

Recent Developments on the creation of the UBO Registers in Cyprus and the amendments to the AML legal framework

December 2021



Agenda

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Part II	Recent developments
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INTRODUCTION

- ▶ On 18/02/2021, the law amending the Prevention and Suppression of Money Laundering and Terrorist Financing Law 188(I)/2007 (the "**AML Law**"), fully implementing the EU Directive 2018/843 of the European Parliament and of the Council of 30 May 2018, (the "**AML Directive**") was enacted.
- ▶ On 23/02/2021, the above was published in the Official Gazette of the Republic of Cyprus, constituting the amendments enforceable.
- ▶ Accordingly, companies and other entities were provided until March 2022 to comply with the provisions of the new AML Law legal framework.

New Registers

- ▶ **Register of the Crypto Assets Service Providers** -kept by CySEC ;
- ▶ **Register of the Electronic Registry of Bank Accounts, Payment Accounts and safe Boxes** - kept by the Central Bank;
- ▶ **Beneficial Ownership Register of Companies and other legal entities** - kept by the Department of the Registrar of Companies and Official Receiver;
- ▶ **Beneficial Ownership Register of Express Trusts and Similar arrangements** - kept by CySEC;
- ▶ **Beneficial Ownership Register of legal bodies** (foundations, clubs, unions etc.) - kept by the General Commissioner.

Part I – Framework regulating the creation and operation of the Beneficial Ownership Register



Definition of Beneficial Owner

In accordance with the Guidance issued by the Registrar of Companies on 12/03/2021,

'beneficial owner' means any natural person(s) who ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted and includes at least:

(a) in the case of corporate entities:

*(i) **the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity**, including through bearer shareholdings, or **through control via other means**, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Union law or subject to equivalent international standards which ensure adequate transparency of ownership information. **A shareholding of 25 % plus one share or an ownership interest of more than 25 % in the customer held by a natural person shall be an indication of direct ownership.***

(b) in the case of trusts: (i) the settlor; (ii) the trustee(s); (iii) the protector, if any; (iv) the beneficiaries, or where the individuals benefiting from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates; (v) any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means;

(c) in the case of legal entities such as foundations, and legal arrangements similar to trusts, the natural person(s) holding equivalent or similar positions to those referred to in point (b).

Definition of Beneficial Owner (continued)

- A shareholding of 25 % plus one share or an ownership interest of more than 25 % in the customer held by a corporate entity, which is under the control of a natural person(s), or by multiple corporate entities, which are under the control of the same natural person(s), shall be an indication of indirect ownership. This applies without prejudice to the right of Member States to decide that a lower percentage may be an indication of ownership or control. **Control through other means may be determined**, inter alia, in accordance with the criteria in Article 22(1) to (5) of Directive 2013/34/EU of the European Parliament and of the Council (3);
- (ii) if, after having exhausted all possible means and provided there are no grounds for suspicion, no person under point (i) is identified, or if there is any doubt that the person(s) identified are the beneficial owner(s), the natural person(s) who hold the position of **senior managing official(s)** are declared and the obliged entities shall keep records of the actions taken in order to identify the beneficial ownership under point (i) and this point;

- The Guidance also provides that “Control via other means may include **shareholder’s agreement**, the **exercise of dominant influence, influence through family links or other types of connection with decision-makers**, the **holding of negotiable shares or convertible stock**, and the **power to appoint senior management or any other way.**”
- Hence, companies and other relevant entities must consider the definition of beneficial owner and control in order to take the required and appropriate measures to obtain the information required regarding their beneficial owners for internal keeping and reporting.
- Furthermore, the above may give rise to examining the internal governance structure of companies/groups in light of the above considerations and introduce appropriate governance structures and/or amend existing corporate governance structures.

Types of entities

Entities not falling under the obligation to report

Companies listed on a regulated market that is subject to disclosure requirements consistent with EU law;

Companies that are subject to equivalent international standards which ensure adequate transparency of ownership information;

Companies whose directors have filed an application to strike-off the company prior to the commencement of the directive;

Companies whose liquidation has been enacted prior to the commencement of the directive;

Overseas companies;

Information to be reported

Name, surname, date of birth, nationality and residential address

Nature and extent of the beneficial interest held directly or indirectly by each beneficial owner, including through percentage of shares, voting rights, or the nature and extent of the Significant influence or control with other means exercised by each controlling person

Identification document number indicating the type of document and the country of document issuance (Identity card or passport depending on the specific facts).

Date on which the natural person was entered in the register as beneficial owner and

Date on which there were changes in the particulars of the natural person or the date on which the natural person ceased to be a beneficial owner.

Information to
be reported in
case the
structure leads
to Trust, listed
entities,
foundation or
other similar
arrangement

Name and registration number and country of jurisdiction

Business address (not applicable to trust)

Nature and extent of the beneficial interest held directly or indirectly by each beneficial owner, including through percentage of shares, voting rights or the nature and extent of the Significant influence or control with other means exercised by each controlling person

Date on which the trust, foundation, other similar legal arrangements and listed company was entered in the register as beneficial owner

Date on which there were changes in the particulars of a trust, foundation, other similar legal arrangements and listed company or the date on which it ceased to be a beneficial owner for BO register purposes.

Part II – Recent Developments



- Extension of interim period
- Inclusion of Partnerships
- Amendment to filing procedures to allow for filing also to be performed by the directors and/or partners of the entity.

Part III - Filing Procedure

One-off filing

- Article 8 (1) - Existing entities will have a period of 12 months, starting from the 16th March 2021, to submit the relevant data with the BO Registry
- Article 9 (1) - New Entities (registered following the 16th March 2021), must, no later than thirty (30) days from the date of their registration, file electronically the relevant data to the BO Registry

Filing Procedure

Changes in the UBOs

Article 10 (1) and (2) - In case of a change in the information of a BO, an entity and its officers must, within fourteen (14) days from the change, file onto the BO register the information regarding the new BO or the change on the details of an existing BO owner.

Annual filing

Article 10 (3) - During the period from 1st to 31st December of each calendar year, an Entity must confirm electronically, to the Registrar its beneficial owners.

Filing Procedure

Registration can be made by either the company itself or by one of the officers/partners of the entity.

Important points to note:

- Need for Profile creation in Ariadni;
- Verification of natural persons;
- Proper authorisation (in case of legal person – to create company profile)

Access to Public Registers

- Competent Supervisory Authorities, the FIU, Customs Department, Tax Department and the police will have fast and unlimited access without the submission of a fee and without notifying the Entity.
- Obligated Entities, in the context of conducting due diligence and identification measures for the client (as defined by the Law and for verification purposes – not reliance) will have access to the name, month and year of birth, nationality and country of residence of the beneficial owner as well as the nature and extent of the beneficial interest held following the payment of a fee (Euro 3,50)
- All members of the general public have access to the name, month and year of birth, nationality and country of residence of the beneficial owner as well as the nature and extent of the beneficial interest held following the payment of a fee (Euro 3,50)

For the interim 12 month period (as from the 16th March) access will be granted **only to** Competent Supervisory Authorities, the FIU, Customs Department, Tax Department and the police.

The search function will not be available to obliged entities and members of the public during the interim period.



Discrepancies

- A discrepancy exists in the case where the information provided in the Public Register of beneficial owners is inconsistent with the information **competent authorities and/or Obligated Entities** have at their disposal. In such a case, the aforementioned **competent authorities and/or Obligated Entities** shall have an obligation to submit relevant documents and information evidencing the discrepancy.
- For the interim period, the discrepancy report will be implemented only by competent authorities.

Penalties

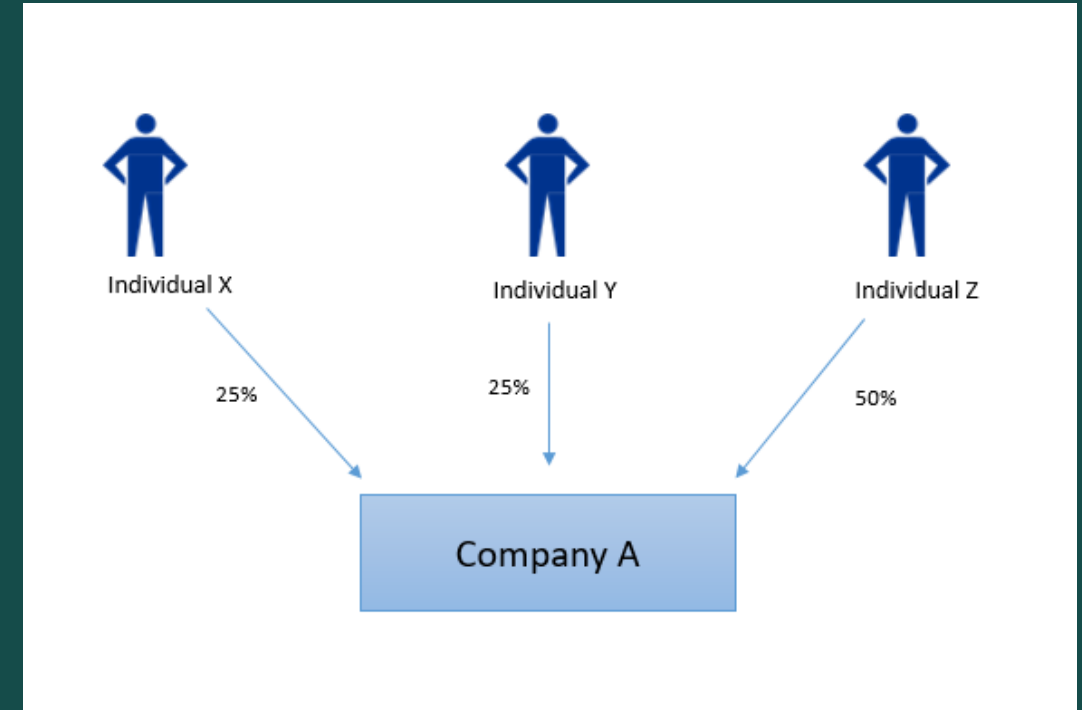


- No penalties will be imposed during the interim period of 6 months starting from the 16th of March 2021;
- €200 fixed fee plus €100 per additional day of non-compliance with a cap of €20.000;
- Penalties are imposed both on the Company and its officers.

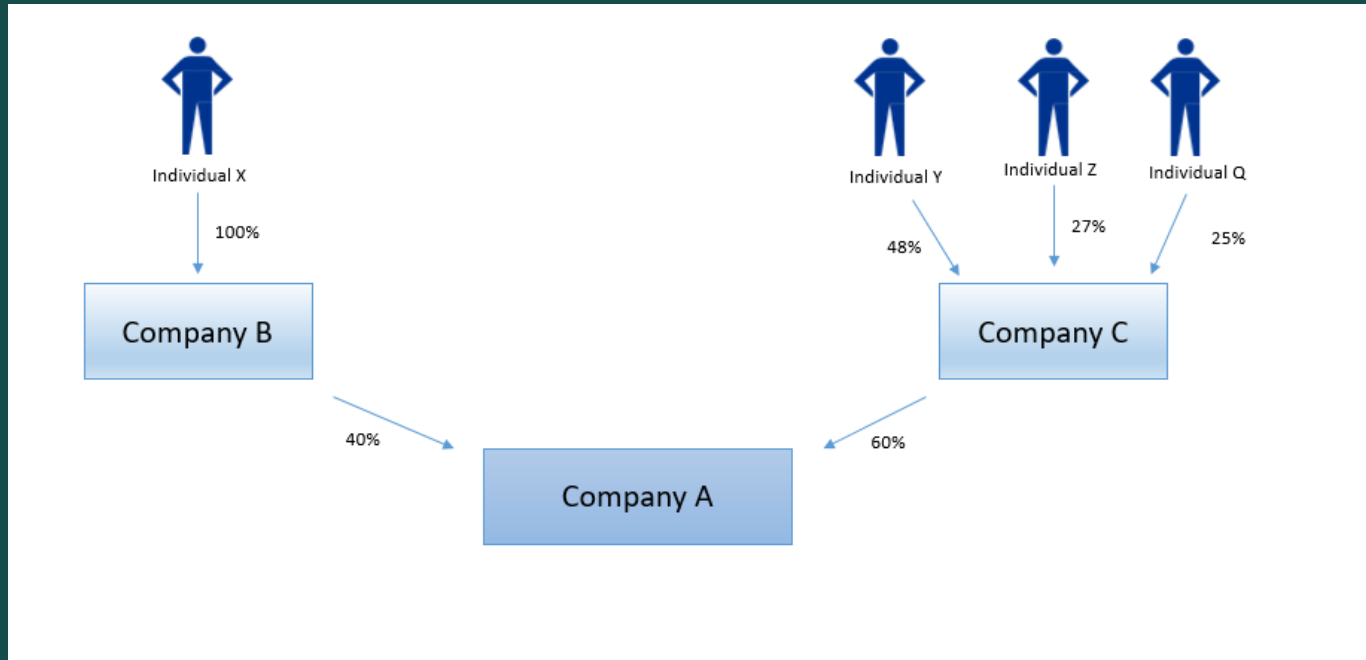
Part IV – Examples and Questions



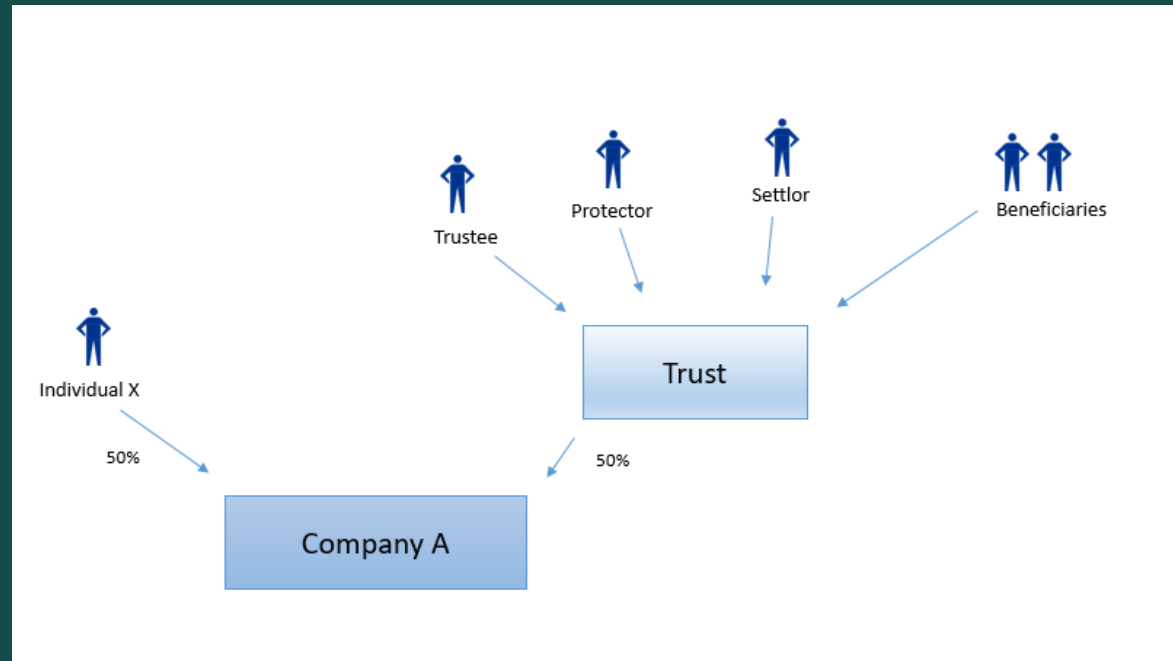
Case number 1



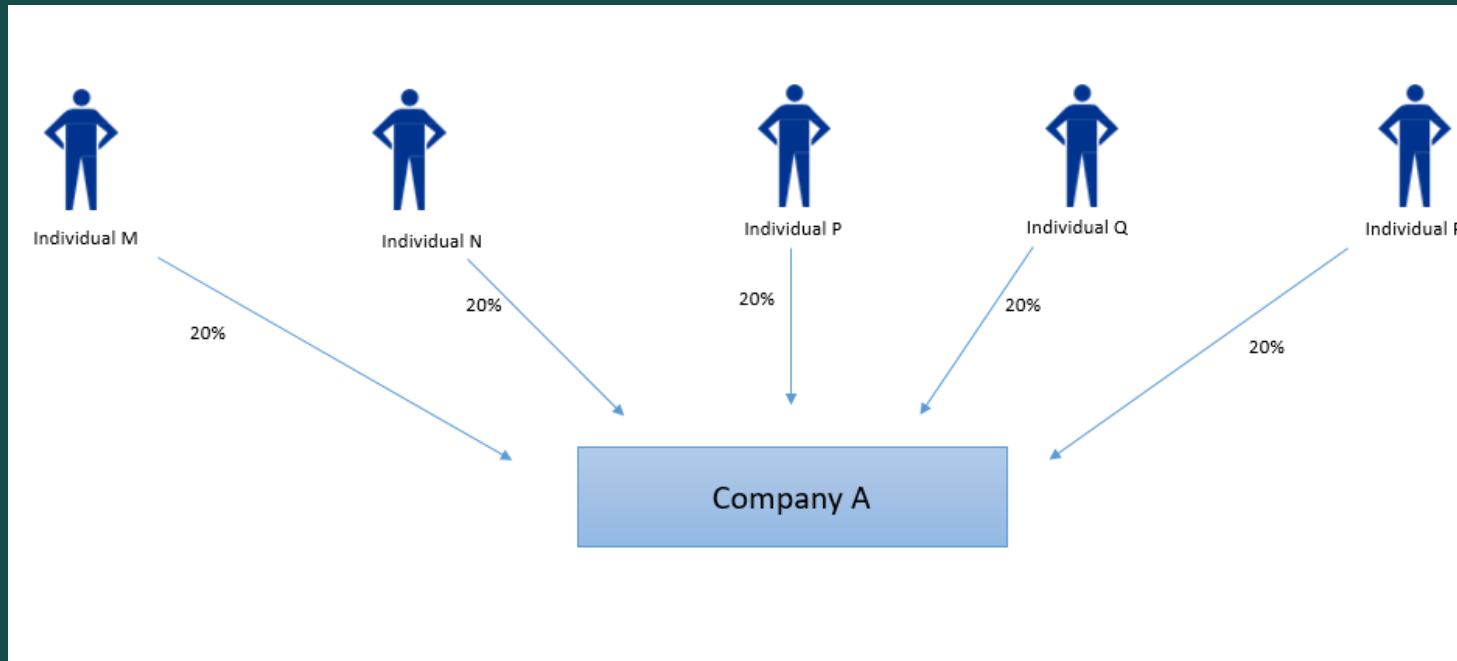
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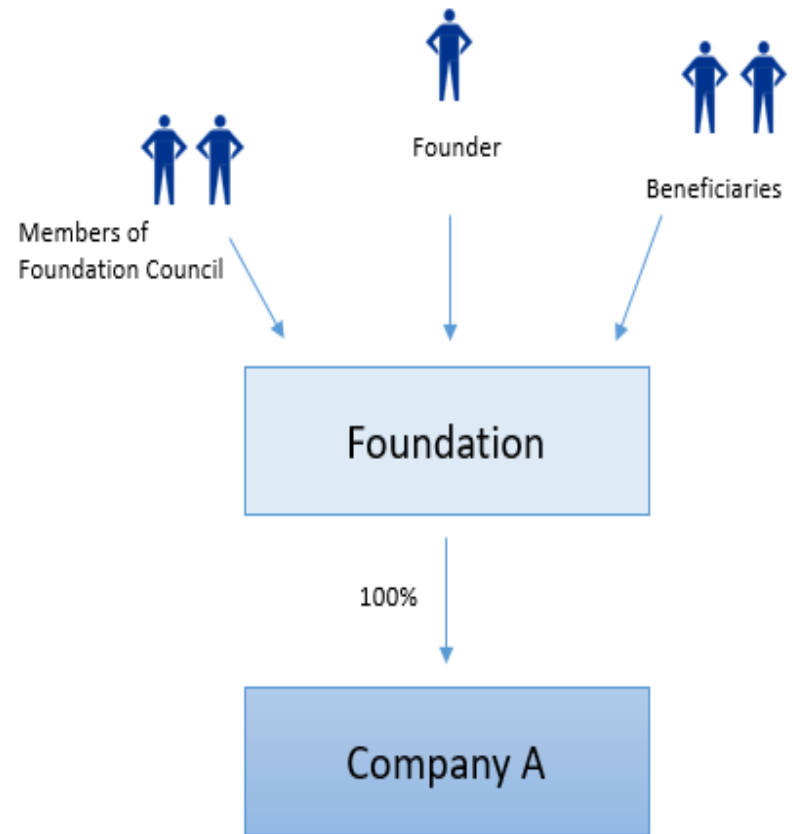
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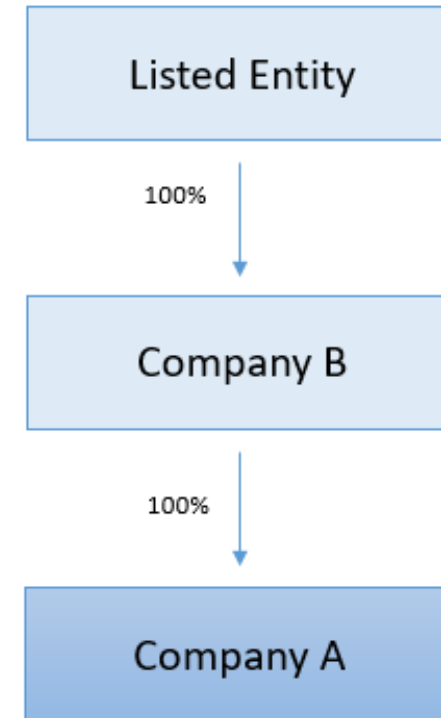
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Case number 5



Case number 6



Case number 7

