal arrangements who have demonstrated a long period of inactivity following incorporation, followed by a sudden and unexplained increase in financial activities;
- ❖ Director or controlling shareholder(s) do not appear to have an active role in the company;
- ❖ Director, controlling shareholder(s) and/or beneficial owner(s) are listed in the records of other legal persons or arrangements, indicating the use of nominees;
- ❖ Ownership structure involves a jurisdiction that is considered to pose a high money laundering or terrorism financing risk.



## PART 4: EXAMPLES OF BENEFICIAL OWNERS PER TYPE OF LEGAL ENTITY AND TYPE OF DOCUMENTS

### EXAMPLES OF BENEFICIAL OWNERS PER TYPE OF LEGAL ENTITY

Type of Legal Entity	Type of Beneficial Owner <i>IF no beneficial owner - natural person could be identified according to the criteria of ownership 25% or according to the criteria of control by "other means", as specified in the (Section 1 of this Document above)</i>	Type of Documents to Identify and Verify (list non exhaustive)
<b>Associations or Federations of associations (Monegasque)</b>	<p>Natural persons, who, in any capacity, are responsible for its management;</p> <p>Natural persons who are responsible for its administration;</p> <p>Any other person who, by any other means, directly or indirectly, can exercise effective control of the association or a federation.</p>	<p>Statutory Documents</p> <p>Minutes of Board Meeting</p>
<b>Foundations (Monegasque)</b>	The founders, Any other person who, by any other means, directly or indirectly, can exercise effective control of the foundation	<p>Statutory Documents</p> <p>Minutes of Board Meeting</p>
<b>Funds</b>	Fund Managers, Fund Sponsor, General Partner, Fund Provider, Fund Administrator.	Certificate of Incorporation or Registration





<b>Cooperatives</b>	Senior individuals within the organization	Registration form Board Meeting Minutes
<b>Government Bodies</b>	Senior officials of the organization	Government decision to establish the organization
<b>Government linked Enterprise</b>	Senior officials of the institution	Shareholder's Resolution Joint Venture Resolution Register of Members
<b>Economic interest groups (GIEs)</b>	President, General director or the member(s) of the management board of the GIE, or the president of the endowment fund, or the natural person(s) and, where applicable, the permanent representative of the legal entities, designated administrators of the economic interest group	Notarized or private deed Registration evidence Register of Members Minutes of Board Meeting
<b>Limited Liability Partnerships (SARLs)</b>	Members, Senior/Executive Management board	Statutory documents Extrait RCI Certificate of Registration Minutes of Board Meeting
<b>Limited partnerships (SCSs) or Commercial partnerships (SNCs) or Limited partnership with shares (SCAs) or Civil-law partnerships (SCIs and SCPs)</b>	General or limited Partners	Statutory Documents Certificate of Registration
<b>Monegasque joint-stock companies (SAMs)</b>	Président - Administrateur Délégué	Statutory Documents Certificate of Registration Extrait RCI Minutes of Board Meeting



<b>Publicly listed Companies</b>	Chairman, Chief Executive Officer, Managing Director, Chief Financial Officer, Finance Director, Chief Operating Officer	Certificate of Incorporation Certificate of Registration Articles of Association Annual Report
<b>Sole Trader</b>	Proprietor	Registration Evidence
<b>Special Purpose Vehicle</b>	Legal owner of Assets or Partner  Senior Executives or Board Members such as Chief Executive Officer, Chief Financial Officer, Chief Operating Officer or persons who hold similar senior control positions	Legal Agreement Establishing an SPV  Certificate of Good Standing Certificate of Incorporation Register of Directors Register of Shareholders
<b>Trusts</b>	Trustees, Beneficiaries, Protector(s) and Settlor(s) of the Trust/Foundation	Trust Deed or Letter of Wishes Trust Registration Document Recent Minutes
<b>NPOs</b>	Senior individuals within the organization	Charter Registration form Minutes of the Meeting



## PART 5: REMINDER OF LAW AND SANCTIONS PROVISIONS

The main reference texts which define all AML/CFT obligations are:

- ❖ Law n°1.362 of August 3, 2009, amended.
- ❖ Sovereign Ordinance No. 2.318, amended,
- ❖ Ministerial Decree n°2021-703 of November 8, 2021, relating to the list of States or territories whose anti-money laundering systems, the financing of terrorism or corruption presenting strategic deficiencies, referred to in article 14-1 of Law n° 1.362, amended
- ❖ Ministerial Decree No. 2022-553 of October 20, 2022 setting out the terms and conditions for communicating questionnaires established by the AMSF.

Sanctions falling under the AMSF authority are the result of two separate procedures:

- ❖ Those provided for in Article 64-8 of Law No. 1.362 targeting material, one-off and isolated breaches, listed in Article 64-7, such as: failure to transmit the business risk assessment, the annual activity report, to transmit procedures in French, to respond to the annual STRIX questionnaire, etc.

This procedure may lead to an administrative sanction of up to €5,000 against the obliged entity, if the latter has not regularized his situation after being formally notified to do so.

- ❖ Those provided for in Article 65-1 of the said law, targeting breaches of the entire system devoted to AML/CFT compliance, noted, in particular, during on-site inspection missions carried out by the AMSF.

This procedure is initiated at the end of the inspection process, or in the absence of regularization of his situation by the obliged entity after having been notified, or in application of the last paragraph of Article 64-8, the department exercising the supervisory function of the Authority transmits to the department exercising the sanction function of the Authority the inspection report referred to in Article 54 or a statement of the breach(es) noted outside of any inspection, accompanied by the documents on which it relied to establish said report or statement.

After examination of the inspection report or the statement of the breach(es) and the attached documents, carried out by the sanction department, an adversarial sanction procedure may be initiated against the person concerned, before the sanction formation of the AMSF.

The administrative sanctions regime is governed by the procedural guarantees described in "Sub-Section I - Sanctions falling under the AMSF" of "Section I - Administrative sanctions" of Chapter XI of Law No. 1.362.



At the end of this procedure, the sanctioning body may impose the following sanctions:

- 1°)** a warning;
- 2°)** a reprimand;
- 3°)** an injunction ordering the natural or legal person to put an end to the conduct in question and prohibiting them from repeating it;
- 4°)** a ban on carrying out certain operations;
- 5°)** an injunction to take appropriate measures to comply with their obligations;
- 6°)** an injunction to report regularly to the supervisory authority on the measures it takes;
- 7°)** a financial penalty the amount of which cannot exceed one million euros, or 10% of the net banking income or the annual turnover excluding tax of the organization or person concerned, or, when the advantage gained from the breach can be determined at double the latter, the highest amount being retained. For the organizations and persons referred to in points 1°) to 4°) and 24°) to 28°) of Article 1, the financial penalty may be increased to an amount of up to ten million euros. When the company is a subsidiary of a parent company, the income to be taken into consideration is that which results from the consolidated accounts of the parent company during the previous financial year;
- 8°)** temporary suspension or revocation of the work permit;
- 9°)** the suspension or deprivation of effect of the declaration of activity, the temporary suspension or revocation of the authorization to practice, or of the authorization to constitute the company, or of the approval of activities relating to services on digital assets or crypto-assets, excluding services approved by the Commission for the Control of Financial Activities;
- 10°)** a ban on holding salaried employment within the sector of activity in question or carrying out an activity;
- 11°)** a decision of temporary suspension from exercising management functions within the organizations or persons referred to in Article 1 for a period not exceeding ten years, or of automatic dismissal, with or without appointment of a provisional administrator, when direct and personal responsibility for the breaches is established against the managers of the said entities or the members of their administrative body;
- 12°)** publication of the sanction decision, anonymized or not, under the conditions of Article 69 of Law n° 1.362. The AMSF may decide to publish its decision in the Journal de Monaco, on its website and, where applicable, on any other paper or digital medium.



Administrative sanctions imposed by the AMSF are published anonymously in the following cases:

- a) when publication in a non-anonymous form would compromise an ongoing criminal investigation;
- b) When it appears from objective and verifiable elements provided by the sanctioned person that the harm which would result for him or her from a publication in a non-anonymous form would be disproportionate.

When the situations mentioned in points a) and b) are likely to cease to exist within a short period of time, the AMSF may decide to defer publication during this period.

It may also decide to charge the sanctioned person all or part of the publication costs of said publication, as well as the costs incurred by the control measures which made it possible to establish the sanctioned facts.

## PART 6: RELEVANT DOCUMENTS

Among many other existing resources, the following documentation may support BO understanding:

- ❖ AMSF Generic Guidelines:

<https://amsf.mc/publications/lignes-directrices-generiques-a-destination-des-professionnels-monegasques>

- ❖ FATF report, Concealment of Beneficial Ownership:

<https://www.fatf-gafi.org/en/publications/Methodsand Trends/Concealment-beneficial-ownership.html>

- ❖ FATF Guidance on Beneficial Ownership of Legal Persons (Recommendation 24):

<https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Guidance-Beneficial-Ownership-Legal-Persons.html>

- ❖ IMF, Unmasking Control: A guide to Beneficial Ownership Transparency:

<https://www.imf.org/en/Publications/Books/Issues/2022/10/06/Unmasking-Control-A-Guide-to-Beneficial-Ownership-Transparency-517096>





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