

Guideline for identification of a beneficial owner (updated on 4 September 2020)

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1. Who is a beneficial owner?

Pursuant to subsection 9 (1) of the Money Laundering and Terrorist Financing Prevention Act (hereinafter the MLTFPA), a **beneficial owner** is a natural person who has the final dominant influence over a natural or legal person, or in whose interests, for the benefit of whom or in whose name a transaction or operation is made. Final dominant influence arises from control over a person via ownership or other methods.

Pursuant to subsection 27 (1) of the Accounting Act, **dominant influence** may, *inter alia*, arise from the following circumstances:

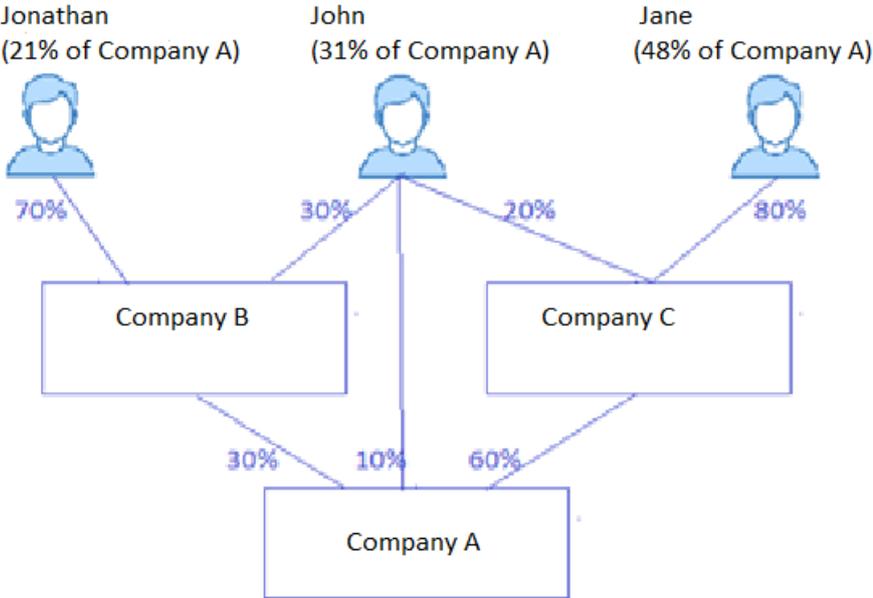
- 1) a holding of more than 50 per cent of the voting rights in the consolidated entity, or
- 2) a direct or indirect right arising from law or a contract to appoint or remove a majority of the members of the management (for example, a company's management board) or the highest supervisory body (for example, the supervisory body of a company) by exercising the rights of a founder or by a decision of the general meeting.

Where a beneficial owner cannot be identified in the manner specified above, the beneficial owner of a company is a natural person whose direct or indirect shareholding or the total shareholding of all of the direct and indirect shareholdings in the company exceeds 25%.

Pursuant to subsection 9 (3) of the MLTFPA, **direct shareholding** is a means of control whereby a natural person **personally** holds shares in a company, whereas **indirect shareholding** is a means of control whereby a natural person holds shares in a company **via one or multiple persons or a chain of persons**.

Here are some **examples** of companies.

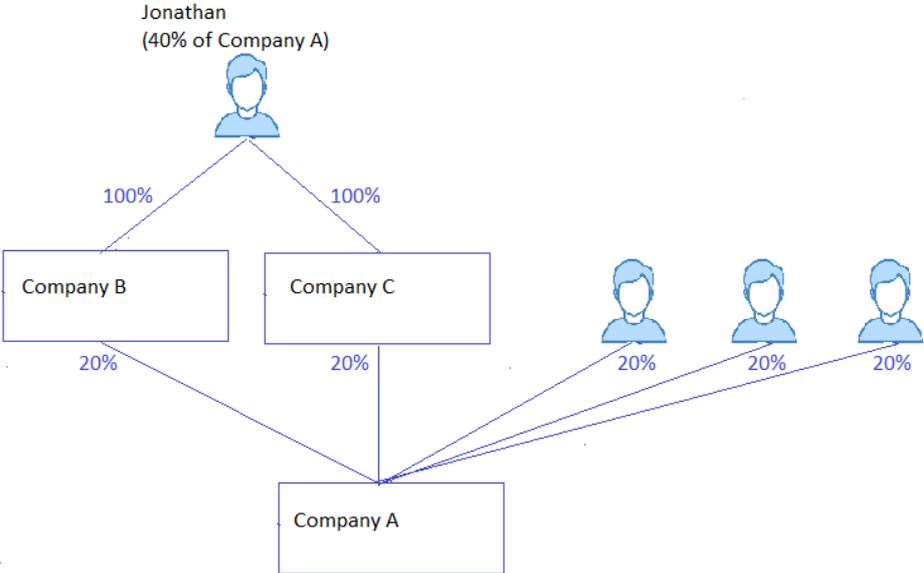
In **Example 1**, the owners of Company A are Company B, Company C and John. Company B owns 30% of Company A, which means that the shareholders of Company B hold, via indirect shareholding, a total of 30% of Company A. This 30% is divided between the shareholders of Company B based on the shareholdings of the respective shareholders in Company B. This means that of the 30%, Jonathan



Example 1

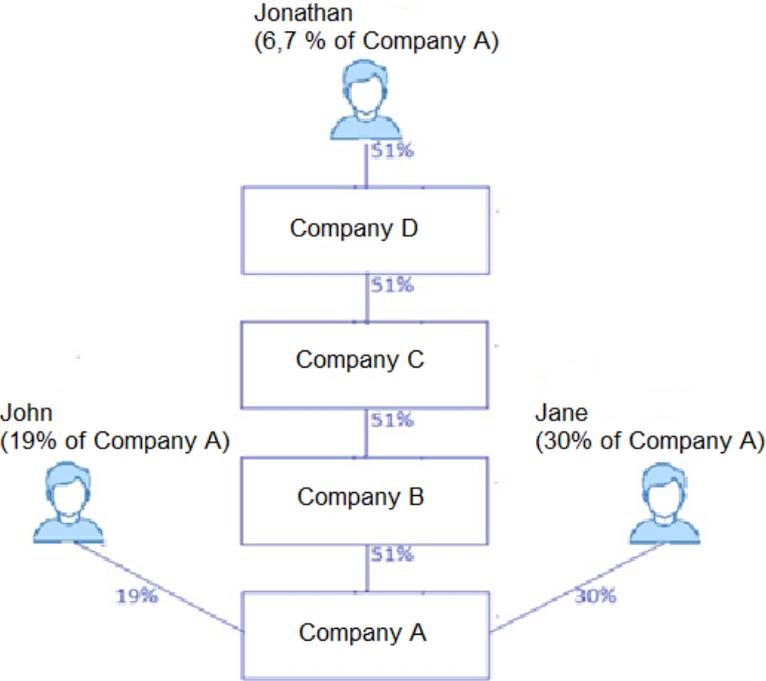
holds 70%, making his shareholding in Company A to be 21%. John’s shareholding via Company B in Company A is 30% of 30%, which is 9% of Company A. Furthermore, John holds a direct shareholding of 10% in Company A and 12% indirect shareholding via Company C, which totals 31% of Company A. Jane’s shareholding in Company A is calculated similarly to John’s shareholding. The beneficial owners of Company A are John and Jane, as both hold a shareholding of more than 25% in Company A.

In **Example 2**, the beneficial owner of Company A is Jonathan, who holds a shareholding of 40% in the company through Companies B and C.



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In **Example 3**, the beneficial owner of Company A is Jonathan, who **controls Company A through majority shareholdings in Companies B, C and D**. This is irrespective of the fact that his shareholding in Company A is less than 25%. In addition to Jonathan, Jane is also a beneficial owner of Company A because of her direct shareholding of 30%.

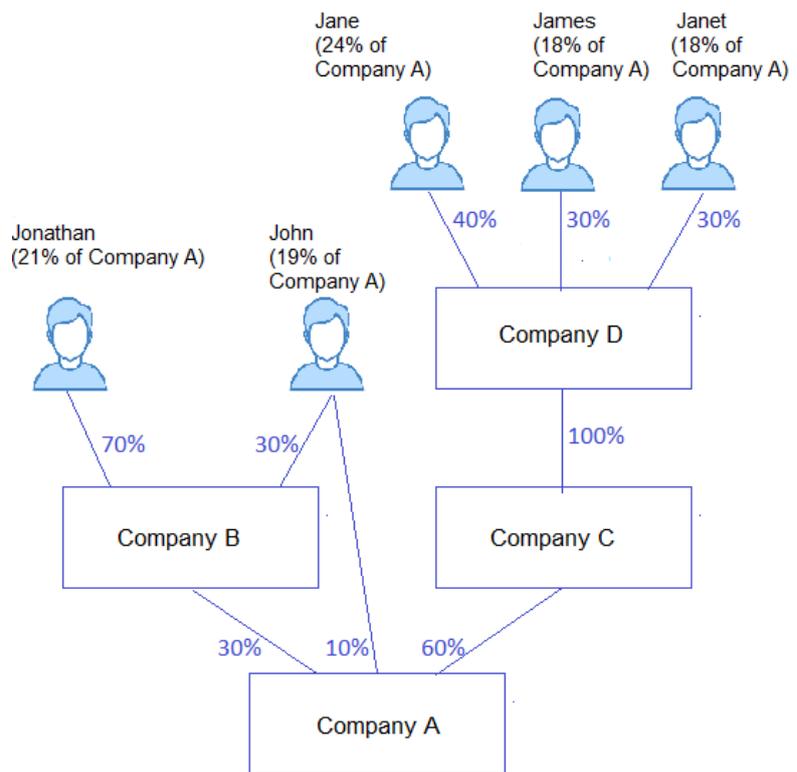


Example 3

Control cannot always be ascertained through majority holding: it can also exist as ‘dominant influence’, which is understood as the direct or indirect right to appoint or remove the majority of the executive management or members of a higher managing body by exercising the rights of the founder or with a resolution of the general meeting of shareholders, which arises from law **or a contract (e.g. an agreement between shareholders)**.

Essentially, this means that in practice, it is sometimes still impossible, after all possible means of identification have been exhausted, to identify the person who has the final dominant influence over a natural or legal person (clause 9 (1) 1) of the MLTFPA), or in whose interests, for the benefit of whom or in whose name a transaction or operation is made (clause 9 (1) 2) of the MLTFPA), or there is no person whose direct or indirect shareholding or the total shareholding of all of the direct and indirect shareholdings in the company exceeds 25%, including shareholdings in the form of bearer shares or otherwise (subsection 9 (2) of the MLTFPA). If there is no ground for calling the existence of such person into doubt or where there are doubts as to whether the identified person is the beneficial owner, the natural person who holds the position of a senior managing official in the respective legal body is deemed to be the beneficial owner. A senior managing official is an officer or employee with sufficient knowledge of the institution’s money laundering and terrorist financing risk exposure and sufficient seniority to take decisions affecting its risk exposure, and needs not, in all cases, be a member of the management board. The management body of a private legal person is its management board. Where the existence of a supervisory body is required by law, the supervisory board is also a management body. Where several persons meet such terms, including where there are several senior managing officials, several senior management bodies or where another legal person holds shares in a company via one or several persons or chains of persons, the person(s) who exercise(s) actual control over the company and make(s) strategic decisions in the company or, upon absence of such persons, manage(s) the company is (are) considered the beneficial owner(s).

This situation is covered in **Example 4**. Company A is controlled by Company C as a majority shareholder that in its turn is controlled by Company D, but Company D does not have a controlling shareholder. Neither are there any natural persons whose direct or indirect shareholding or the total shareholding of all of the direct and indirect shareholdings in Company A exceeds 25%. The example also describes a situation where a holding in Company C holds shares in Company A via holding in Company D. In such a case, the person(s) who exercise(s) actual control over Company A or the person(s) who make(s) strategic decisions in the company or, upon absence of such persons, manage(s) the company is (are) considered the beneficial owner(s) of the company (based on subsection 9 (4¹) of the MLTFPA).



Example 4

The same provisions also apply in a situation where Company A is a company listed on the stock exchange.

The persons exercising day-to-day and regular actual control over a company are persons whose day-to-day work duties or liability are made up of activities which

- 1) constitute strategic decisions concerning the business of the specific company; these are decisions which fundamentally impact the business activity and/or practices and general (business) trends of the company, or
- 2) constitute day-to-day or regular management of the company (for example, chief executive officer, chief financial officer, director or president, etc.).

The **structure of the managing bodies** of foreign companies may differ from the Estonian one: the 'board' may consist of dozens of people. **In the case of managing bodies consisting of more than three people, we advise noting the chairman (or chairmen, as it is possible that two persons share this position) of the respective body as the beneficial owner.** If a person is noted as the beneficial owner due to their position as a member of a managing body, this does not mean that they receive monetary income from the company or that the company operates in their personal interests.

The beneficial owner must also be noted in the case of **non-profit associations**, although earning profit is not the goal of any of them. According to the definition of beneficial owner, the person(s) under whose control the company is operating are indicated in such a case. Usually, they are **members of**

the management board. Exceptions are possible, e.g. if the founders or members of a non-profit association are legal entities, the beneficial owners are defined in the same way as in the case of companies. The same principle applies here, i.e. noting the chairman of the management board is enough if the management board has more than four members. If a person is noted as the beneficial owner due to their position as a member of a managing body, this does not mean that they receive monetary income from the company or that the company operates in their personal interests.

In the event of a trust, civil law partnership, community or other association of persons that does not have the status of a legal entity, the beneficial owner is the natural person who ultimately controls the association via direct or indirect ownership or via other means and who is the association's:

- 1) settlor of the trust or the establisher of the arrangement;
- 2) trustee;
- 3) person ensuring and controlling the preservation of property, where such person has been appointed;
- 4) beneficiary, or where the beneficiary or beneficiaries are yet to be determined, the class of persons in whose main interest such trust or arrangement has been set up or operates; or
- 5) any other person who in any way exercises ultimate control over the property of the trust or arrangement (subsection 9 (6) of the MLTFPA).

In the case of a foundation, the person noted as the beneficial owner is the person who may make payouts from the assets of the foundation, **where such person(s) have been specified by name in the articles of association of the foundation.** If such persons have not been specified by name in the articles of association, the members of the management board and supervisory board are noted as the beneficial owners.

2. Who is required to submit data?

Data must be submitted by:

- 1) private limited companies (pursuant to the Commercial Register, there are 212,128 private limited companies as of 1 August 2020);
- 2) public limited companies (2,843);
- 3) general partnerships (1,374);
- 4) limited partnerships (4,565);
- 5) commercial associations (1,694);
- 6) foundations (807);
- 7) non-profit associations (22,177);
- 8) European companies, European Cooperative Societies and European Economic Interest Groupings (32).
- 9) *Trusts operating in Estonia as of 10 May 2021*

The following are not obliged to preserve or submit the data of the beneficial owner:

- 1) apartment association;
- 2) building association;
- 3) a company listed on the regulated market to which disclosure rules complying with European Union law or similar international standards are applied, which ensure the sufficient transparency of the data of owners;
- 4) a foundation the goal of whose economic activities is safekeeping or collecting assets in the interests of the beneficiaries or group of persons specified in the articles of association and that has no other economic activity;
- 5) a subsidiary.

As **gardening associations** are ordinary non-profit associations within the legal meaning, then the obligation to submit the data of the beneficial owner **applies** to them.

3. Which data of the beneficial owner must be submitted?

A general partnership, limited partnership, private limited company, public limited company, commercial association or non-profit association must submit the following data of their beneficial owners:

- 1) the person's name, ID code and country of the ID code, the date and place of birth if there is no ID code, and country of residence;
- 2) data of the manner in which the person exercises control.

If a group's parent undertaking has not been registered in the Estonian commercial register, the company submits, together with the data of the beneficial owner, the name and registry code of the group's parent undertaking and the name of the country where the parent undertaking is registered.

A foundation submits the following data of its beneficial owner:

- 3) the person's name, ID code and country of the ID code, the date and place of birth if there is no ID code, and country of residence;
- 4) data of the manner in which the person exercises control;
- 5) the list of beneficiaries, which includes each beneficiary's name, ID code and country of the ID code, the date and place of birth if there is no ID code, and country of residence **if such persons are specified by name in the articles of association of the foundation.**

The guideline on how to submit data in the Company Registration Portal can be found here: <http://abiinfo.rik.ee/tegelikkasusaaja>

4. When do the data have to be submitted?

A company, non-profit association and foundation must submit the data of the beneficial owner with the application for entry in the Commercial Register. The trustee must submit the data within 30 days after the formation of a trust, after becoming a trustee or after the grant of temporary right of residence.

The pre-populated data of beneficial owners in the Company Registration Portal of the Commercial Register can be changed (e.g. the means by which control is exercised can be added), confirmed and/or beneficial owners can be entered and added. In the next stage, the company, non-profit association or foundation confirms that the data are true when submitting the annual report if their data have not changed in the meantime.

5. Amendment, preservation and deletion of data

If the submitted data changes, the management board submits the correct data within 30 days. The management board confirms that the data of the beneficial owners are true (i.e. if no changes have occurred) every year when submitting the annual report.

If the person obliged to submit the data has not submitted the data on time, the registry department will notify the person and request the submission of the data. In such a case, the person obliged to submit the data must submit the data within ten business days after receipt of the notice. If the registry department receives a justified notice about the incorrectness of the data of beneficial owners, the registry department will notify the person obliged to submit the data and will make a note to the data about the suspected incorrectness. The note will automatically be deleted if the correctness of the data is confirmed or the data change.

Data are automatically deleted when five years have passed from the deletion of the legal entity from the register. The data of the beneficial owner of a trust are deleted if the person having a legitimate interest proves that at least five years have passed from the cessation of the ground for the submission of the data. The beneficial owner themselves has the right to demand the amendment of incorrect data from the management board. If the management board does not correct the data, the beneficial owner has the right demand from the legal entity compensation for the damage caused with the incorrect data.

6. Does a branch of a foreign company have to submit the data of the beneficial owner?

The data of the beneficial owner are not submitted in the case of the branch of a foreign company, because the branch is not a legal entity pursuant to subsection 384 (2) of the Commercial Code. A foreign company is responsible for the activities of its branch and enters the data of the beneficial owner in its respective register of beneficial owners.

7. Who is the beneficial owner in the case of a company whose parent company is a company listed on a regulated market?

Companies listed on the stock exchange do not have to submit the data of beneficial owners, but the **subsidiaries** belonging to their groups of companies must do it. The same principles that apply to ordinary companies apply here as well: if there are no natural persons among the shareholders of a listed company whose shareholding in the company exceeds 25%, members of the controlling body of the listed company, i.e. the management board and the supervisory board, are noted as the beneficial owners.

8. Who is the beneficial owner of a state-owned company or foundation, or a foundation or non-profit association established by a local government (city, town or municipality)?

State-owned companies are ordinary private legal entities. The beneficial owner of a state-owned company is the minister responsible for the area, who represents the state in the company and appoints the members of the supervisory boards of the companies in their area of government, the chairman of the supervisory board/management board of the company and the members of both bodies. For example, the finance minister as the representative of the state, the chairman and members of the supervisory board and the chairman and members of the management board can be considered beneficial owners of AS Eesti Loto.

In the case of foundations established by the state where the rights of a founder are exercised by ministries and foundations with state participation, the minister of the respective area, the chairman/members of the supervisory board and the chairman/members of the management board can be considered the beneficial owners. The members of the supervisory board are appointed and the other rights of a founder or shareholder of a foundation of a municipality, town or city, whose sole founder is the municipality, town or city, as well as of a private limited company or public limited company, whose sole shareholder is a municipality, town or city, are exercised by the government of the municipality, town or city, so the mayor of the municipality, town or city or the members of the government of the municipality, town or city can be considered the beneficial owners. The principle applied here is the same: noting the chairman of a body is enough if the body consists of more than four persons. If an association has been established with the state and a local government or several local governments together, none of which have dominant influence over the association, the chairmen or members of the management board or supervisory board of the association are noted as the beneficial owner.

9. How can data be submitted if the member of the management board cannot log in to the Company Registration Portal (they don't have an ID card or e-resident card)?

A notary operating in Estonia must be contacted in such a case. If the member of the management board is in a foreign country and cannot travel to Estonia, their representative may also go to a notary in Estonia on the basis of a power of attorney issued by the member of the management board. However, the format and text of the power of attorney should be approved in advance by the Estonian notary who will be contacted.

10. Punishment for intentional submission of false data about the beneficial owner or failure to submit data

Failure to submit the data of the beneficial owner, to notify about changes in data or intentional submission of false data is punishable by a fine. The fine is up to 300 fine units in the case of a natural person and up to 32,000 euros in the case of a legal entity. It should be noted that the intentional submission of false data about the beneficial owner may also include a situation where an entry made about the incorrectness of data is deleted because the person has confirmed the correctness of the data, knowing that the data were incorrect.

In legal issues concerning the identification of beneficial owners, lawyer of the Entrepreneurship and Accounting Policy Department of the Ministry of Finance, Henrik Mägi can be contacted (henrik.magi@fin.ee).

You will find the guideline on the submission of the data of beneficial owners at the website <http://abiinfo.rik.ee/tegelikkasusaaja>.