اللجنة الوطنية لمكافحة
غسل الأموال وتمويل الإرهاب
NATIONAL COMMITTEE
FOR AML & CFT

SUPERVISORY GUIDANCE ON BENEFICIAL OWNERSHIP

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Index

1. Introduction

1. Numerous reports acknowledge the money laundering (ML) and terrorism financing (TF) risks associated with Legal Entities and Legal Arrangements. Corporate Vehicles, including companies, trusts, foundations, and partnerships, engage in diverse commercial activities globally. Despite their mostly legitimate economic role, these entities are still also susceptible to misuse in complex schemes aimed at concealing true beneficial ownership and the underlying reasons for holding assets. Illicit activities, such as money laundering, bribery, corruption, insider trading, tax fraud, terrorist financing, and sanctions evasion, can be facilitated by manipulating corporate vehicles.

2. A common method of misuse is the utilization of legal persons and arrangements to conceal ownership and control rights. By creating a legal entity or legal arrangement, a criminal can create a layer of distance between himself and his/her illicit assets to complicate their detection and hinder any criminal investigations. While many companies are legitimate, the outlined scenario can be exploited to evade tax obligations, conceal illicit funds, and to facilitate money laundering.

3. To prevent misuse of Kuwaiti legal entities and legal arrangements, a number of obligations exist with regards to beneficial ownership, which can be broadly categorized into three types:

4. First, legal entities created under Kuwaiti law are under an obligation to register their beneficial ownership information with the Ministry of Commerce and Industry (MOCI) within the time limit prescribed by the Ministerial Decision on Beneficial Ownership and its amendments, for existing entities, or creation of a new company, and to keep this information accurate and updated at all times. Additionally, companies in Kuwait are required to maintain accurate and up-to-date records of their beneficial owners. These records must include essential details such as the name, nationality, date and place of birth, address, and identification documents like civil ID or passport. The requirements in this regard are set out in:

   - **Companies Law No. 1 of 2016:** This law governs the registration and management of companies in Kuwait. The Ministry of Commerce and Industry (MOCI) is responsible for the oversight of legal persons and for ensuring that basic and beneficial ownership information is maintained for all legal entities in Kuwait.
   - **Ministerial Resolution No. 287/2016:** This resolution supplements the Companies Law and provides further regulations on the establishment and management of legal entities. It reiterates the obligations of companies to maintain accurate and up-to-date beneficial ownership information.

5. **Ministerial decisions issued by the Ministry of Commerce and Industry** introduced more stringent procedures regarding the maintenance of beneficial ownership information. Under these decisions, companies are required to register their beneficial owners with MOCI, providing key details such as name, nationality, date of birth, and the legal basis for qualifying as a beneficial owner.

   <u>For the purposes of this Guidance, a legal person means any entity to which Kuwaiti law grants legal personality. Companies established under the Companies Law No. 1 of 2016 constitute legal persons and shall take one of the legal forms prescribed by that Law.</u>

6. Legal persons should obtain and maintain adequate, accurate, and up-to-date information on their beneficial owners; maintain supporting records explaining the ownership and control structure; update this information after any change; provide it to MOCI and competent authorities upon request; and cooperate with FIs and DNFBPs conducting CDD. Companies

should also have procedures to request information from shareholders, members, directors, nominees, and any other persons who may exercise ownership or control.

7. <u>Bearer shares and corporate director's shares are not permitted to be issued in the State of Kuwait. Accordingly, ownership of legal persons in Kuwait is recorded through registered shares, supporting the transparency of beneficial ownership information.</u>

8. Within the framework of the amendments introduced to the provisions governing the procedures for identifying the beneficial owner, the related requirements and procedures have been strengthened to raise the level of accuracy and reliability of beneficial ownership data, in a manner that supports the effectiveness of the transparency framework and limits the misuse of legal entities. The amendments also included the imposition of direct financial penalties on any natural person who intentionally submits false or misleading data or information relating to the beneficial owner, without prejudice to any more severe penalties prescribed under the applicable laws and decisions, thereby enhancing the ability of the competent authorities to verify the accuracy of data and to take appropriate action against violators.

9. Secondly, FIs and DNFBPs licensed or registered in Kuwait are under an obligation to identify and verify the identity of the beneficial owners of their customers, to record this information, and provide it to authorities upon request, as per the requirements set out in the AML/CFT legislative framework. The legal requirements for FIs and DNFBPs in this regard are set out in:

   - **Law 106/2013:** Kuwait's Anti-Money Laundering and Counter-Terrorist Financing (AML/CFT) law requires FIs and DNFBPs to apply comprehensive customer due diligence, record keeping, STR reporting and other preventive measure and as part of those, to identify and verify the identify the beneficial owners of their customers. Supervisory authorities are mandated to verify compliance by FIs/DNFBPs with these obligations.
   - **Ministerial Resolution 37/2013:** The Executive Regulation on AML/CFT underpins and further details the requirements introduced by Law 106/2013.

10. **Third: The Waqf:** The Waqf is one of the Islamic systems that promotes social solidarity and family cohesion within communities, and it is one of the gateways of charitable work for humanity, given the sustainability and stability it provides for works of charity.

11. **Definition of a Waqf:** "Retaining the principal asset and dedicating its benefit", that is, dedicating money or real estate and prohibiting its disposal by sale or gift, while its returns and proceeds continue to be spent on works of righteousness and charity for the sake of God. This disposition must be evidenced by an official document held with the official authorities, signed by the Waqif and two witnesses, or established through the courts.

12. **Types of Waqf:** (1) charitable Waqf (Khayri); (2) private Waqf (Dhurri); and (3) joint Waqf (Mushtarak).

13. **Pillars of a Waqf:**

    a. **The Waqif:** the person who owns the movable or immovable property and wishes to endow it;

    b. **The Mawquf Alayh (beneficiary):** either a specified natural person, a specified legal entity, or a general public purpose, subject to the conditions determined by the Waqif;

    c. **The subject of the Waqf (Mahal al-Waqf),** which may take the following forms: a real estate Waqf, a Waqf of movables, a Waqf of monetary funds, a Waqf of usufruct, or a Waqf of intangible rights; and

d. **The Nazir of the Waqf or the Waqf Council (beholder):** the natural or legal person that administers the Waqf in accordance with what the Waqif has prescribed in the Waqf deed (Hujjat al-Waqf).

14. While the three categories of obligations vary quite significantly in terms of their scope and nature, the concept of beneficial ownership that underpins them is the exact same.

15. The first purpose of this guidance document is thus to explore and explain the concept of beneficial ownership, to ensure that companies and legal arrangements are clear on what their registration and record keeping obligations entail, and that FIs and DNFBPs understand on how the term is to be interpreted for purposes of applying AML/CFT preventive measures.

16. The second purpose of this document is to offer guidance to FIs and DNFBPs in Kuwait for the operational application of beneficial ownership (BO) requirements in a compliance context. The guidance is structured to assist entities in understanding and fulfilling their obligations under national regulations and international standards, particularly the FATF Recommendations. Reference is made to FATF Recommendations 24 and 25, which focus on the transparency of legal persons and legal arrangements, and Recommendation 10 which focuses on identification and verification requirements for beneficial owners.

17. The efforts are part of Kuwait's broader compliance with FATF standards to safeguard the financial system from misuse.

Risk-based Approach to Legal Persons:

18. Supervisors should assess the ML/TF risks associated with different types of legal persons in Kuwait, including their legal form, sector of activity, ownership and control structure, involvement of professional intermediaries, use of nominees, foreign ownership, links to higher-risk jurisdictions, and exposure to public procurement, real estate, or other higher-risk sectors. The results of this assessment should inform the intensity and frequency of supervision and the level of verification expected from FIs and DNFBPs.

2. The Concept of Beneficial Ownership

19. The definition of beneficial ownership is enshrined in Article 1 of Law 106/2013 and further defined in Ministerial Decision on Beneficial Ownership and its amendments. Article 1 of Law 106/2013 extends the concept to cover "any natural person who ultimately owns or exercises direct or indirect control over a customer or the person on whose behalf a transaction is being conducted, including those persons who ultimately exercise control over a legal person or legal arrangement."

20. Ministerial Decision on Beneficial Ownership and its amendments further specifies that the term is to be applied to cover:

a) the natural person(s) who, ultimately owns or controls 25% or more of the customer's capital or voting rights.

b) If there is doubt as to whether the person(s) under criterion (a) is the beneficial owner or where no natural person is identified under (a), the natural person(s), who exert control over the legal person through other means, such as holding a position of significant influence within the company.

c) If no individual meets criteria (a) or (b), then the natural person(s) holding the senior management position.

21. Kuwait's definition of beneficial ownership aligns with the FATF standards, particularly Recommendation 24, which focus on the transparency and beneficial ownership of legal persons. According to FATF standards, a beneficial owner is defined as a natural person who ultimately owns or controls a legal entity, either through direct ownership of a threshold percentage of shares (25% or more) or through control by other means, such as exercising significant influence over the legal entity's decision-making process.

22. Ministerial Decision on Beneficial Ownership and its amendments define beneficial ownership using a 25% threshold for ownership or control of a legal entity, like the FATF threshold. Additionally, the Kuwaiti framework requires that if no individual directly or indirectly owns or controls 25% or more of a company, then the senior management person is considered the beneficial owner, which aligns with FATF's emphasis on identifying the natural person who exercises control over the legal entity.

23. The only type of legal arrangements that exist in Kuwait is the Waqf, which is a Sharia-based legal arrangement whereby assets are withheld and placed under the administration of the Nazir, who manages and disposes of them for the benefit of specified beneficiaries, either for a public (charitable) purpose, a private (Dhurri) purpose, or a joint (Mushtarak) purpose. FIs and DNFBPs are under an obligation to identify and verify the beneficial owners also of customers that are Waqf. While the definition of the term set out in Ministerial Resolution 2/2023, and Ministerial Decision on Beneficial Ownership and its amendments is not fully fitting for the concept of Waqf, Article 1 of Law 106/2013 does extend the concept of beneficial ownership also to Waqf, and it should be understood to cover in all cases the natural persons holding any of following function:

- **Endower (Waqif) (Settlor Equivalent):** The individual who creates the Waqf and contributes assets.
- **Nazir (Trustee Equivalent):** The person or institution (such as the Waqf Authority (General Secretariat of Awqaf)) appointed to manage the Waqf's assets.
- **Beneficiaries:** Individuals or groups who benefit from the Waqf, either explicitly named or defined by a class of beneficiaries.

24. Understanding the difference between legal ownership and beneficial ownership is essential for ensuring transparency and accountability in the management of assets, whether in the form of legal entities like companies, or legal arrangements such as a Waqf. While these concepts are often used interchangeably, they hold distinct legal meanings and implications, particularly in the context of compliance with international standards set by bodies such as the Financial Action Task Force (FATF). The Ministry of Commerce and Industry (MOCI) defines the term to cover anyone who ultimately owns or controls at least 25% of the shares or voting rights, or otherwise has significant control over a company, so regulators can keep track of who is really in charge.

25. Legal ownership for Joint Stock Companies, Limited Liability Companies, sole proprietorships, or partnerships refers to whoever's name is officially listed as the owner in government records, like the company registry. A legal owner can be a natural person, a legal entity such as a company, or even a legal arrangement such as a trust or a Waqf, and it is the legal owner that legally holds the title and often has rights to the company's assets, profits, and key decisions. In a business, for example, a shareholder would be considered a legal owner—they can vote on company matters, receive dividends, or sell their shares. Being the legal owner does however not always mean that the shareholder has actual ownership of, or any claim to the benefits of a legal entity.

26. In contrast, the beneficial owner is the person who ultimately exercises control over or owns a legal entity or Waqf even though this person is not officially named in the legal entity's or Waqf's records. Only a natural person can be a beneficial owner, and a beneficial owner is always the natural person or persons who has/have the actual power to influence decisions or enjoy a company's financial rewards. The concept of beneficial ownership is not about holding shares but about ultimately owning, or exercising control, directly or indirectly, over a legal person or a Waqf.

27. In scenarios where a company's legal ownership is split between several shareholders that are themselves legal entities, the legal entities would be listed as shareholders and thus legal owners of the company. The ultimate control over the company could just rest with just one person or a small group, which are those natural persons who ultimately control or legally own the legal entity shareholders. The natural persons are the beneficial owners, even though their names don't appear in any public documents of the company.

28. A Waqf is the withholding of assets, whereby the Waqif donates assets that he owns, which are thereafter administered by the Nazir. The assets are set aside to serve either specific people or a charitable cause (charitable works). In the context of a Waqf, the owner is the Waqif, while the administration and disposal of the endowed assets rest with the Nazir, who manages and disposes of them in accordance with the conditions set out in the Waqf deed. Accordingly, for Awqaf the standards require that any of the following should be identified as beneficial owners:

    a. The Waqif;

    b. The Wakeel (Nazir);

    c. Beneficiaries or classes of beneficiaries; and

    d. any other person(s) who exercising effective control of the Waqf.

29. In contrast to complex corporate structures, where beneficial ownership can sometimes be hidden, the beneficiaries of a Waqf are usually clearly named when the Waqf is established. The Wakeel (Nazir) might control the assets (the endowed assets), but they must act in the interests of those beneficiaries (in accordance with the Waqif's conditions set out in the Waqf deed). While the Wakeel (Nazir) has the legal power to manage the assets, the benefits flow transparently to the intended recipients.

30. Like in the case of legal entities, making sure that the real beneficiaries of a Waqf are clear and documented is key to maintaining trust in the system and preventing misuse. While Waqfs tend to be more straightforward, ensuring that the actual beneficiaries are known is just as important as it is for legal entities, where complex structures can sometimes be used to obscure who really controls or benefits from an arrangement.

31. To summarize, the key distinction between legal and beneficial ownership in both legal entities and Waqfs lies in the control and benefit elements:

    - **Legal ownership** is about holding legal title or being registered in official records of a legal entity or Waqf as the formal owner or decision maker, which grants formal rights to manage or dispose of assets of a legal entity or legal arrangement.
    - **Beneficial ownership** goes beyond formal title and identifies the person or persons who ultimate owner or control a legal entity or Waqf, whereby this ownership and control can be exercised either directly or indirectly.

32. In the context of combating money laundering and terrorist financing, identifying the beneficial owner is more important than merely identifying the legal owner, as it is the beneficial owner

who may have hidden motives or influence that could pose risks to the integrity of the financial system.

33. By requiring transparency in beneficial ownership for both legal entities and Waqfs, Kuwait aligns itself with FATF standards and ensures that regulators and authorities can look beyond the formal structures to identify the individuals who truly hold power or stand to benefit from these arrangements. This distinction is critical for ensuring that neither legal entities nor Waqfs are misused for illicit purposes such as hiding proceeds from crime, facilitating money laundering, or funding terrorist activities.

34. Foreign legal persons shall be subject to beneficial ownership expectations where they have sufficient links to Kuwait. Such links may include a branch, agency, permanent establishment, significant business activity, significant or ongoing relationships with FIs or DNFBPs, ownership of real estate or other significant assets, participation in public procurement, employment of staff, or other meaningful economic presence in Kuwait.

3. Regulatory Requirements for Financial Institutions and DNFBPs

35. In Kuwait, financial institutions (FIs) and designated non-financial businesses and professions (DNFBPs) have comprehensive obligations to identify and verify the beneficial owners (BOs) of their customers as part of their customer due diligence (CDD) processes. These obligations are grounded in Law No. 106 of 2013 on Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) and reinforced by Ministerial Resolution 37/2013 and sector-specific guidance.

36. The foundation for the identification and verification of beneficial ownership by FIs and DNFBPs lies in Article 5 of Law No. 106/2013, which requires FIs and DNFBPs to **identify and verify the identity of their customers and beneficial owners** using reliable, independent source documents, data, or information. This must be done before establishing a business relationship or conducting a significant transaction. The **verification of the beneficial owner** must be done **through reliable documentation or data sources**, and it applies to both legal persons and legal arrangements (such as Waqfs, where relevant).

37. Article 5 and 11 of Law No. 106/2013 and provides further clarity on the specific steps that FIs and DNFBPs must follow. It emphasizes the obligation to **maintain adequate and up-to-date information on beneficial owners**, which should be readily accessible to competent authorities, such as the Kuwait Financial Intelligence Unit (KwFIU). It also requires FIs and DNFBPs to **maintain all records**, including those related to beneficial ownership, **for at least five years** after the business relationship ends.

38. For purposes of this guidance, beneficial ownership information is adequate when it is sufficient to identify the natural person who ultimately owns or controls the legal person and the means by which ownership or control is exercised. It is accurate when it has been verified using reliable, independent source documents, data, or information. It is up to date when it reflects the current ownership and control structure and is updated within the timeframe required by law or, where no specific timeframe applies, within a reasonable period after any change becomes known.

Identifying the Beneficial Owner

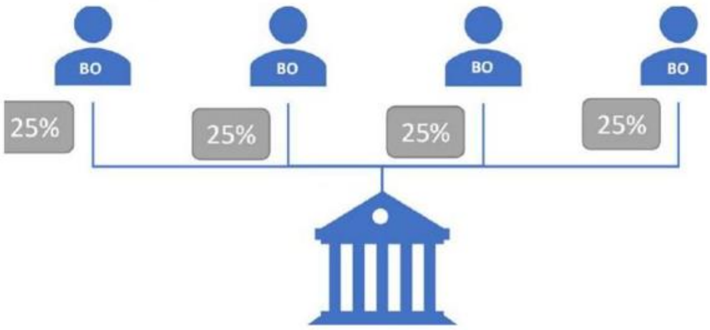
39. MOCI's beneficial ownership registry should support timely access to adequate, accurate, and up-to-date beneficial ownership information by competent authorities. The registry should maintain digital and searchable records, support searches by legal person and beneficial owner, allow for risk-based verification and review, record changes over time, support discrepancy reporting and correction, and include safeguards to protect personal data and prevent improper disclosure.

40. To identify and verify the beneficial owners of their customer, FIs/DNFBPs should follow the three-step approach required by FATF in recommendation 24, the definition included in the AML/CFT Law and its resolution and the Ministerial Decision on Beneficial Ownership and its amendments.

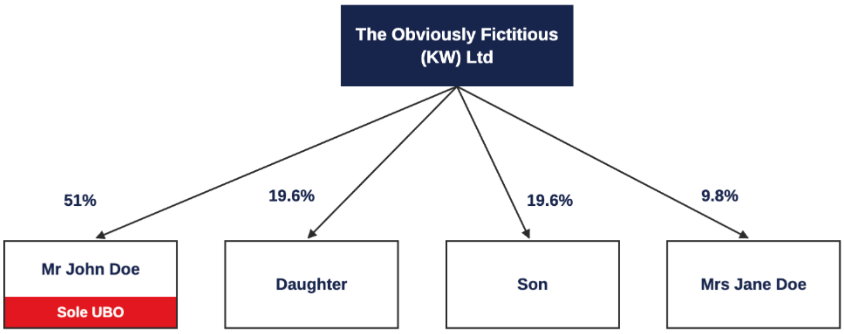
Step 1 - Notion of Ultimate Ownership or Control Rights of 25% or More

41. In the chain of identifying natural person beneficial owners, the first step for the FIs/DNFBPs is to determine whether there is one or more natural persons that directly or indirectly owns 25% or more of the customer's capital or voting rights.

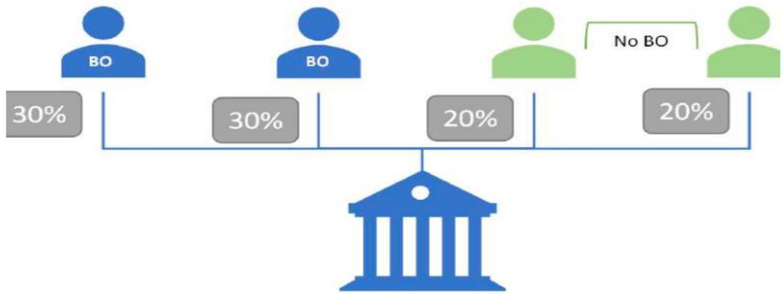
42. **Example 1** illustrates simple direct ownership, where the company is beneficially owned by four natural persons, each with a 25% ownership right.



43. **Example 2** illustrates a simple ownership structure, where Mr. John Doe is the only beneficial owner of The Obviously Fictious (KW) Ltd company due to his 51% ownership interest.



44. **Example 3** illustrates a legal entity with 4 natural persons who are the direct owners but where only 2 natural persons own 25% and more of the company and are thus beneficial owners.

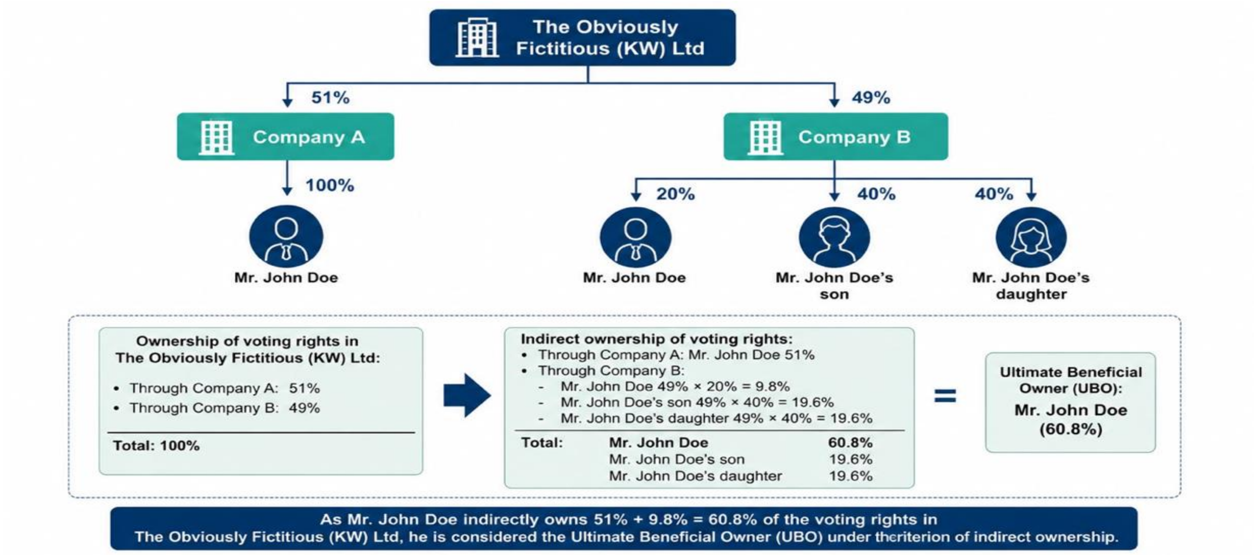


45. **Example 4** illustrates a simple structure of direct and indirect ownership, where company A is owned 50% by the natural person directly and 50% by the natural indirectly through company B. In sum, the natural person owns 100% of company A.

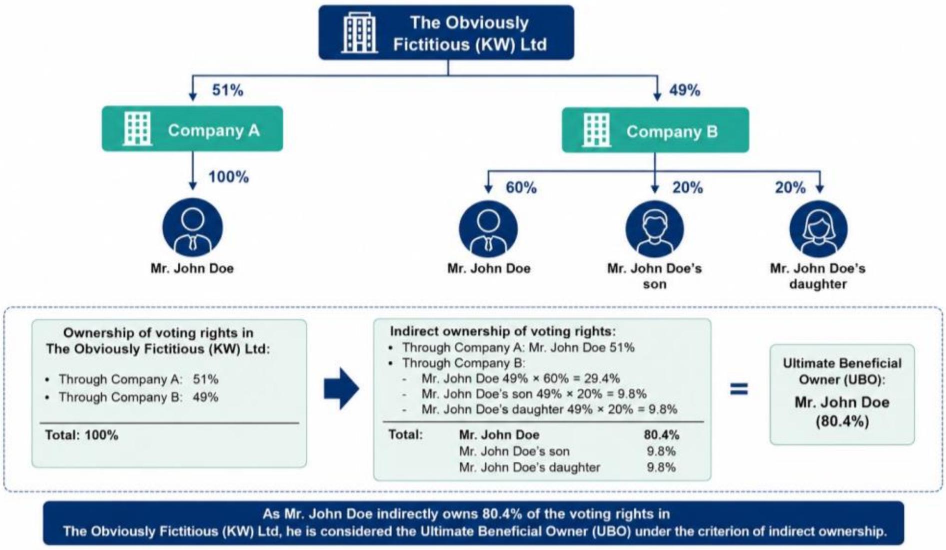
46. When counting ownership rights, relationships between different parties must be examined to determine whether direct and indirect ownership rights exist that meet the 25 % threshold. This means, in the first instance all individuals, including those who directly or indirectly hold a minimum percentage of ownership interest in the legal entity, should be taken into account.

47. **Example 5:** illustrates a case of indirect ownership where legal entities exist within the ownership chain. The Obviously Fictitious (KW) Ltd has two registered shareholders. Company A holds 51% of the voting rights and is wholly owned by Mr. John Doe. Company B holds 49% of the voting rights and is owned by three shareholders: Mr. John Doe (20%), his son (40%), and his daughter (40%).

Based on the ownership and voting rights illustrated above, Mr. John Doe indirectly owns 51% of the voting rights in The Obviously Fictitious (KW) Ltd. Accordingly, he is considered the Ultimate Beneficial Owner (UBO) of the company under the criterion of indirect ownership.

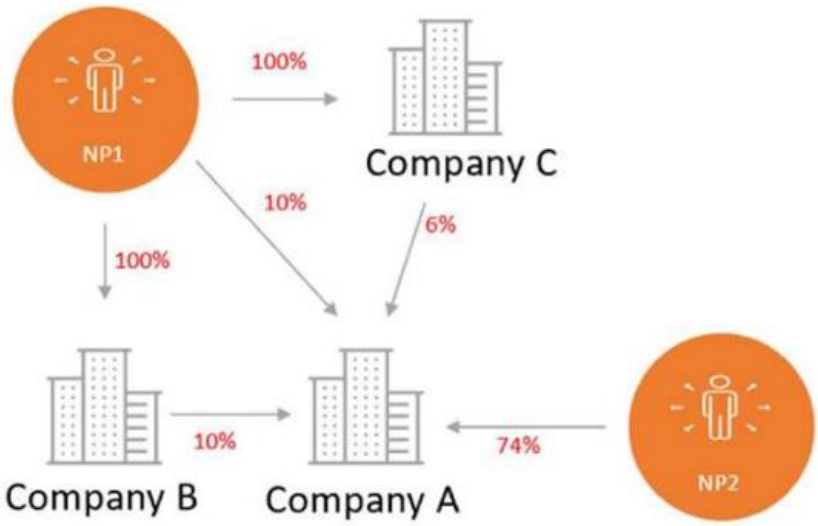


48. **Example 6:** Following Example 5, if Mr. John Doe's voting rights in Company B increase from 20% to 60%, his indirect voting rights in The Obviously Fictitious (KW) Ltd would increase to 29.4% (60% × 49%). Accordingly, he would also qualify as a Beneficial Owner of the company under the criterion of indirect ownership.



49. Ownership rights of every natural person must be aggregated to determine whether direct and indirect ownership or control rights exist that meet the 25% threshold. Where the proportion of capital held must be determined via several successive levels of indirect ownership, the total percentage of capital ultimately held by each individual is the mathematical result of these different proportions held indirectly - a calculation of the percentages of capital shares held. In this illustrated case, the indirect owner holds 50% of the Company A (100% x 50% = 50%).

50. **Example 7** illustrates a case where company A is directly and indirectly owned by 26% by natural person 1, and 75% by natural person 2. Both natural persons 1 and 2 are thus beneficial owners of company A.



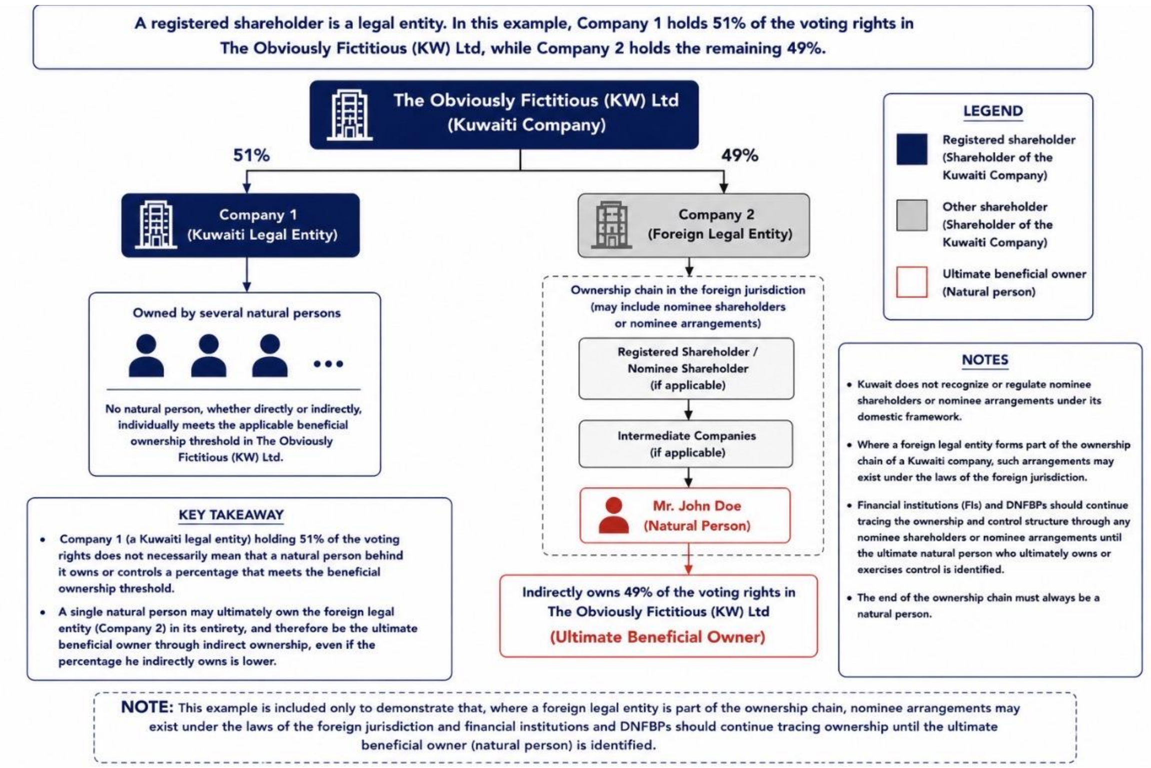
51. **Example 8:** The Obviously Fictitious (KW) Ltd is a Kuwaiti company owned by two legal persons. Company 1, a Kuwaiti legal entity, holds 51% of its voting rights, while Company 2, a foreign legal entity, holds the remaining 49%.

Although Company 1 holds the majority of the voting rights, its ownership is distributed among several natural persons, none of whom individually meets the applicable beneficial ownership threshold in The Obviously Fictitious (KW) Ltd.

Company 2 is incorporated in a foreign jurisdiction that may recognize nominee shareholders or nominee arrangements. Financial institutions and DNFBPs should therefore not rely solely on the registered shareholder of Company 2. They should continue tracing its ownership and control structure through any nominee or intermediate arrangements until the ultimate natural person who owns or exercises control is identified.

In this example, Mr. John Doe ultimately owns 100% of Company 2. Accordingly, he indirectly owns 49% of the voting rights in The Obviously Fictitious (KW) Ltd and is identified as its ultimate beneficial owner under the criterion of indirect ownership.

Note: Kuwait does not recognize or regulate nominee shareholders or nominee arrangements under its domestic framework. However, where a foreign legal entity forms part of the ownership chain of a Kuwaiti company, such arrangements may exist under the laws of the foreign jurisdiction. Financial institutions and DNFBPs should take this possibility into consideration and continue tracing the ownership and control structure until the ultimate beneficial owner, who must be a natural person, is identified.



Step 2 - Notion of Control Through Other Means

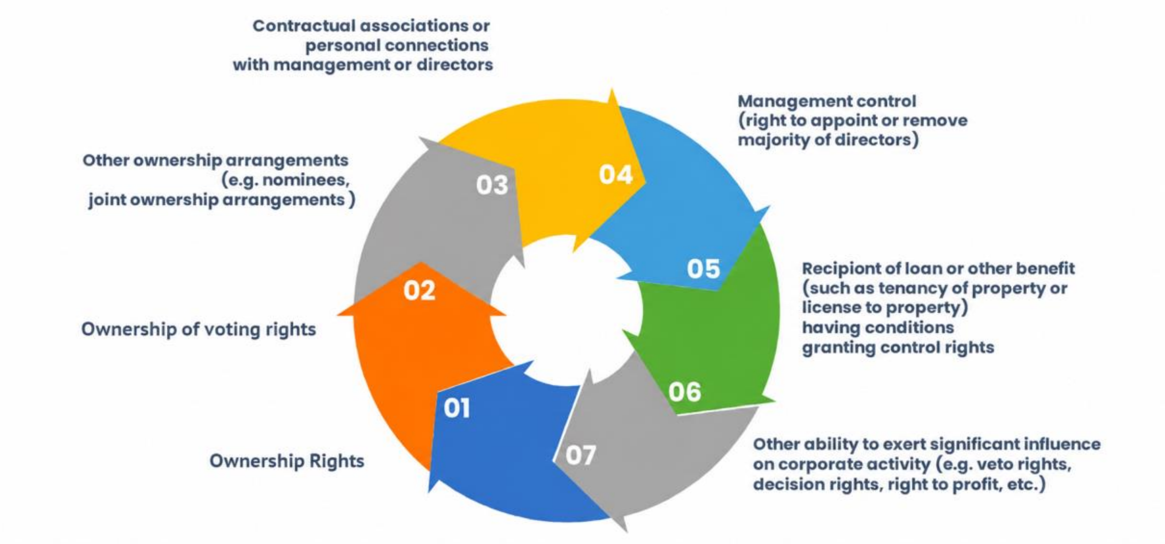
52. When FIs/DNFBPs have gone through the Step 1 and have not been able to identify any natural person who, directly or indirectly, owns or controls 25% or more of the legal entity, or where the FIs/DNFBP has doubts as to whether the person(s) identified through step 1 are indeed the beneficial owner(s), FIs/DNFBPs must determine whether there exists a natural person

who directly or indirectly exercises ultimate effective control of the legal entity through means other than ownership.

53. The concept of control refers to the ability to take relevant decisions within the legal person or arrangement and to impose those decisions. Under step 1, FIs/DNFBPs seek to identify natural persons who exercise control based on their ownership rights. In Step 2, the focus is on identifying natural persons that exercise ultimate effective control through means other than ownership rights. Understanding the customer's management and governance structure aids in identifying individuals with such ultimate effective control through other means.

54. When determining the effective controller(s) of a legal entity through means other than ownership, attention should be paid to individuals who control the customer, appoint or dismiss senior management, individuals in senior management positions (e.g., CEO), and trustees where applicable. This comprehensive approach ensures a granular understanding of the control structure of a legal entity.

55. The following Diagram illustrates notions of control based on which a natural person should be considered as a beneficial owner.



56. Examples of natural persons who could qualify as beneficial owners on the basis that they exercise ultimate control of the legal person through means other than ownership interests are:

    (a) **Minority shareholders who exercise control** alone or with other shareholders on the basis of a contract, informal understanding, a specific relationship, including where control is exercised through another corporate vehicle or a nominee. Minority shareholders may also collaborate to enhance control through formal or informal agreements, including the use of nominee shareholders.

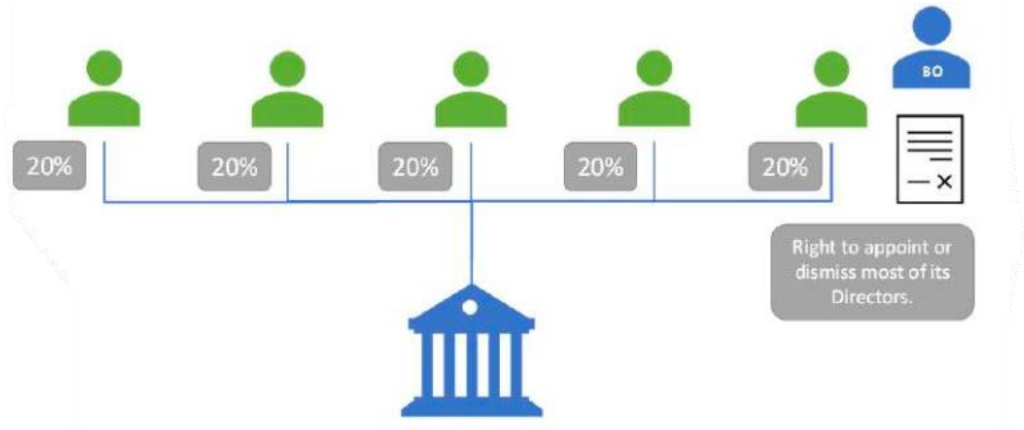
    (b) **Loan Covenants**, where a lender imposes conditions that limit the financial and operational decision-making powers of the company's management, and de-facto transfer much of this power to the lender.

    (c) **Contractual associations or personal connections** with a company's management or directors could result in the transfer of control rights. For example, where a company's management places advisors or consultants in strategic roles and allow them to steer decision-making, the advisor or consultant could be exercising ultimate effective control.

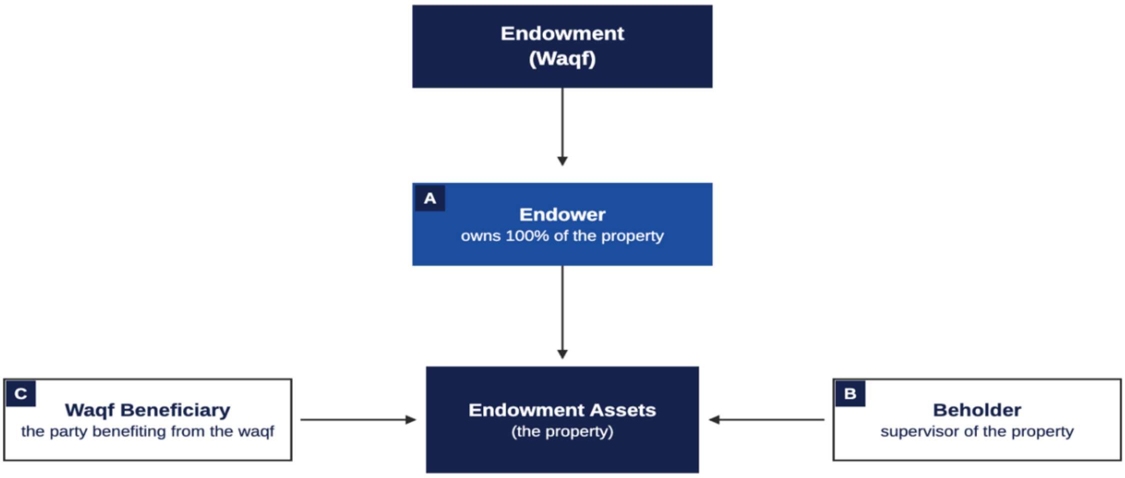
    (d) **Control through Positions Held** covers individuals responsible for strategic decisions affecting the legal entity's practices or direction, such as directors or executives. Directors may or may not actively control the entity, and their information may be limited if nominee directors represent unidentified interests.

(e) **Executive Control**: Natural persons exercising executive control over daily affairs through senior management positions like CEO, CFO, managing/executive director, or president are essential. These individuals hold significant authority over financial relationships and ongoing financial affairs of the legal entity, including dealings with financial institutions holding accounts on behalf of the entity.

57. **Examples 9** illustrates a case where a company has no beneficial owners based on ultimate control rights, but where an external natural person qualifies as beneficial owner based on the fact that this person can appoint or dismiss the company's directors despite not having any ownership rights in the company.



58. **Example 10** illustrates a case where real estate is owned 100% by a natural person (the Waqif) A, who applied to the Ministry of Justice to establish a Waqf (a legal arrangement). He completed the application form, specified the type of the Waqf, and identified the Nazir (trustee) of the Waqf B and the Mawquf Alayh (beneficiary) C. The Ministry of Justice therefore requires him to submit proof of ownership of the real estate, the official identification of the owner, the identity of the Nazir and of the beneficiary, and the identity of every natural person referred to in the Waqf deed. The Ministry verifies this information and retains it in its official records, such persons being considered beneficial owners.



Step 3 – Identify natural person on whose behalf transaction is conducted

59. As a last step of the process, if no beneficial owner(s) could be identified through steps 1 and 2, FIs/DNFBPs must identify and verify the identity of the natural person or persons who hold the position of senior managing official of the legal entity and consider those persons to be the beneficial owners.

Identifying Ownership and Controls for Complex Structures

60. A key method to disguise beneficial ownership involves the use of legal entities and arrangements to create complex ownership chains, which allows the beneficial owner to distance himself/herself from the company's assets in a very effective manner. For the purpose of this guideline the **Complex structure** refers to customers with 3 or more layers between the customer and the beneficial owner, or structures that are less than 3 layers of ownership but that are difficult to verify the beneficial owner due to obscurity or obfuscation, such as when information is not publicly accessible, lacks transparency, involves a foreign company or trust.

61. Complex structures often combine direct and indirect control through chains of legal entities that span multiple jurisdictions. Complex legal structures can and are being created and exist for legitimate purposes but typically the more complex a legal structure is, the more difficult it is to identify the actual beneficial owner(s). Complex ownership structures, undisclosed agreements, and variations in voting rights contribute to the complexity. Examples of instruments often used as part of complex structures include:

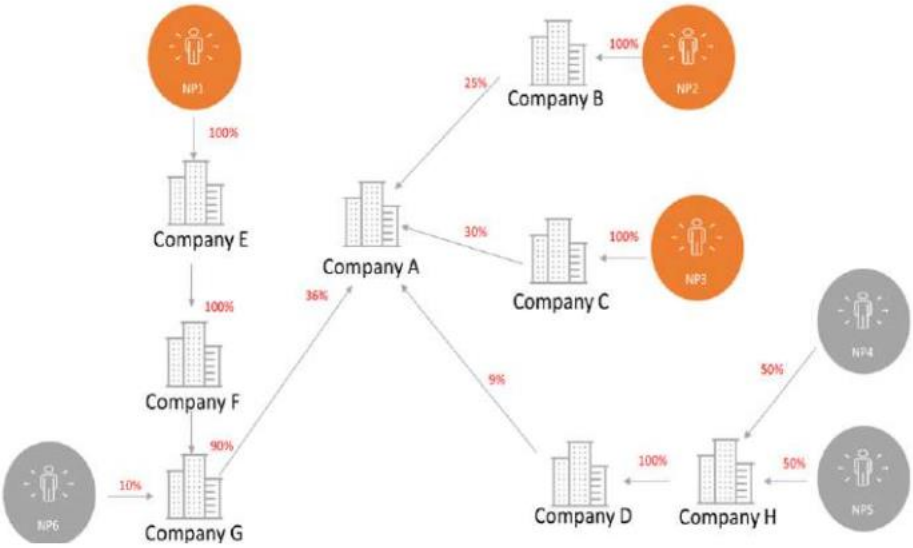
62. **Circular ownership** – where companies own a legal entity and there is no natural person with a significant shareholding. Such ownership is difficult to identify when it involves number of layers incorporated in various jurisdictions and involve ownership loops, where companies hold interests in other companies within the same loop and it becomes possible for companies to own shares of themselves.

63. **Control with fragmented ownership** - where no individual passes the 25 percent threshold but a natural person who owns less than 25% of direct shares can be considered as a beneficial owner due to ultimate effective control through other means.

64. **Trust Structures** – created in one jurisdiction and used in another to hold assets across jurisdictions to disguise the origin of funds. Trusts are often used to enhance anonymity by disconnecting the beneficial owner from the trustee, settlor, protector, or beneficiary.

65. **Nominee shareholders and directors** - legal entities that have nominees to represent shareholders and directors. Some nominee arrangements are used primarily to conceal the beneficial owner's identity.

66. **Example 11** illustrates a case of a complex corporate structure. Company H is beneficially owned by natural persons 1, 2, and 3. All three have indirect ownership rights of 25% or more to company A. Natural persons 4 and 5 are not beneficial owners of company A. Natural person 4 holds only 4.5% of A, natural person 5 holds 4.5%, and natural person 6 holds 3.24 of company A. Natural person 1 owns his shares in company A through 4 layers, thus company A is part of a complex corporate structure.



67. Supervisors should pay particular attention to lawyers, accountants, notaries, and other professional intermediaries involved in creating, managing, or administering legal persons or arrangements. These professionals should apply CDD, identify and verify beneficial owners, understand ownership and control structures, maintain records, and make information available to competent authorities where required by law. Where legal professional privilege or professional secrecy applies, its scope should be clearly understood and should not be used to shield information that is not legally protected.

Verifying the Identity of the Beneficial Owner

68. Verification of beneficial ownership for FIs and DNFBPs may comprise of the following two components:

    a. Verification of identity: Appropriate steps should be taken (as suggested below) to verify the identity of any natural person(s) recorded as a beneficial owner;

    b. Verification of status: Appropriate steps should be taken to verify the basis of identification of a person as a beneficial owner.

69. Verification of beneficial ownership information typically involves a review of documents submitted to verify the status of the beneficial owner, such as, share certificates, shareholder register, board meeting resolutions, and power of attorney documents. Reliable documents, such as a valid passport, national identity card, etc., may be used to verify the identity of a beneficial owner.

70. FIs and DNFBPs should consider whether the information provided regarding the beneficial ownership is adequate to establish the beneficial owner's identity and can be considered to meet the legal requirement of being "reliable, independent source documents, data, or information."

71. Adequate information to identify a beneficial owner includes, for example, the full name, nationality or nationalities, the full date and place of birth, residential address, nationality, national identification number and document type.

72. Beneficial ownership information should be verified to determine whether it is accurate. The degree of verification should be based on a risk-based approach. Simple corporate structures would require verification that the documents presented are authentic and valid. More complex ownership structures require more sources for verifying the information presented, including a greater focus on the types and the veracity of the documents provided to establish a beneficial owners' status (for example, shareholder documents and other agreements providing natural persons with control over the legal entity or the legal arrangement).

73. For complex corporate structures, documents that may help to verify the beneficial ownership may include: a certificate of incorporation of a company, an extract of a shareholder registry showing ownership, a trust deed, a partnership agreement, the constitution and/or certificate of incorporation for a legal entity, any nominee agreement that shows who exercises real control behind a shareholder arrangement, a shareholders' agreement that shows a natural person controlling the shares of more than one shareholder, effectively giving control, documentary evidence that a natural person is able to exercise a dominant influence over a legal person, documentary evidence that a natural person has the power to appoint senior management, documentary evidence (for example, an employment contract) that a director or employee can influence a legal person, or documentary evidence of exercise of dominant influence over the transactions of a legal entity/arrangement.

74. The list is not exhaustive but illustrative. The more complex or opaque a complex corporate structure is, and the less plausible or explainable the need for its existence, the more verification steps should be undertaken until the FI/DNFBP is satisfied it knows who the true beneficial owner(s) are.

75. The objective of verifying beneficial ownership information should be that the overall mechanism ensures the accuracy of beneficial ownership information and provides a degree of consistency of information across different sources. To this end, FIs and DNFBPs should ensure accuracy and consistency in information gathering across all steps in establishing beneficial ownership.

Record-Keeping

76. The legal requirements governing the retention, updating, and timely communication of beneficial ownership (BO) information in Kuwait are outlined in several key pieces of legislation, primarily focused on ensuring transparency and compliance with international standards.

77. Under Article 11 (a) of Law 106/2013, FIs and DNFBPs are required to maintain all records obtained through the customer due diligence (CDD) process, including documents that demonstrate the identities of beneficial owners. These records must be kept for at least five years after the business relationship has ended or after the date of the occasional transaction.

78. In addition, Supervisors should consider recording discrepancy reports made (e.g., shown in excerpts of the register/alternative mechanism), so that potential users of this information are aware that this data might not be adequate, accurate or up-to-date. More broadly, supervisors may consider monitoring the number of discrepancy reports and the reasons for them.

Importance of Ongoing Monitoring for Identifying Beneficial Owners

79. The ongoing monitoring of beneficial ownership is crucial for accurately identifying the individuals who ultimately control or benefit from an entity. Over time, beneficial ownership interests can change, particularly in complex corporate structures where shares or control rights are divided among various stakeholders and are typically exercise indirectly. New investors might take a significant role in the company, or current owners might transfer control.

These changes can occur frequently, making it essential for FIs and DNFBPs to continuously review and monitor transactions to ensure that their understanding of the true beneficial owners remains current.

80. Criminals often exploit complex ownership structures or use nominees to disguise the true controllers of an entity, making it easier for them to carry out illicit activities undetected. Without proper monitoring, these efforts to conceal ownership might go unnoticed, allowing funds to be moved illicitly without raising any alarms. Through diligent monitoring of financial flows and reviewing changes in ownership, institutions can identify irregular patterns such as unexpected transactions, transfers to high-risk countries, or discrepancies in ownership records and actual activities taking place. Detecting such anomalies early can help prevent the misuse of the financial system for illegal activities.

81. In line with FATF standards, FIs must adopt a risk-based approach to customer due diligence (CDD), which includes the need for ongoing monitoring. Entities identified as higher risk—due to factors such as their involvement in sensitive sectors or links to jurisdictions with weaker AML/CFT measures—should be subject to more frequent and detailed scrutiny. This allows institutions to adjust their CDD measures based on the evolving risk profile of a customer or beneficial owner, ensuring that any emerging risks are addressed promptly.

82. Additionally, continuous monitoring is vital for mitigating the risks associated with money laundering and terrorist financing. It allows institutions to detect unusual transactions, whether they be large transfers or a series of smaller transactions designed to avoid detection (commonly known as structuring). These irregularities can prompt further investigation or reporting to authorities, potentially preventing the completion of illegal financial activities.

83. From the case studies above it is clear how quickly the situation can change and a lot depends on the documentation held to correctly verify and validate information which may not be available from the records at the companies registry alone. Record keeping and KYC processes go beyond simple paper or check-box ticking exercises as determination of the BO often requires an in-depth analysis.

84. In addition, to use information held by FIs and DNFBPs, it is also essential to have effective monitoring and supervision of FIs and DNFBPs to ensure that they are complying with CDD requirements. Implementation of the CDD requirements should form part of any comprehensive mechanism to increase transparency of corporate vehicles. It is particularly important to extend these requirements to businesses and professions which are often involved in the creation and management of corporate vehicles. A regulated FI/DNFBP regime would include an effective sanctioning regime for offences such as failing to update information in a timely manner, failing to supply information and submitting inaccurate information to authorities, which is effectively enforced.

4. Reporting Incorrect or Inaccurate Beneficial Ownership Data

MOCI's beneficial ownership registry supports timely access to adequate, accurate, and up-to-date beneficial ownership information by competent authorities. The registry shall maintain digital and searchable records, support searches by legal person and beneficial owner, allow for risk-based verification and review, record changes over time, support discrepancy reporting and correction, and include safeguards to protect personal data and prevent improper disclosure.

In support of the accuracy and reliability of beneficial ownership data, the Ministry of Commerce and Industry adopts regulatory procedures for receiving and processing reports concerning incorrect, inaccurate, or misleading beneficial ownership data submitted to the Ministry, thereby contributing to the maintenance of sufficient, accurate, and up-to-date information in line with the relevant international standards.

Reports may be submitted by:

- Individuals or legal persons who become aware of incorrect or inaccurate beneficial ownership data.
- The competent authorities, including supervisory authorities such as the Central Bank of Kuwait, the Capital Markets Authority, the Insurance Regulatory Unit, law enforcement authorities, the Kuwait Financial Intelligence Unit, and entities subject to the supervision of the Anti-Money Laundering and Counter-Terrorism Financing Department of the Ministry of Commerce and Industry.

The Ministry of Commerce and Industry receives reports through the approved official electronic channels, while committing to preserve the confidentiality of the reporting party's data in accordance with the applicable laws and regulations.

Steps for submitting a report on incorrect or inaccurate beneficial ownership data — for individuals, legal persons, and the competent authorities:

1. Access the electronic portal of the Commercial Register.
2. Access the service for reporting incorrect beneficial ownership data (for supervisory authorities, law enforcement authorities, and individuals).
3. Select individual / supervisory authority or representatives of their subject entities / law enforcement authority / Kuwait Financial Intelligence Unit / entities subject to the supervision of the Anti-Money Laundering and Counter-Terrorism Financing Department of the Ministry of Commerce and Industry.
4. Enter the civil ID number, so that the reporting party's details appear automatically.
5. Enter the name of the company/establishment concerned, a summary of the complaint, and attach the supporting documents or attachments, where applicable.
6. Submit the report electronically through the system after authentication via the Hawiyti application by the applicant.

Procedures for Handling Reports

The Ministry of Commerce and Industry takes the necessary measures regarding the reports received in accordance with the approved procedures, which include the following:

First: Registering the report

- Registering the report in the approved internal system.
- Assigning the report a reference number.
- Classifying the report according to its type and nature.

Second: Verification and analysis

The information contained in the report is verified through:

- Commercial records.
- The beneficial ownership register.
- The databases and electronic systems available at the Ministry.
- Requesting any additional documents or clarifications where needed.

Third: Supervisory action

Based on the results of the analysis, the Ministry may take one or more of the following actions:

- The Ministry may request the updating of the beneficial ownership data within a specified period.
- Imposing a financial penalty and suspending the Commercial Register until the violation has been rectified.
- Coordinating with the supervisory authorities or law enforcement authorities where needed.

Fourth: Taking the decision

Where the existence of incorrect or misleading data relating to the beneficial owner is established, the appropriate legal or supervisory measures are taken, including the imposition of the administrative or financial penalties stipulated in the relevant Ministerial Decision, or referral of the matter to the law enforcement authorities as the case may be.

Access to Beneficial Ownership Information

85. Competent authorities shall have timely access to basic and beneficial ownership information held by companies, MOCI, FIs, DNFBPs, and other relevant sources. FIs and DNFBPs shall have access to information needed to perform CDD and report discrepancies. Foreign competent authorities shall be able to request information through established cooperation channels. Any wider access should be subject to applicable confidentiality, data protection, and privacy safeguards.

86. Public authorities involved in procurement shall have timely access to basic and beneficial ownership information on bidders and contract recipients. Procurement authorities may require bidders to submit beneficial ownership information directly, obtain information from MOCI or other competent authorities, or rely on other official sources where the information is adequate, accurate, and up to date. BO information should be considered as part of procurement integrity, conflict-of-interest, sanctions, and AML/CFT risk checks.

87. Kuwait shall be able to provide international cooperation in relation to beneficial ownership information in a timely and effective manner. This includes facilitating access by foreign competent authorities to basic company information, exchanging shareholder and ownership information, and using domestic powers to obtain beneficial ownership information on behalf of foreign counterparts, subject to applicable legal requirements and cooperation channels.

5. Sanctions and Enforcement

88. Sanctions for breaches of beneficial ownership obligations in Kuwait are effective, proportionate, and dissuasive, and shall apply to the relevant legal or natural person responsible for the breach. Sanctionable conduct may include failure to obtain or maintain BO information, failure to update information, failure to provide information to MOCI or competent authorities, submission of false or misleading information, failure to disclose nominee status, non-cooperation with FIs/DNFBPs conducting CDD, and failure by regulated entities to identify, verify, or monitor beneficial ownership information.

89. The authorities overseeing BO compliance, such as the Central Bank of Kuwait (CBK), Capital Markets Authority (CMA), Insurance Regulatory Unit (IRU), and Ministry of Commerce and Industry (MOCI), have the power to enforce penalties. These enforcement measures include

administrative fines and penalties to ensure that institutions meet their anti-money laundering (AML) and counter-terrorist financing (CFT) obligations.

90. Supervisory bodies can issue warnings, require corrective actions, or impose fines based on the severity of the non-compliance. In extreme cases, they can revoke or suspend operating licenses, which could force non-compliant institutions out of the financial market.

91. These enforcement actions are based on Kuwait's Law No. 106 of 2013, which provides the legal framework for combating money laundering and terrorist financing, granting authorities the power to impose both administrative and criminal sanctions for violations of AML/CFT rules, including BO obligations.

92. Key provisions of Law No. 106 of 2013 include Article 14 of the law authorizes supervisory authorities to impose administrative penalties on non-compliant institutions. These penalties include warnings, suspensions, and the revocation of licenses. This legal basis enables authorities like the Central Bank of Kuwait (CBK), Capital Markets Authority (CMA), the Insurance Regulatory Unit (IRU) and Ministry of Commerce and Industry (MOCI) to take action against FIs/DNFBPs that fail to comply with BO obligations.

93. The overall effectiveness of these enforcement mechanisms is crucial to Kuwait's compliance with the Financial Action Task Force (FATF) standards, particularly in relation to Immediate Outcome 5, which assesses the transparency and beneficial ownership of legal persons and arrangements.

94. The Ministry of Commerce and Industry may impose a financial penalty of not less than one thousand (1,000) Kuwaiti Dinars and not more than ten thousand (10,000) Kuwaiti Dinars on any natural person who intentionally submits false or misleading data or information relating to the beneficial owner.

95. The penalties shall be applied with due regard to the principle of proportionality according to the gravity and nature of the violation, without prejudice to the right of the Ministry to take any other supervisory or legal measures, or to refer the matter to the law enforcement authorities whenever there is a suspicion of the commission of a crime in accordance with the applicable legislation.

96. Licensing and supervisory authorities should take appropriate steps to prevent criminals and their associates from holding, controlling, or benefiting from significant ownership interests or management functions in FIs and DNFBPs. Fit-and-proper checks should be applied at licensing or registration and on an ongoing basis, including when ownership or control changes.