

The Beneficial Ownership Act 2017

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ISLE OF MAN
FINANCIAL SERVICES AUTHORITY

Lught-Reill Shirveishyn Argidoil Ellan Vannin

What we will cover:

- Guidance issued by the Isle of Man Financial Supervision (“the Authority”)
- Examples
- Practical oversight by the Authority



Guidance issued by the Authority

Section 4 (4) allows the Authority to issue guidance about the meaning of:

- Beneficial ownership
- Ownership
- Control
- Legal ownership
- Registrable beneficial ownership



Beneficial ownership

- The definition of beneficial owner is set out at section 4(1) of the Act and provides that “**beneficial owner**” means a natural person who ultimately owns or controls a legal entity to which the Act applies, in whole or in part, through direct or indirect ownership or control of shares or voting rights or other ownership interest in that entity, or who exercises control via other means, and “**beneficial ownership**” is to be construed accordingly.
- Intentionally broad as to capture all of those individuals who hold any defined interest or are able to exercise control over the entity.
- Applies regardless of interest being held solely, jointly or severally.



Ownership

The term “ownership” is not defined in the Act, but should be construed as including beneficial ownership and/or legal ownership of the entity concerned.



Control

The term “control” is also not defined in the Act, but again should be construed broadly, as including all those individuals who, by whatever means, hold a right in respect of or are able to exercise significant influence over the decision-making process of the entity. A person may hold such a right as a result of a variety of circumstances including the provisions of the entity’s constitution, the rights attached to the shares or securities which the person holds, a shareholders agreement, some other agreement or otherwise. Whether a person holds such a right is a matter of fact and law, which must be determined in the case of each entity.



Control - Exclusions

Person providing advice of professional services:

- Lawyer
- Investment advisor
- Tax advisor

Person deals with legal entity as a third party under commercial or financial agreement:

- Suppliers
- Customers

Person exercising function under an enactment:

- Regulator
- Liquidator or receiver



Control - Exclusions cont....

Person is a Director of a company, including:

- Managing Director
- Sole Director
- Non-executive/executive Director who holds a casting vote.

An employee acting in the course of their employment and as nominee for their employer, including an employee, Director or CEO of a third party (such as a Corporate Director), which has significant control over the legal entity.

For further examples see the guidance issued by the Authority.



Legal ownership

The term “**legal owner**” is defined in section 3 of the Act as meaning a natural or legal “person who directly owns or controls shares or voting rights or other ownership interest in that entity or who exercises direct control via other means whether or not that person is also the beneficial owner of that interest”. This includes corporate shareholders and nominee shareholders holding shares on behalf of others.



Registrable beneficial ownership

The term “**registrable beneficial owner**” is defined in section 3 of the Act as meaning “a beneficial owner who owns or controls more than 25% of the beneficial ownership of a legal entity to which the Act applies and “**registrable beneficial ownership**” is to be construed accordingly”.

It is important to note that a registrable beneficial owner can only be a natural person whose ownership interest or control can be quantified at more than 25%, so in practice a registrable beneficial owner can only be a natural person who exercises ownership or control by direct or indirect shareholding.



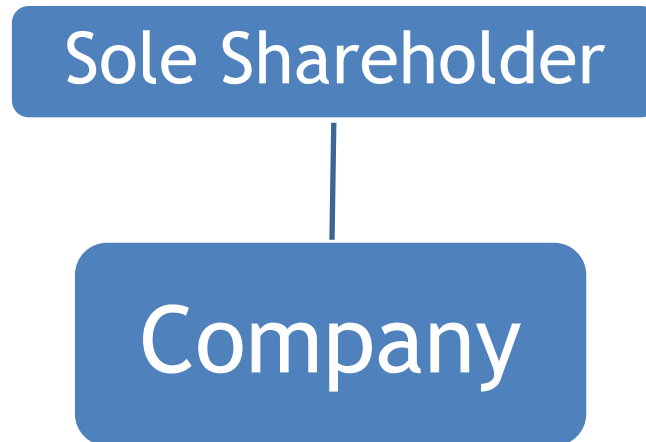
Registrable beneficial ownership- Exclusions

This will exclude such individuals as beneficiaries of a discretionary trust which itself owns an interest in the legal entity. It will also exclude settlors of a trust (unless the trust is revocable). It may also exclude protectors, depending on whether the powers held confer quantifiable control of over 25%.



Example 1

Company has one shareholder who is a natural person, who holds the share for him or herself.

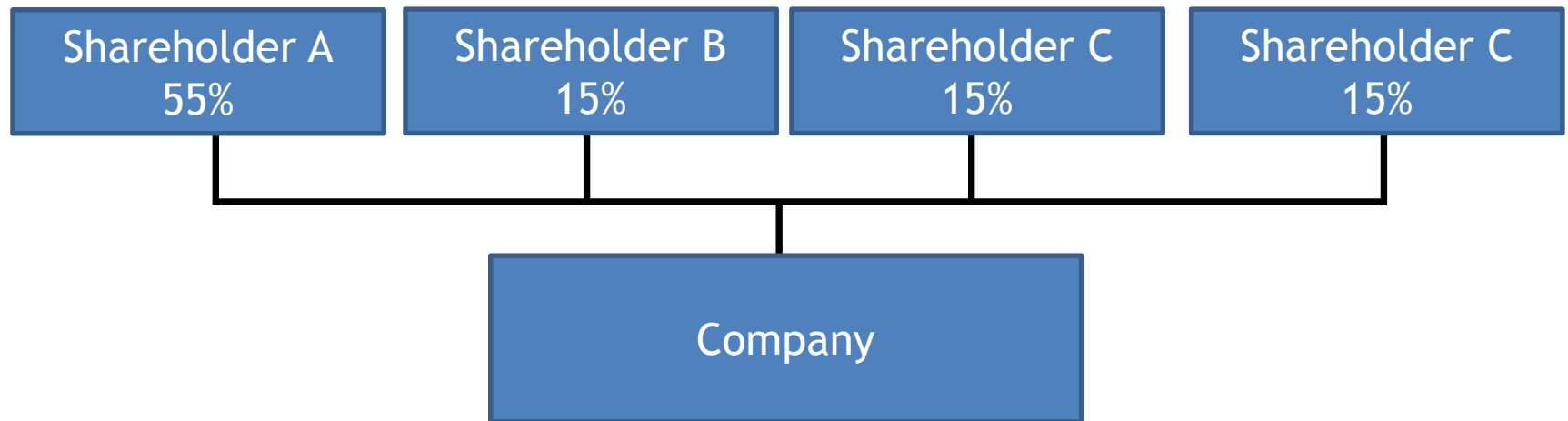


That person is therefore the legal owner, beneficial owner and registrable beneficial owner and controller.



Example 2

Company has several shareholders who are natural persons, who hold the shares for themselves.

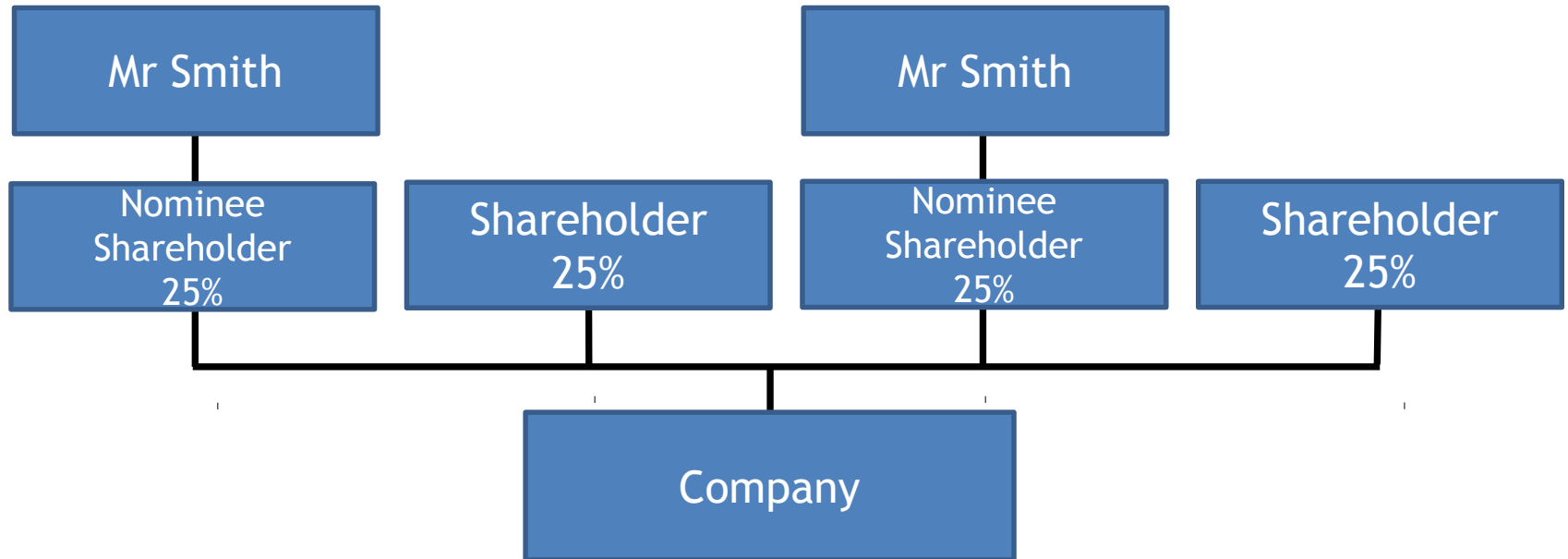


They are all legal owners and beneficial owners, however only the person with 55% (over 25%) is also a registrable beneficial owner and controller.



Example 3

Company has several shareholders. 2 are natural persons and 2 nominee shareholders.

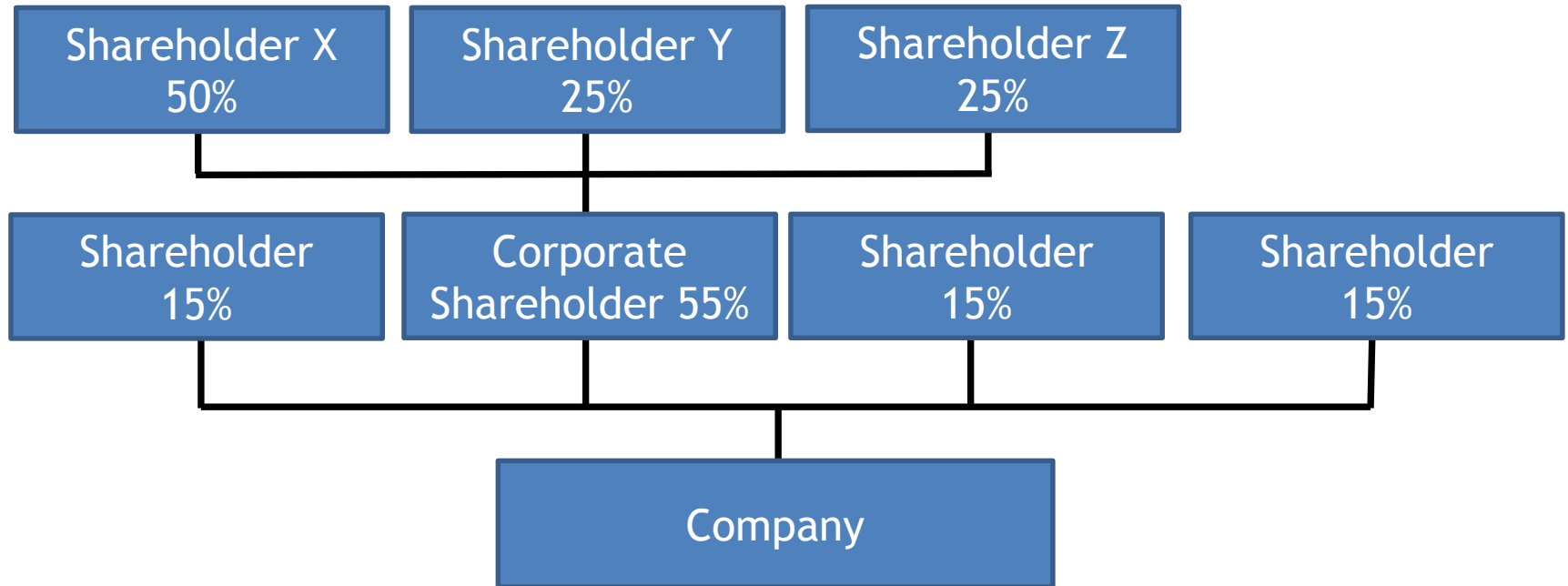


Mr Smith is the registrable beneficial owner because his total shareholding is 50%, despite being held by 2 nominee shareholders.



Example 4

Company has several shareholders. 3 are natural persons and 1 corporate shareholder.

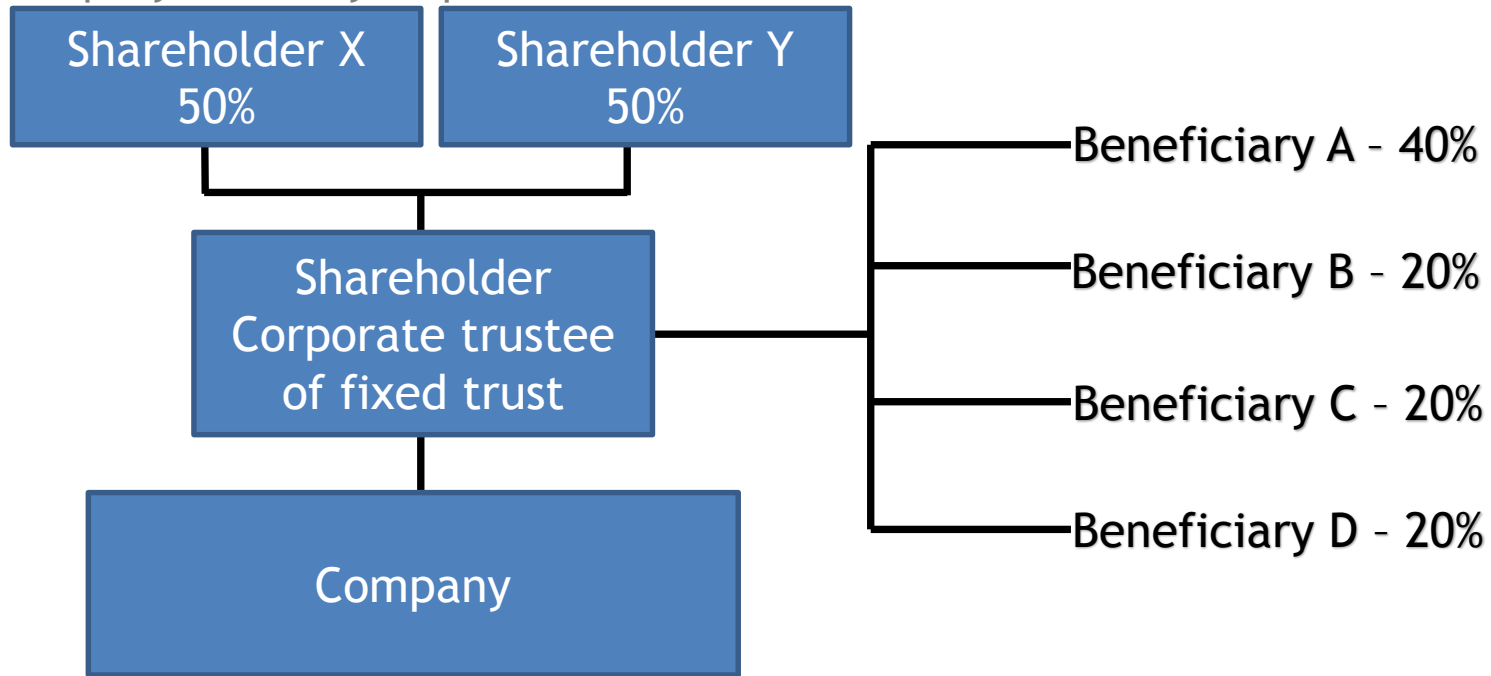


Shareholder X is the only registrable beneficial owner because his total shareholding is 27.5% (50% of the corporate shareholder).



Example 5

Company owned by corporate trustee. 4 beneficiaries with fixed interest.

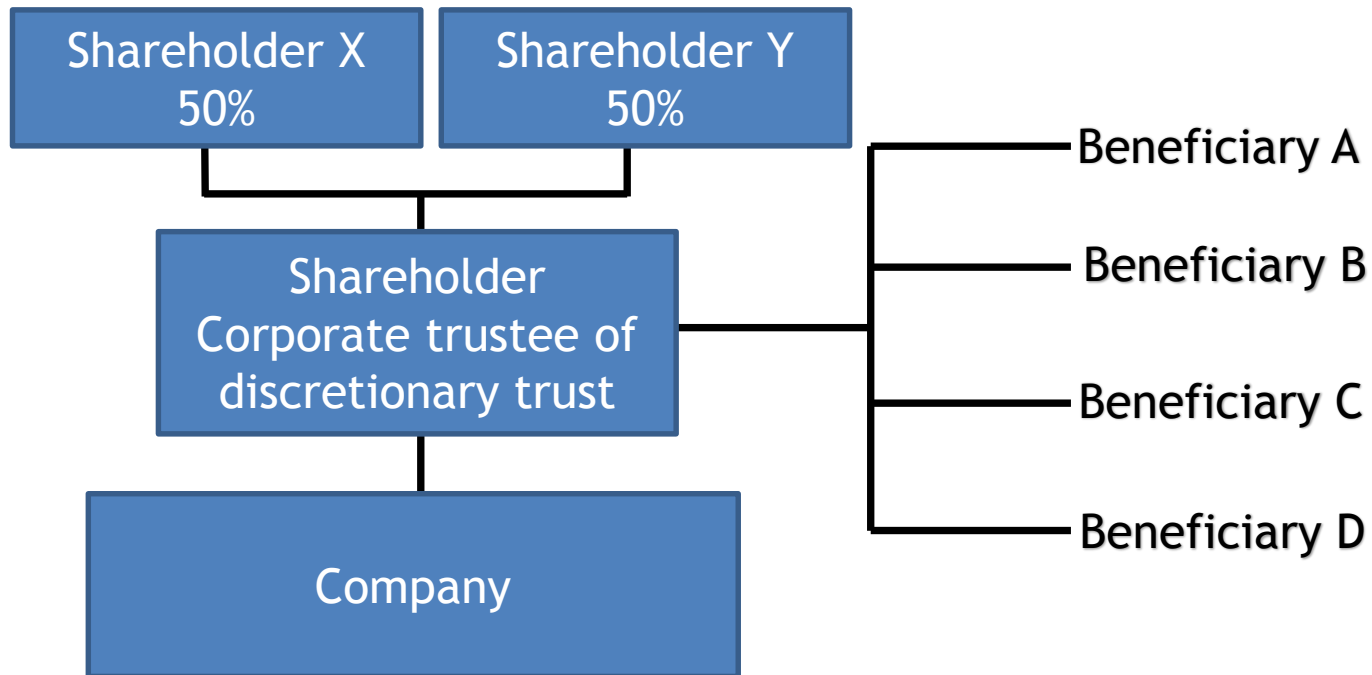


Beneficiary A is a registrable beneficial owner as are shareholders X and Y (as controllers).



Example 6

Company owned by corporate trustee. 4 discretionary beneficiaries.

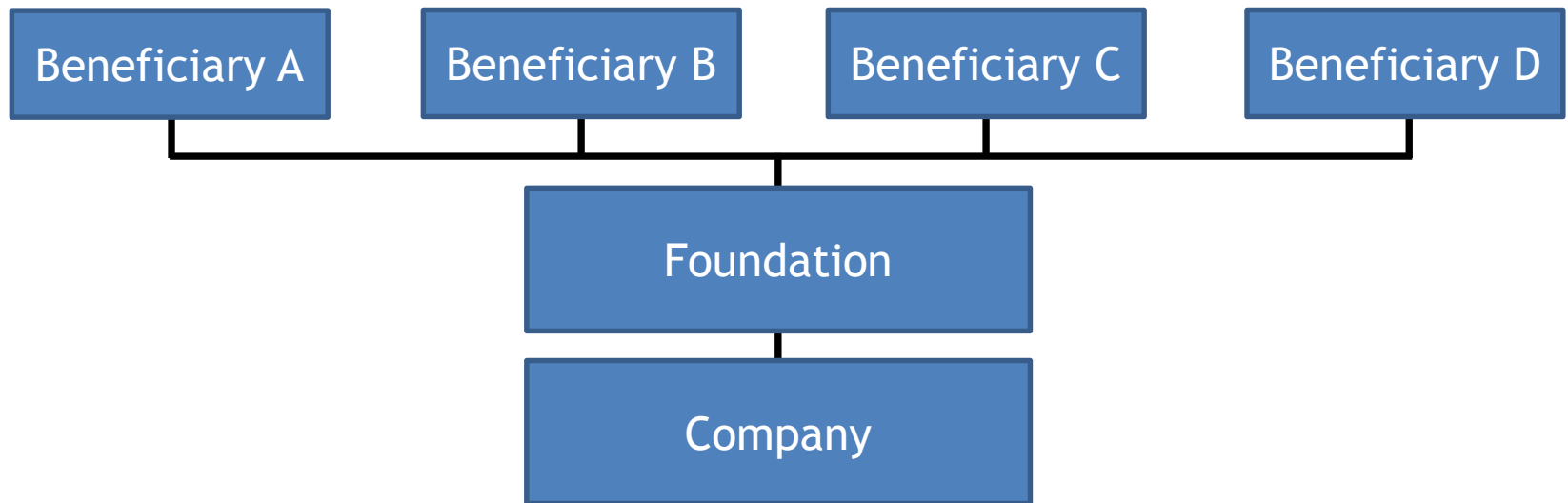


Only shareholders X and Y are registrable beneficial owners (as controllers).



Example 7

Foundation has beneficiaries that only benefit at the discretion of the foundation council. The foundation holds more than 25% interest in the legal entity.



No beneficiary is a beneficial owner or registrable beneficial owner. The council members, and any other founder or dedicator who retains control should be considered the registrable beneficial owner (as controllers).



Practical oversight by the Authority

- Visits to begin in July/August 2017.
- Initial period of education and learning.
- Oversight powers utilised under Section 30 and Schedule 1 of the Act.
- Visits intended to have a minimal impact on businesses.
- Should be shorter than other Supervisory visits by the Authority.



Practical oversight by the Authority

- Advanced notice will be given by the Authority to the nominated officer (or relevant person). Date of visit within 4 weeks of initial contact.
- Relevant material will be checked to ascertain the information on the register is correct and the Act is being complied with by all parties.
- Nominated officer/CSP will be provided with a copy of a record of inspection.
- Where issues are identified the nominated officer will be provided with a report which details “failures”, action to be taken and a deadline for that action.



Questions?

