



Ultimate Beneficial Owner

KPMG in Bahrain's Tax Webinar

home.kpmg/bh

—

January 2021



Agenda



Session Timing: 11:00 – 12:00

- Introduction
- What is an Ultimate Beneficial Owner (UBO)
- Why is identifying an UBO important
- Introduction of UBO in Bahrain
- How to identify an UBO
- Application and practical challenges
- International best practice in EU and Malta
- Compliance requirements and next steps
- Q&A



Speakers



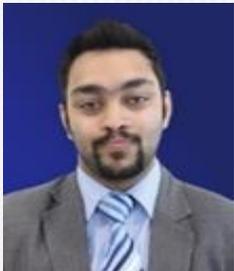
Mubeen Khadir

Partner

Tax and Corporate Services

mubeenkhadir@kpmg.com

+973 3222 6811



Ali Al Mahroos

Director

Tax and Corporate Services

aalmahroos@kpmg.com

+973 3434 3440



Trudy Muscat

Senior Manager

Tax and Corporate Services

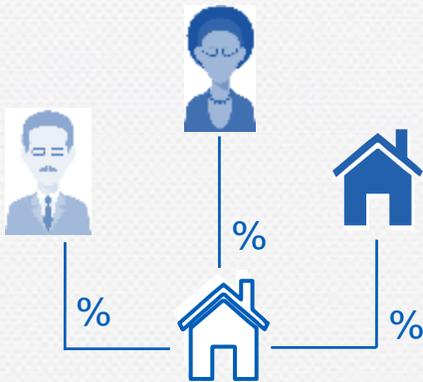
trudymuscat@Kpmg.com.mt



What is Ultimate Beneficial Ownership (UBO)?

Definition of the UBO

- An Ultimate Beneficial Owner (UBO) is an individual that benefits from or is impacted positively from a company even though they are not formally named as the owner of a business. It is a person within the parent company that owns or controls over 25% of the company shares, has the right to exercise significant control over the company and/or has the right to remove the majority of the board of directors. A UBO is formally defined as a person with significant control at the 'top of a tree' in a business.



- Any individual person who:
 - ultimately owns or controls a business or legal entity* **and/or**
 - on whose behalf a transaction or activity is being conducted.
- For corporate entities:
 - any individual person who ultimately holds a shareholding, controlling interest or ownership interest over 25% of the shares or voting rights. In Bahrain, the percentage is 10%.
- If no UBO can be identified:
 - the senior managing officials are in principle registered as the UBO.



Why is identifying an UBO important?

- Identifying the beneficial owner is important for the government for the following:
 - Ensuring compliance with money laundering obligations & Financial Action Task Force (FATF) requirements
 - Global security concerns; and
 - Tax avoidance issues



UBO Transparency

Financial Action Task Force

- 1989: Group of countries aimed to establish international standards to prevent money laundering
- 2001: Extended to combating the financing of terrorism
- Several updates and recommendations to date



EU Anti-Money Laundering Directive

1. 1991 AMLD 1: credit and financial institutions to verify customer identity and report any suspicions of money laundering
2. 2001 AMLD 2: extension to bring in line with FATF recommendations
3. 2006 AMLD 3: introduction of a risk-based approach and included certain non-financial service providers
4. **2015 AMLD 4**: update to comply with FATF recommendations; widen scope of obliged entities and transactions; information to be kept in a central register set up by June 2017; amendment to BO definition
5. **2018 AMLD 5**: extension to defined virtual currencies with exchanges and custodian wallets becoming obliged entities; public access to register; extension to any trust and other stores of value
6. 2018 AMLD 6: criminal liability harmonisation.



Introduction of UBO in Bahrain



- The Ministry of Industry, Commerce and Tourism (MOICT) has issued [Ministerial Order No. 83](#) (2020) in July 2020 which sets out the conditions and rules governing the disclosure of the Ultimate Beneficial Owner (UBO) in Bahrain.
- The Ministerial Order requires all Commercial Registration (CR) holders in Bahrain to disclose the information of the UBO for each corporate shareholders via the MOICT's online portal (Sijilat).
- The UBO is a natural person who ultimately owns or controls a CR, and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise effective control over a legal person or arrangement and have control on any CR through means other than ownership.



How to identify a UBO

Based on the Ministerial Order (83) the following are the criterion to determine a UBO in Bahrain. CR holders should assess where they satisfy some of or all of the conditions below (in addition to adhering to the rules adopted by the Financial Action Task Force (FATF):

OPTION 01

- Owning or controlling, directly or indirectly, a percentage equal to or exceeding 10% of the capital or voting rights of the Registered Person;

Where the Registered Person is a legal person owned by another legal person or legal arrangement, -
then the Ultimate Beneficial Owner is the natural person who is the ultimate owner of the ownership chain or who exercises effective control over it;

OPTION 02

OPTION 03

- The ability to make or influence decisions in the Registered Person either directly or through other means such as personal communications or through participation in the financing of the project, family relations or through any kind of contract, arrangement, understanding, relationship or through a hierarchical entity (in the ownership chain of legal entities);

The natural person who contributes to financing the business of the Registered Person or -
its assets, or that transactions are made in its favour, even if these contributions are hidden;

OPTION 04



How to identify a UBO (cont.)

Based on the Ministerial Order (83) the following are the criterion to determine a UBO in Bahrain. CR holders should assess where they satisfy some of or all of the conditions below (in addition to adhering to the rules adopted by the Financial Action Task Force (FATF):

OPTION 05

- Having direct or indirect control over the operations of the Registered Person through a management agreement, power of attorney or similar instrument;

Ultimate effective control through a series of ownerships or other means of control other than direct control of a Registered Person;

OPTION 06

OPTION 07

- Natural persons who may exercise control through management position within the Registered Person in such a way that affects the strategic decisions or influences the general direction of the Registered Person;

Any other conditions, criteria, and rules determined by the Minister, in accordance with international requirements and standards that guarantees the best practices related to improvement of the international tax compliance, anti-money-laundering and counter-financing of terrorism.

OPTION 08



In a nutshell - Who could be a UBO?

To simplify based on the Ministerial Order criterion, any of the following could be UBOs

Shareholders
(owning 10% share/voting
or more)

Shareholders (owning
less than 10%) but have
controlling interest

Board of Directors

Executive Management
(e.g. CEO/CFO)

Trustees

Having delegated
authority (through
authorized signatories /
power of attorney holders)

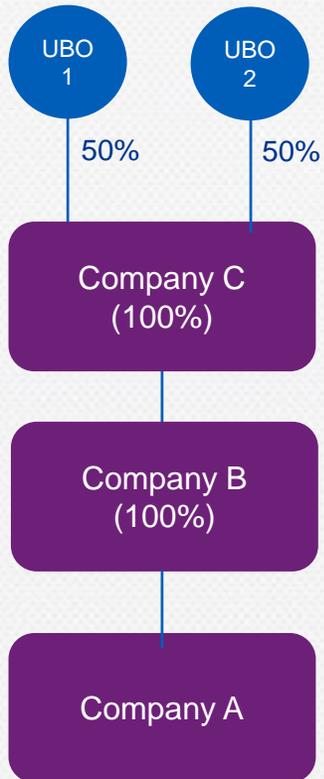
Undisclosed
shareholders or
benefactors

Any other person who
exercises control over an
entity



Practical Application

The following case is an example of beneficial owners and how to identify who should be disclosed



1

The natural person that are at the top level of Company C as shareholders

2

Any board of directors within Company A

3

Any executive management/ authorized signatories/ power of attorney holders of Company A

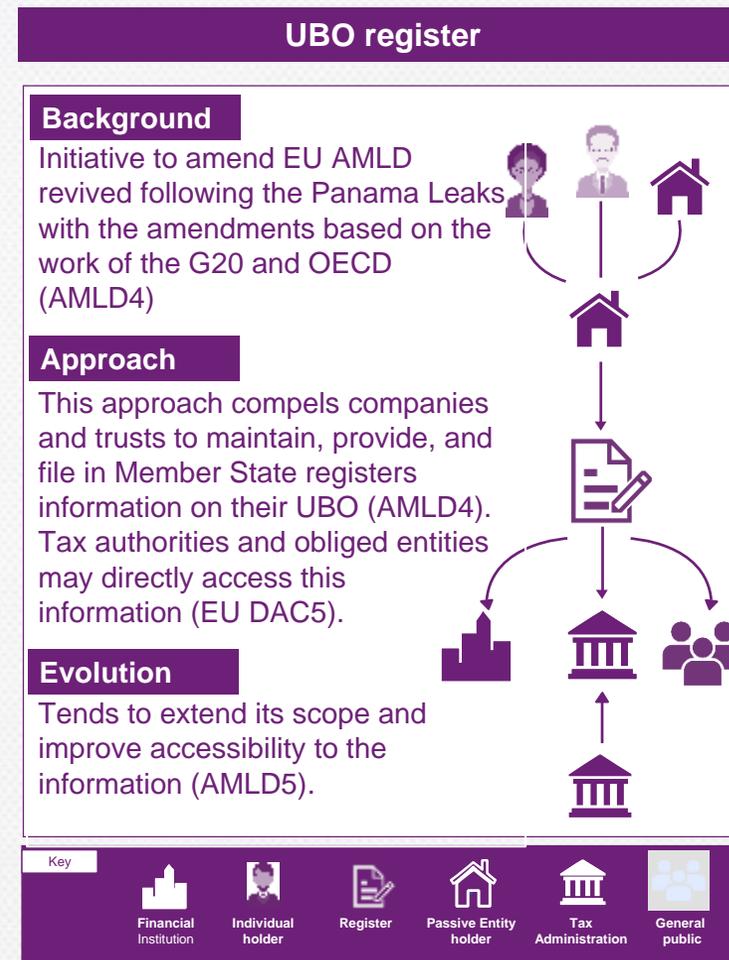
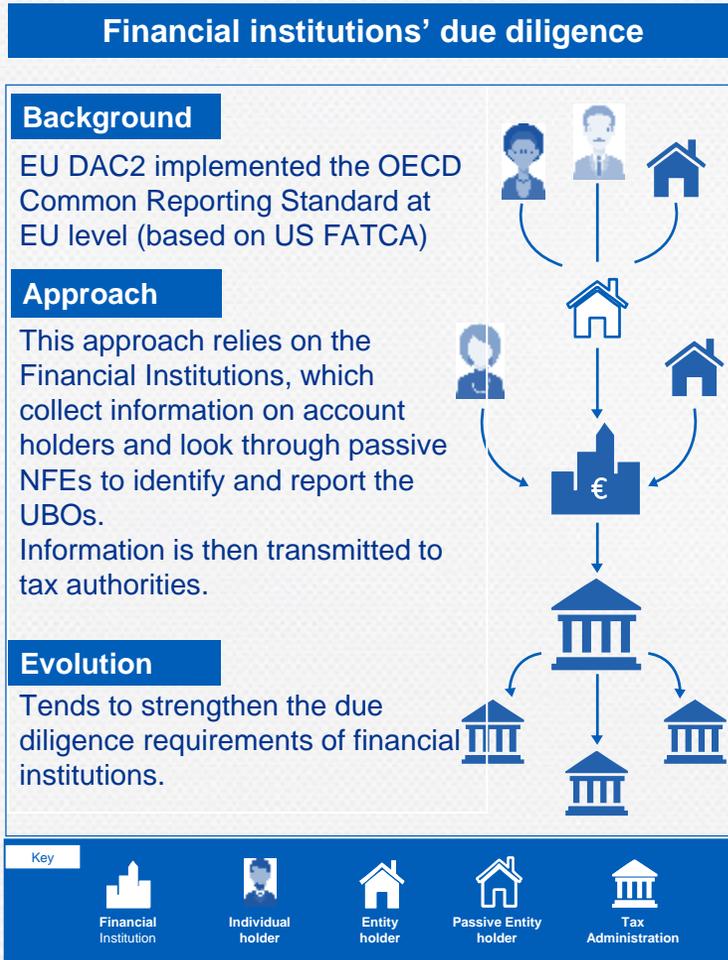




International best practice in EU and Malta

Background - UBO Transparency

Two Different EU Approaches



Purpose and Objective of AMLD

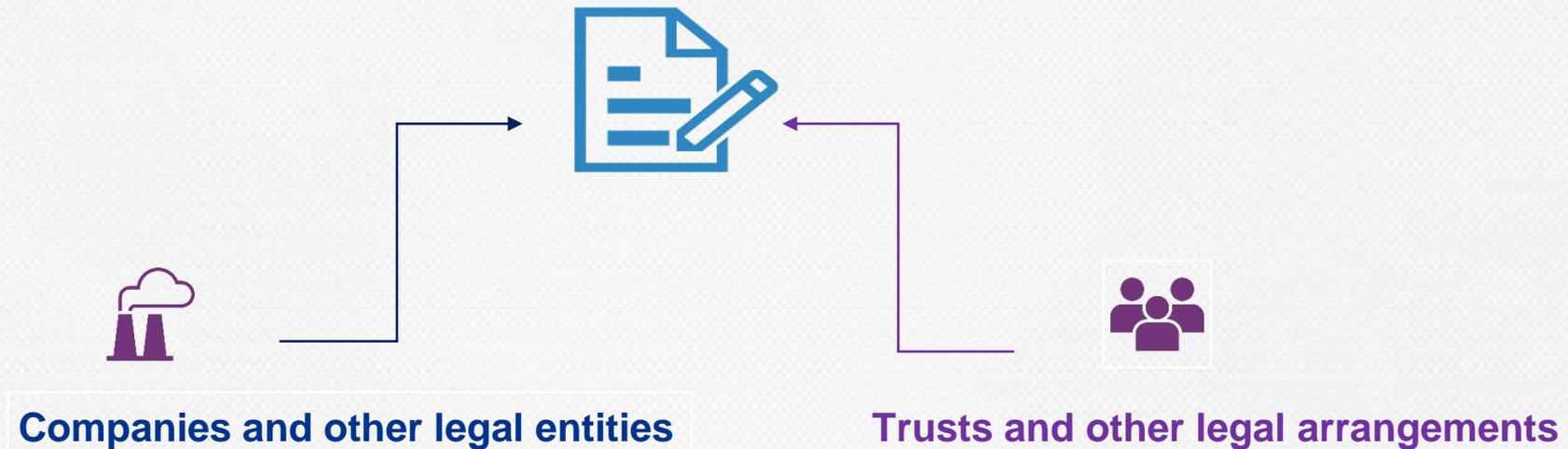
- To **protect** the financial system by means of the prevention, detection and investigation of money laundering and terrorist financing in line with the uniform functioning of the EU internal market;
- To **prevent the misuse** of the financial system to channel illicit or even lawful money into terrorist purposes poses a clear risk to the integrity, proper functioning, reputation and stability of the financial system;

How?

1. By requiring *Obligated Entities* to collect, retain and disclose the beneficial ownership information of legal entities and arrangements.



2. UBO Register - Scope



- *“In order to ensure effective transparency, Member States should ensure that the widest possible range of legal entities incorporated or created by any other mechanism in their territory is covered.”* EU AML Directive
- **Identify, verify** and **disclose** any individual who:
 - ultimately owns or controls a business or legal entity **and/or**
 - on whose behalf a transaction or activity is being conducted.

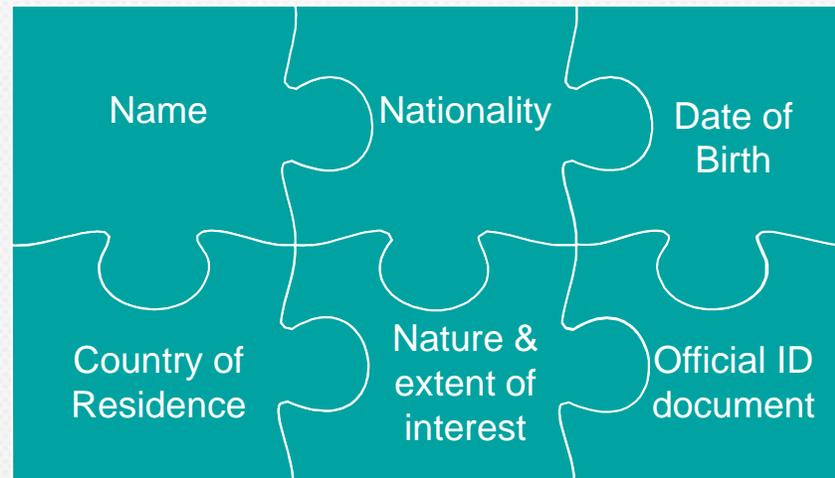


UBO Register - Companies & Legal Persons



Companies and other legal entities

- Corporate and other legal entities/ bodies of persons incorporated within Malta are required to obtain and hold adequate, accurate and current information on their beneficial ownership (not only legal ownership), including the details of the beneficial interests held by same.
 - Internal register (kept at the registered office of the company);
 - Disclosure to national register
- Information disclosed on the beneficial owner:

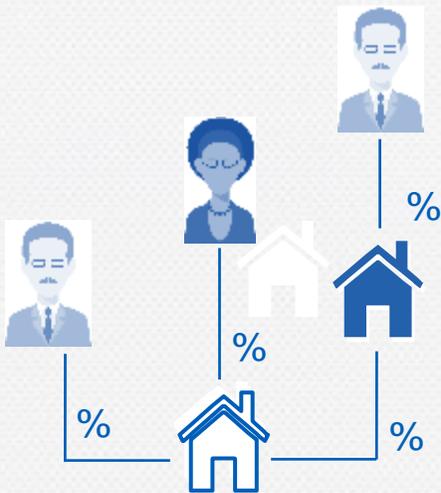


UBO Register - Companies & Legal Persons



Companies and other legal entities

Definition of the UBO



- any individual person who ultimately owns or controls directly or indirectly over 25% of the shares or voting rights or other ownership interest in a body of persons, or through control by any other means
- If no UBO can be identified and no grounds for suspicion: the senior managing officials



UBO Register - Companies & Legal Persons



Companies and other legal entities

Exclusions from disclosure

- x A company listed on a regulated market subject to equivalent disclosure requirements to ensure adequate transparency of ownership information
- x A company whose registered shareholders are all *individuals* disclosed in the public corporate records of the Business Registry



UBO Register - Companies & Legal Persons



Companies and other legal entities

Consequences for non/inadequate disclosure

- Suspension of any further registration formalities by the Business Registry
- Striking off a company from the Registry
- Unrestricted on-site inspections to verify beneficial ownership information
- Enforcement of penalties
- Fraudulent disclosure tantamount to an offence punishable with a maximum criminal fine of €5,000 and/or imprisonment for 6 months.

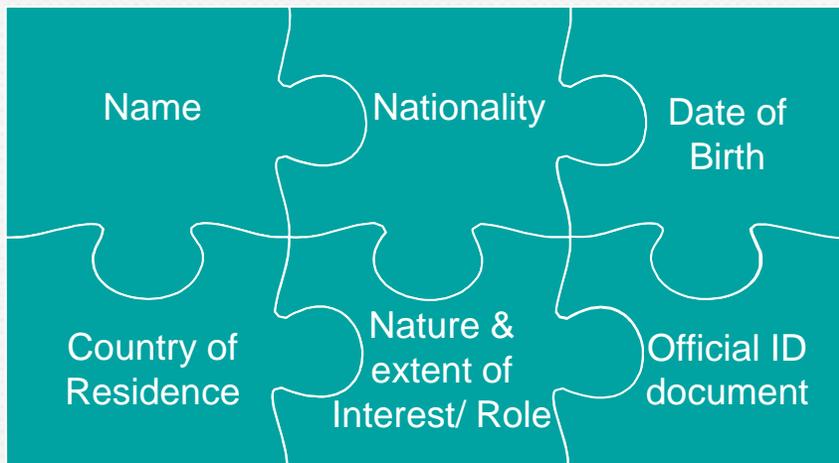


UBO Register - Trusts & Legal Arrangements



Trusts and other legal arrangements

- Trustees registered in Malta of any express trust and similar legal arrangements governed under and administered in Malta are required to obtain and hold adequate, accurate and current information on beneficial ownership regarding the trust.
- Also applicable to foreign trustees who enter into a business relationship or acquire real estate in Malta.
 - Disclosure to national register
- Information retained on the beneficial owner:



- In the case of a class of beneficiaries, members are to be declared upon appointment

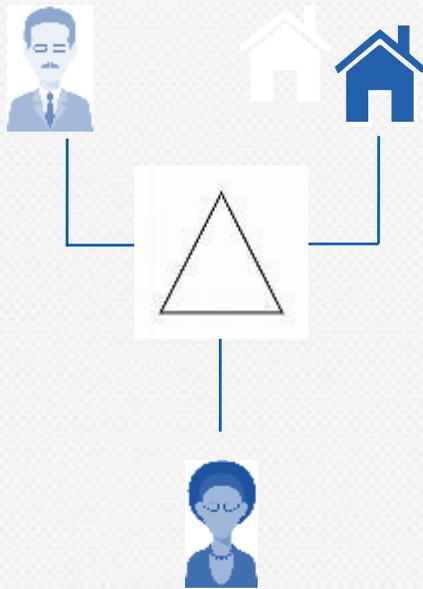


UBO Register - Trusts & Legal Arrangements



Trusts and other legal arrangements

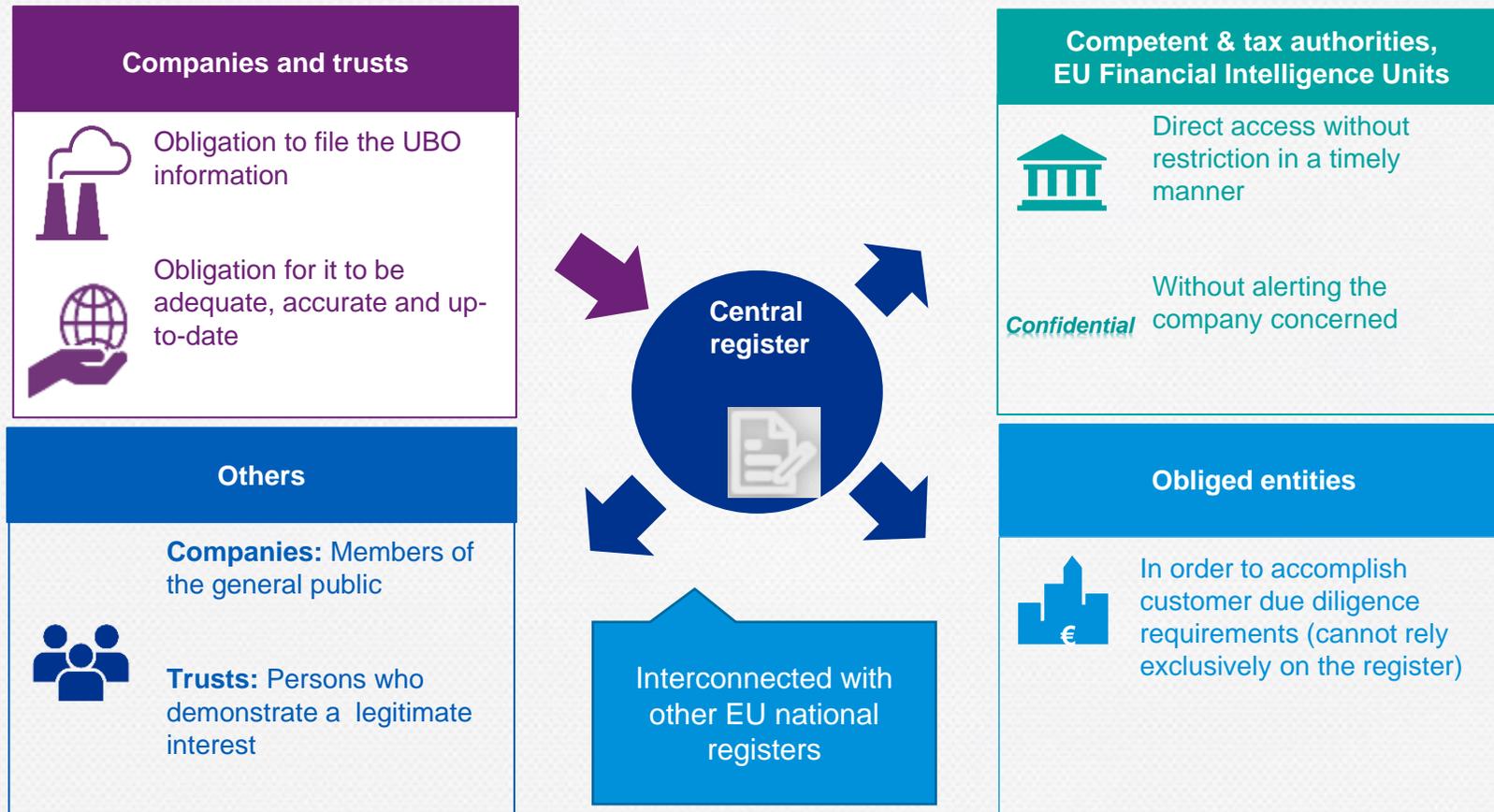
Definition of the UBO



- Settlor who settles property
- Trustee(s) who manage the trust property and who are endowed with legal ownership
- Protector(s) (if any) who supervise the management of the trust
- (class of) Beneficiaries entitled to the trust property
- Any other natural person exercising effective control



UBO Register - Access to the UBO register



- Must comply with data protection rules
- May be subject to online registration and the payment of a fee
- May be exempt on a case-by-case basis in exceptional circumstances



UBO Register - EU MSt Practice (France)

Registre des beneficiaires effectifs

Definition of the UBO

- Natural person(s) who:
 - either ultimately hold(s), directly or indirectly, over 25% of the share capital or voting rights of the company,
 - or exercises, by any other means, a power of control over the company:
 - effectively determines the decisions taken at that company's general meetings through the voting rights he or she holds or when he or she is a partner in, or shareholder of that company and
 - has the power to appoint or dismiss the majority of the members of that company's administrative, management or supervisory organs.
- Where no individual meets the UBO definition: the legal representative of the company. If a legal entity, the UBO is the individual legally representing said legal entity.
- On pain of penalties, court orders to comply, criminal penalties and imprisonment, suspension of Company Registry formalities and even a ban on management.



UBO Register - United Kingdom

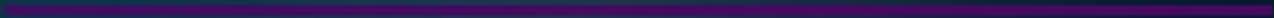
Register: The Companies House

- **Brexit Free Trade Agreement:**
 - *The Parties shall make their best endeavours to ensure that internationally agreed standards in the financial services sector for regulation and supervision, for the fight against money laundering and terrorist financing and for the fight against tax evasion and avoidance, are implemented and applied in their territory.*
 - *The Parties shall each maintain a comprehensive regime to combat money laundering and terrorist financing, and regularly review the need to enhance that regime, taking account of the principles and objectives of the Financial Action Task Force Recommendations.*
 - *Each Party shall put in place mechanisms to ensure that its competent authorities have timely access to adequate, accurate and up-to-date information about beneficial owners.*
 - *Each Party shall ensure that there are effective, proportionate and dissuasive sanctions.*





Compliance



The Beneficial Ownership Register – What to disclose

What to disclose?

The UBO Register must contain at least the following details of the beneficial owner:

- Name
- Date of birth (month and year)
- Nationality
- Country of residence
- Nature and size of the beneficial interest held by the beneficial owner



Trustees of any express trust must hold details on beneficial ownership regarding the trust, which shall include the above details in relation to the:

- Settlor
- Trustee(s)
- Protector (if any)
- Beneficiary or beneficiaries
- All other natural persons having control of the trust



Exemption

An exemption may be allowed in exceptional cases where access to the information held in the UBO Register may expose the beneficial owner to a risk of fraud, kidnapping, blackmail, violence or intimidation or where the beneficial owner is a minor or otherwise incapable.



The Beneficial Ownership Register - Declaration Form

KINGDOM OF BAHRAIN
Ministry of Industry,
Commerce and Tourism



مملكة البحرين
وزارة الصناعة والتجارة والسياحة

معلومات المستفيد النهائي

أفيد أنا الموقع أدناه..... بصفتي مالك / مدير / مخول بالتوقيع لشركة / مؤسسة
رقم السجل التجاري..... بيان بيانات المستفيد النهائي صحيحة وذلك حسب التالي.
الاسم :
رقم الشخصي/الحواز :
رقم الهاتف :

Ultimate beneficiary information

I am the undersigned.....as a Owner/ Director / Authorized Signatory of the Company/
EstablishmentCR No..... State that the
information of the ultimate beneficiary owner provided by me through Sijilat system are correct
as below.

Name:
CPR/Passport Number:
Mobile Number:

Information of Owner/ Director/ Authorized Signatory

Name :
CPR/Passport No:
Position:
Signature:
Date:

بيانات المالك/ المدير/ المخول بالتوقيع

الاسم:
الرقم الشخصي/رقم الحواز:
المنصب:
التوقيع:
التاريخ:

1

The details of the natural person being identified

2

The Commercial Registration details of the entity

3

The details of the person signing the declaration (if not the same as the natural person being identified).

Steps to assign a UBO

The following outlines the steps to register a UBO on the MOICT portal:



When to update the UBO information?

The UBO declarations need to be updated on the MOICT Sijilat portal at any of the following points:



- At the time of incorporating a new entity (commercial registration)



- Any time there is a change within the entity & a UBO is added or removed



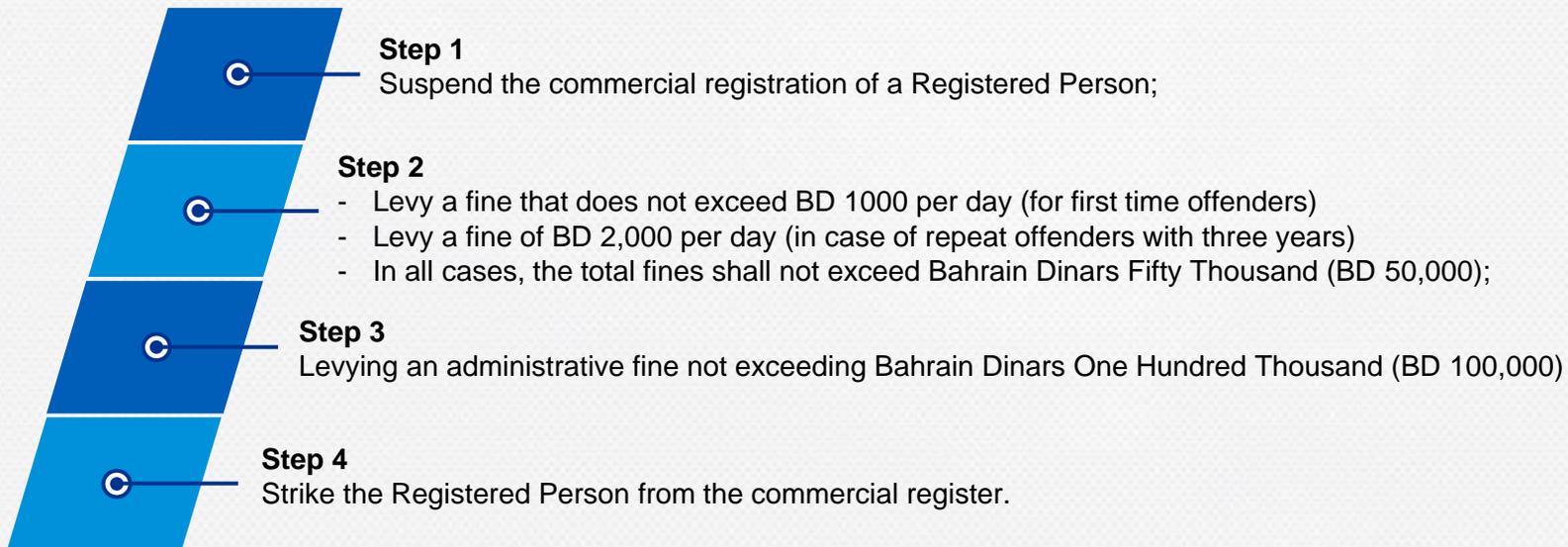
- Annually at the time of renewing the commercial registration



Non-compliance



Should a company fail to comply with the MO correctly the company may face the following non-compliance penalties:





Next Steps

- Where companies have not completed the UBO declarations, an assessment should be conducted to identify all UBOs. Once identified, submit the UBO declarations to MOICT.
- Where UBO declarations have been submitted and are incomplete, identify all remaining UBOs and submit the additional information to MOICT at the earliest;
- Ensure all supporting documentation are maintained in case of further scrutiny by the MOICT.
- Ongoing monitoring of the UBO status with an entity.
- Ensure annual disclosure requirements are completed.



Questions?



Thank you





home.kpmg/bh

KPMG Fakhro, a Bahrain partnership registered with the Ministry of Industry, Commerce and Tourism (MOICT), Kingdom of Bahrain and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative (“KPMG International”), a Swiss entity.

©2021 KPMG Fakhro, a Bahrain partnership registered with the Ministry of Industry, Commerce and Tourism (MOICT), Kingdom of Bahrain and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative (“KPMG International”), a Swiss entity. All rights reserved.

