

Anti-money laundering and combatting the financing of terrorism (AML/CFT)

Beneficial Ownership Guidance Notes for Real Estate Agents & Letting Agents (REAs) and High Value Good Dealers (HVGDs)

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Disclaimer

The information contained in these guidelines is not intended to be legal advice and is for guidance and information purposes only. For the definitive authority on your legal obligations regarding anti-money laundering and combatting the finance of terrorism, please refer to the Proceeds of Crime Act 2015 and to the OFT's Guidance Notes for REAs and HVGDs.

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1. About this document

1.1 Why is the OFT issuing these guidance notes?

The OFT is issuing these Guidance Notes to accompany the OFT's AML/CFT Guidance Notes for Real Estate Agents & Letting Agents (**REAs**) and for High Value Good Dealers (**HVGDs**) in order to:

1. assist REAs and HVGDs to understand the concept of beneficial ownership;
2. help REAs and HVGDs identify their customers' beneficial owners (**BOs**); and
3. allow REAs and HVGDSs to carry out appropriate customer due diligence measures.

The OFT's AML/CFT Guidance Notes for REAs and HVGDs may be found in the 'Documents' section of the 'AML/CFT' page of the OFT's website (www.oft.gov.gi). There you will also find a copy of these Guidance Notes and other useful documents to assist REAs and HVGDs to comply with their AML/CFT obligations.

1.2 About these guidance notes.

These Guidance Notes set out simplified explanations of beneficial ownership to assist REAs and HVGDs to identify BOs.

In sections 4 to 7 below the OFT has set out common control and ownership structures containing companies, trusts and other legal arrangements for illustrative purposes.

It should be noted however that this document is only intended to provide high level guidance. Businesses should therefore refer to the full definition of 'beneficial owner' in section 7 POCA to conclusively determine who their customers' BOs are. In March 2022, international standards were significantly strengthened to ensure countries collect and maintain adequate, accurate, and up-to-date beneficial ownership information. The updated standard aims to prevent misuse of legal persons by criminal actors, including the use of shell companies.

2. Beneficial ownership explained

2.1 What does beneficial ownership mean?

The full definition of 'beneficial owner' is set out in section 7(1A) Proceeds of Crime Act 2015 (**POCA**) that can be found in the 'Documents' section of the 'AML/CFT' page of the OFT's website (www.oft.gov.gi).

2.2 Who is a beneficial owner?

A beneficial owner (**BO**) is an individual (or 'natural person') who will ultimately benefit from a transaction or business relationship.

Where an individual is conducting a transaction or activity for their own benefit then they are the beneficial owner (POCA section 7(1A)(a)(i)).

If, however, a transaction is being carried out by a customer on behalf of another person then the BO is the individual

1. on whose behalf a transaction or activity is being conducted (POCA section 7.(1A)(a)(ii)); and/or
2. who ultimately owns or controls the customer entering into the transaction.

Where a REA's or HVGD's customer is entering into a transaction on behalf of another person the REA or HVGD must identify and verify who that other person is. That person is the BO.

2.3 Identifying the BOs of customers who are companies.

Where a HVGD's or REA's customer is a company (or other legal entity, e.g. a partnership) they must determine who directly or indirectly controls that company as that person will be a BO.

An individual shall be considered a direct owner of that company if they directly:

1. hold 25% plus one share in the company (see section 4 below); or
2. have an ownership interest of more than 25%.

An individual shall be considered an indirect owner of a company that is the customer if they control another company (or companies) which:

1. hold 25% plus one share in the company that is the customer; or
2. have an ownership interest of more than 25% in the company that is the customer,

(see section 4 below).

International standards promote a multi-pronged approach to ensure effective beneficial ownership transparency. Under this model, BO information is sourced from:

1. Information provided directly by the company or legal entity;
2. Information held in a central public authority or registry (e.g. the Gibraltar Register of Ultimate Beneficial Ownership);
3. Information obtained through customer due diligence (CDD).

This approach allows for cross-verification of data and helps ensure that BO information is accurate and complete. REAs and HVGDs must consider all available sources when verifying BO.

2.4 Addressing Foreign Legal Persons

Where the customer is a foreign legal person (i.e. not incorporated in Gibraltar), REAs and HVGDs must determine if the entity has a sufficient link to Gibraltar. Sufficient links may include owning real estate, maintaining a permanent establishment, or conducting significant business operations in Gibraltar. In such cases, full BO identification and verification must be carried out in accordance with local requirements.

2.5 What if I have doubts about who the BO of a company is?

You must exhaust all possible means to determine who a company's BO is. This will involve the business making appropriate and proactive enquiries to determine who the BO is. The business must be able to demonstrate these enquiries to the OFT.

However, if after having exhausting all possible means:

1. there are doubt as to who the BO is; or
2. no person is identified as the BO,

then the BO shall be the individual exercising control over the customer via other means (POCA s7(c)(ii)).

Exercise of control can take many forms including:

1. having more than 25% of the voting rights in the company (see section 5 below);
2. the power to appoint or remove a majority of the board of directors of a company (see section 6 below);
3. the right to exercise a significant influence or control over a company (see section 6 below); or
4. entering into agreements to act together with another person to exert control (see section 7 below).

If, after having exhausted all possible means, there is still doubt about who the individual exercising control is, then the BO shall be the individual who holds the senior management position in the customer (POCA s7(c)(ii) & (iv)). REAs and HVGDs must not only collect BO information but also take reasonable measures to verify the identity of the beneficial owner. Verification should involve the use of reliable, independent sources such as official documents or registry extracts. Where a discrepancy is identified between the information obtained from the customer and that on the public BO register, the REA or HVGD must report the discrepancy to the appropriate authority.

2.6 Listed companies and entities

A listed entity, being a company with shares admitted to trading on a regulated market recognised by POCA, shall be regarded as a BO. It will not be necessary for a HVGD or

REA to identify the ownership beyond that listed entity (POCA s7(1A)(b)).

A majority-owned subsidiary of such a listed entity shall also be regarded as a BO.

2.7 Identifying the BOs of a Trust.

In the case of customer who owned or controlled by the trustees of a trust, all of the following shall be considered a BO and will need to be identified:

1. the settlor or settlors;
2. the trustee or trustees;
3. the protector or protectors, if any;
4. the beneficiaries (or where the individuals benefiting from the trust have yet to be determined, the class of persons in whose main interest the trust is set up or operates); and
5. any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means.

2.8 Identifying the BOs of other legal entities

For other types of legal entities such as foundations, and legal arrangements similar to trusts, the natural person holding equivalent or similar positions to those referred to in 1 to 5 of section 2.6 in relation to trusts shall be the BO.

2.9 Additional BO requirements

Pursuant to section 11(4A) POCA, where a HVGD or REA is required to apply CDD measures to a trust, corporate or legal entity it shall collect proof of registration (or an excerpt) of the BO's registration on the Gibraltar Register of Ultimate Beneficial Owners (<https://uboregister.egov.gi>).



G I B R A L T A R

2.9 B Assessing and Mitigating BO-Related Risks

REAs and HVGDs should assess the ML/TF/PF risks associated with each legal person they deal with. Factors that may elevate risk include:

- Complex ownership structures or multiple layers of ownership;
- Use of nominee shareholders or directors;

- Foreign incorporation in high-risk jurisdictions;
- Ownership by politically exposed persons (PEPs).

Where higher risks are identified, enhanced due diligence (EDD) measures must be applied. These may include obtaining additional information, senior management approval, and increased monitoring.

2.9 B

3. Useful Contacts

3.1 Office of Fair Trading

The Office of Fair Trading (OFT) has been appointed as a supervisory authority under the Proceeds of Crime Act 2015. Additionally, it is responsible for business licensing and for consumer protection in Gibraltar.

Suite 975 Europort, Gibraltar

Tel: (+350) 20071700

aml.oft@gibraltar.gov.gi

www.oft.gov.gi

3.2 Gibraltar Financial Intelligence Unit

The Gibraltar Financial Intelligence Unit (GFIU) receives, analyses and disseminates financial intelligence gathered from Suspicious Activity Reports.

Suite 832, Europort, Gibraltar

Tel: (+350) 20070211

Fax: (+350) 20070233

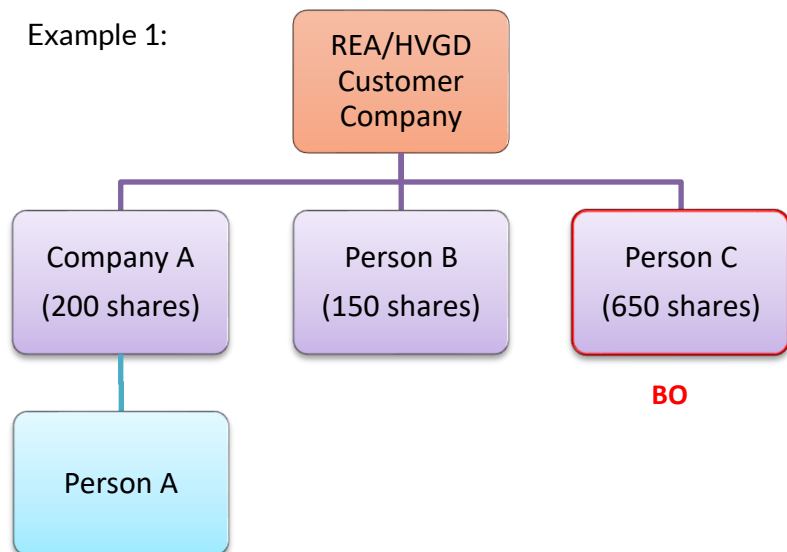
gfiu@gcid.gov.gi

www.gfiu.gov.gi

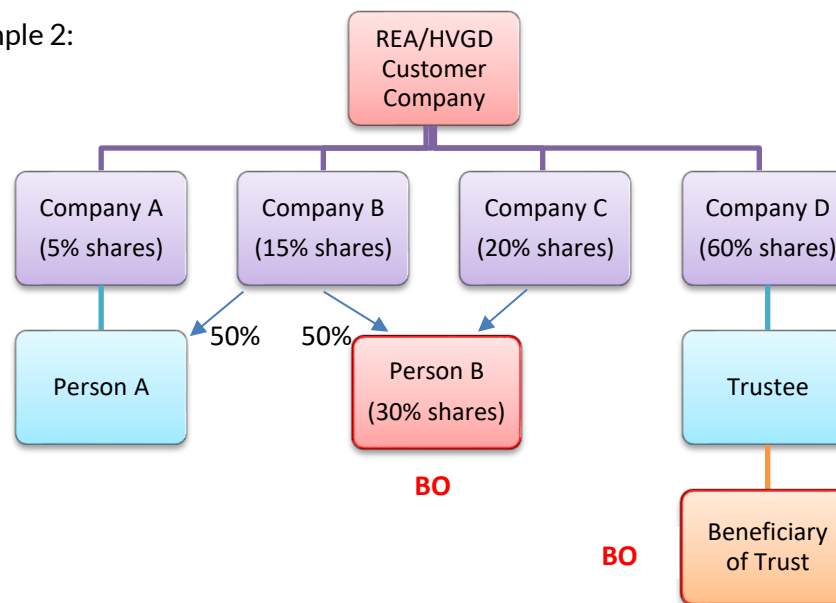
4. Companies – Direct and indirect ownership

See section 2.3 above - A Beneficial Owner (BO) is anyone who directly or indirectly holds 25% plus one share of or has an ownership interest of more than 25% in the company.

Example 1:



Example 2:



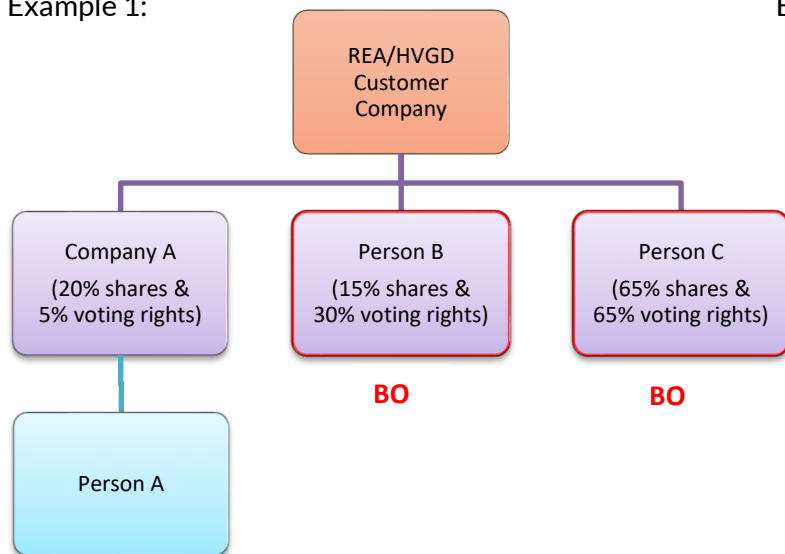
In example 1, person C is the BO because they are the only person with more than 25% + 1 shares in the Customer Company.

In example 2, person B is a BO because it holds 27.5% of the shares in the Customer Company indirectly (50% of shares in Company C (7.5%) + 20% in Company C) and the beneficiary of the trust is also a BO because it has an indirect ownership interest of more than 25% in the Customer Company.

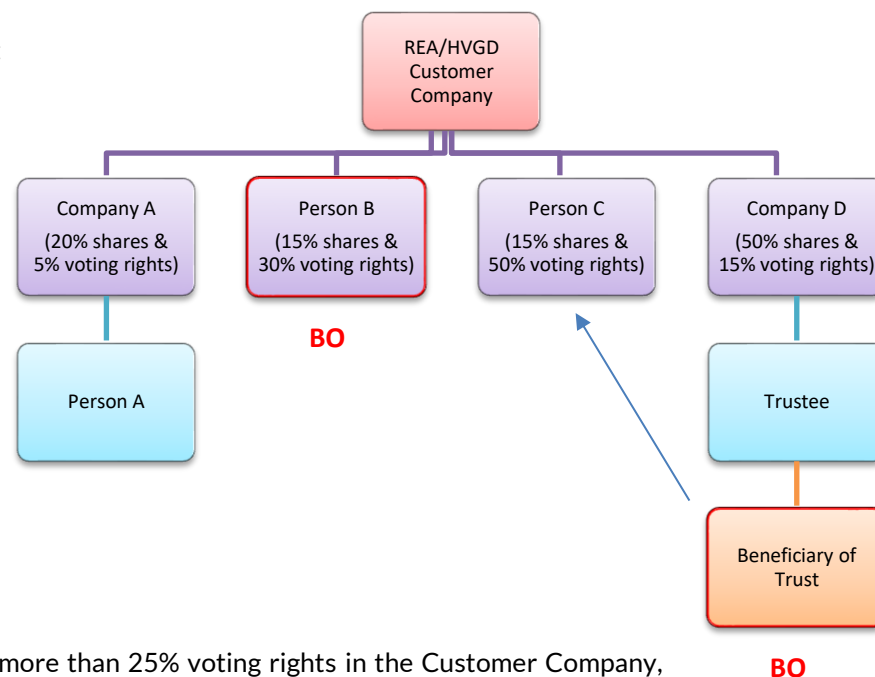
5. Exercising control - Voting rights

See section 2.4 above - A Beneficial Owner (BO) is anyone who has more than 25% of the voting rights in the company. Usually voting rights are determined by the number of shares held by a shareholder (e.g. one share one vote) however it is possible for a person with few shares to have significant voting rights.

Example 1:



Example 2:



In example 1, Person B and Person C are both BOs because they each have more than 25% voting rights in the Customer Company, regardless of whether or not they have more than 25% shares in the Customer Company.

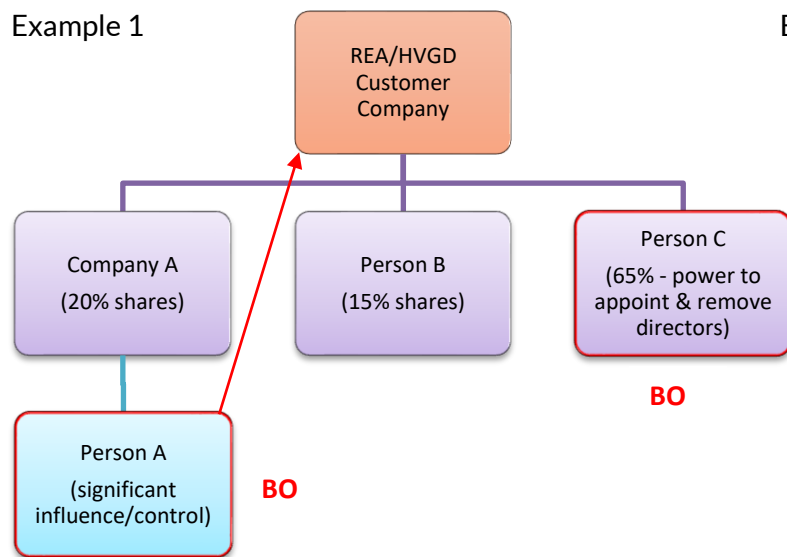
In example 2, Person B is a BOs of the Customer Company as they have more than 25% voting rights. Although the Beneficiary does not have voting rights directly they are also a BO as they are able to assert control over Person C (their relative) who in turn holds 50% of the voting rights in the Customer Company.

6. Exercising control - Powers over board & significant influence or control

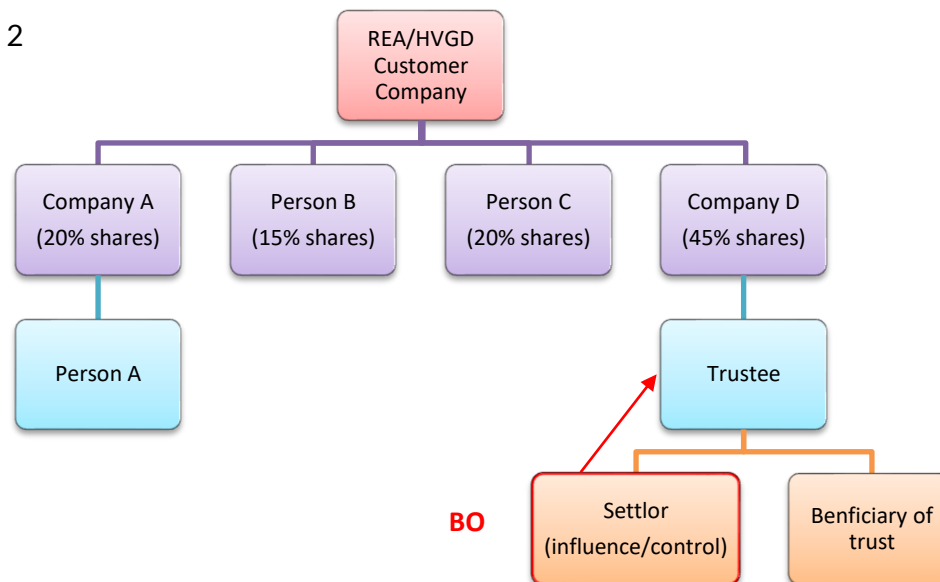
An Ultimate Beneficial Owner (BO) is anyone who has:

- 1 power to appoint or remove a majority of the board of directors of the company (example 1);
- 2 the right to exercise a significant influence or control over the company (example 1); and/or
- 3 the right to exercise a significant influence or control over a trust or firm (or similar non-legal arrangement) (example 2).

Example 1



Example 2



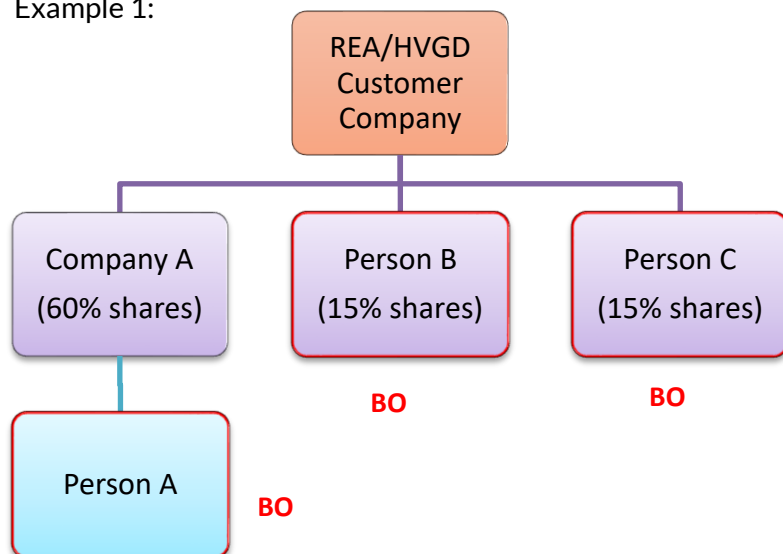
In example 1, Person A is a BO because they have significant influence and/or control over the Customer Company. Person C is also the BO because they have the power to appoint and remove members of the board of directors (majority shareholders usually have this power).

In example 2, the Settlor of the trust is a BO because they have significant influence and control over the trustee of the trust, which owns Company D and is the majority shareholder of the Customer Company.

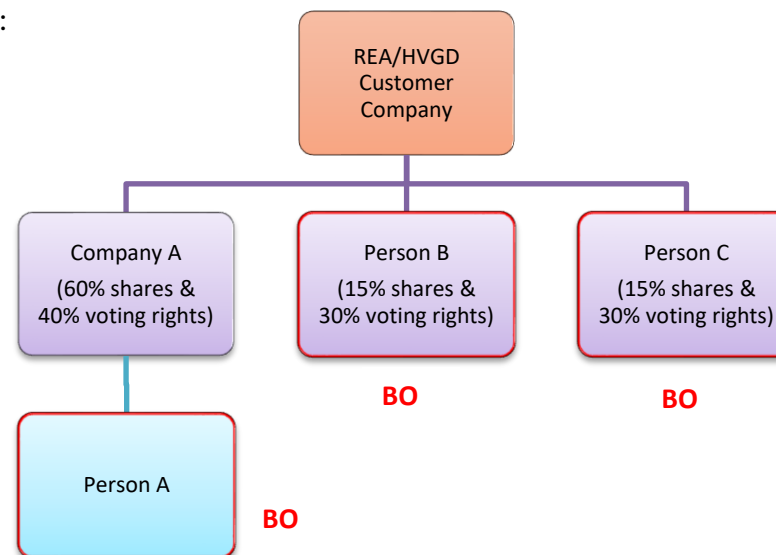
7. Exercising control - Agreements to act together

An Ultimate Beneficial Owner (BO) is anyone who enters into an agreement to act together with another BO and together they have more than 25% of the shares of the Customer Company, more than 50% of voting rights of the Customer Company or the right to add or remove the majority of directors.

Example 1:



Example 2:



In example 1, Person B and Person C have an agreement to act together. Although neither holds sufficient shares on their own to be a BO, together they control 30% of shares making them both BOs. Person A is also a BO as they have indirect control of 60% of the shares.

In example 2, Person B and Person C have an agreement to act together. Although neither holds sufficient voting rights on their own to be a BO, together they control 60% of the voting rights. Both persons combined therefore have the majority vote and the ability to add or remove the majority of directors, thereby making them BOs.