

**GUIDELINE FOR THE APPLICATION AND
INTERPRETATION OF THE TERM “BENEFICIAL
OWNERSHIP” AND THE IDENTIFICATION OF
BENEFICIAL OWNERS OF COMPANIES**

**ISSUED BY THE CORPORATE AFFAIRS AND
INTELLECTUAL PROPERTY OFFICE**

JULY, 2021

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GUIDELINE FOR THE APPLICATION AND INTERPRETATION OF THE TERM “BENEFICIAL OWNERSHIP” AND THE IDENTIFICATION OF BENEFICIAL OWNERS OF COMPANIES

1. This guideline is issued pursuant to section 448A of the Companies Act, CAP. 308 of the Laws of Barbados. For the purpose of this guideline, any reference made to “companies” includes all companies incorporated and existing under the Companies Act, and, all societies organized and existing under the Societies with Restricted Liability Act, Cap. 318, by virtue of section 65 of that Act.

INTRODUCTION

2. Businesses play an important role in supporting the social and economic growth of Barbados. In addition to providing a means of income for the population, they foster innovation and competition, provide goods and services and generate revenue which facilitates the provision of valuable public services.

3. However, the global threats of money laundering, and the financing of terrorism and proliferation of weapons of mass destruction mean that businesses are also susceptible to being misused for carrying these and other out illicit activities. Oftentimes, the individual perpetrators behind these nefarious activities hide behind businesses and complex corporate structures; employing a multitude of measures and going to great lengths to conceal their identities. Countries have had to strengthen their vigilance to counter these threats and to minimize the possibility of their jurisdictions or institutions becoming involved. Accordingly, the availability of beneficial ownership information, is now a key requirement of international tax transparency and the fight against tax evasion and other financial crimes.

4. In order to ensure that our business entities are free from misuse for illicit activities, and therefore protect our legitimate financial system from illegitimately acquired funds, Barbados has introduced measures to identify the individual persons behind corporate entities.

5. As such, The Registrar hereby issues this guideline pursuant to section 448A of the Companies Act, Cap. 308 of the Laws of Barbados to provide guidance on beneficial ownership; specifically the application and interpretation of the term “beneficial ownership” and the identification of beneficial owners of all legal persons. In promoting transparency of beneficial ownership, legal persons must give effect to the requirements provided in this guideline in relation to identifying and verifying the beneficial owners of a legal entity, keeping the beneficial ownership information accurate and up-to-date so that it can be accessed in a timely manner, notifying the Registrar that the beneficial ownership information has been kept in accordance with the law and also of any changes thereto, as well as providing access to beneficial ownership information to the Registrar or a person designated by him or her to do so.

BACKGROUND

6. The obligation to maintain a record of the beneficial ownership of companies at their registered office, was introduced into section 170 of the Companies Act by the Corporate (Miscellaneous Provisions) Act, 2015-1. To ensure the compliance of companies with this obligation, section 15A of the Companies Act established that that each year a company must notify the Registrar that the beneficial ownership information has been maintained at the registered office of the company through the submission of an

annual return.

7. The introduction of these new requirements were in direct response to the international recommendations in order to ensure that Barbados has in place an effective framework to prevent money laundering, terrorist financing, corruption, tax evasion and other financial crimes; and where there is evidence of such activities, that there are measures in place to identify the perpetrators and bring them to justice. International agencies, such as the FATF and the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes, have included beneficial ownership requirements in their standards and conduct assessments of jurisdictions on the availability of beneficial ownership information to the relevant authorities in each country.

8. The legislation has since been amended by the Companies (Amendment) Act, 2019-51, to ensure that Barbados' legislation remains in line with international standards.

9. In February 2020, Barbados revised its AML/CFT National Action Plan that consists of the steps necessary to strengthen and demonstrate the effectiveness of Barbados' Anti-Money Laundering and Terrorist Financing regime. Included in the Action Plan, under Immediate Outcome 5, are action items specifically related to Beneficial Ownership. Among these is the establishment of an effective mechanism to ensure that beneficial ownership information, based on a clear understanding of the Beneficial Ownership definition, is accurate and kept updated for all legal persons and subsequently demonstrate that this mechanism is effectively applied.

10. While Barbados had made positive steps towards implementing legislative provisions in relation to beneficial

ownership information for legal persons there are challenges being experienced. The first is ensuring that companies have a clear understanding of the definition of beneficial ownership. The second challenge is ensuring that the information companies maintain in relation to beneficial ownership is accurate and up-to-date. This guideline is therefore aimed at providing guidance to companies on the identification of beneficial owners and the maintenance of beneficial ownership information. This guideline must be read together with the relevant statutory provisions set out in the Companies Act.

WHO ARE BENEFICIAL OWNERS?

11. Beneficial owners are always natural persons who ultimately own or control a legal entity or arrangement. They cannot be other companies, trusts or other legal persons or arrangements.

12. Section 448 of the Companies Act, Cap. 308, provides the following definitions in relation to beneficial ownership:

“448

...

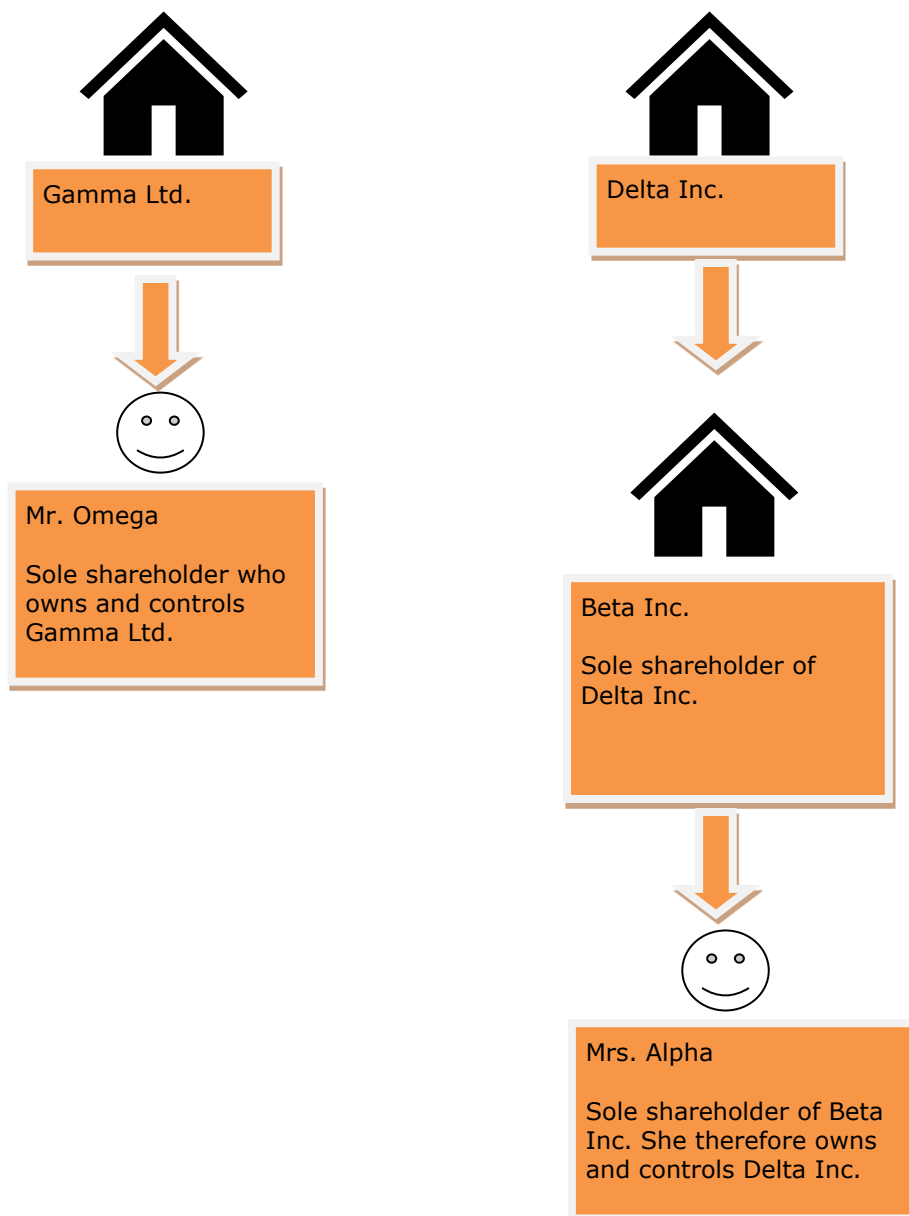
(e) “beneficial owner” means the individual who ultimately owns a body corporate or who exercises the ultimate ownership or control over the body corporate;

(e.1) “beneficial ownership” means the ultimate ownership or control exercised by a beneficial owner over a body corporate in circumstances where ownership or control is exercised through a chain of ownership or by means of control, other than direct control;

(e.2) “beneficial interest” includes ownership through a trustee, a legal representative, an agent or any other intermediary;”

13. When an individual is the sole shareholder of a company and controls it directly, that individual is the beneficial owner of the company. However, it is not always easy to identify the natural person behind a company. Some entities are established in such a way that the identity of the beneficial owner is hidden. There may be several layers involved in the ownership structure; perhaps an entity or even a chain of entities between a company and its beneficial owner, as outlined in Figure 1 below.

Figure 1 – Beneficial Ownership Structure



14. Because economic activity can be conducted through complex systems of legal vehicles, the anonymity of such structures enables perpetrators of illegal activities to hide from law enforcement. International standards require that jurisdictions are assessed on the timely and accurate availability of beneficial ownership information in their systems. Jurisdictions must ensure there is adequate, accurate and up-to-date information on beneficial ownership of legal persons in the jurisdiction, and that such information can be provided to a competent authority in a timely manner.

15. The strength of each country's system for availability of and access to information on beneficial owners in their jurisdictions, is an important factor in deciding whether countries would be "blacklisted" by international standard-setting bodies. Being "blacklisted" or even the mere threat of such a listing could have dire consequences on a country such as international distrust, economic sanctions and other prohibitive measures by other countries and international organisations.

16. Beneficial ownership can be exercised in many different ways, both direct and indirect. For example, a beneficial owner may hold a controlling ownership interest of a legal person, control of a significant percentage of voting rights, or have the ability to name or remove directors or influence over a veto of the entity's decision. Control may also be exercised through agreements (such as those made among shareholders), or even through family or other connections with decision-makers. Importantly, a beneficial owner does not have to reside within the jurisdiction in order to exercise effective control over a company.

17. As such, determining the beneficial owner can be a complex process that must be undertaken on a case-by-case basis. This guideline will provide clarification on the statutory definitions of “beneficial owner”, “beneficial ownership” and “beneficial interest” and will also ensure that a company is able to identify the natural persons who ultimately own or have control over that company.

18. Since beneficial ownership is not limited to ownership through the holding of shares in a legal entity, guidance will also be provided to ensure that all legal entities are able to comply with the requirements relating to beneficial ownership and maintenance of beneficial ownership information. This is particularly important as it relates to companies without share capital (non-profit companies) as provided for under Part III, Division A of the Companies Act.

OVERVIEW OF THE FRAMEWORK PROVIDING FOR THE MAINTENANCE OF BENEFICIAL OWNERSHIP INFORMATION

19. All companies must maintain beneficial ownership information as outlined in section 170 (2) of the Companies Act which states as follows:

“(2) A company shall maintain a register of shareholders showing

- (a) the name and the latest known address of each shareholder and whether the person holds or has held a prominent public office whether in Barbados or elsewhere;
- (b) a statement of the shares held by each shareholder;
- (c) the date on which a person was entered on the register as a shareholder, and the date on which any person ceased to be a shareholder; and
- (d) an up to date and accurate record of the basic and beneficial ownership information of the company, whether

incorporated or registered in Barbados.”

Section 170 (5) requires that the register be maintained at the registered office of the company.

20. It is also vital that Barbados is able to effectively regulate companies, to ensure that they are keeping with their record keeping requirements. To this end, section 175 of the Companies Act provides that the Registrar may require a company to produce any books, records or other documents required to be kept by the company under any provision of the Act. The Registrar may also examine, or by instrument in writing appoint, at the expense of a company, a person to examine, any books, records and other documents required to be kept by the company under any provision of the Act in order to ascertain that the Company is in compliance with its obligations. This includes requiring the production or examination of beneficial ownership records and information.

21. Companies are also required to submit an annual statement by way of the Annual Return Form which certifies that accurate and up-to-date beneficial ownership information was maintained for the preceding year, at the registered office of the company, in accordance with the provisions contained in section 170 of the Companies Act.

22. It is recognized that many companies are already licensed and regulated by one of the prudential regulators in the jurisdiction, namely the Financial Services Commission, Central Bank of Barbados and the International Business Unit, depending on the type of business they carry on and the type of licence required to do so. Since these regulators also monitor the company’s beneficial ownership obligations, these companies are exempt from the requirement to file annual returns under section 15A (7) of the

Companies Act.

23. In addition, pursuant to section 392A of the Companies Act, companies with revenue exceeding BDS\$1 000 000 are required to have their corporate services carried out by a corporate or trust service provider (CTSP), licensed under the Corporate and Trust Service Providers Act, 2015-12. They are regulated by the International Business Unit (IBU) and have obligations in relation to the beneficial ownership information of the entities they regulate as stipulated under the Guideline for the Detection and prevention of Money Laundering and Financing of Terrorism and Proliferation in Barbados issued by the IBU. These companies with over \$1 000 000 in revenue, who have their corporate services carried out by a CTSP, are also exempt from filing annual returns, pursuant to section 15A (7) of the Companies Act.

24. Based on the foregoing, and in order to satisfy their obligations, companies must therefore:

- take steps to obtain information on the identify of natural person(s) who is/are their beneficial owner(s), noting that there may be several beneficial owners of a company;
- Verify their identity;
- Record details of how they meet the definition of being a beneficial owner;
- record the beneficial ownership information into the register of shareholders which is to be maintained at the registered office of the company;

- keep the beneficial ownership information accurate and up-to-date. This includes updating the information whenever there is a change to the particulars of the beneficial owner;
- provide access to information as requested by the Registrar or his/her appointee.

25. Companies must ensure that the above measures are in place on a continuous basis. This obligation falls to the directors and officers of the company.

IDENTIFYING, OBTAINING AND KEEPING THE BENEFICIAL OWNERSHIP INFORMATION ACCURATE AND UP-TO-DATE

Company limited by shares

26. As a starting point, the beneficial owner of a company is a natural person who ultimately owns a body corporate or who exercises the ultimate ownership or control over the body corporate. The beneficial owner may be identified by using one or more of the criteria listed below. However, except for very simple company structures, share ownership might not equate to beneficial ownership, and thus companies must take steps to justify why they consider that meeting the share ownership threshold alone is sufficient to establish who the beneficial owner is. Companies should also consider and record their consideration of whether ultimate ownership or control is being exercised by the other means listed.

(i) Holds not less than 20% of the shares of the company, or has a direct or indirect interest in not less than 20% of the shares of the company;

The information in the register of shareholders will establish

whether any individual or corporate entity has an interest in at least 20% of the shares in the company.

(ii) Directly or indirectly holds not less than 20% of the voting shares of the company;

Voting shares confer the right of the holder to vote on resolutions on all or substantially all matters which require a shareholder's vote. If the shares are directly owned, information in the share register will determine if an individual or corporate entity has an interest of at least 20% of the voting shares of the company.

(iii) Has the right to exercise ultimate ownership or control whether formal or informal over the company, or over the directors or the management of the company, including means of control other than direct control;

"Ultimate ownership or control" refers to situations where the company, the directors or the management of the company are required to act under the directions, instructions or wishes of a particular person or persons.

An individual exercises ultimate ownership or control over a company when any recommendation made by him which influences the decision of the company, is always followed by the shareholders holding a majority of the voting rights in the company, or by the directors or management of the company. This includes a means of control other than direct control such as instances where an individual consistently exercises influence or control over the company or is consulted by the directors or managers in making decisions, on a consistent basis. Other examples include:

- Amending the company's business plan;

- Changing the nature of the company's business;
- Making decisions on borrowing funds from the lenders; and
- Appointing or removing the chief executive officer

(iv) Has the right or power to directly or indirectly appoint or remove a director(s) who holds a majority of the voting rights at the meeting of directors;

An individual may have influence or control over the company if he directly or indirectly appoints or removes a director who holds a majority of the voting rights at the meeting of directors.

(v) Is a shareholder of the company and, under an agreement with another shareholder(s) of the company, controls a majority of the voting rights in the company.

Control over a company may be exercised through the cumulative effect of an agreement which leads to the effective control of a company.

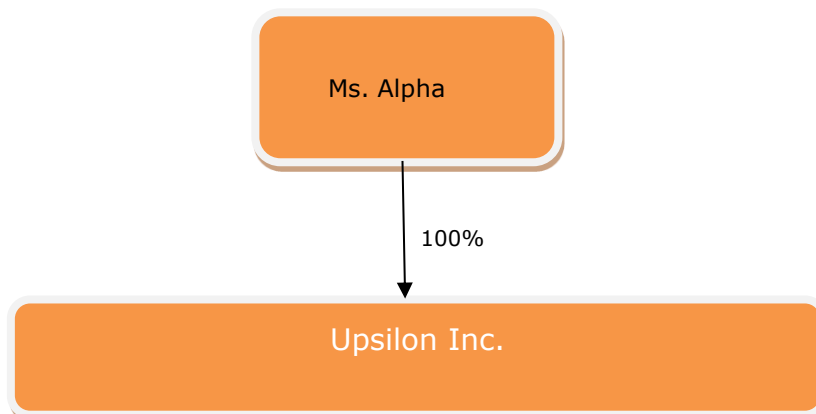
ILLUSTRATIONS OF OWNERSHIP AND CONTROL ¹

Companies Limited by Shares:

(a) A natural person who holds, directly or indirectly, not less than 20% of the shares of the company.

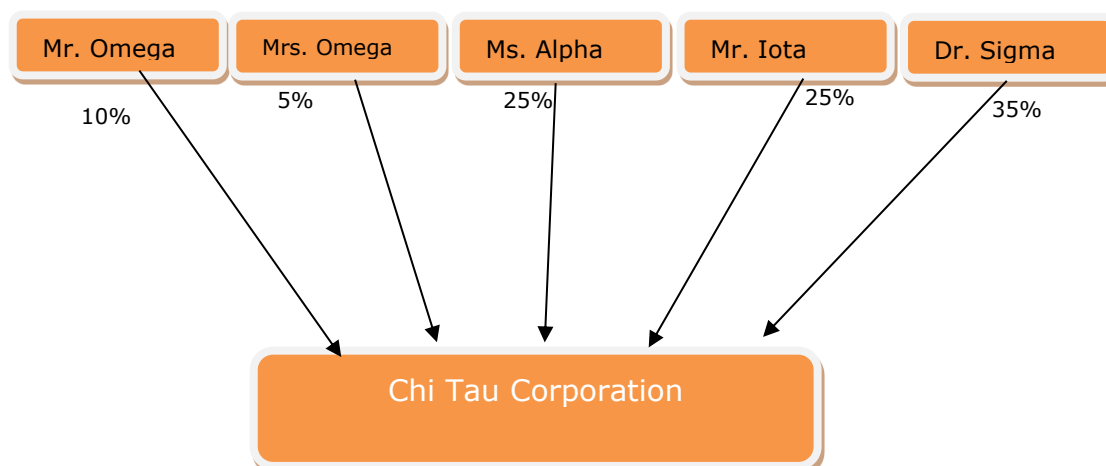
¹ These examples are for illustrative purposes only and are not intended to be a representation of every situation that may arise. Any similarity to the names of persons or existing companies is purely coincidental.

Example A



27. In Example A, Ms. Alpha wholly owns Upsilon Inc. through 100% ownership. Therefore, in the absence of any evidence to suggest that there is another natural person controlling the company by other means, Ms. Alpha is deemed the beneficial owner and her name must be entered in the register of Upsilon Inc.

Example B

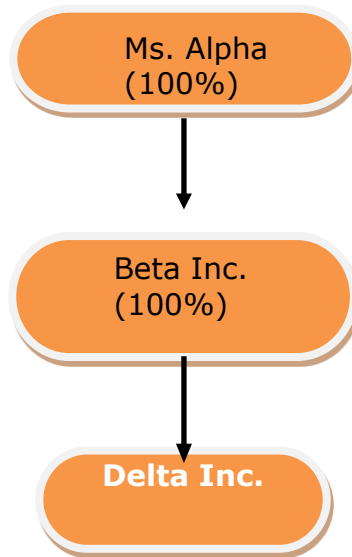


28. In Example B, Ms. Alpha, Mr. Iota and Dr. Sigma each hold not less than 20% of the shares of Chi Tau Corporation. Therefore, in the absence of any evidence to suggest that there is another natural person controlling the company by other means, they are deemed the beneficial owners and their names must be entered in the register of Chi Tau Corporation.

(b) A natural person who directly or indirectly has interest

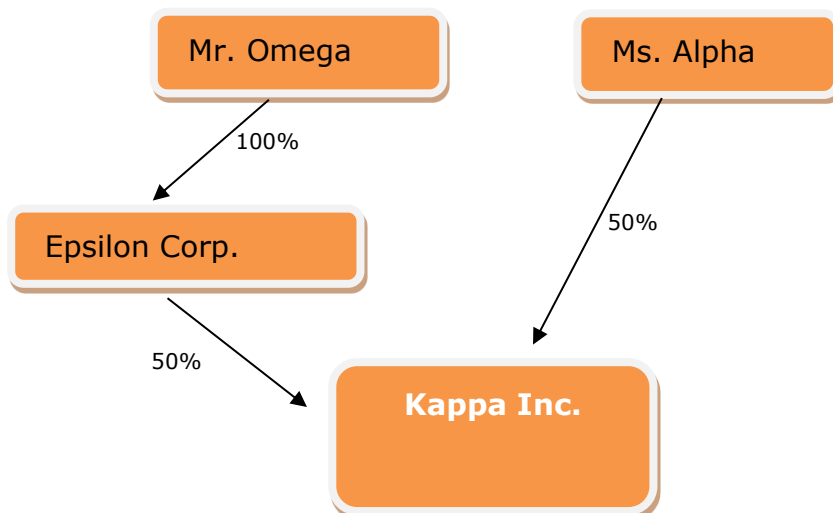
in not less than 20% of the shares of a company.

Example C: Direct interest



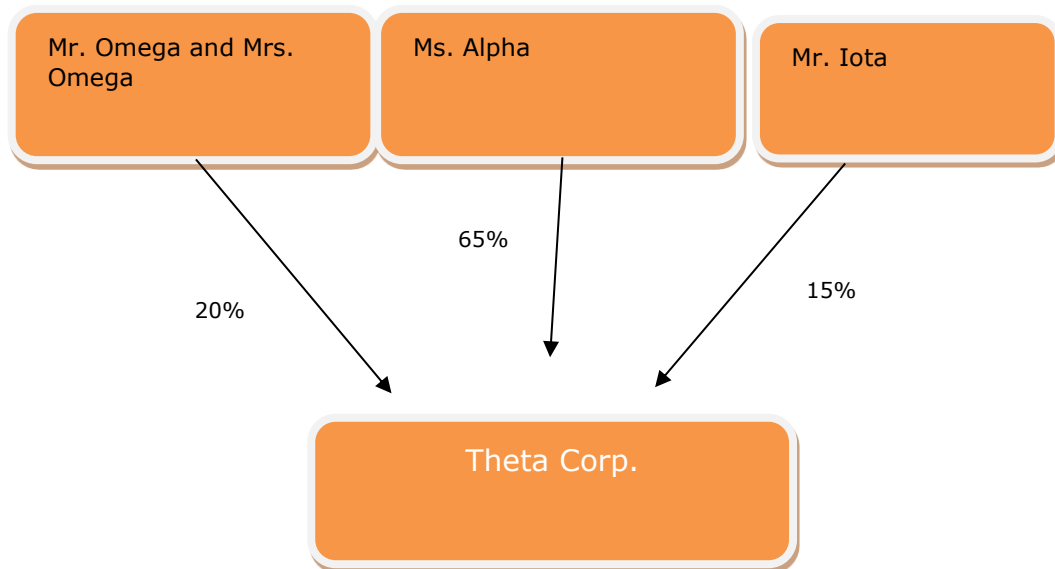
29. In Example C, Ms. Alpha is deemed to have an interest in Delta Inc. She holds 100% ownership of Beta Inc. which in turn holds 100% ownership of Delta Inc. Therefore, in the absence of any evidence to suggest that there is another natural person controlling the company by other means, Ms. Alpha is the beneficial owner of the shares and her name must be entered in the register of Delta Inc.

Example D: Indirect interest



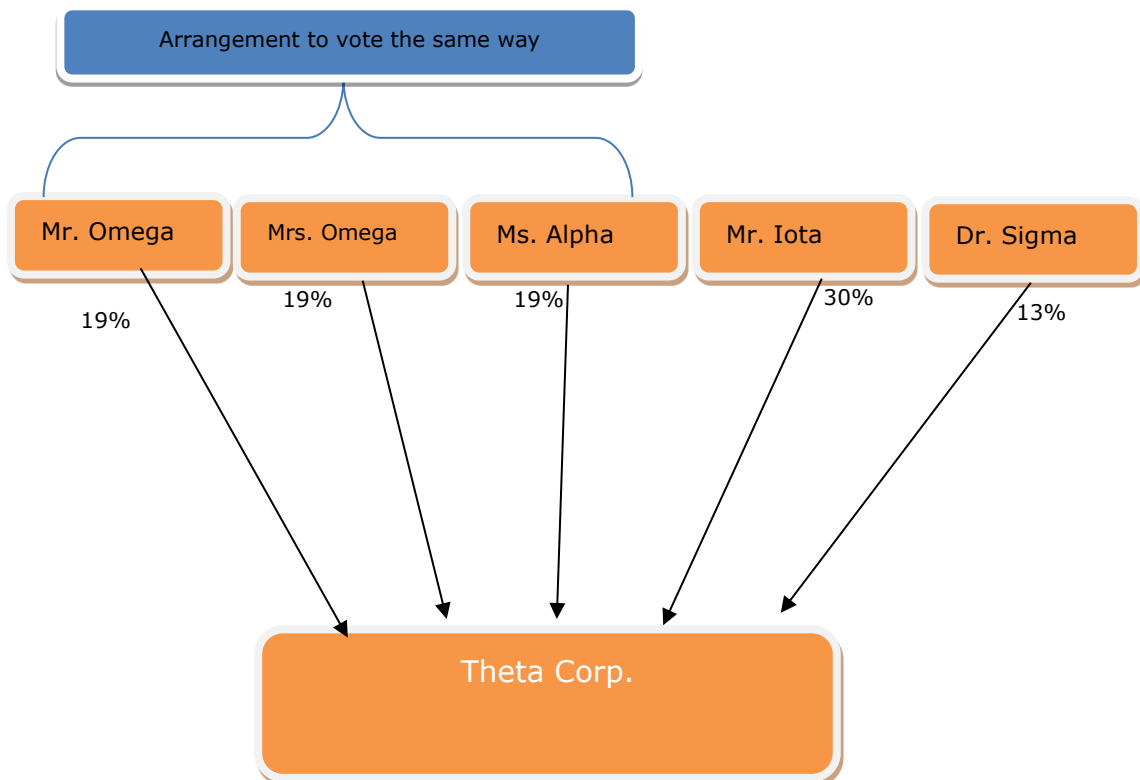
30. In Example D, Epsilon Corp. and Ms. Alpha each hold 50% of the shares in Kappa Inc. Since Mr. Omega owns 100% of the shares in Epsilon Corp., he has a 50% interest in Kappa Inc. As such, in the absence of any evidence to suggest that there is another natural person controlling the company by other means, Mr. Omega and Ms. Alpha are deemed the beneficial owners and both names must be entered in its register of Kappa Inc.

Example E: Joint interest



31. In Example E, Mr. and Mrs. Omega jointly hold 20% of the voting rights in Theta Corp. In the absence of any evidence to suggest that there is another natural person controlling the company by other means, both are deemed to be the beneficial owners together with Mrs. Alpha and their names must be entered in the register of Theta Corp.

Example F: Joint arrangement



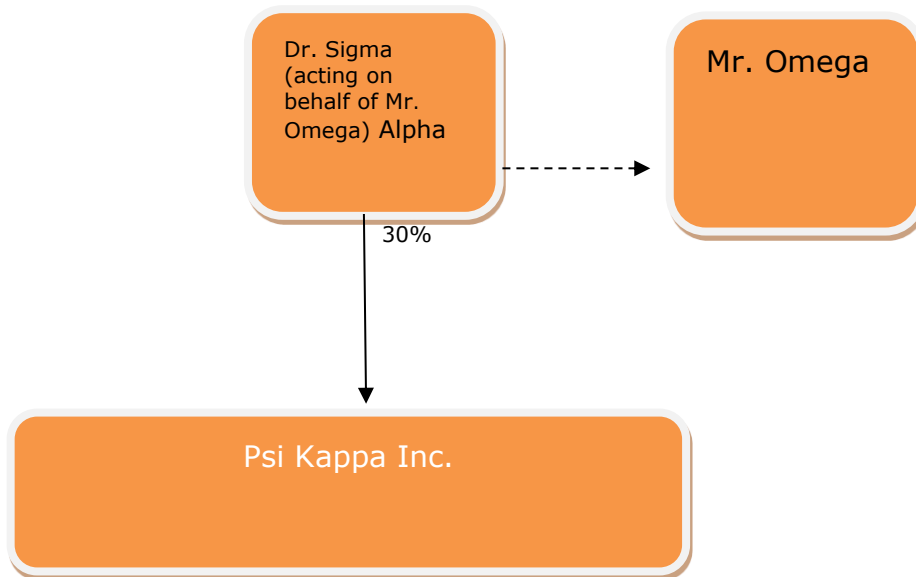
32. In Example F, Mr Omega, Mrs. Omega and Ms. Alpha have entered into an arrangement to exercise their votes in the same way. The arrangement means that their cumulative interest surpasses the 20% threshold. Therefore, in the absence of any evidence to suggest that there is another natural person controlling the company by other means, Mr. Omega, Mrs. Omega and Ms. Alpha are deemed to be the beneficial owners along with Mr. Iota whose interest also surpasses 20%. Their names must be entered in the register as beneficial owners of Theta Corp.

Example G: Shareholder acting on behalf of another person

33. Where a shareholder is acting on behalf of an individual or corporate entity, the company is required to take steps to identify the individual who has the ultimate influence or control over the

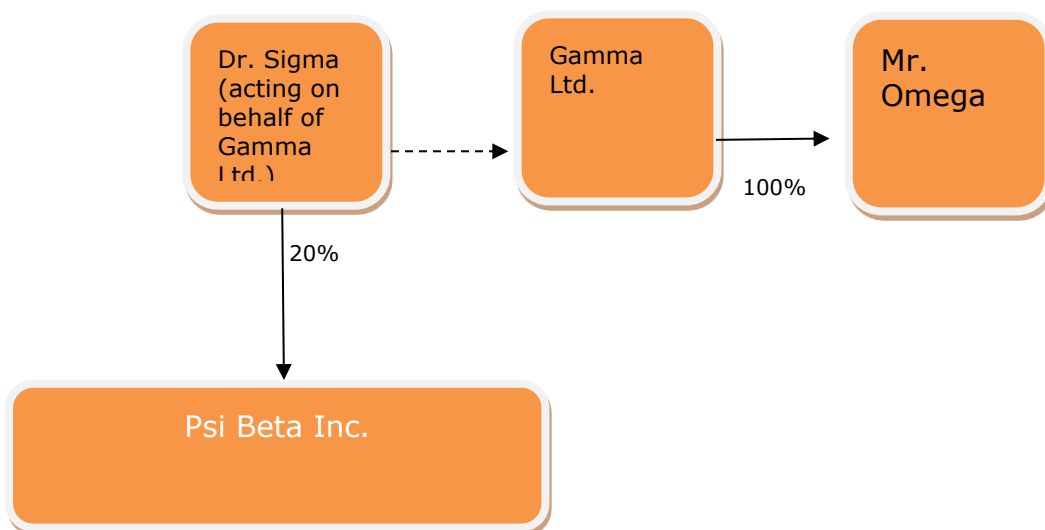
company acting through that shareholder.

Example G (1)



34. In Example G (1), Mr. Omega has a 30% interest in Psi Kappa Inc. through the 30% ownership of Dr. Sigma who is acting on his behalf. Mr. Omega should be entered in the register as a beneficial owner of Psi Kappa Inc.

Example G (2)



35. In Example G (2), Mr. Omega has a 20% interest in Psi Beta

Inc. through the 20% ownership of Dr. Sigma. Dr. Sigma is acting on behalf of Gamma Ltd., is wholly owned by Mr. Omega. As such, Mr. Omega's name must be entered in the register as a beneficial owner of Psi Beta Inc.

Company without share capital

36. An individual (natural person) is deemed to be a beneficial owner of a company without share capital, if he meets any one or more of the following criteria:

(a) Has the right to exercise ultimate ownership or control whether formal or informal over the company; or the directors or the management of the company;

37. An individual exercises ultimate ownership or control over a company when any recommendation made by him which influences the decision of the company, is always followed by the directors or management of the company. This includes instances where an individual consistently exercises influence or control over the company or is consulted by the directors or managers in making decisions, on a consistent basis.

(b) Has the right or power to directly or indirectly appoint or remove a director(s); or

38. An individual may have influence or control over the company without share capital, if he directly or indirectly has the right to appoint or remove a director.

(c) Has the right to exercise, or actually exercises ultimate ownership or control, whether formal or informal, over the

company.

39. An individual exercises ultimate ownership or control over a company when any recommendation made by him which influences the decision of the company, is always followed by the directors or management of the company. This includes instances where an individual consistently exercises influence or control over the company or is consulted by the directors or managers in making decisions, on a consistent basis. Other examples include:

- Amending the company's business plan
- Changing the nature of the company's business
- Making any borrowing from the lenders
- Appointing or removing the chief executive officer

MEASURES TO BE EMPLOYED FOR IDENTIFICATION OF BENEFICIAL OWNERS FOR ALL COMPANIES

40. In order to identify their beneficial owners, companies should employ the following actions:

- i. Review all documents and information available to the company (e.g. register of shareholders, shareholders' agreements, certificates of incorporation, etc.)
- ii. Consider all interests in the company which are held by individuals, corporate entities, trusts, partnerships or other arrangements;
- iii. Consider any evidence that may show interests or rights held through alternative means or arrangements;
- iv. Maintain an internal policy on beneficial owner identification and require shareholders to notify the company of –

- a. the identity of the beneficial owner; and
- b. any changes in the beneficial ownership information.

41. Notwithstanding the above, a company may employ any other actions that it may deem necessary for the adequate identification of the beneficial owner depending on the circumstances of each company.

OBTAINING THE BENEFICIAL OWNERSHIP INFORMATION

42. As part of companies' internal policy on the identification of beneficial ownership, the companies should require shareholders to notify the company of the identity of the beneficial owner, and of any changes in the beneficial ownership information.

43. The following information in relation to the beneficial owners should be obtained:

- a. Full name;
- b. Nationality(ies);
- c. Primary residential address (not a PO Box);
- d. Contact information (email address, phone number, mailing address if different from residential address);
- e. Date of birth;
- f. National registration number or Passport No.;
- g. Type of Beneficial Ownership (direct/indirect);

- h. Details of ownership (including percentage of ownership or capital contribution, if any);
- i. Date of becoming/ ceasing to be a beneficial owner;
- j. Whether the beneficial owner has held prominent public office in Barbados, and elsewhere, and if so the details of holding that prominent public office.

VERIFYING THE BENEFICIAL OWNERSHIP INFORMATION

44. Companies must ensure that beneficial ownership information is accurate. This involves verifying how the natural person(s) qualifies as a beneficial owner, and verifying their identity. The company should ensure that all relevant identity information is submitted and verified. A company is obliged to conduct verification of the beneficial ownership information when the name of a beneficial owner is entered on the register or when changes to the particulars of beneficial ownership information is entered on the register.

45. Notwithstanding the above, companies may voluntarily conduct verification of beneficial ownership information in the register of beneficial owners from time to time. This is in addition to the beneficial ownership certification required for submitting annual returns, or, if the company is exempt from filing annual returns, as required by its prudential regulator.

SUPPORTING DOCUMENTS

46. In identifying and verifying the identity of a beneficial owner, a company must rely on sufficient information or documentation as a basis upon which the beneficial owner is identified and verified.

47. Such supporting documents may include, but are not limited to, certified copies of a national identification card, passport or other similar documents, founding documents and agreements regulating the power to bind the company.

48. It is recommended that the supporting documents also be kept at the company's registered office. The documents may be kept in physical or electronic form.

**APPENDIX A – SUMMARY OF SANCTIONS RELATING TO
BREACHES OF BENEFICIAL OWNERSHIP REQUIREMENTS**

Description of Breach	Sanction	Legislation
Failure to maintain the share register and beneficial ownership information	On summary conviction, a fine of \$100,000 or imprisonment of 5 years or both.	s. 175A
Making a false report, return or other document	On summary conviction, a fine of \$20,000 or imprisonment for 2 years or both	s. 432
Failure to produce books, records, documents or information to the Registrar as requested within 14 days of service of the request	A penalty of \$5,000; If the penalty is not paid on the due date, then an additional penalty of \$500 for every day during the default up to a maximum of \$15,000; For continued default after the maximum penalty - a fine of \$100,000 on summary conviction or imprisonment for 5 years or both.	s. 175 (12) and (13)
Failure to comply with this Guideline	Fine of \$100,000 on summary conviction or imprisonment for a term of 5 years or both.	s. 448A (2)

APPENDIX B – SAMPLE FORM THAT COMPANIES MAY USE TO COLLECT BENEFICIAL OWNERSHIP INFORMATION

It is recommended that this form be issued to:

- shareholders;
- if a shareholder is a legal person, the beneficial owners of that shareholder;
- persons who have an indirect interest in the shares of the company;
- persons can exercise control over the company;
- persons can exercise control over the directors or the management of the company;
- persons who can directly or indirectly appoint or remove a director(s) who hold a majority of the voting rights at meeting of directors;

NAME OF COMPANY:

COMPANY NUMBER:

Please select the items which apply:

I am holding not less than 20% of the shares of this company []

I have a direct interest in not less than 20% of the shares of this company. []

I have an indirect interest in not less than 20% of the shares of this company []

I have the right to exercise ultimate ownership or control whether formal or informal over the company []

I have the right to exercise control over the directors or the management of the company; []

I have the right or power to directly or indirectly appoint or remove a director(s) who hold a majority of the voting rights at meeting of directors; []

I am shareholder of the company and, under an agreement with another shareholder of the company, control(s) alone a majority of the voting right in the company []

If you have checked at least one of the above, you are deemed to be a beneficial owner. Complete the following information:

- (i) Full name
- (ii) Primary residential address (not a PO Box)
- (iii) Nationality(ies)
- (iv) Date of birth
- (v) National Registration/Passport No.
- (vi) Date of becoming a Beneficial Owner
- (vii) Email address

Please select the items which apply:

I am holding at least 20% of the shares of the company behalf of another person as a trustee. [] yes [] No

If yes, the person on whose behalf you are holding the shares is deemed a beneficial owner. Provide the details of the Beneficial owner as per items (i) to (viii) above.

I hold at least 20% of the voting shares of the company and I have entered into agreement or arrangement with another person who is entitled to control how I exercise my voting rights carried by my voting shares. []

If yes, the person with control over the exercise of your voting rights is deemed a beneficial owner. Provide details of:

- The agreement or arrangement including the full name of the party/parties to the agreement or arrangement.*
- The details of the person² entitled to exercise control over your voting rights as per items (i) to (viii) above.*

² If there is more than 1 person controlling the members, provide details of all the persons.