



ACAMS

South Africa Chapter

Ultimate beneficial Ownership

Association of Certified
Anti-Money Laundering
Specialists®

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1. Ultimate Beneficial Ownership - Definitions

Beneficial ownership is enjoyed by anyone who has the benefits of [ownership](#) of a [Security \(finance\)](#) or [property](#), and yet does not nominally own the asset itself.

In US securities law, a [beneficial owner](#) (as distinct from a "[nominee](#) owner," "[registered](#) owner," or "record holder") of a security includes any person who, directly or indirectly, has or shares voting or investment power. [\[1\]](#)

Beneficial owner is a legal term where specific [property rights](#) ("use and title") in [equity](#) belong to a person even though legal [title](#) of the property belongs to another person

The beneficial owner of an asset is the person for whose benefit it is being held. Beneficial ownership arises when an asset is owned by one person (the "legal owner") who has a duty to use it on behalf of another; one person holds assets as trustee for another.

1. A person who enjoys the benefits of ownership even though title is in another name.
2. Any individual or group of individuals that, either directly or indirectly, has the power to vote or influence the transaction decisions regarding a specific security.

The [individual](#) who enjoys the [benefits](#) of owning a [security](#) or [property](#), regardless of whose name the [title](#) is in.

The owner of an asset that is registered in another name. For example, investors often leave securities in trust with their brokerage firms. Although the brokerage firm is shown on the issuer's books as the owner of record, the investor is the beneficial owner.

2. Ultimate Beneficial Ownership - Definitions

OECD

Definition: When a parent company abroad is not owned more than 50% by another natural or legal person, the foreign parent and the ultimate beneficial owners are the same.

Context: The notion of ultimate beneficial owner corresponds more to the concept of “ownership” than to the “control” concept.

In the framework of the OECD Handbook on Economic Globalisation Indicators, the term “ultimate beneficial” is replaced by the term “ultimate controlled” or “ultimate control unit”.

In reality, there could be several ultimate beneficiaries, but only one ultimate control unit.

WOLFSBERG

The term “beneficial ownership” is conventionally used in anti-money laundering contexts, such as the Guidelines, to refer to that level of ownership in funds that, as a practical matter, equates with control over such funds or entitlement to such funds. “Control” or “entitlement” in this practical sense is to be distinguished from mere signature authority or mere legal title.

The term reflects a recognition that a person in whose name an account is opened with a bank is not necessarily the person who ultimately controls such funds or who is ultimately entitled to such funds. This distinction is important because the focus of anti-money laundering guidelines – and this is fundamental to the Guidelines – needs to be on the person who has this ultimate level of control or entitlement. Placing the emphasis on this person is a necessary step in determining what the source of funds is.

UBO - How Far Do you Go?

KYC360 Editor

The reality is the requirement to ascertain the identity of the ultimate beneficial owner(s) of client entities can place a heavy administrative burden on institutions.

The word “ultimate” is unambiguous. Where there is a chain of ownership, you must **get right to the end** of the chain. Only then do you truly know who your client is – which has always been a fundamental AML requirement.

The temptation when faced with a relatively complex structure may be to trace ownership up **one or two levels**, but then to take the view

“above that we don’t have specific information, but we have been told that X is the owner and that is good enough for us. We can’t spend our whole lives gathering this information.”

1. The Challenge of Identifying Beneficial Ownership

Acknowledgement to **Pekka Dare** *Global Head AML and Financial Crime at the International Compliance Association* - KYC 360

Challenge faced is **unravelling** the **often opaque structures of clients' affairs** to **identify the ultimate beneficial ownership**.

This is core of the concept of KYC.

Wolfsberg Principles refer to beneficial ownership as "that **level of ownership in funds equates with control over or entitlement** to fund.

For corporate listed corporate entities. Using the **risk based approach** firms are often able to satisfy themselves by confirming a listing for company on a regulated market.

Entities incorporated outside these regulated markets provide challenges. Information is either not in the public domain, or material is unreliable or out of date.

The obligation on firms to verify the beneficial owner remains clear. Wolfsberg indicates that even if a jurisdiction has no requirement for beneficial ownership to be disclosed into the public arena the onus is on firms to undertake CDD.

2. The Challenge of Identifying Beneficial Ownership

Acknowledgement to **Pekka Dare** – *Global Head AML and Financial Crime at the International Compliance Association* - KYC 360

A **risk based approach** to establish the identity of the beneficial owner is essential to deal pragmatically with clients at the start of the relationship. The issues raised by the range of entities firms will encounter require a flexible approach.

Firms deal with listed or private companies, trusts, charities or foundations (broadly speaking the civil law jurisdictions' equivalent to the common law trust). All require proportionate CDD measures.

So where is the first port of call? Extracts of public registers, copies of identification and incorporation documents will obviously be a starting point. Firms dealing with regulated intermediaries will often insist on a formal introduction certificate and possibly insist on direct evidence of beneficial ownership as well.

For higher risk customers the information should be verified by or obtained from independent sources. If these options are exhausted many firms take the approach of instructing a legal advisor authorised to act in the relevant jurisdiction to establish and verify the beneficial ownership, with the client bearing the cost.

Ultimately the onus is on firms to understand who they are dealing with and who is behind the transaction, and if the client cannot or will not provide the information, or it cannot be obtained from another source then the business relationship must be ended.



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1. In conclusion - How Far Do you Go?

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The temptation when faced with a relatively complex structure may be to trace ownership up **one or two levels**, but then to take the view "above that we don't have specific information, but we have been told that X is the owner and that is good enough for us. We can't spend our whole lives gathering this information."

That temptation should not be entertained. Firstly and most importantly because it means you do not have the knowledge you need as to ultimate beneficial ownership. And secondly because you do not have the documentation you need to demonstrate that you have verified ownership.

Why should it be difficult to gather the relevant information, anyway? Of course bureaucracy is tedious, and does not make money. Nobody welcomes a request for paperwork. But the information needed should not take long to put together, if it exists. The ultimate client should have no reason to be reluctant to provide it to you. And any other service providers involved in administering entities in the structure should have the material themselves and should be prepared to provide it on request.

2. In conclusion - How Far Do you Go?

KYC360 Editor

If repeated requests for proof of ownership are met with silence or with obstruction, however polite, you should not be deterred. You should be concerned. If the evidence provided does not completely fill the gaps, you should press on with your requests until the gaps are filled.

You may be confident that you have the necessary CDD on the person you understand to be "the client" – you may have met him and corresponded with him – but without the necessary documents evidencing the chain of ownership of all the relevant entities, how can you be sure that that "client" is in fact the sole ultimate beneficial owner of those entities? Could there be other UBOs you do not know about? If you do not know they exist, you obviously cannot satisfy yourselves they are not money launderers.

Anything less than a complete chain of ownership, fully evidenced, is simply inadequate. And regulators and prosecutors are likely to be increasingly tough on those who fall short, especially when taking on new business or where an existing client has given cause for concern for other reasons.

Concluding remarks

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