

# **GUIDELINES FOR THE IDENTIFICATION OF BENEFICIAL OWNERS OF LEGAL PERSONS AND ARRANGEMENTS**

**ISSUED BY  
THE REGISTRAR GENERAL**

October 2023

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## List of abbreviations and acronyms

<b>AML/CFT</b>	Anti-Money Laundering and Counter Financing Terrorism
<b>BO</b>	Beneficial Owner
<b>CEO</b>	Chief Executive Officer
<b>CFO</b>	Chief Financial Officer
<b>DNFBP</b>	Designated Non-Financial Business and Profession
<b>FATF</b>	Financial Action Task Force
<b>Global Forum</b>	Global Forum on Transparency and Exchange of Information for Tax Purposes
<b>RDB</b>	Rwanda Development Board

## Glossary of Terms

<b>Beneficial owner</b>	Beneficial owner refers to 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 natural persons who exercise ultimate effective control over a legal person or arrangement. Only a natural person can be an ultimate beneficial owner, and more than one natural person can be the ultimate beneficial owner of a given legal person or arrangement
<b>Express trusts</b>	Express trust refers to a trust clearly created by the settlor, usually in the form of a document e.g. a written deed of trust. They are to be contrasted with trusts which come into being through the operation of the law and which do not result from the clear intent or decision of a settlor to create a trust or similar legal arrangements (e.g. constructive trust).
<b>FATF<sup>1</sup></b>	Financial Action Task Force. It is an inter-governmental body responsible for setting international standards and promoting effective implementation of legal, regulatory and operational measures to combat money laundering, terrorist financing and other related threats to the integrity of the international financial system.
<b>Foundation</b>	A legal entity established to hold assets in its own name with the objective of managing the assets for the purpose specified in the foundation charter.
<b>Global Forum<sup>2</sup></b>	Global Forum on Transparency and Exchange of Information for Tax Purposes. It is the leading international body working on the implementation of global transparency and exchange of information standards around the world.
<b>Legal persons</b>	An entity other than natural persons with a separate legal personality.
<b>Legal arrangements</b>	Refers to express trusts or other similar arrangements

<sup>1</sup> More information about the FATF is available at: <https://www.fatf-gafi.org/en/home.html>

<sup>2</sup> More information about the Global Forum is available at: <https://www.oecd.org/tax/transparency/>

<b>Trust</b>	A relationship between people or one that arises out of death of a settlor, where the property of a settlor is placed under the control of a trustee for the benefit of a beneficiary or for any other purpose
<b>Nominee</b>	A person or entity that is asked or named to act for another (such as an agent or trustee) and may hold legal ownership of another person's property <sup>3</sup> .

<sup>3</sup> A Beneficial Ownership Implementation Toolkit, p. 33.

# Introduction

1. The availability of information on the beneficial owners of legal entities and arrangements is now an integral part of global transparency standards that Rwanda has committed to implement. This includes the standards monitored by the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum)<sup>4</sup> and the Financial Action Task Force (FATF)<sup>5</sup>.
2. To ensure compliance with its international commitments with regard to ensuring transparency of beneficial owners of legal entities and arrangements, the Government of Rwanda has introduced obligations requiring all legal entities and legal arrangements created or recognized in Rwanda to obtain and maintain adequate, accurate and up-to-date information on their beneficial owners and to disclose the same to the Registrar General. These include obligations under:
  - Law N° 007/2021 of 05/02/2021 governing companies as amended by Law N° 019/2023 of 30/03/2023;
  - Law N° 008/2021 of 16/02/2021 governing partnerships as amended by Law N° 018/2023 of 30/03/2023;
  - Law N° 059/2021 of 14/10/2021 governing foundations;
  - Law N° 062/2021 of 14/10/2021 governing collective investment schemes; and
  - Law N° 063/2021 of 14/10/2021 governing trusts.
3. Law N° 028/2023 of 19/05/2023 on the prevention and punishment of money laundering, terrorism financing and the financing of proliferation weapons of mass destruction also requires AML-obliged persons to obtain and maintain information on the beneficial owners of their customers as part of their customer due diligence or know your customer obligations.

<sup>4</sup> Further information about the Global Forum is available at: <https://www.oecd.org/tax/transparency/>

<sup>5</sup> Further information about the FATF is available at: <https://www.fatf-gafi.org/en/home.html>

4. The purpose of this guideline is to make the relevant legal entities and arrangements (reporting persons) aware of the beneficial ownership requirements prescribed by the above laws, provide more detailed directions on the methodology for identifying their beneficial owners and the procedure for filing information on their beneficial owners with the Registrar General.
5. These guidelines are not for AML-obliged persons who are subject to Law N° 028/2023 of 19/05/2023 on the prevention and punishment of money laundering, terrorism financing:
  - General Guidelines N° 3160/2021 - 00026[616] to Financial Institutions on Anti-Money Laundering, Terrorist Financing and Financing of the Proliferation of Weapons of Mass Destruction.
  - Regulations N° 001/FIC/2022 of 16/02/2022 relating to anti-money laundering, combating the financing of terrorism and financing of proliferation of weapons of mass destruction.
  - Financial Intelligence Centre Guidelines N° 001/2022 of 14/09/2022 on transparency and beneficial ownership.
6. These guidelines apply to all legal entities and arrangements that fall within the scope of the laws outlined in paragraph 2 above except common benefit foundations.



## CHAPTER 1:

# Concept of Beneficial Owner

### Definition of Beneficial Owner

7. The term “beneficial owner” as used in this guidance is consistent with the definition of the term under the FATF standard. Under the FATF standard, beneficial owner refers to:

*“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 natural persons who exercise ultimate effective control over a legal person or arrangement. Only a natural person can be an ultimate beneficial owner, and more than one natural person can be the ultimate beneficial owner of a given legal person or arrangement.”*

It should be noted that reference to “ultimately owns or controls” and “ultimate effective control” as used in this definition refer to situations in which ownership/control is exercised through a chain of ownership or by means of control other than direct control<sup>6</sup>.

8. It is clear from this definition that only a natural person can be the ultimate beneficial owner and more than one natural person can be the ultimate beneficial owner of a legal person or arrangement<sup>7</sup>.
9. Under Rwanda’s legislative framework, the term beneficial owner is defined by reference to the type of legal entity or arrangement under consideration (e.g. company, partnership, trust, foundation, collective investment scheme). However, the common thread in determining the beneficial owner of these entities or arrangements are ownership and control, whether direct or indirect.

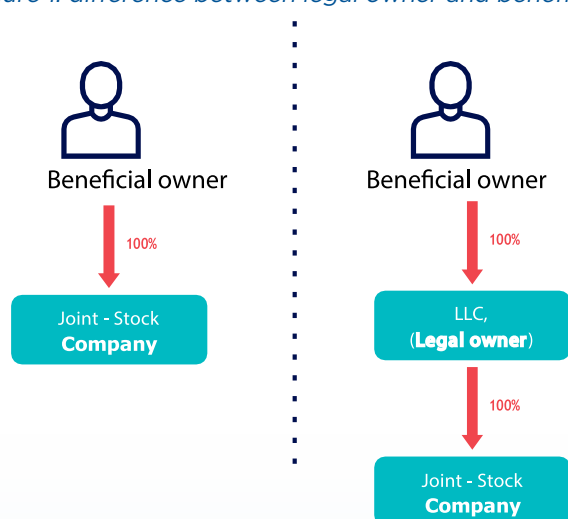
<sup>6</sup> Footnote No. 70 on the definition of beneficial owner in the General Glossary to the FATF Recommendations.

<sup>7</sup> See footnote No. 72 on the definition of beneficial owner in the General Glossary to the FATF Recommendations.

## In the context of legal persons

10. In comprehension of the above, the laws governing companies and partnerships in Rwanda define a beneficial owner as *“the natural person(s) who ultimately owns or controls a legal person or a legal arrangement and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.”*
11. In the context of legal persons<sup>8</sup>, the concept of beneficial owner must be distinguished from the concepts of legal ownership and control. Legal ownership means the natural or legal persons who own the legal person. Control refers to the ability of taking relevant decisions within the legal person and impose those resolutions.
12. However, the definition of beneficial owner extends beyond legal ownership and control to consider the notion of ultimate ownership and control. It focuses on the natural person or persons who actually own and take advantage of the capital or assets of the legal person as well as those who exert effective control over the legal person irrespective of whether or not they occupy formal positions within that legal person, rather than just the (natural or legal) persons who are legally (on paper) entitled to do so.
13. Accordingly, the beneficial owner of a legal person is always the natural person(s) who actually owns and takes advantage of the capital or assets of the legal person. It also includes the natural person(s) who have ultimate effective control over the legal person.
14. The concept of effective control in the above paragraph is to be understood as the ability to take relevant decisions within the legal person or arrangement and to impose those decisions. Persons appearing in the incorporation documents of a legal person as holding controlling positions within the company, but who are actually acting on behalf of someone else, cannot be considered beneficial owners because they are being used by someone else to exercise effective control over the company.
15. The following illustration portrays the difference between a legal owner and a beneficial owner of a legal person.

Figure 1: difference between legal owner and beneficial owner



Source: IDB and OECD (2021), Building Effective Beneficial Ownership Frameworks, A joint Global Forum and IDB Toolkit

<sup>8</sup> The FATF defines legal persons as “any entities 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, foundations, Anstalt, partnerships, or associations and other relevantly similar entities”.

16. In the above illustration, the panel on the left represents a single layer of ownership of the Joint Stock Company where the beneficial owner controls the Joint-Stock Company directly (the legal owner is also the beneficial owner). In the right-hand panel, there is an additional layer of ownership (Limited liability company) between the Joint Stock Company and the beneficial owner. The limited liability company is therefore the legal owner of the Joint-Stock Company, while the natural person indirectly controls the Joint-Stock company through the LLC. The natural person is therefore the beneficial owner of the Joint-Stock Company.

### **In the context of legal arrangements**

17. The definition of beneficial owner also applies in the context of legal arrangements, meaning the natural person(s), at the end of the chain, who ultimately own(s) or control(s) the legal arrangement, including those persons who exercise ultimate effective control over the legal arrangement.

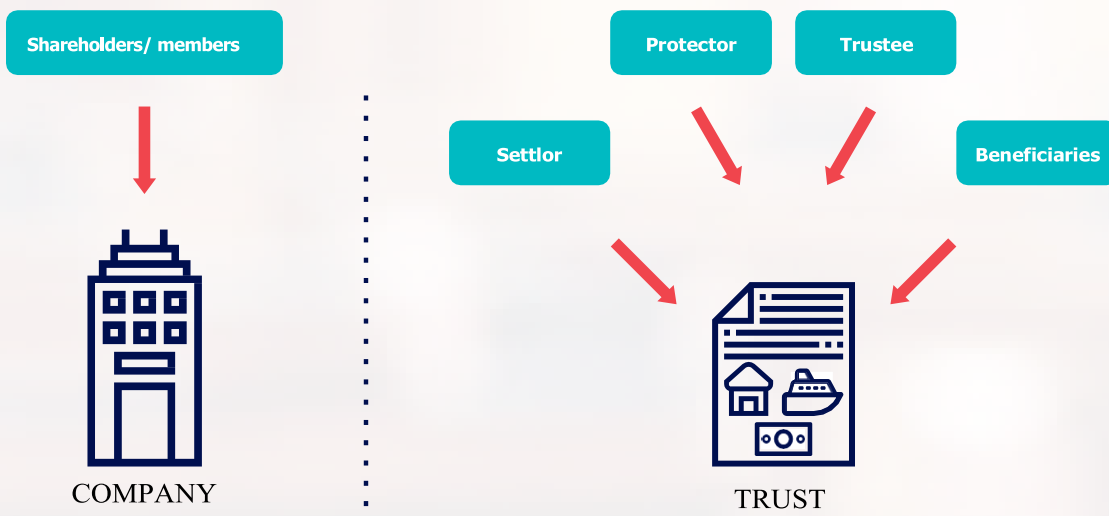
18. A legal arrangement may take the form of an express trust (in which the settlor's creation of a trust is deliberate and is neither implicit nor the result of the application of a law). A trust is a structure in which a person (settlor) transfers assets to another person (the trustee) who manages the entrusted assets following the settlor's instructions, but for the benefit of the beneficiaries (either persons named by the settlor to receive income or the entrusted assets at some point, or a defined class of unnamed persons).

19. The specific characteristics of trusts make it more complicated to identify the beneficial owner(s) in practice because in a trust, the legal title and control of an asset are separated from the interests in the asset, meaning different categories of persons may own, benefit from, and control the trust.

20. The legal owner of a trust property (trustee) simply holds the beneficial interest in the property on trust for the beneficial owner. The beneficial owner holds a right to the income from the property or a share in it, and a right to the proceeds of sale of the property or part of the proceeds. Accordingly, for trusts, the standards require that any natural person satisfying any of the following criteria should be identified as beneficial owners:

- Settlor(s);
- Trustee(s);
- Beneficiaries or classes of beneficiaries;
- Protector(s);
- Any other person(s) who exercising effective control of the trust.

Figure 2: Difference in the control structure between a legal person and a trust



Source: IDB and OECD (2021), Building Effective Beneficial Ownership Frameworks, A joint Global Forum and IDB Toolkit

# Methodology for the identification of the beneficial owners of legal entities and arrangements

## Introduction

21. The following laws require the identification of the beneficial owners of legal persons<sup>9</sup> and arrangements<sup>10</sup> in Rwanda:
- Law N° 007 of 05/02/2021 governing companies as amended to date;
  - Law N° 008/2021 of 16/02/2021 governing partnerships as amended to date
  - Law N° 063/2021 of 14/10/2021 governing trusts
  - Law N° 059/2021 of 14/10/2021 governing foundations
  - Law N° 062/2021 of 14/10/2021 governing collective investment schemes
22. The sections below provide a definition and methodology for the identification of the beneficial owners of each of these legal entities and arrangements.

## 2.1 Companies

23. Article 2 of Law N° 007 of 05/02/2021 governing Companies as amended defines a beneficial owner as “the natural person(s) who ultimately owns or controls a legal person or arrangement or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.”

<sup>9</sup> According to the General Glossary to the FATF Recommendations a legal person is “any entities 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, foundations, Anstalt, partnerships, or associations and other relevantly similar entities”

<sup>10</sup> According to the General Glossary to the FATF Recommendations, a legal arrangement refers to “express trusts or other similar legal arrangements.”

24. In the context of this definition, reference to “ultimately owns or controls” and “ultimate effective control” refer to situations in which ownership/control is exercised through a chain of ownership or by means of control other than direct control.
25. In accordance with this definition, the beneficial owner is the natural person(s) who owns and takes advantage of the capital or assets of the company. It also includes the natural persons who exert effective control over the company irrespective of whether or not they occupy formal positions within that company, rather than just the (natural or legal) persons who are legally (on paper) entitled to do so.
26. The concept of “control” means the ability to take relevant decisions within the company and to impose those decisions. However, persons appearing in the incorporation documents of a company as holding controlling positions within the company, but who are acting on behalf of someone else are not considered beneficial owners because they are being used to exercise effective control over the company.
27. When an individual is the sole shareholder of a company and effectively controls and directs the actions of the company, that individual should be identified as the beneficial owner of the company. However, in the actual business world, it is very common to find several layers between the legal vehicle and its beneficial owner, representing a chain of ownership. Therefore, even where a natural person is the sole shareholder, there is an obligation to verify that there is no other natural person who may control the company e.g. that the sole shareholder is not a nominee.

## Scope of Reporting for Companies

28. Article 116 of the Company Law requires all companies incorporated in Rwanda and companies incorporated outside Rwanda and authorized to operate in Rwanda (foreign companies) to obtain and hold adequate, accurate and up-to-date information on their beneficial owners, including the details of the beneficial interests held in the company. This requirement also extends to dormant companies<sup>11</sup>.
29. According to article 11 of the Company Law, companies incorporated in Rwanda may be grouped under the following categories:
  - A company limited by shares
  - A company limited by guarantee
  - A company limited by shares and by guarantee
  - An unlimited company
  - A protected cell company
30. It should be mentioned that “limited by share companies’ are set up with a share capital, which means the company is divided into shares and shareholders are appointed. Each share represents a percentage of the company share capital. The proportional value of the shares owned by each shareholder represents their percentage of control and ownership, their profit entitlement, and the limit of their personal financial liability for company debts.

<sup>11</sup> According to Article 263 of Company Law “a company is a dormant company for any period during which no significant accounting transaction occurs”.



31. Companies “limited by guarantee” are set up without share capital. So instead of shares and shareholders, they have guarantors who each undertake to contribute to the assets of the company in the amount specified in the memorandum of association in the event of its being wound. The financial guarantee is the limit of a guarantor’s personal liability to the company.

### **Obligation for Companies**

32. Under articles 116 and 117 of the Companies Law, companies registered in Rwanda must comply with the following requirements regarding beneficial ownership transparency:

- Give notice to a member or shareholder of that company requiring that member or shareholder to disclose whether they are holding their interest in that company for their own benefit or the benefit of another person, and, if not, the beneficial ownership information.
- Maintain an up to date the internal register of beneficial owners at the registered office of the company.
- File a copy of the internal register of beneficial owners with the Registrar General and informs the latter within fourteen (14) days of any changes thereto from the date of the changes.

### **Methodology for the identification of beneficial owners of companies**

#### *In the case of companies limited by shares: the cascade approach*

33. All companies have to apply the following steps to identify their beneficial owners<sup>12</sup>:

- **Step 1:** the identity of the natural persons, who directly or indirectly, whether acting alone or together, ultimately have a controlling ownership interest in a legal person should be obtained and verified.
- **Step 2:** if there is any doubt as to whether the persons with controlling ownership interest are the beneficial owners, or where no natural person exerts control through ownership interests, then the identity of the natural persons (if any) exercising control of the legal person through other means should be obtained and verified; or
- **Step 3:** where no natural person is identified under Step 1 or Step 2 above, the reporting person should identify the relevant natural person who holds the position of senior managing official.

<sup>12</sup> This approach is contained in the FATF Interpretative Note to Recommendation 10, Paragraph 5(b)(i).

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**Note: A reporting entity can only proceed to step 3 where no natural person(s) have been identified as beneficial owner(s) under 1 and 2 above (which are mandatory and should be followed before moving to step 3).**

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34. If any individual, or individuals acting through any person or trust, act with a common intent or purpose of exercising any rights or entitlements, or exercising control or significant influence, over a legal person, pursuant to an agreement or understanding, formal or informal, such individuals shall be deemed to be acting together.
35. Based on this cascading approach above, the following are examples of natural persons who could be considered as beneficial owners on account of the fact that they are ultimate owners/controllers of the company, either through their controlling ownership interest, through positions held within the company or through other means:

***a) Natural persons who control the company through ownership interest***

- (i). The natural person(s) who directly or indirectly holds at least twenty-five percent (25 %) of the shares and/or the voting rights in the company.
- (ii). Shareholders who exercise control alone or together with other shareholders, including through any contract, understanding, relationship, intermediary or tiered entity. This highlights the notion of indirect control which may extend beyond legal (direct) ownership or could be through a chain of other legal entities or arrangements and through nominees. This indirect control could be identified through various means as shareholder's agreement, exercise of dominant influence or power to appoint senior management. Shareholders may collaborate to increase the level of control by a person through formal or informal agreements, or through the use of nominee shareholders.

***b) Natural persons who control the company through other means***

- (i). The natural person(s) who exerts control of the company through other means such as personal connections to persons that possess ownership.
- (ii). The natural person(s) who exert control without ownership by participating in the financing of the company, or because of close and intimate family relationships, historical or contractual associations, or if the company defaults on certain payments. Control may also be presumed even if control is never actually exercised, such as using, enjoying or benefiting from the assets owned by the company.

***c) Natural persons who exercise control through positions held within the company***

- (i). The natural persons responsible for strategic decisions that fundamentally affect the business practices or general direction of the company.
- (ii). The natural person(s) who exercises executive control over the daily or regular affairs of the company through a senior management position, such as a director, chief executive officer (CEO), chief financial officer, managing or executive director. The natural person(s) who has 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.



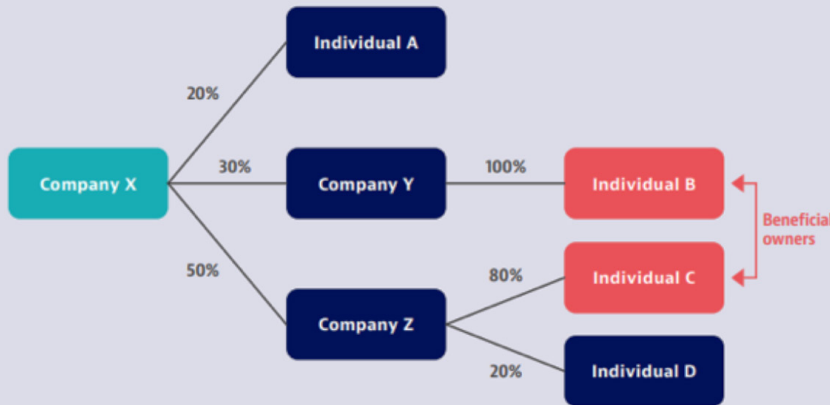
36. Below are examples of different scenarios for the identification of beneficial owners of companies:

**Example 1**

Company X has three shareholders: Individual A, with 20% of the shares, Company Y, with 30% of the shares, and Company Z, with 50% of the shares.

In turn, Company Y is owned at 100% by Individual B, and Company Z is owned by Individuals C and D, which hold 80% and 20%, respectively. Pursuant to the domestic laws, the controlling ownership interest criterion used for being a beneficial owner is having at least a 25% ownership interest in the company (Step 1 of the cascade approach).

Individual A owns less than 25% of Company X, so this individual should not be identified as a beneficial owner. Company Y and Company Z cannot be beneficial owners of Company X, because they are not natural persons, so there is the need to identify the natural persons behind them. Individual B is a beneficial owner, because that natural person has an ownership interest in Company X higher than 25% ( $100 \times 30\% = 30\%$ ). In addition, Individual C is also a beneficial owner, because that individual owns 40% of Company X ( $80 \times 50\%$ ). By contrast, Individual D cannot be a beneficial owner, as this natural person has an ownership interest of 10% ( $20 \times 50\% = 10\%$ ), below the 25% threshold.



**Source:** IDB and OECD (2021), Building Effective Beneficial Ownership Frameworks, A joint Global Forum and IDB Toolkit

**Example 2**

MARCH Limited is a company incorporated in the XYZ country, which has four shareholders. Mr O owns 30% of the shares, while APRIL Limited, a company incorporated in XYZ, owns 60% of the shares. Ms G and Ms V each own 5% of the shares of

MARCH Limited. Ms G also controls 30% of the voting rights of MARCH Limited and is married to Mr O. Ms A owns 60% of the shares of APRIL Limited. Mr V holds the remaining 40% of the shares of APRIL Limited.

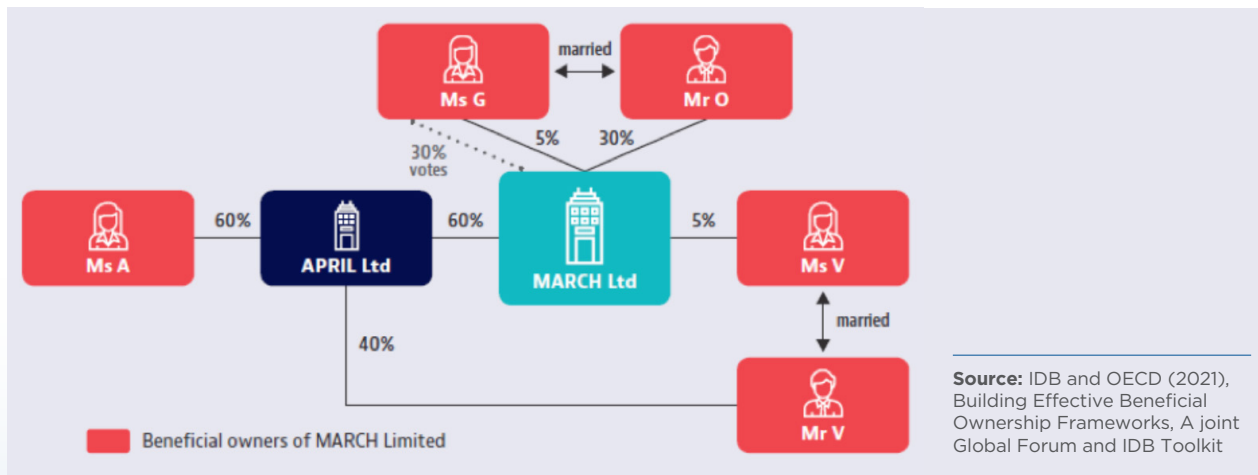
According to XYZ domestic legislation, the controlling ownership interest criterion used for being a beneficial owner is having at least a 25% ownership interest in the company (Step 1 of the cascade approach).

- Mr O is a beneficial owner of MARCH Limited because he owns 30% of its shares directly.
- Ms G, his wife, owns only 5% of the shares of MARCH Limited but she meets the controlling ownership interest as she holds 30% of the voting rights.

She is therefore a beneficial owner of MARCH Limited. In any case, the two spouses directly control together 35% of the shares. Ms G is, therefore, a beneficial owner based both on voting rights and on shared ownership through the marital relationship.

- Ms A owns 60% of APRIL Limited, which in turn owns 60% of MARCH Limited. As a result, Ms A indirectly owns 36% of MARCH Limited through her ownership of APRIL Limited.
- Mr V owns 40% of APRIL Limited, which owns 60% of MARCH Limited. Therefore, he indirectly owns 24% of MARCH Limited, which is just below the 25% threshold for identification as beneficial owner. Ms V directly owns 5% of the shares of MARCH Limited, which appears to be below the threshold for identification as beneficial owner. However, as Mr and Ms V are married, they jointly control 29% of MARCH Limited directly and indirectly, as a result of the marital status and are there considered beneficial owners as well.

Thus, Mr O, Ms G, Ms A, Mr V and Ms V should all be identified as beneficial owners based on Step 1 of the cascading approach as implemented in XYZ.



**Source:** IDB and OECD (2021), Building Effective Beneficial Ownership Frameworks, A joint Global Forum and IDB Toolkit

### *In the case of companies limited by guarantee*

37. A member (natural person) of a company limited by guarantee is deemed to be a beneficial owner of the company, if he/she meets any of the following criteria:
- a) Has the right to exercise ultimate effective control whether formal or informal over the company; or the directors or the management of the company. An individual exercises ultimate effective control over a company when the recommendation made is always followed by the members holding a majority of the voting rights in the company. The individual may not necessarily be a member or director of the company but consistently exercises dominant influence or control over the company or is regularly consulted for the decision of the board of directors.
  - b) Has the right or power to directly or indirectly appoint or remove a majority of director(s); The right to exercise ultimate effective control may be established by looking at the relationships that the individual has with the company.
  - c) Has the right to exercise, or actually exercises ultimate effective control over the company. In assessing whether an individual meets the criteria, companies should consider referring to the information kept by the company including the constitution, the register of members and the register of directors. An individual may exercise ultimate effective control over a company even when such individual is not or no longer a member or director of the company, however the individual's recommendation is always followed by the members of the company.

### *In the case of protected cell companies*

38. Article 2(24) of the Company Law defines a protected cell company (PCC) as a company in which a single legal entity consists of a core linked to several cells, each with separate assets and liabilities.
39. Notwithstanding that it may create one or more cells, the PCC remains a single legal person and the creation of a cell does not create, in respect of that cell, a legal person separate from the protected cell company.
40. A protected cell company may issue two types of shares, namely core shares which are attributable to the core and cell shares which are attributable to the cell in respect of which the cell shares were issued. Each cell may have its own shareholders allowing sole or multiple ownership of an entire cell.
41. A shareholder may hold core shares or cell shares directly or indirectly including through a nominee. Pursuant to article 215 of the Company Law, the directors of a protected cell company may cause or permit cellular assets and that of the core to be held by or through a nominee.

42. In determining the beneficial owners of a protected cell company, beneficial owners shall be identified separately for each of the cells and the core of the PCC by applying the cascade approach described in paragraph 33 above. Where a natural person holds core shares or cell shares, directly or indirectly through nominees, the PCC must identify the nominator(s) as the beneficial owners. However, natural persons holding shares or exercising rights in the protected cell company as a whole that reaches threshold will also be identified as beneficial owners of the protected cell company.
43. This is to prevent situations whereby shares or voting rights of a shareholder in the PCC are divided among different cells in order to avoid reaching the required beneficial ownership reporting threshold

## 2.2 Partnerships

44. Article 3 of Law No 008/2021 of 16/02/2021 governing partnerships as modified to date defines a beneficial owner as:
- a) A natural person who ultimately owns a legal entity or arrangement;
  - b) A natural person who ultimately controls a legal entity or arrangement;
  - c) A natural person on whose behalf a partnership-related transaction is being conducted;
  - d) A natural person who exercises ultimate effective control of a legal entity or arrangement;

### Scope of Reporting for Partnerships

45. Article 7 of the Law governing partnerships distinguishes between three types of partnerships, namely:
- General partnership, a type of partnership in which all partners have unlimited liability;
  - Limited partnership, a partnership which has one or more partners each with unlimited liability and one or more partners each with limited liability for the debts of the partnership; and
  - Limited liability partnership, a type of partnership in which the liability of the partners for the debts of the partnership is limited to their capital contribution.
46. Article 23 ter of the Law governing partnerships requires every partnership established in Rwanda or elsewhere with a registered office in Rwanda to:
- Obtain and hold, adequate, accurate and up-to-date information in respect of the partnership's beneficial owners;
  - Keep the register and supporting documents at its registered office in Rwanda;
  - Record the information in the internal register of beneficial owners;
  - Update the register whenever there is a change to the particulars of the beneficial owners within 7 days of the change;
  - Store the information for the period of time during which an individual is a beneficial owner, and for a further period of 10 years after the individual ceases to be a beneficial owner;

- Disclose data to competent authorities, upon request, in a timely manner.

## Methodology for the identification of beneficial owners of partnerships

47. The identification of the beneficial owners of a partnership will depend on whether it is treated as a legal person with a separate legal personality or as a legal arrangement:
- For all partnerships that have a legal personality, the process for the identification of the beneficial owners of companies and other legal persons should be followed when identifying the beneficial owners of the partnership
  - Where a partnership is regarded as a legal arrangement (i.e. has no separate legal personality), all parties to the partnership, in principle all the partners, and any other natural person exercising control over the partnership should be identified as beneficial owners.
48. Where a legal entity is party to a partnership, either as a limited or general partner, the beneficial owners of this limited or general partner should also be identified.
49. In addition, depending on the particular circumstances of the partnership, there could be also other natural persons, who are not necessarily partners, but who are exercising effective control over the partnership who should also be considered and identified as beneficial owners.

### General partnerships:

50. In Rwanda, a general partnership does not have a **separate legal personality**. The following steps should be undertaken to identify its beneficial owner(s):

**Step 1:** Partners of a general partnership are all natural persons and are entitled to share equally in the capital contribution unless the partnership agreement provides otherwise. All partners are entitled to take part in the management of the business and affairs of the general partnership. Therefore, all the partners of the general partnership acting in their own capacity should be considered as the beneficial owners.

**Step 2:** To the extent that there is doubt as to whether the natural person(s) identified under step 1 are the beneficial owners, identify the natural persons exercising ultimate control over the management of the business and affairs of the general partnership.

There may be a presumption of control, where a natural person is entitled to the assets of the general partnership in the event of winding up or dissolution of the general partnership.

51. Where a general partner is a legal entity or arrangement, you should identify the beneficial owners of such legal entity or arrangement.

### Limited partnership:

52. A limited partnership does not have a separate legal personality and has two types of partners: general and limited partners. The general partners of a limited partnership manage the partnership. The beneficial owner of a limited partnership is a natural person who is identified under the steps below:

**Step 1:** The natural persons who hold the position of general partner of the limited partnership;

**Step 2:** The natural person(s) who directly or indirectly, whether acting alone or jointly, ultimately have a controlling ownership interest in the limited partnership. This refers to natural persons entitled to or owning at least twenty-five (25) percent of the capital or profits of the limited partnership either directly or indirectly; and

**Step 3:** The natural persons (if any) who, acting alone or jointly, exercise significant influence or control, directly or indirectly, over the management of the business of the limited partnership. A natural person may exercise significant influence or control as a result of a variety of circumstances including through a partnership agreement or some other agreement, through rights attached to a financial interest, or otherwise, holds the right directly or indirectly to appoint or remove a majority of the general partners of the limited partnership; or is entitled to more than 25% of the assets of the limited partnership in the event of the dissolution of the limited partnership, etc.

A limited partnership does not have a **separate legal**

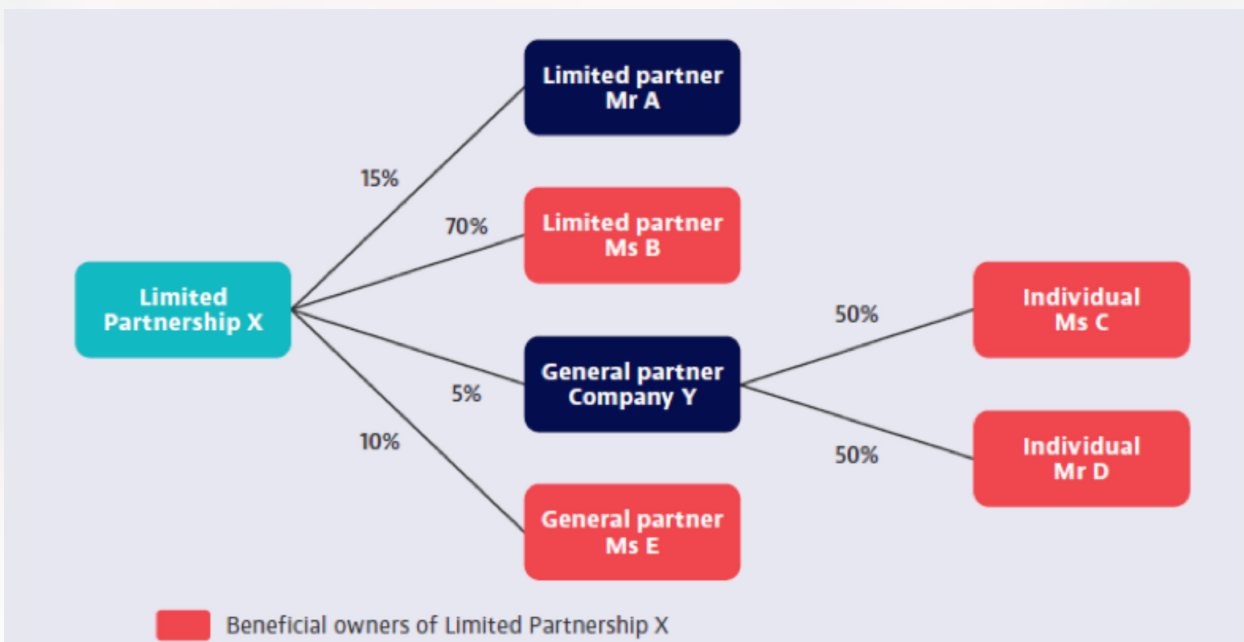
53. Where a legal entity or arrangement is party to the Limited Partnership either as a general or limited partner, the beneficial owners of such legal entity or arrangement also qualify as beneficial owners of the limited partnership.

### Example on beneficial owners of a partnership

The LP X has two limited partners, Mr A and Ms B, who own 15% and 70% of the LP X respectively, based on their investment contribution. The liability of the limited partners is limited to the extent of their contribution, and they do not have management control over the LP X.

Company Y and Ms E are the general partners of LP X, and they contributed with 5% and 10% of the total investment, respectively. The general partners have unlimited liability over the LP X and exercise complete management and control, irrespective of their contribution. Ms C and Mr D are the owners of Company Y, and each owns 50% of its shares.

Assuming that the methodology for the identification of beneficial owners is in line with the standard and that a 25% threshold for ownership interest has been established in step 1 of the cascading approach, the beneficial owners of LP X should be as follows:



In relation to the limited partners, Ms B would be identified as a beneficial owner because she has an ownership interest greater than 25%, even if she has no management control over the LP X. Following the same ownership criteria and the fact that he has no management control over the LP X, Mr A is not a beneficial owner.

Considering that there are two general partners exercising control by other means than ownership interest, this should lead to a doubt as to whether the natural person identified in step 1 of the cascading approach (i.e. Ms B) is the only genuine beneficial owner of the LP X. Therefore, step 2 of the cascade should apply and any other natural person exercising a control over the LP X should be also identified as beneficial owner. The level of management control of the general partners is irrespective of their ownership participation. Therefore, even if Ms E contributed with only 10% of the total investment of the LP X, she would be identified as a beneficial owner. There is the need to look through the general partner Company Y to identify the beneficial owners, and Ms C and Mr D would be identified as beneficial owners of LP X, because they surpass the 25% ownership threshold in Company Y and exercise through it complete control over the LP X.

In conclusion, the beneficial owners of LP X are Ms B, Ms E, Ms C and Mr D.

**Source:** IDB and OECD (2021), Building Effective Beneficial Ownership Frameworks, A joint Global Forum and IDB Toolkit

### Limited liability partnerships:

54. A Limited Liability Partnership (LLP) is incorporated as a separate legal entity and so the liability of the partners is limited to their contribution to the capital of the LLP. All partners have limited liability and all partners can participate in management activities. This is unlike a Limited Partnership, where only the general partners can partake in the management of the business.
55. Persons who subscribed their names to the incorporation document statement of the LLP are its partners. An individual or a body corporate can be a partner in a LLP. A LLP must have at least one manager (1) residing in Rwanda.



56. The identification of the beneficial owners of a LLP follows the same steps as the identification of the beneficial owners of a company.

**Step 1:** Identify the natural persons who, directly or indirectly, individually or jointly with another person, control the LLP through partnership interest or right (ownership interest). The following are examples of natural persons who could be considered as beneficial owners on account of partnership interest or right:

- (i) The natural person(s) who directly or indirectly holds at least twenty-five percent (25 %) of the capital contribution or the voting rights in the conduct and management of the business of the LLP;
- (ii) The natural persons who exercise control alone or together with other persons with a partnership interest, including through any contract, understanding, relationship, intermediary or tiered entity. This highlights the notion of indirect control which may extend beyond legal (direct) ownership or could be through a chain of corporate vehicles and through nominees. This indirect control could be identified through various means such as shareholder's agreement, exercise of dominant influence or power to appoint senior management. Shareholders may collaborate to increase the level of control by a person through formal or informal agreements, or through the use of nominee shareholders.

**Step 2:** If there is any doubt as to whether the persons with controlling ownership interest are the beneficial owners, or where no natural person exerts control through ownership interests, then identify the natural persons who control the LLP through other means. The following are examples of natural persons who may be controlling the limited liability partnership through other means:

- (i) The natural person(s) who exerts control of the LLP through personal connections to persons that possess ownership.
- (ii) The natural person(s) who exert control without ownership by participating in the financing of the LLP, or because of close and intimate family relationships, historical or contractual associations, or if the LLP defaults on certain payments. Control may also be presumed even if control is never actually exercised, such as using, enjoying or benefiting from the assets owned by the LLP.
- (iii) A natural person with the right to appoint the majority of managing officials of the LLP, through rights attached to a financial interest, or otherwise.
- (iv) The natural persons who are entitled to at least 25 % of the assets of the LLP in the event of its winding up or dissolution.

**Step 3:**

where no natural persons are identified under step 1 and step 2, identify the natural persons who exercise control through positions held within the LLP. The following are examples of natural persons who may be identified under this step:

- (i) The natural person appointed as the Manager of the Limited Liability Partnership in accordance with article 103 of the Partnership Law.
- (ii) The natural persons responsible for strategic decisions that fundamentally affect the business practices or general direction of the limited liability partnership.
- (iii) The natural person(s) who exercises executive control over the daily or regular affairs of the limited liability partnership through a senior management position, such as the manager.

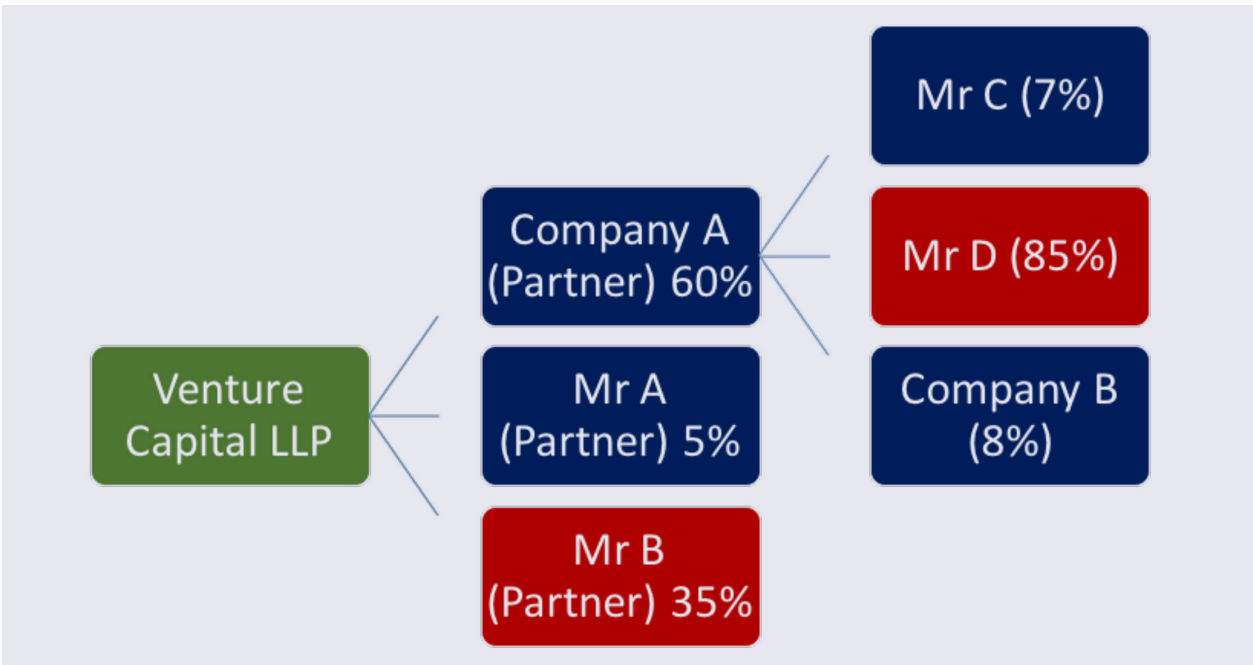
**Example 4**

Venture Capital LLP has 3 partners, of which 2 are natural persons and 1 is a legal person.

In this scenario, the first consist of looking at the partnership deed to identify any partners owning at least 25 % of the capital or entitled to at least of 25 % of the profits of the limited liability partnership. On that basis, Mr B with 35% stake in the capital will should be identified as a beneficial owner. However, the process of the identification of the beneficial owners of General Partnerships and Limited Partnerships should be followed to identify the beneficial owners of Mr B.

Company A with 60% stake also meets the ownership threshold of 25 %, however Company A should not be identified as a beneficial owner because it is a legal person. Therefore, the reporting person must look through Company A to identify any natural persons who own and control Company A. In doing so, Mr D who holds 85% shares of Company A will by extension qualify to be identified as a beneficial owner of the Limited Liability Partnership.

So the beneficial owners of Venture Capital LLP are Mr B and Mr D





## 2.3 Foundations

57. Article 3 of Law No. 059/2021 of 14/10/2021 governing foundations defines a **beneficial owner** as “a natural person who is the founder of the foundation, the beneficiary or the person who exert real influence on the foundation including

- The founder or the will executor;
- The guardian;
- A member the Foundation Council;
- Beneficiaries;
- Any other person who may have influence on the foundation.”

### Scope of Reporting for Foundations:

58. Article 54 of the law No. 059/2021 of 14/10/2021 governing foundations requires every foundation established in Rwanda or elsewhere with a registered office in Rwanda to:

- Establish the internal register of beneficial owners;
- Take appropriate measures to obtain, verify and hold adequate, accurate and up-to-date information in respect of its beneficial owners;
- Record the information in the internal register of beneficial owners;
- Update the information in respect of the beneficial owner in the register whenever there is a change, which is done within seven (7) days of the date the beneficial owner has notified the changes;
- Store the information for the period of time during which an individual is beneficial owner, and for a period of 10 years after the individual ceases to be beneficial owner;
- Keep the internal register of beneficial owners and supporting documents at its registered office in Rwanda;
- Provide the data to the competent organs, upon request;
- File with the Registrar, a copy of the internal register of beneficial owners; and
- Notify the Registrar of any changes within fourteen (14) days of the occurrence of such changes.

### Which foundations must comply?

59. The obligations to obtain and maintain accurate, adequate and up to date beneficial ownership information applies to foundations established in Rwanda and classified in the following categories under article 5 of the Law Governing Foundations:

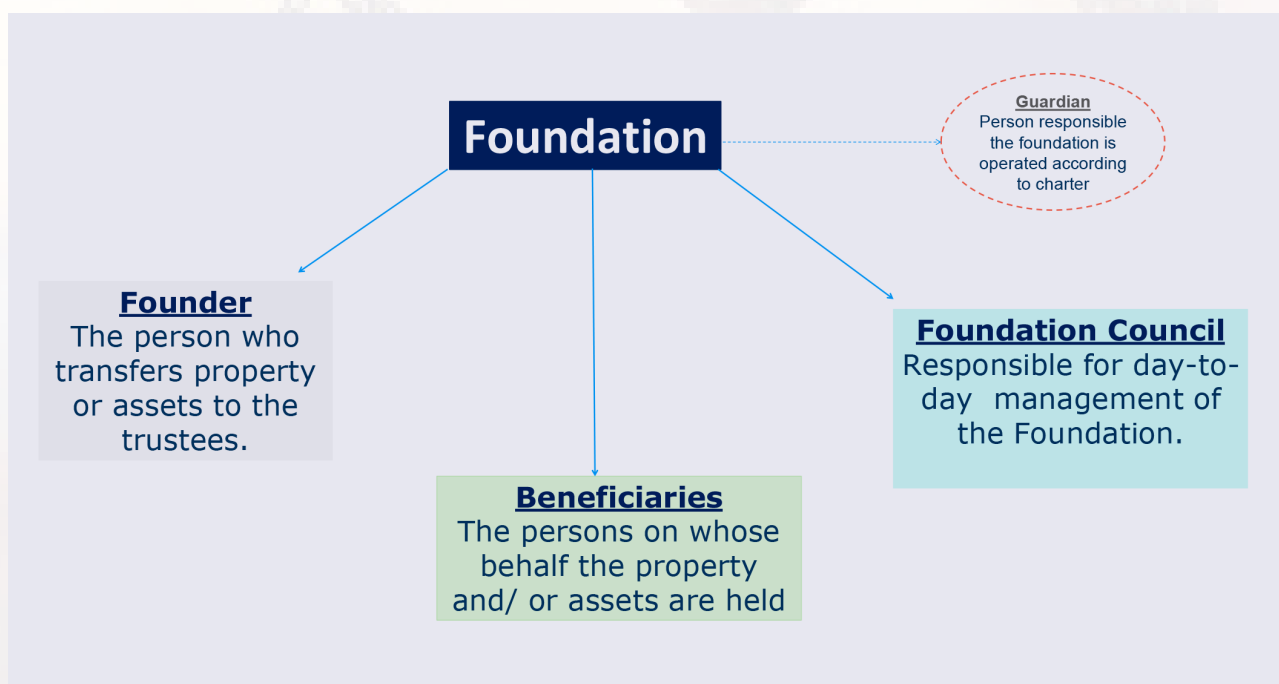
- **Private-benefit foundations** created to serve private or personal purposes that include estate planning and other investment in commercial activities in order to grow its assets.
- **Mixed-benefit foundations** intended to do investment in commercial activities in order to serve private or personal purposes and partly invest its revenues in social impact projects.
- **Foreign foundations** established under the laws of other States with activities in Rwanda or re-domicile in Rwanda.

## Methodology for the identification of the beneficial owners of foundations

60. All the parties to the foundation should be identified as beneficial owners. These include the foundation's:

- **Founder:** the founder is the one who endows the foundation with the initial assets. A founder may also be a beneficiary of the foundation which he/she is the founder.
- **Executor** (if any); he/she is responsible for registering the foundation in the case of a foundation established by will and exercises the power to appoint the foundation Council in accordance with the will of the founder.
- **Protector** (or members of the committee of protectors).
- **Guardian** (the guardian may be a natural person or a legal entity). He/she has powers conferred on him/her to ensure that the Council carries out its functions, to approve or disapprove any action of the Council and to sanction or authorize any action taken or to be taken by the Council that would not otherwise be permitted by the charter or regulations of the foundation. The founder may also be the Guardian.
- **Members of the foundation council.** They are responsible for managing the business of the foundation, represent it and monitor the fulfilment of the purpose and objectives of the foundation in compliance with the provisions of the law governing foundations and the charter of the foundation.
- **Beneficiaries or class of beneficiaries:** They include individuals, legal entities or charities entitled to benefit under the foundation and/or derive an economic benefit from the foundation at dissolution or winding up.
- Any natural person who belongs to the category of persons in whose main interest the foundation was established or operates, where the natural persons who are beneficiaries of the foundation have not yet been designated;
- Any natural person who exercises by other means a power of control over the property of the foundation or any other comparable legal structure governed by foreign law.
- Any other natural person who, directly or indirectly, exercises ultimate control over the foundation by means of direct or indirect ownership or by other means because of the special powers, he/she may be exercising alone or jointly with another person or with the consent of another person, to:
  - i. dispose of, advance, lend, invest, pay or apply trust property or property of the foundation,
  - ii. vary or terminate the foundation,
  - iii. add or remove a person as a beneficiary or to or from a class of beneficiaries,
  - iv. appoint or remove a council member or give another person control over the foundation, or
  - v. direct, withhold consent or to overrule the exercise of a power referred to in subparagraphs (i) – (iv).
- Any other natural person or legal entity entitled to benefit under the foundation or derive an economic benefit from the foundation at dissolution or winding up in accordance with the foundation charter also qualifies as beneficial owner.

61. Where any of the positions listed in above are fulfilled by a legal person or arrangement, the requirements to identify the natural person(s) who are the beneficial owners of such legal person or arrangement shall apply.



## 2.4 Trusts

62. Article 87 of Law No. 063/2021 of 14/10/2021 governing trusts requires trustees of trusts established under Rwandan law and trustees who manage foreign trusts from within Rwanda, to take reasonable measures to obtain, verify and hold adequate, accurate and up-to-date information in respect of the trust’s beneficial owners.
63. Article 3 of the Law Governing Trusts defines a beneficial owner as “beneficial owner: any natural person who ultimately owns or controls the trust and includes:
- (a) The settlor
  - (b) The trustee
  - (c) The protector
  - (d) The beneficiary, the individuals benefiting from the trust have yet to be determined, or the class of persons in whose main interest the trust is created
  - (e) Any other natural person exercising ultimate control over the trust directly or indirectly or by other means, such as when he or she has the power, alone or jointly with another person or with the consent of another person, to:
    - (i) Dispose of, advance, lend, invest, pay or apply trust property or property of the trust for the benefit of the beneficiaries,
    - (ii) Vary or terminate the trust
    - (iii) Add or remove a person to or from the list as a beneficiary or to or from a class of beneficiaries
    - (iv) Appoint or remove a trustee or give another person control over the trust
    - (v) Direct, withhold consent or to overrule the exercise of a power referred to in items i, ii, iii and iv;”

## Obligations to obtain and maintain beneficial ownership information

64. Under the provisions of article 87 of the law governing trusts, the trustee of a trust created or recognized in Rwanda is required to:

- Establish the internal register of beneficial owners;
- Take appropriate measures to obtain, verify and hold adequate, accurate and up-to-date information in respect of its beneficial owners;
- Record the information in the internal register of beneficial owners;
- Update the information in respect of the beneficial owners in the register whenever there is a change, which is done within seven (7) days of the date the beneficial owner has notified the change;
- Store the information for the period of time during which an individual is beneficial owner, and for a period of 10 years after the individual ceases to be beneficial owner;
- Keep the internal register of beneficial owner and supporting documents at its registered office in Rwanda;
- Provide the data to the competent organs, upon request;
- File with the Registrar, a copy of the internal register of beneficial owners; and
- Notify the latter of any changes within fourteen (14) days of the occurrence of such changes.

## Scope of Trusts subject to the beneficial ownership requirement

65. The beneficial ownership requirement applies to all types of trusts covered in the law governing trusts in Rwanda. This includes amongst others:

- **Purpose trusts:** which are created for a specific purpose rather than providing any benefits to beneficiaries (article 21 law governing trusts). Usually, they are created only to hold assets;
- **Charitable trusts:** Pursuant to article 34 of the law governing trusts a charitable purpose trust may be created for the purpose of relief of poverty, advancement of education, advancement of religion, protection of the environment, advancement of human rights and fundamental freedoms or for any other purpose beneficial to the public in general. A charitable purpose trust therefore promotes a charitable purpose and does not benefit any specific person. It may benefit a section of the public or a class of persons not resident in Rwanda; and
- **Protective trusts:** Pursuant to article 29 of the law governing trusts, a protective trust is created where beneficiaries are unable to sell or give away their equitable interests in the trust property for the purposes of protecting beneficiaries who need legal protection in order to prevent them from frittering away their inheritance.

66. The beneficial ownership obligations also apply to all foreign trusts that are connected to Rwanda either because:

- A trustee to the foreign trusts is resident in Rwanda; or
- A trust property of the foreign trust is situated in Rwanda.

### Methodology for determining the beneficial owners of a trust

67. In the case of trusts, the cascade approach applied for legal entities is not applicable. This is because the legal title and control of an asset are separated from the interests in the asset, meaning different categories of persons may own, benefit from, and control the trust. The legal owner of a trust property (trustee) simply holds the beneficial interest in the property on trust for the beneficial owner. The beneficial owner holds a right to the income from the property or a share in it, and a right to the proceeds of sale of the property or part of the proceeds.

68. Accordingly, for the purposes of compliance with the beneficial ownership reporting framework, all the parties of the trust qualify as beneficial owners and, therefore, their particulars must be obtained and included in the register of beneficial owners maintained by the trustee.

69. The parties to a trust all qualify as beneficial owners as outlined below:

- **Settlor(s):** The settlor qualifies as a beneficial owner because he/she initiated the trust and contributed the asset to the trust in the first place. A settlor may also be a beneficiary of the trust.
- **Trustee(s)**, regardless of their number (a trust may have as many trustees depending on the number of trustees required). The trustee qualifies as a beneficial owner because he/she is responsible for conducting the day-to-day management of the assets of the trust and could if he/she wanted dispose of it in any way he liked, on condition that he/she acts in the interest of the beneficiary as set out in the deed of trust. In addition, the trustee may himself have rights as a beneficiary.
- **Protector(s)**, if any. The protector qualifies as a beneficial owner because of the powers he/she exercises over the trust. As per article 78 of the Law Governing Trusts, the protector has the powers:
  - To remove from office a trustee and to appoint a new trustee;
  - To determine the law of which jurisdiction is the proper law of the trust;
  - To change the forum of administration of the trust;
  - To refuse consent from certain acts of the trustees either conditionally or unconditionally.”
- **Enforcer(s)**, if any. The enforcer in the case of a non-charitable trust also qualifies as a beneficial owner because by virtue of Article 29 of the Law Governing Trusts, the enforcer is responsible for ensuring the execution of the activities of a non-charitable trust.

- **Beneficiary(ies)**, or class of beneficiaries. The beneficiaries are beneficial owners of the trust because they hold rights to the income from the property or a share in it, and a right to the proceeds of sale of the property or part of the proceeds. In other words they are the persons in whose interest the trust is set up or operates.
- Any natural persons who belong to the category of persons in whose main interest the trust was established or operates, where the natural persons who are beneficiaries of the trust or other comparable legal structure have not yet been designated;
- Any other natural person(s) exercising ultimate control over the trust by means of direct or indirect ownership or by other means because of the special powers, they may be exercising alone or jointly with another person or with the consent of another person, to:
  - a) Dispose of, advance, lend, invest, pay or apply trust property or property of the trust,
  - b) Vary or terminate the trust,
  - c) Add or remove a person as a beneficiary or to or from a class of beneficiaries,
  - d) Appoint or remove a trustee or give another person control over the trust, or
  - e) Direct, withhold consent or to overrule the exercise of a power referred to in subparagraphs (a) - (d).

70. The law governing trusts in Rwanda allows a trustee to appoint other persons to act on behalf of the trust. These include:

- Investment managers appointed by the trustee to manage the investment of the trust property;
- Accountants, lawyers, bankers, brokers, custodians, investment advisers, nominees, property agents; and other professionals appointed by the trustee to act in relation to any of the affairs of the trust or to hold any of the trust property.

71. A person(s) appointed by the trustee to act on behalf of the trust, cannot be considered a beneficial owner because he/she is being used to exercise effective control over the trust.

72. However, if such a professional is appointed as a service provider to the trust but receives powers to conduct day to day management activities over the trust, alone or jointly with the trustee, such as power to dispose of, advance, lend, invest, pay or apply trust property, such professional would be considered as a trustee and thereby qualify as beneficial owner.

73. In addition, the trust instrument or any other documents may reveal other person(s) who may have been granted an interest in the trust. These may include:

- Persons mentioned in the trust instrument or any other document including a memorandum of wishes, a power of attorney, etc;
- A person, whether ascertained or not, who may become entitled, directly or indirectly, to an interest under the trust at a future date or on the happening of a future event if there is specified person or a member of a specified class of persons;
- A person whose personal interest in the trust may arise by reason of any discretionary power given to another person;
- A minor or an adult with no legal capacity who has a direct or indirect interest, whether vested or contingent under the trust.



### *Case of a charitable trust*

74. The following natural persons should be identified as beneficial owners of a charitable trust:
- a) The settlor(s);
  - b) The trustee(s);
  - c) The protector(s);
  - d) The members of the governing body;
  - e) All the classes of beneficiaries resident in Rwanda or resident in a foreign country; and
  - f) Any other natural person(s) who has control over the charitable trust, either by exercise of a power of appointment or disposition of its property.

### *Case of a discretionary trust*

75. As regards a discretionary trust, the interest of the beneficiaries in the trust may not be fixed at its creation but may depend upon the exercise by the trustee of some discretionary powers in their favour.
76. As such, the beneficiaries of the trust may not be known until when the trustee decides to make a distribution, that is, the trust deed can specify a class of people who are eligible to benefit, but until the trustees decide that a particular member of that class is to benefit, there is no individual beneficiary.
77. Until such a decision is taken, those to be determined as beneficial owners are the specified class of beneficiaries, the settlor, trustee and protector.

### *Case where a legal person or arrangement is party to a trust*

78. If any of the parties to a trust is a legal person, the trustee is required to look beyond the legal person to identify any individuals, constituted through that legal person, as beneficial owners of the trust. Depending of the type of the legal person, the specific rules for determining the beneficial owners should apply (e.g. if the legal person is a company, the cascade approach applicable to legal persons shall apply).
79. If any legal arrangement (e.g. a trust, general partnership) is party to the trust, the beneficial owners of such legal arrangement should be identified following the rules for the identification of beneficial owners of such a legal arrangement.

### *In the case of a foreign trust recognized in Rwanda*

80. Article 95 of the Law Governing Trusts requires a foreign trust with a property administered in Rwanda or in respect of which a trustee is resident in Rwanda to register its property with the Registrar General of Companies in Rwanda within thirty (30) days from the date of the acquisition of such property or the date of acceptance of the trustee or if there are more than one trustee from the date of the last acceptance. Failure to register the property of a foreign trust in the prescribed time limit entails the non-recognition of the trust by the Law governing trusts.
81. Any Rwanda resident trustee who manages a trust created in a foreign jurisdiction is required to identify and keep information on the beneficial owners of the foreign trust that he/ or she is managing.

82. All the parties related to the foreign trust such as the settlor(s), the trustee(s), the protector(s) and the beneficiary(ies) must be registered in the register of beneficial owners maintained by the trustee and submitted to the Registrar General of Companies.

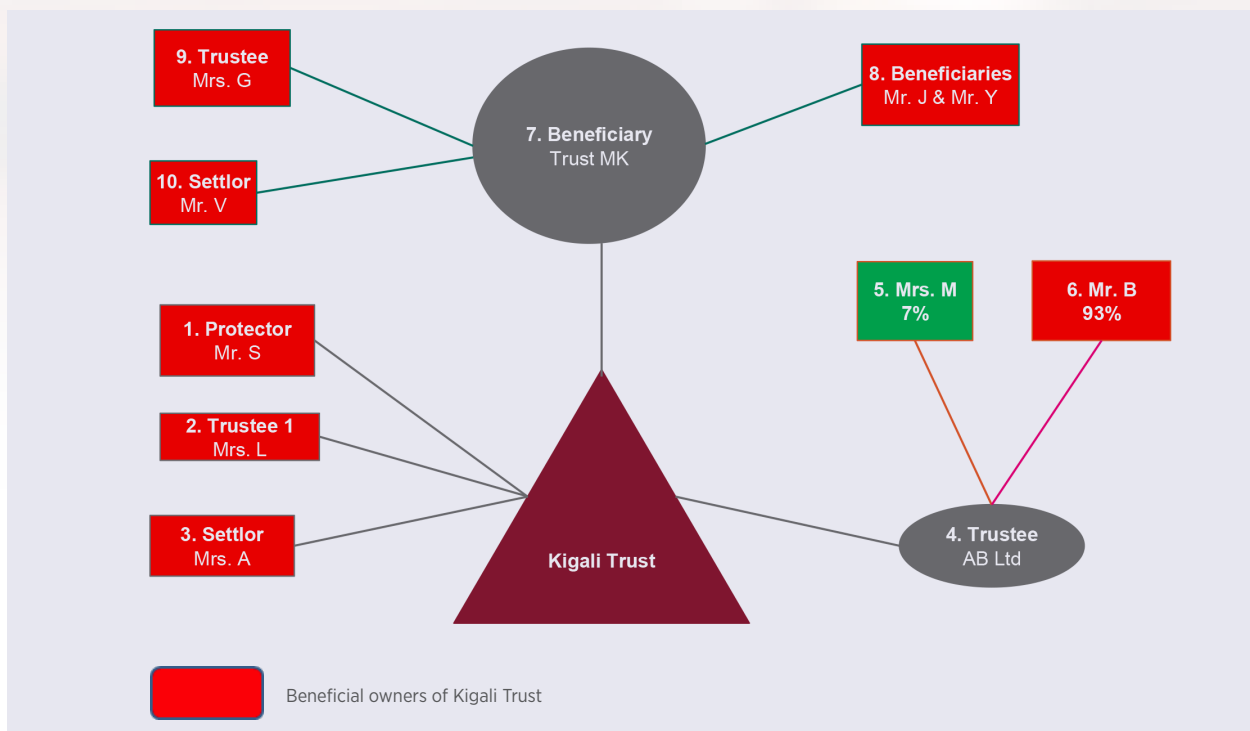
**Example 5**

Kigali Trust has recently been registered by the Office of the Registrar General. According to article 87 of the law governing trusts in Rwanda, the Trustee is required to keep a register of the beneficial owners of the trust and to file a copy of the same with the Registrar General.

For this purpose, all the parties of the trust who are natural persons are immediately identified as beneficial owners of Kigali Trust: Mrs A (Settlor), Mrs L (Trustee) and Mr S (Protector). The beneficiary Trust MK and the trustee AB Ltd. cannot be beneficial owners of Kigali Trust, because they are a legal arrangement and a legal person (a company), respectively.

Then, it is necessary to look through these entities by applying the right methodology to identify the beneficial owners of Kigali Trust:

- The natural persons who are parties of the beneficiary Trust MK are the beneficial owners of Kigali Trust: Mr. V (Settlor), Mrs G (Trustee), Mr J and Mr Y.
- Mr B, who owns 93% of the corporate trustee AB Ltd., would be the beneficial owner of Kigali Trust (following the 25% threshold criteria).



## 2.5 Collective investment schemes

### Scope of Reporting for Collective Investment Schemes

83. Pursuant to article 74 of the Law governing collective investment schemes (CIS), the CIS or its operator is required to implement the following measures:

- Take reasonable measures to obtain, verify and hold adequate, accurate and up-to-date information in respect of the beneficial owners of the CIS they manage;
- Record information in the register of beneficial owners;
- Update the register whenever there is a change to the particulars of the beneficial owners within seven (7) days of the changes;



- Store the information for the period of time during which an individual is beneficial owner, and for a further period of ten (10) years after the individual ceases to be beneficial owner or after the CIS has, for whatever reason, ceased to exist;
- Keep the register and supporting documents at its registered office in Rwanda;
- Disclose data to the competent authority, upon request and in a timely manner;
- File with the regulatory authority, a copy of the register of beneficial owners and update within fourteen (14) days of updating the internal register as provided under item 3° of this Article.

## Methodology for determining the beneficial owner of a collective investment scheme

### *Investment Company Scheme*

84. According to the CIS law, a CIS structured as an Investment Company Scheme (ICS) may take the following forms:
- a. An investment company with fixed capital which may be a single or umbrella scheme (SICAF);
  - b. An investment company with variable capital which may be a limited or indefinite life scheme (SICAV); and
  - c. Protected cell company.
85. Since the investment company scheme takes the form of a company, it is required to comply with the beneficial ownership reporting framework in respect of companies even when it is listed in the Rwanda Stock Exchange.
86. Therefore, the 3-step approach (the cascade) described under 2.1 above is equally applicable to determine the beneficial owners of an investment company scheme:

**Step 1:** The identity of the natural persons, who whether acting alone or together, hold, directly or indirectly, at least twenty five (25) percent of the units or shares or voting rights of the investment company scheme.

**Step 2:** To the extent that there is doubt under step 1 as to whether the natural person(s) who ultimately own the investment company scheme are the beneficial owners or where no natural persons ultimately own the investment company, identify the natural persons (if any) who, whether acting alone or together, exercise control of the investment company scheme through other means.

In this circumstance, control through other means includes, but not restricted to situations where the natural person(s) effectively determine, through the voting rights they hold, the decisions made at the CIS's general meetings or where they have the power to appoint or dismiss the majority of the members of the investment company's administrative, management or supervisory bodies.

**Step 3:**

Where no natural person(s) is identified under steps 1 or 2 above, reasonable measures should be taken to identify and verify the identity of the relevant natural person who holds the position of senior managing officer. Where the collective investment scheme is managed by an investment management company, the natural person or persons who effectively manage that investment management company should be identified.

**Unit Trust**

87. A unit trust is an arrangement whereby property is held on trust for a large number of investors. It is constituted by a deed regulating the rights, powers and duties of the parties to the arrangement.
88. The parties to a unit trust include a manager, a trustee and investors (i.e the unit holders). In a unit trust arrangement, the manager purchases property and vests the title to it in the trustee who, at the outset, holds on trust for the manager.
89. The beneficial interest is divided into a large number of units which are sold by the manager to investors. The manager agrees to buy back units from any unit holder desiring to sell. These units may be resold by the manager.
90. The beneficial owners of a Unit Trust are deemed to include the following parties:
  - The settlor i.e fund manager who purchases the property and vests the title to it in the trustee who, at the outset, holds on trust for the manager;
  - The trustee(s) (the role of trustee will generally be carried out either by a bank or an insurance company);
  - The natural person(s) (i.e investors-unitholders) who acting alone or together, hold directly or indirectly at least twenty five (25) percent of the units in the unit trust;
  - Any other natural person(s) (if any) exercising control over the unit trust by any other means;
  - The natural person(s) within the trustee or management company who exercises ultimate control over the entity must also be identified as beneficial owners of the Unit Trust.

## Investment Partnership Scheme

91. A partnership scheme is established by a scheme agreement (Partnership Agreement) concluded between the operator (General Partner) and the limited partners.

92. The beneficial owners of a partnership scheme shall be based on the following steps:

**Step 1:** Identify any natural person(s) acting alone or together, who hold directly or indirectly at least twenty five percent (25%) of the capital or the voting rights in the conduct of the business of the partnership scheme;

**Step 2:** To the extent that there is doubt under Step 1 as to whether the natural person(s) who ultimately own the limited partnership scheme are the beneficial owners or where no natural persons ultimately own the limited partnership scheme, identify the natural persons (if any) who, acting alone or together, exercise control of the limited partnership scheme through other means.

In this case control through other means includes, but not restricted to the power to appoint or dismiss a majority of the general partners of the partnership scheme or, entitlement to at least twenty five (25) percent of the assets of the partnership scheme in the event of dissolution.

**Step 3:** Where no natural person is identified Step 1 or 2 above, take reasonable measures to identify the individuals who hold the position of general partner of the partnership scheme or, in the case of a general partner that is a body corporate, the individuals who are the senior managing officials of the general partner.

## 2.6 Other legal arrangements

93. For other types of legal arrangements (examples include fiducie (a French arrangement similar to trust), treuhand (a German arrangement trust), fideicomiso (an arrangement similar to trust in some civil law countries) or waqfs (an arrangement similar to trust under Islamic law)), the natural person(s) in equivalent or similar positions to a trust must be identified as the beneficial owner.

# Guidelines for obtaining and maintaining beneficial ownership information

94. The sections below provide guidance on the steps that a legal entity or arrangement should take to identify its beneficial owners following the methodology outlined in chapter 2 as well as the documents that they should retain to evidence the identity of their beneficial owners.

### 3.1 Obtaining beneficial ownership information

95. The following actions should be taken to obtain the beneficial ownership information:

- Require shareholders/members to notify the reporting legal person or arrangement of the identity of its beneficial owner, and of any changes in the beneficial ownership information.
- Serve a notice on any person that the reporting legal person or arrangement knows or has reasonable cause to believe to be beneficial owner in relation to the legal person or arrangement; or that knows or may have reasonable cause to know the identity of a person with significant control over the company. The notice must require the addressee to:
  - ✓ In case the person is believed to be beneficial owner:
    - a) State whether he/she is a beneficial owner of the legal person or arrangement named in the notice, and
    - b) If so, confirm or correct any particulars of his/hers that is included in the notice, and supply any that are missing.

✓ In case the person is believed to know a beneficial owner:

- a) To state whether or not the addressee knows the identity of any natural person who is a beneficial owner of the legal person or arrangement named in the notice, or any person (whether a natural person or not) likely to have that knowledge, and
- b) If so, to supply any particulars of any such person that are within the addressee's knowledge, and state whether or not the particulars are being supplied with the knowledge of each of the persons concerned.

96. Where a legal entity or arrangement already has the particulars of a beneficial owner in its records or obtains such information from another source with the knowledge of the beneficial owner, it is not required to give notice to such a natural person.

### **3.2 What information should be obtained regarding the beneficial owner**

97. Details of particulars that should be obtained for each beneficial owner and recorded in the internal register of beneficial owners by the legal persons and arrangements include the following:

- a) Full names of the beneficial owner;
- b) Residential address, business, postal and/or email address;
- c) Nationality;
- d) Date and place of birth;
- e) National ID/Tax identification number;
- f) Occupation;
- g) Date on which the individual became a beneficial owner;
- h) Nature and extent of ownership interest held;
- i) Nature and extent of control exercised;
- j) Date of cessation as a beneficial owner;
- k) In respect of a class of beneficial owners, information sufficient to identify and describe the class of individuals who are beneficial owners.

### **3.3 Who should provide the required beneficial ownership information?**

98. Individuals who are beneficial owners are obliged to notify companies, partnerships, foundations, trusts and collective investment schemes in which they hold a beneficial interest of such beneficial interest where the required information has not already been provided and to notify them of any change in the future.
99. Where a legal person or arrangement must map out the ownership of other entities or arrangements in its ownership chain in order to identify a beneficial owner, the other entities or arrangements in the ownership chain are obligated to provide all relevant information with respect to their beneficial owners.
100. A beneficial owner who acquires, disposes of, increases or reduces his beneficial interest is bound to provide the said information to the company, foundation or trust within 14 days and within 10 working days for partnerships. A beneficial owner is bound to notify the company, foundation, trust and collective investment scheme within 14 days and within 10 working days for partnerships, if he/she cease to be beneficial owners or if their particulars on the beneficial ownership register changes.

### **3.5 Who is responsible for the identification of beneficial owners**

101. The responsibility for maintaining beneficial ownership information is dependent on the type of legal person or arrangement.

#### *In the case of a company*

102. Pursuant to article 116 of the law governing companies in Rwanda, the Company Secretary of every company created or recognized in Rwanda is responsible for ensuring compliance with the beneficial ownership requirements.
103. The Company Secretary is also under obligation to ensure that the beneficial ownership information is accurate and up-to-date and can be accessed by relevant competent authorities in a timely manner. All changes to the beneficial owners of the company must be communicated to the Registrar General within fourteen (14) days.
104. According to the Company Law, the Company Secretary refers to a person appointed by a competent authority and responsible, among other things, for ensuring that the company's business activities comply with the legal provisions.
105. Where the company does not have a Company Secretary, the responsibility for maintaining the register of beneficial owners lies with the Board of Directors of the company. Otherwise, the company can authorize any officer of the company or its legal representative to be responsible for collecting, checking and providing the beneficial ownership information.
106. Article 114 of the company law also allows a company to appoint an agent to maintain its register.



### *In case of a foundation*

107. According to article 32 of the Law governing foundations, the foundation council must take steps to ensure that the foundation's records and prepared and kept. On this basis, the responsibility for ensuring compliance with the beneficial ownership requirement lies with the Foundation Council.
108. Each member of the council of the foundation is responsible for ensuring that the register of beneficial owners is prepared and properly kept and the beneficial ownership information is accurate and up-to-date.

### *In case of a partnership*

109. In respect of general and limited partnerships, the responsibility for ensuring compliance with the beneficial ownership requirement lies with the general partners, on account of the fact that they are responsible for managing the business of the partnership (article 67 of the partnership law).
110. In respect of a LLP, the responsibility for ensuring compliance with the beneficial ownership requirement lies with its manager or a person who acts as compliance officer.

### *In the case of a trust*

111. In respect of trusts, according to article 87 of the Law governing trusts, the responsibility for identifying and verifying the particulars of beneficial owners lies with the trustee(s).

### *In the case of a collective investment scheme*

112. In the respect of an Investment Company Scheme, the responsibility for complying with the beneficial ownership reporting framework lies with the board of directors. Therefore, each member of the board of directors must take steps to ensure that the Investment Company Scheme fulfils the beneficial ownership requirements.
113. In case of Investment partnership Scheme, the responsibility to establish and maintain a register of beneficial owners in respect of partnership schemes lies with the operator (General Partner).

### 3.6 Obligation to verify the beneficial ownership information

114. In order to identify their beneficial owners, legal persons and arrangements should take the following actions:

- Review all documents and information available to the legal person or arrangement:
  - For companies (e.g. articles of association, register of shareholders, shareholders' agreements, certificates of incorporation, etc.)
  - For partnerships (e.g. partnership deeds or agreements, register of partners)
  - For foundations (e.g. foundation charter, register of members, statement of purpose, management reports etc)
  - For trusts (e.g. trust deed, register of members, memorandum of wishes etc)
- Consider any evidence that may show interests or rights held through alternative means or arrangements. For example, management reports may reveal any natural persons who exercise control through other means.
- Examine organisation chart of the legal person or arrangement
- Maintain an internal policy on beneficial owner identification and require all parties to the legal person or arrangement to notify it of:
  - a. the identity of its beneficial owner(s); and
  - b. any changes in its beneficial ownership information.

115. The reporting person must verify the accuracy of the information provided in response to a notice before the name of the beneficial owner is entered in the register of beneficial owners for example by:

- Obtaining an unexpired government-issued identification document evidencing nationality or residence and bearing a photograph or other similar safeguards, such as a national identity card, a passport or a driver's license; and
- verifying the person's identity by comparing information he/she provided with information from a public database or other reliable source.



### 3.7 Documentary obligations: what documents should the legal persons and arrangements retain?

#### Evidence of steps taken to identify the beneficial owners

116. Legal persons and arrangements are compelled to keep a record of the reasonable steps taken to identify their beneficial owners and must retain those records for a period of not less than ten (10) years after the date on which the legal person or arrangement ceases to exist.
117. The record must show how beneficial owners were identified and how their information was verified. The record must also show how the beneficial owner was traced in the case of a chain of ownership. The following details must be on record:
  - The particulars of person(s) to whom it has issued a notice to provide beneficial ownership information;
  - The person(s) interest in the legal entity or legal arrangement;
  - The date on which the notice was issued;
  - The date on which the notice was complied with;
  - The date on which a restriction, if any, was put in place for failure to comply with the notice;
  - The date on which a restriction, if any, was lifted following the person(s) compliance with the notice.
118. Reporting persons are required to file with the Registrar General a copy of this record and update the Registrar General within fourteen (14) days of any changes made to the records. Such changes may include an acquisition, disposal, increase or reduction to a beneficial interest.

## Supporting/underlying/justification documents to keep

119. For the purpose of compliance with the requirement to keep accurate and timely beneficial ownership information, companies, partnerships, foundations, trusts and CISs must keep the original or a copy of all documents, and a record of the data and information, obtained in the course of identifying and ascertaining the identity of the beneficial owner for at least 10 years. Such supporting documents may include, but are not limited to:

- ***In the case of legal persons (e.g. companies, partnership etc)***

- copies of the beneficial owner's national identification card, passport or other similar documents;
- certificate of incorporation
- certificate of registration
- company constitution (memorandum and articles of association)
- minutes of board meetings
- shareholding including information on parent company and subsidiaries information
- company tree
- director's and shareholder's resolution
- partnership agreement
- appointment/ authorisation letter
- Senior management list
- Company's annual report and annual return
- shareholder's agreements and other related agreements
- Director nomination agreement
- Registers of partners/shareholder and beneficial owners
- Any other source documents that sufficiently identifies the beneficial owner

- ***In the case of a foundation***

- List of parties to the foundation
- Persons involved in the foundation establishment.
- Foundation charter
- Foundation registration document
- Internal register of beneficial owners

- ***In the case of trusts***

- List of parties to the trust
- Persons involved in the trust
- Trust deed
- Trust registration document
- Internal register of beneficial owners

- ***In the case of partnerships***

- Partnership deed
- Registration certificate

## Where to keep the document

120. The supporting documents must be kept by the company, partnership, foundation, trustee and CIS at the same location with the register of beneficial owners to show that reasonable steps have been taken in identifying the beneficial owner. Such location must be the registered office of the legal person or legal arrangement in Rwanda. It can also be another place in Rwanda; but this should be notified to the Registrar General.
121. In the case of foreign companies, partnerships, trusts and foundations the register must be stored in the registered office of the representative or appointed agent in Rwanda.
122. Where the reporting person changes the place at which the register of beneficial owners is kept, it must, within fifteen (15) days of the change, notify the Registrar General.

## 3.8 Retention obligations:

### Retention period (starting point)

123. Legal persons and arrangements must store the information on their beneficial owners and supporting documents for the period of time during which an individual is beneficial owner, and for a further period of 10 years from the date the individual ceases to be beneficial owner

### How to maintain the info (BO register and underlying documentation)

124. Beneficial ownership information and supporting documents must be kept in any official language in Rwanda either in an electronic or physical form and from the day the individual becomes a beneficial owner and up until 10 years after such individual ceases to be a beneficial owner.

### When to update the information maintained

125. The internal register of beneficial owners must be updated when there has been a relevant change in beneficial ownership, (i.e. where a natural person ceases to be a beneficial owner, or when there has been a change in the information contained in the internal register). Where legal person or arrangement learns of such changes or has reasonable cause to believe that such a change has occurred, it must serve notice on the natural person concerned seeking updated information, unless the information has already been provided by or on behalf of the natural person.

### Legal entities and arrangements that cease to exist

126. When a legal person or arrangement is dissolved or ceases to exist the relevant books and records including beneficial ownership records should be submitted to the Registrar General within one (1) month from the date of end of winding up.

127. The responsibility for this submitting of records to the Registrar General lies with the Company Secretary, the Board of Directors, Partners, Foundation Council, Trustee and liquidator.
128. The Registrar General has the responsibility to keep them for a period of ten (10) years from the date of their receipt. This also applies to foreign legal persons and arrangement authorised to operate in Rwanda.

### **3.9 Reporting the beneficial ownership information to the Central Register of Beneficial Owners**

129. To ensure availability of accurate beneficial ownership information, accessible by competent authorities in a timely manner, a Central Register of Beneficial Owners maintained by the Registrar General of Companies has been established.
130. The submission of beneficial ownership information with the Registrar General is made online (beneficial owner declaration) through a portal created by the Rwanda Development Board (RDB) or as might be otherwise advised by the Registrar General. This information must be adequate, accurate and up to date, enabling to identify the beneficial owners, the nature and extent of the interest held by each such beneficial owner.

#### **When to report (first report, periodic report, spontaneous report (changes))**

131. The first beneficial owner declaration must be submitted upon the registration of the company, partnership, foundation, trust, collective investment scheme with the Office of the Registrar General.
132. For existing entities, the first beneficial owner declaration must be made by the reporting entities, within the time limit specified in the relevant laws (i.e. Company, Partnership, CIS, Foundation and Trust laws) .
133. Should the information change, the reporting person is required to submit an updated declaration to the Registrar within 14 calendar days after such changes.

## What to report (information and documents to be reported)

134. The following information must be delivered by a relevant entity or arrangement to the Central Register of Beneficial Owner:

- The name, date of birth, nationality and residential address of each of its beneficial owners;
- A statement of the nature and extent of the interest held or control exercised by each of its beneficial owners;
- Such other information as determined by the Registrar General.

### 3.10 The Transitional Period

135. All legal entities and arrangements existing at the effective date of this Guide must file their beneficial ownership information with the Registrar General within the time frame specified by the relevant laws.

136. In case of a change in the information of a beneficial owner, a reporting person must, within fourteen (14) days from the change, file the information regarding the new beneficial owner or the change on the details of an existing beneficial owner.

137. Legal persons and legal arrangements created or formed after the signature of this Guide shall, at the time of formation or registration, file their beneficial ownership information with the Registrar General.

### 3.11 Sanctions

138. Persons who fail to comply with the requirements of the beneficial ownership are liable to the sanctions provided for by the Trust law, CIS law, Company Law, Partnership Law and Foundation law.

### 3.12 Commencement

139. These Guidelines enter into force on the date of their signature and they replace any previous Guidelines on the same subject matter.

**Kigali, 28 March 2023**

**Se**

**Richard KAYIBANDA**

**Registrar General**

# Useful Resources

## Laws of Rwanda

### Commercial Laws

- Law N° 007/2021 of 05/02/2021 governing companies as amended by Law N° 019/2023 of 30/03/2023;
- Law N° 008/2021 of 16/02/2021 governing partnerships as amended by Law N° 018/2023 of 30/03/2023
- Law N° 059/2021 of 14/10/2021 governing foundations
- Law N° 062/2021 of 14/10/2021 governing collective investment schemes
- Law N° 063/2021 of 14/10/2021 governing trusts.

### Anti-money laundering laws and guidelines

- Law N° 028/2023 of 19/05/2023 on the prevention and punishment of money laundering, terrorism financing and the financing of proliferation weapons of mass destruction General Guidelines N° 3160/2021 - 00026[616] to Financial Institutions on Anti-Money Laundering, Terrorist Financing and Financing of the Proliferation of Weapons of Mass Destruction
- Regulations N° 001/FIC/2022 of 16/02/2022 relating to anti-money laundering, combating the financing of terrorism and financing of proliferation of weapons of mass destruction
- Financial Intelligence Centre Guidelines N° 001/2022 of 14/09/2022 on transparency and beneficial ownership

### The International Standards on Tax Transparency

- Exchange of Information on Request: <https://www.oecd.org/tax/transparency/what-we-do>
- Automatic Exchange of Information: <http://www.oecd.org/tax/automatic-exchange/>

### The FATF Recommendations

- FATF (2012-2022), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France, [www.fatf-gafi.org/recommendations.html](http://www.fatf-gafi.org/recommendations.html)

### Beneficial Ownership Toolkits

- • Building Effective Beneficial Ownership Frameworks: A joint Global Forum and IDB Toolkit available at [https://www.oecd.org/tax/transparency/documents/effective-beneficial-ownershipframeworks-toolkit\\_en.pdf](https://www.oecd.org/tax/transparency/documents/effective-beneficial-ownershipframeworks-toolkit_en.pdf)
- A Beneficial Ownership Implementation Toolkit: <http://www.oecd.org/tax/transparency/documents/beneficial-ownership-toolkit.pdf>



# Annexure A

**Sample notice to a person holding any voting shares/voting rights to inform the company that the person is a beneficial owner**

Kigali.....

[Date]

[Addressee],

Re: [Company Name] (“company”)

Pursuant to article.....[insert law], as a member/shareholder/partner of the [insert name of company/partnership/foundation/trust] you are required to inform and confirm the following information within 30 days from the date of this notice:

- a) confirm whether or not you are a beneficial owner of the [company, partnership, foundation, trust]; and
- b) confirm or correct any particulars concerning him or her that is included in the notice, and provide any information that is missing, if necessary.

Please be informed that failure to comply with this notice or providing false or misleading information, the [partnership, foundation, company, trust] may restrict you from exercising your rights in the [partnership, foundation, company, trust]

Yours faithfully,

[Name] [Director/Company Secretary]

For and behalf of [Name of the company]

# Annexure B

## Sample notice to enquire if there are any shareholder agreements

Kigali.....

[Date]

[Addressee],

Re: [insert subject]

Pursuant to article.....[insert law], as a member/shareholder/partner of the [insert name of company/partnership/foundation/trust] you are required to inform and confirm the following information within 30 days from the date of this notice:

- a) Whether or not you have entered into any agreement or arrangement with another person who is entitled to control you as a shareholder/member of the [company, partnership, foundation, trust] in exercising your voting rights carried by your voting shares.
  
- b) If you are under an agreement or arrangement with another person who is entitled to control you as a member of the [company, partnership, foundation, trust] in exercising your voting rights carried by your voting shares, kindly provide the following particulars:
  - i. ....
  - ii. ....
  - iii. ....

Please be informed that failure to comply with this notice or providing false or misleading information, the [partnership, foundation, company, trustee] may restrict you from exercising your rights in the [partnership, foundation, company, trust]

Yours faithfully,

[Name] [Director/Company Secretary]

For and behalf of [Name of the company]

