Guidelines for
Beneficial Owner

Bangladesh Financial Intelligence Unit

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I. Legal Authority

1. This guideline is issued pursuant to section 25 of Money Laundering Prevention Act, 2012 and section 3.3(3) of BFIU circular No-19/2017.

II. Introduction

2. It is crucial to know who the beneficial owner(s) are so that one can make appropriate decisions about the level of money laundering and terrorist financing risk associated with customer. Some criminal enterprises deliberately try to hide the true owners and controllers of their business and its assets. Sometimes identifying and verifying who customers' beneficial owner(s) are can be difficult to do. This could be because the ownership structure is complex but legitimate. However, someone should remain alert to the possibility that it may be because there is an attempt to conceal the beneficial owner(s).

3. This guideline on Beneficial Ownership applies primarily to customers who are legal persons or arrangements. The guideline provides information on how to determine beneficial ownership by identifying the individual(s) that own more than 20 percent of ownership, those with effective control on a customer, and persons on whose behalf a transaction is conducted.

4. Acting on behalf of a customer is not part of the beneficial ownership definition. However, the reporting entities should identify and verify those persons. Information on 'acting on behalf' is included to help reporting entities understand the distinction between a beneficial owner and a person acting on behalf of a customer.

5. A risk-based approach will allow some flexibility in the measures to verify the identity of the customer's beneficial owners. Generally, simplified customer due diligence relates to customers that are already subject to transparency and public disclosure. Thus, simplified customer due diligence, which in effect means there is no requirement to check beneficial ownership.

6. Examples provided in this guideline are suggestions to assist meeting obligations but are not intended as exhaustive examples. After reading this guideline, if still do not understand any of the obligations one should seek legal advice, or contact BFIU for further clarification.

III. Who is a beneficial owner?[1]

7. The definition of beneficial owner means the individual who –

a) has effective control of a customer; or
b) owns a prescribed threshold, 20% as per Bangladeshi regulation of the company or legal arrangements.

8. Identifying the beneficial ownership of a customer one must apply three elements. Any one element or any combination of these three elements satisfies beneficial ownership. These elements are:

a. who owns 20 or more percent of a company or legal arrangements
b. who has effective control of the customer;
c. the person on whose behalf a transaction is conducted

9. Effective control, ownership and persons on whose behalf a transaction is conducted are not mutually exclusive. The beneficial owner must be a natural person and cannot be a company, an organization or a legal arrangement.

IV. Why is it important to identify the beneficial owner?

10. Corporate entities such as companies, trusts, foundations, partnerships, and other types of legal persons and arrangements conduct a wide variety of commercial and entrepreneurial activities. However, despite the essential and legitimate role that corporate entities play in the economy, under certain conditions, they have been misused for illicit purposes, including money laundering (ML), bribery and corruption, insider dealings, tax fraud, terrorist financing (TF), and other unlawful activities. This is because, for criminals trying to circumvent anti-money laundering (AML) and countering the financing of terrorism (CFT) measures, corporate entities provide an attractive avenue to disguise the ownership and hide the illicit origin.

11. Various studies conducted by Financial Action Task Force (FATF), World Bank, United Nations Office on Drugs and Crime (UNODC) have explored the misuse of corporate entities for illicit purposes, including for ML/TF. In general, the lack of adequate, accurate and timely beneficial ownership information facilitates ML/TF by disguising:

a) The identity of known or suspected criminals,
b) The true purpose of an account or property held by a corporate entities, and/or
c) The source or use of funds or property associated with a corporate entity.

V. Ways in which beneficial ownership information can be hidden/obscured

12. Beneficial ownership information can be obscured through various ways, including but not limited to;

a) Use of shell companies (which can be established with various forms of ownership structure), especially in cases where there is foreign ownership, which is spread across jurisdictions,

[1] As per 2(4) of MLPR 2019 beneficial owner means the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercises ultimate effective control over a legal person or arrangement or holds 20% or more share of a company. Here "ultimately owns or controls" and "ultimate effective controls" refers to situation in which ownership/control is exercised through a chain of ownership or by means of control other than direct control.

b) Complex ownership and control structures involving many layers of ownership, sometimes in the name of other legal persons and sometimes using a chain of ownership that is spread across several jurisdictions,

c) Bearer shares and bearer share warrants,

d) Use of legal persons as directors,

e) Formal nominee shareholders and directors where the identity of the nominator is undisclosed,

f) Informal nominee shareholders and directors, such as close associates and family,

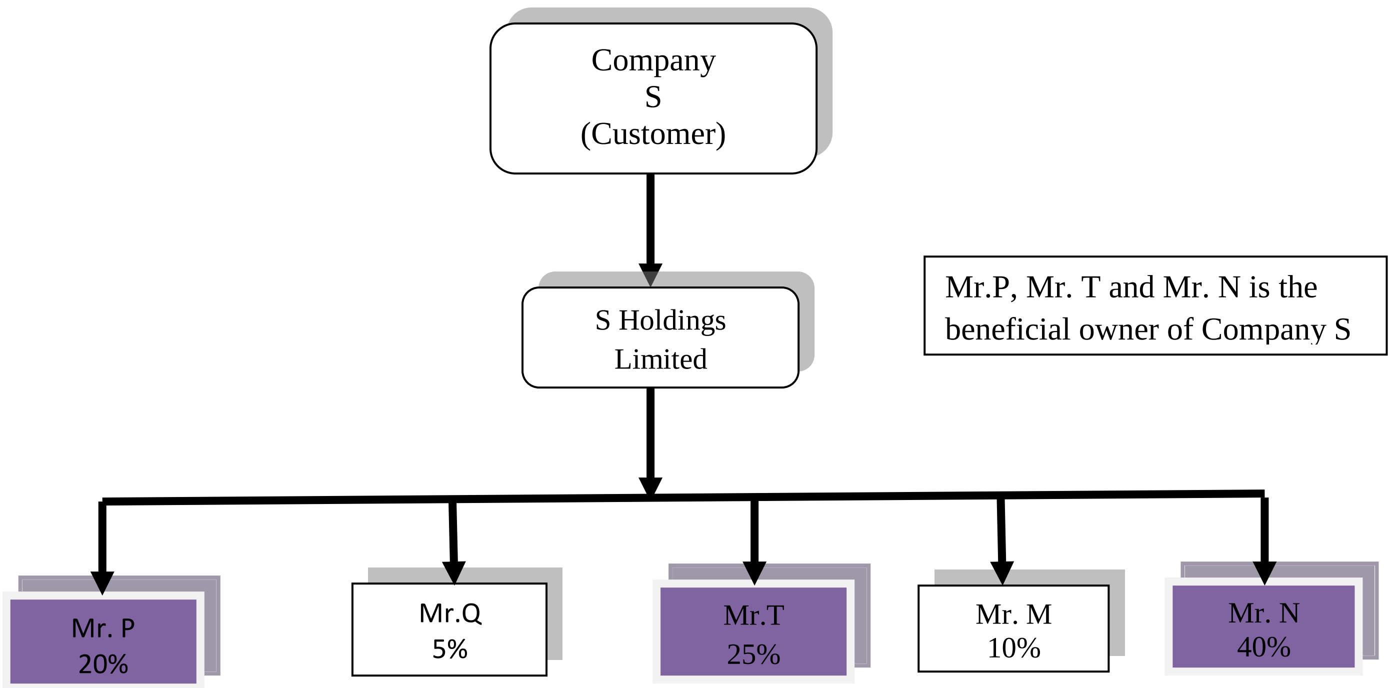
g) Trust and other legal arrangements, which enable a separation of legal ownership and beneficial ownership of assets,

h) Use of intermediaries in forming legal persons[2], including professional intermediaries such as accountants, lawyers, notaries, trust and company service providers.

VI. Ownership

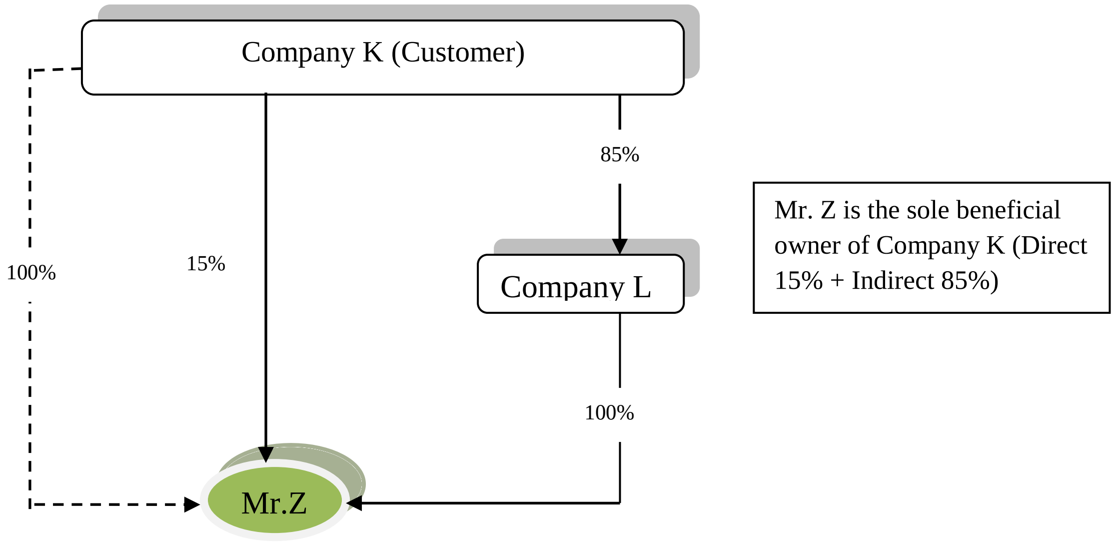
13. The reporting entities should understand the ownership and control structure of the customers. The threshold for controlling interest owns 20% or more of the customer. The ownership can be simple and complex in nature. Few examples are as follows:

a) Simple ownership

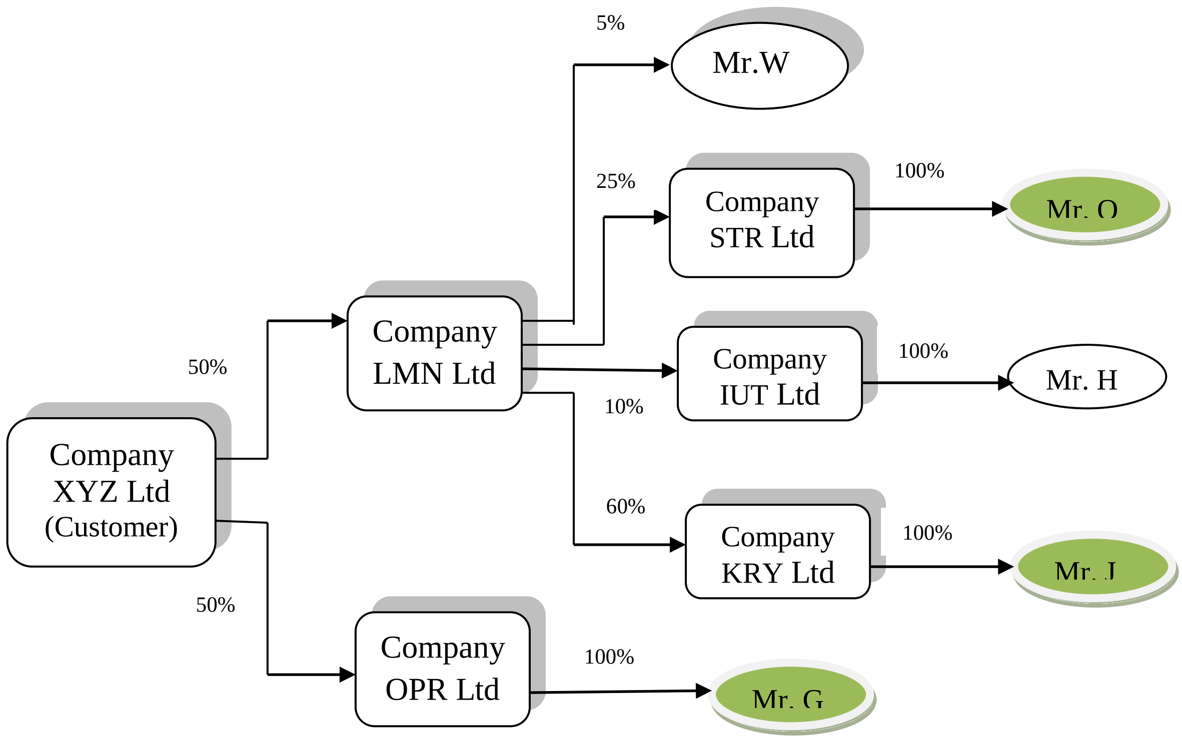


[2] As per MLPR 2019 Legal person means any entity other than natural persons that can establish a permanent customer relationship with a financial institution or otherwise own property. This can include companies, bodies corporate, foundation, installations, partnerships or associations and other relevantly similar entities,

b) Simple (Direct and Indirect) ownership



c) Complex (Multi level Indirect) ownership



Mr. O, Mr. G and Mr. J are the beneficial owners of Company XYZ through indirect ownership.

14. An individual who has a control over a portion of equity directly or via family relationship or via nominee or close associate (whether disclosed or undisclosed) can be considered as a beneficial owner.

15. Ownership can be spread over a large number of individuals with no individual owning more than 20 percent. For example, a co-operative that has a large number of members is likely to have no individual(s) owning more than 20 percent. In such instance, the effective control element is more likely to determine the beneficial owner(s).

VII. Effective Control

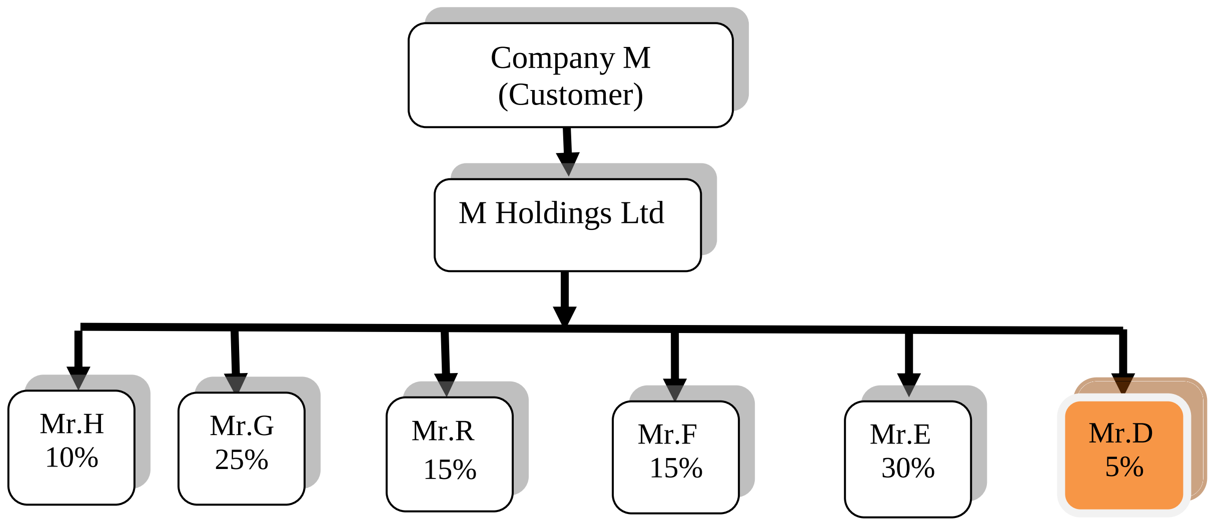
16. It is essential to understand the customer's governance structure as an aid in identifying those persons that exercise effective control over the customer. In deciding the effective controller(s) in relation to a customer, reporting entities should consider:

   a. a person who can hire or terminate a member of senior level management;
   b. a person who can appoint or dismiss Directors;
   c. Senior managers who have control over daily/regular operations of the person/arrangement (e.g. a CEO, CFO or a Managing Director).

17. Natural persons may also control the legal person through other means such as:

   a) Personal connections to persons in positions such as Executive Directors/ CEOs/ Managing Director or that possess ownership;
   b) Significant authority over a legal person's financial relationships (including with financial institutions that hold accounts on behalf of a legal person) and the ongoing financial affairs of the legal person;
   c) Control without ownership by participating in the financing of the enterprise, or because of close family relationships, historical or contractual associations, or if a company defaults on certain payments;
   d) Use, enjoyment or benefiting from the assets owned by the legal person even if control is never exercised.

Effective Control



Mr. D is the managing director of the EFG Bank, which is the main financing source of the company M. In such a situation even if Mr. D holds less than twenty percent (20%) of Company M, he has effective control over the company M through EFG Bank and should be considered as a beneficial owner through effective control.

18. When a reporting entity identifies a customer, it should identify the beneficial owner(s) and take all reasonable steps to verify his identity:

(a) Where the client is **a company**, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has/have a controlling ownership interest or who exercises control through other means.

(b) Where the client is **a partnership firm**, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has/have ownership of/entitlement to 20 or more percent of capital or profits of the partnership.

(c) Where the client is **an unincorporated association or body** of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has/have ownership of/entitlement to 20 or more of the property or capital or profits of the unincorporated association or body of individuals.

(d) Where no natural person is identified under (a), (b) or (c) above, the beneficial owner is the relevant natural person who holds the position of senior managing official.

(e) Where the client or the owner of the controlling interest is **a company listed** on a stock exchange, or is a subsidiary of such a company, it is not necessary to identify and verify the identity of any shareholder or beneficial owner of such companies.

19. The beneficial owner must also be noted in the case of **non-profit associations**, although earning profit is not the goal of any of them. According to the definition of beneficial owner, the person(s) under whose control the company is opening are indicated in such a case. Usually, they are member of the management board. Exceptions are possible, e.g. if the founders or members of a non-profit association are legal entities, the beneficial owners are defined in the same way as in the case of companies. The same principle applies here, i.e. noting the chairman of the management board is enough is enough if the management board has more than four members. If a person is noted as the beneficial owner due to their position as a member of a managing body, this does not mean that they receive monetary income from the company or that the company operates in their personal interests.

20. In the event of a limited partnership fund, **civil law partnership, community or other association** of persons that does not have the status of a legal entity, the beneficial owner is the natural person who ultimately controls the association via direct or indirect ownership or via other means and who is the association's:

- founder or person who has handed over property to the asset pool;
- trustee or manager or possessor of the property;
- person ensuring and controlling the preservation of property, where such person has been appointed, or
- the beneficiary, or where the beneficiary or beneficiaries have yet to be determined, the class of persons in whose main interest such association is set up or operates

In the case of **a foundation**, the person noted as the beneficial owner is the person who may make payouts from the assets of the foundation, where such person(s) have been specified by name in the articles of association of the foundation. If such persons have not been specified by name in the articles of association, the members of the management board and supervisory board are noted as the beneficial owners.

VIII. Person on whose behalf a transaction is conducted

21. Another part of the definition of beneficial owner is a person on whose behalf a transaction is conducted. This may be the individual who is an underlying client of the customer. This concept is important when considering the relationship between managing intermediaries and their underlying clients. There are various scenarios, many of which are complicated.

22. An example is, if a reporting entity knows that someone (person A) is conducting an occasional transaction on behalf of another person (person B), then person A and person B should be identified and verified along with any other beneficial owners.

IX. Beneficial owner of legal arrangements

23. Legal arrangement includes an express trust, a fiduciary account or a nominee.

24. All trusts have the common characteristic of causing a separation between legal ownership and beneficial ownership. Legal ownership always rests with the trustee. Beneficial ownership can rest with the author of trust, trustees or beneficiaries, jointly or individually.

25. Reporting entities should identify and take reasonable measures to verify information about a trust, including, the identities of the author of the trust, the trustees, the beneficiary or class of beneficiaries and any other natural person exercising ultimate effective control over the trust (including those who control through the chain of control or ownership).

26. Reporting entities are required to obtain trust documents (e.g. deed of trust, instrument of trust, trust declaration, etc.) and the provisions of the trust document must be fully understood within the context of the laws of the governing jurisdiction. The Reporting entities should take reasonable measures to verify trust document through independent means (e.g. Registry of Trust, Notary)

Example: Person 'B' is the author of a trust for the benefit of his child. The trustee seeks to establish a relationship with a financial institution to help manage the assets of the trust. Even though the trustee is the controller of the assets of the trust he may not be the ultimate beneficial owner and the main focus of CDD should include person 'B'" as well.

X. Applying a risk-based approach

27. A risk-based approach refers how the beneficial ownership of a customer will be verified. Identifying beneficial ownership of a customer is an obligation that must be satisfied, regardless of the level of risk associated with that customer. However, when deciding what reasonable steps should be taken to satisfy that the customer's identity and information is correct, one may vary approach depending on the risk assessment of the customer. The process for assessing customer risk and deciding how to identify and verify beneficial ownership should be set out into the AML/CFT programme.

28. One should apply enhanced customer due diligence and make a suspicious transaction report to the Bangladesh Financial Intelligence Unit (BFIU) where there are reasonable grounds for suspicion of money laundering or terrorist financing,

29. A risk-based approach allows some flexibility in obligation to use data, documents or information obtained from a reliable and independent source to verify the identity of the beneficial owner(s) of customer. Here is an example of a local business where the customer could be a sole trader or a registered company. The approach should be:

Example: A local business

Stage one-gather information

Identify the customer/person seeking to conduct a transaction. Establish the purpose of the relationship. Establish the nature and purpose of their business, and the ownership structure. Ask them for documents and information relating to their expected ongoing/future levels of business. Obtain sufficient information to determine whether they will be subject to enhanced customer due diligence, and then establish their source of funds or wealth/income if enhanced customer due diligence is required. (It is good practice to retain all copies of documents and notes).

Stage two-identify beneficial owners

Identify the beneficial owners (and those with authority to act on behalf of the customer). The appropriate level of customer due diligence (standard, simplified, enhanced) that should apply may become more apparent at the end of stage two – so one may have to return to the customer for further information and documents depending on the level of risk. Take reasonable steps to ensure the information given is correct.

Stage three

Apply a risk based approach to verifying the identity of the beneficial owners.

30. The risk assessment will set out what to do to verify different types of customers. For example, a well known local family business wants to become customer. Reporting entities must first identify both the customer and the beneficial owner(s) and obtain standard identity documentation such as NID or passports. The risk assessment may lead to treat this customer as lower risk. One may decide that a check in the local business directories, combined with local knowledge, is reasonable steps. If the customer is higher risk, one may apply enhanced customer due diligence, in which case one must obtain information relating to the source of funds or wealth of the customer. Verification of the identity of the beneficial owner(s) is the last step in the process. To verify the beneficial owner(s) appropriate documentations must be obtained so that it is known who the beneficial owner is.

31. It is appropriate for beneficial ownership identification process to include measures to ensure that make consistent decisions about customers. This process should be in line with risk assessment. If the customer is associated with higher risk factors, internal controls in AML/CFT programme should set out when to escalate decisions to a higher level. For example: sign off for new business; ending existing business; or imposing additional controls for risk management.

XI. Customer Due Diligence

32. The obligation is to determine the individual(s) who are the beneficial owner(s). A beneficial owner is an individual (a natural person). Therefore the beneficial owner can only be an individual, not a company or organization. There may be more than one beneficial owner associated with customers. The task is to identify and verify the identity of all the beneficial owners of the customers.

33. If the customer is an individual to treat that person as the beneficial owner unless there are reasonable grounds to make the suspect that are acting on behalf of another. If the customer is acting on behalf of another person, anyone will need to establish that person's identity, the beneficial ownership of the customer and any other beneficial owners.

XII. Record keeping

34. It is a good practice to keep detailed records of all decisions and retain customer due diligence and relevant records in a readily auditable manner. It is important to record the rationale behind any decision is made. Anyone reading the notes years later should be able to understand why such a risk-based decision is taken.

XIII. Example

35. Example 1: Record for ownership and control structure of a legal person

ABC Company Ltd. is a private limited liability company registered under the Companies Act. Mr. A owns 25% of the shares and BC Company Ltd. owns the balance 75% of shares of ABC. Mr. S is Managing Director of ABC Company and; the Board of Directors consists of his wife, Mrs. S, ABC's Chief Financial Officer; and their three children.

In this example, Reporting entities be required to record:

- The ownership of the Company - shared by Mr. A (25% of the shares) and BC Company Ltd. (75% of the shares);
- The ownership structure of the entity - ABC Company Ltd. is a privately traded.
- The identification of all members the Board of Directors (Mr. S's Family) as they are having effective control;
- Identification of Mr. A as he is having more than 20% of ownership
- Identification of all of the individuals who own or control, directly or indirectly, 20% or more of the shares of BC Company Ltd since it owns 75% of the shares, it also exercises control. However, in a case like this, the reporting entity must research further to determine whether any individual owns enough shares of BC Company Ltd. that would constitute 20% of ABC Company Ltd., or until the reporting entity determine that there is no such individual;
- The manner in which the reporting entity obtained this information; and
- The measures taken to verify accuracy of information.

36. Example 2 Record for ownership and control structure of partnership

Bengal Developers is a partnership engaged in buying and selling of real estate in Western District owned by two partners (Mr. T and Mr. J). Mr. T and Mr. J have signed a partnership agreement stating that Mr. T will invest Tk. 5,000,000 in the partnership to rent space for the Rainbow Property Developers and other administrative expenses, and Mr. J will be solely responsible for operations of the business. All decisions related to the partnership must be unanimous; in case of a disagreement, either partner can decide to end the partnership. Mr. T & Mr. J will split the profits from the business 50/50. If they decide to end the partnership, Mr. T will get 55% of the proceeds of the sale of the business assets, while Mr. J will get 45%.

In this example the reporting entity is required to record:

- The ownership structure of the entity, including the details of the partnership between Mr. T & Mr. J;
- Identification of Mr. T and Mr. J as both control the partnership;
- The manner in which, the FI obtained this information; and
- The measures taken to confirm accuracy of information.

Note: The business structure is important in this example as the ownership and control of the partnership is shared between Mr. T & Mr. J. The FI needs to retain a copy of the partnership agreement to meet record keeping requirements as well as confirm the accuracy of the beneficial ownership information obtained. In the absence of such agreement it should be recorded that the partnership exists between Mr. T and Mr. J without having a written agreement.

XIV. Question/Answer

37. **<u>Who is required to submit data to the reporting entity in supporting beneficial ownership?</u>**

- A private limited company
- General partnership
- Limited partnership
- Commercial association
- Foundation
- Non-profit association
- Economic Interest Grouping

38. **<u>Who are not obliged to submit data of the beneficial owner?</u>**

- apartment association;
- building association;
- a company listed on the regulated market to which disclosure rules complying with Bangladeshi law or similar international standards are applied, which ensure the sufficient transparency of the data of owners;
- a foundation the goal of whose economic activities is safekeeping or collecting assets in the interests of the beneficiaries or group of persons specified in the articles of association and that has no other economic activity.
- As gardening associations are ordinary non-profit associations within the legal meaning, then the obligation to submit the data of the beneficial owner applies to them.

39. **<u>Does a branch of a foreign company have to submit the data of the beneficial owner?</u>**

- The data of the beneficial owner are not submitted in the case of the branch of a foreign company, because the branch is not a legal. A foreign company is responsible for the activities of its branch and enters the data of the beneficial owner in its respective register of beneficial owners.

40. **<u>Who is the beneficial owner in the case of a company whose parent company is a company listed on a regulated market?</u>**

- Companies listed on the stock exchange do not have to submit the data of beneficial owners, but the subsidiaries belonging to their groups of companies must do it. The same principles that apply to ordinary companies apply here as well: if there are no natural persons among the shareholders of a listed company whose shareholding in the company exceeds 20%, the members of the controlling body of the listed company, i.e. the management board and the supervisory board, are noted as the beneficial owners.

41. **<u>Who is the beneficial owner of a state-owned company or foundation, or a foundation or non-profit association established by a local government (city, town or municipality)?</u>**

State-owned companies are ordinary private legal entities. The beneficial owner of a state-owned company is the minister responsible for the area, which represents the state in the company and appoints the members of the supervisory boards of the companies in their area of government, the chairman of the supervisory board/management board of the company and the members of both bodies. For example, the finance minister as the representative of the state, the chairman and members of the supervisory board and the chairman and members of the management board can be considered beneficial owners.

In the case of foundations established by the state where the rights of a founder are exercised by ministries and foundations with state participation, the minister of the respective area, the chairman/members of the supervisory board and the chairman/members of the management board can be considered the beneficial owners. The members of the supervisory board are appointed and the other rights of a founder or shareholder of a foundation of a municipality, town or city, whose sole founder is the municipality, town or city, as well as of a private limited company or public limited company, whose sole shareholder is a municipality, town or city, are exercised by the government of the municipality, town or city, so the mayor of the municipality, town or city or the members of the government of the municipality, town or city can be considered the beneficial owners. The principle applied here is the same: noting the chairman of a body is enough if the body consists of more than four persons. If an association has been established with the state and a local government or several local governments together, none of which have dominant influence over the association, the chairmen or members of the management board or supervisory board of the association are noted as the beneficial owners.