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Cabinet Decision No. 50/2020 Regulating the Beneficial Owner Procedure



Cabinet Decision No. (58) of 2020 Regulating the Beneficial Owner Procedure

The United Arab Emirates (UAE) recently issued Cabinet Resolution No. 58 of 2020 on the Regulation of the Procedures of the Real Beneficiary...

Rationale behind introduction of the Regulation

- ◆ International focus on International tax transparency and the fight against tax evasion and other financial crimes.
- ◆ Exchange of Information on Request and Automatic Exchange of Information considered vital for International tax transparency Standard.
- ◆ Recommendation of Financial Action Task Force ('FATF'), to OECDs Global Forum on Transparency on measures geared to Anti-money Laundering (AML) and Countering the Financing of Terrorism (CFT)
- ◆ As per reviews conducted by FATF, key requirement is the availability of beneficial ownership information, i.e. the natural person benefiting out of a legal entity or arrangement.

To whom is the Decision Applicable?

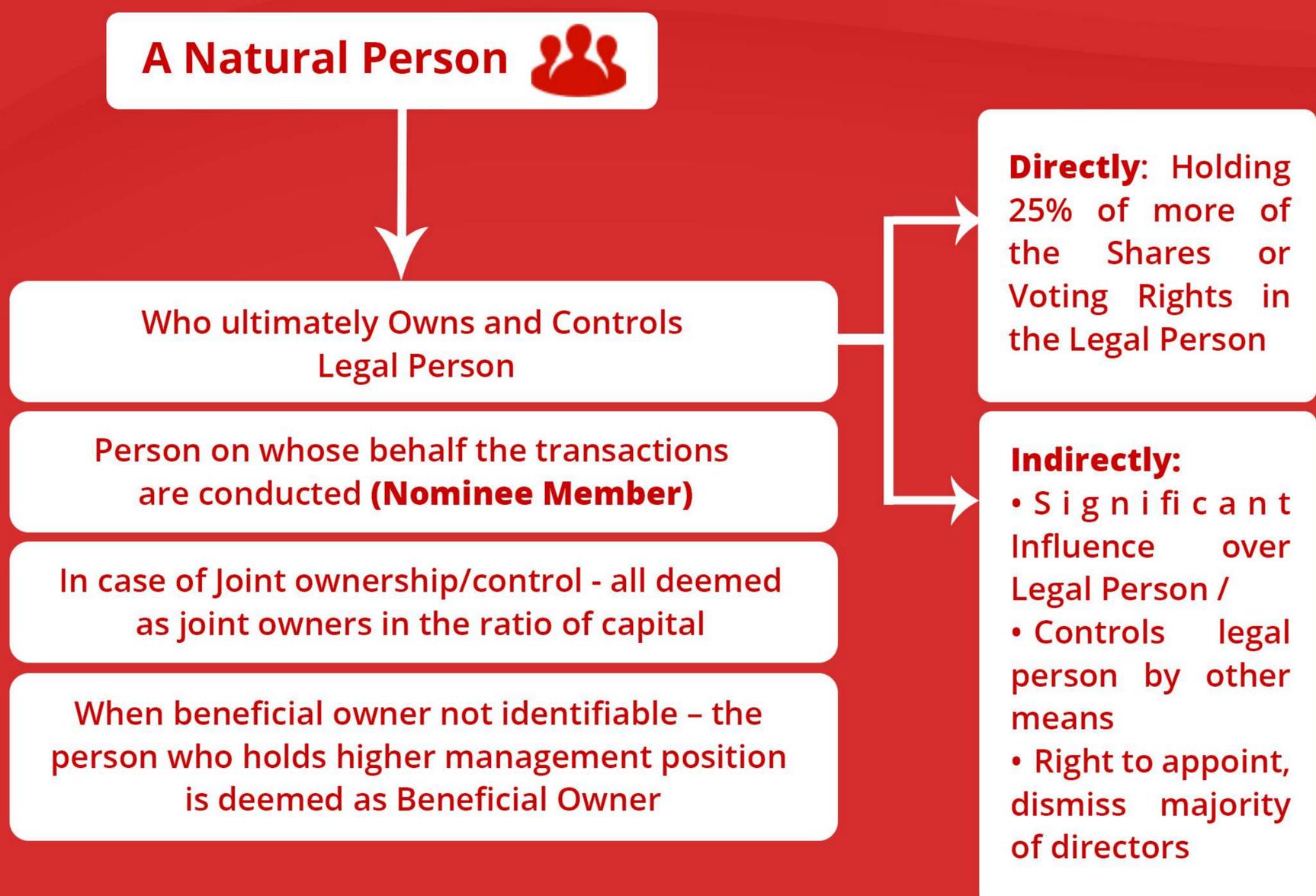
Provision of this Decision shall apply to:

- ◆ All **Registered Legal Persons** in the UAE. This includes Companies / LLPs / Partnership / Trust set up in Mainland and Free Zone

Specific Exclusion:

- ◆ Financial Free Zone Companies (DIFC and ADGM)
- ◆ Companies **wholly** owned by the Local / Federal Government and their subsidiaries

Who is the Beneficial Owner?

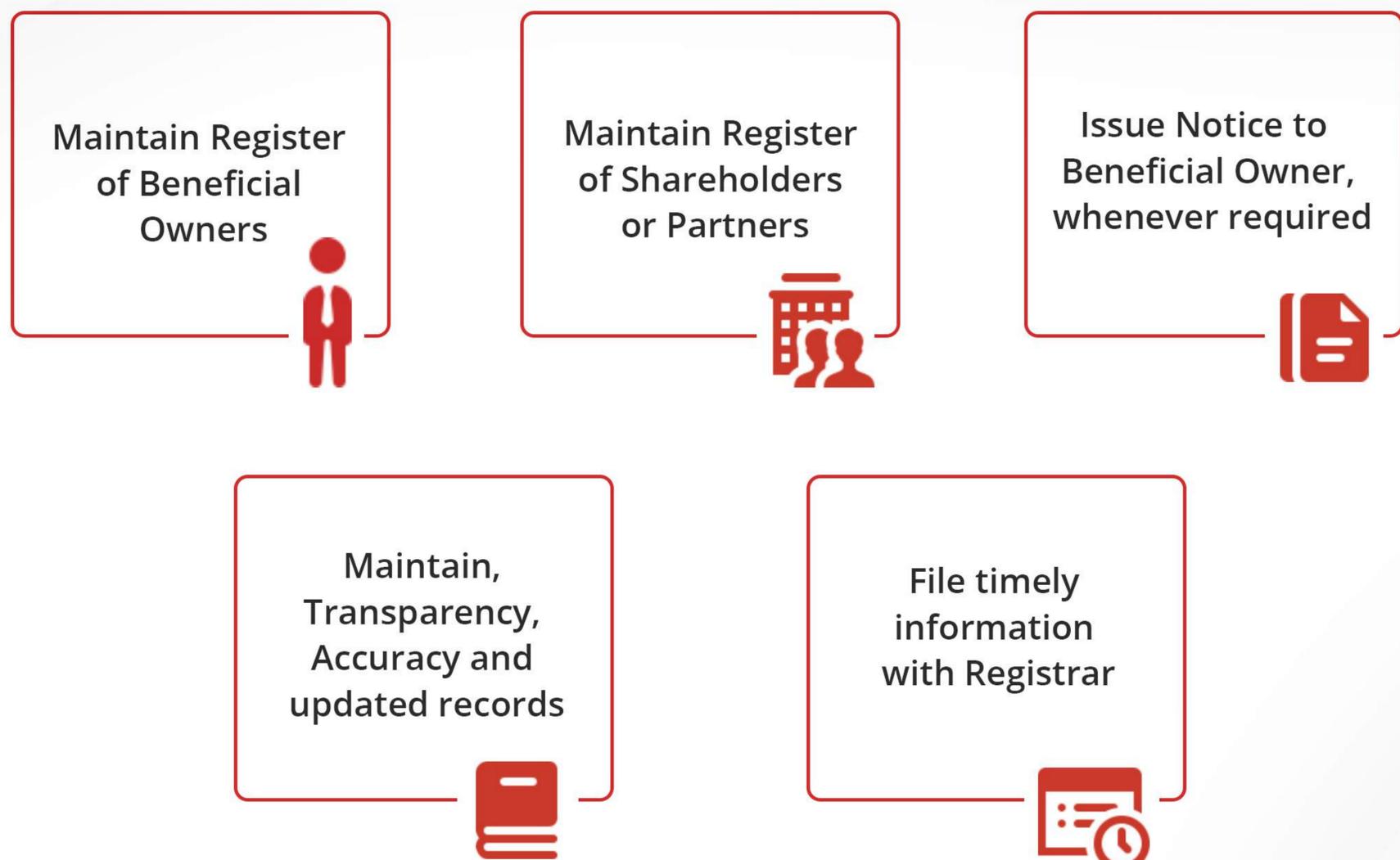


Do Nominee Board member have any obligations towards the Legal Person?

A Nominee Member is a Natural Person who acts on the directives, instructions or wills of another person. He may be a Manager or Board Member. As he acts on behalf of the Beneficial Owner he has the following obligations:

- ◆ To inform Legal Person of his appointment as Nominee Board Member (NBM) within 15 days of becoming NBM or 30 days from date of enactment of this Decision
- ◆ Furnish all details relating to Shareholders, Partners, Trustee to Legal Person
- ◆ Inform Legal Person within 15 days in case of any change in information of Shareholders, Partners, Trustee
- ◆ Inform Legal Person within 15 days in case he ceases to be a NBM

What are the duties of Legal Person under the Regulation?



What are the details required to maintain Register of Beneficial Owners?

The Register of Beneficial Owner shall include the following data in respect of each Beneficial

Owner:

- ◆ Full name
- ◆ Nationality
- ◆ Date & Place of Birth
- ◆ Residential Address or address where notice can be sent
- ◆ Passport No. or Identity card No., its country & place of issuance, its expiry date
- ◆ Basis & date when person became Beneficial Owner
- ◆ Date on which person ceased to become Beneficial Owner

What are the details required to maintain Register of Shareholders or Partners?

In case of Individual Shareholders

- ◆ Full name (as passport or identity card),
- ◆ Nationality,
- ◆ Address
- ◆ Place of Birth
- ◆ Name & Address of employer
- ◆ True copy of Valid Passport or ID
- ◆ Number of shares held by each holder with categories & associated voting rights
- ◆ Date when acquired capacity in Legal Person
- ◆ *Details of any Shareholders or Partners acting as Trustee or Board Nominee Member, if any*

In case of Corporate Shareholders

- ◆ Name, legal form & MOA
- ◆ Head Office/ Principal Address (For Foreign Legal Person- Name & Address of legal representative in the UAE)
- ◆ Articles of Association or other similar document
- ◆ Name of person holding higher management position (their details on Passport/ ID No., Date of Issuance, Expiry, Issuing entity)
- ◆ Number of shares held with categories & associated voting rights
- ◆ Date when acquired such capacity in Legal Person
- ◆ *Details of any Shareholders acting as Trustee or Board Nominee Member*

When are the details required to be furnished? Timelines to be adhered to

Existing Entities

- ◆ Within 60 days of the promulgation of this decision file details of beneficial owner and Register of Partners/Shareholders

New Registrant

- ◆ At the time of submission of application for incorporation, registration or licensing

On Inquiry

- ◆ Within time stipulated by the Registrar

Recurring Furnishing

- ◆ At the time of renewal of license, registration or amendment

New issue of shares or change in partners

- ◆ Within 15 days of issuance of shares or admission of new partner





Compliances at the time of Dissolution / Liquidation of the Legal Person

Legal Person in the process of dissolution or liquidation shall appoint a liquidator.

As per Article 11(7), the liquidator is obliged to handover the copy of the Beneficial Owner Register and Register of Partners/Shareholders to Registrar within 30 days of his appointment.

Further, as per Article 11(8), the Legal Person or Person Responsible for dissolution affairs would be required to maintain the records for atleast 5 years after date of dissolution.

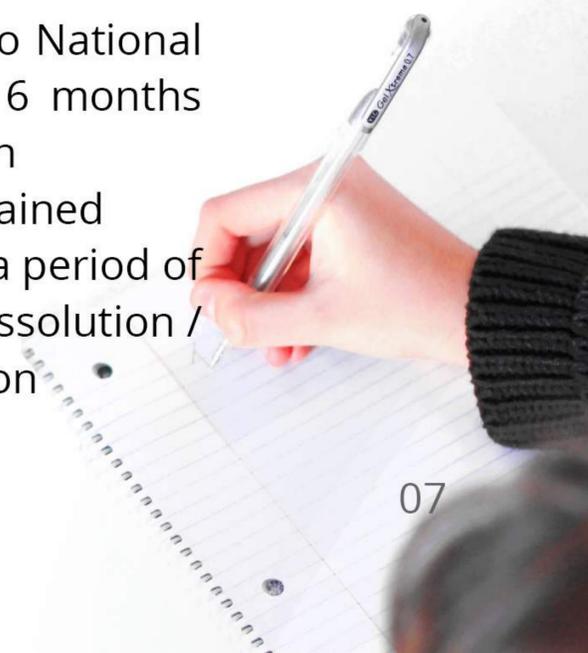
What are the Rights and Obligations of the Registrar?

Rights (Article 12)

- ◆ Request to provide data and documents, by virtue of a written notice
- ◆ Keep copies of the details and documents filed and share and disclose the same to his personnel or authorized agents
- ◆ In case data or documents not provided, to summon the concerned person to appear before him in person.

Obligations (Article 13)

- ◆ Prepare and issue the templates, notices and manuals related to the registration procedure
- ◆ Automate the info obtained by him and facilitate reference and exchange with Relevant Authorities, upon request
- ◆ Furnish the data relating to National Economic Register within 6 months of the date of promulgation
- ◆ Verify accuracy of data obtained
- ◆ Maintain all registers - for a period of 5 years from the date of dissolution / liquidation or de-registration



Will the information shared with the Registrar remain confidential or available to public at large?

- ◆ As per Article 15, Information shared with Registrar shall remain confidential and shall not be disclosed to any person without consent of the Beneficial Owner or Nominee Board member.
- ◆ Exception being the circumstances when the information is sought in context of International cooperation under Anti Money laundering or Exchange of data and information Regulations.
- ◆ Article 16, has therefore been introduced to allow the Authorities to share any information about beneficial ownership without intimating the beneficial owners, to implement international cooperation policies

Are there any Penal provisions under the Regulation?

Though specific penal provision has not been mentioned in the Regulation, Article 17 of the Regulation gives the Ministry or the Licensing Authority right to impose any sanctions specified in the List of Administrative Sanctions issued by Cabinet Decision. Such sanctions shall be issued after coordination with the Ministries.

Therefore, possibility of subsequent imposition of penalty provisions cannot be ruled out.

Are there any provision to waive the Sanctions / Penalty?

Article 18, give the Legal Person right to Appeal against any grievance caused due to imposition of sanctions (penalty).

Such appeal must be filed with the Committee formed for the purpose, before 30 days from the date of notification.

The committee shall decide the appeal within 30 days from the date of submission of Appeal.



Q1 : Where do we file/ furnish all the details required by the Regulation??

As per Article 11, the details must be filed by Legal person to the Registrar.

Registrar is defined in the Regulation as entity in charge of supervision of the commercial names register and includes Licensing Authorities.

Presently, we have observed that few Licensing Authorities has already issued their own format in which Details of Beneficial Owner is required to be submitted. We expect all the authorities to do the same and therefore **each Legal Person** will be required file the details of their Beneficial owners to their respective Licensing Authorities, unless otherwise communicated.

Q2 : What is the due date for filing of the Beneficial Owners' details?

As per Article 11, each Legal Person is required to file/ furnish the following;

- ◆ Register of Beneficial Owner, and
- ◆ Register of Partners or Shareholders

These filings are to be done within 60 days of promulgation date of this Decision.

The Decision was signed on August 24, 2020, so 60 days can be calculated from 24th August 2020 unless any other due date or deadline is declared by respective Licensing Authority.



Q3 : What should I do, if I am not sure on who is my Ultimate Beneficial Owner, or don't have all the details in respect of him/ her?

As per Article 7, in case Legal Person believes that, a particular Individual is its Beneficial Owner, but is not sure whether he actually is or does not have all the details about him/ her, Legal person is required to send a communication to such person, inquiring about

- ◆ the missing details
- ◆ asking for confirmation of whether he is or not a Beneficial Owner, and
- ◆ confirm the other details possessed by the Legal person

The Beneficial Owner from whom the confirmation is asked for, is required to reply to such inquiry within 15 days. If the Beneficial Owner does not revert within stipulated time (15 days), the Legal Person may enter the available data in the Register of Beneficial Owner.

Thus, when the Legal Person is not sure on the details of Beneficial Owner or the Beneficial Owner itself, it has an option of writing to the concerned person and confirm

Q4 : Do we need confirmation from all the Beneficial Owners on the record before we submit details?

It is recommended (our view) to get the confirmation from all Beneficial Owners as regards all their data and ownership, as Article 8(3) of the Regulation mandates all the Beneficial Owners to be intimated about their name inclusion, within 15 days of doing so, in case the data is not sourced from them directly.

This gives right to the Beneficial Owners to approach Competent Authorities to ensure that all details given about them are correct and in case of incorrect details, to rectify the same.



Q5 : What if the companies are partly (15%, 50% or 75%) owned by Government Entities? Will they be exempt from disclosure of Beneficial owner Information?

Article 3, specifically mentions that the provisions of this Decision shall not apply to Legal Persons which are **wholly** owned by local or Federal Government. Therefore, cases where the legal person is **not wholly owned** (only partially owned) by the local or Federal Government will have to adhere to the provisions of this Decision.

Q6 : What happens to Trust that are beneficiaries of companies and these trusts do not have list of beneficiaries recorded?



As per the Regulation, Beneficial Owner has to be a Natural Person. Therefore, the Legal person in UAE will have to find out the beneficiaries of the Trust and name them in their Beneficial Owner Register. That's the actual intent of the Regulation.

Q7 : If the Co X in UAE is owned by another Company outside UAE, will the Regulation apply to Co X? Whose name shall appear in Beneficial Owner Register?

Regulation will apply to all Legal person in UAE. Therefore Co. X will be required to maintain and submit the Register of Beneficial Owners and Register of Shareholders. Co X will be required to obtain the details of Beneficial Owners of Company outside UAE and report their names in the Beneficial Owner Register.

Q8 : Can Legal Person issue bearer shares ?

Article 11(5) of the Regulation, restricts Legal Person to issue bearer share warrants. As per our understanding, the intent here is to curb potential abuse of anonymity associated with bearer shares.



Q9 : What is the issue about bearer shares mentioned in the Regulation?

Giving a Power of Attorney to operate a business will not change the status of the POA holder to a Beneficial Owner. What is required to be reviewed is whether beneficial ownership is shifted or not.

Q10 : Will the provisions of this Decision be applicable to Civil Companies and Sole Establishments?

The Decision is applicable to Legal Person and not for Natural Person. The Civil Companies are regulated by Federal Law No. 5 of 1985 and hence the entities registered under this Regulation will be considered as Legal Person. Therefore, such Civil Companies shall come under the purview of this Decision.

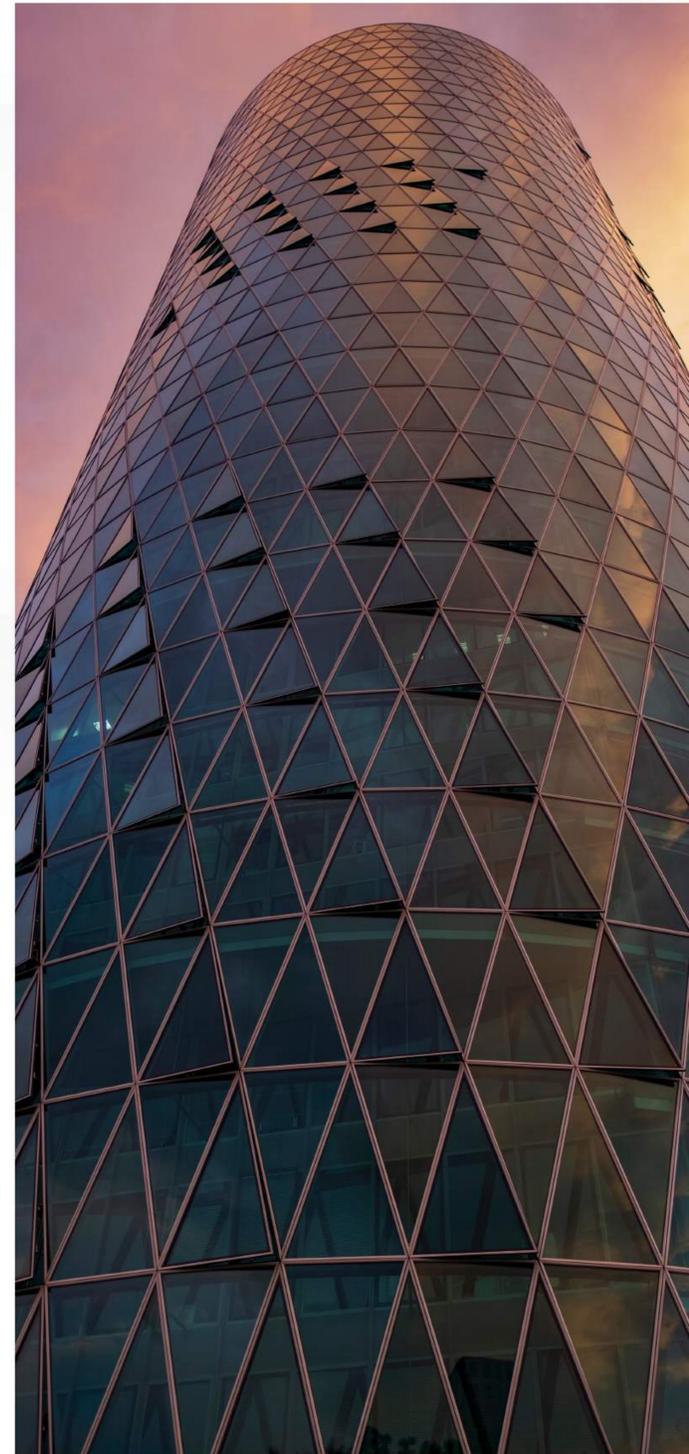
However, Sole Establishments do not have a legal personality that is independent of its owner and is accordingly considered to be the same person as its owner. Hence, Sole Establishment would not come under the purview of this Decision.

Q11 : In case of entities in Mainland, the local partner holds 51% and the remaining 3 partners hold 20%, 15% and 14%. Who would be reported as Beneficial owner?

As per the definition, Beneficial Owner is any natural person who directly or indirectly owns or controls the Legal Person (here LLC). As per Article 5, Direct control means holding 25% or more shares/control in the Legal person. As per the Direct Control criteria, the 3 partners may not be considered as beneficial owner.

However, one needs to perform the indirect control test as well. Indirect control means having decision making authority and right to control. Assuming all the 3 partners have the authority to conclude contracts and take decisions, It can be said that all of them are controlling the entire business and therefore are the Beneficial Owners of the Legal Person.

In such cases, the arrangement between all the partners would be required to be reviewed to understand substance over form.





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