

GLOBAL FORUM ON
**TRANSPARENCY AND EXCHANGE OF
INFORMATION FOR TAX PURPOSES**

BENEFICIAL OWNERSHIP

Learning objectives

1. Introduce the concept of beneficial ownership information.
2. Explain how beneficial owners are identified
3. Reflect jointly on how this information can be useful for tax purposes.



Quick poll

Q1: How would you evaluate your understanding of beneficial ownership?

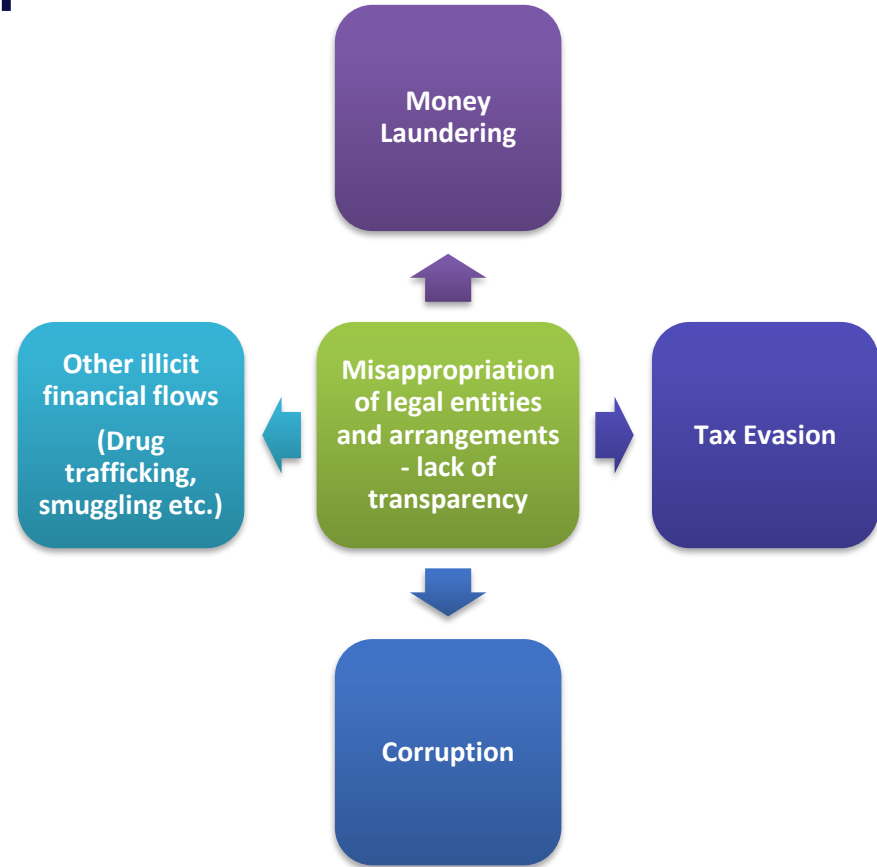
- 1** → I have heard this term, but do not understand the concept
- 2** → I am familiar with the concept in broad terms
- 3** → I understand the concept and want to know more about its practical implementation
- 4** → I understand the concept and have been applying this knowledge in practice

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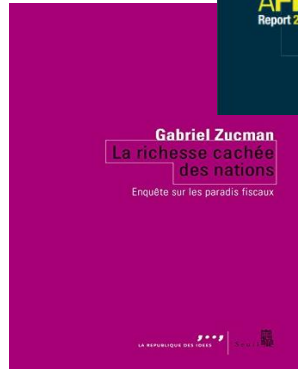
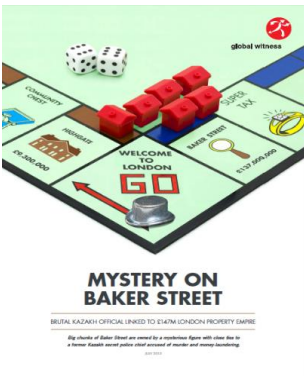
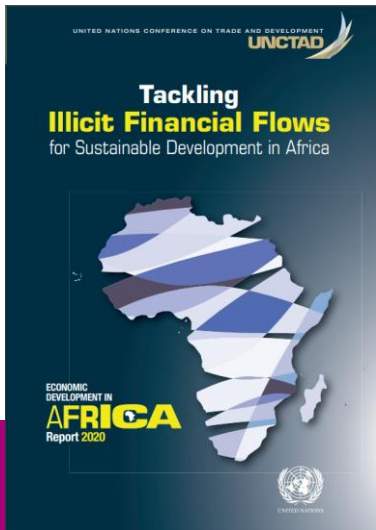
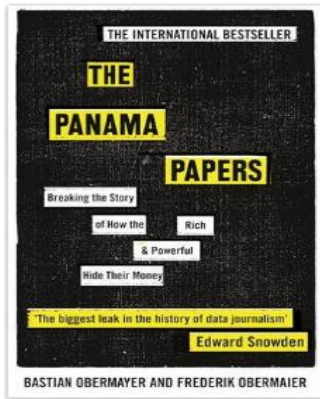
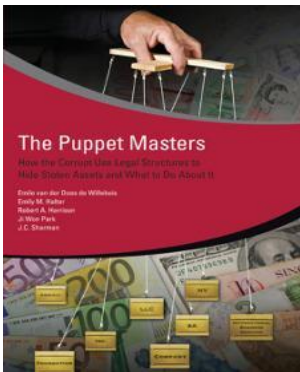
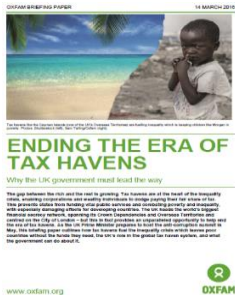
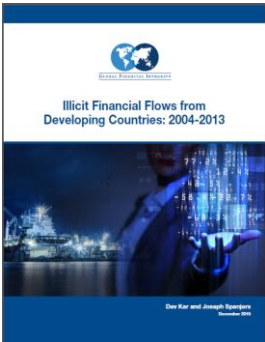
Part 1. The concept of beneficial ownership

Beneficial Owner: a concept for evils

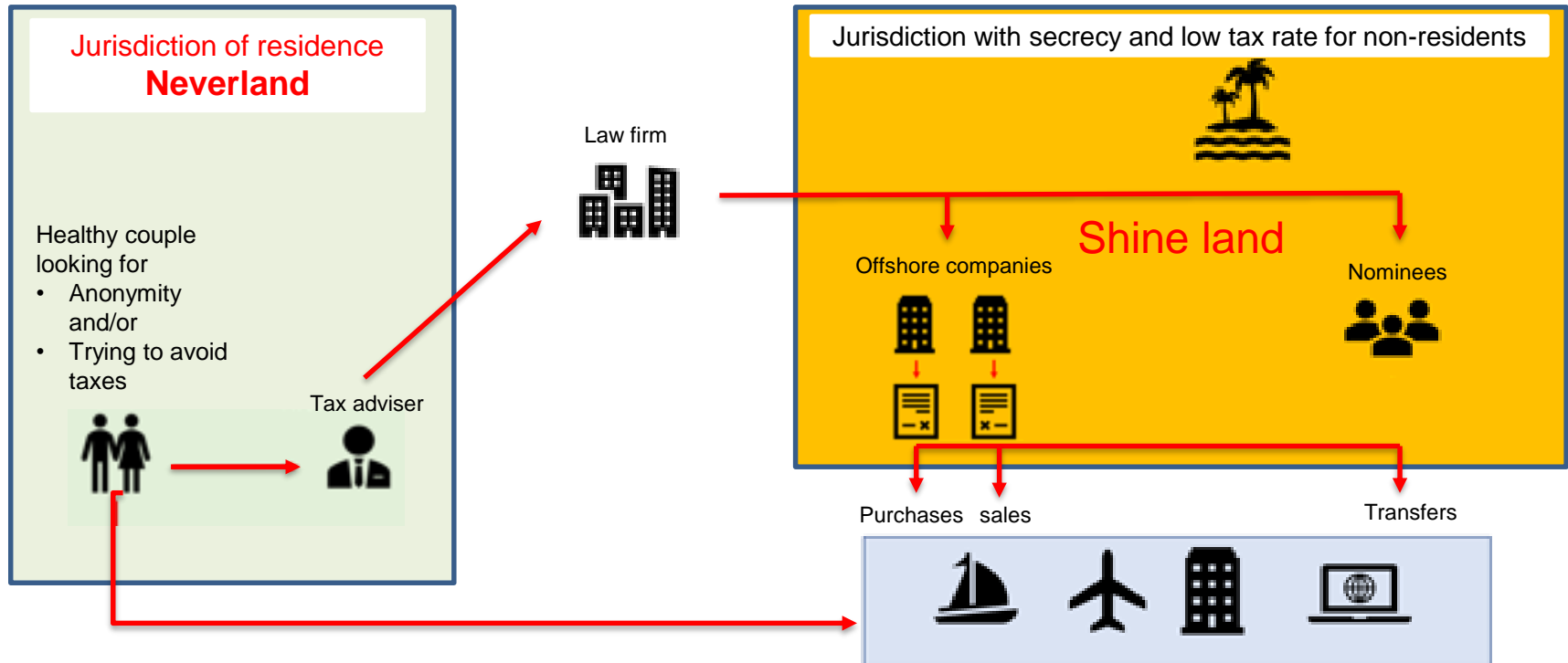
- In the absence of a mechanism to ensure transparency, the use of legal entities and legal arrangements may facilitate the movement of proceeds of crime, including tax evasion by concealing:
 - The identity of the person
 - The true purpose of an account or assets
 - The origin of the funds or assets.
- Anonymity is often sought and organised through complex legal arrangements and recourse to jurisdictions that do not ensure a satisfactory degree of transparency.



Abundant literature on the link between lack of transparency and illicit financial flows



The problem of BO: a case from the leaks



Convergence of BO transparency standards

Recommendations of the Financial Action Task Force (FATF)

Global Forum on Transparency and Exchange of Information for Tax Purposes

United Nations Convention against Corruption

Extractive Industries Transparency Initiative transparency standard

Beneficial ownership in the international standards

International Focus on Beneficial Ownership

Financial Action Task Force
(FATF)

Combatting money laundering
and terrorism financing

AML/CFT standard

Global Forum (GF)

Combatting tax evasion

Tax transparency standards

Forms of ownership

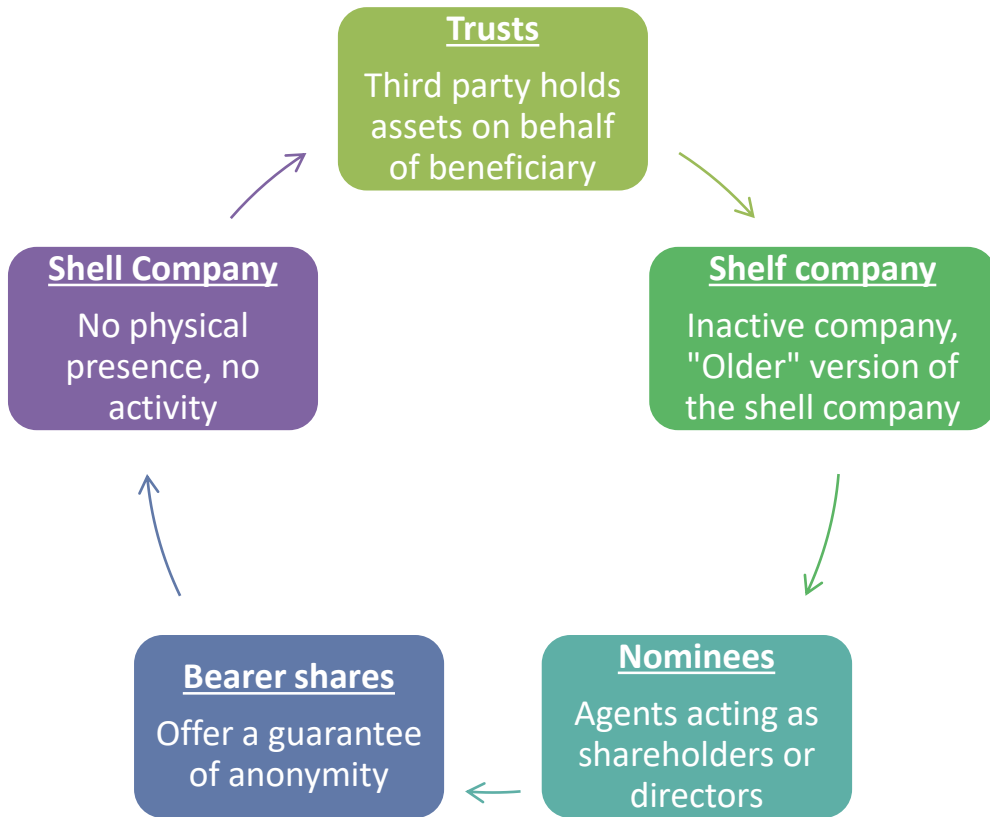
Legal Ownership

- A person holding legal title to the asset (movable or immovable property).
- The legal owner may be a legal entity or a natural person.
- It is the apparent ownership

Beneficial Ownership

- Hidden/concealed/undisclosed natural person who **controls** the natural or legal person or legal arrangement whose identity is revealed
- Existence of barriers or overlapping of apparent owners.
- Legal title is only the starting point.

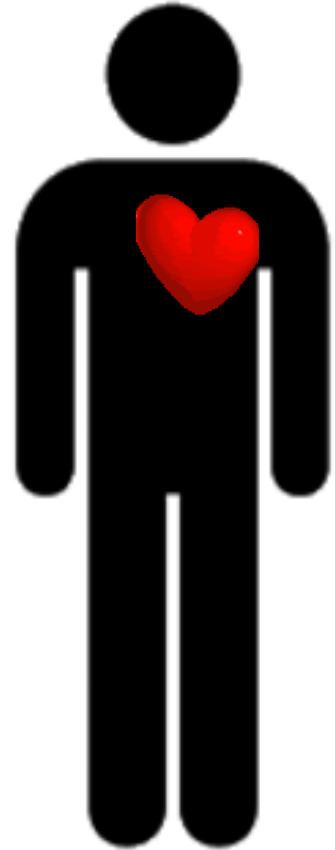
Common structures to conceal BO



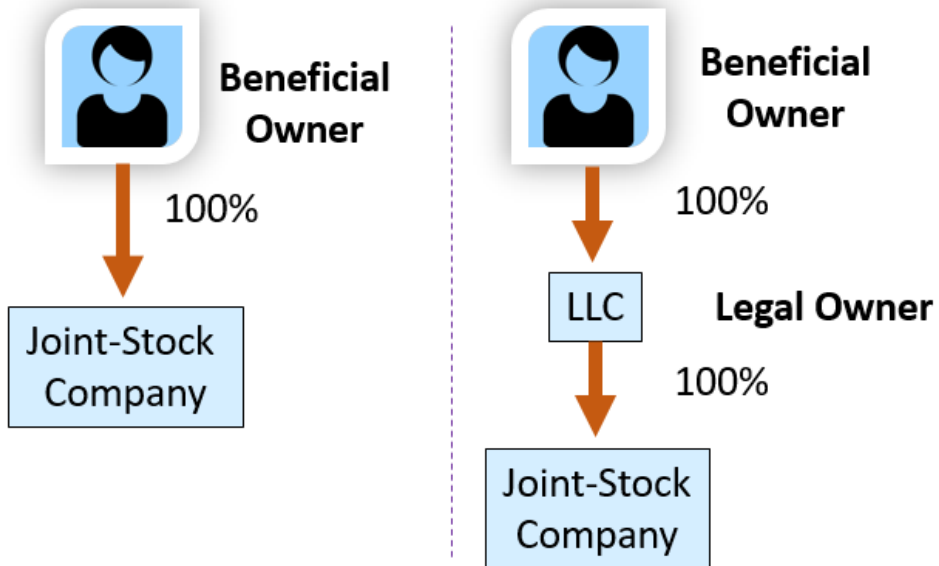
Part 2. Who is a beneficial owner?

The beneficial owner is the...

- Living
- Breathing
- Natural Person



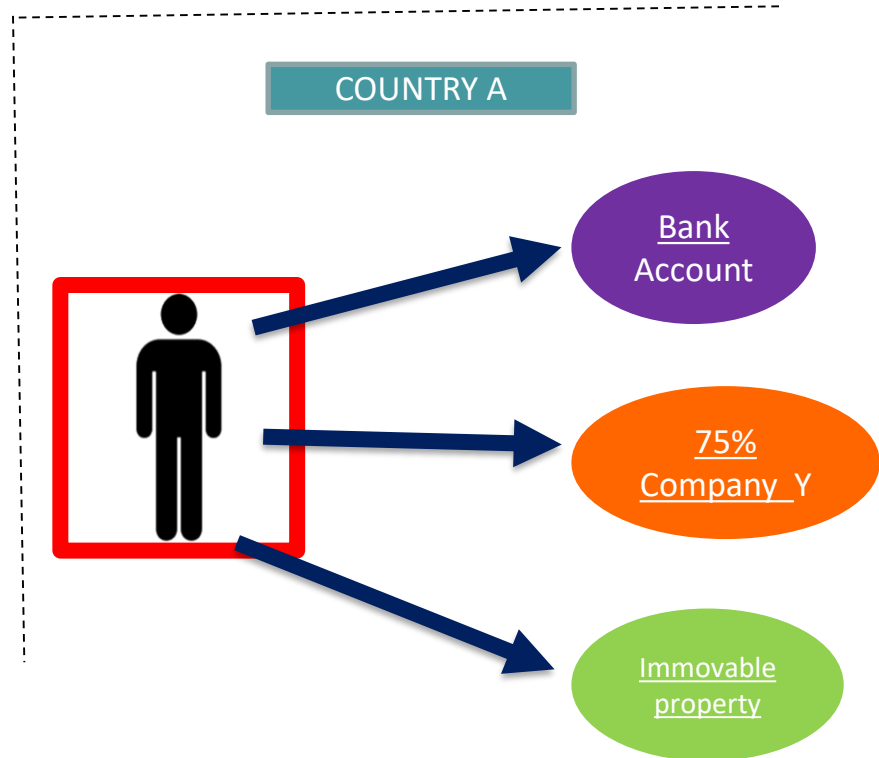
Example



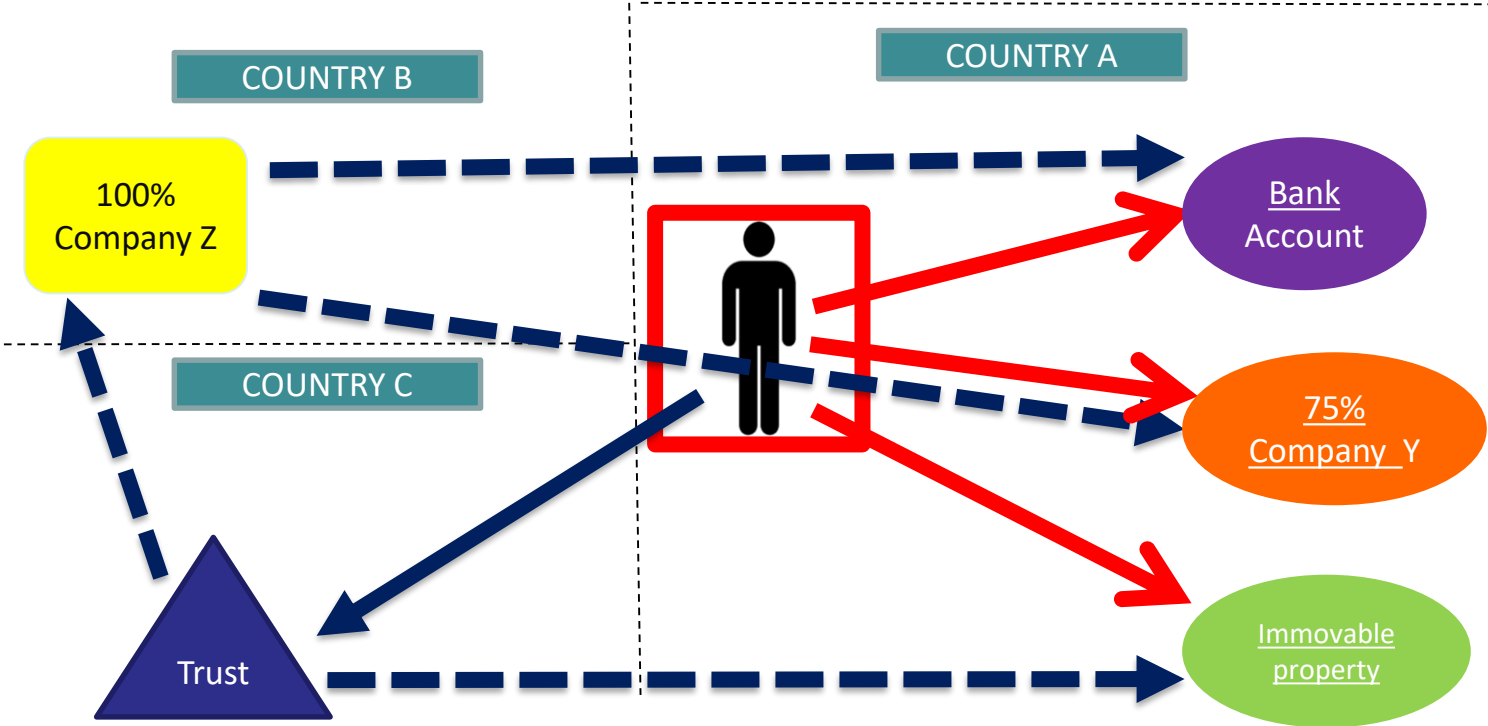
Relevance of BO information for tax administrations

Example:

BO information gives Country A tax authorities knowledge of how Mr. X is linked to assets in Country A that may not have been declared, and the related taxes on wealth and income that have not been paid. The ability to look through is very important!



Relevance of BO information for tax administrations

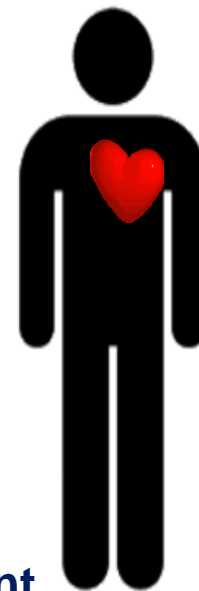


The beneficial owner is the ...

A natural person who ultimately:

- Owns; or
- Controls;

a legal entity or legal arrangement.



... contrary to a legal person/entity or a legal arrangement

Legal entities

SARL, foundation, SA, LLP, INC, NV...

Legal arrangements

Trust, *fiducie*, *fideicomiso*, *treuhand*...

Beneficial Owner: FATF Definition

FATF Recommendations 24 and 25

The natural person(s) who:

- ❖ ultimately owns or controls a customer; and/or
- ❖ on whose behalf a transaction is being conducted
- ❖ It also includes those persons who exercise ultimate effective control over a legal person or arrangement

“ultimately owns or controls” and “ultimate effective control” – refer to situations in which ownership/control is exercised through a chain of ownership or by means of control other than direct control



Beneficial ownership



“The secret to success is to own nothing, but control everything” – Nelson Rockefeller



Methodology for determining the BO of legal persons

FATF has established a 3-step approach (the cascade):

1

Is (a) natural person(s) (acting alone or jointly) ultimately exercising control over the legal person through (direct or indirect) participation (e.g. 25% threshold)?

If not, or in case of doubt

2

Is (a) natural person(s) exercising control of the legal person through other means?

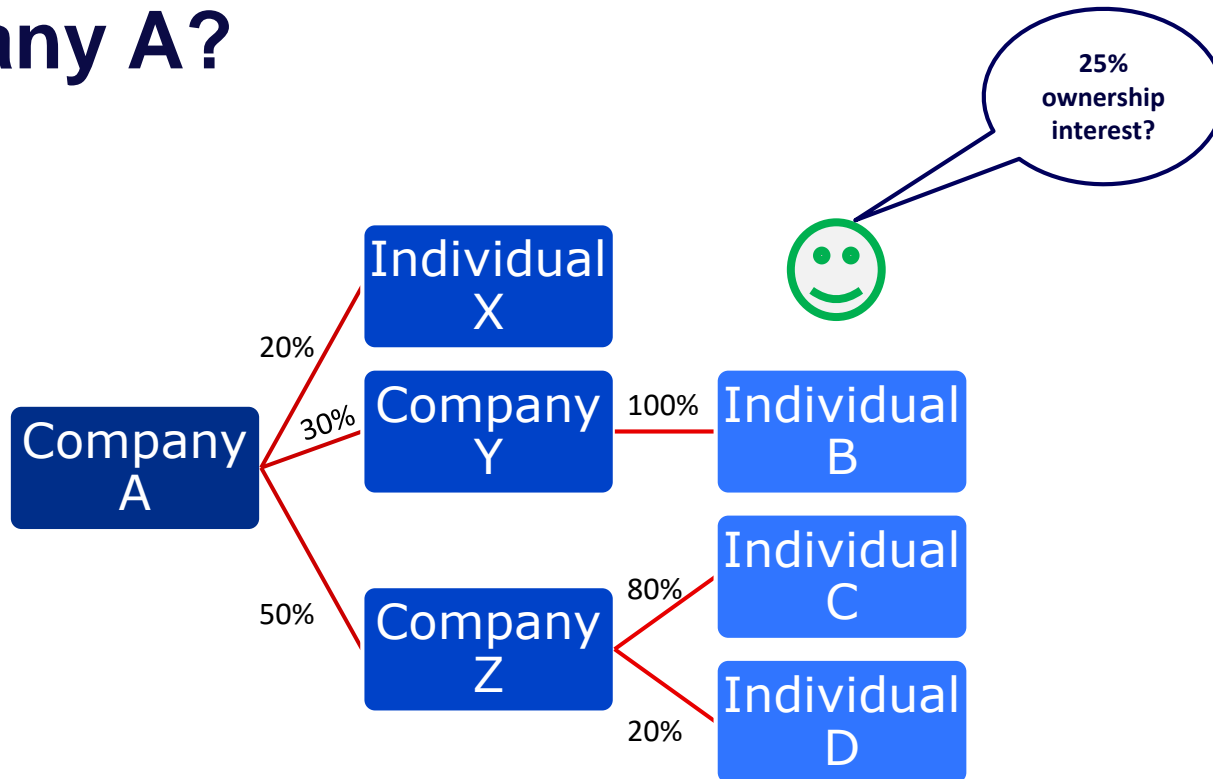
If not, and exceptionally

3

If no natural person is identified in steps 1 and 2, the natural person(s) who holds the position of senior managing officer.

See interpretative note to FATF Recommendation 10.

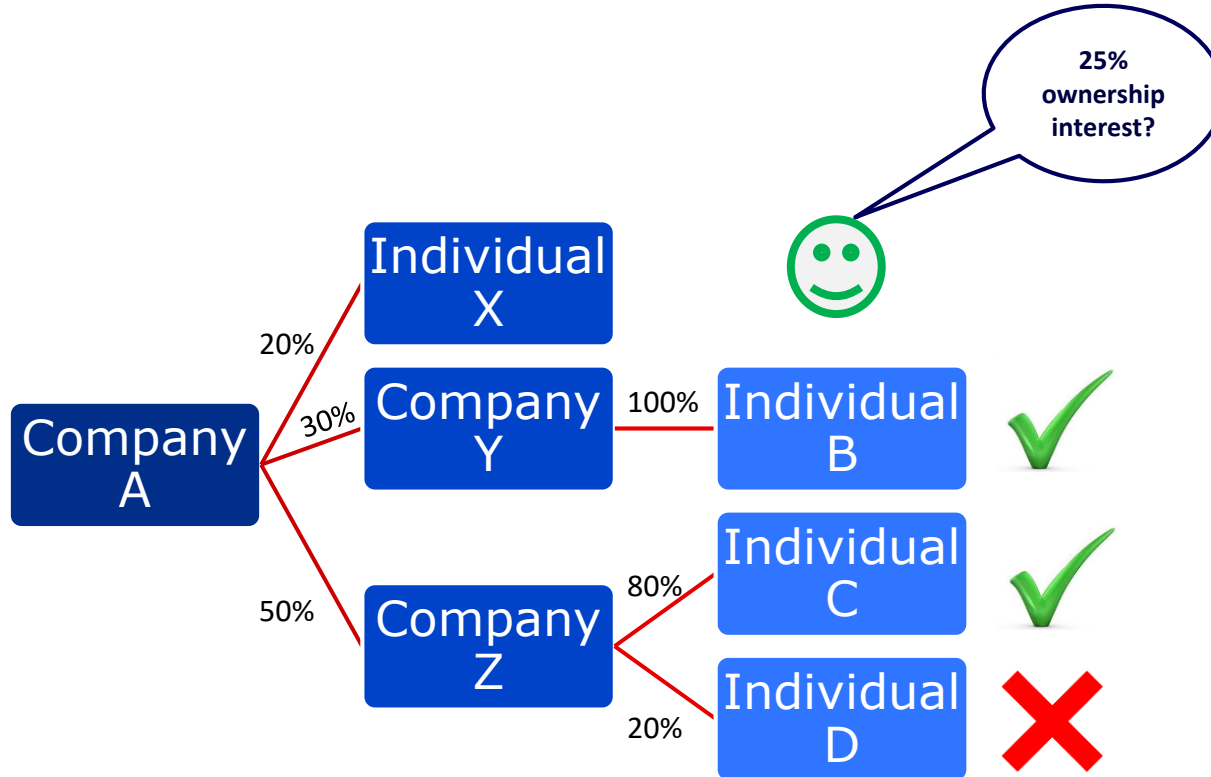
Q.2: Who are the Beneficial Owners of Company A?



Q2: Who are the Beneficial Owners of Company A?

1. Individuals X, B, C and D
2. Companies Y and Z
3. Companies Y and Z plus Individuals B and C
4. Individuals B and C

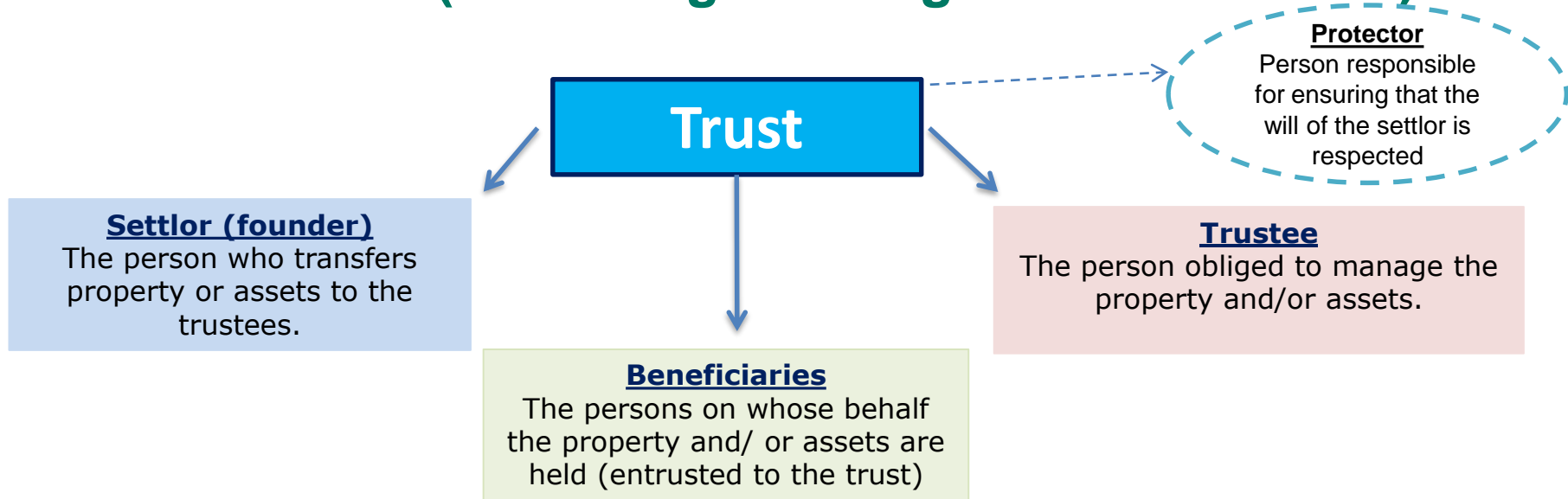
Who are the Beneficial Owners of Company A?



Q2: Who are the Beneficial Owners of Company A?

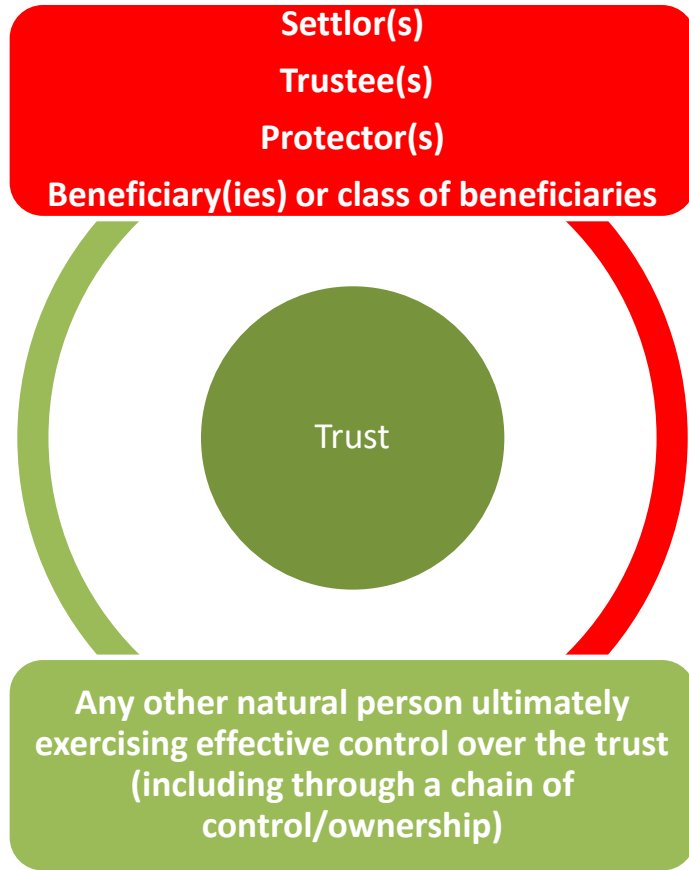
1. Individuals X, B, C and D
2. Companies Y and Z
3. Companies Y and Z plus Individuals B and C
4. **Individuals B and C**

Control of trusts (trust = legal arrangement = contract)



- Trusts are granted a greater level of privacy than corporate entities and are **generally not required to be centrally registered**.
- Most services establishing trusts or other trustee services **have not been regulated in the past**.
- May utilize attorney operating accounts as an entry point for funds transferred to the trust.

Methodology for the identification of the BO of legal arrangements

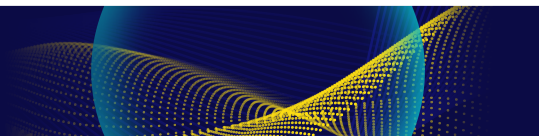
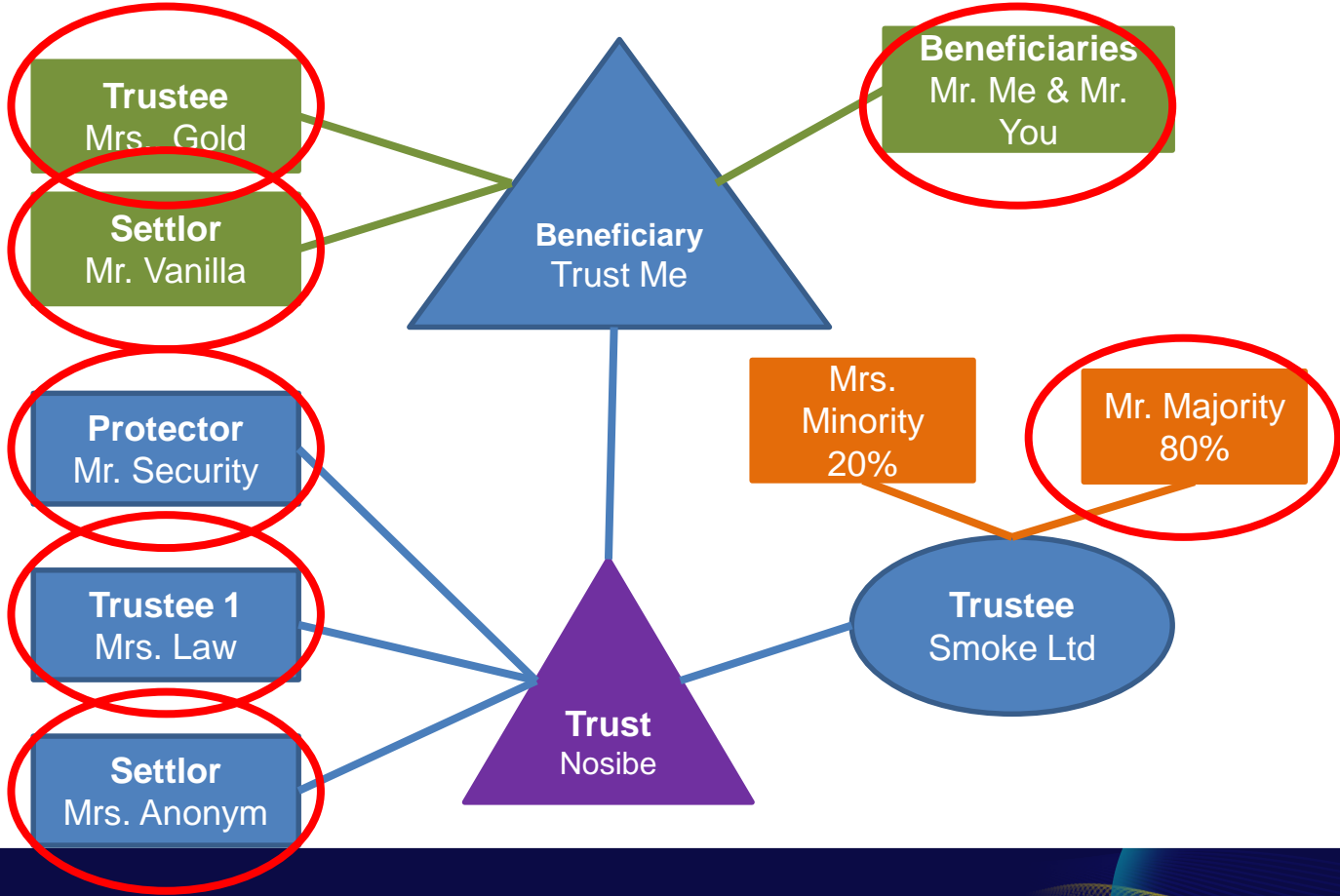


Other types of legal arrangements



Identity of persons occupying positions equivalent or similar to those defined in the case of a trust

Q.3: Who are the beneficial owners of the Nosibe Trust?



Ensuring the availability of information on beneficial owners

1. Information held by persons subject to anti-money laundering and terrorist financing legislation (AML/CFT)



2. Register of beneficial owners kept by the legal entities themselves



Availability of beneficial ownership information

4. Register of beneficial owners kept by the tax authorities



3. Register of beneficial owners kept by the register of commerce and/or companies



General trends

- Finally, analysis of the framework put in place by jurisdictions to ensure the availability of BO information shows that the **system will be very effective when** :
 - **the definition (including clear modalities of determination of BOs) is in line with the standard;**
 - **the AML obliged persons are required to conduct CDD on their customers;**
 - **there is a system to centralize the BO information at one place and entities are also obliged to keep and update BO information;**
 - **there is a good supervision system (monitoring and supervision of the obligations to identify, maintain and update BO information), as well as dissuasive sanctions in case of non-compliance, regardless of the category of information holder concerned.**