

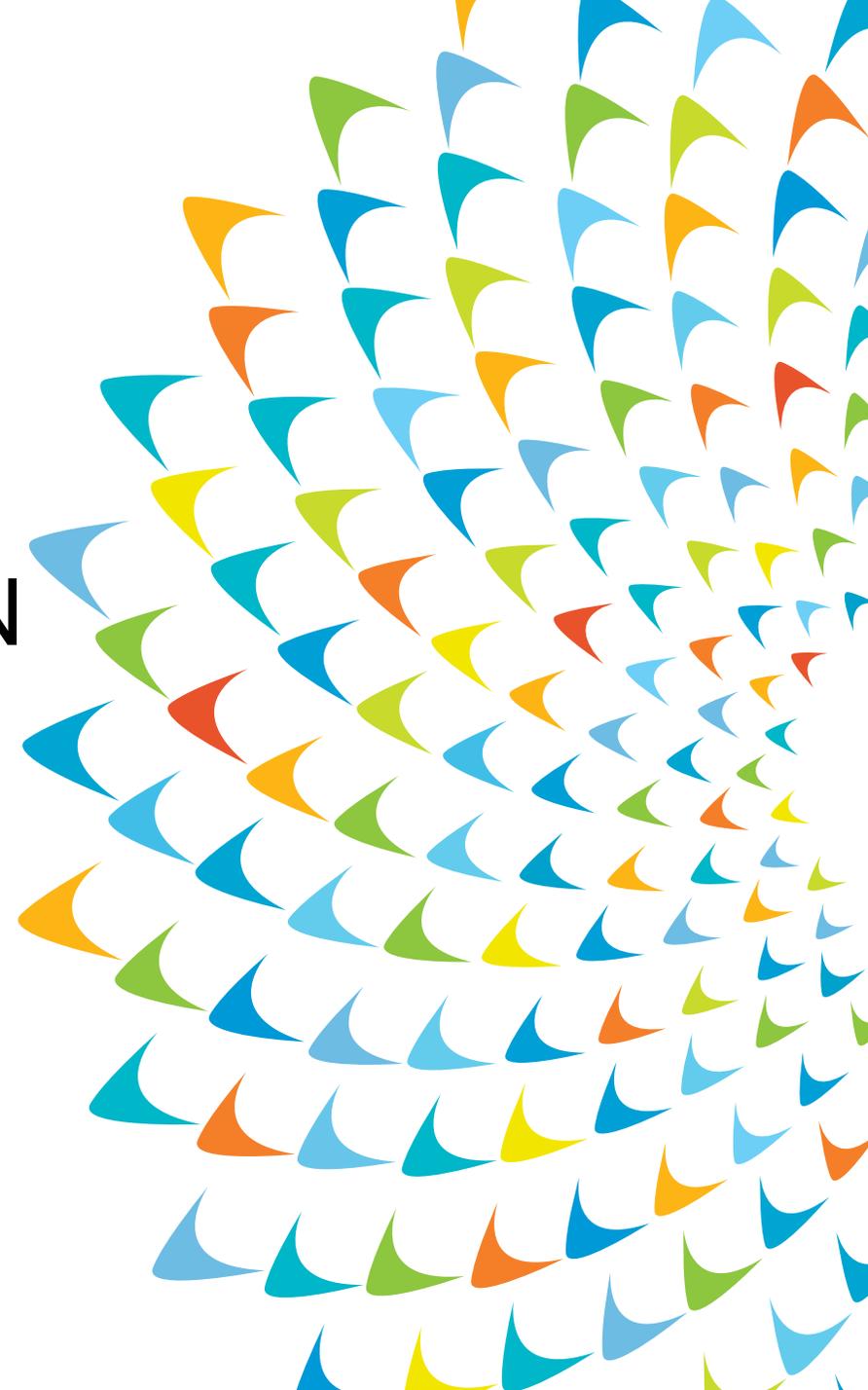


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ADVANCING BENEFICIAL OWNERSHIP TRANSPARENCY IN ASIA AND THE PACIFIC REGION

BO Data Verification Mechanisms: Policy, Technical and Practical Considerations

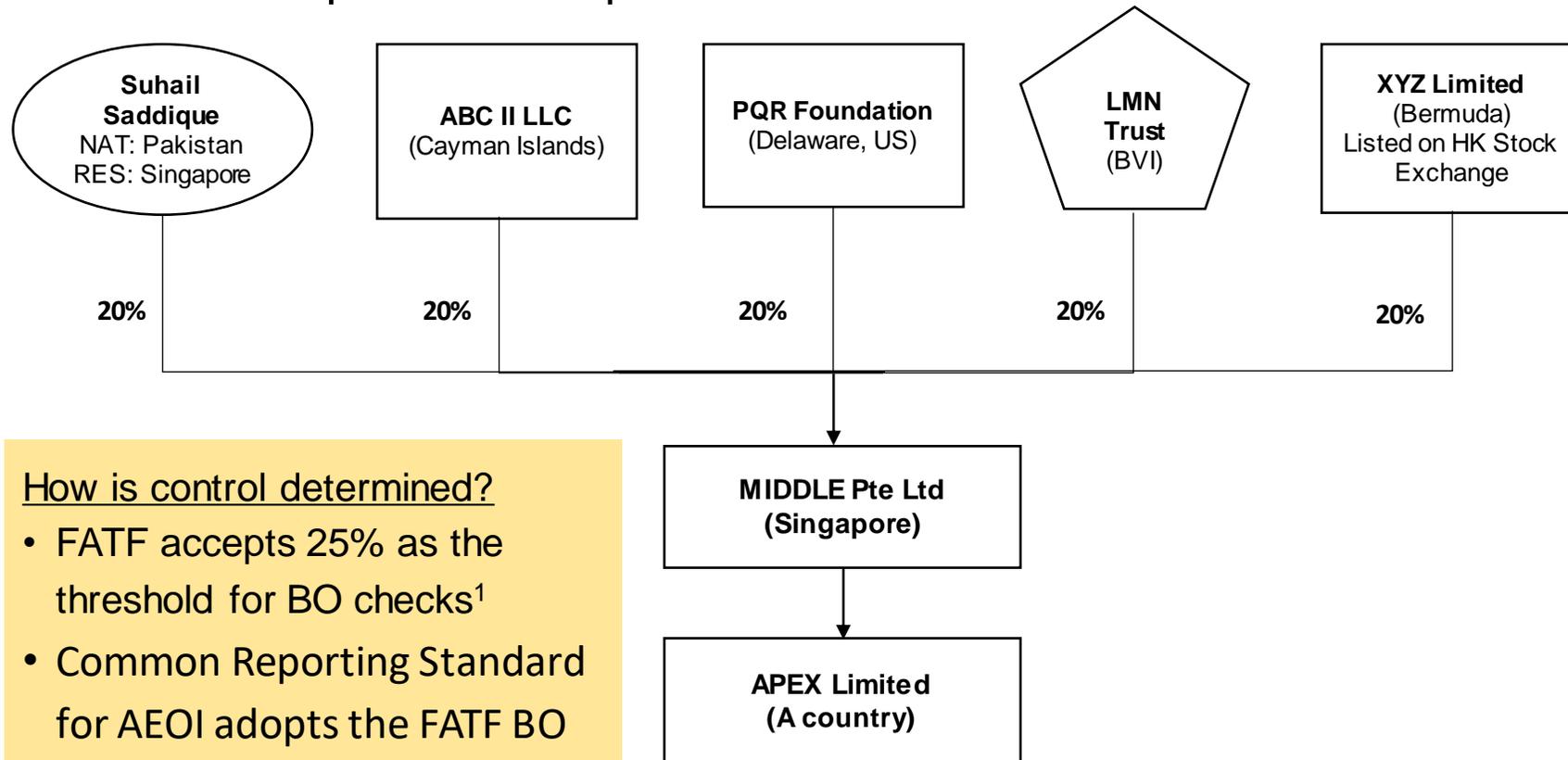
23 February 2022





The extent of complexity of ownership and control structures

Example ownership structure



How is control determined?

- FATF accepts 25% as the threshold for BO checks¹
- Common Reporting Standard for AEOI adopts the FATF BO determination in its definition of Controlling Person²

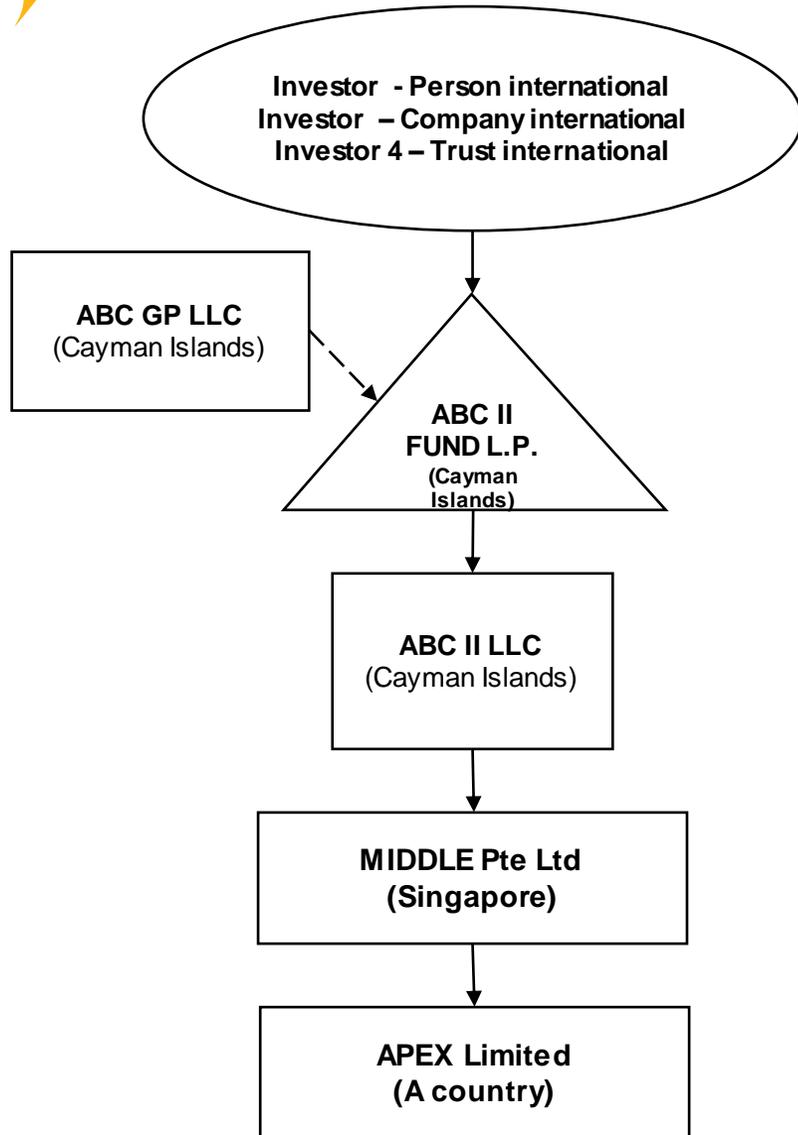
- Ownership structures can be complex, particularly when global investors are shareholders
- In such cases intermediate jurisdictions that apply no tax or light tax are usually present
- The resulting multiple layers of ownership makes BO checking and verification onerous, time consuming and potentially costly
- The lack of uniform rules across jurisdictions and lack of publicly available information further obstructs the process

1. FATF (2012-2020), *International Standards on Combating Money Laundering and the Financing of Terrorism* (FATF: Paris, October 2020) (hereinafter, "The FATF Recommendations"), p. 113. Available at: <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>

2. OECD (2017), *Standard for Automatic Exchange of Financial Account Information in Tax Matters, Second Edition*, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264267992-en>



Private equity funds

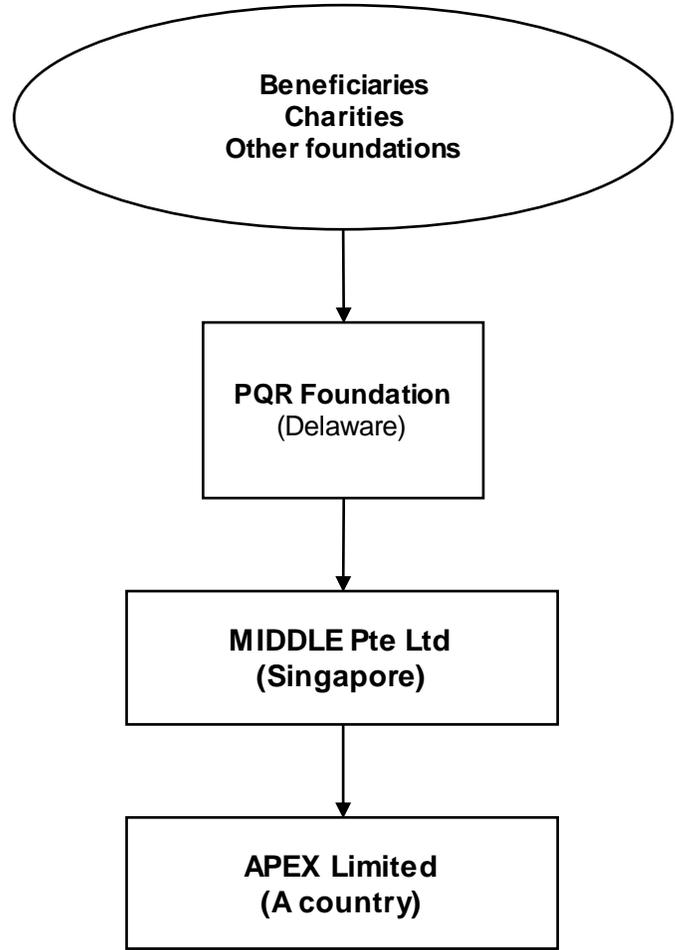


- Private equity funds establish a fund vehicle in an intermediate jurisdiction that facilitates the pooling of investors from multiple jurisdictions
- No investment activities take place in the fund jurisdiction
- Special purpose vehicles (SPVs) are established in other intermediate jurisdictions, these are the shareholders of record in the final investment company

Beneficial Ownership	Control
<p>Investors in the fund - could be any type of entity from any country</p> <p>Ownership checks, AML and CRS checks conducted according to statutory and regulatory rules in the jurisdiction of the fund vehicle</p>	<p>Through the General Partner and usually delegated to a fund manager who receives management and performance fees</p> <p>The share register of ABC II LLC states ABC GP LLC as holder of record on behalf of ABC II Fund L.P.</p>



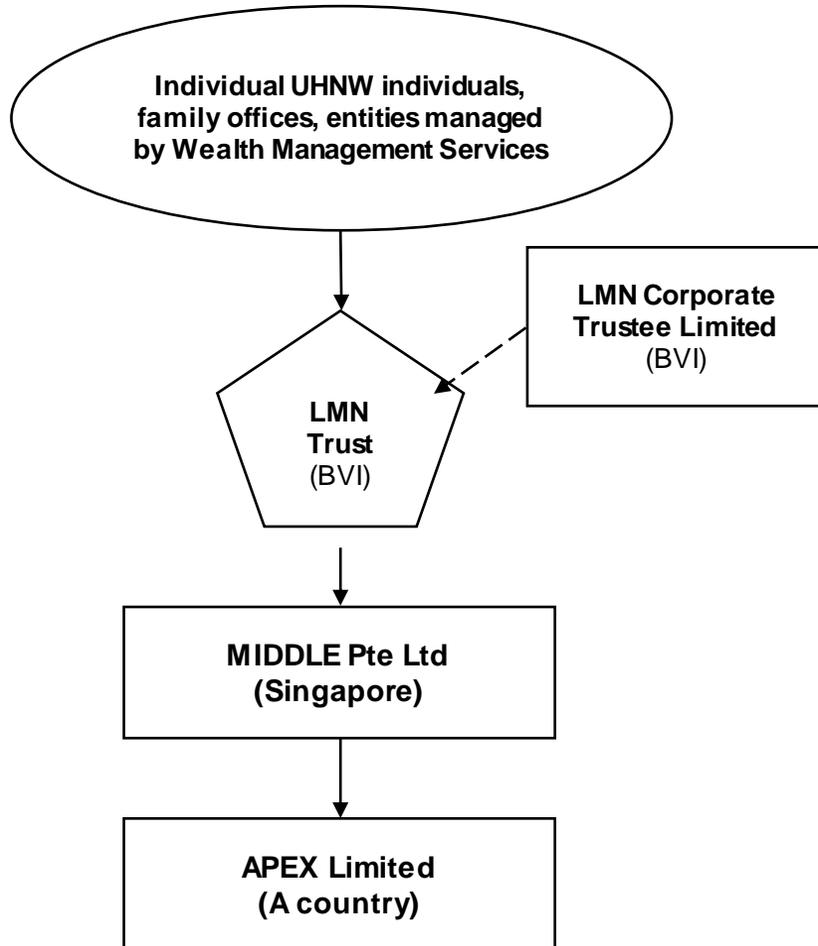
Private foundations



Beneficial Ownership	Control
<p>Beneficiaries are typically charities but the requirement for registered charities depends on the local requirements for foundations</p> <p>The beneficiaries can be changed at any time by the donor or appointed board of governors</p>	<p>May be governed solely by its donor or by a board consisting of family and/or other individuals chosen by the donors</p>



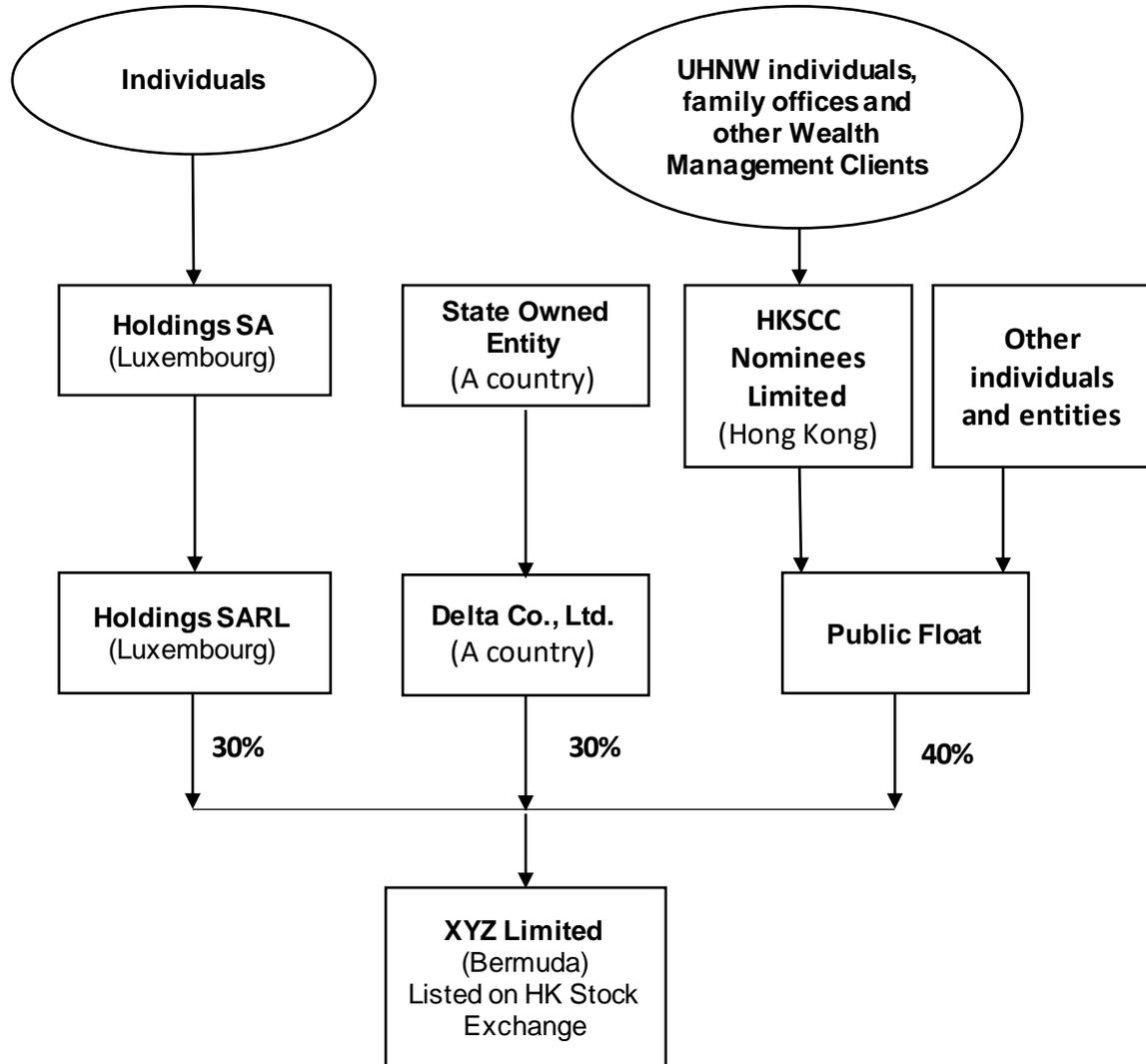
Trusts



Beneficial Ownership	Control
Beneficiaries may be defined in the trust deed or may be discretionary	The Trustee controls the Trust but only within the scope of the Trust Deed
Where beneficiaries are named in the Trust Deed they may be changed by the Settlor / Protector	The Trust Settlor / Protector can replace the Trustee and appoint another
	The Settlor / Protector can change the Trust Deed



Listed companies and nominee companies held by financial intermediaries



Beneficial Ownership	Control
<p>Companies are not required to list 100% of their shares</p> <p>It is common for a company to list a minority of shares</p>	<p>Typically, where minority listings exist the majority shareholders arranged the IPO to raise funds for the company and they retain control after the IPO</p>
<p>Stock exchanges compete for IPOs. Minority listings are allowed and some also allow different voting and control rights (e.g. Facebook)</p>	<p>The listing rules, shareholder agreement and corporate law on the rights of minority shareholders determine the level of control</p>
<p><u>Nominee Companies</u> have beneficiaries who are typically HNW individuals and family offices who are using a wealth manager</p> <p>The wealth manager establishes a nominee company to collectively hold all the shares in the listed company on behalf of its clients</p>	<p><u>Nominee Companies</u> The wealth manager is the financial intermediary who acts as proxy for the beneficiaries</p> <p>These beneficiaries are not named on the public share register</p>



The role of civil society, competent authorities, Financial Institutions and designated Non-Financial Businesses and Professions (DNFBPs)

There is a role for each of the above in the collection, verification and registration of BO information

In most countries Financial Institutions and Professions are required to collect and verify BO information on their clients, but there are limitations and constraints

- No requirement to obtain the names of investors in private equity funds
- No requirement to capture and check the Settlor / Protector of trusts
- BO checks may be avoided where a company is listed regardless of the size of the public float
- No requirement to disclose the names of beneficiaries behind Nominee Companies (some countries require disclosure to the competent tax authority)
- No requirement to collect information beyond the parent company
- BOs of trusts and foundations can change at any time during the life of the trust / foundation



The role of civil society, competent authorities, Financial Institutions and designated Non-Financial Businesses and Professions (DNFBPs) continued

Other parties are involved in high value transactions and should be included in the BO collection and verification process

These include real estate agents, precious stones and metals dealers including wholesale jewelers

Charities noted as beneficiaries under trusts and foundations should be checked against a charity register

Additional problems:

- Quality of information
- Foreign BO information can be difficult to understand
- Legal structures can be difficult to understand
- Incentives to motivate parties to participate in the collection and verification process
- Costs involved



Thank you

