



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN



**FREQUENTLY ASKED QUESTIONS (FAQS)**  
**ON**  
**ULTIMATE BENEFICIAL OWNERSHIP**

*(Revised November 2020)*

**1. Who is an ultimate beneficial owner (UBO) of a company?**

“Ultimate Beneficial Owner” “means a natural person who ultimately owns or controls a company, whether directly or indirectly, through at least twenty-five percent shares or voting rights or by exercising effective control in that company through such other means, as may be specified.”<sup>1</sup>

**2. Is the definition of UBO the same for the different types of legal persons?**

Legal persons are legal entities that are formed and established through a law, such as public companies and private companies registered under the Companies Act, 2017, limited liability partnerships registered under the Limited Liability Partnership Act, 2017, cooperative societies registered under the Cooperative Societies Act 1925, etc.

The definition of UBO is different under the different laws, keeping in view the unique characteristics associated with each type of legal person. For instance, section 123A of the Companies Act, 2017 defines a UBO as “*a natural person who ultimately owns or controls a company, whether directly or indirectly, through at least twenty-five percent shares or voting rights or by exercising effective control in that company through such other means, as may be specified*”.

Section 8 of the Limited Liability Partnership Act, 2017 (LLP Act 2017)<sup>2</sup> defines UBO as “*a natural person who ultimately and effectively owns or controls a limited liability partnership through direct or indirect rights or who shares at least one fourth of the net profits and losses of the partnership*”.

Notwithstanding the above, the threshold of ownership or control for the purpose of classification as an ultimate beneficial owner provided in the definitions in the different laws and regulations is the same, i.e. 25%.

**3. How would you differentiate between direct ownership and indirect ownership or control?**

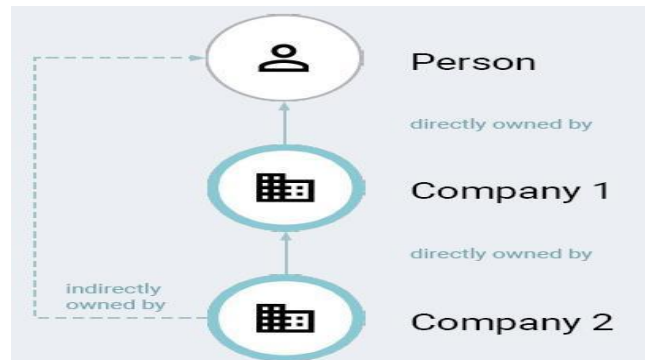
Direct owner refers to individuals and entities who directly own shares in any legal entity. For example, if you own 25% of the shares in a particular entity, you become a direct owner. A direct owner need not necessarily be an individual (natural person) and can also be another entity as in the case where the parent company is a direct owner in its direct subsidiary.

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<sup>1</sup> Section 123A of the Companies Act, 2017.

<sup>2</sup> No. F.22(48)/2020-Legis dated 27<sup>th</sup> August, 2020.

A person can be an indirect owner, if a company or any other business entity in which he has shares, owns another company, as illustrated below. For example, if Company 2 is owned to the extent of 25% by Company 1, and Company 1 is owned to the extent of 50% by a natural person, then the said natural person is an indirect owner of Company 2 through Company 1. The effective ownership of the Person in Company 2 through Company 1 will be 12.5% (50% X 25%).



**4. How would you differentiate between beneficial ownership and legal ownership?**

Ownership is the right to possess, use, sell, donate or give as a gift any asset or property belonging to a person known as the “owner.” An owner can either be a beneficial owner or a legal owner.

A legal owner is essentially the 'official' or 'formal' owner of a property. The legal owner of an asset may either be a natural person or a legal person that holds the legal title of that asset.

On the other hand, a beneficial owner is the person with the right to enjoy or benefit from the property – this can include the right or entitlement to any income from the property. In majority of the situations, the same person is the legal owner as well as the beneficial owner. A beneficial owner must always be a natural person, as a legal person cannot exert “ultimate” control over an asset or entity. This is due to the fact that legal persons are always controlled, directly or indirectly, by natural persons.

**5. How would you differentiate between a legal person and a natural person?**

**Legal persons** are any legal entities that are formed and established through a law, such as public companies, private companies, limited liability partnerships, associations not for profit, etc. registered under the Companies Act, 2017.

FATF recommendations<sup>3</sup> define legal persons as any entities, other than natural persons, that can establish a permanent customer relationship with a financial institution or otherwise own property. This can include companies, bodies corporate, foundations, partnerships, or associations and other relevantly similar entities that have legal personality.

**Natural persons** are living human beings or individuals, who for the purpose of FATF recommendations, shall be recognized as ultimate beneficial owners if exercising ownership and control rights in legal persons.

Both a legal person as well as a natural person can establish a permanent customer relationship with a financial institution or otherwise own property.

**6. Does every Company and limited liability partnership (LLP) has to prepare a register for UBO?**

Yes, every company and every LLP has to prepare a register of its ultimate beneficial owners and shall timely record accurate and updated particulars in a timely fashion.

**7. When are the Ultimate Beneficial owner details required?**

Each company shall identify and obtain the UBO information within three months from the date of coming into force of section 123A of the Companies Act, 2017 i.e. commencing on 26<sup>th</sup> August 2020. Similarly, every LLP shall within three months of coming into force of amended section 8 of the Limited Liability Partnership Act 2017 i.e. 27<sup>th</sup> August 2020 take reasonable measures to identify and obtain the information of its ultimate beneficial owners.

**8. Who is an authorized officer of a company and an LLP?**

The Board of Directors of a company shall authorize its chief executive officer or one of its directors or officers to provide the information required under regulation 19A(6) of the Companies (General Provisions and Forms) Regulations, 2018.

The limited liability partnership shall authorize any of its partners or designated partners or officers to provide the required information under regulation 14A(6) of the Limited Liability Partnership Regulations, 2018.

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<sup>33</sup> <http://www.fatf-qafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html>

**9. What is the mechanism to identify and obtain UBO information?**

A comprehensive mechanism to identify and obtain the UBO information as well as requisite forms are provided in the Companies (General Provisions and Forms) Regulations, 2018<sup>4</sup>. Similar mechanisms for limited liability partnerships and foreign companies are provided through amendments to the Limited Liability Partnership Regulations, 2018<sup>5</sup> and Foreign Companies Regulations, 2018<sup>6</sup> respectively. For companies being newly incorporated, requisite amendments have been made to the Companies (Incorporation) Regulations 2017<sup>7</sup>.

For more information please see the said Regulations.

**10. Does every company have to file UBO information to the Registrar?**

Every incorporated company and registered LLP shall have to provide a declaration of compliance to the registrar with the requirements to obtain, maintain and update UBO information. In case of a listed company, a copy of the said declaration shall also be filed with the Commission<sup>8</sup>.

Additional particulars relating to the UBOs of subscribers holding at least 25% of shares, voting rights or controlling interest shall be obtained and maintained, and a declaration to this effect as required under section 16 of the Companies Act 2017 is required to be provided by the declarant authorized by the subscribers at the time of incorporation of a company in the “Application for Company Incorporation” on Inc. Form-II.

The foreign company shall also have to file a declaration that necessary UBO information at the time of “Registration of Documents of a Foreign Company” has been obtained and is available on record, as specified in FNC. Form-II.

**11. What is meant by bear shares or bearer share warrants?**

Section 60A(1) of the Companies Act, 2017<sup>9</sup> defines: “*bearer shares or bearer share warrants*” as a negotiable instrument that accords ownership or control in

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<sup>4</sup> <https://www.secp.gov.pk/document/amendments-to-the-companies-general-provisions-and-forms-regulations-2018/?wpdmdl=40345&refresh=5fc76cc590e401606905029>

<sup>5</sup> <https://www.secp.gov.pk/document/amendments-to-the-limited-liability-partnership-regulations-2018/?wpdmdl=40350&refresh=5fc76cc59770c1606905029>

<sup>6</sup> <https://www.secp.gov.pk/document/amendments-to-the-foreign-companies-regulations-2018-2/?wpdmdl=40355&refresh=5fc76cc5861861606905029>

<sup>7</sup> <https://www.secp.gov.pk/document/amendments-to-the-companies-incorporation-regulations-2017-3/?wpdmdl=40351&refresh=5fc76cc5837631606905029>

<sup>8</sup> Regulation 19 of the Companies (General Provisions and Forms) Regulations, 2018)

<sup>9</sup> Act No.XXVII of 2020 of 26<sup>th</sup> August, 2020.

*a company to the person who possess such instrument and includes any other equity or debt security of a bearer nature.”*

**12. What is the mechanism to register or cancel the “bearer shares” or “bearer share warrants”?**

A comprehensive mechanism to register and cancel the “bearer shares” or “bearer share warrants” is provided in the Companies (General Provisions and Forms) Regulations, 2018. For further information please see the said Regulations.

**13. What is the purpose behind the requirement to maintain ultimate beneficial ownership information by the companies?**

The requirement to maintain UBO information is aimed at determining the true owners of a company who can only be natural persons.

Corporate vehicles such as limited companies, limited liability partnerships and trusts, etc. are at the heart of many tax evasion and money laundering schemes, as activities are not carried out in the name of real/natural persons, but by “legal persons” instead behind whom real controlling persons are concealed by the “corporate veil”.

In 2001, the OECD issued its report “*Behind the Corporate Veil*”, where it concluded that “any jurisdiction that provides mechanisms enabling individuals to successfully hide their identity behind a corporate vehicle while excessively constraining the capacity of authorities to obtain and share information on beneficial ownership and control for regulatory/supervisory and law enforcement purposes is increasing the vulnerability of its corporate vehicles to misuse.”

**14. Who needs information on UBO and control?**

UBO information is necessary to detect and prevent tax evasion, corruption, money laundering, terrorist financing, and other illicit behavior involving one or more companies or legal persons. Public trust in companies and markets largely depends on the existence of an accurate disclosure regime that provides transparency in the beneficial ownership and control structures of companies.

UBO information assists financial institutions in applying adequate customer verification procedures before commencement of the relationship with their customers. This is also likely to assist the companies themselves in understanding their ultimate owners/controllers where there are complex corporate ownership and/or control structures.

Different authorities may have a recognizable legal interest in obtaining information on UBO and control in order to investigate suspected illicit activities.

Law enforcement authorities investigating and prosecuting money laundering and other crimes, tax authorities verifying compliance with tax laws, and securities regulators investigating market manipulation, unlawful insider trading, and fraud are just some of the authorities who may require information on UBO and control.

Courts may also need such information in the context of litigation cases. Legal and beneficial ownership information can assist law enforcement and other competent authorities by identifying those natural persons who may be responsible for the underlying activity of concern, or who may have relevant information to further an investigation.

**15. How does the requirement for maintenance of register of members under section 452 of the Companies Act, 2017 differ from the maintenance of register of ultimate beneficial owners?**

The regulatory requirements for the two different provisions are compared below:

|               | <b>Section 123A of the Companies Act, 2020<br/>UBO</b>   | <b>Section 452 of Companies Act, 2017<br/>BO</b>  |
|---------------|--|---|
| Applicability | All the companies having natural persons as ultimate beneficial owners (UBO) with not less than 25% ownership/control rights in that company through legal persons | Every substantial shareholder (having not less than 10% interest), officer of the company or the company itself, having shareholding or other interest in a foreign company or body corporate |
| Represents    | Ultimate Beneficial Ownership of the company   | Investment by substantial shareholders, officers or the company in foreign  |

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|---|---|--|
|   |   | companies or body corporate  |
| Information to be maintained by the company               | Yes   | Yes  |
| Information to be notified to the registrar or Commission | No, only a declaration of compliance for obtaining, maintaining and updating information is required to be submitted to the registrar, and in case of a listed company, to the Commission as well | Yes  |
| Information is publicly available                         | Declaration of compliance is publicly available   | No   |
| Information to be provided to other authorities           | Yes, as may be demanded by other authorities from the companies   | Yes, to the Commission and to other authorities through the Commission |
| Penal provision for non – compliance                      | Yes   | Yes  |

## 16. What is the role and purpose of Financial Action Task Force?

The **Financial Action Task Force (FATF)**, an inter-governmental body formed to coordinate efforts on Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT), has issued a set of 40 recommendations which serve as international standards for combating ML/TF. Pakistan is a member of Asia Pacific Group - a FATF Styled Regional Body, and is required to adopt FATF standards as per membership obligations and also to comply with the UN Resolution.

FATF recommendation 24 require countries to take measures to prevent the misuse of legal persons for ML/TF purposes, and ensure that there is adequate, accurate and timely information available with the companies on the ultimate (actual) beneficial ownership and control of legal persons that can be accessed in a timely manner by competent authorities.



**17. What are the requirements for provision of UBO information to regulatory authorities?**

Companies and LLPs shall also provide this information to any other authority or agency of the Government pursuant to the powers to call for information entrusted by law to such authority or agency.

Each company and LLP shall authorize its chief executive officer/designated partners or one of its directors/partners/officers to provide the requisite information to the concerned authorities, and provide further assistance as may be needed.

**18. Is it required to regularly or periodically submit the information of ultimate beneficial owners to SECP?**

No. The law only requires submission of a declaration of compliance with the requirements for obtaining, maintaining and updating this information to SECP. However, the registrar or any authority or agency are empowered to call for such information from the companies or LLPs.

**19. What is the difference between a member and a shareholder?**

A shareholder is a person who owns the share(s) in a company whereas a member is a person whose name is entered or recorded in the register of Members maintained by the Company. The name of a person will be entered or recorded in the register of members, in the capacity of a subscriber upon registration of a company, and later if any person agrees in writing to become a member of the company.

Every member may not be a shareholder and likewise every shareholder may not be a member.

**20. Is there a need for filing a NIL Form 45 - Declaration of Compliance with the provisions of section 123 A of the Companies Act 2017, in case of a Section 42 not for profit association, not having share capital or which is not having any member having at least 25% voting rights in the company?**

Every company, including a section 42 company, is required to issue a notice to every member who directly holds at least twenty five percent of shares or voting rights in the company or to the representative of every legal person or legal arrangement which holds at least twenty five percent of shares or voting rights in the company. Further, explanation to Regulation 19A of the Companies (General Provisions and Forms) Regulations, 2018 specifies that a member/ natural person

may be classified as ultimate beneficial owner by virtue of exercising control through other means, which may be exercised, inter-alia, through close relatives or associates having significant influence or control over the finances or decisions of the company.

All the companies required to issue notices as per Form 42 shall file declaration on Form – 45.

**Q21. Whether a Company should maintain record of beneficial owners who hold at least twenty five percent shareholding or voting rights or controlling interest in the company as provided in regulation 19A of the Companies (General Provisions and Forms) Regulations, 2018 or should maintain record of beneficial owners who hold ten percent shareholding or voting rights or controlling interest as notified under Circular No.16 of 2018 dated August 29, 2018?**

Circular No, 16 of 2018 dated August 29, 2018 and Circular 20 of 2018 dated November 01, 2018 have been repealed vide amendments in the Companies (General Provisions and Forms ) Regulations, 2018 and are no longer effective. Therefore, the company shall be required to maintain record of ultimate beneficial owners under the existing minimum threshold (25%) of ownership or control as specified under section 123 A of the Companies Act, 2017 read with Regulation 19 A of the Companies (General Provisions and Forms ) Regulations, 2018.

**Q 22. Is a Company required to file Form 45 with the registrar together with annual return of the Company after its Annual General Meeting or required to file Form 45 with every change occurring in UBOs of the Company during the year?**

A declaration of compliance in pursuance of sub-section (2) of section 123A of the Act, as per Form 45, is required to be filed with the registrar concerned within fifteen days from the receipt of declaration under regulation 19A (2) of the Companies (General Provisions and Forms ) Regulations, 2018 and thereafter along with annual return of the Company under sub-regulation (5) thereof.

For any change in the particulars of UBO subsequently, Form 44 has been specified for the purpose under sub-regulation (3) of regulation 19A.

**Q23. Whether a Company, having a government owned entity as a member or shareholder, required to maintain a register of Ultimate Beneficial Ownership?**

In case the government or any company or body corporate owned or controlled by it is a member or shareholder of a company, the particulars required of ultimate beneficial owner shall be in respect of the senior management official(s) nominated by the said government on the board of directors or governing body of the said company or body corporate, to the extent of investment of the government in the company.

**Q24. In case a shareholder himself holds beneficial interest in the shares or voting rights in the Company, would he be required to provide information about the ultimate beneficial owner(s) of the company in accordance with regulation 19A(2) of the Companies (General Provisions and Forms ) Regulations, 2018?**

Every member to whom notice for providing ultimate beneficial owner details has been issued, shall be required to submit declaration on Form 43. However, he shall be required to fill particulars of ultimate beneficial owner in column 4 of Form 43 only if he do not himself hold the requisite beneficial interest in the company.

**Q 25. In case of LLP, having 04 partners, whether the LLP is required to issue notices to every partner and submit declaration of compliance under Limited Liability Partnership Regulations, 2018?**

Notice on Form IX is mandatorily required to be issued to every partner who shares at least one fourth of the net profits and losses of the partnership or to the representative of every legal person or legal arrangement which holds at least one fourth of the net profits and losses of the partnership.

Every partner to whom notice is issued, shall be required to submit declaration to the LLP, whether or not someone else is holding beneficial interest on his behalf.

Every LLP required to maintain register of ultimate beneficial owners shall submit to the registrar concerned a declaration of compliance on Form XII, within fifteen days from the receipt of declaration under Regulation 14 A(2) or (3), and thereafter on an annual basis.

**Q26. If Company B holds more than 25% shares in Company A. Company B is further owned by the companies (C and D) and individual (E) in such a way that shareholding of each of the companies (C and D) and individual**

**(E) is less than 25% in Company A. Would the companies (C and D) and individual (E) qualify for the ultimate beneficial owner of Company A?**

No. The companies (C and D) and individual (E) having less than 25% indirect shareholding in Company A, do not qualify for ultimate beneficial owner of Company A through Company B.

**Q27.** Regulation 19(a) of the Companies (General Provisions and Forms) Regulations, 2018) was amended to require maintenance of following additional information in the register of members

- Name of the person on whose behalf shares or debentures have been held; and
- Number of shares or percentage of voting rights or controlling interest in the company held on behalf of a person not himself being a member or debenture holder of the company.

Are the aforesaid amendments applicable to:

1. All natural members including minority shareholders who even hold one share?

OR

2. Only those natural members who are Ultimate Beneficial Owners (holding 25% or more shareholding)?

A. The spirit of the law is to know the details of ultimate beneficial owners who have kept their significant shareholding hidden through the legal owners appearing as members of the companies. The term ‘controlling interest’ signifies that minority shareholders are excluded from the scope of the said requirement. Furthermore, because this amendment is being made from the perspective of requiring additional disclosures in respect of UBOs, the requirement of minimum threshold of 25% shall apply for the purpose of the said regulation.

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