



Pursuant to Article 36, paragraph 1, sub-paragraph 1.17, and Article 65, paragraphs 1 and 2, of the Law no. 03/L-209 on the Central Bank of the Republic of Kosovo (Official Gazette of the Republic of Kosovo, no. 77/16 August 2010), Article 85, paragraph 1 of the Law no. 04/L-093 on Banks, Microfinance Institutions and Non-Bank Financial Institutions, and Article 66, paragraph 2 of the Law no. 05/L096 on the Prevention of Money Laundering and Combating Terrorist Financing, the Executive Board of the Central Bank of the Republic of Kosovo, in the meeting held on 26 December 2017, approved the following:

## **INSTRUCTION ON IDENTIFICATION OF BENEFICIAL OWNERS**

### **Article 1**

#### **Purpose and scope**

1. The purpose of this Instruction is to support financial institutions to comply with the requirements of customer due diligence in accordance with Article 19, paragraph 1, sub-paragraph 1.2, of the Law no. 05 / L-096 on the Prevention of Money Laundering and Combating Terrorism Financing (hereinafter: ‘Law on PML/CTF’) and Articles 8 and 10 of the CBK Regulation on the Prevention of Money Laundering and Terrorist Financing (hereinafter: ‘Regulation’).
2. This Instruction aims to facilitate the identification and verification of the form of ownership. Identification of beneficial owners is essential to adequate decision making on the level of risk of money laundering and terrorist financing (ML/TF) presented by a client of the financial institution. Legal persons and business entities can be used by individuals or groups of individuals for purposes of concealing funds obtained from illegal activities. To achieve this goal, these entities tend to conceal the true owners and their business control structure. As a result of the complex ownership structure, identification of beneficial owners in certain cases may be difficult. However, it should always be noted that this may represent an attempt to conceal the beneficial owners.
3. This Instruction shall apply to clients who are legal persons or other legal arrangements. It provides instructions on the manner of identification of beneficial owners by identifying natural persons who own 25% or more of the ownership of a legal person, those who exercise effective control over the client and the persons on whose behalf the transaction is being conducted.

4. The examples provided in this Instruction shall serve to support financial institutions to implement and comply with the requirements of the Law on PML/CTF and the Regulation, without prejudice to and limitation of the various situations and circumstances that financial institutions may encounter during the process of definition and identification of the beneficial owners.

## **Article 2**

### **Beneficial owners**

Pursuant to the Law on PML/CTF, beneficial owner means:

1. a natural person who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction or activity is being conducted, or the person who ultimately exercises effective control over a legal person or legal arrangement;
2. a natural person who ultimately owns or controls a legal person through ownership or direct or indirect control of a sufficient percentage of shares or voting rights in that legal person, including holders of transfer shares, other than legal persons registered in a regulated market that is subject to disclosure rules in accordance with international standards that ensure adequate transparency of ownership information; a percentage of twenty-five percent (25%) or more is considered sufficient to meet this criterion. A percentage of twenty-five percent (25%) or more of shares and/or a percentage of twenty-five percent (25%) or more of ownership interest in the client owned by the natural person shall be an indication of direct ownership. A percentage of twenty-five percent (25%) or more of shares or a percentage of twenty-five percent (25%) or more of ownership interest in the client owned by a legal person under the control of the natural person(s) or by several legal persons under the control of a natural person shall be an indication of indirect ownership;
3. a natural person who otherwise exercises control over the management of the legal person.

## **Article 3**

### **Definition and identification of beneficial owners**

1. Financial institutions shall identify natural persons who are the beneficial owners of a legal person. The beneficial owner cannot be a company or organization but only a natural person. In certain cases there may be more than one beneficial owner and it is the obligation of financial institutions to identify and verify each beneficial owner of their client.
2. When assessing the need for ownership disclosure of a client, the following criteria shall be considered:
  - 2.1. persons owning 25 % or more of the client (legal person);
  - 2.2. persons who exercise effective control over the client (legal person);
  - 2.3. persons on whose name the transaction was conducted (legal person).

3. A beneficial owner is the person who meets one of the above criteria or any combination of these criteria.
4. Financial institutions shall identify all persons who own 25% or more of the client's ownership and have effective control over the client and those on whose behalf the transaction is conducted. There may be situations where the application of the ownership factor alone is insufficient.
5. In certain cases, there may be persons who have effective control over the client while they are not in possession of shares and are not persons on whose behalf the transaction was conducted but should be identified as beneficial owners.
6. When establishing a business relationship with a customer, the final beneficial owner must be identified and verified by designing and defining the ownership structure of the client and understanding the ownership at each level. In case of structures with complex ownership levels and without any clear reason, it should be considered that this structure can be used to conceal the real beneficial owner.
7. In cases of complex ownership and control structures, financial institutions should undertake additional investigations. Additional measures and investigations by the financial institution should continue to the extent the impossibility to secure the information is justified. However, if identification and verification of the identity of the beneficial owners has not been carried out and due diligence measures have not been undertaken in full, the transaction should not be completed, any business relationship should be discontinued or not initiated and any accounts should be closed and any property returned to its source (Article 19 of the Law on PML/CTF).
8. For entities that may not have shareholders such as nonprofit organizations/NGOs, trusts, funds, and other similar legal arrangements, financial institutions shall ensure to identify the control structure and understand the legitimate purpose of the organization, including the identification of members of the controlling body, the supervisory board of directors, founders, executive management, and persons with equivalent or similar positions.

#### **Article 4** **Annex**

For purposes of this Instruction, Annex 1 is an integral part to it, providing practical examples of how to define and identify beneficial owners. These examples are without prejudice to or limitation of the various situations and circumstances that financial institutions may encounter during the process of definition and identification of the beneficial owners.

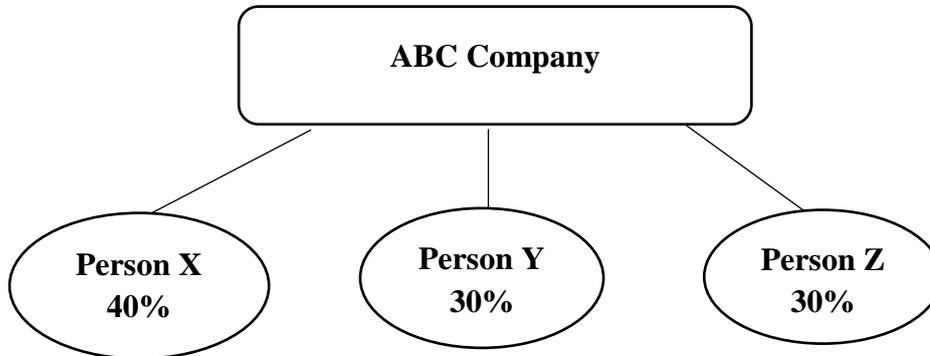
**Article 5**  
**Entry into force**

This Instruction shall enter into force 30 days after approval.

Fehmi Mehmeti  
Chairman of the Executive Board

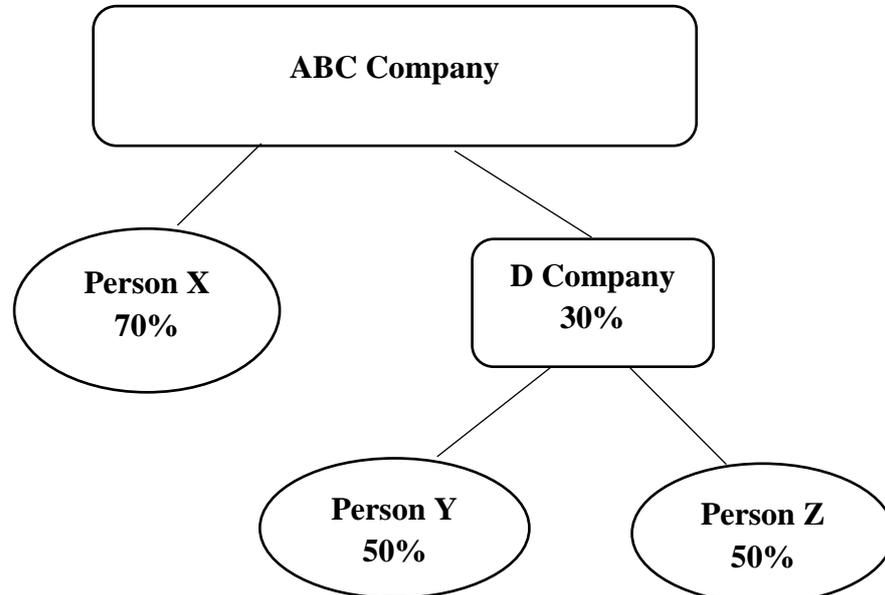
## Annex 1

### Example 1.



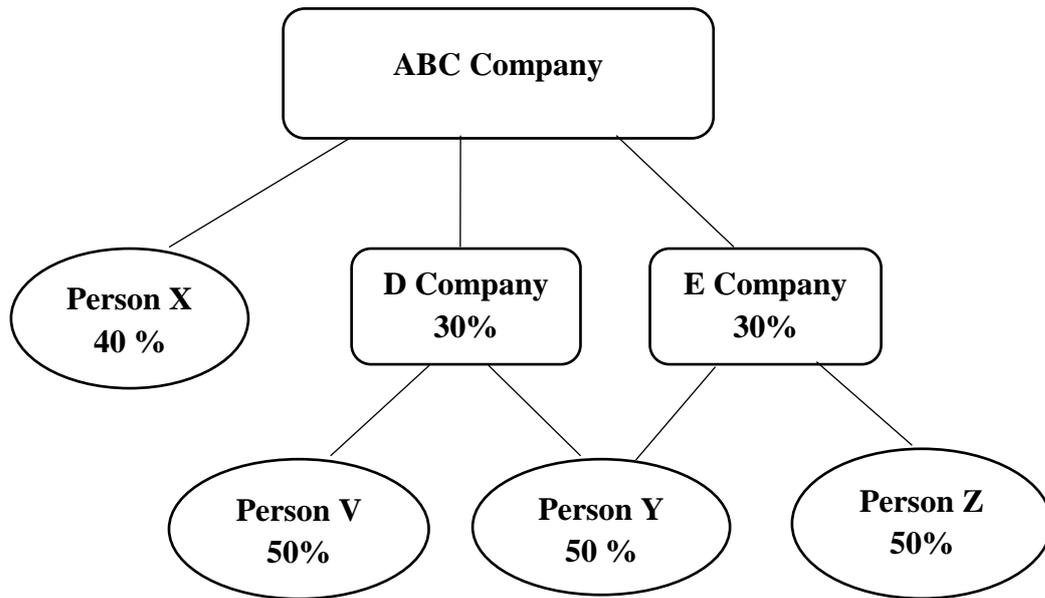
In Example 1, all persons owning more than 25% of the property of the ABC Company and consequently persons X, Y and Z are the beneficial owners through direct ownership in the ABC Company.

### Example 2.



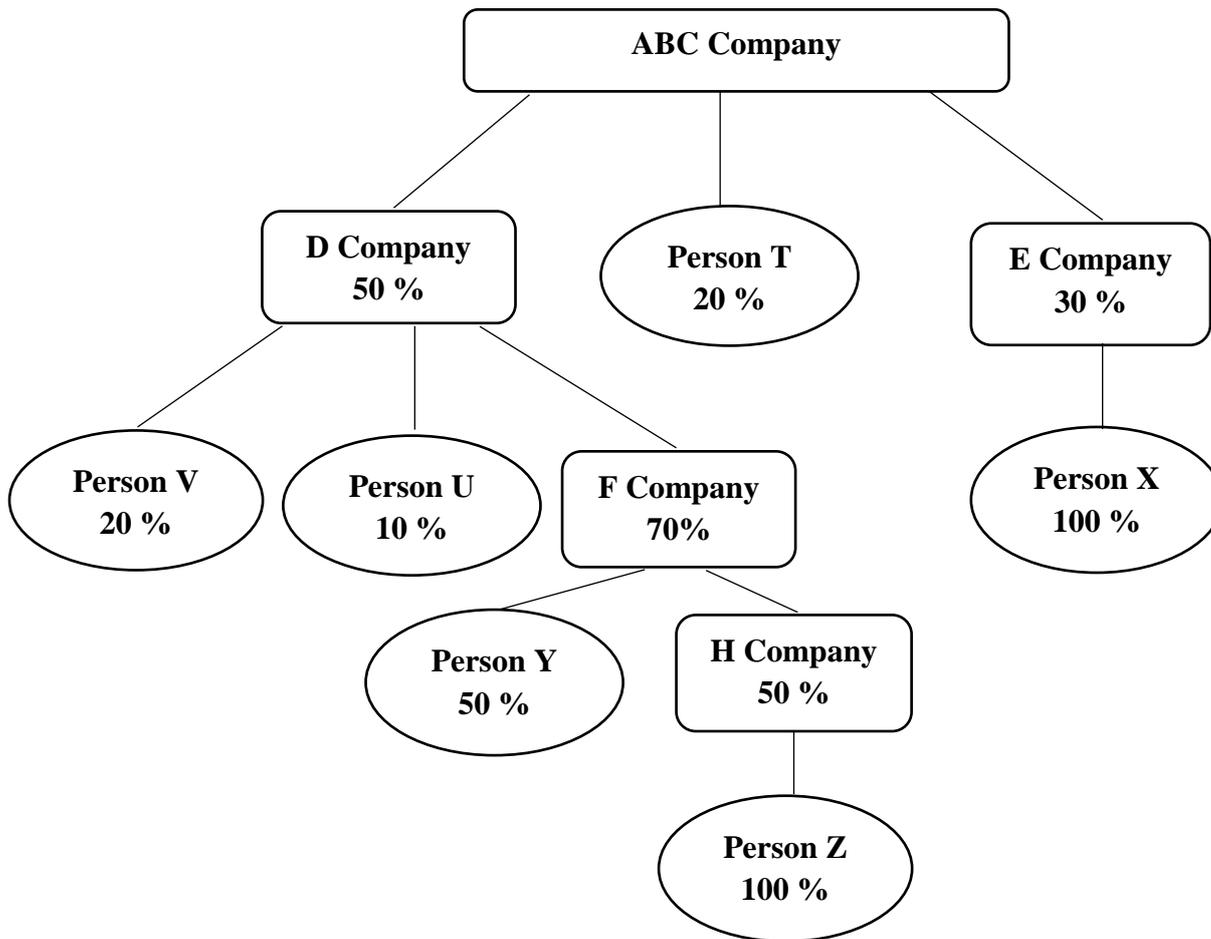
In Example 2, person X owns 70% of the property of the ABC Company and is consequently the beneficial owner through direct ownership. Persons Y and Z own the D Company, however they have no influence over the decision-making of the ABC Company and consequently are not the beneficial owners.

**Example 3.**



In Example 3, person X owns 40% of the property of the ABC Company and is consequently the beneficial owner of the property through direct ownership. Persons V and Z own the D Company, respectively E Company, yet they have no influence over the decision-making of the ABC Company and consequently are not the beneficial owners. Person Y is the beneficial owner because he owns, through E and D Companies, 30% of the property of the ABC Company and has influence over the decision-making of the company.

**Example 4.**



In Example 4, we have a more complex ownership structure. As mentioned earlier, in such cases it should be considered that this structure may be used to conceal the beneficial owner. Person X is the beneficial owner, because he owns, through the E Company, 30% of the property of the ABC Company. Person Y does not meet the ownership factor of 25%, however he has influence over the decision-making of the ABC Company by owning 50% of the property of the F Company. The F Company owns 70% of the property of the D Company, which means that it has a direct influence over the D Company, which, on the other hand, owns 50% of the property of the ABC Company and has influence over the decision-making of this Company. The situation is similar regarding Person Z, who also does not meet the 25% ownership factor, yet it has influence over the ABC Company through ownership of 100% of the H Company. The H Company owns 50% of the F Company, which has direct influence over the D company by owning 70% of its property. Consequently, the D Company is the key decision-maker in the ABC Company by owning 50% of its property. If we make a logical analysis of the concrete example, it is clear that Persons Y and Z are beneficial owners and exercise control over the ABC Company through the H, F and D Companies. On the other hand, Persons T, U and V have shares in the ABC Company, but their influence over decision-making is small compared to Persons X, Y and Z.