

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

Beneficial Ownership Guidance Notes for Real Estate Agents (REAs) and High Value Dealers (HVDs)

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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 HVDs.

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1. Beneficial ownership explained

1.1 What does this term mean?

An ultimate beneficial owner (**UBO**) is an individual:

1. on whose behalf a transaction or activity is being conducted; and/or
2. who ultimately owns or controls the customer.

That individual is the person who will ultimately benefit from the transaction.

1.2 Acting on someone's behalf.

Where a Real Estate Agent's (**REA**) and High Value Dealer's (**HVD**) customer is entering into a transaction on behalf of another person the REA or HVD must identify and verify who that other person is. That person is the UBO.

1.3 Legal persons and arrangements.

Where an individual either owns or has control over a company, a trust or firm (or similar non-legal arrangement) who is the HVD's or REA's customer, that individual will be a UBO.

Broadly speaking a person is a UBO if they directly or indirectly:

1. hold more than 25% of the shares in a company (see section 2 below);
2. hold more than 25% of the voting rights in a company (see section 3 below);
3. hold the power to appoint or remove a majority of the board of directors of a company (see section 4 below);
4. have the right to exercise a significant influence or control over a company (see section 4 below); or

5. have the right to exercise a significant influence or control over a trust or firm (or similar non-legal arrangement) where that trust or firm meets one or more of the criteria in points 1 to 4 above (see section 4 below).

A person is also a UBO where they are in agreement with another UBO and they jointly meet one or more of the criteria in points 1 to 5 above (see section 5 below).

1.4 Is this the official definition of a UBO?

No, the explanations given in paragraph 1.1 to 1.3 above are for guidance purposes only and to assist in providing the examples of beneficial ownership in these Guidance Notes.

The term "**beneficial ownership**" is defined in section 7 of the Proceeds of Crime Act 2015 (**POCA**).

For the definitive definition of this term please refer to POCA. The full body of the Act may be found by following a link contained in the 'Documents' section of the 'AML/CFT' section page of the OFT's website (www.oft.gov.gi) along with a pdf copy of these Guidance Notes.

It can also be found on the HM Government of Gibraltar's Gibraltar laws website (www.gibraltarlaws.gov.gi) by searching for "Proceeds of Crime".

1.5 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 REAs and HVDs in order to:



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1. assist REAs and HVDs to understand the concept of beneficial ownership;
2. help REAs and HVDs identify their customers' UBOs; and
3. allow REAs and HVDS to carry out appropriate customer due diligence.

The OFT's AML/CFT Guidance Notes for REAs and HVDs may be found by following a link contained in the 'Documents' section of the 'AML/CFT' section page of the OFT's website (www.oft.gov.gi) along with a pdf

copy of these Guidance Notes and other useful documents to assist REA's and HVD's to comply with their AML/CFT obligations.

1.6 Examples of common ownership structures.

In sections 3 to 6 of these Guidance Notes the OFT has set out common ownership structures of Legal persons and arrangements and with these has identified various examples of who UBOs can be.

2. Useful Contacts

2.1 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

2.2 Gibraltar Financial Intelligence Unit

The Gibraltar Financial Intelligence Unit (GFIU) receives, analyses and disseminates financial intelligence gathered from Suspicious Activity Reports (see 5.8 above).

Suite 832, Europort, Gibraltar

Tel: (+350) 20070211

Fax: (+350) 20070233

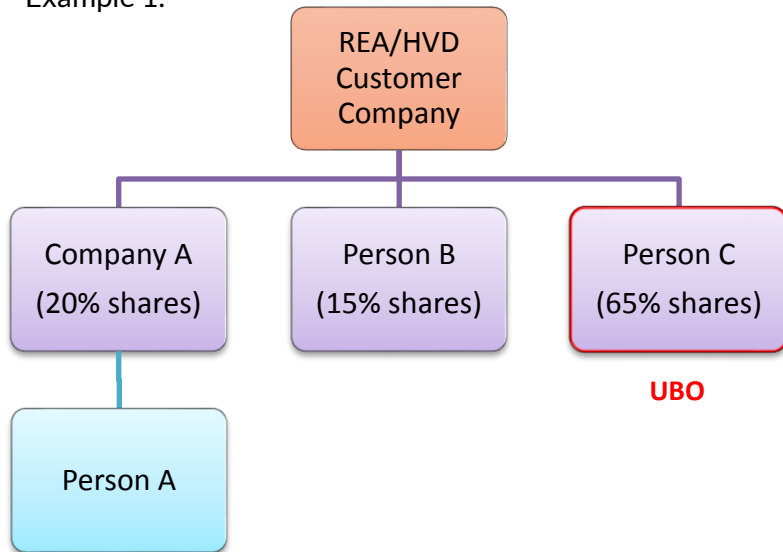
gfiu@gcid.gov.gi

www.gfiu.gov.gi

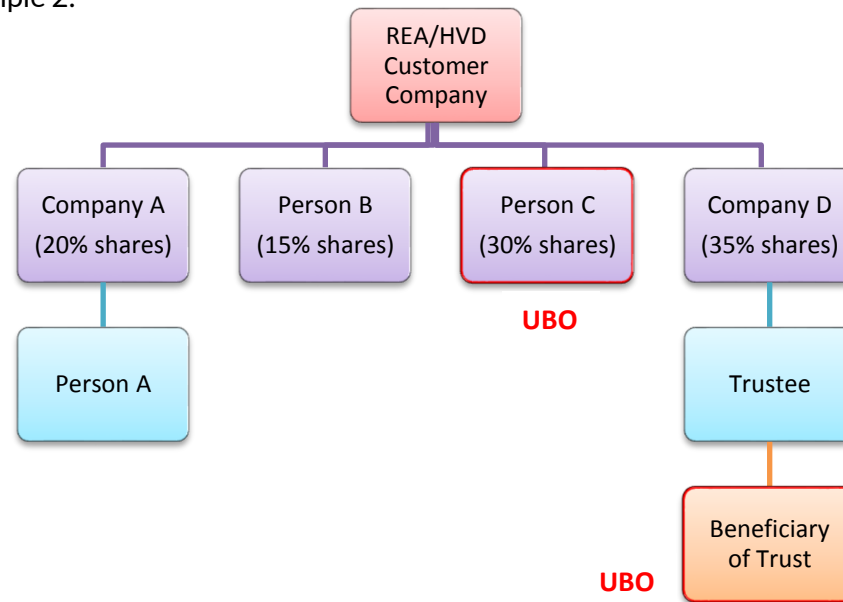
3. Shareholders

An Ultimate Beneficial Owner (UBO) is anyone who holds or controls more than 25% of the shares in a company.

Example 1:



Example 2:



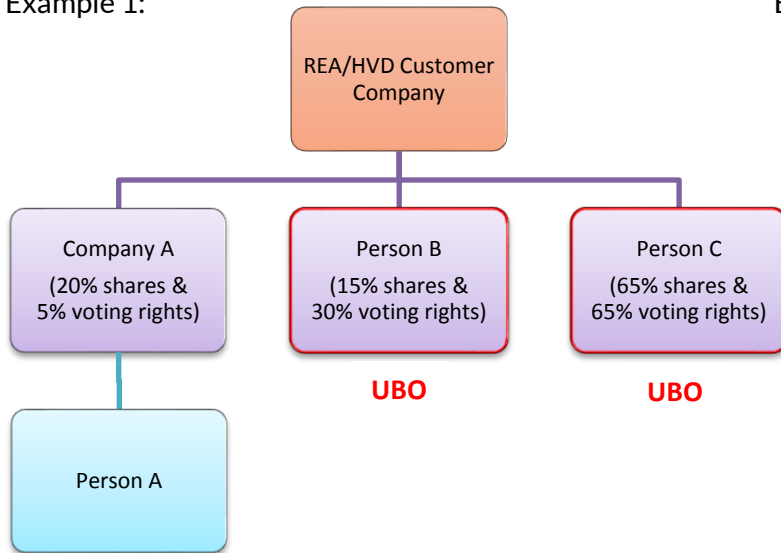
In example 1, person C is the UBO because they are the only person with more than 25% of the shares in the Customer Company.

In example 2, person C is still a UBO but the beneficiary of the trust is also a UBO because they also hold, albeit indirectly, more than 25% of the shares in the Customer Company.

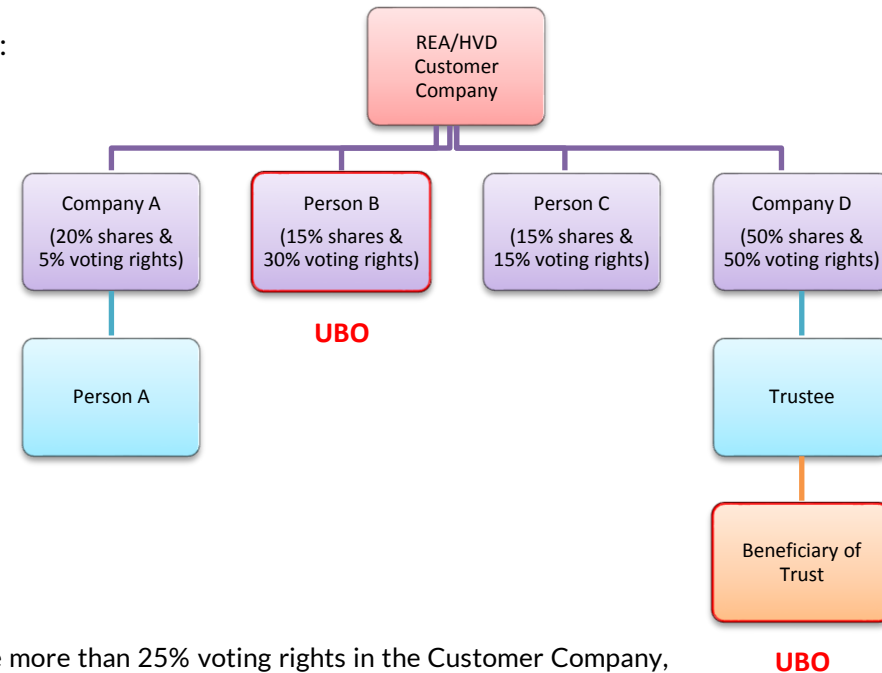
4. Voting rights

An Ultimate Beneficial Owner (UBO) 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 UBOs 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.

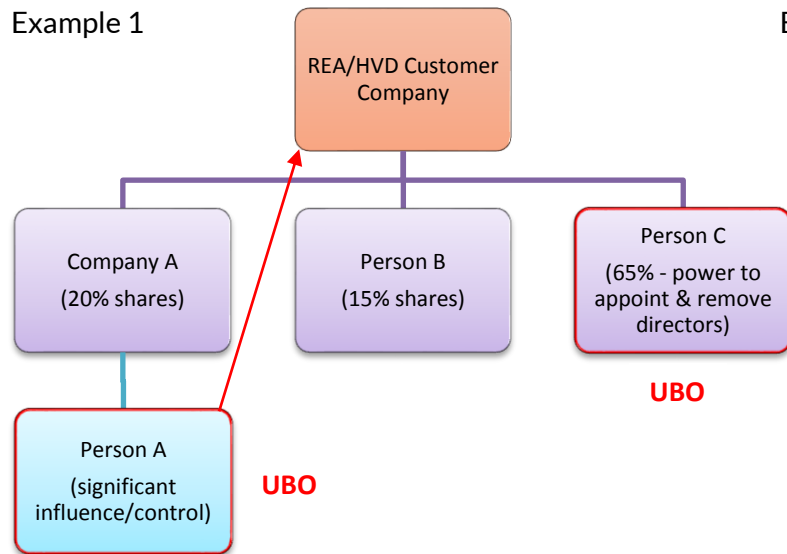
In example 2, Person B is a UBOs of the Customer Company as they have more than 25% voting rights. Although the Beneficiary does not hold the shares directly they are also a UBO as the trustee holds the shares in Company D for their benefit and company D in turn holds 50% of the voting rights in the Customer Company.

5. Powers over board & significant influence or control

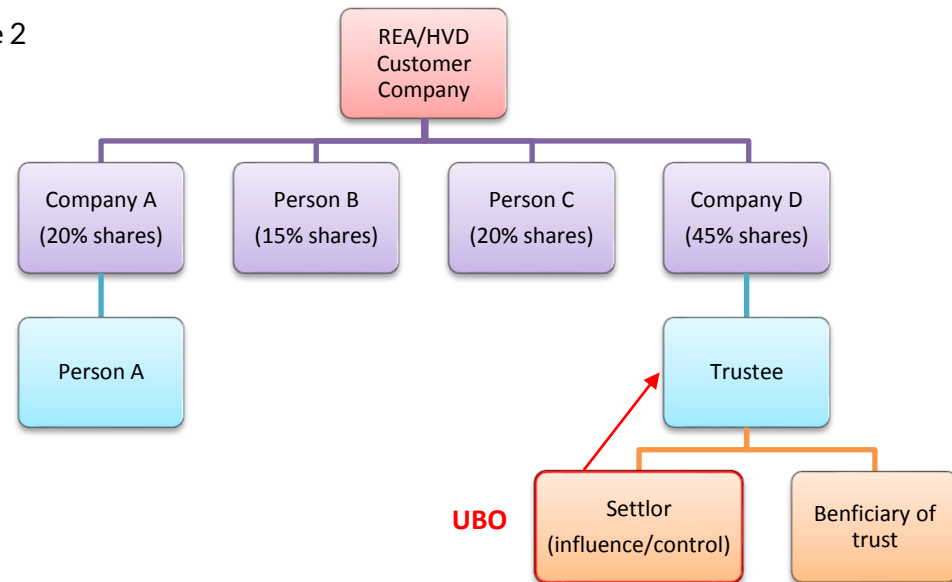
An Ultimate Beneficial Owner (UBO) is anyone who has:

- 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



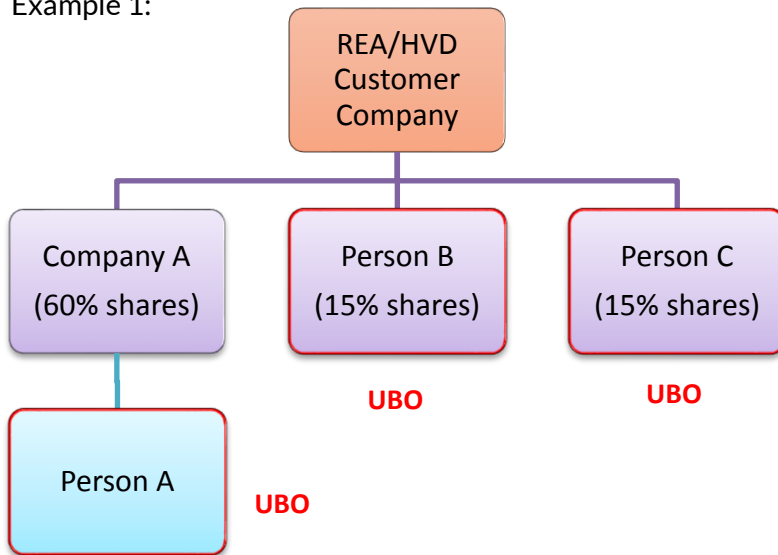
In example 1, Person A is a UBO because they have significant influence and/or control over the Customer Company. Person C is also the UBO because they have the power to appoint and remove members of the board of directors (majority shareholders usually have this power).

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

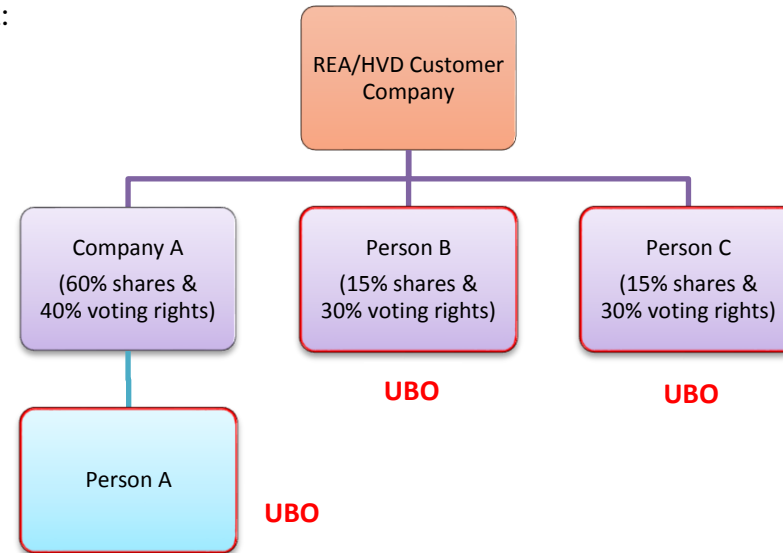
6. Agreements to act together

An Ultimate Beneficial Owner (UBO) is anyone who enters into an agreement to act together with another UBO 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 UBO, together they control 30% of shares making them both UBOs. Person A is also a UBO 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 UBO, 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 UBOs.