

GUIDANCE

on determining the beneficial owner

Introduction

1. Recommendation 10 of the Methodology for Assessing Technical Compliance with the Financial Action Task Force (hereinafter referred to as “FATF”) recommendations and the effectiveness of AML/CTF/CPF systems (hereinafter referred to as “FATF Methodology”) sets forth the requirements for customer due diligence (hereinafter referred to as “CDD”), and its Standard 10 – requirements for determining the beneficial owner within the framework of CDD.

2. The obligation of the reporting entity to conduct CDD is prescribed by Articles 16, 17 and 18 of the Law “On combating money laundering and terrorism financing” (hereinafter referred to as “Law”). Pursuant to sub-point “a” of point 19 of part 1 of Article 3 of the Law, identifying and undertaking reasonable measures for verification of identity of the customer’s beneficial owner (hereinafter referred to also as “determining the beneficial owner”) also constitute part of the CDD.

3. For the purpose of assisting the process of determining the beneficial owner, the Financial Monitoring Center of the Central Bank of the Republic of Armenia, based on point 16 of part 1 of Article 10 of the Law, has drawn up this Guidance, which provides practical clarifications and examples related to collection of beneficial ownership information. The Guidance has been drawn up based on the FATF publications, and study of the international practice.

Scope of beneficial ownership

4. Pursuant to point 14 of part 1 of Article 3, beneficial owner shall be the natural person, on behalf or for the benefit of whom the customer ultimately acts; and (or) who really (actually) controls the customer or the person on behalf or for the benefit of whom the transaction is conducted or the business relationship is established. The beneficial owner of a legal person shall be the natural person, who:

- *directly or indirectly holds 20 and more per cent of the voting stocks (issued stocks, shares) of the given legal person, or has 20 and more per cent direct or indirect participation in the statutory capital of the legal person;*
- *exercises real (actual) control over the given legal person through other means;*
- *is an official carrying out the overall or routine management of the given legal person, in case no natural person complying with the requirements of the previous points is identified.*

5. It is important to note that on all the grounds provided for by the Law only a natural person may be a beneficial owner. Furthermore, more than one beneficial owner may be determined through application of each ground.

6. In determining the beneficial owner on the above-mentioned grounds the peculiarities of the legal status of the natural person as a civil law subject (being of minor age,

limited active legal capacity, patronage, existence of guardianship or curatorship, etc.) shall be taken into account.

Beneficial owner of the transaction or the business relationship

7. Beneficial owner of the transaction or the business relationship shall be the natural person:

- *on behalf or for the benefit of whom the customer ultimately acts or;*
- *who really (actually) controls:*
 - *the customer; or*
 - *the person, on behalf of or for the benefit of whom the transaction is conducted, or the business relationship is established.*

8. As a rule, the beneficial owner of the transaction aligns with the beneficial owner of the business relationship established with the customer or the beneficial owner of the customer. However, in certain cases transactions can be conducted, where the beneficial owner differs from the beneficial owner of the business relationship or the customer.

9. This component of the definition focuses on determination of natural persons, to whom the customer provides services or on whose behalf the customer otherwise acts as an intermediary. This may occur in the form of both formal and informal representation.

10. An example of formal representation may be when the person providing legal or accounting services conducts, in the capacity of an agent, a transaction on behalf of its customer or on its behalf, but for the benefit of its customer.

11. An example of informal representation may be when other person conducts a transaction or establishes a business relationship on behalf of a politically exposed person.

Beneficial owner of the legal person

12. Pursuant to part 6 of Article 16 of the Law, in case of legal person customers the reporting entity should have complete information on the ownership and control structure of that legal person. This is the first step to determining the beneficial owner of the legal person on the ground of participation, control or the position held.

13. It should be noted that having complete information on the ownership and control structure of that legal person implies not only acquisition of information based on mandatory documents for establishing the legal person, but also taking reasonable measures to acquire information on formal and informal arrangements that may impact the decision-making process of the legal person. Such information can be acquired also based on the logic of the transactions conducted within the scope of the business relationship.

14. The determination of beneficial ownership of the legal person requires application of the three-pronged approach. As the first step, the reporting entity should determine all natural persons that meet the criteria provided for by sub-points “a” and “b” of point 14 of Article 3 of this Law, and only if there are no such persons, the beneficial ownership should be determined by applying the criterion provided for by sub-point “c”.

a. Beneficial owner on the ground of participation

15. In view of application of the threshold, the Law differentiates between the **voting right and participation**, as the participation interest in the statutory capital of the legal person and the weight of the voting right deriving therefrom may not be equal. In particular, the weight of the voting right deriving from the participation interest held by the person depends on the peculiarities defined by law or the statute of the given commercial organization. For instance, in case of a joint stock company that has issued preferred stocks without voting rights, in order to determine the percentage of the voting right of the person it is necessary to make a calculation based on the total number of voting stocks solely and not all stocks of the company.

16. The voting right held by the person may also have different level of impact, depending on how factual circumstances change. For instance, given that the stocks repurchased by the joint stock company are not taken into account during the calculation of votes, the vote of the person holding the remaining stocks will carry greater weight in decision-making under these conditions.

17. On the ground of the voting right held by the person the latter may be considered a beneficial owner of the legal person both individually and jointly with other persons, by acting in a coordinated manner (for instance, by virtue of the agreement to vote in a coordinated manner based on the shareholder's agreement concluded between the shareholders of the company).

18. At the same time, the participation held by the person in the statutory capital of the legal person may exceed the threshold defined by the Law, without granting equivalent or any voting right (for example, if the person holds preferred stocks without voting rights).

19. In terms of exceeding the threshold provided for by the Law, the participation and the voting right held by the person shall be assessed regardless of the presence of an asset manager, nominee or other management (custody) arrangements. Moreover, such persons providing management or custody-related services may not be a beneficial owner of the legal person.

20. The Law also differentiates between **direct and indirect** fulfillment of the specified conditions, taking into account that a person may acquire participation in the statutory capital of a legal person directly or through intermediate legal persons (see [Figure 1](#)).

21. In case of participation through an intermediate legal person or persons the size of final participation is calculated based on the size of participation of each previous intermediate organization (see [Figure 2](#)).

22. The size of total participation of the person is calculated based on the aggregate sum of all percentages of the participation in the statutory capital of the legal person resulting from direct and indirect participation of the beneficial owner (see [Figure 3](#)).

23. The application of 20-percent threshold provided for by the Law may bring about such situations where the commercial organization has no beneficial owner on the ground of participation or voting right as the statutory capital is divided so that there is no natural person, whose participation or voting right (direct or indirect) exceeds the minimum threshold.

b. Beneficial owner on the ground of control

24. Apart from existence of participation or voting right exceeding a certain threshold, the Law also views as beneficial owners all those persons that exercise real (actual) control over the

given legal person through other means. Moreover, the natural persons able to exercise control are considered beneficial owners of the legal person, regardless whether there are beneficial owners on the ground of participation.

25. There is real (actual) control where the natural person can predetermine the actions of the legal person or impact the adoption of decisions on behalf of the legal person.

26. The control capacity may depend on various legal or factual circumstances. These circumstances may include, for example:

- *Position held in the management bodies of the legal person, which vests the person – by virtue of the law or the statute – with essential competences to predetermine the actions of the organization;*
- *Capacity to appoint and dismiss the majority of members of management bodies of the legal person, as a result of which the person may influence the decisions adopted by the given management body;*
- *Capacity to predetermine the actions of the legal person based on the terms and conditions provided for in loan or credit agreements, under which the creditor may significantly intervene with the management of the legal person;*
- *Presence of kinship or other personal relations with the participants or members of the management body of the legal person.*

27. For instance, in case of a partnership where the management is carried out by the consensus of all members, the participants or a part of them may not fulfill the beneficial ownership criteria on the ground of participation or voting right (on the ground of failure to exceed the threshold), but all of them will be considered beneficial owners on the ground of control, as they are empowered to prevent the adoption of any essential decisions by themselves.

28. Determining the whole chain of participants of the legal person customer is also important to assess actual control exercised by the participants (see [Figures 4](#) and [5](#)).

c. Beneficial owner based on the position held

29. The beneficial owner shall be determined on the ground of the position held by them in the structure of the legal person only where there is no natural person who fulfills the beneficial ownership criteria on the ground of participation or control. In this case, within the meaning of the Law, a beneficial owner of a legal person is the official carrying out the overall or routine management of the given legal person.

30. Determining the beneficial owner by applying this ground constitutes a part of performance of the CDD obligation, however it does not imply that the legal person operates for the benefit of the person specified as a beneficial owner in the given case.

31. Depending on the type of the legal person and its management form, such person may be considered to be the director, chairperson, manager, etc. In general, it is assumed that depending on the position thereof, the overall or routine management of the given legal person is carried out by one person, while — depending on the management peculiarities of the legal person — there may be cases where more than one beneficial owner is determined by the application of this ground.

32. If the overall or routine management of the legal person is carried out by other legal person or legal arrangement, by applying the regulations of the Law the natural person empowered to act on behalf of the given legal person or legal arrangement shall to be identified.

Peculiarities of non-commercial organizations

33. The ground for being considered as a beneficial owner on the ground of participation is not applicable to legal persons that have no authorized (equity) capital divided into stocks (issued stocks, shares). Beneficial owners of such legal person (foundations, non-governmental organizations, etc.) are deemed the persons (exercising control) determined by applying sub-point “b” of point 14 of part 1 of Article 3 of the Law, and in the absence of such persons – the official carrying out the overall or routine management of the activity of the legal person.

Peculiarities of trusts or other legal arrangements

34. Part 6.1 of Article 16 of the Law provides the peculiarities of determining beneficial owners of a trust or other legal arrangement without the status of a legal person. In particular, in such cases it is necessary to acquire complete information on settlors, trustees, beneficiaries (including the class of beneficiaries), protectors (if available) and any other natural person exercising real (actual) control over the legal arrangement or person performing similar functions and their powers.

35. Moreover, within the meaning of application of the above-mentioned requirement of the Law, the trust or other legal arrangement without the status of a legal person is considered a customer of the reporting entity where its trustee or a person performing similar functions establishes the business relationship or conducts a transaction on behalf of the beneficiaries of the legal arrangement or relying on founding documents of the legal arrangement.

36. Where in determining the beneficial owners of the trust or other legal arrangement without the status of a legal person it is established that any of the parties provided for by part 6.1 of Article 16 of the Law is a legal person or other legal arrangement, at least the beneficial owners of the given legal person or legal arrangement shall be determined.

37. Moreover, given the peculiarities of determination of beneficial owners of trusts or other legal arrangements, where, unlike intermediate companies, the composition of participants of a legal person includes an intermediate trust, all its parties (for example, a trustee, beneficiaries, etc.) are considered beneficial owners, where that trust meets one of the beneficial ownership criteria (for example, it has 20 percent and more participation in the statutory capital of the legal person).

38. By summarizing the above-mentioned rules for determining the beneficial owner of a legal person, as well as a trust and other legal arrangements, it should be noted that it is crucial for their proper application that the reporting entity determines the whole chain of participants of the legal person customer and decide on the scope of applicable rules in a specific case (see [Figure 6](#)).

Ensuring the reliability of data on a beneficial owner

39. The identification and verification of identity of the beneficial owner provided for by the Law implies presence of two components:

- *identification and verification of identity of the beneficial owner natural person based on reliable and valid documents and other information provided by the competent state body;*
- *identification and verification of the grounds for beneficial ownership of a person based on the information received from reliable sources (for example, from competent state bodies, customers, open sources).*

40. Point 2 of part 5 of Article 16 of the Law provides that the reporting entity should take reasonable measures to verify the identity of the beneficial owner. For the purpose of ensuring the reasonableness of the actions undertaken reporting entities must rely on risk-based approach. Accordingly, it is necessary to apply differentiated approach to, for example, legal person customers with a complex corporate structure and small and medium-sized enterprises with a simple structure (for example, whose participant, beneficial owner and head of the executive body is the same natural person).

41. Verification of the identity of the beneficial owner implies, as a rule, examination of at least the submitted documents (founding documents of the legal person or arrangement, excerpts from the relevant state register, decisions adopted by the management bodies of the legal person, documents related to the study conducted by the legal person to determine its beneficial owner). Depending on the risk level, the verification of the identity of the beneficial owner may imply verification of reliability of the data received from the customer by use of the data received from one or several sources, including study of the state or other databases (the State Population Register, the State Register of Legal Entities) or automated cross-check of the data.

42. Moreover, if the cross-check with the database of beneficial owners of legal persons of the State Register of Legal Entities of the Ministry of Justice of the Republic of Armenia results in detection of inconsistencies, the reporting entity should – with the view to dispelling the suspicions with respect to determination of the beneficial owner of the legal person – provide an opportunity to make relevant alternations to the state register within the reasonable time limit, and in case of uncooperative behavior of the legal person, it should – based on part 1 or 2 of Article 27 of the Law – reject the transaction and not approve (terminate) the business relationship.

43. Within the scope of study related to a foreign natural or legal person or a foreign legal arrangement the reporting entity should also undertake measures to verify the reliability of the documents submitted.

44. In cases where the customer is a commercial organization with listed stocks or a commercial organization that is fully controlled by another commercial organization with listed stocks, and if the stocks of the given organization are listed in a regulated market where the beneficial ownership disclosure criteria ensure sufficient transparency, the identification and verification of identity of beneficial owners may be carried out by receiving information from relevant open registries, customer or other reliable sources. In this case it is unnecessary to carry out verification of reliability of the data on beneficial owners disclosed for the purpose of listing, except when there are indications as to unreliability of the data.

45. For the purpose of assessing the beneficial ownership transparency level in a specific regulated market, the list of regulated markets approved based on part 6 of Article 60.3 of the Law

“On state registration of legal persons, state record-registration of separated subdivisions of legal persons, institutions and individual entrepreneurs” may be used as a reference.

46. The reporting entity should also ensure in the ongoing due diligence conducted throughout the business relationship that the data on identification of a beneficial owner and the grounds for beneficial ownership of the given person are up-to-date.

47. Based on the requirements of part 5.1 of Article 16 of the Law, the measures, conclusions and their substantiations made to identify the customer’s beneficial owner and to verify the identity thereof shall be documented and retained for at least 5 years after the transaction is concluded, or the business relationship is terminated.

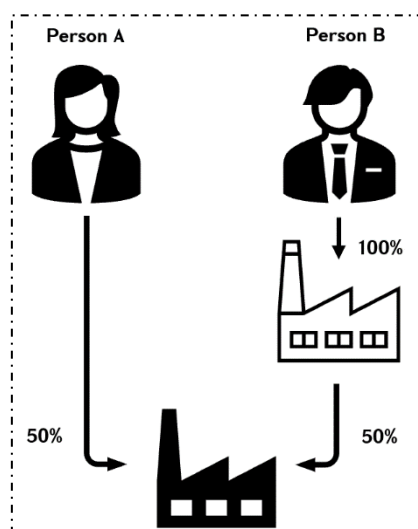


Figure 1

In the scenario that the figure portrays, “Person A” is a beneficial owner of the organization due to 50 percent direct participation in the statutory capital of the organization. “Person B” is a beneficial owner of the organization due to 50 percent indirect participation (through an intermediate organization).

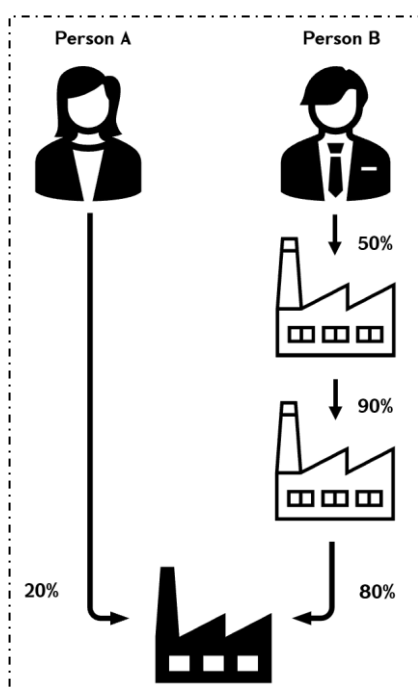


Figure 2

In the scenario that the figure portrays, “Person A” is a beneficial owner of the organization due to 20 percent direct participation in the statutory capital of the organization. The size of participation of “Person B” is calculated by taking into consideration the size of participation of all intermediate legal persons. In this case the size of indirect participation of “Person B” will be 36 percent ($80\% \times 90\% \times 50\% = 36\%$).

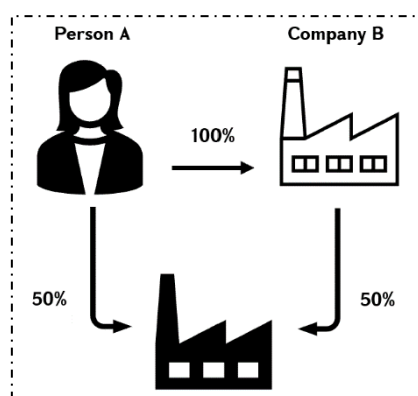


Figure 3

In the scenario that the figure portrays, “Person A” is a beneficial owner due to total participation of 100 percent in the statutory capital of the organization (50 percent direct participation and 50 percent indirect participation through “Company B” intermediate organization).

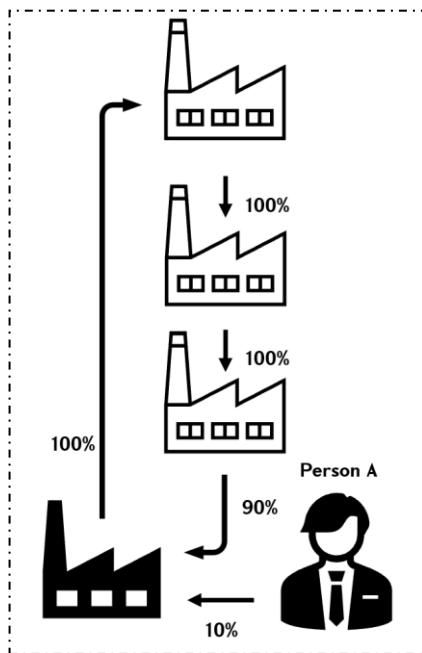


Figure 4

In the scenario that the figure portrays, even though “Person A” will not be considered a beneficial owner of the organization due to participation, they fully control the organization, as the other 90% of direct participation is controlled by no other person due to circular ownership.

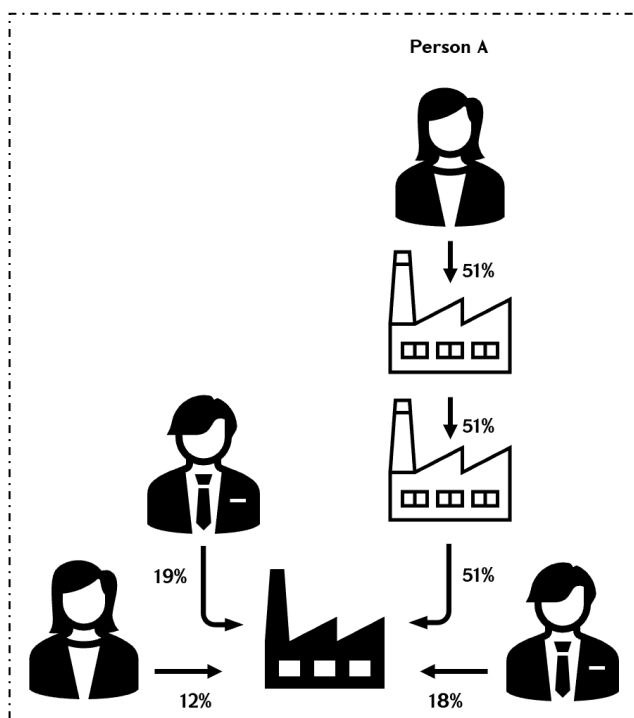


Figure 5

In the scenario that the figure portrays, even though “Person A” will not be considered a beneficial owner due to participation (indirect participation is approximately 13.3%), given the logic of organizational management by the participants (due to the possibility to adopt decisions by the simple majority of votes), “Person A” is the person controlling the organization.

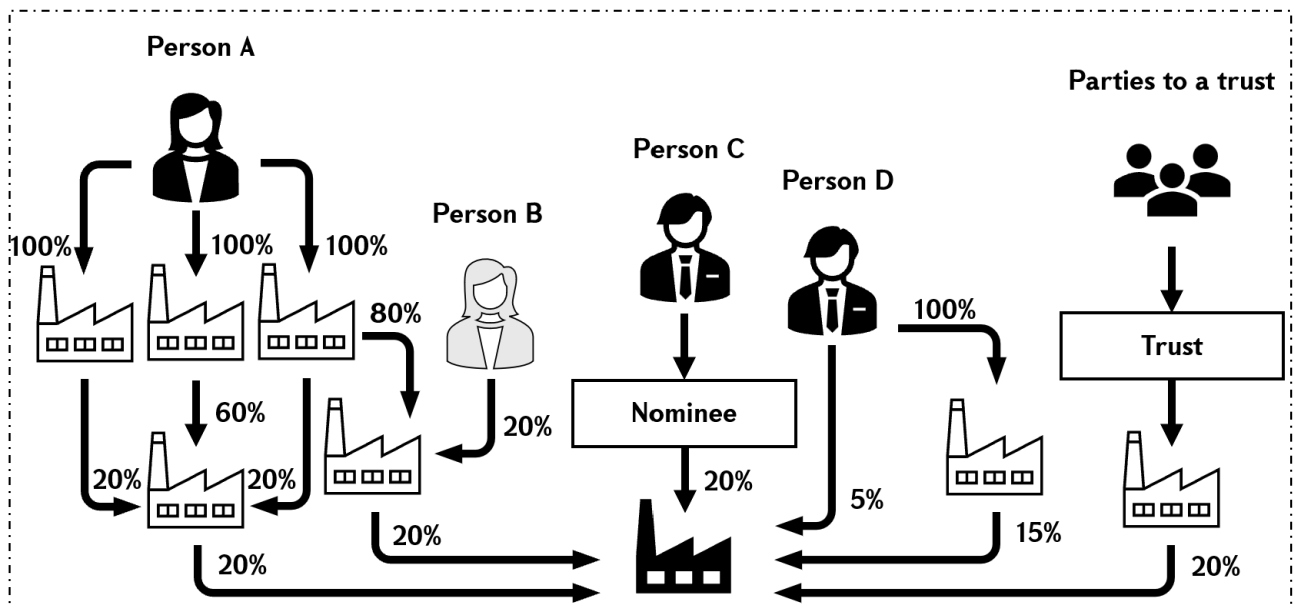


Figure 6

In the scenario that the figure portrays, “Person A” is a beneficial owner of the organization due to 36% indirect participation in its statutory capital ($20\% \times 20\% \times 100\% + 20\% \times 60\% \times 100\% + 20\% \times 20\% \times 100\% + 20\% \times 80\% \times 100\% = 4\% + 12\% + 4\% + 16\% = 36\%$).

While, “Person B” is not a beneficial owner of the organization, as their indirect participation constitutes 4% ($20\% \times 20\%$).

“Person C” is a beneficial owner of the organization due to 20% participation in the statutory capital, while the nominee that exercises, under the agreement, the powers vested with the participant, is not a beneficial owner of the organization.

“Person D” is a beneficial owner of the organization due to total participation of 20% (5 percent direct participation and 15 percent indirect participation through an intermediate organization).

All parties to the trust (trustee, beneficiary, settlor, etc.) are beneficial owners of the organization due to 20% indirect participation (through a trust) in the statutory capital.