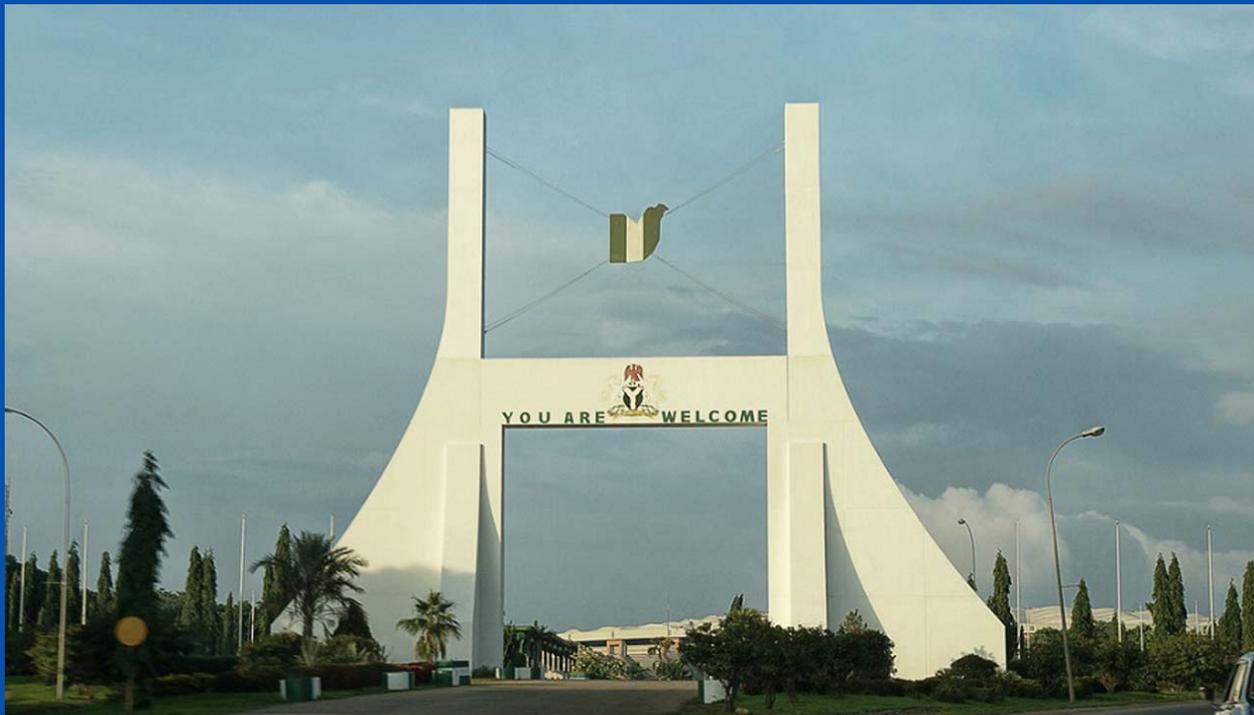




EXCHANGE OF



INFORMATION AS A TOOL TO COMBAT OFFSHORE TAX EVASION



Grand Pela Hotel and Suites
Abuja, Nigeria
23 – 25 October 2019

SESSION 14: BENEFICIAL OWNERSHIP

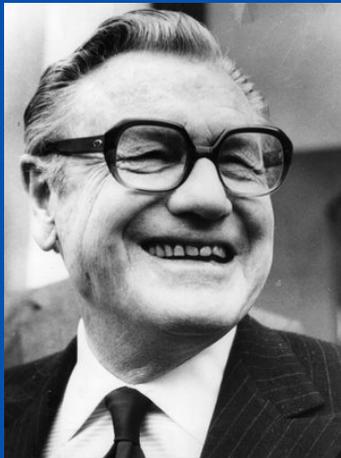


**Grand Pela Hotel and Suites
Abuja, Nigeria
23 – 25 October 2019**



“The secret to success is to own nothing,
but control everything”

-- Nelson Rockefeller





Numbers, Please!

Estimate of undeclared individual wealth broken down by region

	<i>Offshore wealth (\$ billions)</i>	<i>Share of financial wealth held offshore</i>	<i>Tax revenue loss (\$ billions)</i>
Europe	2,600	10%	75
United States	1,200	4%	36
Asia	1,300	4%	35
Latin America	700	22%	21
Africa	500	30%	15
Canada	300	9%	6
Russia	200	50%	1
Gulf countries	800	57%	0
Total	7,600	8.0%	190



Source: G. Zucman (2014). *Taxing across Borders: Tracking Personal Wealth and Corporate Profits*.
<http://gabriel-zucman.eu/files/Zucman2014JEP.pdf>



EOIR STANDARD REQUIREMENTS FOR BENEFICIAL OWNERSHIP



DEFINITION OF BENEFICIAL OWNERSHIP



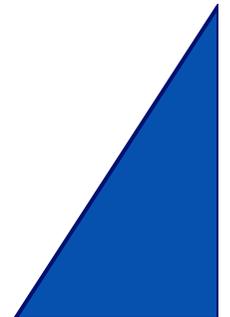
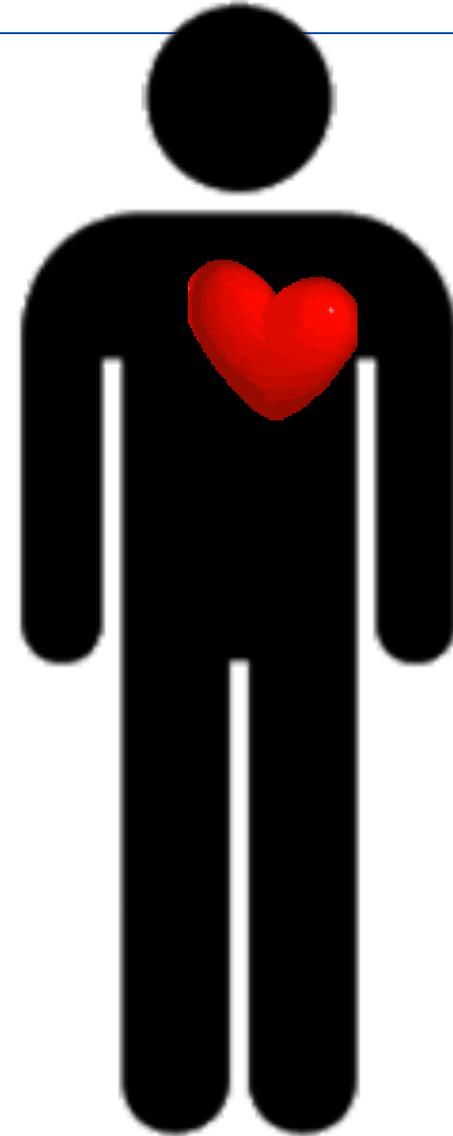


The beneficial owner is the...

Natural person who ultimately

- owns or
- controls

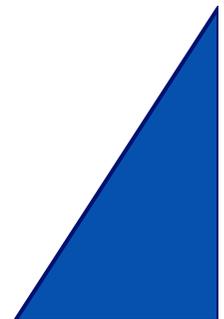
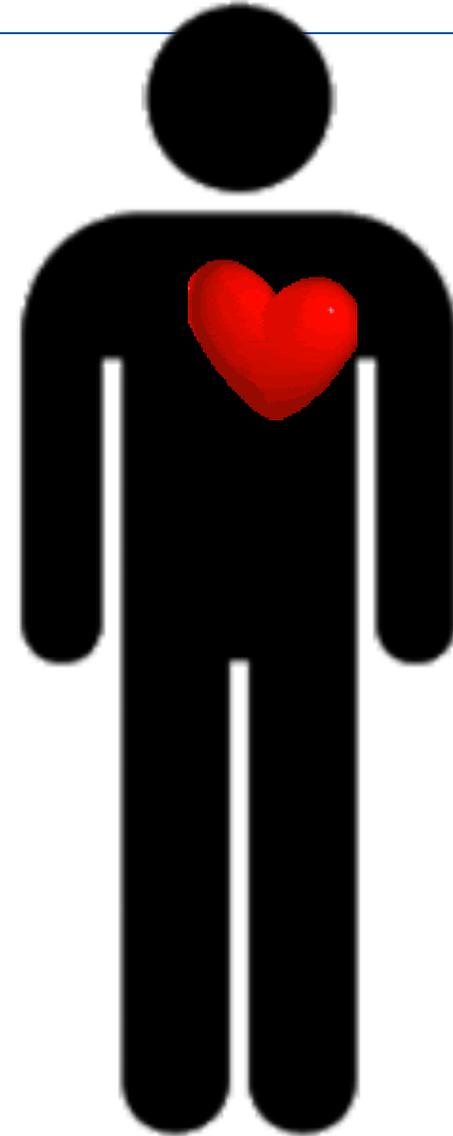
a legal entity or
a legal arrangement.





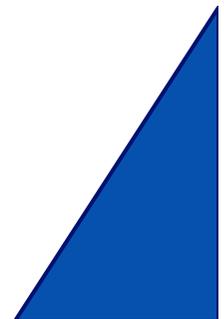
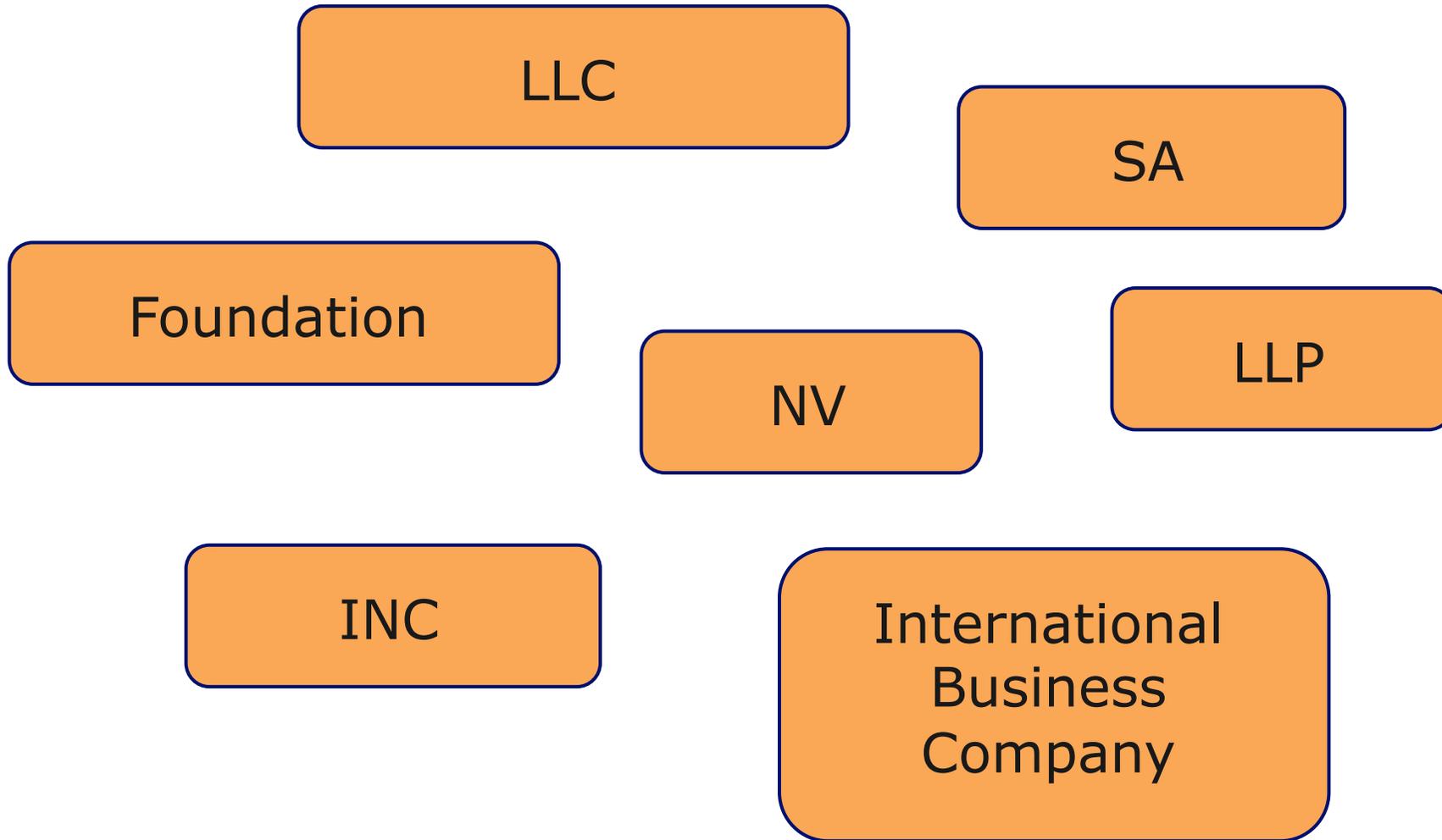
The beneficial owner is the...

- Living
- Breathing
- Natural Person



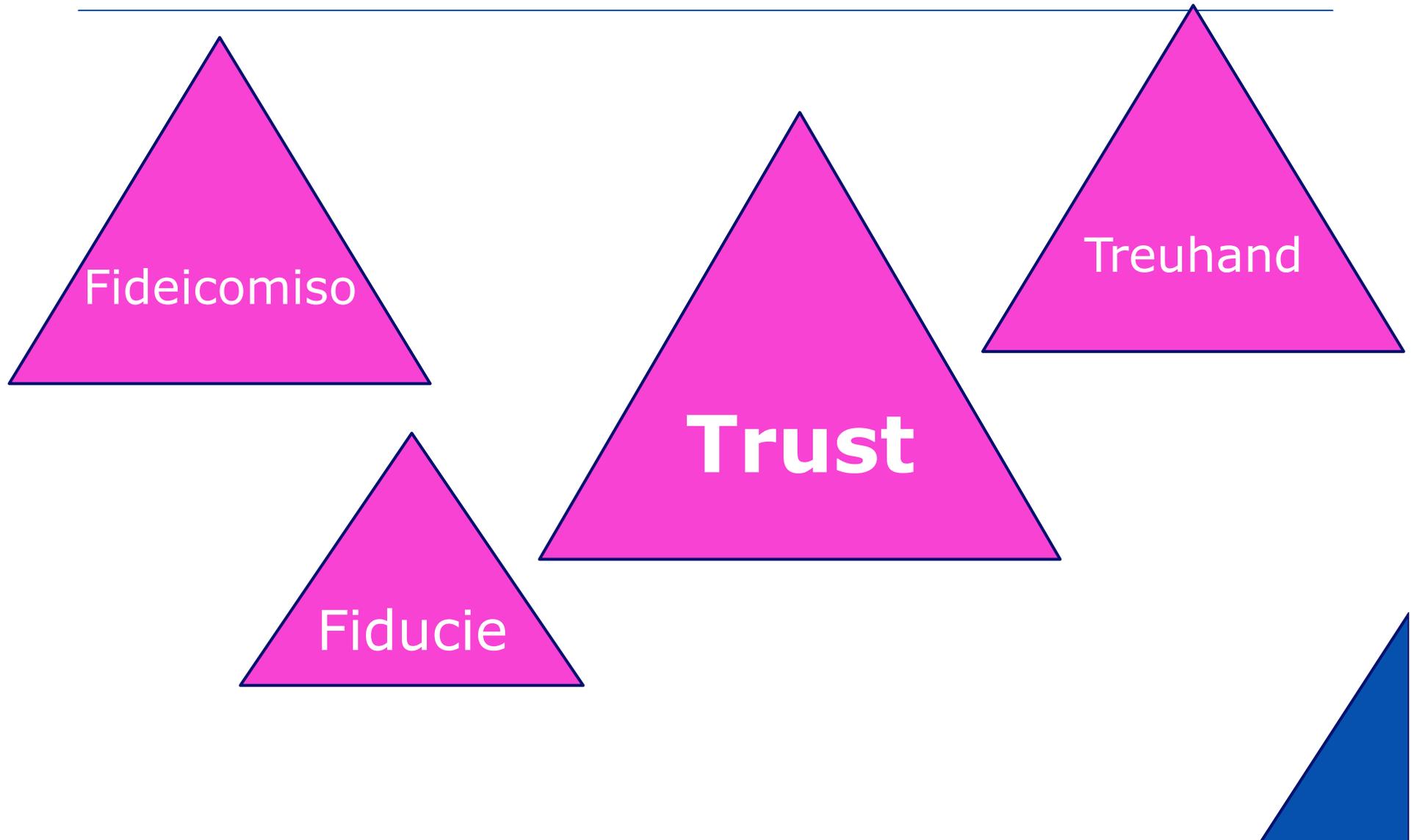


...versus a legal person/ entity





...or a legal arrangement





LEGAL OWNER VS BENEFICIAL OWNER



Types of Ownership

Legal Ownership

- Person holding legal title to the asset.
- Legal owner may be a legal or natural person.

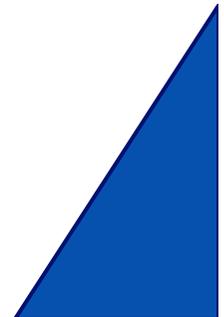
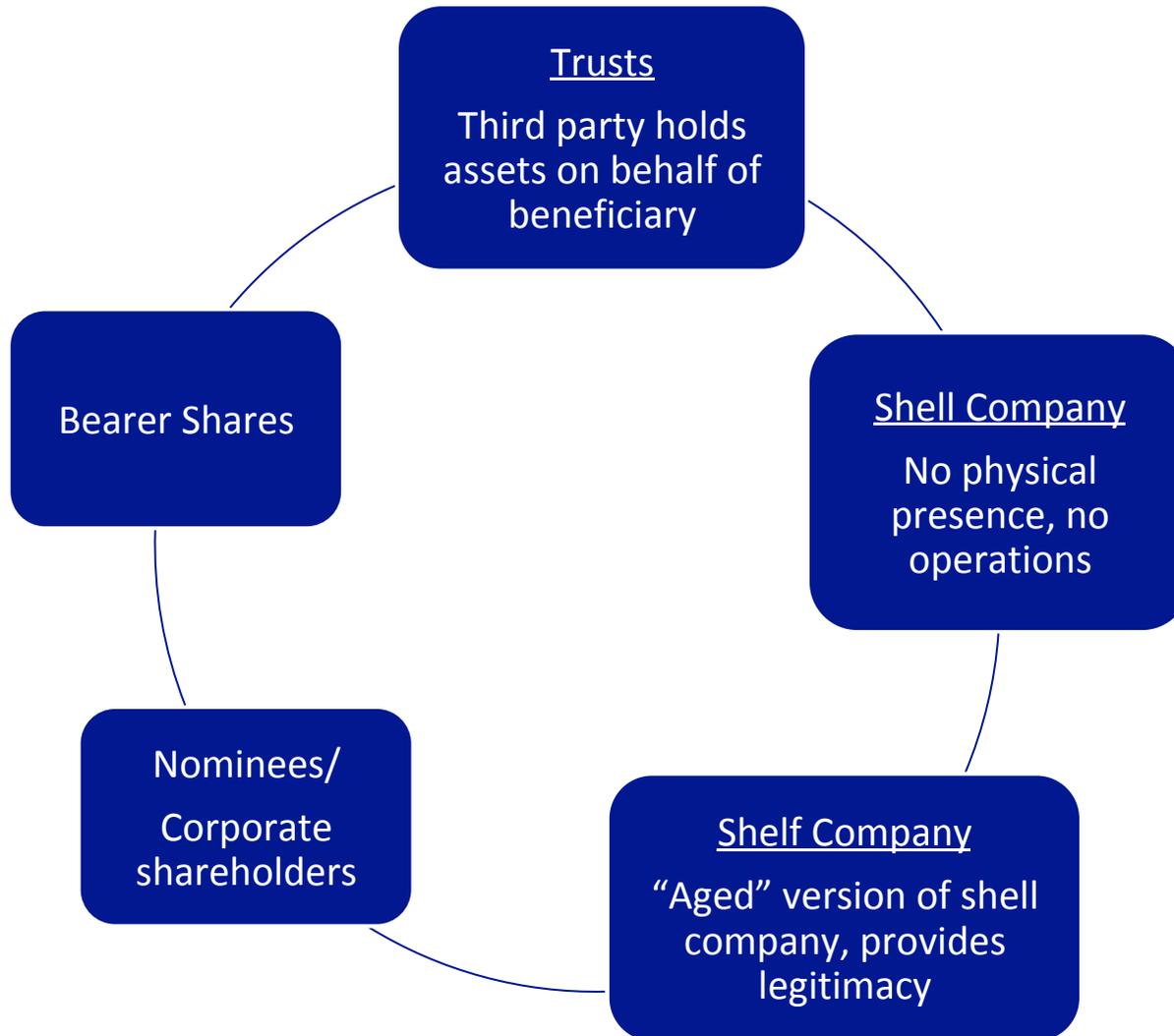


Beneficial Ownership

- Person exercising control over the legal person or arrangement and/or the person on whose behalf a transaction is being conducted.
- Legal title is starting point only.
- Beneficial owner must be a natural person for FATF.

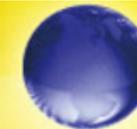


Common structures to conceal BO





THE CONCEPT OF CONTROL



Concept of “Control”

- Control – the ability to take relevant decisions within the legal person or arrangement and to impose those decisions.



Who may exercise control?

in **companies**: shareholder(s), board of directors, executive officer(s)

- in **trusts**: settlor(s), trustee(s), beneficiary(ies)



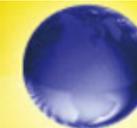


Control for legal entities

Cascading approach

- Step 1: the natural persons (if any) who ultimately have a **controlling ownership interest** in a legal person; and
- Step 2: if there is doubt as to whether the person(s) identified under step 1 are the beneficial owner(s) or where no natural person exerts control through ownership, the identity of the natural persons (if any) exercising **control** of the legal person **through other means**.
- Step 3: where no natural person is identified under step 1 or step 2, the natural person who holds the position of **senior managing official**.

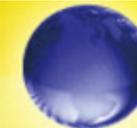




Control of Corporations

Control through	Defining Characteristics	Associated Risks
Corporate directors	Corporation is selected to serve as a director. Management functions performed by representative of the selected corporation.	Creates an extra layer in establishing identity of natural person who controls. May facilitate abuse of CVs if legal system cannot timely assign responsibility to physical persons.
Nominee directors	Director nominates another entity or person to act as the director in its place.	Increased difficulty in identifying those who exercises de facto control.





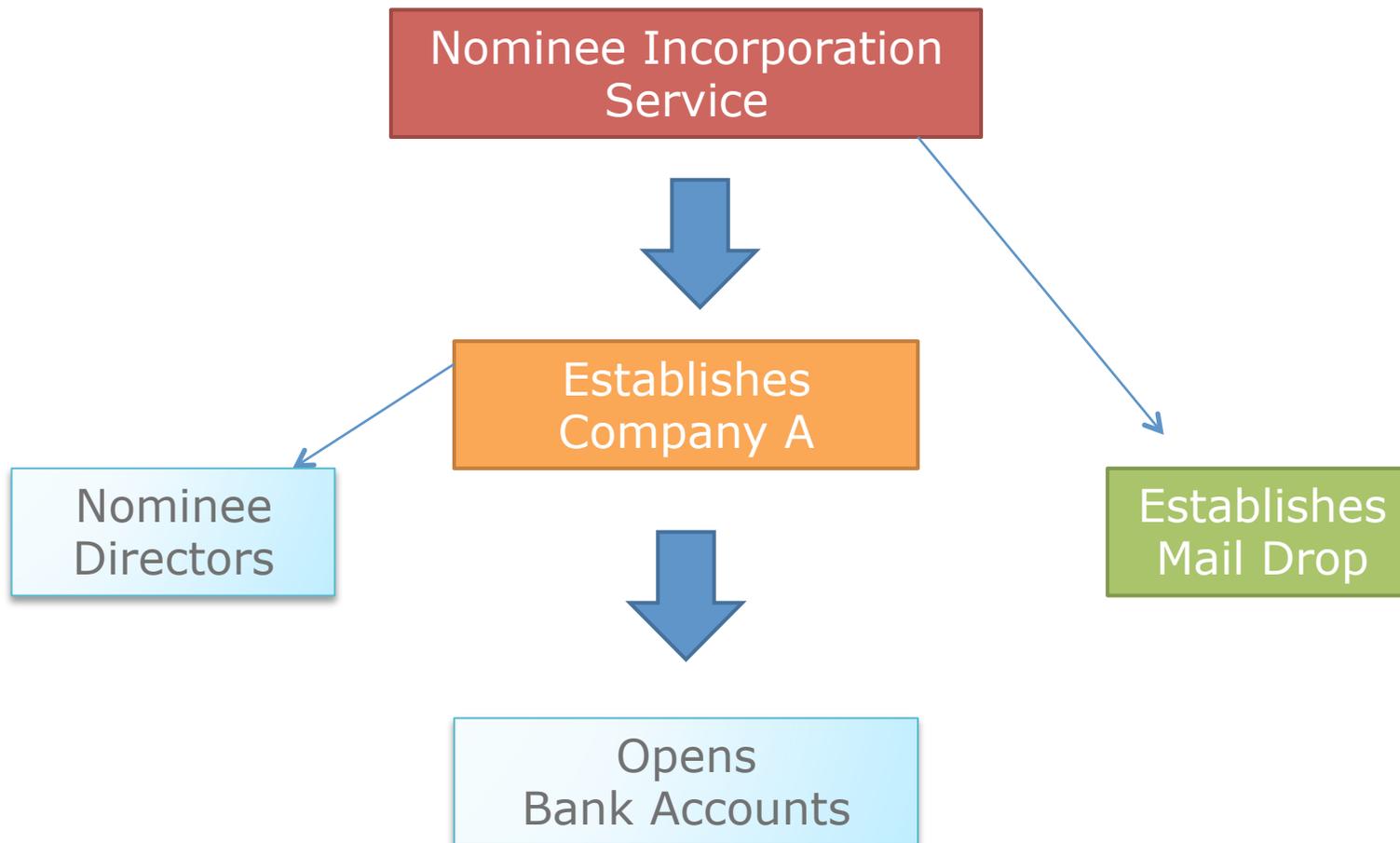
Ownership of Corporations

Ownership through	Defining Characteristics	Associated Problems and Risks
Corporate Shareholders	Shares are owned by a legal person, which in turn can be owned by a natural person or another legal entity	Creates an extra layer between beneficial owner and entity.
Nominee Shareholders	Shares are registered in the name of another (such as a stockbroker)	Reduces usefulness of shareholder register
Bearer Shares	Negotiable instruments according to the ownership of a corporation to the person who possesses the bearer share certificate	Can be easily transferred without leaving a paper trail





Shell Company

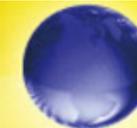




Case study of a company

- Painting by Amedeo Modigliani called *Seated Man with a Cane* (1918)
- Before WWII, it belonged to Jewish art collector Oscar Stettiner
- Forcibly sold under Nazi occupation of France, thereafter, the Modigliani remained missing for almost 50 years
- Painting resurfaced at a Christie's auction in London in 1996 and bought by Panamanian Company, **International Art Centre (IAC)** for \$3.2million.
- In 2008, painting again came up for sale at Sotheby's but did not find a buyer. Estimated value was between \$18 million and \$25 million.
- Painting was since exhibited twice at the **Helly Nahmad Gallery** in New York.





Case study of a company (cont'd)

- **Helly Nahmad Gallery** is run by Mr. Helly Nahmad, son of billionaire Mr. **David Nahmad**
- In 2011, Philippe Maestracci, Stettiner's sole heir in France, took **Helly Nahmad Gallery** to court requesting for the return of the Modigliani.
- But Helly Nahmad affirmed in writing that his gallery did not own the Modigliani. He merely borrowed the painting for exhibition at his gallery.
- Furthermore, Nahmad's lawyers presented a document from Christie's showing that the painting was sold in 1996 to the Panama-based company **International Art Center**, not to the Helly Nahmah Gallery.
- Maestracci could offer no counter-argument and he withdrew the lawsuit in 2012.

International Art Centre S.A.

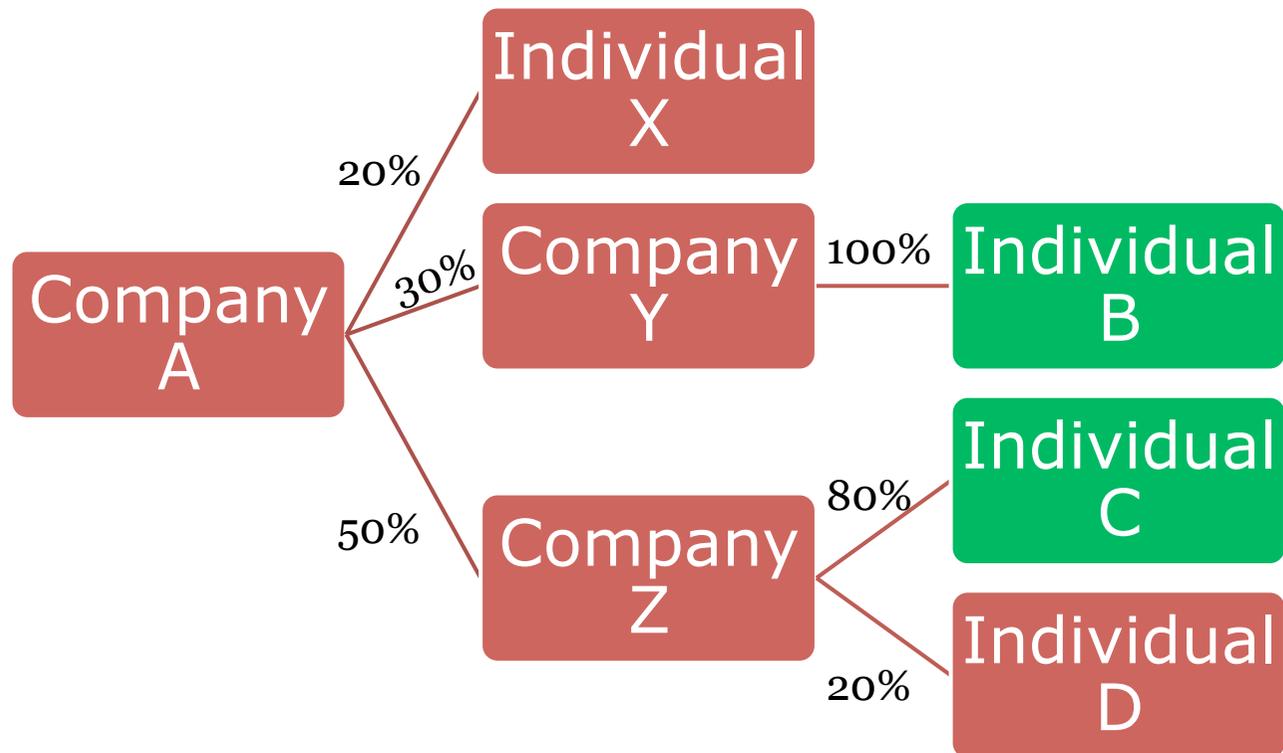
Founded in 1995 by
Giuseppe Nahmad,
David's brother

In 2008, **Giuseppe**
reassigned half his
ICA shares to
David

In 2008, **David**
was named the sole
shareholder of ICA.



Who are the Beneficial Owners of Company A?





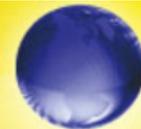
Control for legal arrangements

For trusts

- The identity of **the settlor, the trustee(s)**, the protector (if any), **the beneficiaries** or class of beneficiaries, and **any other natural person exercising ultimate effective control** over the trust (including through a chain of control/ownership)

Other types of legal arrangements

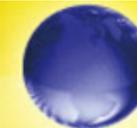
- the identity of persons in equivalent or similar positions



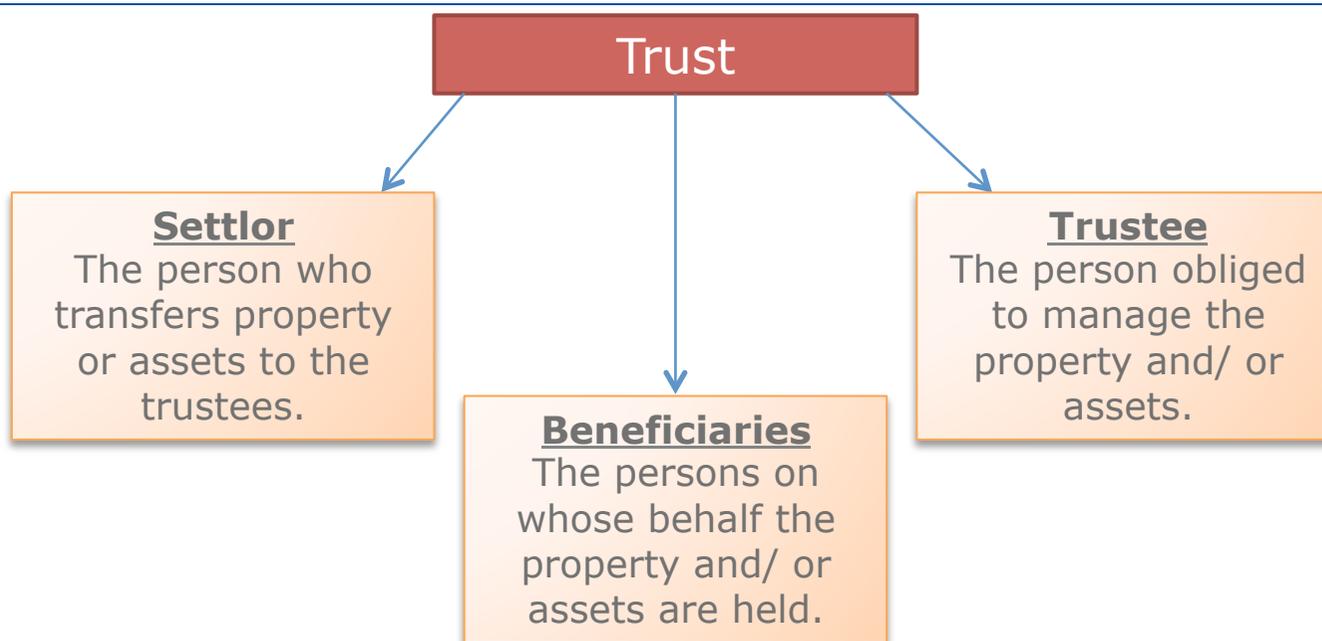
Control for Trusts

- A trust is a binding obligation, requiring a person (the trustee) to manage the property or assets over which he/she has control (the trust property) for the benefit of persons or entities specified (the beneficiaries) and described under the terms of the trust (trust deed).
- The trust arrangement can be set up for a determinate or indeterminate period of time.
- The trust owns the assets assigned to it.
- Trusts separate legal ownership of property from beneficial ownership.





Trusts



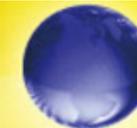
- Trusts are granted a greater level of privacy than corporate entities and are generally not required to be centrally registered.
- Most services establishing trusts or other trustee services have not been regulated in the past.
- May utilize attorney operating accounts as an entry point for funds transferred to the trust.



Control of other legal Arrangements

- the natural person(s), at the end of the chain, who ultimately **owns or controls** the legal arrangement, including those persons who exercise **ultimate effective control over** the legal arrangement, and/or the natural person(s) **on whose behalf a transaction** is being conducted
- the identity of persons in **positions equivalent or similar** to a trustee, settlor, protector or beneficiary of a trust





In summary



Criminals misuse corporate vehicles for illicit purposes:

- money laundering,
- corruption,
- tax fraud,
- terrorist financing,
- etc.

Corporate vehicles that are not transparent facilitate the use and movement of proceeds of crime, including tax evasion, by disguising:

- the identity of the suspected criminal,
- the true purpose of an account or property
- the source of funds or property.

Example techniques:

- Use of shell companies
- Complex structures
- Use of intermediaries and nominees.





The usefulness of BO information

Problem

- Over a trillion US dollars in estimated **illicit financial flows** (corruption and other criminal assets) is diverting much needed resources from developing countries

Ways and Means

- Complex money trails
- Strings of shell companies and
- Layers of legal persons and legal arrangement



Solution

- Transparency of beneficial ownership will help ensure that the puppet masters and their associates and facilitators are not able to operate in secrecy and impede development.



CASE STUDY:

WHY IDENTIFICATION OF BENEFICIAL OWNERSHIP IS IMPORTANT





The Corrupt Country Leader

A former President, P, of Asian Country Z and his family are alleged to have taken bribes in order to allow Yuanta Securities to acquire a financial holding company without opposition from the Z government.

Prosecutors in Z have uncovered some initial details:

- Yuanta transferred USD 6 million to a Hong Kong bank account, which prosecutors know is owned by the President's Wife, W.
- Prosecutors obtained details that W moved funds from the Hong Kong account to Swiss bank accounts held in the names of Avallo Ltd. and Bravo Trust.
- Prosecutors think that Avallo and Bravo are shell arrangements in the Caribbean.
- U.S. officials have shared with prosecutors that P's son, S, recently moved into a condo in New York City that was bought by a Delaware LLC for approximately USD 2 million.

You've been specially assigned to the Prosecutor's team. You want to know if there is a connection between the corruption proceeds W received and the property S purchased. How do you start investigating your theory?



The Corrupt Country Leader

- Discussion Questions:
- **1) How would knowing the beneficial owners in this case help you? Be specific.**
- **2) What specific beneficial ownership information would you want to acquire?**
- **3) Based on the FATF standards, where would you expect to be able to find this BO information to help your investigation?**
- **4) What potential obstacles could you face in getting BO information?**



The Corrupt Country Leader

- **Facts:**
 - **The former President of an Asian country**
 - **Corruption case, involving him and his family members**
 - **Proceeds of corruption used to buy properties in the United States**
 - **Transnational scheme:**
 - **Use of multiple legal structures; legal persons and legal arrangement**
 - **Use of offshore bank accounts**

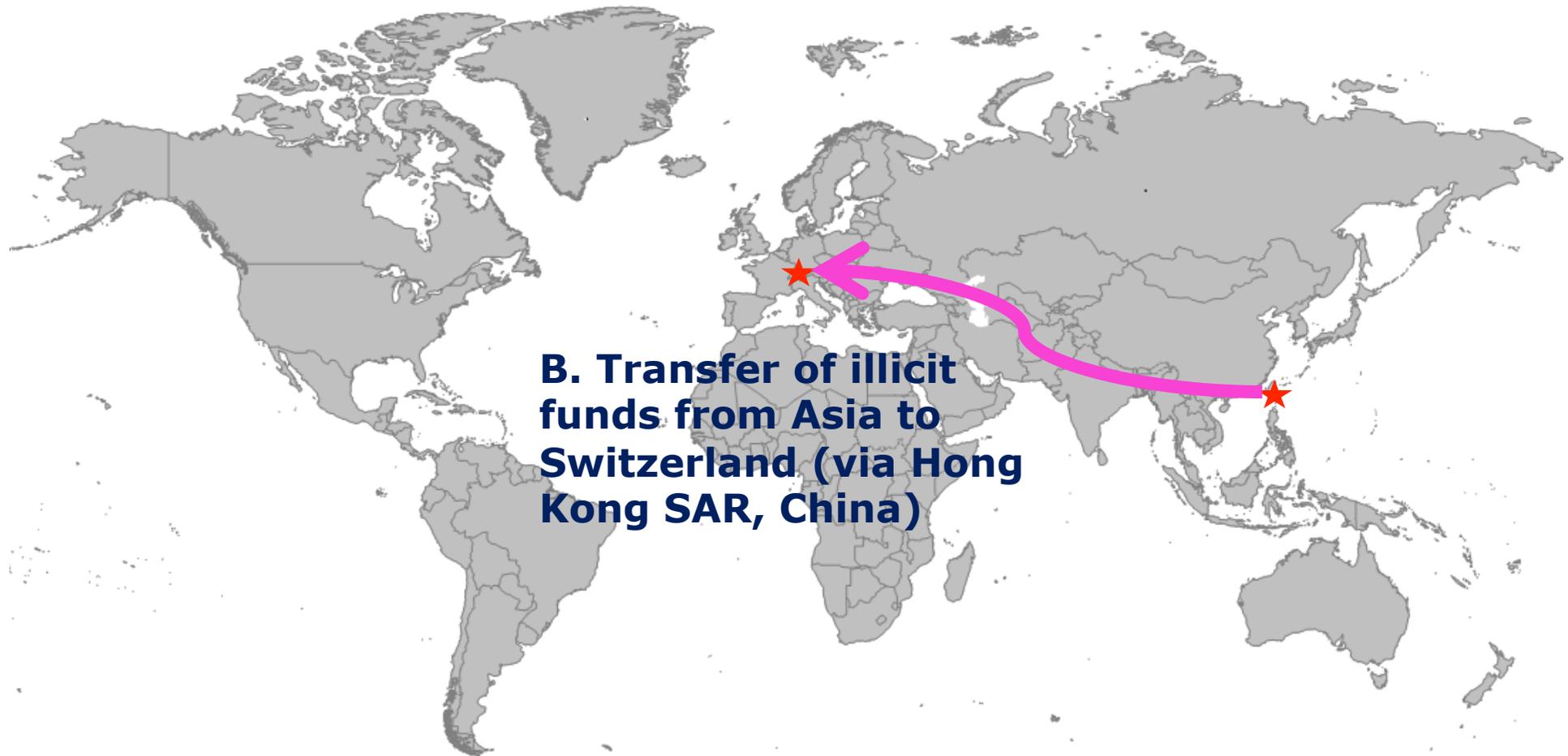


[1] Corruption in Asia

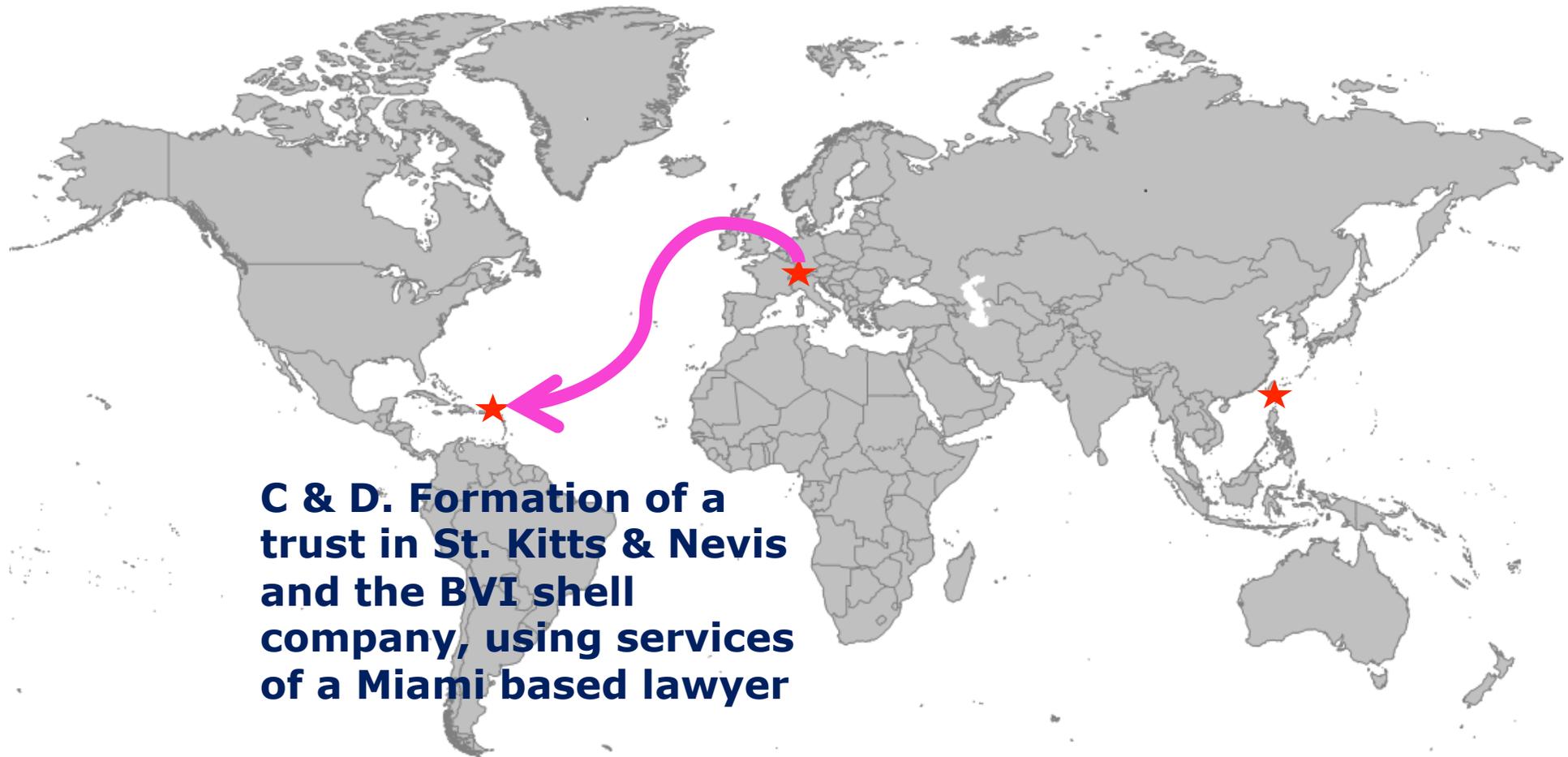


A. Corruption payment of approximately US \$6 million.

[2] Transfer of funds



[3] Misuse of legal structures

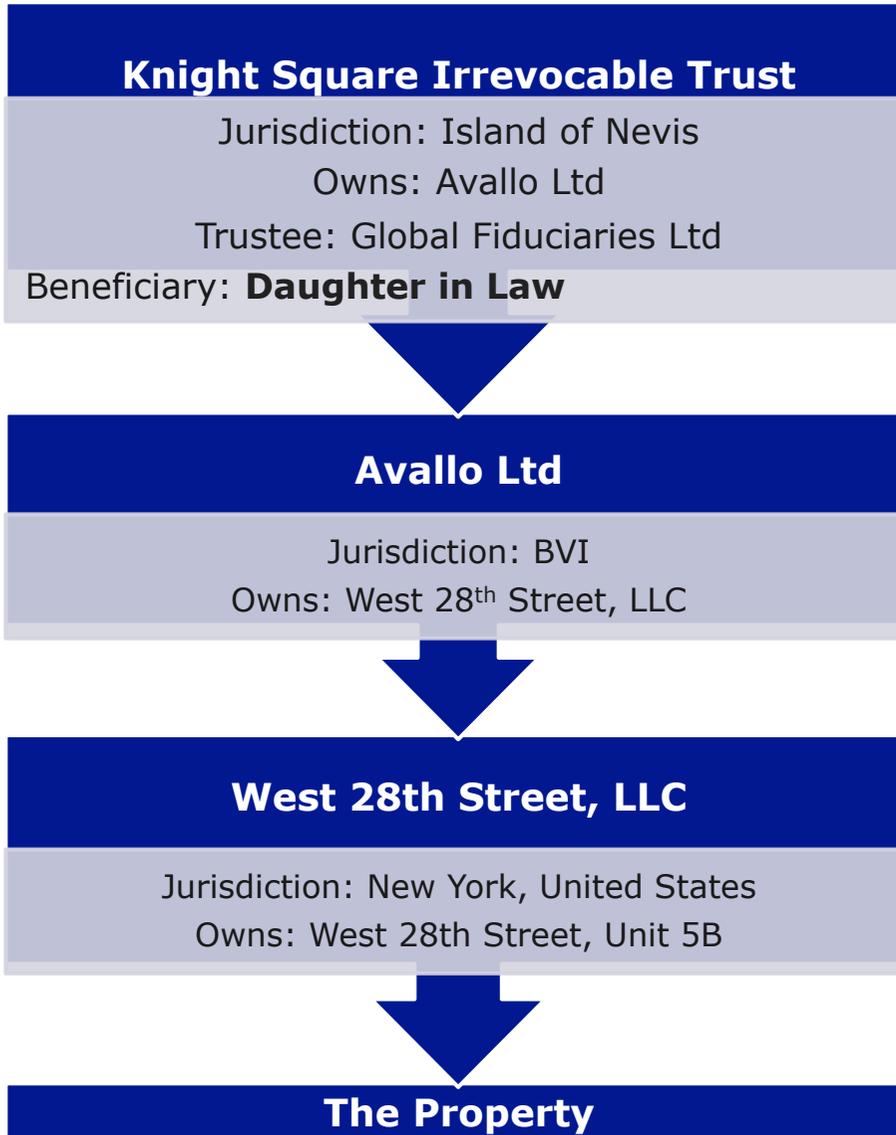


C & D. Formation of a trust in St. Kitts & Nevis and the BVI shell company, using services of a Miami based lawyer

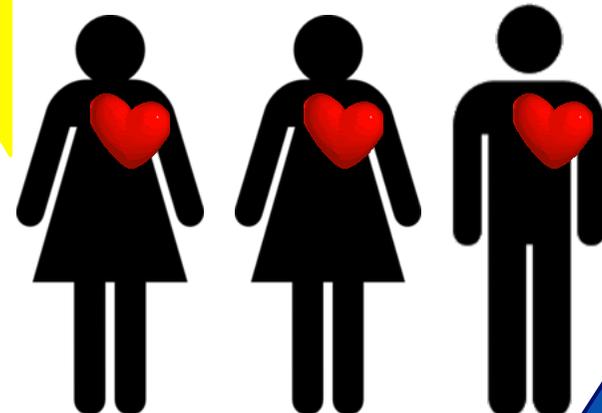
[4] Purchase of properties



Ownership structure



Bank Account for Avallo Ltd
Wegelin and Co Private Bank
Jurisdiction: Switzerland
Signatory Authorities:
1. Son
2. Wife





The corruption case used...

- **Multiple Structures**
 - Shell Companies
 - Trust
 - Offshore bank accounts

- **Across multiple jurisdictions**
 - Asia
 - Switzerland
 - St Kitts and Nevis
 - British Virgin Islands

- **Involving several family members, acting as nominees/ intermediaries including:**
 - Wife
 - Son
 - Daughter in Law



INTERPLAY BETWEEN EOIR AND THE FATF STANDARD



Financial Action Task Force



- Inter-government policy-making body:
 - 35 member countries + 2 member organisations
 - 9 FATF-style regional bodies (FSRBs)
 - 22 Observers
- Sets the international standards for anti-money laundering and counter-terrorist financing (AML/CFT)
- Core activities:
 - Standard setting (FATF 40 Recommendations)
 - Assessing compliance
 - Identify and respond to threats: high risk jurisdictions and typology studies
- Over 190 countries have endorsed the FATF Standards

The FATF's decision making body, the FATF Plenary, meets three times per year.



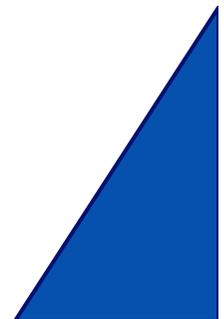
FATF Plenary in session, February 2012





FATF Recommendations

- Set the international standards for measures to combat money laundering, terrorist financing and the financing of proliferation.
- First drafted in 1990, recently revised in 2012.
- Countries based on their understanding of risk have some flexibility when implementing the AML/CFT measures.
- Legal, regulatory and operational measures:
 - Includes preventive measures for financial institutions and other designated reporting entities
- Action to prevent the misuse of corporate vehicles:
 - Legal persons (Recommendation 24), and
 - Legal arrangements (Recommendation 25)



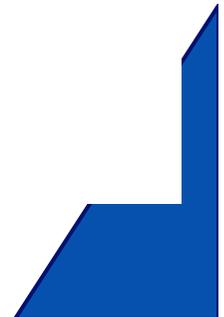


FATF's Standard

The FATF
Recommendation
require...

A yellow sticky note with a green pushpin at the top, containing text about the FATF standard.

Jurisdictions to ensure that adequate, accurate and timely information on beneficial ownership of corporate vehicles is available and can be accessed by the competent authorities in a timely fashion.





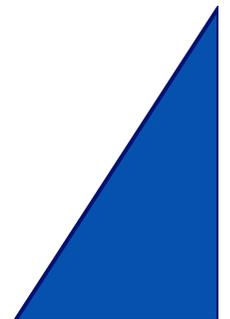
One definition of beneficial owner

One definition

- 2012 FATF = EOIR 2016 ToR = CRS

But different perspectives

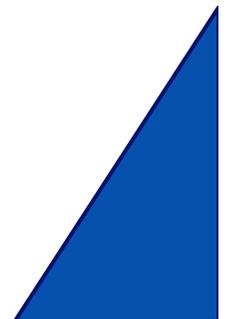
- FATF – BO at prescribed sources (FIs, DNFBPs + on entities and arrangements), specific mechanisms, risk based
- EOIR – any source works as long as BO in respect of all relevant entities and arrangements and bank account-holders
- CRS – BO (controlling persons) with reporting FIs



FATF R.10

Financial institutions should be required to undertake CDD measures when:

- (i) establishing business relations;
- (ii) carrying out occasional transactions above the applicable threshold (USD/EUR 15 000); or that are certain wire transfers;
- (iii) there is a suspicion of money laundering or terrorist financing; or
- (iv) the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data.

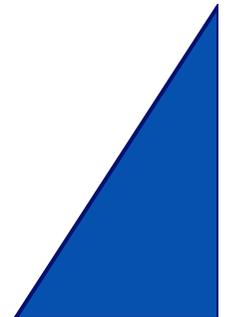




FATF R.22

CDD requirements of R.10 apply to designated non-financial businesses and professions (DNFBPs) when performing certain activities:

- Casinos, Real estate agents, Dealers in precious metals and stones;
- Lawyers, notaries, other independent legal professionals and accountants;
- Trust and company service providers



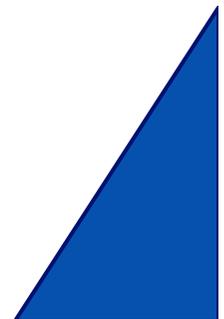


FATF R. 24 and 25

Countries should be able to obtain, or have access in a timely fashion to, adequate, accurate, and current information on the beneficial ownership and control of **companies, trusts and other legal persons/arrangements that are created in the country.**

Countries may **choose the kind of mechanisms** to achieve the above.

Countries should have a framework (legal or other mechanisms) to facilitate access to beneficial ownership and control information by **financial institutions and DNFBPs (R.10 and 22).**

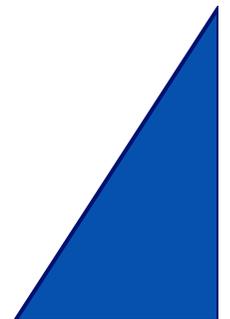




FATF R.24

Countries should use one or more of the following mechanisms:

- Requiring **companies or company registries** to obtain and hold up-to-date information on the companies' beneficial ownership;
- Requiring **companies to take reasonable measures** to obtain and hold up-to-date information on the companies' beneficial ownership;
- **Using existing information**, including: (i) information obtained by FIs and/or DNFBPs; (ii) information held by other competent authorities (e.g. company registries, tax authorities or financial or other regulators); (iii) information held by the company; and (iv) available information on companies listed on a stock exchange





2016 TOR on Beneficial Ownership

Element A.1

- Availability of beneficial ownership information for legal persons and legal arrangements

Element A.3

- Availability of beneficial ownership information on bank accounts

Element B.1

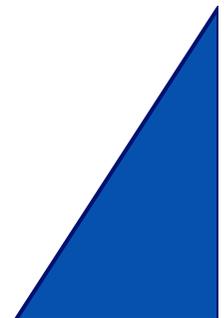
- Access to beneficial ownership information

Principles

- FATF definition of beneficial ownership
- FATF requirements relating to CDD & KYC

Evaluation

- FATF findings referenced where appropriate
- Technical compliance & effectiveness





EOIR BO sources

BO registries

Entities or
arrangements
holding BO

Third party
sources /
existing
information
(e.g. FIs,
DNFBPs, tax
authority)



Rec 24: Mechanisms and Sources

1. Company registries

2. Requiring companies to hold beneficial ownership information

3. Reliance on existing information (e.g., tax authority, stock exchange, etc.)



CDD obligations on DNFBPs

Approach of FATF (Recommendation 22)

- CDD and record-keeping requirements apply to all DNFBPs subject to AML

Approach of Global Forum

- Most (non-EU) countries do not have company registries with beneficial ownership information and may rely on the company or FIs and DNFBPs performing CDD
- Includes notaries, legal professionals, accountants and Trust and Company Service Providers (TCSPs)
- For tax purposes focus is on DNFBPs that are relevant



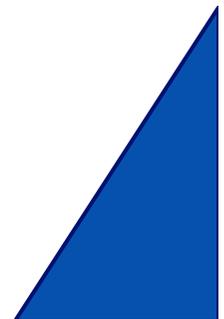


FATF Rec 10 – Customer Due Diligence FIs

Identify the customer (legal owner) and verify that identity using reliable independent information

Identify the beneficial owner and take reasonable measures to verify the beneficial owner; and

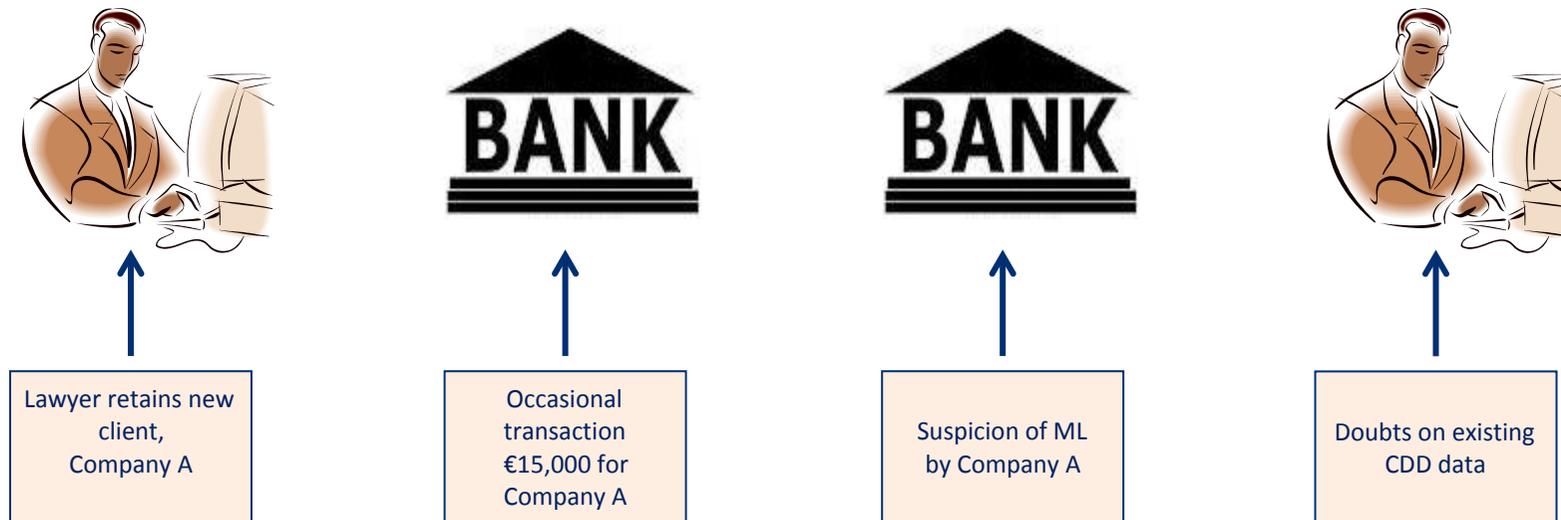
Understand the purpose and nature of the business relationship





The FATF Standards

Customer due diligence: When is it required?



- CDD for every customer, wherever incorporated.
- Tax authorities should have power to ask for information from financial institutions / DNFBPs in its jurisdiction (ToR B.1).



AEOI STANDARD REQUIREMENTS FOR BENEFICIAL OWNERSHIP

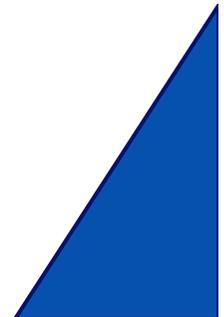


Under the CRS

The term
“Controlling
Person” ...

A yellow sticky note is pinned to the slide with a green pushpin. The note contains text explaining the interpretation of the term 'Controlling Person' under the CRS.

Corresponds to the term
“beneficial owner” and
must be interpreted in a
manner consistent with the
FATF Recommendations.

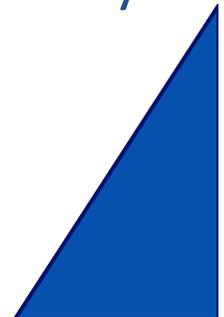




“Look-through” to Controlling Persons



- Corresponds to “beneficial owner” in the Financial Action Task Force Recommendations
- “Look through” the Entity to identify the natural person(s) who exercises control over the Entity (generally controlling ownership interest in the entity - often interpreted $\geq 25\%$ ownership).
- For trusts (and equivalents), the settlor(s), trustee(s), protector(s), beneficiary(ies), and any other natural person(s) exercising effective control over the trust.

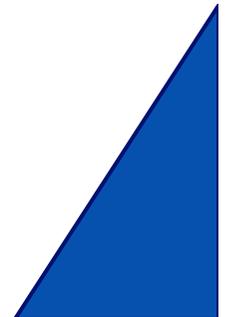




BO under CRS

Reporting FI required to identify Controlling Persons of account-holders who are Passive NFEs in respect of

- pre-existing Entity accounts above USD 250 000
- new Entity accounts





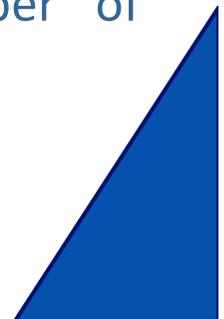
BO under CRS

Passive NFE

- any Entity that is not a FI, and
- is **not an Active NFE**; or
- an Investment Entity Type B that is not a Participating Jurisdiction FI.

Active NFE is NFE meeting any of the criteria including

- less than 50% of the NFE's gross income is passive income;
- the stock of the NFE is traded on a securities market;
- the NFE is a Governmental Entity, an International Organisation, a Central Bank, or an Entity wholly owned by these;
- is established and operated exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; and other entities for public purpose such as professional organisations or chamber of commerce



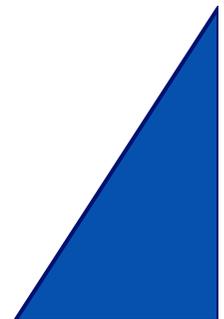


BO under CRS

Identification of Controlling Persons = look through Entities by application of AML/KYC due diligence and record keeping measures

Look through approach in respect of trusts

- Identification of the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary(ies) or class(es) of beneficiaries regardless of ownerships threshold or control over the trust
- If the settlor(s), the trustee(s), the protector(s) or the beneficiary(ies) are Entities then look through these Entities to identify the Controlling Persons of these Entities





BENEFICIAL OWNERSHIP TRANSPARENCY QUIZ *(JUST 6 QUESTIONS)*

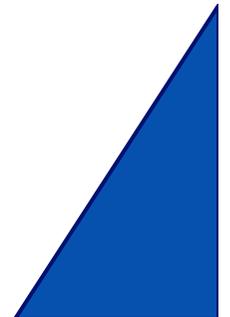
Source: <https://olc.worldbank.org/content/beneficial-ownership-transparency#video13965>



Question 1

What are the key components to determine the beneficial owner?

- Ownership
- Direct control
- Indirect control
- Derives benefits
- Natural Person
- All of the above

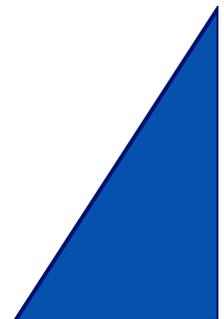




Question 2

Beneficial ownership information must be...?

- Accurate
- Adequate
- Up to date
- Accessible on a timely basis to relevant competent authority
- All of the above

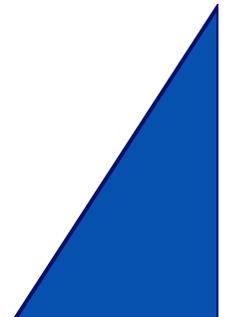




Question 3

Which of these institutions can be expected to maintain beneficial ownership information?

- Banks
- Company Service Providers
- Trusts
- Companies
- Lawyers and Accountants providing services to companies
- All of the above

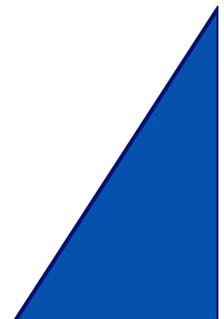




Question 4

Mr. John from Jurisdiction A, registers a company in Jurisdiction B, using the services of a lawyer in Jurisdiction C. He uses the company to swindle victims in Jurisdiction D. According to the G20 Principles, where could the beneficial ownership information be required to be maintained?

- Jurisdiction A only
- Jurisdiction B only
- Jurisdiction C only
- Jurisdiction D only
- Jurisdiction A and B
- Jurisdiction C and D
- Jurisdictions A, B and C
- Jurisdictions A, B and D





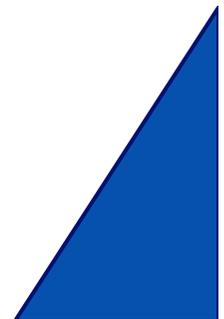
Question 5

Part 1 – Mr. Smith is the 90% shareholder of Onion Importers, Ltd., a company that purportedly imports tomatoes and generates revenues of US\$20 million/year. Is Mr. Smith the beneficial owner of Onion Importers, Ltd.?

Yes

No

Maybe



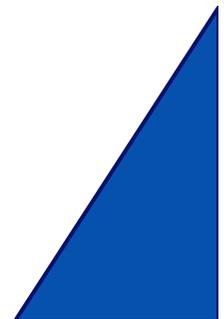


Question 6

Part 2 – Mr. Wayne is the 10% shareholder of Onion Importers, Ltd. He is also a known government official, against whom there are several allegations of corruption. Mr. Wayne owns several residences including a mansion at the same address listed at the company registry as the place of business for Onion Importers, Ltd. He is also the sole signatory on the company's bank account. When interviewed, Mr. Smith (the 90% legal owner of Onion Importers, Ltd.) admits to working as a security guard at Mr. Wayne's mansion for which he is paid US\$20,000/year. The investigators also visited the mansion and found no tomatoes.

Who is more likely to be the beneficial owner of Onion Importers, Ltd.?

- Mr. Wayne (10% legal owner)
- Mr. Smith (90% legal owner)





THANK YOU