



Guideline for definition of a beneficial owner

Updated on 22.10.2018

Who is a beneficial owner?

Pursuant to subsection 9 (1) of the Money Laundering and Terrorist Financing Prevention Act (hereinafter the MLTFPA):

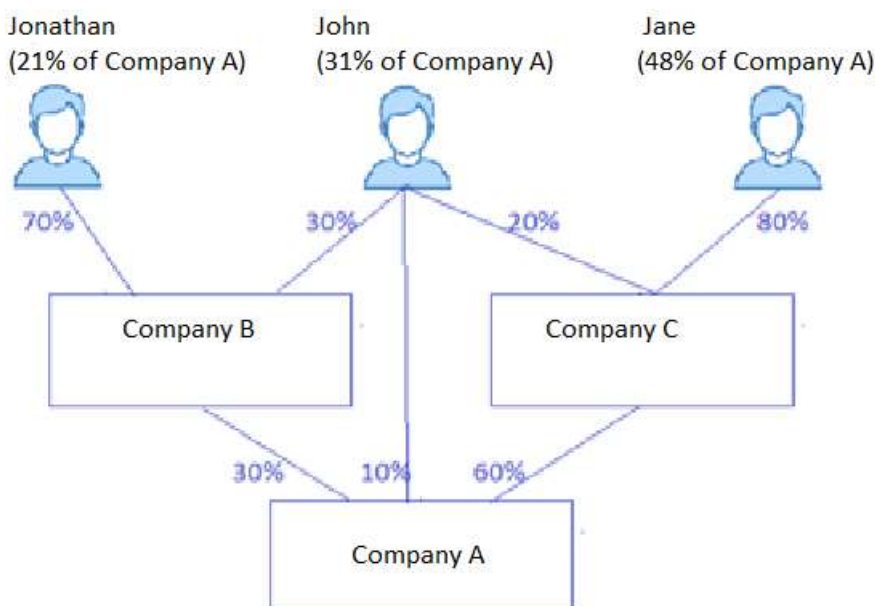
a natural person who, taking advantage of their influence, makes a transaction, act, action, operation or step or otherwise exercises **control** over a transaction, act, action, operation or step or over another person and in whose interests or favour or on whose account a transaction or act, action, operation or step is made.

In the case of **companies**, a beneficial owner is the **natural person** who **ultimately owns or controls a legal entity** through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that person, including through bearer shareholdings, or through control via other means.

Pursuant to subsection 9 (3) of the MLTFPA, **direct ownership** is a manner of exercising control whereby a natural person holds a shareholding of **25 percent plus one share or an ownership interest of more than 25 percent in a company**; **indirect ownership** is a manner of exercising control whereby **a company that is under the control of a natural person holds or multiple companies that are under the control of the same natural person hold a shareholding of 25 percent plus one share or an ownership interest of more than 25 percent in a company**.

Some examples of **companies**:

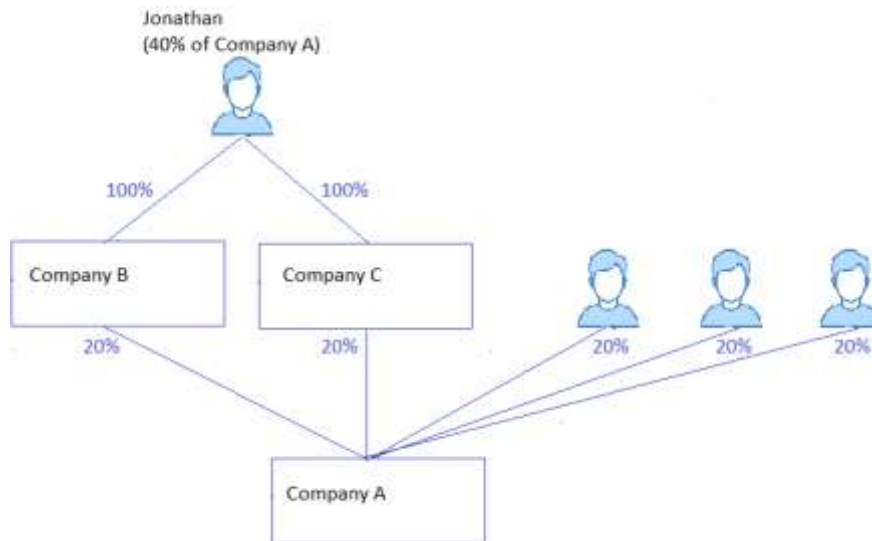
In **Example 1**, the beneficial owners of Company A are John and Jane, as both hold a shareholding of 25% in Company A.



Example 1



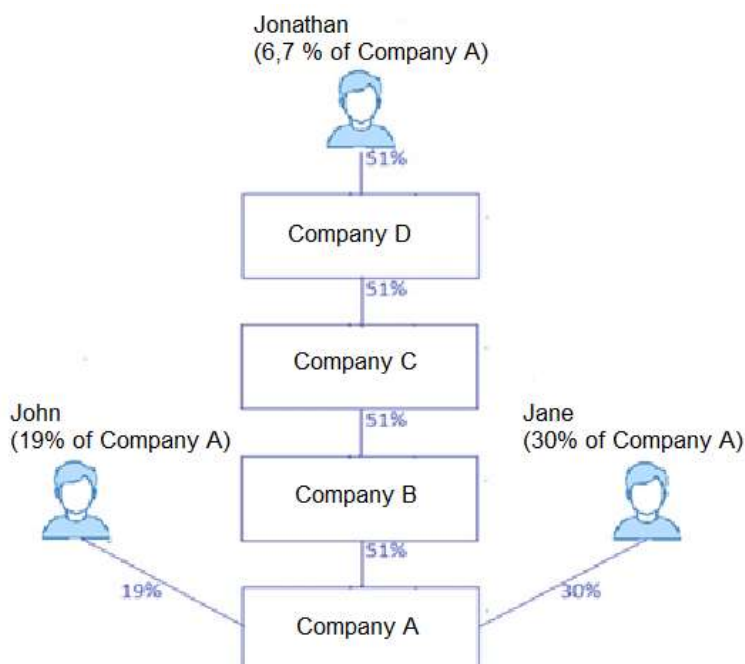
In **Example 2**, the beneficial owner of Company A is Jonathan, who holds a shareholding of 40% in the company through Companies B and C.



Example 2

In **Example 3**, the beneficial owner of Company A is Jonathan, who **controls Company A through majority shareholdings in Companies B, C and D**. This is irrespective of the fact that his shareholding in Company A is less than 25%. In addition to Jonathan, Jane is also a beneficial owner of Company A because of her direct shareholding of 30%.

Control cannot always be ascertained through majority holding: it can also exist as ‘dominant influence’, which is understood as the direct or indirect right to appoint or remove the majority of the executive management or members of a higher managing body by exercising the rights of the founder or with a resolution of the general meeting of shareholders, which arises from law **or a contract (e.g. an agreement between shareholders)**.



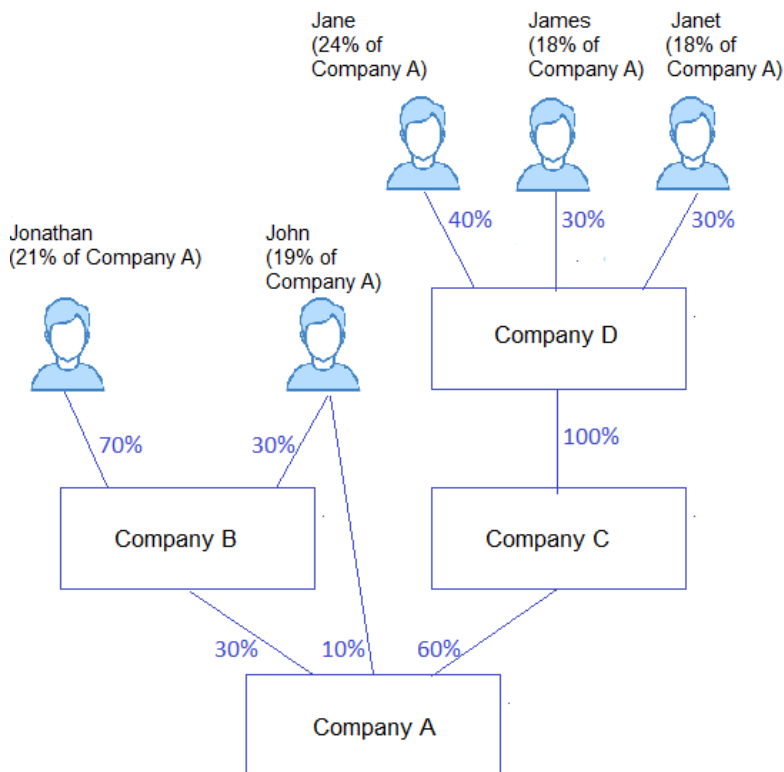
Example 3



There may also exist a situation where the natural person, who could hold a shareholding of 25% in the Company or control it via other means, does not exist and there is no reason to believe that they could exist. This situation is covered in **Example 4**. Company A is controlled by Company C as a majority shareholder that in its turn is controlled by Company D, but Company D does not have a controlling shareholder. Consequently, the **members of the managing body** of Company D are defined as the beneficial owners of Company A (on the basis of subsection 9 (4) of the MLTFPA).

The same solution is also reached in a situation where D is, for example, a listed company.

The **managing body** of a private legal entity is the management board. If there is a supervisory board, the supervisory board is also a managing body.



Example 4

The **structure of the managing bodies** of foreign companies may differ from the Estonian one: the ‘board’ may consist of dozens of people. **In the case of managing bodies consisting of more than four people, we advise noting the chairman (or chairmen, as it’s possible that two persons share this position) of the respective body as the beneficial owner.** If a person is noted as the beneficial owner due to their position as a member of a managing body, this does not mean that they receive monetary income from the company or that the company operates in their personal interests.

The beneficial owner must also be noted in the case of **non-profit associations**, although earning profit is not the goal of any of them. According to the definition of beneficial owner, the person(s) under whose control the company is operating are indicated in such a case. Usually, they are **members of the management board**. Exceptions are possible, e.g. if the founders or members of a non-profit association are legal entities, the beneficial owners are defined in the same way as in the case of companies. The same principle applies here, i.e. noting the chairman of the management board is enough if the management board has more than four members. If a person is noted as the beneficial owner due to their position as a member of a managing body, this does not mean that they receive monetary income from the company or



that the company operates in their personal interests.

In the event of a limited partnership fund, civil law partnership, community or other association of persons that does not have the status of a legal entity, the beneficial owner is the natural person who ultimately controls the association via direct or indirect ownership or via other means and who is the association's:

- founder or person who has handed over property to the asset pool;
- trustee or manager or possessor of the property;
- person ensuring and controlling the preservation of property, where such person has been appointed, or
- the beneficiary, or where the beneficiary or beneficiaries have yet to be determined, the class of persons in whose main interest such association is set up or operates (subsection 9 (6) of the MLTFPA).

In the case of a foundation, the person noted as the beneficial owner is the person who may make payouts from the assets of the foundation, **where such person(s) have been specified by name in the articles of association of the foundation**. If such persons have not been specified by name in the articles of association, the members of the management board and supervisory board are noted as the beneficial owners.

Who is required to submit data?

- A private limited company (pursuant to the Commercial Register, there are 186,346 private limited companies as of 28 August 2018) Public limited company (3,404)
- General partnership (1,365)
- Limited partnership (3,064)
- Commercial association (1,716)
- Foundation (796)
- Non-profit association (21,584)
- European company and European Economic Interest Grouping (26)

Which data of the beneficial owner must be submitted?

A general partnership, limited partnership, private limited company, public limited company, commercial association or non-profit association must submit the following data of their beneficial owners:

- 1) the person's name, ID code and country of the ID code, the date and place of birth if there is no ID code, and country of residence;
- 2) data of the manner in which the person exercises control.

A foundation submits the following data of its beneficial owner:

- 1) the person's name, ID code and country of the ID code, the date and place of birth if there is no ID code, and country of residence;
- 2) data of the manner in which the person exercises control;



- 3) the list of beneficiaries, which includes each beneficiary's name, ID code and country of the ID code, the date and place of birth if there is no ID code, and country of residence **if such persons are specified by name in the articles of association of the foundation.**

The guideline on how to submit data in the Company Registration Portal can be found here: <http://abiinfo.rik.ee/tegelikkasusaaja>.

The following are not obliged to submit the data of the beneficial owner:

- 1) apartment association;
- 2) building association;
- 3) a company listed on the regulated market to which disclosure rules complying with European Union law or similar international standards are applied, which ensure the sufficient transparency of the data of owners;
- 4) a foundation the goal of whose economic activities is safekeeping or collecting assets in the interests of the beneficiaries or group of persons specified in the articles of association and that has no other economic activity.

As **gardening associations** are ordinary non-profit associations within the legal meaning, then the obligation to submit the data of the beneficial owner **applies** to them.

Does a branch of a foreign company have to submit the data of the beneficial owner?

The data of the beneficial owner are not submitted in the case of the branch of a foreign company, because the branch is not a legal entity pursuant to subsection 384 (2) of the Commercial Code. A foreign company is responsible for the activities of its branch and enters the data of the beneficial owner in its respective register of beneficial owners.

Who is the beneficial owner in the case of a company whose parent company is a company listed on a regulated market?

Companies listed on the stock exchange do not have to submit the data of beneficial owners, but the **subsidiaries** belonging to their groups of companies must do it. The same principles that apply to ordinary companies apply here as well: if there are no natural persons among the shareholders of a listed company whose shareholding in the company exceeds 25%, the members of the controlling body of the listed company, i.e. the management board and the supervisory board, are noted as the beneficial owners.

Who is the beneficial owner of a state-owned company or foundation, or a foundation or non-profit association established by a local government (city, town or municipality)?

State-owned companies are ordinary private legal entities. The beneficial owner of a state-owned company is the minister responsible for the area, who represents the state in the company and appoints the members of the supervisory boards of the companies in their area of government, the chairman of the supervisory board/management board of the company and the members of both bodies. For example, the finance minister as the representative of the state, the chairman and members of the supervisory board and the chairman and members of the management board can be considered beneficial owners of AS Eesti Loto.

In the case of foundations established by the state where the rights of a founder are exercised by ministries and foundations with state participation, the minister of the respective area, the chairman/members of the supervisory board and the chairman/members of the management board can be considered the beneficial owners. The members of the supervisory board are appointed and the other rights of a founder or



shareholder of a foundation of a municipality, town or city, whose sole founder is the municipality, town or city, as well as of a private limited company or public limited company, whose sole shareholder is a municipality, town or city, are exercised by the government of the municipality, town or city, so the mayor of the municipality, town or city or the members of the government of the municipality, town or city can be considered the beneficial owners. The principle applied here is the same: noting the chairman of a body is enough if the body consists of more than four persons. If an association has been established with the state and a local government or several local governments together, none of which have dominant influence over the association, the chairmen or members of the management board or supervisory board of the association are noted as the beneficial owners.

When do the data of a beneficial owner have to be submitted?

The data must be submitted within 60 days of 1 September, i.e. by 30 October, but it is also possible to submit and change them later.

The pre-populated data of beneficial owners in the Company Registration Portal of the Commercial Register can be changed (e.g. the means by which control is exercised can be added), confirmed and/or beneficial owners can be entered and added.

In the next stage, the company, non-profit association or foundation confirms that the data are true when submitting the annual report if their data have not changed in the meantime. In the case of a legal entity being founded, the data of the beneficial owner must be submitted with the application for entry in the Commercial Register.

Amendment, preservation and deletion of data

If the submitted data changes, the management board submits the correct data within 30 days. The management board confirms that the data of the beneficial owners are true (i.e. if no changes have occurred) every year when submitting the annual report.

Data are automatically deleted when five years have passed from the deletion of the legal entity from the register.

The beneficial owner themselves has the right to demand the amendment of incorrect data from the management board. If the management board does not correct the data, the beneficial owner has the right demand from the legal entity compensation for the damage caused with the incorrect data.

How can data be submitted if the member of the management board cannot log in to the Company Registration Portal (they don't have an ID card or e-resident card)?

A notary operating in Estonia must be contacted in such a case. If the member of the management board is in a foreign country and cannot travel to Estonia, their representative may also go to a notary in Estonia on the basis of a power of attorney issued by the member of the management board. However, the format and text of the power of attorney should be approved in advance by the Estonian notary who will be contacted.

Punishment for intentional submission of false data about the beneficial owner or failure to submit data

Failure to submit the data of the beneficial owner, to notify about changes in data or intentional submission of false data is punishable by a fine. The fine is up to 300 fine units in the case of a natural person and up to 32,000 euros in the case of a legal entity. These provisions will enter into force on 1 January 2019 and no entrepreneurs will be punished at first, and punishments will also not be



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automatically imposed.

You can contact **Ülle Eelmaa**, lawyer of the Entrepreneurship and Accounting Policy Department of the Ministry of Finance, telephone: 611 3016, e-mail: ylle.eelmaa@fin.ee.

You will find the guideline on submission of the data of beneficial owners at the website <http://abiinfo.rik.ee/tegelikkasusaaja>.