



Beneficial ownership obligations under the AML Regulations and AMLTF Code of Practice

Guidelines – December 2024



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ACRONYMS

AML	Anti-money Laundering
AMLFCOP	Anti-money Laundering and Terrorist Financing Code of Practice
AML Regulations	Anti-money Laundering Regulations
CDD	Customer Due Diligence
CFT	Countering the Financing of Terrorism
CPF	Countering Proliferation Financing
ECDD	Enhanced Customer Due Diligence
FIA	Financial Investigation Agency
FSC	Financial Services Commission
ML	Money Laundering
PEP	Politically Exposed Person
PF	Proliferation Financing
TF	Terrorist Financing
VI	Virgin Islands

DEFINITIONS

Term	Definition
applicant for business	means the party intending to enter into a business relationship or one-off transaction with an entity or professional
beneficial owner	<p>means the natural person who ultimately owns or controls an applicant for business or a customer or on whose behalf a transaction or activity is being conducted, and includes, though not restricted to</p> <p>(a) in the case of a body corporate</p> <p>(i) as it relates to a legal person that is not a company whose securities are listed on a recognised exchange, a natural person who ultimately owns or controls, whether directly or indirectly, 10% or more of the shares or voting rights in the legal person; and</p> <p>(ii) as it relates to any body corporate, a natural person who otherwise exercises control over the management of the legal person; and</p> <p>(b) in the case of a partnership</p> <p>(i) a natural person who is ultimately entitled to or controls, whether directly or indirectly, 10% or more share of the</p>

	<p>capital or profits of the partnership or 10% or more voting rights in the partnership; and</p> <p>(ii) a natural person who otherwise exercises control over the management of the partnership;</p> <p>(c) in the case of a trust</p> <p>(i) any natural person, characteristic or class of persons entitled to a vested right in the trust; and</p> <p>(ii) the trustee, the settlor, the protector (if any), or any other person who has control over the trust; and</p> <p>(d) in the case of any other type of legal person or legal arrangement, the natural persons in equivalent or similar positions or who exercise similar controls to those detailed in paragraphs (a) to (c);</p>
BO information	means information in relation to a beneficial owner
control	<p>for the purposes of the definition of “beneficial owner”, means having an influence over the activities of an applicant for business or customer with or without any ownership interest, and includes</p> <p>(a) having an influence through close family relationships, or historical or contractual associations; or</p> <p>(b) using, enjoying or benefitting from the assets owned by the applicant for business or customer</p>
customer	means a party that has entered into a business relationship or one-off transaction with an entity or professional
Licensees	means the entities supervised by both the FSC and FIA and includes financial institutions and designated non-financial businesses and professionals
nominator	means an individual that issues instructions to a nominee to act on their behalf in a certain capacity (e.g. as a shareholder)
nominee shareholder	a member of a company acts as a nominee shareholder if he or she holds shares in the company and exercises the associated voting rights according to the instructions of a nominator without any discretion or receives dividends on behalf of a nominator
partnership	includes a general partnership and limited partnership
trust	means an express trust that is clearly created by the settlor, usually in the form of a document (e.g. a written deed of trust)

Introduction

These Guidelines are issued by the Financial Services Commission (the “FSC”) as the supervisor of financial institutions (FIs) and the Financial Investigation Agency (the “FIA”) as the Anti-Money Laundering, Counter-Financing of Terrorism and Counter-Proliferation Financing (AML/CFT/CPF) supervisor of Designated Non-Financial Businesses and Professions (DNFBPs) in the Virgin Islands (VI). The FSC is responsible for the regulation and supervision of the financial services sector: (i) banking, (ii) insurance, (iii) trust and company services providers (“TSCPs”), (iv) investment business, (v) financing business (FB), (vi) money service businesses (“MSBs”), (vii) insolvency services, and (viii) virtual asset service providers (“VASPs”). The FIA is responsible for the supervision and monitoring of designated non-financial businesses and professions in the VI: (i) legal practitioners, (ii) notaries public, (iii) accountants, (iv) real estate agents, (v) dealers in precious metals and stones (“DPMS”), (vi) high value goods dealers (“HVGD”), (vii) vehicle dealers, and (viii) persons engaged in the business of buying and selling boats. For the purposes of these Guidelines, the entities supervised by the FSC and FIA are collectively referred to as “licensees”.

As supervisors, the FSC and FIA are cognisant of the need to ensure all licensees are aware of the various risks related to their business. As members of the Council of Competent Authorities’ Joint Supervisory Committee, the FSC and FIA are committed to ongoing cooperation and collaboration on matters that impact licensees to ensure proper risk mitigation and enhance transparency, while maintaining the VI’s reputation as a place to conduct legitimate and quality business.

These Guidelines have been developed for the benefit of, and to assist licensees in understanding the requirements for the collection and maintenance of BO information under the VI’s AML/CFT/CPF regime.

Importantly, these Guidelines buttress the provisions for compliance with the Anti-Money Laundering and Terrorist Financing Code of Practice (the “AMLTCOP”), the Anti-Money Laundering Regulations (the “AML Regulations”), the Regulatory Code (the “RC”), the Financial Investigation Agency Act (the “FIA Act”) and the Financial Services Commission Act (the “FSC Act”), including any Explanatory Notes to these documents.

Comprehensive AML/CFT/CPF compliance by licensees is essential to remaining up to date with evolving risks and threats that could adversely impact operations and compliance. These Guidelines, therefore, also serve as a complement to the ongoing need to report to and engage with the FSC, FIA and other Competent Authorities, including law enforcement agencies, to achieve optimal results in preventing ML, TF and PF risks from being realised. These agencies include the Office of the Governor, Attorney General’s Chambers, Royal Virgin Islands Police Force (RVIPF) and the BVI International Tax Authority (ITA).

The AML Regulations and AMLFCOP set out the framework for identifying and verifying the beneficial owners (“BO”) of applicants for business and customers. These Guidelines have been developed to assist persons in understanding the requirements for the collection and maintenance of BO information under the AML/CFT/CPF regime, including:

- how to determine the BOs of applicants for business and customers that are companies, partnerships¹ or whose ownership structure involves a trust;
- legal obligations of licensees to identify and verify BOs;
- the requirements to maintain adequate, accurate and up to date BO information; and
- penalties for failing to adhere to the legal requirements set out under the AML regime.

These Guidelines are not legal advice.

Licensees should not exclusively rely on these Guidelines to determine any obligations under the AML/CFT/CPF regime.

¹ Although this document provides guidance about maintaining information on companies and partnerships, it is expected that similar measures would be implemented by entities and professionals for other types of legal persons.

Background

1. Given the global nature of the companies, partnerships and trusts that operate in the VI, and their ability to engage in complex cross-border and high value transactions, the VI is vulnerable to ML, TF and PF risks. An important part of mitigating the ML, TF and PF risks to which the VI is exposed is properly identifying and verifying the BO of applicants for business and customers, as not being able to identify true ownership of these entities places them at greater risk of being abused for illegitimate purposes.
2. BO information can be obscured through the use of:
 - **Complex ownership and control structures** involving many layers of shares registered in the name of other legal persons
 - **Bearer shares and bearer share warrants**
 - **Unrestricted use of legal persons as directors of other legal persons**
 - **Formal nominee shareholders and directors** where the identity of the nominator is undisclosed
 - **Informal nominee shareholders and directors**, such as close associates and family
 - **Trusts and other legal arrangements** which enable a separation of legal ownership and beneficial ownership of assets
 - **Use of intermediaries in forming legal persons**, including professional intermediaries.
3. As an international finance centre, the VI is committed to the prevention and detection of ML, TF, PF and other serious and organised crime. As part of its efforts, the VI has developed a robust AML/CFT/CPF regime which sets out the steps that licensees must take to identify and verify BOs of applicants for business and clients, and to have accurate and up to date BO information readily available to provide, upon request, to the FSC, FIA or other competent authority or law enforcement agency. These measures are in line with international standards developed by the FATF.

Applicable Persons to Whom These Guidelines Apply

4. These Guidelines apply to persons that engage in relevant business.² For the avoidance of doubt, this includes licensees that are engaged in the following types of business:
- I. Banking business or trust business within the meaning of the Banks and Trust Companies Act, Revised Edition 2020
 - II. The business of providing category A or category B insurance business³ or acting as an insurance intermediary within the meaning of the Insurance Act, Revised Edition 2020
 - III. The business of company management within the meaning of the Company Management Act, Revised Edition 2020
 - IV. Investment business or business as a mutual fund or a private investment fund within the meaning of the Securities and Investment Business Act, Revised Edition 2020
 - V. The business of acting as a trust or company service provider for the purpose of providing any of the following services to a third party:
 - acting as a formation agent of legal persons;
 - acting (or arranging for another person to act) as a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
 - providing a registered office, business address or accommodation, correspondence or administrative address for a company, partnership or any other legal person or arrangement;
 - acting (or arranging for another person to act) as a trustee, protector or administrator of a trust or settlement; or
 - acting (or arranging for another person to act) as a nominee shareholder for another person
 - VI. The business of providing remittance service of Telegraphic Money Order under the Post Office (Telegraph Money Order) Rules or money order under the Post Office Rules
 - VII. Financing business or money services business within the meaning of the Financing and Money Services Act, Revised Edition 2020
 - VIII. The provision of services to clients by legal practitioners, notaries public or accountants which involve transactions concerning any of the following activities—
 - buying and selling of real estate;
 - managing of client money, securities or other assets;
 - management of bank, savings or securities accounts;
 - organisation of contributions for the creation, operation or management of companies; and

² Section 2(1) of the AML Regulations

³ Domestic and captive insurance business

- creation, operation or management of legal persons or arrangements, or buying and selling of business entities
- IX. The business of acting as a real estate agent when engaged in a transaction for a client concerning the buying and selling of real estate
- X. The business of dealing in precious metals or precious stones when such transaction involves accepting a cash payment of \$15,000 or more or the equivalent in any other currency
- XI. The business of gaming and betting within the meaning of the Virgin Islands Gaming and Betting Control Act, 2020 when a financial transaction is valued at \$3,000 or more or the equivalent in any other currency
- XII. The business of providing or engaging in a virtual asset service within the meaning of the Virtual Assets Service Providers Act, Revised Edition 2020 when a transaction involves assets valued at \$1,000 or more.

Determining the Beneficial Owner

5. Licensees are required to identify and verify each applicant for business and customer, including the underlying beneficial owners.⁴

Beneficial Ownership: Legal Persons

Companies

6. This section provides general guidance on how to determine beneficial owners where an applicant for business or customer is one of the following:
 - a. Company limited by shares;
 - b. Company limited by guarantee that is not authorised to issue shares;
 - c. Company limited by guarantee that is authorised to issue shares;
 - d. Unlimited company that is not authorised to issue shares; and
 - e. Unlimited company that is authorised to issue shares.

Companies limited by shares

Licensees must understand the difference between legal ownership and beneficial ownership to be able to determine the beneficial owners of a company limited by shares.

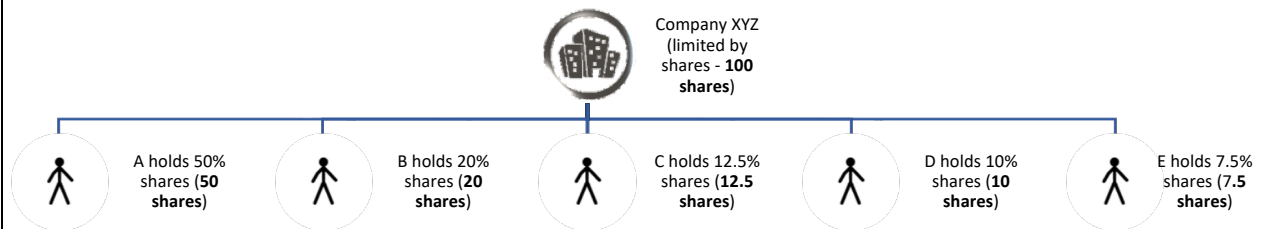
⁴ Section 19 of the AMLTFCOP

Direct Ownership Interest

7. A person who holds the legal title of shares in a company, and whose name appears on the company's register of members as shareholder has legal ownership of the respective shares. Where a natural person is entitled to the benefits associated with shares in a company (e.g. dividends), that person has beneficial ownership of the respective shares.
8. The following persons are the beneficial owners of a company limited by shares:
 - a. Individuals who directly own or control 10% or more of the shares or voting rights in the company;
 - b. Individuals who indirectly own or control 10% or more of the shares or voting rights in the company; and
 - c. Individuals who control the activities of the company through other means.
9. Where an individual has legal ownership of shares in a company limited by shares, and has beneficial ownership of 10% or more of those shares, the individual is a beneficial owner of the company via direct ownership interest.

9.1

Individual shareholders



In this example, A, B, C and D each hold 10% or more shares in Company XYZ, and are the beneficial owners of the company.

E holds less than 10% shares in the company; therefore, E is not a beneficial owner of the company.

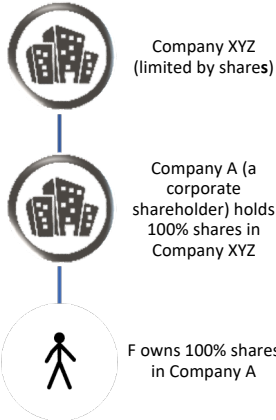
Indirect Ownership Interest

10. Legal ownership and beneficial ownership may overlap, but this will not always be the case. For example, legal ownership and beneficial ownership do not overlap where an individual uses a company (Company A) to own shares in another company (Company XYZ). In such circumstances, Company A has legal ownership of the respective shares (as shareholder)

and the individual has beneficial ownership of the shares in Company XYZ. If the individual has beneficial ownership of 10% or more of the shares in Company XYZ, the individual is a beneficial owner of Company XYZ via indirect ownership interests. This is illustrated in the example below.

10.1

Holding company



In this example, Company A is the legal owner of 100% shares in Company XYZ. However, Company A is not a beneficial owner of Company XYZ because it is not an individual.

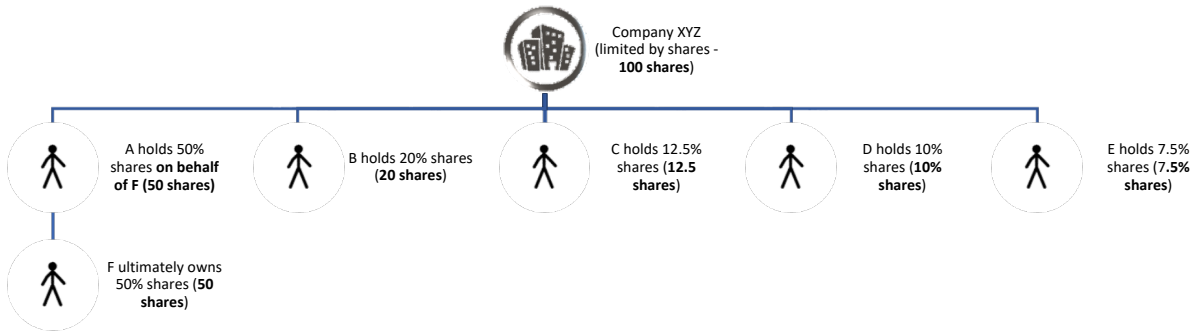
The shares in Company A are owned by F. Accordingly, F is the beneficial owner of Company XYZ.

Nominee Relationships

11. Legal ownership and beneficial ownership of shares in a company will also be different where a person is listed on a company’s register of members as a shareholder of the company, however that shareholder is instructed (by a nominator) how to exercise the voting rights associated with the relevant shares or receives dividends resulting from the shareholding for a nominator’s benefit. The person listed as shareholder on the register of members has legal ownership of the respective shares (as a nominee shareholder) while the nominator has beneficial ownership of the shares. Where the nominator has beneficial ownership of 10% or more of the shares in the company, the nominator is a beneficial owner of the company.

11.1

Nominee shareholder



In this example, A holds 50 shares in Company XYZ on behalf of F as a nominee shareholder. A is the legal owner of the shares in Company XYZ, while F is the beneficial owner of the shares. The beneficial owners of Company XYZ are therefore B, C, D and F.

12. Licensees should always inquire whether any nominee relationships exist. A nominee shareholder must never be recorded as a beneficial owner of any applicant for business or customer.
13. Where a licensee acts as a nominee shareholder of a company, the licensee must inform the company of that fact and provide the company with the name, gender, principal residential address and date of birth of the nominator.⁵

Control

14. An individual who has control of a company in any of the following circumstances is a beneficial owner of the company:
 - a. Controlling 10% or more shares in the company;
 - b. Controlling 10% or more voting rights in the company; and
 - c. Controlling the company through other means.

Examples of control

15. Below, are some ways in which an individual may exercise control over a company:
 - a. *Control structures included in company documents*
 - i. Control structures may be found in a company's memorandum and articles of association. For example, a company's memorandum and articles may provide that an individual who has less than 25%

⁵ Section 25A(3) and (4)

ownership interests has the power to appoint or remove the majority of senior management. That individual should be listed as a beneficial owner of the company (as well as any other person that would qualify as a beneficial owner).

- ii. Control structures may also be found in a power of attorney concerning a company. For example, a donor who is a beneficial owner of a company may execute a power of attorney that gives another person authority to act on the donor's behalf concerning the company. That individual should be listed as a BO of the company.

b. *Control by way of financial instruments*

Control may be exercised through debt instruments or financing arrangements. This would be the case where a lending agreement provides the lender with a right (via the agreement) to control a company in exchange for the financing provided to the borrower who would otherwise exercise such control but for the lending agreement. However, a bank providing financing to a legal person, by itself, will rarely be considered as exercising control over a company.

c. *Positions held*

- i. Certain individuals may control a company by virtue of the position that they occupy within the company. This includes directors who have responsibility for strategic decisions that fundamentally affect the business practices or general direction of a company and exercise substantial command over the activities of the company

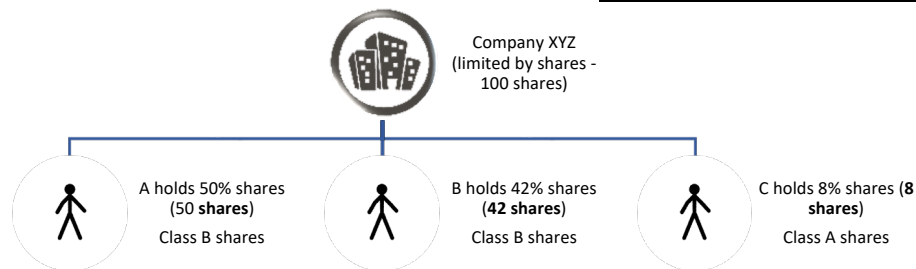
d. *Close personal connections*

Close personal connections include spouses, children, parents, siblings, personal advisers, close business colleagues and friends. A person may use such connections to control a company. For example, an individual may agree for a close connection to hold a controlling position in a company on his or her behalf or rely on aggregate voting rights shared with close personal connections to control a company.

15.1

Beneficial owner (through control)

Class of Shares	Rights (as provided in the Memorandum and Articles of Association)
Class A	Each share entitled to one vote in all circumstances (including the appointment of the Managing Director of the Company)
Class B	Each share entitled to one vote in all circumstances <u>except</u> in the appointment of the Managing Director of the Company



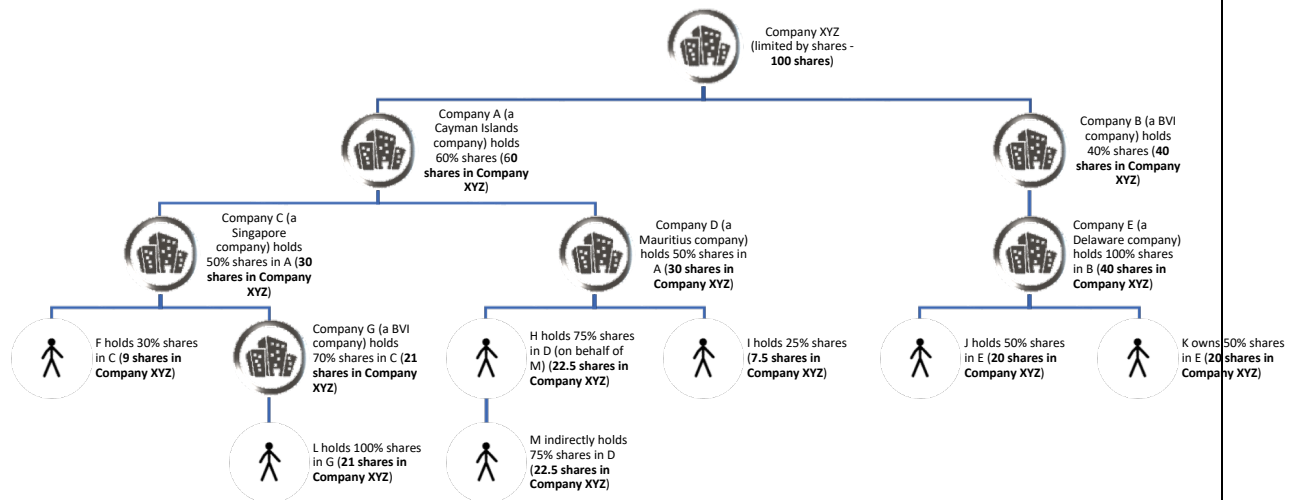
In this example, Company XYZ is limited by shares which are divided into two categories: Class A shares and Class B shares. A and B are beneficial owners of the company, as they hold 10% or more shares in Company XYZ. C is also a beneficial owner of the company (by way of control), given that C has the right to vote on the appointment of a senior manager in Company XYZ.

Complex Structures

16. In some cases, an applicant for business or customer that is a company will have an ownership structure with multiple layers. In such circumstances, licensees must closely examine the ownership structure to determine the beneficial owners.

16.1

Corporate structure (involving several companies across various jurisdictions)



In this example, Companies A and B are corporate shareholders of Company XYZ. Companies A and B are also owned by other corporate shareholders (i.e. Companies C, D and E respectively). The complete ownership structure of Company XYZ shows that seven individuals are associated with the ownership of Company XYZ (i.e. F, H, I, J, K, L and M). To determine which of the seven individuals are beneficial owners (via ownership interests), their respective shareholdings must be considered across the structure as follows:

Individual	Shares held in Company XYZ	Share % held in Company XYZ
F	30% shares in Company C 30% of 30 shares held by Company C in Company XYZ ($30/100 \times 30 = 9$ shares)	9%
H	75% shares in Company D on behalf of M (another individual). Therefore, H is not a beneficial owner of Company XYZ.	None
I	25% shares held in Company D 25% of 30 shares held by Company D in Company XYZ	7.5%

Individual	Shares held in Company XYZ	Share % held in Company XYZ
	(25/100 x 30 = 7.5 shares)	
J	50% shares in Company B 50% of 40 shares held by Company B in Company XYZ (50/100 x 40 = 20 shares)	20%
K	50% shares in Company B 50% of 40 shares held by Company B in Company XYZ (50/100 x 40 = 20 shares)	20%
L	70% shares in Company C 70% of 30 shares held by Company C in Company XYZ (70/100 x 30 = 21 shares)	21%
M	75% shares in Company D 75% of 30 shares held by Company D in Company XYZ (75/100 x 30 = 22.5 shares)	22.5%

Considering the above, the beneficial owners of Company XYZ are J, K, L and M.

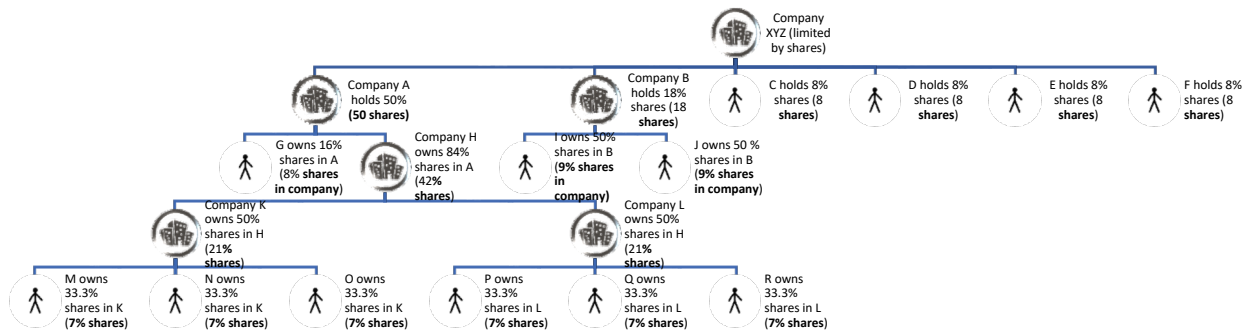
Control by senior manager

17. Where, after taking reasonable steps to determine the beneficial owners of a company, it is not possible to identify any individual who owns or controls 10% or more of shares or voting rights in the company or has control of the company through other means, the individual who holds the position of senior managing official should be recorded as the beneficial owner (e.g. a Chief Executive Officer, Managing Director).

17.1

Control by senior manager

**Senior Managing Official
of Company XYZ = John
Doe**



In this example, no individual can be identified as owning or controlling 10% or more shares or voting rights in Company XYZ. Also, there are no details about any individual who controls Company XYZ by other means. Accordingly, John Doe (in his capacity as senior managing official) should be listed as the beneficial owner of Company XYZ.

Companies limited by shares whose securities are listed on a recognised exchange

18. A company that is listed on any exchange designated by the FSC as a recognised exchange in the Regulatory Code (Recognised Exchanges) Notice or Schedule 2 of the BVI Business Companies and Limited Partnership (Beneficial Ownership) Guidelines, 2024 is exempted from the BO requirements save for the relevant licensee ensuring that its records reflect the name of the recognised exchange.

Companies limited by guarantee that are not authorised to issue shares

19. These types of company only have guarantee members. The beneficial owners should be determined by examining the control of the company (see paragraphs 14 and 15 above for further information about determining beneficial ownership through control).

Companies limited by guarantee that are authorised to issue shares

20. These types of companies have shareholders and guarantee members. The beneficial owners should be determined by examining the ownership and control of the company (see paragraphs 7 through 15 above for further information about determining beneficial ownership through ownership and control).

Unlimited companies that are not authorised to issue shares

21. These types of companies only have unlimited members. The beneficial owners should be determined by examining the control of the company (see paragraphs 14 and 15 above for further information about determining beneficial ownership through control).

Unlimited companies that are authorised to issue shares

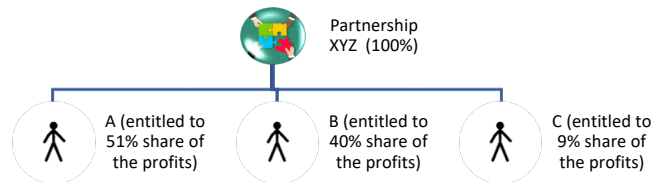
22. These types of companies have shareholders and unlimited members. The beneficial owners should be determined by examining the ownership and control of the company (see paragraphs 7 through 15 above for further information about determining beneficial ownership through ownership and control).

Partnerships

23. This section provides general guidance on how to determine beneficial owners where an applicant for business or customer is a partnership.
24. The partners of a partnership may be natural or legal persons. Where an individual is a partner owning 10% or more share of the capital or profits of a partnership, the individual is a beneficial owner of the partnership.

Example 24.1

Individual partners



The beneficial ownership of the assets in Partnership XYZ are held in proportion to the partners' entitlement to the profits of the partnership (as shown above). The beneficial owners of Partnership XYZ are A and B.

25. Where a partner of a partnership is:
- a company or partnership; and
 - is entitled to or controls 10% or more share of the capital, profits or voting rights in the partnership (whether directly or indirectly),

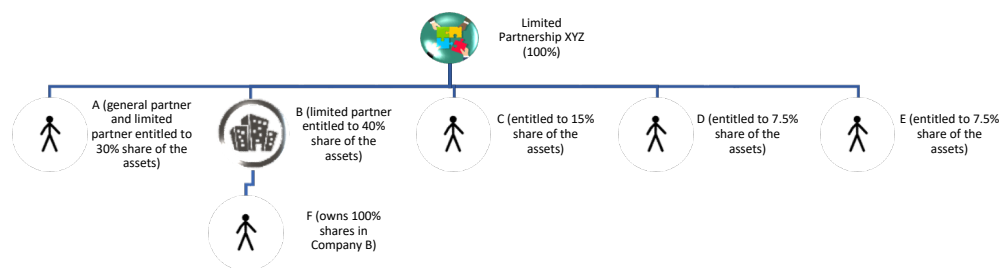
a licensee must first establish who are the beneficial owners of the legal person that is the partner, then determine which of those individuals meet the criteria under b. above to determine the beneficial owners of the partnership.

Control

26. An individual who has control of a partnership in any of the following circumstances is a beneficial owner of the partnership:
- Controlling 10% or more share of the capital in the partnership;
 - Controlling 10% or more share of the profits in the partnership; and
 - Controlling the partnership through other means.
27. A non-exhaustive list of ways in which an individual may exercise control over a partnership is included below:
- Responsibility for the management of the partnership;
 - The right to appoint or remove partners;
 - The right to direct the investment decisions of the partnership; and
 - The right to determine the profit share or capital returns of the partnership's funds or assets.
28. In the case of a limited partnership, the general partner is typically responsible for the management of the limited partnership. Where the general partner is an individual, they must be recorded as a beneficial owner of the limited partnership. Where a general partner is a company or partnership, the beneficial owner(s) of that legal person should be established and recorded as the beneficial owner(s) of the limited partnership. The limited partners will also be beneficial owners if they meet the criteria outlined in paragraph 26 above.

28.1

Limited partnership



In Limited Partnership XYZ, A would constitute a beneficial owner via control (as general partner) and asset share (as a limited partner). C, and F would also constitute beneficial owners of the limited partnership (by virtue of their asset shares).

Segregated Portfolio Companies

29. A segregated portfolio company is a company limited by shares that may create segregated portfolios to separate its assets and liabilities. Where an individual:
- a. owns or controls 10% or more of the shares or voting rights in the segregated portfolio company;
 - b. owns or controls 10% or more of the shares or voting rights in any segregated portfolio;
 - c. exercises control over the management of the segregated portfolio company; or
 - d. exercises control over any particular segregated portfolio,

the individual is a beneficial owner of the segregated portfolio company. The provisions above in relation to BO of companies limited by shares above equally applies to segregated portfolio companies.

Beneficial Ownership: Legal Arrangements

Structures involving trusts

30. This section provides general guidance on how to determine beneficial owners where an applicant for business or customer's ownership structure involves a trust. Where a trust is part of the ownership structure of an applicant for business or customer, the beneficial owners of the trust must be identified.
31. The following persons are the BOs of a trust:
- a. the trustee;
 - b. the settlor;
 - c. the protector (if any);
 - d. person, characteristic or class of persons with a vested interest in the trust (i.e. beneficiary); and
 - e. any other natural person exercising ultimate effective control over the trust.
32. Where any of the above is a legal person, licensees must review the structure of the legal person, inclusive of verification documentation, to determine the BOs.
33. For the purposes of control, a natural person exercising control over the trust may, amongst others, include where that person has the following powers to:
- a. dispose of, advance, lend, invest, pay or apply trust property or property of the trust;
 - b. vary or terminate the trust;
 - c. add or remove a person as a beneficiary to or from a class of beneficiaries;

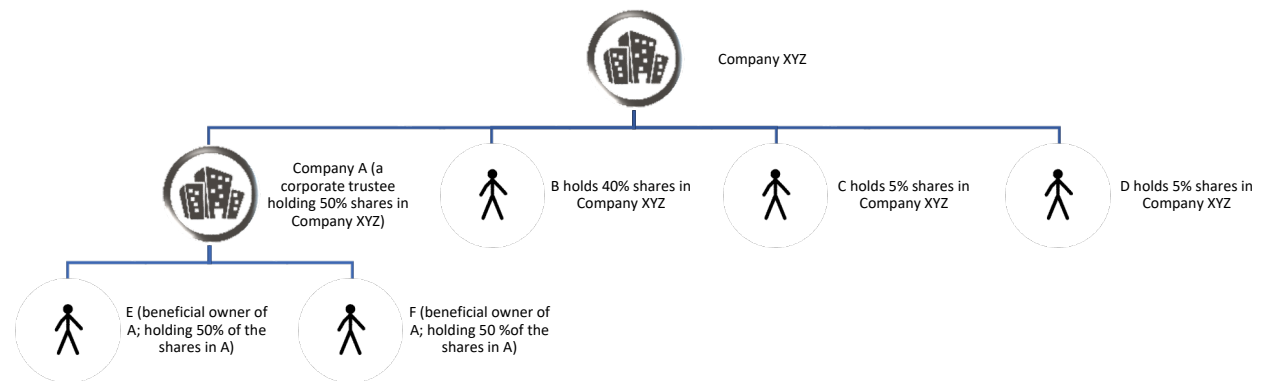
- d. appoint or remove a trustee or give another person control over the trust; or
- e. direct, withhold consent or overrule the exercise of a power referred to in items (a) – (d) above.

Trustees

34. In the case of an applicant for business or customer that is a company, a trustee may form part of the ownership structure, holding shares in the company (as a shareholder) on trust for the beneficiaries of the trust. A trustee will be an individual or a company. Where the trustee is an individual holding 10% or more of the shares in the company, the individual should be recorded as a beneficial owner of the company. Where the trustee (holding 10% or more of the shares in the company) is a company (i.e. a corporate trustee), the beneficial owners of the company trustee should be recorded as the respective beneficial owners. In addition to the trustee (whether an individual or a corporate trustee), any beneficiary of the trust administered by the corporate trustee, once vested, should be recorded as a beneficial owner.

34.1

Structure involving a trust



In this example, Company A is a corporate trustee holding 50% of the shares in Company XYZ. E and F are the beneficial owners of Company A. The beneficial owners of Company XYZ are B, E and F.

Although this example does not provide any details of the beneficiaries of the trust for which Company A acts as corporate trustee, the beneficiaries of that trust should also be identified as beneficial owners of Company XYZ.

35. A licensee acting as a trustee of a trust must disclose that fact to another licensee when it is forming a business relationship with that licensee in relation to the trust for which it acts as trustee.⁶

Other legal arrangements

36. Where a legal arrangement, other than a trust, is part of the ownership structure of an applicant for business or customer, the beneficial owners of the legal arrangement must be identified in a manner similar to identifying the beneficial owners of a trust. The natural person(s) in equivalent or similar positions to a trust must be identified as the beneficial owner.

37. Other types of legal arrangements include:

- a. Fiducie (a French arrangement similar to trust)
- b. Treuhand (a German arrangement trust)
- c. Fideicomiso (an arrangement similar to trust in some civil law countries); and
- d. Waqfs (an arrangement similar to trust under Islamic law).

Requirement to Identify Beneficial Owners: Legal Persons/Legal Arrangements

Identifying a beneficial owner: Legal Persons

38. Licensees must identify the beneficial owners of legal persons.⁷ As part of the process of identifying an applicant for business or customer that is a company or a partnership or any other legal person, licensees must obtain satisfactory evidence of the identity of each beneficial owner. This should be done as part of the CDD process, as soon as reasonably practicable after engaging with the applicant for business or customer about establishing a business relationship or carrying out a one-off transaction. Such requirements are also applicable where changes occur during the business relationship.

39. Licensees must determine what evidence is adequate to identify a beneficial owner on a case-by-case basis. However, this determination should be made, having regard to established identification procedures⁸ and the assessed level of ML, TF and PF risk that the applicant for business or customer, including its beneficial owner(s).

⁶ Section 28A of the AMLTFCOP

⁷ Section 25(2)(b)(ii) of the AMLTFCOP

⁸ established and maintained in accordance with regulation 4 of the AML Regulations

40. Licensees may simplify CDD measures where a customer presents a low ML/TF/PF risk.⁹ In such circumstances, the evidence obtained to identify a beneficial owner may also be simplified, but not excluded. Information such as full legal name,¹⁰ gender, date of birth and residential address are necessary to identify a beneficial owner and must be obtained in all cases.¹¹
41. Where an applicant for business, customer or beneficial owner presents a higher ML, TF and PF risk, licensees must apply ECDD measures, as an additional precautionary measure to assist identification.
42. Other information which can be used to identify a beneficial owner includes, but is not limited to, the following:
- a. place of birth;
 - b. nationality;
 - c. national identification number (e.g. passport number);
 - d. tax identification number or equivalent in country of residence; and
 - e. social security number.
43. For more detailed information on CDD and ECDD, please refer to **sections 19 and 20 of the AMLTFCOP** and the FSC’s Guidelines on ECDD.

Means and mechanisms of exercising beneficial ownership (in the case of companies and partnerships)

44. In identifying a beneficial owner of a company or partnership, licensees should also obtain information about the means and mechanisms through which each individual qualifies as a beneficial owner, including whether the individual is a beneficial owner through direct or indirect ownership interests and/or control **and** particulars concerning the ownership and/or control. Details that would be expected to be recorded are included in the below table:

Means and mechanism of BO	Particulars to identify means and mechanism	Scope of BO
Ownership	<p>Companies:</p> <ul style="list-style-type: none"> 1. Shareholding 2. Voting rights <p>Partnerships:</p> <ul style="list-style-type: none"> 1. Share of assets or capital 2. Profits (include details of percentage of profits that 	<p>Companies:</p> <ul style="list-style-type: none"> 1. Percentage of shares held 2. Percentage of voting rights held 3. Whether shares are held directly or indirectly 4. Whether there is any nominee relationship

⁹ Section 19(7) of the AMLTFCOP
¹⁰ including any former name, other current name or aliases used
¹¹ Section 24(2) of the AMLTFCOP

Means and mechanism of BO	Particulars to identify means and mechanism	Scope of BO
	beneficial owner is entitled to) 3. Voting rights held in the partnership (include details of percentage of voting rights held)	Partnerships: 1. Details of share of assets or capital in partnership held 2. Details of voting rights held 3. Details of entitlement to profits
Control through other means	Companies and Partnerships: 1. Type of control held (e.g. senior officer)	1. Details concerning how control is exercised (include details of position(s) held and/or documents which evidence how control is exercised)

Identifying a beneficial owner: Legal Arrangements

- 45. Licensees must identify the beneficial owners of legal arrangements.¹²
- 46. Generally, the identification measures explained in paragraphs 39 to 43 apply in identifying the beneficial owners of a trust or other legal arrangement. However, special rules apply concerning the timing of identification.

When identification should occur

- 47. Special rules apply when identifying the beneficiaries of a trust or other legal arrangement. The identification of the beneficiaries will depend on whether the beneficiary is:
 - specifically named as a beneficiary of the trust, or
 - designated by characteristics or class.
- 48. Where a beneficiary is designated by characteristics or class, identification should occur either at the time of establishing the business relationship or as soon as the beneficiary is designated.

¹² Section 2(1(b)(i) of the AMLTFCOP

Role of the beneficial owner (in the case of trusts)

49. In identifying a beneficial owner of a trust, information should be obtained on the role of the beneficial owner in the trust (i.e. whether he/she is a settlor, trustee, protector, beneficiary or another individual exercising ultimate effective control over the trust).

Requirement to Verify Beneficial Owners: Legal Persons/Legal Arrangements

50. The purpose of verification is to establish the identities of the beneficial owners, ensuring that persons are who they claim to be and that documents presented to licensees support relevant claims being made.

Verifying a beneficial owner: Legal Persons

51. Licensees must verify the beneficial owners of legal persons.¹³ After obtaining evidence of the identity/ies of the beneficial owner(s) of an applicant for business or customer that is a company or partnership, licensees must verify the evidence provided. As part of the verification process, licensees must ensure that the purported beneficial owner falls within the definition of beneficial owner under the AML Regulations and AMLTFCOP. This may, for example, involve reviewing any documents and agreements concerning the ownership or control of a company, partnership or trust.
52. Licensees are expected to use reliable and independent source documents, data, information, or evidence to verify the identity of each beneficial owner.¹⁴ The verification process may take various forms, however the extent to which licensees verify identification information should be determined on a case-by-case basis, by adopting a risk-based approach to verification. Where an applicant for business or customer presents a higher risk, licensees should take such measures as it determines necessary to satisfactorily verify identity evidence that was obtained.¹⁵ Section 24 of the AMLTFCOP provides detailed information about the process for verifying an individual (including a beneficial owner) and documents that can be used for identity verification.

When should verification occur

53. In general, verification should occur before establishing a business relationship or engaging in a transaction. However, initial verification may occur following the establishment of a business relationship, where it is necessary to do so in order to not disrupt the normal

¹³ Section 25(2)(b)(ii) of the AMLTFCOP

¹⁴ Section 19(3)(c) of the AMLTFCOP

¹⁵ This should be done in accordance with verification measures established and maintained in accordance with regulation 5 of the AML Regulations.

conduct of business.¹⁶ Where a licensee decides to complete verification after the establishment of a business relationship, it must, prior to establishing the relationship, adopt relevant risk management processes and procedures specified in the AMLFCOP, having regard to the circumstances in which the relationship is being developed. Also, verification must be completed as soon as reasonably practicable after the establishment of the relationship.

54. Verification should also occur on an ongoing basis during the course of a relationship with a customer, including each time that a beneficial owner's information changes. This is part of the requirement for ensuring that information remains up to date (discussed further in below section titled 'Requirement to maintain up-to-date BO information').
55. Where, during the verification process, a licensee discovers or suspects that an applicant for business or customer is or may be involved in ML, TF or PF, the licensee must:
- a. Not open an account, enter into the business relationship or carry out the transaction (where verification occurs before establishing the relationship or engaging in the transaction); or
 - b. terminate any existing business relationship (where verification occurs after the establishment of a business relationship); and
 - c. submit a report to the FIA outlining the discovery or suspicion.¹⁷
56. Similarly, where licensees have difficulties in carrying out CDD to determine beneficial ownership (e.g. failing to secure full cooperation of an applicant for business or customer or being unable to carry out the required CDD), licensees must:
- a. not enter into the business relationship or carry out the transaction (where verification occurs before establishing the relationship or engaging in the transaction); or
 - b. terminate the business relationship (where verification occurs after the establishment of a business relationship); and
 - c. submit a report to the FIA if it believes that the conduct of the applicant for business or customer raises ML, TF or PF concerns.¹⁸
57. For more detailed information on general verification and verifying individuals, please refer to **sections 23 and 24 of the AMLFCOP**.

¹⁶ Section 23(2) of the AMLFCOP

¹⁷ Section 23(2C) of the AMLFCOP

¹⁸ Section 23(2C) of the AMLFCOP

Verifying a beneficial owner: Legal Arrangements

When verification should occur

58. The general rule is that licensees should verify the identity of beneficial owners of legal arrangements at the point of establishing a business relationship or engaging in a one-off transaction. However, special rules apply where a BO of a trust is a beneficiary. Verification of a beneficiary may take place
- a. Before the time of payout
 - b. At the time of payout; or
 - c. At the point where a beneficiary exercises a vested right in the trust¹⁹
59. The above applies whether a person is specifically named as a beneficiary of the trust or prior to being named (i.e. where the beneficiary of the trust is designated by characteristics or class).

Documents to be Maintained: Legal Persons and Legal Arrangements

60. In the case of legal persons (companies and partnerships), the following are examples of documents that should be retained where applicable:
- a. copies of the beneficial owner's national identification card, passport or other similar documents;
 - b. certificate of incorporation;
 - c. certificate of registration;
 - d. company constitution (memorandum and articles of association);
 - e. minutes of board meetings;
 - f. shareholding including information on parent company and subsidiaries information;
 - g. group structure chart where applicable;
 - h. director's and shareholder's resolution;
 - i. partnership agreement;
 - j. appointment/ authorisation letter;
 - k. Register of directors;
 - l. List of Senior management;
 - m. Company's annual report and annual return;
 - n. shareholder's agreements and other related agreements;
 - o. Director nomination agreement;
 - p. Registers of partners/shareholder/members and beneficial owners; and
 - q. Any other source documents that sufficiently identifies the beneficial owner.

¹⁹ Section 19(4A) of the AMLTFCOP

61. In the case of trusts, the following are examples of documents that should be retained where applicable:
- a. List of parties to the trust;
 - b. Persons involved in the trust (i.e. those not included in any agreements);
 - c. Trust deed;
 - d. Trust registration document; and
 - e. Register of beneficial owners.

Requirement to maintain up to date BO information

62. Licensees must engage in ongoing customer due diligence, including ongoing monitoring, as a means of forestalling ML, TF and PF.²⁰ Licensees must ensure that they maintains BO information that is up to date. Maintaining up to date information is important not only for licensees' risk assessments and ongoing activities but it ensures that the correct information is readily available to share with the FSC, FIA and other competent authorities and law enforcement agencies when required.
63. Licensees are, therefore, expected to review and, where appropriate based on risk, update the beneficial ownership information of each customer, at minimum, on an annual basis for higher risk the customer poses.
64. Licensees must also review and update beneficial ownership information upon trigger events.²¹ The senior management of a licensee is responsible for determining which events should prompt the review and update of CDD information, including beneficial ownership information. However, the following are some examples of events that should trigger the review and update of beneficial ownership information:
- a. Material changes in ownership and/or management structure of a customer
 - b. Changes in a beneficial owner's profile, including where a beneficial owner:
 - i. becomes a PEP;
 - ii. becomes subject to sanctions; or
 - iii. has been connected to criminal activity or any higher risk activity.
65. To effectively review and update beneficial ownership information in the circumstances outlined above, licensees must have systems in place to regularly screen customers, including beneficial owners against applicable sanctions listings to identify a designated person immediately upon their designation.

²⁰ Section 21 of the AMLTFCOP

²¹ Section 21(1)(c) of the AMLTFCOP

66. Licensees must take reasonable steps to review and update (to the extent possible), beneficial ownership information when a business relationship with a customer ends.²² Licensees must take and have a record of steps taken to ensure that it has accurate and up to date BO information at the time of termination. In circumstances where reviewing and updating beneficial ownership information is not possible, a licensee must record on the relevant customer's file that it did what was reasonable in the circumstances to try and obtain the updated beneficial ownership information but was unsuccessful in doing so. A record of the steps taken in these circumstances should also be maintained.
67. Licensees should also note that verification and accuracy go hand in hand. Ongoing monitoring may reveal that BO information on file may need to be updated; and any beneficial ownership information that is updated should be subject to the verification process (to ensure its accuracy).
68. For more detailed information on reviewing and updating customer information, including beneficial ownership information, please refer to **section 21 of the AMLTFCOP**.

[Introducer Relationships and Beneficial ownership: Reliance on third parties](#)

69. Licensees may rely on a third party (i.e. the introducer) to obtain and verify the identity of a beneficial owner²³. However, there are inherent risks associated with relying on a third party in this regard, including the risk that the third party:
- a. has insufficient procedures to monitor the AML/CFT/CPF risks that a customer, including its beneficial owner, poses in line with the relevant requirements under the Virgin Islands' AML regime; or
 - b. poorly reviews and monitors introduced business relationships.
70. To mitigate the dangers and risks associated with relying on a third party to obtain CDD information on a customer, including its beneficial owner, licensees wishing to rely on a third party to obtain and maintain CDD information (including beneficial owner information) must:
- a. prior to entering into a business relationship with the third party:
 - i. conduct due diligence to ensure the suitability of the third party introducer;
 - ii. enter into a written agreement with the third party; and
 - b. during the course of a business relationship with a third party introducer, undertake periodic reviews to test the business relationship.²⁴

²² Section 21(3) of the AMLTFCOP

²³ Regulation 7(1)(b) of the AMLR and section 31 of the AMLTFCOP.

²⁴ Regulation 7B of the AML Regulations and section 31A of the AMLTFCOP

71. Where a licensee relies on a third party to identify an applicant for business or customer's beneficial owner(s), the licensee remains ultimately responsible for ensuring that it has obtained and verified the identity of the applicant for business or customer and that it knows the beneficial owner(s).²⁵
72. For more detailed information on relying on third parties, please refer to **regulations 7, 7A and 7B of the AMLR, section 30, 31 and 31A of the AMLTFCOP** and the FSC and FIA jointly issued **Guidance on 'Mitigating Risks with Introduced Business Relationships'**.

Accessibility of BO information and documents

73. Licensees must ensure that they can provide accurate and up to date BO information and documents upon request from a competent authority or law enforcement agency in a timely manner (usually within 24 hours of a request). The relevant competent authority or law enforcement agency will typically provide licensees with a written request for information which specifies the timeframe in which such information is required.
74. Where a licensee relies on a third party to obtain and verify the identity of a beneficial owner of an applicant for business or customer, such reliance must not hinder the licensee's ability to provide BO information and documents to the FSC, FIA or other competent authority or law enforcement agency. Written agreements between licensees and third parties must require the third party to provide to the licensee any requested information (including BO information and documents) within 1 business day,²⁶ thereby ensuring that licensees have rapid access to the information which can then be provided to any requesting authority/agency in a timely manner.

Failure to comply with obligations

75. Failure to comply with obligations concerning the collection and maintenance of BO information under the AML/CFT/CPF regime may result in administrative penalties as specified in **Schedule 4 of the AMLTFCOP**; fines under the Financial Services Commission Act, Revised Edition 2020; and/or imprisonment as specified in the Proceeds of Criminal Conduct Act.

²⁵ Regulation 7(7) of the AMLR

²⁶ Section 31A(1)(c) of the AMLTFCOP

Concealment of Beneficial Ownership: Indicators/Red Flags

76. The following are examples of common indicators that may point to concealed beneficial ownership. These examples should be read in conjunction with the examples provided in the AMLTFCOP, including Schedule 3 to the AMLTFCOP and guidance provided by the FIA.²⁷

77. Many of the situations described in these examples may be considered reasonably normal within certain business contexts having regard to identified risk. However, in other situations they could trigger a suspicion that requires further investigation. Licensees must assess the relevant indicator and determine whether it provides sufficient reason to form a suspicion. Whilst a single indicator may be sufficient to form a suspicion, the licensee must assess all indicators, including assessing the context in which the transaction occurs or is being attempted. The licensee's knowledge of its customers' business will also assist in determining whether the suspicion is warranted and whether a SAR should be filed.

- The following examples highlight key indicators and red flags that may signal unusual or potentially suspicious activity, warranting closer scrutiny or further investigation.

The customer is reluctant or unable to explain/identify:

- their business activities and history;
 - the identity of the BO;
 - their source of wealth or source of funds ;
 - the manner in which they carry on activities and engage customers; and
 - the nature of their business dealings with third parties (particularly third parties located in foreign jurisdictions).
-
- Individuals or connected persons:
 - are actively avoiding personal contact, without sufficient justification;
 - are foreign nationals with no significant dealings in the country in which they are procuring professional or financial services;
 - refuse to co-operate or provide information, data, and documents usually required to facilitate a transaction;
 - are PEPs, or have familial or professional associations with a person who is a PEP;
 - are conducting transactions inconsistent with an individual's profession; and
 - are the signatory to company accounts without sufficient explanation.

 - Legal persons or legal arrangements:
 - use of nominee shareholder arrangements;

²⁷ [British Virgin Islands Financial Investigation Agency > Analysis & Investigation > Suspicious Activity Reports > FAQ](#)

- complex ownership structures that do not appear to legitimately require that level of complexity, or which do not make commercial sense;
- use of bearer shares and warrants;
- ownership structures involving persons in higher risk jurisdictions for ML, TF, PF or other financial crimes;
- where the BO does not appear to have an active role in the company;
- exhibiting frequent change in ownership without proper rationale; and
- demonstrating frequent changes in service providers and authorised persons without proper rationale.

Overarching Requirement for Compliance

78. Licensees must remain vigilant in relation to evolving ML, TF and PF threats, as well as other threats that can negatively impact their operations. To mitigate against these threats and resulting risks, licensees must be diligent in the application of AML/CFT/CPF measures. These measures must be holistic and integrate prudent governance and modern risk management strategies with a robust compliance framework. Licensees must therefore remain responsive and embed systems to allow for continual improvement in the efficiency and effectiveness of their AML/CFT/CPF compliance.