



DIFFERENCE # MAKERS

ULTIMATE BENEFICIAL OWNERSHIP

GUIDE



IMPORTANT NOTICE

This guide is based on selected sections of the Financial Intelligence Centre Act (as amended and referred to as the (“FICA”), the Companies Act, the Trust Property Controls Act (the Acts) as well as further supporting local and international laws and guidance.

Please note that this guide is not a comprehensive summary of the above legislation mentioned and the supporting local and international laws and guidance’s. It includes information on matters which are practical and relevant to SAICA members. In the interest of brevity, the guide summarises certain provisions of the Acts and the supporting local and international laws and guidance’s or refers to extracts. The guide is not intended to be exhaustive and should not be viewed as a substitute for reading the Acts and the supporting local and international laws and guidance’s. The information given in this document does not constitute legal advice and should be treated with caution.

At the time of compiling this guide certain of the interpretations of the mentioned Acts have not been tested in a court of law. Therefore, where the guide suggests a particular interpretation or approach to any matter, this is based only on SAICA’s current view of the interpretation of the Acts. Although SAICA has consulted widely on contentious issues, it is possible that a different view may ultimately be followed in practice, for example in instances where the Companies and Intellectual Property Commission (“CIPC”) provides specific guidance.

SAICA recommends that any decision or actions being considered in relation to the Acts and the supporting local and international laws and guidance’s be checked with appropriately qualified legal advisors, the CIPC or another appropriate expert. This guide does not consider the JSE Listings Requirements, King V or any other legislation or regulation that affects the compliance requirements of businesses




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Legislation has recently been amended relating to the requirements of Ultimate Beneficial Ownership (“UBO”).

The understanding of the requirements is complex yet important to ensure regulatory compliance. As members of the South African Institute of Chartered Accountants (“SAICA”), members are owners of firms, directors of companies, members of close corporations, employees of various types of organisations and offer services to clients and will be impacted by the requirements of the new beneficial ownership regime.

South Africa’s grey listing in February 2023 (South Africa was removed in October 2025) required strengthened controls relating to UBO to better respond to the risks of money laundering (“ML”), terrorist financing (“TF”) and proliferation financing (“PF”). Accountable Institutions (“AIs”) are required to maintain accessible records of the UBOs of its clients and to provide this information to competent authorities including the Financial Intelligence Centre (“FIC”), this is an obligation set by the Financial Intelligence Centre Act (“FICA”).

The AI should obtain accurate, adequate, and up to date beneficial ownership (“BO”) information on its clients. Through identification and taking reasonable steps to verify the BO, the AI must be satisfied that it knows “who” the BO is, and “why” or “how” the person is a BO. This requires understanding of the BO interest.

IT IS IMPORTANT THAT MEMBERS UNDERSTAND THE IMPORTANCE OF ENSURING REGULATORY COMPLIANCE IN RELATION TO UBO DISCLOSURE AND ENCOURAGE ENHANCED RISK MANAGEMENT TO RESPOND TO ML, TF & PF RISKS.

Accountable Institution ("AI")	An accountable institution is defined as a person, or an organisation referred to and listed in Schedule 1 of the FIC Act that carries on the business of any entity.
Anti-Money Laundering (AML)	Anti-money laundering refers to a set of policies and practices to ensure that financial institutions and other regulated entities prevent, detect, and report financial crime and especially money laundering activities.
Beneficial Owner ("BO")	Beneficial Ownership (BO) refers to the individuals who ultimately own or control a company or legal entity, regardless of whether they are listed in the official records.
Counter Financing of Terrorism ("CFT")	Counter-financing of terrorism, or combating the financing of terrorism, seeks to stop the flow of illegal cash to terrorist organisations. It is closely tied to anti-money laundering.
Companies And Intellectual Property Commission ("CIPC")	The Companies and Intellectual Property Commission is an agency of the Department of Trade, Industry and Competition in South Africa.
Financial Action Task Force ("FATF")	The Financial Action Task Force (FATF) is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering and terrorist financing. Recommendations issued by the FATF define criminal justice and regulatory measures that should be implemented to counter this problem. These Recommendations also include international co-operation and preventive measures to be taken by financial institutions and others such as casinos, real estate dealers, lawyers and accountants. The FATF Recommendations are recognised as the global anti-money laundering (AML) and counter-terrorist financing (CFT) standard.
Financial Intelligence Centre ("FIC")	The FIC was established to identify proceeds of crime, combat money laundering, and the financing of terrorism and, in so doing, has a primary role to protect the integrity of South Africa's financial system. The Entity was established by the FIC Act 38 of 2001 and reports to the Minister of Finance and to Parliament.
Financial Intelligence Centre Act ("FICA")	The Financial Intelligence Centre Act, 2001 (Act 38 of 2001), empowers the FIC to apply measures designed to identify the proceeds of crime, combat money laundering, terrorist financing and financing of the proliferation of weapons of mass destruction.
General Laws Amendment Act ("GLAA")	The purpose of the new act is to address any shortcomings in the current legislation that deals with combatting money laundering and terrorist financing. This aims to align South Africa with the standards set by the Financial Action Task Force (FATF).
Money Laundering ("ML")	Money laundering (ML) is the process of illegally concealing the origin of money obtained from illicit activities such as, amongst others, fraud, drug trafficking, human trafficking, terrorism, corruption, and embezzlement, and converting the illicit funds into a seemingly legitimate source, usually through a front organisation. ML takes usually takes place in three steps: Placement, Layering and Integration.
Public Compliance Communication ("PCC")	Public compliance communication, as published by the FIC, provides guidance in relation to a number of matters concerning compliance with the obligations in terms of FICA.

Risk Management and Compliance Programme ("RMCP")

The Risk Management and Compliance Programme, as required by section 42 of FICA, establishes guidelines and procedure to ensure full compliance with FICA in identifying, measuring, monitoring, managing and reporting the material AML, CFT and sanctions risks to which the enterprise may be exposed.

South African Institute of Chartered Accountants ("SAICA")

The South African Institute of Chartered Accountants, South Africa's pre-eminent body for accountants. The institute provides a wide range of support services to more than 60 000 members and associates who are chartered accountants, as well as associate general accountants and accounting technicians.

Trust Property Control Act ("TPCA")

A fundamental piece of legislation that governs the management and control of trusts in many jurisdictions.

Ultimate Beneficial Owner ("UBO")

The most common Ultimate Beneficial Ownership (UBO) meaning refers to the natural person who is ultimately responsible for, owns, or controls a 'customer'.



1. <https://www.fic.gov.za/wp-content/uploads/2023/09/2022.12-CG-FIC-Act-reference-guide.pdf>

3.1. What is an Ultimate Beneficial Owner

A UBO is defined by FATF as the natural person who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement. AIs must identify the natural persons who are the BOs, in essence this means that there needs to be a “warm” body identifiable.

3.2. What is a beneficial owner versus an ultimate beneficial owner versus a beneficial interest

Ultimate Beneficial Owner	<ul style="list-style-type: none"> • Focuses on identifying the individual who ultimately owns or controls a company, even if their ownership is exercised through a chain of ownership or control. • Typically defined as individuals owning or controlling a certain percentage of the company (commonly 25% or more, but in South Africa this is 5%), either directly or indirectly. • All UBO's are BO's.
Beneficial Owner	<ul style="list-style-type: none"> • Refers to individuals who enjoy the benefits of ownership in a company, such as receiving income or profits, regardless of whether their names appear on official ownership documents or if the title to the asset is held by someone else. <ul style="list-style-type: none"> • For example, a trust beneficiary may be the beneficial owner of the trust's assets, even though the trustee holds legal title. • This can include individuals with significant influence or control over the company, even if they hold their interest through intermediaries or complex structures. • The term BO can encompass a broader group, including those with indirect or less direct control, whereas UBO specifically identifies the top individuals who have significant ownership or control over the company. • Not all BOs are UBO's.
Beneficial Interest	<ul style="list-style-type: none"> • Refers to the right to enjoy the benefits or profits from property or assets, even though the legal title or ownership might rest with another party. It means that while someone else may hold legal title, the person with the beneficial interest benefits from the property's use, income, or any proceeds, such as dividends or rent as examples. • Beneficial interest is the right to benefit from an asset, while the beneficial owner is the individual who holds that right, even if they don't have legal title to the asset. • There is no legal obligation under the FICA for individuals who have a beneficial interest to be identified.

Understanding the distinction between UBO, BO and beneficial interest is crucial for transparency in corporate structures and compliance with financial regulations.

3.3. Why do you need to collect UBO information

It is important to collect UBO information as criminals often abuse legal persons, trusts, and partnerships to obscure the ownership or control of funds derived from illegal activities or intended to be used for illegal activities. Criminals do this by creating different levels of ownership which makes it difficult to identify the UBO of the legal person, trust, and partnership. Certain legal persons, trusts or partnerships are more vulnerable to being abused by criminals because of the way they are structured or because of their characteristics.

As a business that is also an AI, there is a legal obligation under the FICA for UBO information on clients to be collected.

3.4. Non-compliance and penalties

Non-compliance with the collection of UBO information and the related legislation can result in significant penalties and legal consequences.

Penalties for non-compliance with the obligation to collect UBO information can include:

Fines	Entities that fail to comply with FICA may face fines of up to R10 million for natural persons and up to R50 million in respect of any legal person. This penalty can apply to both individuals and companies.
Imprisonment	Individuals who do not adhere to the UBO disclosure requirements may face imprisonment for up to 15 years in severe cases.
Revocation of Business License	In certain instances, entities that consistently fail to comply with FICA regulations, including UBO reporting requirements, could have their business licenses or permits revoked, preventing them from operating.
Reputational Damage	Beyond the financial and legal penalties, non-compliance can severely damage an entity's reputation, leading to loss of business, contracts, and trust from customers, regulators, and partners.

In June 2024 the FIC imposed a penalty of R1.1 million on Pretoria-based MIKA Finansiële Dienste (Pty) Ltd. Sections 42(1) and (2) of the FICA require AIs to develop, document, maintain, and implement a Risk Management and Compliance Programme ("RMCP") for AML, CFT and CPF. Although MIKA Finansiële Dienste (Pty) Ltd had developed an RMCP, it was found to be defective because it failed to outline the processes to comply with various provisions of the Act. Additionally, MIKA Finansiële Dienste (Pty) Ltd did not implement the RMCP effectively by failing to risk rate most of its customers.

Further, the FIC fined MIKA Finansiële Dienste (Pty) Ltd R200 000 for non-compliance with sub-section (1) and R700 000 for not meeting the requirements of sub-section (2), "Non-verification of beneficial ownership". In the case of clients that are legal entities, trusts, or similar arrangements between natural persons, section 21B of FICA requires that an AI establish the nature of the client's business and the ownership and control structure of the client. At the time of the inspection, MIKA Finansiële Dienste (Pty) Ltd had failed to establish and verify the BO of one client. It is imperative to note that if there is repeated non-compliance with the FICA, the fines are escalated for repeat offences. Further, the FICA publishes a list on its website that is available for public perusal and names the non-compliant entities as well as the details of the offence. It is important that the AI visits the FICA portal daily on the FIC website to check for notifications, notices and any updates from the FIC.

3.5. Regulatory, legal and guidance frameworks governing UBO

The definition of a UBO is important both in international and South African law, regulation, and guidance. South African regulations such as the FICA, PCCs issued by the FIC, the Companies Act, the TPCA, as well as international standards/guidance such as those set by FATF are for the most part aligned in establishing criteria to identify UBOs.

3.6. International

3.6.1. FATF

The FATF is the global ML, TF and PF watchdog. It sets international standards that aim to prevent these illegal activities and the harm that they cause to society. FATF Recommendation 24 underscores the importance of transparent ownership structures for legal entities to fight ML, TF and PF. It emphasises the need for jurisdictions to establish mechanisms that ensure the UBOs are identified, verified, and made accessible to the appropriate authorities and, in some cases, the public. This enhances the global effort to prevent illicit financial activities and promotes transparency in corporate governance.

- ▶ **The definition of a UBO under FATF:** The ultimate beneficial owner is the natural person who ultimately **owns or controls** a legal entity or legal arrangement, such as a company, trust, or partnership.

2. [FSCA-Administrative-sanction-on-Mika-Finansiële-Dienste-Pty-Ltd.pdf](#)

If we break the FATF definition of UBO down further:

Ownership: The person who owns or controls a company through direct or indirect ownership of at least 25% of the shares or voting rights, either individually or through other entities (e.g., companies, trusts, or nominees).

Control: A person who, regardless of ownership (even if ownership is less than 25%), has control over the company. This includes the ability to direct or influence major decisions, such as through voting power, proxy voting, or other mechanisms. In some cases, control could be exercised by individuals who do not meet the ownership threshold but have other means of influence (e.g., directors or executives).

FATF also requires that jurisdictions ensure transparency in identifying UBOs and that this information is made available to:

- competent authorities (tax authorities, financial intelligence units, law enforcement); and
- financial institutions and regulated entities (for due diligence and AML/CFT and CPF purposes).

FATF emphasises that UBO information should be easily accessible to authorities and, where appropriate, to the public, especially when the company operates in sectors that are prone to misuse, such as financial services.

3.7. South Africa

3.7.1. The Financial Intelligence Centre Act

The FICA is the primary South African legislation that addresses UBO, especially in the context of ML, TF and PF.

▶ **The definition of a UBO under the FICA:** The natural person who ultimately **owns or controls** a customer or an entity.

If we break the FICA definition of UBO down further:

Ownership: A person who directly or indirectly holds at least 5% of the ownership interest or voting rights in an entity is a UBO.

Control: A UBO also includes a person who exercises control over the company or entity, even if they do not own 5% or more of the shares. This can include control via voting rights, influence over decision-making, or through indirect ownership (e.g. controlling another company that owns the target entity).

THE PERCENTAGE OF TOTAL OWNERSHIP INTEREST IS A GOOD INDICATOR OF CONTROLLING OWNERSHIP OVER A LEGAL PERSON, AS A PERSON WHO HOLDS SUFFICIENT PERCENTAGE OF OWNERSHIP INTEREST IN MOST INSTANCES EXERCISES INFLUENCE OR CONTROL OVER A LEGAL PERSON AND BENEFITS FROM THAT LEGAL PERSON. IN THIS CONTEXT THE FIC IS OF THE VIEW THAT HOLDING FIVE PERCENT OR MORE OF OWNERSHIP INTEREST IN A LEGAL PERSON IS USUALLY SUFFICIENT TO EXERCISE A CONTROLLING OWNERSHIP INTEREST IN THE LEGAL PERSON. THE FIC STRONGLY RECOMMENDS THAT AIS IDENTIFY THE PERSONS WHO HOLD FIVE PERCENT OR MORE OF OWNERSHIP INTEREST IN A LEGAL PERSON, WHICH PERSONS CAN BE REGARDED AS BOS FOR PURPOSES OF SECTION 21B (2) OF THE FICA.

Beneficial owner

The definition of a BO extends to the scenario where the BO is a natural person who exercises effective control of the client who could be a natural person as well.

Als must identify the natural persons who are the BOs as provided for in section 21B of the FICA. Where the AI does not identify a natural person, the requirement as set out in section 21B of the FICA will not have been fulfilled. Identifying the natural person(s) who are the BOs provides the required understanding as to who ultimately receives the benefits from a client.

More than one natural person can ultimately own or exercise effective control over a client. The AI must identify **all** the natural persons who ultimately own or exercise effective control over a client.

The AI must identify the BO who ultimately, directly or indirectly, owns or exercises effective control of the client. Where a BO indirectly owns or exercises effective control over a legal person through multiple layers in an ownership and control structure, the AI's obligation to identify that BO remains and must be fulfilled.

Legal ownership versus beneficial ownership

A distinction must be drawn between the **legal owner** and **BO**. A natural person may be considered a BO on the basis that he or she is the ultimate owner or controller of a legal person, either through his or her ownership interests or through exercising ultimate effective control through other means.

The legal owner is the person or entity whose name formally appears in official records as the owner of the entity, for example a direct shareholder.

The legal owner may not always be the BO, or the only BO as the case may be, based on this explanation as well as the explanation of beneficial ownership above.

Different types of clients, including legal persons, trusts or partnerships

With reference to the definition of a **legal person**, FICA defines a "legal person" as any person, **other than a natural person**, that establishes a business relationship or enters into a single transaction, with an AI, and includes a person incorporated as a company, close corporation, foreign company or any other form of corporate arrangement or association, but excludes a trust, partnership or sole proprietor. There are different forms of legal persons, trusts, partnerships and other similar arrangements with whom an AI may establish a business relationship or conduct a single once-off transaction on behalf of. AIs are required, in terms of section 42(2)(f) of the FICA, to provide for the manner and the processes by which the institution conducts additional due diligence measures in respect of their clients.

The AI should understand:

- The different types, forms and basic features of legal persons, trusts or partnerships onboarded as their clients or potential clients.
- The manner in which the legal persons, trusts or partnerships are created.
- How to obtain BO information per client type.
- How to determine the possible types of BOs each client type could have.
- How to identify ML, TF, and PF risks posed by each type of client. There may be certain types of legal persons, trusts or partnerships that are inherently more vulnerable to abuse by criminals.

The requirement to identify BOs applies, in addition to the requirement as set out in sections 21 and 21A of the FICA.

Therefore, AIs must identify the legal person, trust or partnership, and the person(s) acting on behalf of the legal person, trust or partnership, as well as the BOs of the legal person, trust or partnership.

3.7.2. PCC 59

The PCC59 underscores the importance of transparent ownership structures for legal entities to fight ML, TF and PF and TF. It emphasises the need for jurisdictions to establish mechanisms that ensure the UBOs are identified, verified, and made accessible to the appropriate authorities and, in some cases, the public. This enhances the global effort to prevent illicit financial activities and promotes transparency in corporate governance.

In PCC59 the threshold of five percent was determined with one of the factors being to align to other legislative requirements, including regulation 32A to the Companies Act which requires affected companies to establish and maintain a register of persons (both natural and juristic) who hold beneficial interest equal to or in excess of five percent of the total number of securities or class of that securities.

3.7.3. The General Laws Amendment Act

In addition to the above in terms of the FICA, the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act (“GLAA”) which commenced in December 2022, amended the obligations imposed on Als regarding BO in terms of the FICA. It is vital that Als now identify the natural person(s) who own or control clients that are legal persons, trusts and partnerships. The GLAA does not define the term UBO.

3.7.4. The Companies Act

The Companies Act governs company structures and their obligations in terms of disclosure, including BO and Beneficial Interest (“BI”).

The Companies Act further gives rise to different obligations for affected and companies that do not fall within the meaning of an “affected company” (hereinafter referred to as “non-affected companies”), as defined in the Companies Act, respectively.

Beneficial Ownership

While the Companies Act does not use the term ‘UBO’ specifically, nor does it define it, it requires companies to disclose shareholders and their direct or indirect control over the company.

In accordance with section 50 of the Companies Act, affected companies are required to establish and maintain a beneficial interest register of persons (both natural and juristic) who hold beneficial interest equal to or in excess of five percent of the total number of securities or class of those securities.

Non-affected companies must record beneficial ownership in their securities register.

Further, for both categories, you need to consider whether the company has beneficial owners (those who directly or indirectly own/ control $\geq 5\%$ of securities or exercise effective control) to declare or not.

The BOs are the individuals who ultimately own or control a company, either directly or indirectly, by holding a beneficial interest of 5% or more in the company or share class (although CIPC only record BOs with 5% or more in the company), typically, these are the shareholders or members of a company. Any beneficial ownership / control below 5%, need not be declared.

For examples of who needs to be identified in terms of the Companies Act, please see “Annexure A”

In terms of the Companies Act, types of beneficial ownership / effective control are:

- The holding of beneficial interest in the securities of a company;
- Control over voting rights, or control over the exercise of voting rights associated with securities of a company;
- The exercise of the right to appoint / remove members of the board of directors of a company, OR control over the exercise of the right to appoint / remove board members;
- The holding of beneficial interests in the securities of a holding company, (through a subsidiary) OR the ability to exercise control (including through a chain of ownership) of a holding company through its subsidiary;
- The ability to exercise control, through a chain of ownership, of:
 - (i) A juristic person other than a holding company of that company;
 - (ii) A body of persons corporate or unincorporate (i.e. body corporate of an estate – NPC);
 - (iii) A person acting on behalf of a partnership; and
 - (iv) A person acting in pursuance of a trust or agreement (i.e. trustees, beneficiaries of trusts, beneficiaries of an agreement).
- The ability to otherwise materially influence the management of that company – effective control.

The following types of companies are required to file beneficial ownership to CIPC:

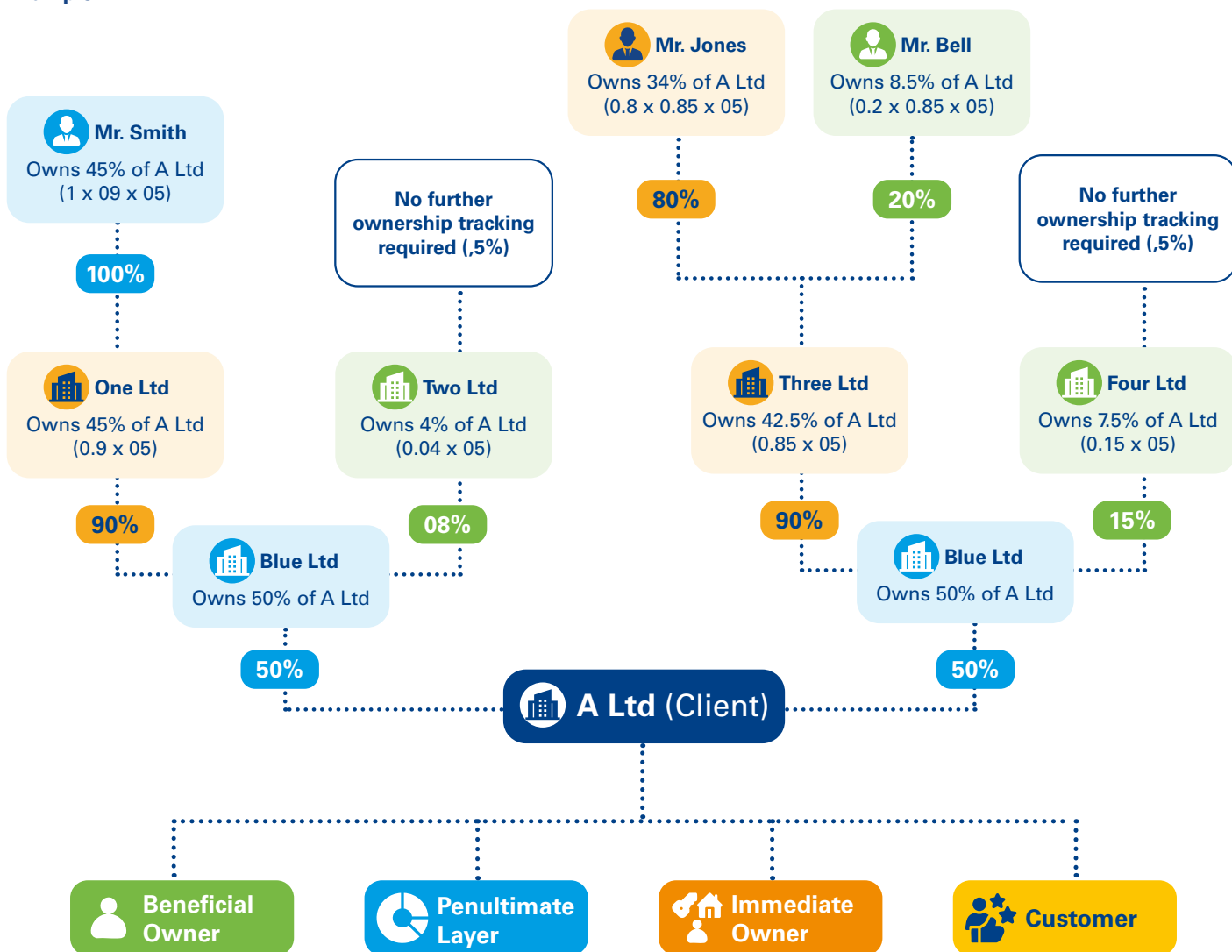
The following entity is not required to file beneficial ownership to CIPC:

- Private Companies (“PTY”);
- Close Corporations (“CC”);
- Non-Profit Companies (“NPC”);
- State Owned Companies (“SOC”) (unless exempted by the Minister in terms of section 9(2) of the Companies Act);
- Personal Liability Company (“PLC”); and
- Public Companies (“LTD”) - while these records are kept by a competent authority such as the Johannesburg Stock Exchange (“JSE”), they are still required to submit a register of beneficial owners as per the Companies Regulations (as amended).

- Primary Co-Operative (“co-op”)

In terms of who can file BO, anyone who has been mandated by the company to file this information must do so within 10 days of incorporation if they were registered after 24 May 2023. Companies are also required to file any changes to this information within 10 days of changes occurring.

Example 1:



6. A co-operative is not a company under the Companies Act; it is a separate legal entity governed by the [Co-operatives Act](#). While both are legally recognised entities that can operate businesses, a co-operative is formed by a group of people to meet a common need and is structured differently from a company, which can be owned by its shareholders. A co-operative is an accountable institution in its own right.

In this example Blue Ltd and Red Ltd (both shaded grey) both own 50% each of the client A Ltd. Since this is over 5%, they are both classed as immediate BO's and therefore need to be identified.

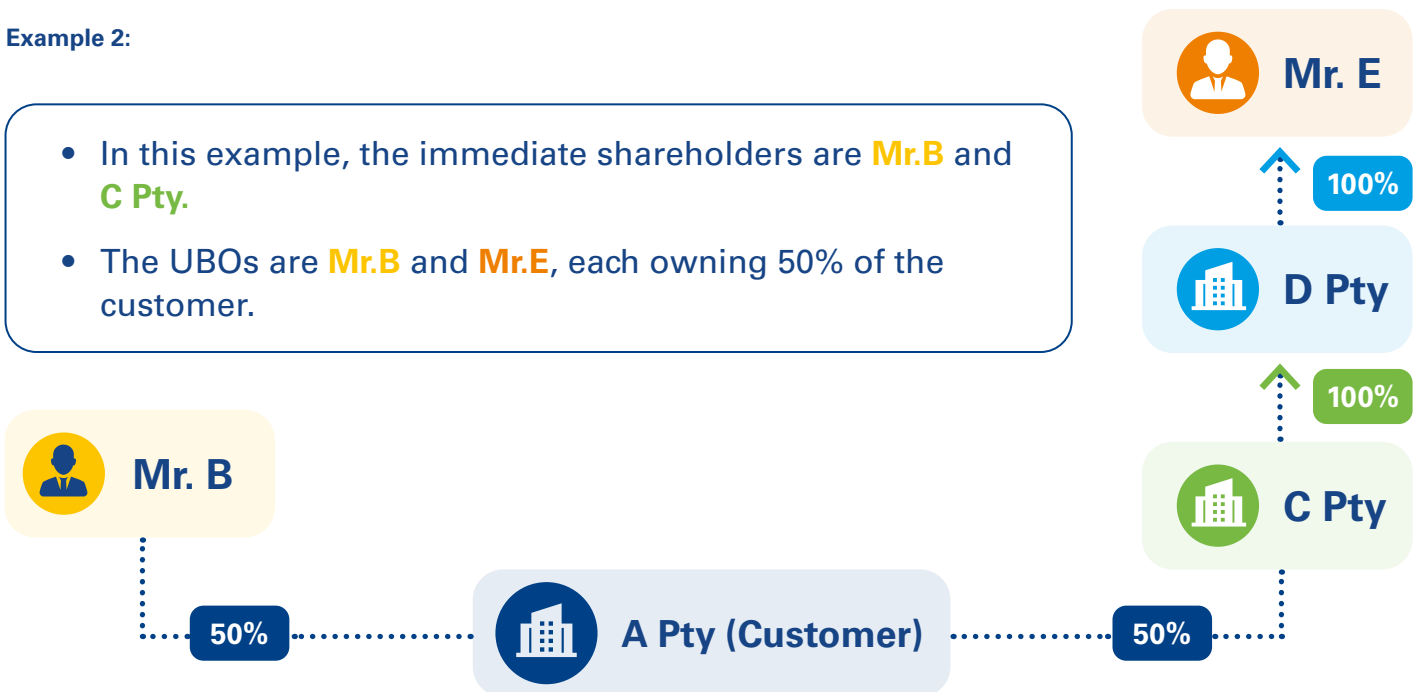
One Ltd (shaded purple) owns 90% of Blue Ltd. It therefore owns 45% (90% x 50%) of the client A Ltd. Since this is over 5%, we need to identify the ownership of One Ltd. One Ltd is owned 100% by Mr. Smith (shaded red). Therefore Mr. Smith is an ultimate beneficial owner of A Ltd (owning 45%) and we need to identify and verify Mr. Smith. Two Ltd (shaded light blue) owns 8% of Blue Ltd. It therefore owns 4% (8% x 50%) of the client A Ltd. Therefore, we will not need to identify Two Ltd.

Three Ltd (shaded purple) owns 85% of Red Ltd. It therefore owns 42.5% (85% x 50%) of the client A Ltd. Since this is over 5%, we need to identify the ownership of Three Ltd. Three Ltd is 80% owned by Mr. Jones (shaded red) and 20% by Mr. Bell (shaded amber). Mr. Jones therefore owns 34% (80% x 85% x 50%) of A Ltd and as such is an ultimate beneficial owner of A Ltd. We therefore need to identify and verify Mr. Jones. Mr. Bell owns 8.5% (20% x 85% x 50%) which is more than 5% and should be treated as a UBO.

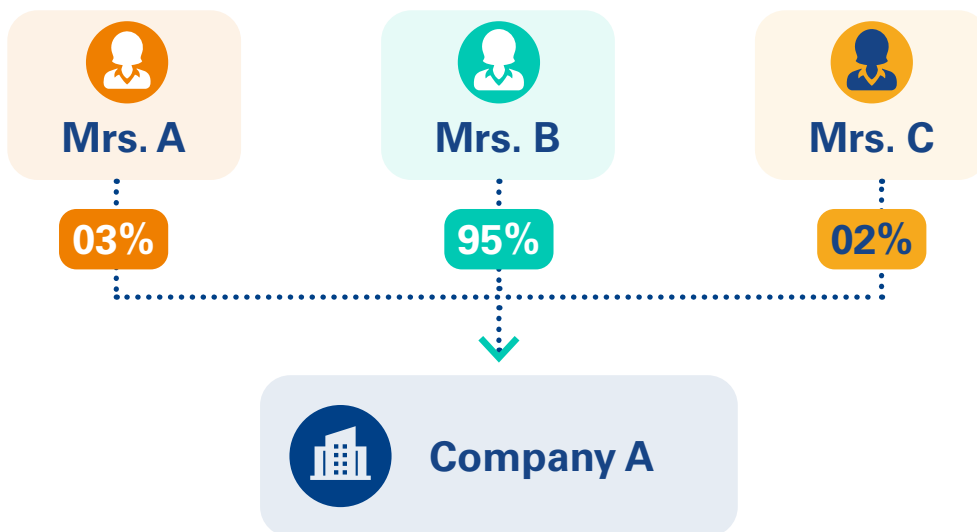
Four Ltd (shaded light blue) owns 15% of Red Ltd. It therefore owns 7.5% (15% x 50%) of the client A Ltd. Since this is more than 5%, we need to identify Four Ltd.

Example 2:

- In this example, the immediate shareholders are **Mr.B** and **C Pty**.
- The UBOs are **Mr.B** and **Mr.E**, each owning 50% of the customer.



Example 3:



As the shareholding of Mrs. A and Mrs. C is below 5%, Mrs. B is the UBO.

Beneficial interest

In terms of the Companies Act, when used in relation to a company's securities, beneficial interest means the right or entitlement of a person, through ownership, agreement, relationship or otherwise, alone or together with another person to:

- (a) receive or participate in any distribution in respect of the company's securities;
- (b) exercise or cause to be exercised, in the ordinary course, any or all of the rights attaching to the company's securities; or
- (c) dispose or direct the disposition of the company's securities, or any part of a distribution in respect of the securities, but does not include any interest held by a person in a unit trust or collective investment scheme in terms of the Collective Investment Schemes Act, 2002 (Act 45 of 2002).

Affected and non-affected companies

Under the Companies Act, companies can be broadly categorised as affected or non-affected companies based on their financial status, regulatory standing, and compliance with specific legal requirements. An affected company is a regulated company as set out in section 117(1)(i) of the Companies Act and a private company that is controlled by or a subsidiary of a regulated company as a result of any circumstances contemplated in section 2(2)(a) or 3(1)(a) of the Companies Act.

An affected company includes:

- A public company;
- A state-owned company;
- A private company – in terms of the transfer of securities when exceeding the percentage prescribed by Minister (10%) within a 24-month period; and
- A private company that is controlled by an affected company (regulated company) or is a subsidiary of an affected company.

If a company does fall within any of the abovementioned companies, the company is a non-affected company.

3.7.5. The Trust Property Control Act

The TPCA primarily governs the administration of trusts and the role of trustees in managing trust property. While it does not specifically address UBO in the same way as the FICA or the Companies Act, it does provide guidance on the disclosure and management of trust assets, which can have implications for identifying the beneficial owners of a trust.



Some key aspects of the TPCA that are relevant to beneficial ownership:

1. Definition of UBO	<ul style="list-style-type: none">• The TPCA defines a BO as a natural person who directly or indirectly ultimately owns the trust property, exercises effective control over the trust's administration, or is named as a founder, trustee, or beneficiary. If any of these roles are held by a legal person (like a company), the beneficial owner is the natural person who ultimately owns or controls that legal person.
2. Definition of Trustee	<ul style="list-style-type: none">• As per the TPCA, a "trustee" is any person who acts as a trustee after being authorised by the Master of the High Court, or whose appointment was already in force when the TPCA commenced. This includes the founder of a trust and any person appointed to administer trust property for the benefit of beneficiaries, who must do so with the care and diligence expected of someone managing another's affairs.
3. Trustees' Fiduciary Duty and Beneficiaries	<ul style="list-style-type: none">• The TPCA outlines the responsibilities of trustees in managing the trust property. Trustees must act in the best interests of the beneficiaries of the trust.• The beneficiaries of a trust are those individuals or entities that ultimately benefit from the trust's assets. In the context of UBO, the beneficiaries are often the UBOs of a trust, as they are the individuals who enjoy the financial benefits derived from the trust.
4. Beneficiary Information	<ul style="list-style-type: none">• Trustees are required to keep accurate and up-to-date records of beneficiaries, including the names and details of those who are entitled to benefit from the trust.• While the TPCA does not explicitly require the identification of UBOs in the same terms as other financial regulations (e.g. the FICA), it is clear that beneficiaries are key to understanding ownership and control over the trust's assets.
5. Trust Deed Requirements	<ul style="list-style-type: none">• A trust deed should outline the beneficiaries and their entitlements to the trust property. This document is essential in identifying the UBOs of the trust, as it will specify who ultimately benefits from the assets of the trust, even if the legal title to the property is held by the trust itself.
6. Reporting Requirements and Transparency	<ul style="list-style-type: none">• The TPCA requires that trustees provide information about the trust to the Master of the High Court ("the Master"). While this information does not automatically include a direct disclosure of the ultimate beneficial owner in the context of financial crime prevention, trustees are obliged to act transparently and in good faith.• The Master may request the details of the trust beneficiaries and, in cases where a trust has been used to conceal ownership or control, this transparency is important for uncovering the UBOs.
7. Implications for UBO	<ul style="list-style-type: none">• In the context of broader South African laws such as the FICA, when a trust is used as part of an ownership structure (e.g. for holding shares in a company), the beneficiaries of the trust could be considered the UBOs.• In line with global standards, trusts may be required to disclose BO information, especially in the context of AML regulations. This is because trusts can be used to obscure the true owners of assets, which is why financial institutions and other regulated entities need to identify the beneficiaries as part of their Know Your Customer (KYC) obligations.
8. Interplay with other legislation (e.g. the FICA)	<ul style="list-style-type: none">• Although the TPCA does not specifically mandate UBO identification in the same way as FICA, South African AIs may still need to comply with FICA requirements when dealing with trusts. This involves identifying the beneficiaries (and ultimately the UBOs) of trusts as part of the broader AML framework.• FICA requires financial institutions to conduct Customer Due Diligence (CDD) and disclose the UBOs of legal entities, including trusts. This aligns with the purpose of the TPCA, which ensures that trustees are acting in the best interest of beneficiaries and provides a legal framework for understanding who the ultimate owners of trust assets are.

In conclusion, while the TPCA does not specifically mention UBO, its provisions about trustees' duties, the role of beneficiaries, and the management of trust property are important for understanding UBO in the context of trusts. Trustees are responsible for maintaining transparency regarding the beneficiaries of the trust, who are often the UBO. When combined with other legislation like the FICA, the TPCA contributes to ensuring that trusts are not used to hide the true ownership of assets.

For many trusts, there will be clearly identifiable beneficiaries, whilst other trusts may have a class of beneficiaries. Where the beneficiary is specifically named within the trust deed, then it is a requirement to identify and verify the named beneficiaries. If the trust deed contains an addendum with a list of named beneficiaries, then this should be considered to be part of the trust deed.

Classes of beneficiaries:

Where the penultimate beneficial owner is a trust, the UBO (i.e. warm body) is any individual who is entitled to an interest in the capital of the trust property. For many trusts, there will be clearly identified beneficiaries, whilst others may have a class of beneficiaries. Where this is the case, it may not be possible to identify the individuals who will benefit from the trust because they may not have been named (e.g. descendants of the donor/founder or because they are a class of beneficiary which by its nature gives rise to a significant number of potential beneficiaries.)

It therefore stands that if the beneficiary is not specifically named within the trust deed, then no KYC obligation exists. In this instance it will be sufficient to identify and record the scope particulars (how beneficiaries of the trust are determined) of the class irrespective of whether the class is restricted or unrestricted.

Note that a bare trust or discretionary trust can be set up as a fund in the form of savings/investment which is to be gifted in the future to an unspecified beneficiary (e.g. godmother to a godchild). In this situation, the investor to the fund is the customer as the beneficiary has not benefitted and will not benefit until the investor chooses to gift the fund to the beneficiary. There is no requirement to verify the identity of beneficiaries of this type. Note that where the named beneficiaries of a trust are minors, depending on the type of trust they may not be eligible to actually benefit from the trust until they become adults. In such cases, they are not required to be verified as they are not yet actual beneficiaries. Minors who are already actual beneficiaries should be verified.

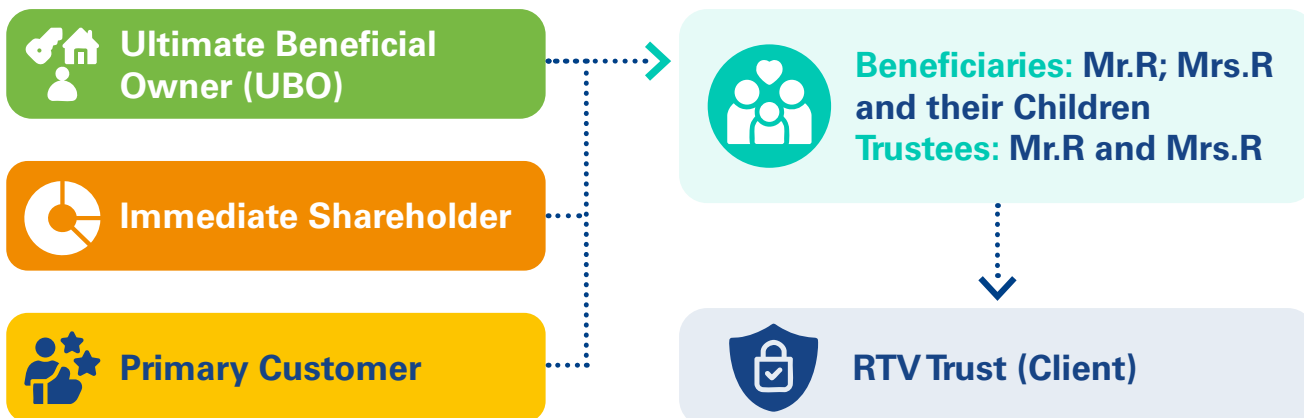
For clarity, all trustees of trusts where the trust is an immediate shareholder or penultimate UBO should be considered to be UBOs. Note that where reference is made to a trust being a penultimate UBO, it means that there are no other entities above the trust in the ownership chain of the customer.

FOR MOST TRUSTS, BENEFICIAL INTEREST PERCENTAGES OF SPECIFIC BENEFICIARIES ARE NOT PROVIDED. NOTE THAT ALL BENEFICIARIES, IRRESPECTIVE OF PERCENTAGE, SHOULD BE CONSIDERED TO BE IMMEDIATE BENEFICIARIES OF TRUSTS AS PRIMARY CUSTOMERS. WHERE TRUSTS ARE IN THE OWNERSHIP CHAIN, THEN PERCENTAGE INTERESTS CAN BE APPLIED IN ORDER TO DISCOUNT BENEFICIARIES FROM BEING UBOS (BUT NEVER FROM BEING IMMEDIATE BENEFICIARIES). WHERE WE CANNOT ESTABLISH IF A BENEFICIARY SHOULD QUALIFY AS A UBO, THEY SHOULD BE TREATED AS SUCH.

For this reason, in the client contact letters sent to customers, details of all beneficiaries of trusts where the trust is an immediate shareholder or penultimate UBO are requested.

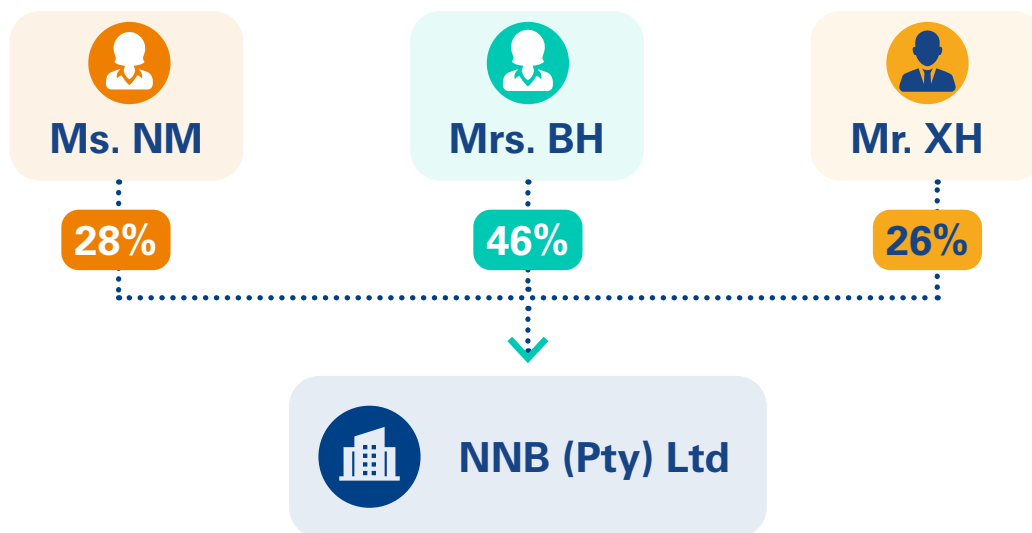
In the below example, there is a trust which is a primary client:

When there is a trust as a primary client, there is still an expectation to identify and verify the UBO. Under this requirement and understanding, the trustees of the trust should be treated as a UBO.



- In this example RTV Trust (shaded in purple) is the primary customer.
- If a trust is a primary customer, a trustee is a UBO even if the trustee is not named as a beneficiary.
- In this instance Mr. R and Mrs. R are both trustees and therefore are to be treated as both a trustee and a beneficiary and captured as such. Mr. R and Mrs. R must be identified and verified.
- With regards to the children of Mr. and Mrs. R, one must obtain additional information to determine if they are in fact UBO's. By definition the children of the trust are a class of beneficiary, and further KYC documentation is required.

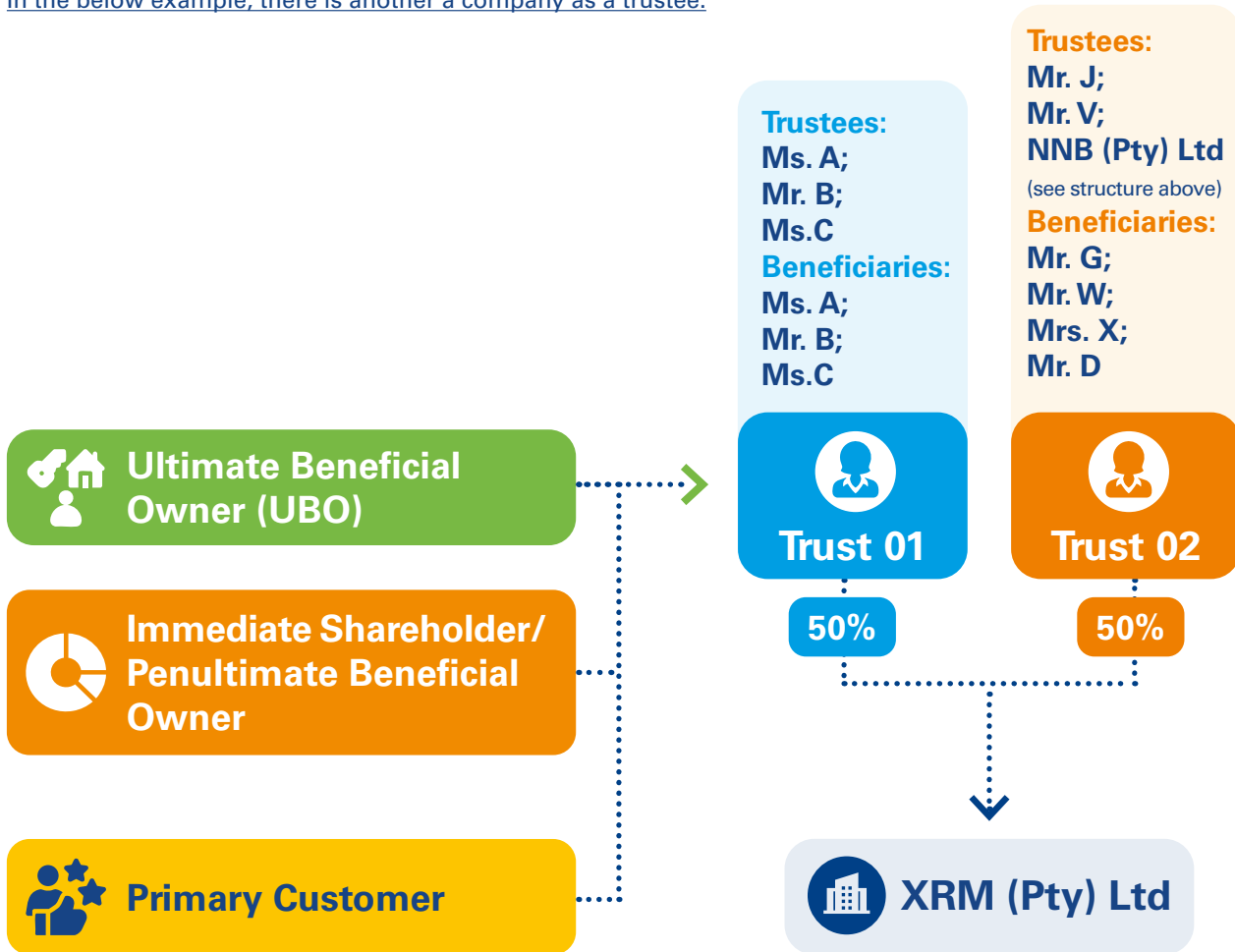
In the below example, there is a company as a trustee:



7 A simple trust, where the beneficiary (or beneficiaries) has an immediate and absolute right to both the capital and income of the trust. The property is held in the name of the trustee (or trustees), but the trustee has no discretion over the assets held in trust. The trustee of a bare trust is a mere nominee, in whose name the property is held. Except in the case of bare trusts for minors, the trustee has no active duties to perform. The trustee must simply follow the (lawful) instructions of the beneficiary in relation to the assets held in trust. A bare trust can be express or implied. ([https://uk.practicallaw.thomsonreuters.com/Browse/Home/PracticalLaw?transitionType=Default&contextData=\(sc.Default\)](https://uk.practicallaw.thomsonreuters.com/Browse/Home/PracticalLaw?transitionType=Default&contextData=(sc.Default)))

A “discretionary Trust” – a Trust where the trustee(s) in terms of the Trust instrument, has the right to vest income, capital gains, assets or retained amounts in that Trust, to its beneficiaries. (<https://www.sars.gov.za/businesses-and-employers/trusts/types-of-trust/>)

In the below example, there is another a company as a trustee:



- In this example, the primary customer is XRM (Pty) Ltd (shaded orange).
- With the two identified trusts both being immediate shareholders, the trusts and its trustees are to be identified and verified in line with the requirements/rules for identification and verification of legal existence of the immediate shareholders.
- All trustees of trusts should be considered to be UBO's where the trust is an immediate shareholder or penultimate beneficial owner. Consistent with this fact, all trustees of both trusts are considered to be UBO's and must be identified and verified.
- Trust 1 (shaded purple) and Trust 2 (shaded blue) each have named beneficiaries. Due to the fact that the trust has been identified as an immediate beneficial owner and also due to the fact that no further ownership structures are identified above the trusts, the trusts are considered to be penultimate beneficial owners too. The beneficiaries of both trusts are thus UBO's and require identification and verification.
- The representative of Trust 2 is required to be identified and verified. Mrs. BH, Ms. NM and Mr XH. are not required to be identified as the representatives of NNB (Pty) Ltd for Trust 2 based on their shareholding. Shareholding is not a requirement in determining the UBO of Trustees. Rather, the trust deed will name in person (e.g. Mr. H.) or via a particular role i.e. CEO of NNB (Pty) Ltd as the representative of the company in the trust. Should the trust deed not indicate the name or role that is to act as the representative, the requirement would be satisfied by the company identifying who the person is that acts as such.

Key points:

- NNB (Pty) Ltd, as a legal entity named as a trustee of Trust 2 requires us to identify and verify an individual who acts as a representative of the legal entity.
- In instances where a private company is named as a beneficiary, the company's group structure is to be obtained in order to allow further tracing of the ownership structure until a UBO is identified (and verified).

3.8. Similarities locally and internationally

To summarise, both South African regulations and FATF guidance share common key criteria for identifying UBOs:

1. Ownership Threshold	A natural person who directly or indirectly owns 25% or more of the entity's shares or voting rights qualifies as a UBO in terms of FATF. A natural person who directly or indirectly owns 5% or more of the entity's shares or voting rights qualifies as a UBO in terms of the FICA.
2. Control or Influence	A natural person who exercises control over the legal entity, either through voting power, decision-making authority, or influence over the management of the entity, qualifies as a UBO, even if they do not meet the ownership threshold.
3. In the Case of Trusts	Trustees (those who manage the trust), settlor (who creates the trust), and beneficiaries (those who benefit from the trust) may all be considered UBOs, depending on the level of control or benefit they derive from the trust. Particularly, the beneficiaries who enjoy the majority of the financial benefit from the trust are considered UBOs.
4. Complex Ownership Structures	In cases where ownership is obscured (e.g. through nominee shareholders, trusts, or layered corporate structures), the natural person who ultimately benefits from the ownership is the UBO. This ensures that control is not hidden behind legal entities or layers of ownership.

These standards ensure greater corporate transparency and help prevent the misuse of corporate structures for illicit purposes like ML, TF, PF, tax evasion, and corruption.



The collection of UBO information can significantly affect cross-border activities in several ways:

<p>1. Increased Transparency</p>	<p>The requirement to disclose UBO information means that businesses, including foreign ones, must reveal the individuals who ultimately own or control them. This leads to greater transparency in global financial systems, which can reduce risks related to ML, TF, PF, tax evasion, and corruption. However, this also means that foreign businesses engaging in cross-border activities must ensure their ownership structures comply with different UBO disclosure requirements in various jurisdictions.</p>
<p>2. Regulatory Compliance</p>	<p>Many countries, especially those in the European Union (“EU”), have implemented UBO reporting regulations to comply with international standards like those set by the FATF. This could create regulatory complexity for businesses operating cross-border, as they may need to comply with different UBO laws depending on where they are registered or conducting business. It increases administrative burdens, especially for multinational companies.</p>
<p>3. Data Privacy Concerns</p>	<p>While UBO transparency helps combat illicit financial activities, it raises privacy concerns. In some jurisdictions, revealing personal ownership information could conflict with data protection laws, such as the Protection of Personal Information Act (“POPIA”) in South Africa and the General Data Protection Regulation (“GDPR”) in the European Union. Cross-border businesses need to navigate these conflicting regulations when sharing UBO information.</p> <p>In terms of the POPIA, an individual’s personal information may not be collected, processed, or shared without their knowledge and consent, however there are exemptions.</p> <p>POPIA allows for certain justifiable limitations, including:</p> <ul style="list-style-type: none"> • Legal obligation: If another law requires disclosure (e.g. the FICA). • Public interest: In cases like national security, law enforcement, or prevention of serious harm. • Compliance with legal duties or obligations placed on a responsible party. <p>Based on the above, under the FICA, no consent is required, and institutions are legally obliged to collect and share client information with the FIC. This overrides the POPIA consent requirement due to the FICA being a statutory obligation. The key takeaway is that you cannot claim the POPIA as a reason to refuse providing information required under the FICA. The FICA is a legal obligation, and POPIA explicitly allows processing of information where it is necessary for compliance with other laws.</p>
<p>4. Impact on International Trade and Investment</p>	<p>Investors may be more cautious about investing in jurisdictions with stringent UBO disclosure requirements if they are concerned about their business interests becoming public. On the other hand, the push for more transparency could attract ethical investors who prioritise transparent business practices and greater accountability.</p>
<p>5. Cross-Border Due Diligence</p>	<p>Companies involved in cross-border mergers, acquisitions, or partnerships must conduct more thorough due diligence on foreign counterparts. Access to UBO information aids in understanding the true ownership structure and identifying potential risks in cross-border deals.</p>
<p>6. Challenges in Enforcement</p>	<p>While UBO transparency aims to prevent illicit activities, enforcement across jurisdictions can be challenging. Different countries have varying levels of commitment to UBO transparency, and enforcement may be difficult when a company operates in multiple jurisdictions with different UBO reporting standards.</p>

In summary, while the collection of UBO information enhances transparency and accountability, it can also increase regulatory complexity, create privacy concerns, and impact the way businesses operate and invest across borders.

The concept of UBO is crucial for ensuring transparency in financial systems and AIs as a whole, particularly in preventing ML, TF, PF and tax evasion. To clarify the ownership thresholds and types of control that determine who qualifies as a UBO, it is important to break down the different components of ownership and control.

5.1. Ownership

The ownership threshold refers to the percentage of ownership that a person must hold in an entity for them to be classified as a UBO. Both South African regulations (under FICA and the Companies Act) and internationally (under FATF) have a standard threshold:

Ownership Threshold

- In South Africa a person who directly or indirectly owns 5% or more of the shares or voting rights of a company qualifies as a UBO. Furthermore, in South Africa this 5% threshold also applies to companies and other legal entities, and it is used to identify individuals who have significant ownership or control over the entity.
- FATF guidelines state that a person who directly or indirectly owns 25% or more of the shares or voting rights of a company qualifies as a UBO.

Direct Ownership

This refers to when a person owns shares or stakes in a company or entity directly in their name.

Indirect Ownership

This occurs when a person owns shares or stakes in a company or entity through another entity, such as a holding company, trust, or another legal structure. Indirect ownership is considered when determining who the UBO is, even if the ownership is indirect through a chain of entities.

Example:

- If Company A owns 40% of Company B, and Person X owns 60% of Company A, then Person X indirectly owns 24% of Company B (60% of 40%). In this case, Person X meets the 5% ownership threshold for Company B, so they would be considered the UBO of Company B based solely on ownership.
- If Company A owns 20% of Company B, and Person X owns 10% of Company A, then Person X indirectly owns 2% of Company B (20% of 10%). In this case, Person X does not meet the 5% ownership threshold for Company B, so they would not be considered the UBO of Company B based solely on ownership.



5.2. Control

Even if a person does not meet the ownership threshold (e.g. they own less than 5% according to South African legislation and guidance), they may still be considered a UBO if they exert control over the entity. Control can be exercised through various means, even without owning a percentage of shares that equal or exceed the threshold.

Types of Control Include:

a. Direct Control (Voting Rights)

- A person may directly control a company or entity through the voting rights associated with the shares they hold, regardless of the percentage of shares.
- Voting control enables a person to influence or make decisions regarding key corporate actions (e.g. electing directors, approving mergers, etc.).

Example:

Person Y holds 4% of the shares in a company but has voting rights that allow them to control key decisions. If Person Y has the ability to influence decisions, such as by controlling the voting block or having a dominant say in shareholder meetings, they could be considered a UBO.

b. Indirect Control (via other entities or Influence)

- A person can exercise indirect control if they control other entities (e.g. holding companies, trusts, or partnerships) that, in turn, control the target entity.
- This control can also be functional (e.g. having the power to hire/fire senior management or directing strategic business decisions).

Example:

If Person Z controls Company C, and Company C holds 60% of Company D, then Person Z is considered to have indirect control over Company D, even though Person Z does not directly own the shares of Company D.

c. Influence (power to direct or restrict decisions)

Control can also be exercised through influence, where a person or entity may not have formal control through shares or voting rights but still influences the decision-making process. This can happen through contractual agreements, informal power, or economic influence.

Example:

If Person W has a personal relationship with the senior management of a company or has economic leverage over the company (e.g. major supplier, creditor, or stakeholder), they may still be considered a UBO due to their influence over business decisions, even without formal ownership or voting rights.



6.1. What are complex structures

Complex ownership structures refer to intricate and layered arrangements of ownership involving multiple entities such as corporations, trusts, and partnerships. These structures are often designed to obscure the true BOs and control of assets or businesses, making it difficult to trace ownership and detect illicit activities such as ML, TF, PF, tax evasion, and other financial crimes.

6.2. Key points on complex structures and how to identify the UBO

6.2.1. Components of Complex Ownership Structures:

- **Multiple Layers:** Ownership is divided across several layers of entities, each owning shares or interests in another entity.
- **Shell Companies:** Corporations that exist only on paper and do not conduct any significant business activities, used to add layers of ownership.
- **Trusts:** Legal arrangements where one party holds assets on behalf of another, often used to conceal the true owners.
- **Nominee Directors/Shareholders:** Individuals or entities listed as directors or shareholders who act on behalf of the true owners without having actual control or interest.

6.2.2. Mechanisms that complex structures make use of:

- **Layering:** Creating multiple layers of ownership to obscure the link between the beneficial owner and the assets.
- **Jurisdictional Arbitrage:** Using entities in different jurisdictions with varying levels of transparency and regulatory oversight to complicate tracking and enforcement efforts.
- **Use of Intermediaries:** Employing intermediaries such as lawyers, accountants, and trust companies to create and manage the ownership structures.

6.2.3. Indicators of Complex Ownership Structures:

- **Lack of Transparency:** Difficulty in identifying the ultimate beneficial owners due to multiple layers of entities and lack of accessible records.
- **Frequent Changes:** Regular changes in ownership, directors, or shareholders that complicate tracking.
- **Use of Offshore Jurisdictions:** Involvement of entities registered in offshore financial centres known for secrecy and minimal disclosure requirements.
- **Discrepancies in Information:** Inconsistent or incomplete information across different records and documents.

6.2.4. Detection and Prevention:

- **Enhanced Due Diligence (EDD):** Conducting thorough investigations to verify the identities of BOs and understand the ownership structure.
- **Beneficial Ownership Registers:** Establishing and maintaining registers of beneficial ownership that are accessible to regulators and financial institutions.
- **KYC Procedures:** Implementing robust Know Your Customer (KYC) procedures to collect and verify detailed information about clients and their ownership structures.
- **Cross-Border Cooperation:** Collaborating with international regulatory bodies and financial institutions to share information and track complex ownership structures across jurisdictions.

6.2.5. Regulatory Framework:

- **FATF:** Provides guidelines and recommendations for identifying and verifying beneficial ownership as part of AML/CFT efforts.

- Local Regulations: Many jurisdictions have enacted laws requiring transparency in corporate ownership and the disclosure of beneficial owners. In South Africa this is the FICA.

6.2.6.Challenges in Addressing Complex Ownership Structures:

- Legal Barriers: Variations in legal and regulatory frameworks across jurisdictions can hinder information sharing and enforcement.
- Resource Intensive: Investigating and unravelling complex ownership structures requires significant resources and expertise.
- Evolving Tactics: Criminals continuously adapt their methods to create more sophisticated and opaque structures.
- In complex structures with multiple layers there may be instances where a number of legal persons form a group with a natural person holding a small percentage ownership interest across all entities in the structure (referred to as parallel beneficial ownership structure) which, when aggregated, equals a controlling ownership interest.
- Examples of complex ownership structures:
 - A multinational corporation uses a network of offshore shell companies and trusts to conceal the identity of its true owners and evade taxes.
 - A high-net-worth individual employs multiple layers of entities in different jurisdictions to hide assets and launder money.
 - A criminal organisation sets up a series of shell companies and nominee shareholders to obscure the source and ownership of illicit funds and assets.

BASED ON THE ABOVE INFORMATION ON COMPLEX STRUCTURES IT WOULD BE ADVISABLE TO MAKE CLIENTS AWARE OF THE ABOVE PRACTICAL IMPLICATIONS OF A COMPLEX STRUCTURE WHEN SETTING UP A BUSINESS. COMPLEX STRUCTURES ARE RATED HIGH RISK BY MOST AIS AND WOULD BE REQUIRED TO GO THROUGH ENHANCED DUE DILIGENCE, WHICH IS ONEROUS.



7.1. What is a risk-based approach

A risk-based approach means that countries, competent authorities, and AIs identify, assess, and understand the ML, TF and PF risk to which they are exposed, and take the appropriate mitigation measures in accordance with the level of risk. The RBA requires a systematic approach to the management of the risks that a business faces and balancing them with appropriate and effective controls.

7.2. Why do you follow a risk-based approach

An RBA is key to achieving effective AML compliance as it allows businesses to focus their resources on areas of highest risk. This helps ensure that a business meets its legal and regulatory requirements while minimising costs.

7.3. Application of a risk-based approach dependent on type of business

Where the legal person presents a heightened ML, TF and PF risk, it may be prudent for the AI, according to its own risk-based approach, to decide to identify all the BO levels, thus not eliminating any level of BO.

Note that the AI has the flexibility to determine what information to request and what documentation to rely on to verify the information as part of the AI's risk-based approach. The AI must take reasonable steps to verify the BOs identity. The AI should adopt a risk-based approach to verify BOs of a client who is a legal person, trust or partnership. It is often necessary to use a combination of information sources and to seek further confirmation from public sources that is correct and up-to-date or to ask for additional documentation that confirms the BO and legal person, trust or partnership structure.

AIs MAY, IN TERMS OF THEIR OWN RISK-BASED APPROACH, OPT TO IDENTIFY PERSONS WHO HAVE LESS THAN FIVE PERCENT OWNERSHIP INTEREST, EVEN THOUGH SUCH PERSONS ARE NOT CONSIDERED TO BE BOS. THERE MAY BE OTHER CLIENT FACTORS THAT WARRANT THE AI TO IDENTIFY NATURAL PERSONS WHO HOLD LESS THAN FIVE PERCENT OWNERSHIP INTEREST IN A LEGAL PERSON.



8.1. When must you report UBO information

Where an AI is unable to identify and take reasonable steps to verify a BO, that AI must not establish a business relationship or conduct a single transaction with the prospective client and must consider filing a suspicious and unusual transaction report in terms of section 29 of the FICA, with the FIC.

IT IS IMPORTANT TO NOTE THAT IT IS NOT JUST AN OBLIGATION ON AIS TO FILE REPORTS IN TERMS OF SECTION 29 OF FICA, BUT AN OBLIGATION ON ANY PERSON WHO CARRIES ON A BUSINESS OR IS IN CHARGE OF OR MANAGES A BUSINESS OR IS EMPLOYED BY A BUSINESS.



9.1. How to collect information from UBOs

Collecting UBO information from a client typically involves identifying individuals who ultimately own or control a legal entity or arrangement. By systematically gathering and verifying this information, you can effectively identify the UBOs of a client and maintain compliance with relevant financial and legal standards.

Annexure B provides a step-by-step process to gather UBO information.

9.2. When to collect UBO information

UBO information should be collected when there is a need to identify and verify the natural persons who ultimately own or control an entity.

Here are key situations when UBO information should be collected:

1. During Company Formation	When a new company is being formed, UBO information is required to establish who holds significant ownership or control over the company.
2. During Customer Due Diligence (CDD)	When a business enters into a relationship with a new client, such as a financial institution opening an account, UBO information should be collected to comply with regulatory requirements.
3. When There Are Changes in Ownership	If there are significant changes in the ownership structure of an existing company (e.g. new shareholders acquire substantial stakes), UBO information must be updated to reflect these changes.
4. Periodic Updates (existing clients)	Some regulations require businesses to periodically review and update UBO information to ensure that the data is current and accurate.
5. Before Transactions (new clients)	UBO information must be gathered prior to executing any transactions (and especially in certain high-value or complex transactions), especially in sectors such as banking, insurance, real estate, and other regulated industries.
6. Upon Request by Regulatory Authorities	Governments and regulatory bodies may require businesses to submit UBO information during audits, investigations, or regulatory checks.
7. When there is doubt in information	UBO information must be collected when there is doubt as to what has been provided.

In general, collecting UBO information is a critical step for transparency, risk management, and compliance with local and international financial crime prevention measures.

9.3. Record Keeping of UBO Information

In South Africa, record-keeping of UBO information is governed by several regulations designed to enhance transparency and prevent financial crimes, such as ML, TF and PF. The key legislation and regulations around UBO information and record-keeping include the FICA and the Companies Act.

9.3.1. Key Requirements for Record-Keeping of UBO Information in South Africa

1. Financial Intelligence Centre Act (FICA)	<ul style="list-style-type: none">• Customer Due Diligence (CDD): Under the FICA, AIs are required to identify and verify the UBOs of their clients as part of their due diligence process. This includes collecting information about the natural persons who ultimately own or control a legal entity, such as a company or trust.• Record Retention: The FICA mandates that institutions must retain records of all customer identification and verification information, including UBO details, for a minimum period of 5 years after the termination of the business relationship or the completion of the transaction.
2. Companies Act	<ul style="list-style-type: none">• The Companies Act requires companies to keep and maintain a register of their directors and shareholders. The UBO information falls under the broader requirement to disclose ownership and control structures, especially when there are significant owners or beneficial stakeholders.• Companies must maintain an up-to-date securities register, which includes information on individuals who hold a significant percentage of shares or voting rights in the company. Shareholder information should be available for inspection by regulatory bodies.
3. Financial Sector Conduct Authority (“FSCA”) and the South African Reserve Bank (“SARB”)	Both regulatory bodies enforce compliance with AML regulations. This includes ensuring that UBO data is accurately reported and maintained in accordance with the relevant laws.
4. Compliance with International Standards	South Africa is also committed to the FATF recommendations, which set global standards for the collection and reporting of UBO information. South Africa’s AML regulations are aligned with FATF standards, and this requires institutions to collect and retain UBO information for proper monitoring and reporting purposes.

9.3.2. Information to be recorded

- Full legal name of the UBO(s);
- National identity number or passport number (if applicable);
- Date of birth;
- Nationality;
- Residential address or registered address (for non-natural persons); and
- The nature and extent of the beneficial ownership (e.g., percentage of shares or voting rights).

9.3.3. Access and inspections

Regulatory bodies, such as the FIC, may inspect these records to ensure compliance with AML regulations. The CIPC may require companies to disclose their UBO information upon request.

9.3.4. Penalties for Non-Compliance

Failure to maintain accurate and up-to-date UBO information, or to keep records for the required period, can result in penalties or sanctions from regulatory authorities, including the FIC, CIPC, and others.

It is important that engagement letters and contracts inform potential contracting parties that South African businesses are under an obligation to comply with the FICA. These obligations amongst others require that UBO be ascertained and verified despite where the potential client is situated. Should the business in South Africa not comply with this they will be subjected to potential penalties, and should the contracting party not want to oblige to provide the required documentation, the business are under obligation to report same to the FIC.

It is important to note that even if a business is not an AI, there is an obligation to report unusual activity, which includes evasive behaviour to providing requested ownership information.

Examples of who needs to be identified in terms of the Companies Act:

ANNEXURE A

In the case of a PTY, the beneficial owners are the shareholders if they are	<ul style="list-style-type: none"> • Individuals holding 5% or more of the issued shares • Companies with beneficial owners holding a beneficial interest of 5% or more in the original company (including foreign companies) • Trusts with beneficiaries
In the case of a CC or PLC	Members holding 5% interest or more in the company.
In the case of an NPC with members	The members would be the beneficial owners.
In the case of an NPC without members	The directors would be the beneficial owners.
In the case of an SOC where a shareholder is a minister	The minister would be the beneficial owner.

Step-by-step process to gather UBO information:

ANNEXURE B

1. Client Background Information

- Request Client's Corporate Structure:
 - Ask for an organisational chart, shareholder register, or ownership structure documentation to understand how the client is structured.
- Legal Entity Information:
 - Gather details such as the client's registration information, tax identification number, and other legal identifiers.

2. Ask for Shareholder and Ownership Information:

- Ownership Breakdown:
 - Request the names and percentages of ownership for each shareholder or partner within the entity.
- Direct vs. Indirect Ownership:
 - Identify not only direct ownership but also indirect control through subsidiaries or intermediary companies.

3. Identify Individuals with Control:

- Individuals with Significant Control:
 - According to the FICA, identify individuals who directly or indirectly own more than a specified percentage of the entity (typically 5% or more).

- Voting Rights and Influence:
 - Individuals who have the power to make key decisions (e.g. through voting rights or other means of control) must also be considered.

4. Verification of Information

- Due Diligence:
 - Conduct background checks to confirm the accuracy of the UBO information, using public registers, third-party data sources, or commercial UBO registries.
- Client Declaration:
 - Ask clients to formally declare their UBOs, often by providing signed forms or statements under oath, verifying the information they provide.

5. Record-Keeping and Monitoring

- Document Collection:
 - Collect and securely store documents that support UBO identification, such as shareholder registers, government-issued IDs of the UBOs, and corporate ownership documents.
- Ongoing Monitoring:
 - Continuously monitor for changes in ownership or control, as UBOs may change over time.

6. Regulatory Compliance

- Ensure that all processes align with local and international regulatory requirements. Depending on the country, UBOs may be subject to public or private reporting requirements.

7. Consulting Legal Advisors or Consultancy (if necessary)

- In complex cases, especially involving international structures or opaque ownership, legal advisors or forensic accountants can help identify UBOs and provide guidance on regulatory compliance.

Below are practical checklists for CIPC submission requirements for affected and non-affected companies:

ANNEXURE C

It is important to note that for both categories, one needs to consider whether the company has beneficial owners (those who directly or indirectly own/control $\geq 5\%$ of securities or exercise effective control) to declare or not.

Affected Companies

Documentation and Records	<ul style="list-style-type: none"> • Register of Beneficial Interests - list all persons with $\geq 5\%$ beneficial interest in issued securities. • Mandate/Board Resolution authorising the filing. • Certified IDs/Passports of beneficial interest holders and the authorised filer. • Supporting Proof of beneficial ownership (e.g. share certificates, trust deeds, etc.). • Disclosure Form (as per CIPC template).
Filing Requirements	<ul style="list-style-type: none"> • Initial submission — within 10 business days of incorporation or becoming an affected company. • Annual update — submit register when filing annual returns. • Change in ownership/control — update within 10 business days of change. • Listed entities — verify exemption if already reporting via the JSE.
Additional Compliance Tips	<ul style="list-style-type: none"> • Keep the register available for inspection. • Update the register immediately upon any transfer of shares or beneficial interest. • Verify that CIPC reflects your company's "affected" status correctly.

9. https://www.cipc.co.za/wp-content/uploads/2024/09/Step-by-step-guide_E-Services-Beneficial-Ownership-Filing-Affected-Company.pdf

Non-Affected Companies with Beneficial Owners

Documentation and Records

- Securities Register / Members Register — reflecting beneficial ownership and control.
- Beneficial Ownership Register — using CIPC’s prescribed format.
- Mandate/Board Resolution authorising the filing.
- Certified IDs/Passports of beneficial owners and the filer.
- Disclosure Form (CIPC template).

Filing Requirements

- Initial submission — within 10 business days of incorporation (if incorporated on/after 24 May 2023), or before filing next annual return (for older companies).
- Change in ownership/control — update within 10 business days.
- Annual filing — upload the latest registers when filing annual returns.

Additional Compliance Tips

- Keep BO and securities registers aligned and updated.
- Ensure that beneficial owners meet the 5%+ threshold definition.
- You cannot file your annual return if BO information is missing (there is a “hard stop” on CIPC e-Services).

Non-Affected Companies with no Beneficial Owners (Private/non-profit companies where no individual or entity holds or controls $\geq 5\%$)

Documentation and Records

- Securities or Members Register — showing all shareholders/members (even if none exceed 5%).
- Mandate/Board Resolution authorising the filing.
- Certified ID/Passport of the filer.
- Nil Disclosure declaration (select “non-affected company – no beneficial ownership” in CIPC e-Services).

Filing Requirements

- Initial filing — at incorporation or with next annual return.
- Annual confirmation — confirm nil beneficial ownership each year with annual return.
- Change in ownership/control — if new beneficial owners arise, update within 10 business days.

Additional Compliance Tips

- Maintain accurate share/membership records — even “nil BO” must be filed.
- File on time to avoid being blocked from annual return submission.
- Keep your internal register updated in case of future ownership changes.



Preparation

- Identify all beneficial owners of the trust. (This includes founders, named beneficiaries, persons with effective control, persons who indirectly control the trust arrangements.)
- For each beneficial owner, obtain certified/verified copy of ID or passport.
- Record the date when each person became a beneficial owner, and if applicable the date they ceased to be one.

Record required information

- For each beneficial owner:
- Full names (as per ID/passport)
- Date of birth
- Nationality
- Official identity document number or passport number (include type of document and country of issue)
- Citizenship
- Residential address
- If different, address for service of notices
- Other means of contact (e.g., email, telephone)
- If registered taxpayer in South Africa: tax number
- Class/category of beneficial ownership under which person falls (e.g., founder, trustee, named beneficiary, controller)
- Date became beneficial owner
- If applicable: date ceased to be beneficial owner
- If person is a minor: include legal guardian details.

Record-keeping by trustee

- Maintain internal register of beneficial owners (based on above)
 - ensure it is kept up to date.
- Record details of all accountable institutions used by the trustee
 - their name, registration details (if not natural person), ID/passport no if natural person, nature of services, dates and nature of transactions/business relationships.

Lodgement with the Master

- Via the Master’s electronic platform, lodge the register.
- Ensure that the register is submitted within a “reasonable time” (taking into account when the electronic system went live).



10. The implementation of the amendments to the Trust Property Control Act, 1988, came into effect on 01 April 2023. The deadline for the filing of the beneficial ownership register with the Master of the High Court is the 15 November 2024.



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