

# Guide on Beneficial Ownership



**UIFAND**

UNITAT D'INTEL·LIGÈNCIA FINANCERA

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## **1. INTRODUCTION**

It has been observed in recent years that the use of networks of companies and the interposing of other types of legal entities in such networks in the same or other countries has been a common pattern in criminal operations and especially in those related to money or asset laundering and/or terrorist financing, for the purpose of concealing the final owner of the respective operations, impeding in this way the identification of the party actually responsible for the illegal act or acts.

Inasmuch as this is a problem on a global scale, one of the foremost challenges of the international bodies has been to implement transparency measures in order to achieve cohesive worldwide standards in the fight against the concealment of the figure of the beneficiary owner, that is to say, the natural person who holds the control of the respective company or legal structure. In this respect, various studies have been conducted by such organizations as the Financial Action Task Force (hereafter called FATF), the Global Forum, the World Bank, the United Nations Office on Drugs and Crime, etc.

Following the principal standards provided in the FATF Recommendations and transposing Directive (EU) 2015/849 of the Parliament and of the Council, of 20 May 2015, on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, which is of compulsory implementation according to the Monetary Agreement signed between the European Union and Andorra on 30 June 2011, Andorra has introduced, by means of Law 14/2017, of 22 June, on prevention and the fight against the laundering of money or assets and against terrorist financing (hereafter called Law 14/2017), the following measures aimed to mitigate and to deal with this risk: (i) the requirement of registration of the beneficial owner of a legal entity in the respective register, and (ii) the definition of "beneficial owner" in the various types of legal structures.

The goal of this document is to provide some practical examples and to guide interested parties in the identification of the beneficial owners in the various types of legal structures, with a twofold aim: (i) to achieve suitable compliance with the due diligence measures required of reporting entities in this sphere by Law 14/2017, and (ii) to ensure the registration of the pertinent beneficial owners in the respective registers of legal entities.

## 2. DETERMINATION OF THE BENEFICIAL OWNER

### 2.1. Identification of the beneficial owner

The definition of “beneficial owner”, given in Article 3.3 of Law 14/2017, provides the following:

**“Beneficial owner:** the natural person or persons who ultimately control the customer and/or the natural person or persons on whose behalf the transaction or activity is carried out. The beneficial owner includes, as a minimum:

a) In the case of legal entities:

*The natural person or persons who ultimately hold the ownership or control of a legal entity through the direct or indirect holding of a sufficient percentage of shares or voting rights or ownership rights in such entity, including portfolios of bearer shares, or by means of control by other means, except for companies which are listed in a regulated market and which are subject to reporting requirements in accordance with international standards that ensure the suitable transparency of the information on ownership.*

*The fact that a natural person holds 25% of the share capital plus one share of the respective legal entity, or an ownership right of more than 25% on the respective legal entity, will be a sign of direct ownership. The fact that a company that is under the control of one or more natural persons, or the fact that multiple companies which are, in turn, under the control of the same natural person or persons, holds 25% of the share capital plus one share of customer, or an ownership right of more than 25% on the customer, will be a sign of indirect ownership.*

*The existence of “control by other means” may be determined, among other ways, in accordance with the criteria provided in Law 30/2007, of 20 December, on the accountability of business operators.*

*ii) Once all possible means have been exhausted and as long as no reasons for suspicion exist, in the event that no person is identified in accordance with point i), or in the event that doubts exist as to whether the identified person or persons are the beneficial owners, the natural person or persons who exercise the effective direction through other means.*

*iii) In the event that no natural person has been identified in accordance with point i) and point ii), the natural person who acts as managing director or who holds an equivalent executive power of attorney.*

*Reporting entities should keep records of the measures taken to identify the respective beneficial owner in accordance with points i), ii) and iii) above and reporting entities should be able to prove that they have exhausted all the possible means to which reference is made in point ii).*

b) In the case of trusts:

*i) the settlor;*

*ii) the trustee or trustees;*

*iii) the protector, if any;*

*iv) the beneficiaries or, when the beneficiaries of the legal entity or structure are still pending designation, the category of persons in the benefit of which the legal entity or structure has mainly been created or acts;*

*v) any other natural person who ultimately exercises the control of the trust through direct or indirect ownership or by any other means.*

*c) In the case of legal entities such as foundations, and in that of legal structures similar to trusts, the natural person or persons who exercise a position equivalent or similar to those considered in Letter b) are included in this category."*

Bearing in mind the foregoing definition, the identification of the beneficial owner is determined:

- 1) By the direct or indirect possession, by a natural person or persons, of a holding of 25% plus one share in the share capital of, or an ownership right of over 25% on, the respective legal entity.

If the natural person has a holding of 25% plus one share in the share capital or an ownership right of over 25% without there being any other company interposed between said person and the respective company, this is a sign of **direct** ownership. (*Cases 1, 2, 3 and 7*)

The fact that a company that is under the control of one or more natural persons, or the fact that multiple companies that are, in turn, under the control of the same natural person or persons, were to have a holding of 25% plus one share in the share capital of the customer, or an ownership right of over 25% on the customer, will be a sign of **indirect** ownership. (*Cases 4, 5, 6, 7 and 16*)

- 2) Control may be exercised by other means on the bodies of governance, administration and direction or on those of other types of authority. The range of possibilities with respect to "exercise of control by other means" is quite broad in this respect and includes, among others, the following:
  - Holding a large number of company shares with respect to the other partners or being a majority shareholder in the chain of ownership, allowing the exercise of control of the respective company's general meetings. (*Case 8*)
  - The existence of a para-corporate arrangement that grants the partners involved significant decision-making power. (*Case 9*)
  - Holding the authority to appoint or to dismiss the majority of the administrators. (*Case 10*)
  - Holding a mandate that allows control of the control bodies. (*Case 15*)

If, as a result of the analysis which is conducted, the beneficial owner cannot be determined in accordance with the foregoing criteria, as long as there is no suspicion of money laundering or terrorist financing, the beneficial owners will be considered to be the natural person or persons who:

- 3) Hold high-level direction positions or exercise by other means the control of the directing bodies or the effective direction of the respective legal entity. (*Case 19*)

In the absence of data to identify the persons described above, the beneficial owners will be considered to be the natural person or persons who:

- 4) Act as Managing Director or hold equivalent executive powers of attorney. (*Case 20*)

In addition to what is provided above, some types of legal entities have certain specific features with respect to the identification of their beneficial owners, such as the following:

#### *a) Listed companies*

The laws on matters of AML/CTF provide that the identification of the shareholders or beneficial owners of listed companies, and of the subsidiaries in which such listed companies have a majority holding, is not required when such companies or subsidiaries are subject to reporting obligations which ensure the suitable transparency of their beneficial owner.<sup>1</sup>

Notwithstanding, in the event in which the reporting entity has this type of companies as customers, the reporting entity should necessarily record that such companies are effectively companies listed in a regulated market and that such companies are subject to reporting requirements in accordance with international standards that ensure the suitable transparency of the ownership information.<sup>2</sup>

#### *b) Asset Holding Companies (Societats patrimonials)*

Asset holding companies (*societats patrimonials*) are legal instruments the main activity of which consists in the management of the assets of the beneficial owner and which generally do not carry out any business activity. They may be incorporated just as any company in general, PIC (Private Investment Company), foreign foundation of private interest, etc.

The reporting entity should understand the control structure in order to be able to determine the beneficial owner of this type of company. In these cases, it is possible that the person who possesses the share capital is not the person who contributes the funds, nor the person who exercises the effective control of the company. Consequently, in order to determine the beneficial owner, the reporting entity's analysis should not be limited to the identification and verification of the shareholders, in the event that they hold over 25% of

<sup>1</sup> Article 9.4 of the Regulations on the application of Law 14/2017.

<sup>2</sup> Article 3.3,a), point i), § 1 of Law 14/2017.



the shares or voting rights, but rather a deeper analysis should be conducted on the basis of the signs detected in the operations of the customers and in the documentation and information which the customer provides, and on the basis of the origin of the contributed funds.

*c) Companies in the process of incorporation*

In the case of companies and entities in the process of being incorporated, the beneficial owner will be considered to be the natural person or persons who request the incorporation of the respective company.<sup>3</sup> In these situations, the banking financial reporting entity may only permit the making of payments and charges derived from the incorporation of the company or entity until such company or entity is legally incorporated and all the documents required by the standards on prevention of the laundering of money or assets and terrorist financing have been provided.

This limitation on operations may be lifted once the respective company has been incorporated and once the reporting entity has completed all the due diligence actions. In this respect and as a part of these actions, the reporting entity should re-determine who the beneficial owner is, given the possibility that the beneficial owner is not the person who was initially identified or that supplementary documentation to identify the beneficial owner was not on hand before.

*d) Companies in liquidation*

The knowledge that a customer with whom the reporting entity maintains a business relation has begun a liquidation process, affects the nature of this relation and requires a reassessment of the ML/TF risks.

With respect to the obligation to identify and verify the beneficial owner and, specifically with respect to the measures for following up these actions, it is considered that the start of a liquidation process is evidence of a change in the customer's circumstances<sup>4</sup> and, consequently, it requires a new determination of the beneficial owner.

*e) Trusts and similar figures*

In the case of trusts, beneficial owners are considered to be<sup>5</sup>:

- i) the settlor (*fideicomitent*),
- ii) the trustee or trustees (*fideïcomissari* or *fideïcomissaris*),
- iii) the protector (*protector*), in any,

<sup>3</sup> Article 6.2 of the Regulations on the application of Law 14/2017.

<sup>4</sup> Article 10.5 of Law 14/2017.

<sup>5</sup> Article 3.3,b) of Law 14/2017.



- iv) the beneficiaries (beneficiaris) or, when the beneficiaries of the legal entity or structure are still pending designation, the category of persons for the benefit of which the legal entity or structure has mainly been created or acts,
- v) any other natural person who ultimately exercises the control of the trust through direct or indirect ownership or by any other means.

In all cases the reporting entity should carry out a thorough analysis of this type of legal structures in order to determine whether there exists any other person who exercises an effective control of the structure through direct or indirect ownership or by other means.

In the case of the rest of similar legal entities under foreign law (for example, the Anglo-Saxon trust, the German Treuhand, the wark under Muslim law, etc.), the reporting entity should consider the beneficial owner to be the figures equivalent to those established above (for example, settlor, trustee, protector, etc.).

#### *f) Foundations*

With respect to foundations incorporated according to *Law 11/2008, of 12 June, on Foundations* (hereafter called *Law 11/2008*), or equivalent entities in other jurisdictions, and similarly to the figures involved in the case of a trust, reporting entities will consider the following persons to be beneficial owners:

- i) the founder,
- ii) the board of trustees,
- iii) the surveillance body,
- iv) the beneficiaries or, when the beneficiaries of the legal entity or structure are still pending designation, the category of persons for the benefit of which the legal entity or structure has mainly been created or acts,
- v) any other natural person who ultimately exercises the control of the foundation through direct or indirect ownership or by any other means.

Notwithstanding the foregoing, in jurisdictions throughout the world there exist legal figures which are also called "foundations", but which do not correspond to the definition given in Andorran law since they are usually of private interest and/or of profit-making nature. In such cases it would be a question of a legal figure in which the beneficial owner would have to be determined in accordance with the provisions of Letter b) of this point.

#### *g) Mutual organizations, associative entities, cooperatives and welfare funds*

In consonance with Article 6.3 of the Regulations on the application of Law 14/2017, the beneficial owners of mutual organizations, associative entities, cooperatives and welfare funds are the persons who exercise the control of or a significant influence on the assets of the respective organization.

#### *h) Charities, clubs and non-profit associations*

In the case of charities, clubs and non-profit associations, the necessary measures should be taken to identify at least two attorneys-in-fact or persons holding prime responsibility who exercise the control or a significant influence on the assets of the organization, such as<sup>6</sup>:

- the members of a governing body or committee,
- the president,
- the members of the board,
- the treasurer.

#### *i) Collective investment schemes*

The business relations with collective investment schemes (hereafter called CISs) require the application of due diligence measures, even when authorization to operate has been granted by a financial authority, and in some case the application of transparency requirements.

In general terms, CISs may be distinguished from other investment vehicles by the regulation set out in their incorporation and operation, which requires the appointment of a management entity and of a depositary entity which, briefly, take charge of the investment decisions and of the safekeeping of the assets, respectively.

In this respect, the beneficial owners of a CIS are the beneficial owners of the management company and of the depositary entity (*Cases 11 and 12*), in addition to:

- The natural person or persons who have a holding of 25% plus one share in the share capital or an ownership right of over 25%; and/or
- The natural person or persons who exercise the effective direction by other means such as, for example, the possession of sufficient voting rights to be able to exercise the control of the management, administration and directing bodies of the CIS.

By way of example, in an investment fund marketed to the public in which no investor owns, directly or indirectly, more than 25% of the shares, the control of this CIS is exercised by the management and depositary entities. Consequently, the beneficial owner of these entities will also be the beneficial owner of the investment fund.

Notwithstanding, the various types of CISs may make it more complex to determine who has the ownership or exercises the control of these investment schemes. In this respect, the following types should be taken into consideration:

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<sup>6</sup> Article 6.4 of the Regulations on application of Law 14/2017.

➤ Legal form

The Andorran regulations in this matter allow the CISs to take the form of investment funds or of companies <sup>7</sup>. CISs taking the form of companies are called SICAVs, which are not a figure found only in Andorra but which may also be incorporated in a large number of other jurisdictions. The special features to be taken into consideration with respect to SICAVs are the following:

- Since they take the form of companies, these CISs are obliged to comply with the laws that apply to public limited companies <sup>8</sup>, including the obligation to provide information on the beneficial owner to the Register of Companies.
- They have the governing bodies which are typical of companies (administration body, general meeting, etc.), which may not coincide with those of the management or depositary companies.
- They are CIS which allow tax planning in many jurisdictions and they may consequently be an investment vehicle of large fortunes in which it is the investor who ultimately controls the SICAV.
- They may not have appointed a management entity and in such case they will consequently self-manage their assets<sup>9</sup>.

➤ Distribution

A CIS could be classified as open or closed in relation to its shares if they may be distributed to customers<sup>10</sup> or if, on the other hand, they are limited to a specific investor or group of investors and the entry of other participants is not allowed. Restrictions on distribution are a sign of the control of the CIS by the investors.

➤ CIS structures

For reasons of efficiency or any other reason, various investment portfolios could be structured within one same CIS. The way of doing this is to create compartments which have differentiated units or shares, so the investors may not coincide. Bearing this feature in mind, the beneficial owner should be determined by compartment and not by CIS.

<sup>7</sup> Article 4 of Law 10/2008, of 12 June, on the regulation of collective schemes under Andorran law (hereafter called Law 10/2008).

<sup>8</sup> Article 16.1 of Law 10/2008.

<sup>9</sup> Article 18.4 of Law 10/2008.

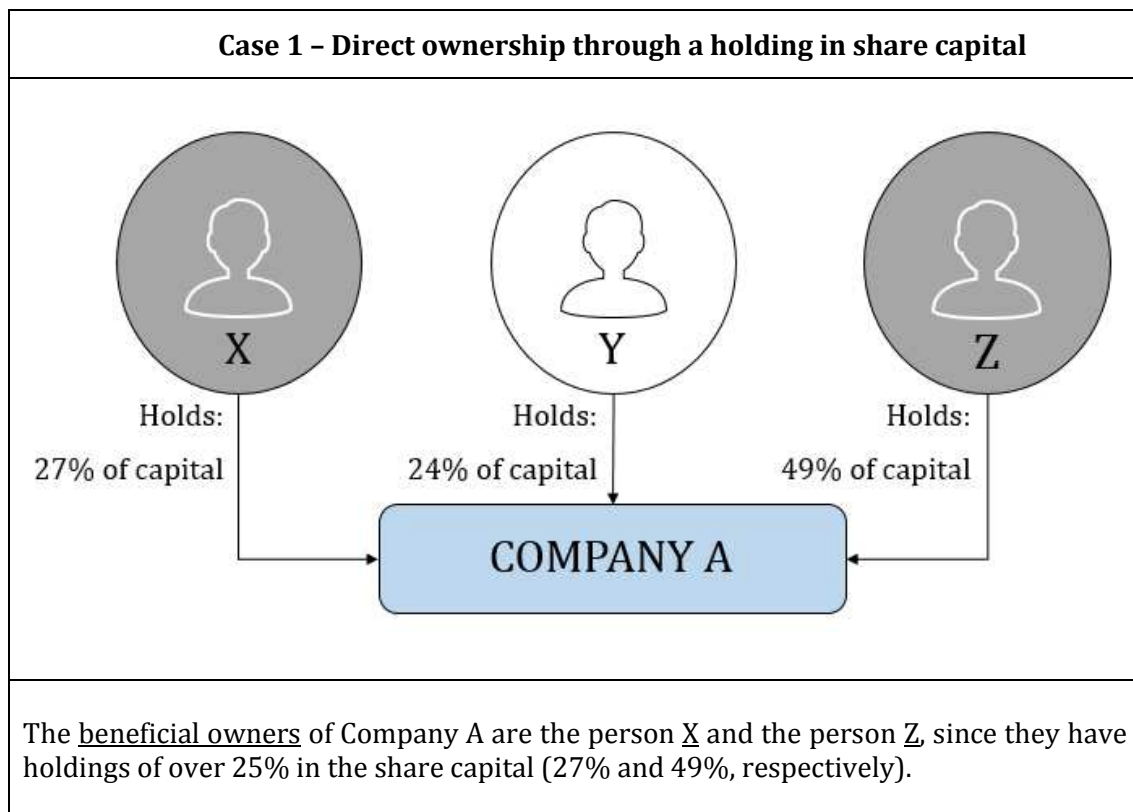
<sup>10</sup> For the purposes of classifying a CIS in terms of its distribution, it does not matter whether the investor is a retail customer, professional or eligible counterpart, according to the classification established in Article 31 of Law 8/2013, of 9 May, on the organizational requirements and the operating conditions of the operating entities of the financial system, investor protection, market abuse and financial collateral arrangements.

## 2.2. Case studies

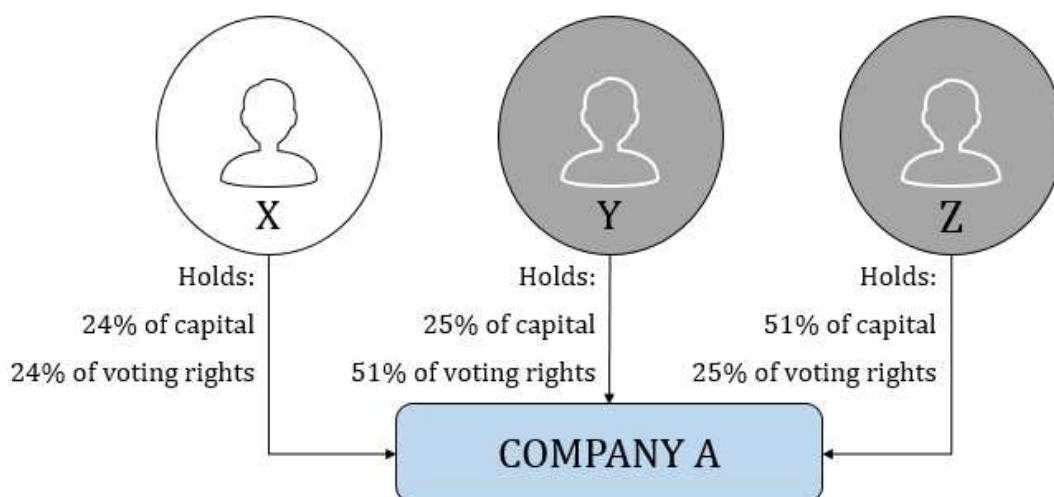
We will now present a series of case studies for the purpose of providing graphic examples of some of the theoretical hypotheses mentioned in the preceding point of this guide.

It should be kept in mind that these cases represent signs of ownership and control and that they should not be considered under any circumstances to be rules to be automatically applied.

For the purposes of the following case studies, it will be considered that every 1% of share capital corresponds to 1 share, unless otherwise indicated in the specific case concerned.



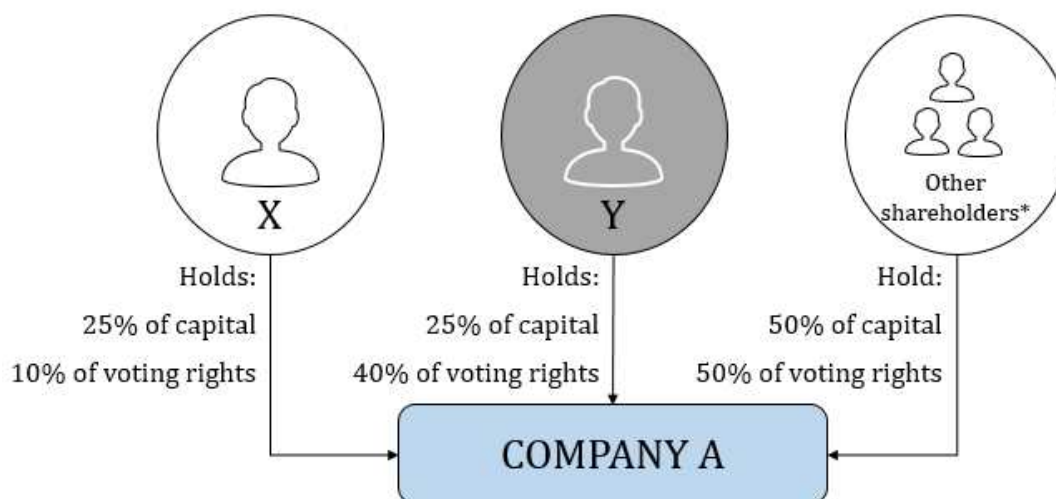
### Case 2 – Direct ownership through voting rights and holding in share capital



The beneficial owners of Company A are:

- The person Y, since he holds over 25% of the voting rights.
- The person Z, since he holds over 25% of the share capital.

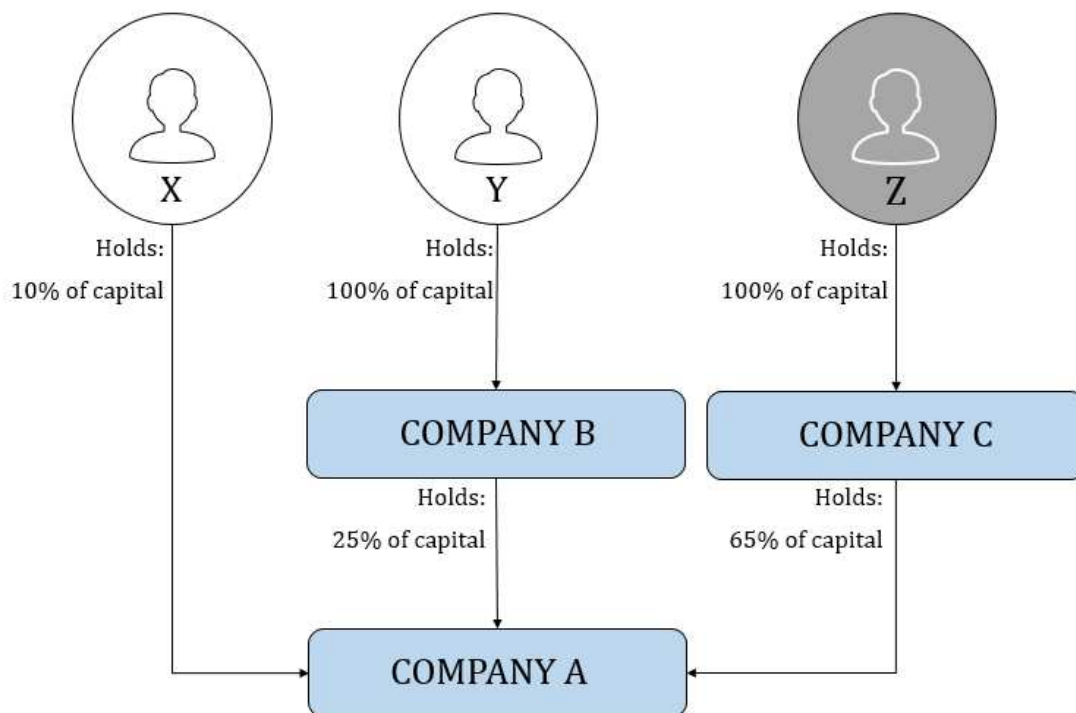
### Case 3 – Direct ownership by means of voting rights



\* None of the “other shareholders” has a holding in the share capital, ownership rights or voting rights of over 25% or exercises any type of control by other means.

The beneficial owner of Company A is the person Y since he holds over 25% of the voting rights.

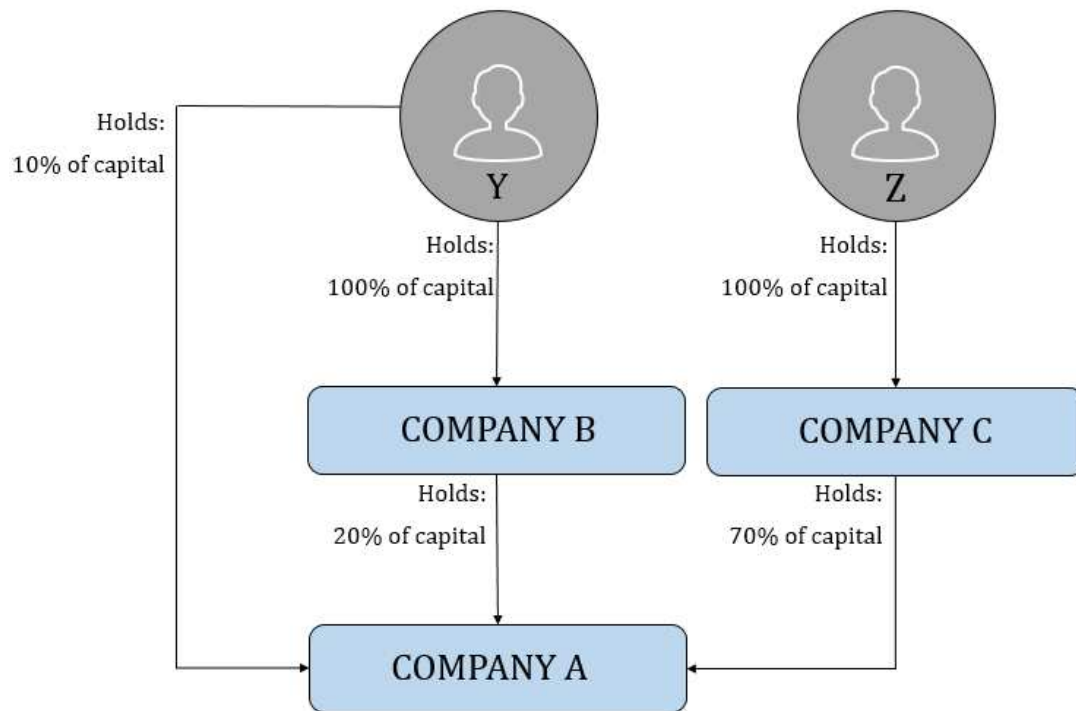
#### Case 4 – Indirect ownership by means of a holding in share capital



The person Z indirectly has a holding of 65% ( $100\% \times 65\% = 65\%$ ) in the share capital of Company A. This percentage is higher than 25% so the person Z is consequently the beneficial owner of Company A.



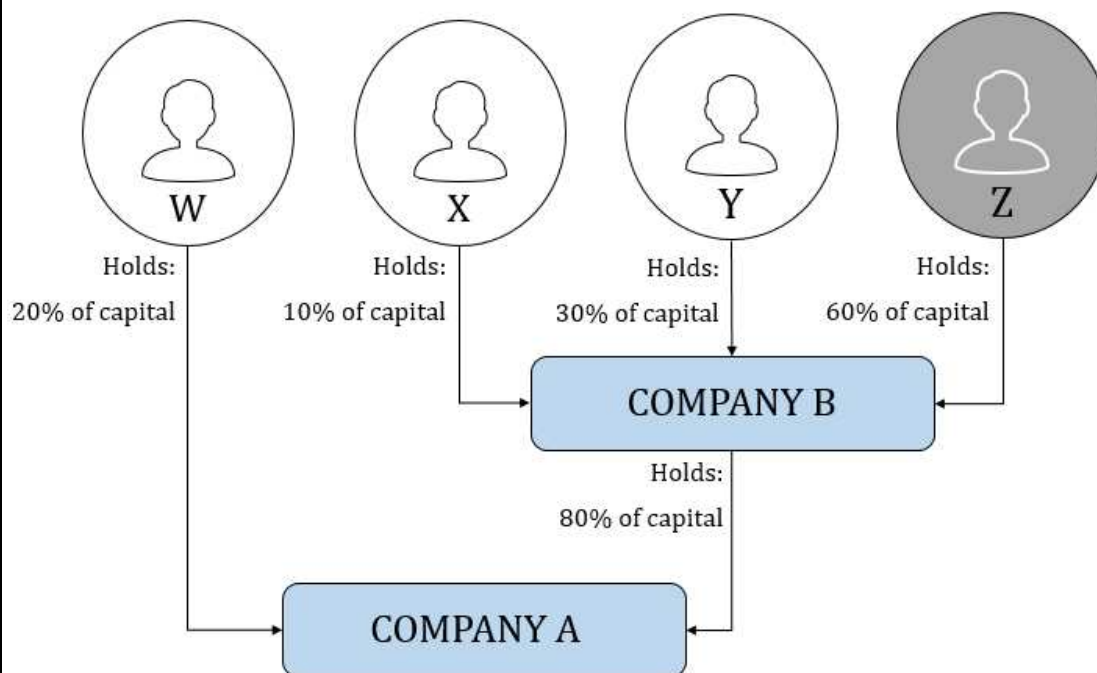
### Case 5 – Ownership by means of both direct and indirect holdings in share capital



The beneficial owners of Company A are:

- The person Y, since he has a holding of over 25% in the share capital.
- This holding is of 30% since he holds 10% of the share capital directly and 20% ( $100\% \times 20\% = 20\%$ ) indirectly.
- The person Z, since he indirectly has a holding of 70% ( $100\% \times 70\% = 70\%$ ) in the share capital, which totals more than the figure of 25% set by law to be considered a beneficial owner.

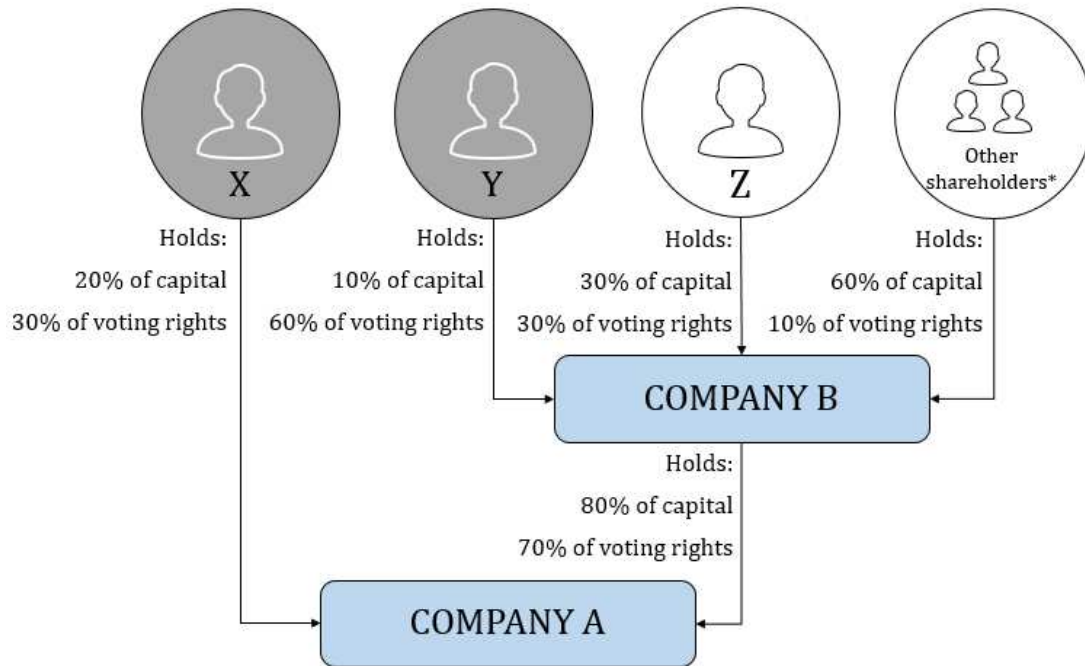
### Case 6 - Indirect ownership by means of a holding in share capital



The beneficial owner of Company A is the person **Z** since he indirectly has a holding of over 25% in the share capital ( $60\% \times 80\% = 48\%$ ).

The person Y is not a beneficial owner since he indirectly has a holding of 24% in the share capital ( $30\% \times 80\% = 24\%$ ), which is lower than the percentage set by law.

### Case 7 – Direct and indirect ownership by means of voting rights



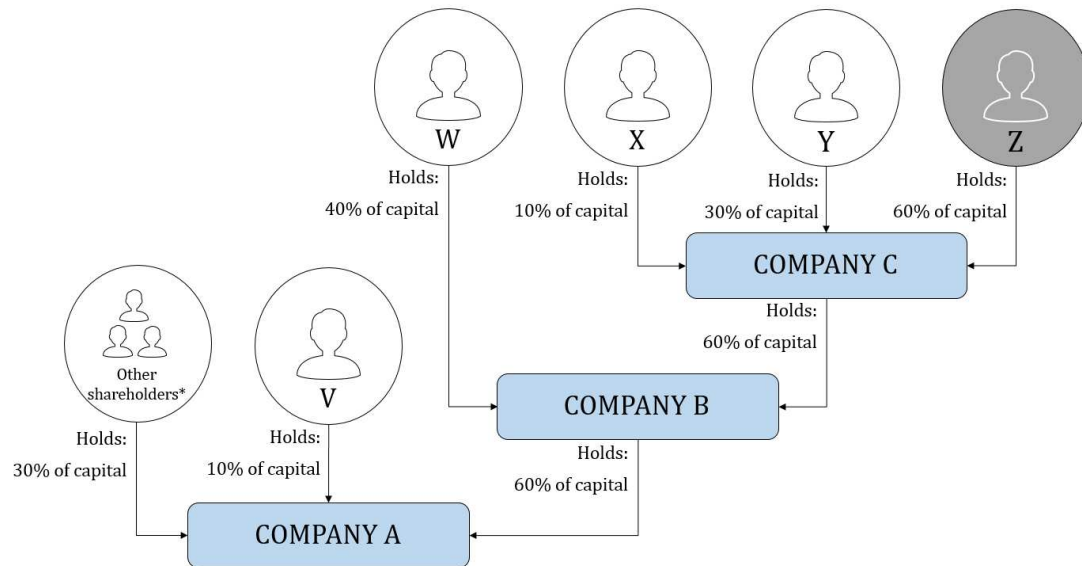
\* None of the “other shareholders” has a holding in the share capital, ownership rights or voting rights of over 25% or exercises any type of control by other means.

The beneficial owners of Company A are:

- The person X since he holds directly over 25% of the voting rights.
- The person Y since he holds indirectly 42% of the voting rights ( $60\% \times 70\% = 42\%$ ), which totals more than the 25% set by law to be considered a beneficial owner.

The person Z is not a beneficial owner since his indirect holding in the share capital is of 24% ( $30\% \times 80\% = 24\%$ ) and he holds 21% of the voting rights, and both these figures are lower than the percentage set by law to be considered a beneficial owner.

### Case 8 – Control by other means: majority shareholder



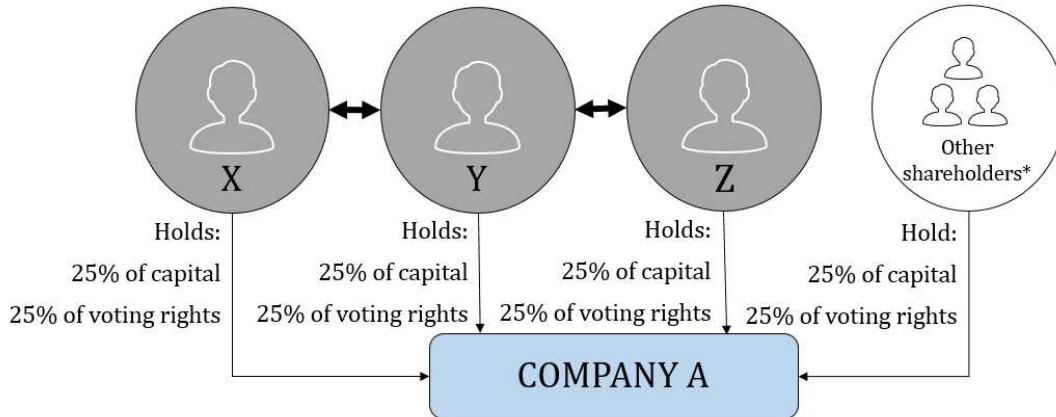
\* None of the “other shareholders” has a holding in the share capital, ownership rights or voting rights of over 25% or exercises any type of control by other means.

None of the people described in the foregoing case have, directly or indirectly, a holding in the share capital, ownership rights or voting rights of over 25%, which is the figure set by law to be considered a beneficial owner.

Notwithstanding, the person Z could be considered a beneficial owner since he is susceptible to be able to exercise control over Company A by other means because:

- He has a holding of 21.6% ( $60\% \times 60\% \times 60\% = 21.6\%$ ) in the share capital, which is a large percentage with respect to the rest of the shareholders.
- He is the majority shareholder of Company C, which is the majority shareholder of Company B, and the latter is in turn the majority shareholder of Company A. This chain may give the person Z the power to control the general meetings of the respective companies.

### Case 9 – Control by other means: para-corporate arrangement or agreement



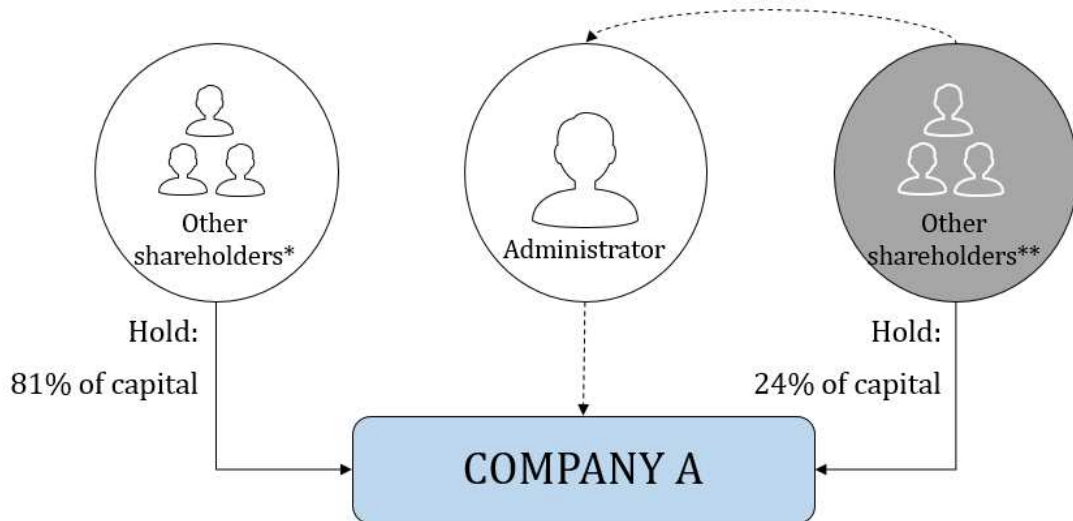
↔ Para-corporate arrangement or agreement/provision of articles of association

\* None of the “other shareholders” has a holding in the share capital, ownership rights or voting rights of over 25% or exercises any type of control by other means.

None of the people described in the foregoing case has, directly or indirectly, a holding in the share capital, ownership rights or voting rights of over 25%, which is the figure set by law to be considered a beneficial owner.

Notwithstanding, there exists between the persons X, Y and Z a para-corporate arrangement which provides that they will act jointly when making decisions of significance for the company, such as the appointment or dismissal of administrators. These people will consequently be considered beneficial owners since the aforementioned arrangement allows them to exercise control over Company A by other means.

### Case 10 – Control by other means: authority of appointment or of dismissal



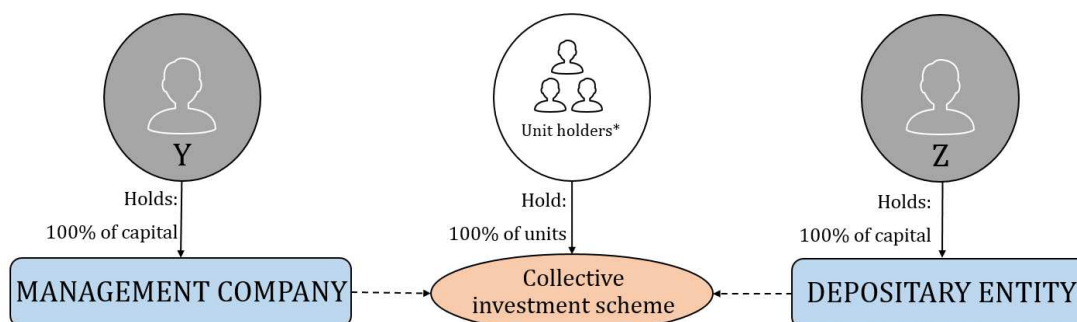
\* None of the “other shareholders” has a holding in the share capital, ownership rights or voting rights of over 25% or exercises any type of control by other means.

\*\* Partners who have the authority to appoint or to dismiss the administrator.

None of the people described in the foregoing case have, directly or indirectly, a holding in the share capital, ownership rights or voting rights of over 25%, which is the figure set by law to be considered a beneficial owner.

Notwithstanding, the group of shareholders which holds 24% of the share capital also has the authority to appoint or to dismiss the administrator, which consequently allows it to exercise control over Company A by other means so the members of the group will be considered beneficial owners.

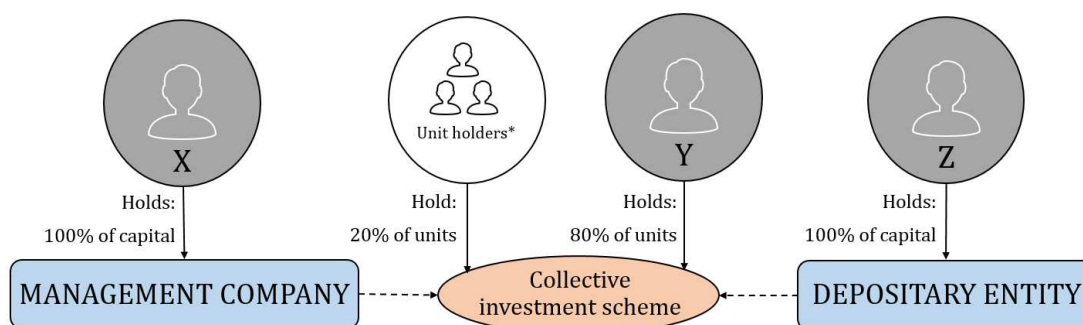
### Case 11 – Collective investment schemes (CISs) (I)



\* None of the “unit holders” has a holding, ownership rights or voting rights of over 25% or exercises by other means any type of control over the CIS.

The beneficial owners of the CIS will be the beneficial owner of the management company and the beneficial owner of the depositary entity, which in this case are the persons Y and Z.

### Case 12 – Collective investment schemes (CISs) (II)

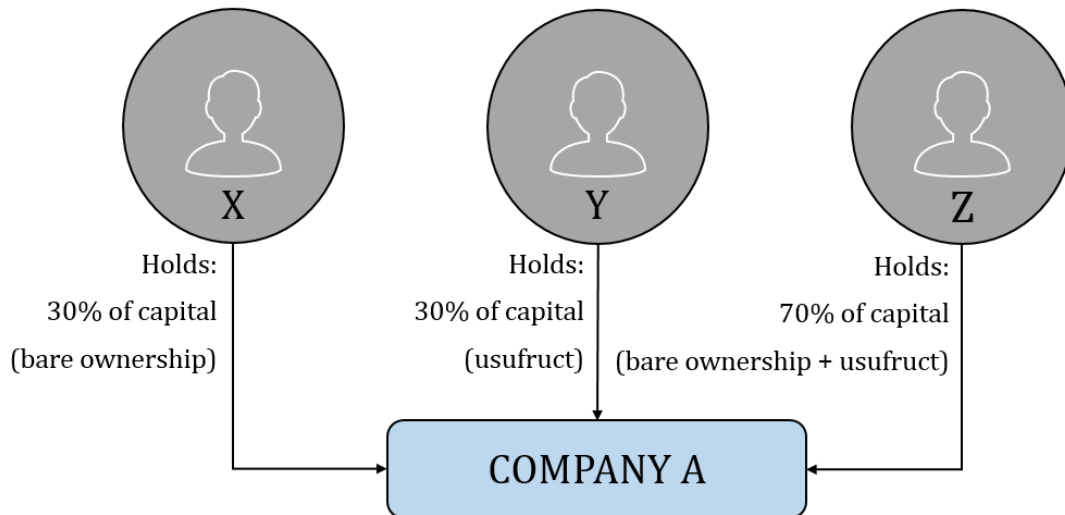


\* None of the “unit holders” has a holding, ownership rights or voting rights of over 25% or exercises by other means any type of control over the CIS

The beneficial owners of the CIS will be the beneficial owner of the management company and the beneficial owner of the depositary entity, which in this case are the persons X and Z. The person Y is also a beneficial owner of the CIS since this unit holder holds over 25% of the fund.



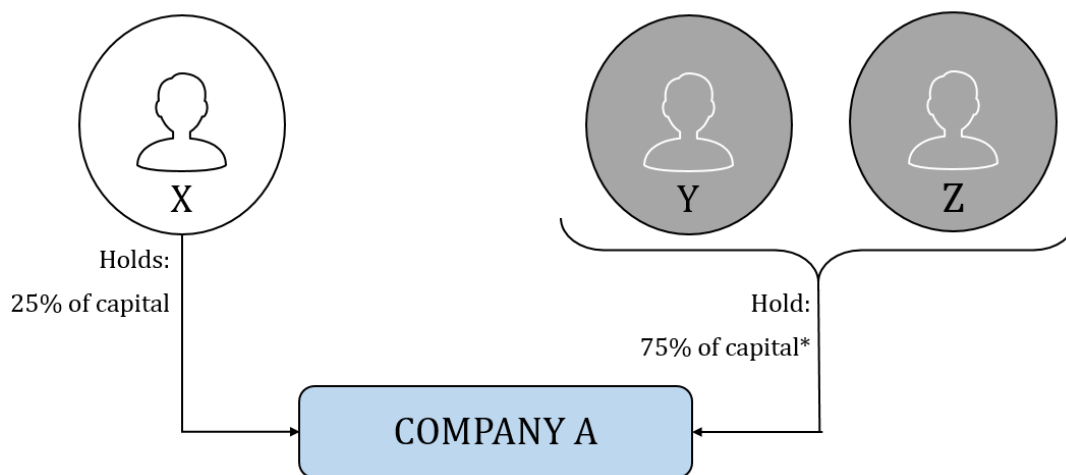
**Case 13 – Control by means of usufruct and bare ownership**



The beneficial owners of Company A are:

- the person **Z** since he holds over 25% of the share capital,
- the person **X**, in the event in which the holding of over 25% of the bare ownership of the holding in the share capital allows him to exercise control over the company (for example by means of voting rights relative to the application of profits),
- the person **Y** in the event that the holding of over 25% of the usufruct of the company allows him to exercise control over the company (for example by means of voting rights relative to the application of profits).

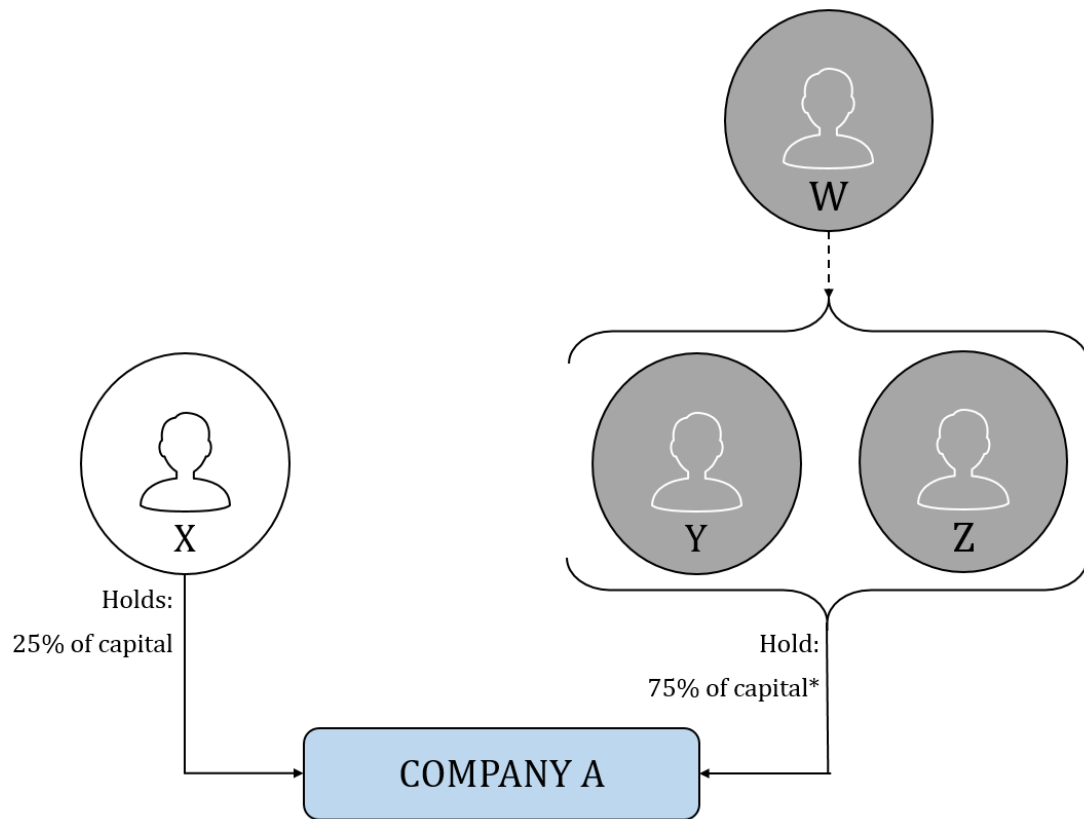
### Case 14 – Indivisible ownership (I)



\* This is indivisible ownership

Since this is a case of indivisible ownership, both the person Y and the person Z are considered beneficial owners of Company A inasmuch as the holding as a whole is more than the figure of 25% set by law.

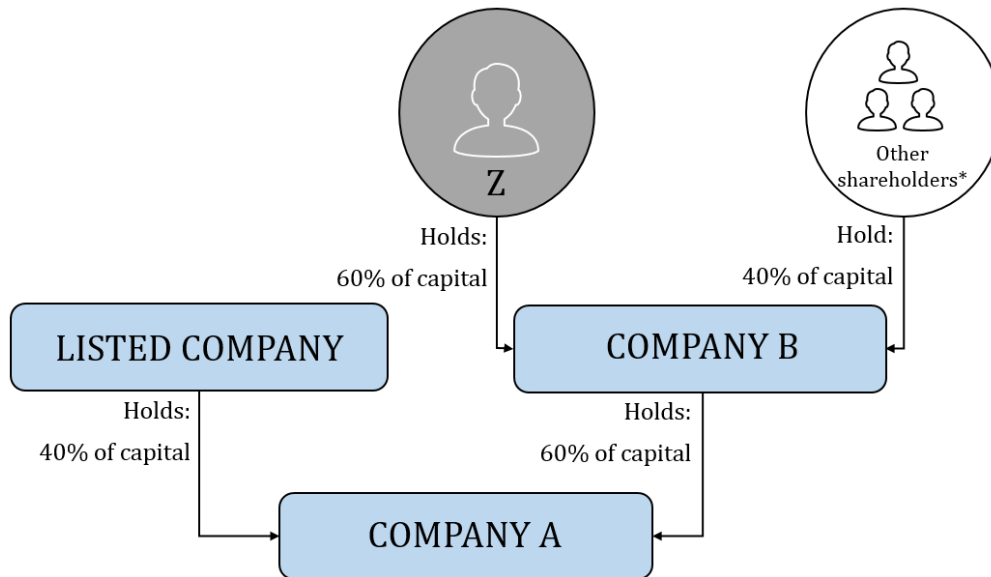
### Case 15 – Indivisible ownership (II)



\* This is indivisible ownership

The persons Y and Z are minors but even so they will be considered beneficial owners of Company A since their holding as a whole is more than the figure of 25% set by law. The person W will also be considered a beneficial owner since, in his capacity as legal representative, he will have the power of control of Company A through the voting rights which he will exercise until the persons Y and Z become of age. It would be the same case if the person W were to hold a power of attorney on the totality of the indivisible ownership.

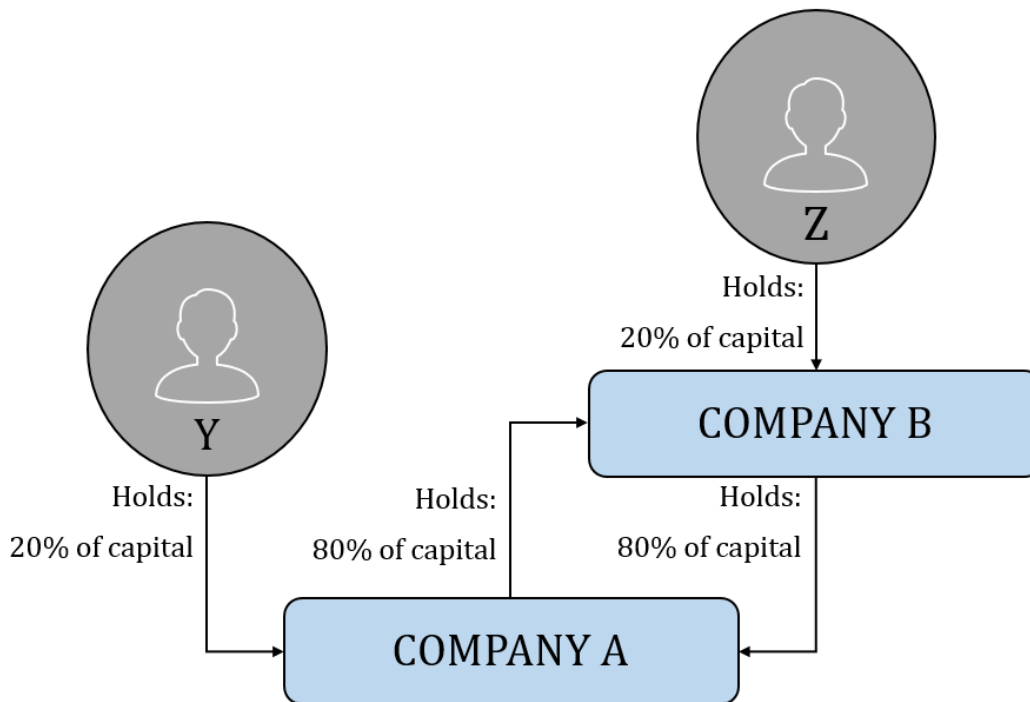
### Case 16 – Listed companies



\* None of the “other shareholders” has a holding in the share capital, ownership rights or voting rights of over 25% or exercises any type of control by other means.

The beneficial owner of Company A is the person Z since he has, indirectly, a holding of over 25% in the share capital ( $60\% \times 60\% = 36\%$ ).  
 With respect to the listed company, the identification of its shareholders or beneficial owners is not required as long as such company is subject to reporting obligations which ensure the suitable transparency of its beneficial owner.

### Case 17 – Direct and indirect closed-loop holding

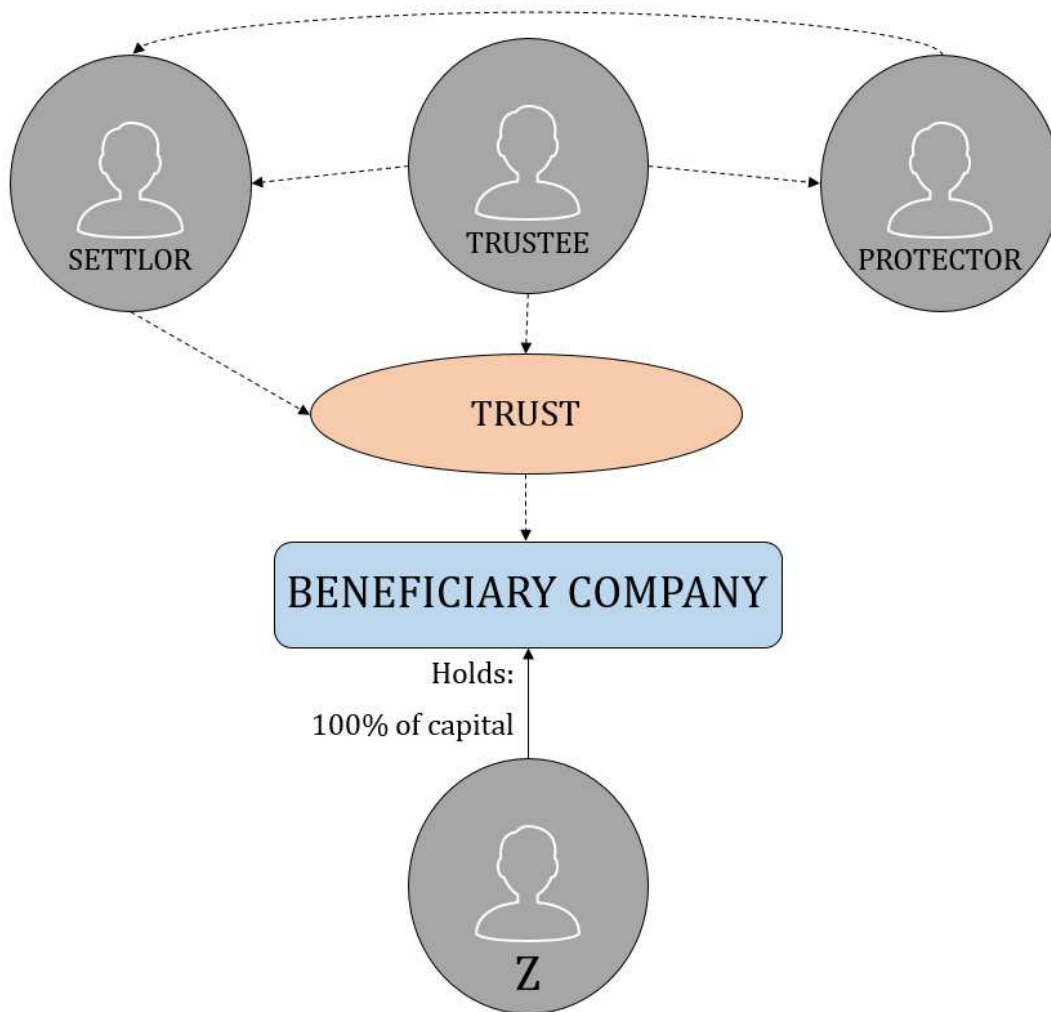


This is a structure in which each of the companies has an 80% holding in the share capital of the other. This closed loop in the holding of share capital allows both the person Y and the person Z to control both companies (A and B). With respect to Company A, for example:

- The holding of the person Y in the share capital is over 25% since, in addition to the 20% which he holds directly, it is necessary to add the 12.8% which he holds indirectly through Company B ( $20\% \times 80\% \times 80\% = 12.8\%$ ). Consequently, he is the beneficial owner of Company A.
- The holding of the person Z in the share capital is over 25%. Although he holds, indirectly, 16% ( $20\% \times 80\% = 16\%$ ), if we continue to add up the holding through the use of the closed-loop structure, in the second round we would come to the conclusion that he has, as a minimum, an additional indirect holding of 10.24% (calculated by multiplying  $20\% \times 80\% \times 80\% \times 80\% = 10.24\%$ ), which is sufficient to determine that the person Z is also a beneficial owner of Company A inasmuch as this holding, added to the initial holding of 16%, suffices to exceed the figure of 25%.

The calculation to determine the beneficial owner of Company B would be carried out in the same way, proceeding inversely.

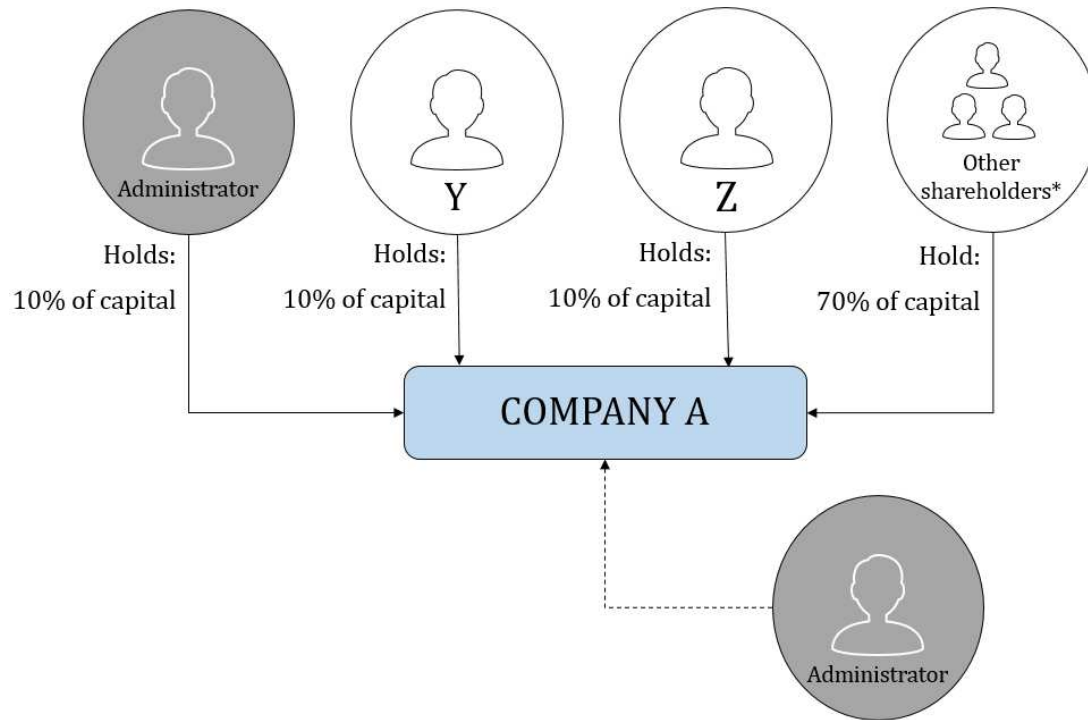
### Case 18 –Trusts and other similar legal structures



In accordance with Article 3.3,b) of *Law 14/2017*, in the case of a trust the beneficial owners are the settlor, the trustee, the protector and the beneficiaries.

In this case, the beneficiary of the trust is a company so the beneficial owner of the trust will also be the beneficial owner of the beneficiary company, that is to say, the person Z.

### Case 19 – Effective direction by other means

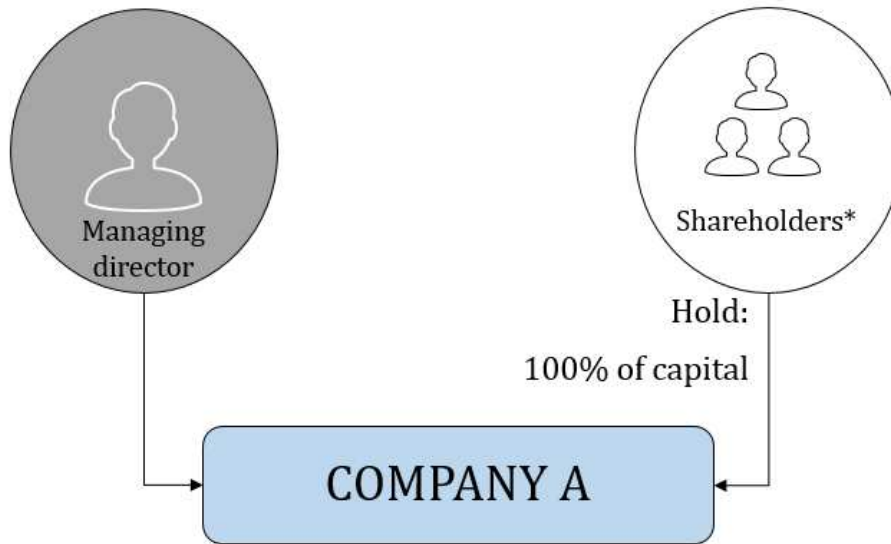


\* None of the “other shareholders” has a holding in the share capital, ownership rights or voting rights of over 25% or exercises any type of control by other means.

Since none of the shareholders has a holding in the share capital, ownership rights or voting rights of over 25%, the beneficial owners of Company A are its administrators inasmuch as they are the people who exercise the effective direction by other means.



**Case 20 – Natural person who acts as managing director or holds equivalent executive power of attorney**



\* None of the “other shareholders” has a holding in the share capital, ownership rights or voting rights of over 25% or exercises any type of control by other means.

Since none of the other shareholders has a holding in the share capital, ownership rights or voting rights of over 25% and no person has been identified who holds control by other means or who exercises the effective direction of the company, the beneficial owner of Company A is its managing director in accordance with Article 3.3,a) Point iii) of *Law 14/2017*.

### **2.3. Products or services with special consideration in relation to the obligations of identification and verification of the customer and the beneficial owner:**

#### *a) Comprehensive or omnibus accounts*

Financial reporting entities which maintain comprehensive or omnibus accounts do not need to apply the identification and verification measures required by Letters a and b of Paragraph 1 of Article 9 of *Law 14/2017* as long as they comply with the established requirements.<sup>11</sup>

Notwithstanding, the financial reporting entities should:

1. Obtain information relating to the territorial scope of the beneficial owners, the activities and the products associated with the account.
2. Obtain sufficient information to understand the activity of the account and to determine a risk profile of the entity which is the holder of the account. Accordingly, on the basis of public information, it should be determined whether the entity has been subject to administrative or judicial actions in the past for reasons relating to the prevention of money laundering or terrorist financing.
3. Assess whether the internal policies, procedures and/or controls of the holder entity allow a correct distinction of the assets of the account at any time and without delay.
4. Assess whether the policies, procedures and controls for the prevention of money laundering or terrorist financing are appropriate and sufficient.
5. Ensure that the holder entity of the account is in a position to identify and verify the identity of the beneficial owners of the assets deposited in the account.
6. Determine the risk level in matters of laundering of money or assets and terrorist financing which the comprehensive or omnibus account entails in accordance with the information obtained and analysed.
7. Establish a procedure by which the holder entity of the account should immediately inform the financial reporting entity of any intention to change materially the use of the comprehensive or omnibus account.<sup>12</sup>
8. Obtain the authorization of the top management before opening the account and inform its Board of Directors, at least every three months, of all the existing omnibus accounts, specifying those which have been newly opened during the reference period.
9. Make periodic reviews focusing on the risks of the holder entities of these omnibus accounts in order to ensure that the requirements established above are under compliance at all times.

<sup>11</sup> According to Article 7.4 of the Regulations on application of *Law 14/2017*.

<sup>12</sup> The financial reporting entity reserves the right to deny the use of the account in the face of a new business activity.

*b) Correspondent banking account:*

Financial reporting entities that establish correspondent banking relations with entities in other countries, on the basis of the established legislative requirements, should<sup>13</sup>:

1. Obtain sufficient information on the foreign correspondent entity to understand its activity. Accordingly, on the basis of public information, it should be determined whether such entity has been subject to administrative or judicial actions in the past for reasons relating to the prevention of money laundering or terrorist financing.
2. Assess the fitness and effectiveness of the controls against money laundering or terrorist financing applied by the foreign correspondent entity.
3. Obtain the authorization of the top management before establishing new correspondent banking relations.
4. Document the respective responsibilities of each of such entities.

The payable-through accounts in other financial centres should offer assurances that the foreign correspondent entity has verified the identity and has applied the due diligence measures to the customers which have direct access to such accounts. The Andorran correspondent entity may request that the necessary data be provided for the identification and verification of the customer and of the beneficial owner.

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<sup>13</sup> According to the provisions of Article 13 of *Law 14/2017*.

### 3. OBLIGATIONS LINKED TO THE DETERMINATION OF THE BENEFICIAL OWNER

Reporting entities should identify the beneficial owners of their customers in accordance with the provisions of law and the recommendations established in the preceding section of this guide. Moreover, it is recommendable for the reporting entity to make an analysis of the documentation in order to identify all the people who are beneficial owners of the company, and for the reporting entity to document and keep such analysis.

Likewise, all legal entities (Andorran companies and branches of foreign entities, associations and foundations) also have the obligation to identify their own beneficial owner or owners in accordance with the definition established by *Law 14/2017* and with due consideration to the case studies presented in the preceding section.

The beneficial owner having been determined, compliance should be made with the following obligations on the basis of such information:

#### 3.1. Obligations of reporting entities:

- 1) **Conservation:** the reporting entity should make a record of this analysis and keep all the documentation and information that have allowed it to reach the respective conclusion, for a minimum period of ten years as provided in Article 37 of *Law 14/2017*. The thoroughness and quantity of documentation should be adapted following a risk-based approach, but it may never entail an exemption from the duty of identifying and verifying the identity of the beneficial owner.
- 2) **Digitization:** in addition to keeping the documentation for the established period, financial reporting entities should duly digitize the documentation (Art. 37.5 of *Law 14/2017*). Moreover, it is recommendable for all non-financial reporting entities to also take measures in this respect.
- 3) **Follow-up:** within the framework of the application of measures for continuously following up the business relation, the reporting entity should make a review of its existing customers in order to corroborate that there have been no changes in the beneficial owner, with a periodicity established according to the assessment of risk level, when signs of a possible change of beneficial owner are detected in the customer's operation or when any significant event has occurred that justifies the review (for example, merger of companies, death of a shareholder, opening of a new account within the framework of the business relations with financial reporting entities, etc.), in all cases with a periodicity of not more than five years.<sup>14</sup>
- 4) **Suspicious transaction report:** If the reporting entity cannot identify and/or verify the beneficial owner of a relation with a customer or has doubts as to the truthfulness or fitness of the information obtained, the reporting entity should

<sup>14</sup> See Technical Communiqué CT-02/2019 issued by UIFAND on 8 March 2019.

refrain from establishing the business relation or from carrying out an occasional transaction. If it is a case of an existing customer, the respective relation should be terminated.

In both cases the reporting entity should assess, on the basis of the documentation and information available to it, whether it has observed sufficient signs or reasons to submit a suspicious transaction report to UIFAND<sup>15</sup>. A record should be made of the respective decision (as to whether or not to submit a suspicious transaction report), including all the documentation and information which justifies the decision.

- 5) **Establishment of policies and procedures:** reporting entities should set out in writing control policies and procedures which should include the application of due diligence measures with respect to the identification and procurement of the information and the verification of the identity of the customer and of the beneficial owner.<sup>16</sup> Reporting entities should ensure that they make sufficient efforts to identify the beneficial owners, applying the instructions set out in the foregoing points.

### 3.2. Obligations of legal entities:

- 1) **Record book of beneficial owners:** companies, associations and foundations should keep a record book of beneficial owners.

The information that is to be contained in each record book is provided in Article 21 bis (Paragraph 2) of *Law 20/2007, of 18 October, on public limited companies and limited liability companies*; Article 28 bis (Paragraph 2) of the *Qualified Law on Associations of 29 December 2000*; and Article 22 (Paragraph 5) of *Law 11/2008*. This information is as follows:

- forename and surnames of the beneficial owner.
- date of birth of the beneficial owner.
- nationality and country of residence of the beneficial owner.
- nature and scope of the real participation of the beneficial owner.

- 2) **Submission of the information to the Register:** in accordance with Articles 2, 4 and 6 of the *Regulations regulating the registration of and access to the information regarding beneficial owners in the record books of legal entities*, of 5 September 2018 (hereafter called the *Regulations on beneficial owners*), legal entities should submit the information in their record books of beneficial owners to the Registers of Companies, Associations and Foundations, as applicable.

<sup>15</sup> Article 10.4 of *Law 14/2017*.

<sup>16</sup> Article 17.1,b) and c) of the *Regulations on application of Law 14/2017*.

The submission of this information should be made within a time of not over fifteen working days from the date of grant of the public deed of incorporation of the respective company or from the date of the foundation charter of the association, or within a time of three working days from the date of the grant of the public deed of the foundation, as applicable.

Legal entities should use the respective forms which are included as annexes of the Regulations on beneficial owners in order to submit this information to the pertinent Register.

3) **Updating:** In accordance with Articles 3, 5 and 7 of the *Regulations on beneficial owners*, the information registered in the Registers should be duly updated. More specifically:

- companies should notify changes of beneficial owners within a time of fifteen working days from the date of the grant of the public deed relating to the resolution or transaction that gives rise to the respective change.
- associations should notify changes of beneficial owners within a time of fifteen working days from the date of the resolution or transaction made in Andorra which gives rise to the respective change.
- foundations should notify changes of beneficial owners within a maximum time of three working days from the grant of the public deed of the resolution or transaction which gives rise to the respective change.

Moreover, in the cases in which the changes of beneficial owners take place by virtue of resolutions or transactions which either do not require the grant of a public deed in Andorra or have not taken place in Andorra, the time for notification of the changes of beneficial owners to the pertinent Registers is two months from the date of the respective resolution or transaction which gives rise to the respective change

In the same way as is set out in the preceding point, legal entities should notify such changes in beneficial owners to the pertinent Registers by means of the respective forms which are included as annexes of the *Regulations on beneficial owners*.

4) **Conservation:** In accordance with the provisions of Article 19 of *Law 14/2017*, legal entities should not only submit the information on their beneficial owners to the respective Registers, but they should moreover duly keep such information.

#### **4. DOCUMENTATION FOR VERIFICATION OF THE BENEFICIAL OWNER:**

Within the framework of the application of due diligence measures <sup>17</sup> reporting entities should adopt, taking a risk-based approach, reasonable measures to verify the identity of the beneficial owners of their customers on the basis of updated documentation, data or information obtained from reliable independent sources.<sup>18</sup>

##### **4.1 - Verification of the beneficial owner in the case of natural-person customers:**

Reporting entities should verify the identity of customers and of beneficial owners by means of the display of or copy of an official identity document complete with a photograph, or else a copy of same authenticated by a notary with the respective apostille. In the case of customers represented by a third party, said representation should be verified by obtaining a copy of the respective power of attorney.

##### **4.2 - Verification of the beneficial owner in the case of customers who are legal entities, trusts or other entities:**

Reporting entities should verify the identity of customers and beneficial owners by means of the following documents, data or information:

- In order to verify the name or business name, the legal form and the existence of such customers, reporting entities may obtain official incorporation documents, information obtained from the respective public registers, legal documents evidencing shareholder resolutions or audited annual accounts, among others.

Some examples of the foregoing are:

- Deed of incorporation,
  - The most recent Annual Report,
  - Approved annual accounts deposited in a public register,
  - Certificate of effectiveness issued by the respective Register of Companies,
  - Record of incorporation.
- In order to verify the representational mandate of a person who acts on behalf of the legal entity, trust or other entity, reporting entities should obtain documents that prove the power of attorney for representation of the respective person in the form of general, special and/or judicial power of attorney issued by a notary. Moreover, they should identify and verify the identity of the respective attorney-in-fact.

<sup>17</sup> As provided by Letters a and b of Paragraph 1 of Article 9 of Law 14/2017.

<sup>18</sup> As provided by Article 7 of the Regulations on application of Law 14/2017.



- In order to verify the internal regime of the respective legal entities, trusts and other entities, reporting entities should obtain such documents as the deed of incorporation and the articles of association of a company. Likewise, they should identify the people who hold a directive position in the foregoing.
- In order to verify the existence of the registered office or the main premises or operation of the respective legal entity, trust or other entity, reporting entities should obtain their address, which should be verified through an information agency or by other means.

#### **Jurisdictions with deficient transparency:**

In the case of legal entities, trusts and other entities constituted in countries known to have deficient transparency in relation to the information on the beneficial owners of their legal entities and structures (that is to say, *if they allow nominee directors, bearer shares, etc.*), reporting entities should obtain additional information in order to verify the data obtained by means of the respective public registers of said jurisdictions.

Accordingly, reporting entities should ensure that they obtain fitting information (share certificates, Agreement for management of a company by Nominee Officers and indemnification of the Nominees, Memorandum and Articles of Association, etc.) according to the procedures for constituting entities of the respective jurisdiction, in order to ensure the correct identification of the beneficial owners

## 5. COMMON ERRORS:

On many occasions the term "beneficial owner" may be misinterpreted or misused. The most significant cases involve the following:

- ✓ **Considering a legal entity to be a beneficial owner**
- ✓ **Confusing the beneficial owner with the customer:** these two figures may coincide in one same person but, just as is set out in this document, they may be different persons. In effect, a customer may be a legal entity or a structure without legal personality, while the beneficial owner will always be one or more natural persons.
- ✓ **Confusing the beneficial owner with a person who acts on behalf of a third party:** although it may be a question of a person who enters into relations with the reporting entity, such person only obeys orders or follows a mandate, has a power of attorney or is the legal representative and, consequently, such person does not necessarily exercise control and merely carries out a transaction or activity on behalf of the beneficial owner.

For example, the person in the name of whom a bank account is opened is not necessarily the person who ultimately exercises the control of such account. The reporting entity should determine whether its customer is acting on behalf of some other person or whether he is really the beneficial owner. This inquiry may range from directly asking the customer to carrying out research in open sources and analysing the incongruences between the stated activity and the activity carried out, which may lead to suspicions that the beneficial owner is not the customer. In such cases the reporting entity should consider whether to submit a suspicious transaction report to UIFAND.

- ✓ **Confusing the beneficial owner with the payee of a funds transfer:** in the case of transfers, the payee is the final recipient person of funds according to the definition set out in Article 29 on definitions of *Law 14/2017* and he may differ from the real beneficial owner.
- ✓ **Confusing the beneficial owner with the beneficiary of life insurance policy:** the beneficial owner is the natural person or legal entity designated by the insured (the beneficiary of the policy) to receive the guaranteed benefits (consideration) on the maturity of the contract or in the event in which the loss were to occur.

Accordingly, the insured is the natural person or legal entity that contracts the insurance policy, but he does not necessarily coincide with the beneficial owner.

- ✓ **Confusing the beneficial owner with the beneficiary of a social consideration through foundations:** non-profit organizations (hereafter called NPOs) apply their funds to charity and on many occasions they do so through considerations to persons or categories of persons pre-established in their founding document. Such final recipient persons of the funds of the NPO are the beneficiaries of the respective aid but, except in the case of foundations, they are not considered beneficial owners since they do not have control of the NPO. The persons who have control and, consequently, who are the beneficial owners of an NPO, on the basis of Article 6.4 of the Regulations on application of Law 14/2017, are the persons who exercise the control of or a significant influence on the assets of the organization, such as the members of a governing body or committee, the president, the members of the board and the treasurer.
  
- ✓ **Basing oneself solely on a self-declaration:** the reporting entity may request its customer to submit a written, signed and sworn declaration as to who the beneficial owner is and to attach the personal details of same. Notwithstanding, such declaration does not exempt the reporting entity from applying the respective due diligence measures in each case in order to determine the real beneficial owner.