

# Suggested Best Practices for Banks to Identify Beneficial Owners

Acknowledged by Financial Supervisory Commission,  
with Letter Jin-Guan-Yin-Fa-Tze 1080140647 dated March 24, 2020

## I. Preface

Whereas, when engaging in crimes or money laundering activities, global financial criminals are used to concealing the controlling person's real identity by establishing legal persons or arrangements, or by controlling such entities through complex ownership structures; Whereas, according to the 2018 National Money Laundering and Terrorist Financing Risk Assessment Report, the corporate crimes investigated by law enforcement agencies may involve fraud, smuggling, tax crime, organized crime, corruption and bribery and other crimes with high money laundering risk. Therefore, enhancing the transparency of the beneficial ownership of the legal person and legal agreement significantly promotes the effectiveness of AML/CFT<sup>1</sup>.

According to Recommendation 34 issued by the Financial Action Task Force ("FATF"), in order to help banks implement the AML/CFT measures, the Bankers Association of the Republic of China ("BAROC") hereby provides "Suggested Best Practices for Banks to Identify Beneficial Owners" ("Suggested Best Practices") based on multiple domestic and foreign regulatory requirements, international standards and practices.

With respect to keeping the records of beneficial owners identification and relevant documentations, banks shall comply with "Money Laundering Control Act" by the Ministry of Justice, "Regulations Governing Anti-Money Laundering of Financial Institutions" ("Regulations") by the Financial Supervisory Commission ("FSC"), and "Model Guidelines for Banks' Anti-Money Laundering and Countering of

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<sup>1</sup> See FSC's Letter Jin-Guan-Yin-Fa-Tze 10802701750 dated January 23, 2019.

Financing of Terrorism Policies and Procedures” (“Model Guidelines”) by BAROC, etc. Suggested Best Practices aim to provide member banks with the practices and approaches to identify beneficial owners. A bank shall formulate relevant measures according to its business nature, risk levels, and group policies. It is impossible for this document to enumerate all practices. In addition, the remarks in this document are merely examples, not self-regulatory rules established by BAROC, and thus not binding in any way.

## II. When to Identify and Exceptions

A bank shall determine when to identify the beneficial owners and to whom such requirement applies according to the existing regulatory requirements<sup>2</sup>. In the case of any of the following circumstances, a bank, however, shall consider whether the identification of beneficial owners may be exempted and take a more flexible measure<sup>3</sup>:

- (I) When developing business relationships with customers to whom the identification and verification of beneficial owners shall not apply<sup>4</sup>.
- (II) According to the existing regulatory regulations<sup>5</sup>, the bank may first obtain the information of the identity of the customer and its beneficial owner(s) and complete verification after establishing business relationship with the customer, to avoid interrupting transactions based on the normal conduct of the customer.

## III. How to Identify Beneficial Owners:

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<sup>2</sup> According to Subparagraph II, IV, and V of Article 3 of the “Regulations Governing Anti-Money Laundering of Financial Institutions”.

<sup>3</sup> According to Subparagraph VII and IX of Article 3 of the “Regulations Governing Anti-Money Laundering of Financial Institutions”, and refer to Q2 of the “FAQ about examples of customer’s transaction types based on needs” released via FSC’s Letter Jin-Guan-Yin-Fa-Tze 10802702660 dated January 23, 2019.

<sup>4</sup> According to Subparagraph VII.(iii) of Article 3 of the “Regulations Governing Anti-Money Laundering of Financial Institutions”.

<sup>5</sup> According to Subparagraph IX of Article 3 of the “Regulations Governing Anti-Money Laundering of Financial Institutions”.

- (I) In the case that a customer is a legal person or an organization, a bank shall identify the beneficial owners in the following order<sup>6</sup>:
- (i) The identity of the natural person(s) who ultimately has a controlling ownership interest in the legal person: A controlling ownership interest refers to owning directly and/or indirectly more than 25 percent of the legal person or organization's shares or capital. A bank may ask the customer to provide its list of shareholders or other documents to assist in the identification of persons holding controlling ownership interest<sup>7</sup>.
  - (ii) To the extent where no natural person exerting control through ownership interests is identified in accordance with paragraph III(I)(i) or that there is doubt as to whether the person(s) with the controlling ownership interest are the beneficial owner(s), the identity of the natural person(s) (if any) exercising control of the customer through other means<sup>7</sup>. The common examples are stated as follows:
    - (A) The natural person who owns directly and/or indirectly more than 25 percent voting rights in the legal person or organization<sup>8</sup>.
    - (B) The natural person who may make decision for the legal person or organization without named as a its senior management, e.g. the person authorized to transfer funds in an account, as defined by the bank in consideration of risk.
    - (C) The person who is identifies as involving frequent transactions with the legal person or organization through transaction monitoring and, therefore, exercises control over it.
  - (iii) In the case that no natural person is identified under paragraph III(I)(ii) and (iii), a bank shall identify the identity of a natural person who holds

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<sup>6</sup> **For examples of the identification of beneficial owners based on common customer types, please refer to the Appendix.**

<sup>7</sup> According to Subparagraph VII.(i) of Article 3 of the "Regulations Governing Anti-Money Laundering of Financial Institutions".

<sup>8</sup> Refer to Article 102, Article 157 and Article 356-7 of the Company Act, and Section 4.4.5 (beneficial owner in relation to a corporation) and Section 4.4.6 (beneficial owner in relation to a partnership) of Guideline on Anti-Money Laundering and Counter- Financing of Terrorism revised by Hong Kong Monetary Authority in October 2019.

the position of senior managing official<sup>7</sup>.

(II) Bearer shareholders or nominee shareholders:

- (i) A bank shall understand whether a customer is able to issue bearer shares and apply appropriate measures to the customer who has issued bearer shares to ensure the information of its beneficial owners are up-to-date<sup>9</sup>.
- (ii) When identifying whether a customer has bearer shareholders, a bank shall ask the customer to provide its Articles of Incorporation. In the case that the Articles of Incorporation specify that the customer may issue bearer shares and the customer certifies that it has issued bearer shares, the bank shall identify the identity of the bearer shareholders<sup>10</sup>.
- (iii) In the case that the customer has any bearer shareholder, a bank shall first identify such shareholder's identity and then execute the identification procedure described in paragraph III(I) according to the identification result.
- (iv) In the case that any of the following situations occurs when a bank performs the identification procedure, the bank may consider whether the customer has nominee shareholders in nature<sup>11</sup>:
  - (A) Where a trust appears in the customer's ownership structure and the bank is unable to obtain the information of the trust's beneficial owner.
  - (B) Where legal, accounting professionals or trust and company service providers (TCSPs) appear in the customer's ownership structure, and the customer is unwilling to certify whether such person is the agent of a nominee shareholder or to provide the information that may allow the bank to identify such person's principal.

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<sup>9</sup> According to Paragraph 1 of Article 166 of the Company Act before the amendment, and Article 447-1 of the existing Company Act.

<sup>10</sup> Refer to Subparagraph XII of Article 4 of the "Model Guidelines for Banks' Anti-Money Laundering and Countering of Financing of Terrorism Policies and Procedures".

<sup>11</sup> Refer to Paragraph 52 and Paragraph 85 of the "Concealment of Beneficial Ownership" released by FATF in July 2018.

(III) Use of Certification:

- (i) When identifying beneficial owners in accordance with the procedure described in paragraph III(I), a bank may take the following steps to obtain documents, data or information from the customer:
  - (A) Obtain the list of shareholders (if applicable), and documents, data or information issued by government, e.g. certificate of incorporation.
  - (B) In the case that the bank is unable to obtain the documents, data or information described in paragraph III(III)(i)(A), it may obtain the independent and reliable documents from the customer, e.g. the annual report audited by a Certified Public Account (“CPA”).
  - (C) Where the bank is unable to obtain the documents, data or information described in paragraph III(III)(i)(A) and (B), it may request the customer to provide the board of directors’ meeting minutes, lists of authorizations and hierarchical delegation of responsibilities, or any other documents that may allow it to identify the beneficial owner but in nature are not a certifications.
  - (D) Where the bank is unable to obtain the documents, data or information described in paragraph III(III)(i)(A), (B) and (C), it may obtain the certification provided by the customer to identify beneficial owners.
- (ii) The certification provided by the customer shall at least record the name, date of birth, nationality, and identification number of the natural person(s) who ultimately has a controlling ownership interest of the customer<sup>12</sup>.
- (iii) A bank shall still verify the certification provided by the customer in

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<sup>12</sup> Refer to Subparagraph VII.(i) 1 of Article 4 of the “Model Guidelines for Banks’ Anti-Money Laundering and Countering of Financing of Terrorism Policies and Procedures”.

accordance with the existing regulatory requirements<sup>13</sup> and in consideration of the bank's risk.

(iv) In the case that a bank knows that the person provided in such certification is not the beneficial owner, or that the beneficial owner has changed (e.g. the original beneficial owner is deceased, or merger and acquisition occur), it shall immediately review the accuracy of the certification.

#### IV. Update on Information

(I) When conducting the ongoing due diligence, a bank may take into account the extent of change of the beneficial owner's information to re-obtain relevant information. For example<sup>14</sup>:

(i) In the case that a beneficial owner is changed: A bank shall obtain the complete information required to identify the new beneficial owner.

(ii) In the case that a beneficial owner remains unchanged and only partial information of the beneficial owner is changed: A bank shall obtain the latest information with respect to the changed part.

(II) A bank may also update the information of each beneficial owner in the consideration of risk.

(III) When obtaining or updating the information of customers periodic review or customer risk assessment, a bank may apply simplified measures to low-risk customers who satisfy specific conditions<sup>15</sup>.

#### V. Application of Risk-Based Approach (RBA)

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<sup>13</sup> Refer to Q15(2) of the "FAQ about Model Guidelines for Banks' Anti-Money Laundering and Countering of Financing of Terrorism Policies and Procedures and Related Requirements - For Financial Institutions".

<sup>14</sup> According to Subparagraph IV of Article 5 of the "Regulations Governing Anti-Money Laundering of Financial Institutions", and refer to Q12 and Q14 of the "Frequently Asked Questions Regarding Customer Due Diligence Requirements for Financial Institutions" released by the US FINCEN in April 2018.

<sup>15</sup> Refer to the "Suggested Simplified Measures for Banks to Obtain or Update Information of Customer Periodic Review or Customer Risk Assessment" promulgated via FSC's Letter Jin-Guan-Yin-Fa-Tze 10801049290 dated April 16, 2019.

- (I) When conducting the identification and verification of a beneficial owner's identity, a bank may determine the enhanced measures applicable to the specific high-risk situations on the basis of risk, e.g. lowering the threshold for determining controlling ownership interest<sup>16</sup>.
- (II) Unless otherwise provided in Subparagraph III of Paragraph 1 of Article 6 of the Regulations or where the customer has issued bearer shares, a bank is not subject to the requirements of identifying and verifying the identity of beneficial owner(s) of a customer, provided the customer or a person having a control ownership interest in the customer meets one of the descriptions in Subparagraph VII.(iii) of Article 3 of the Regulations<sup>17</sup>.

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<sup>16</sup> Refer to Q1 and Q2 of the "Frequently Asked Questions Regarding Customer Due Diligence Requirements for Financial Institutions" released by the US FINCEN in April 2018.

<sup>17</sup> According to Subparagraph VII.(iii) of Article 3 of the "Regulations Governing Anti-Money Laundering of Financial Institutions".

## **Appendix: The Suggested Best Practices To Identify Beneficial Owners By Common Customer Types**

Whereas, there are tons of customer types and it is impossible to enumerate each one of them, BAROC provides the suggested best practices to identify beneficial owners only by common customer types. The following suggested best practices are merely examples. A bank may determine the appropriate measures by taking into account the characteristics of its business, risk levels and group policies.

### **I. Domestic companies that are not enterprises owned by R.O.C. government or public companies**

- (I) A bank may identify the beneficial owners of such customers pursuant to the paragraph III(III) of Suggested Best Practices.
- (II) If the customer is an unlimited company with limited liability shareholders, the beneficial owners to be identified shall include<sup>18</sup>:
  - (i) Any natural persons who are described in the paragraph III(I)(i) of Suggested Best Practices.
  - (ii) If no such person exists, or there is doubt as to the identification results, the bank shall identify all unlimited liability shareholders. If the unlimited liability shareholder is a legal person, the bank shall also identify the legal person's beneficial owners.

### **II. Non-listed offshore customers**

- (I) When identifying and verifying such customer's beneficial owners, in addition to complying with the applicable laws and regulations, a bank may identify the beneficial owners based on the ownership structure chart provided by the customer and verify beneficial owners through documents or nondocumentary methods. In the case that the bank is unable to obtain any

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<sup>18</sup> Refer to Article 122 of the Company Act.

documentary supporting the identification of the customer's beneficial owners, the suggested best practices are stated as follows:

- (i) A bank may obtain by itself, or from the customer, the online search result of the customer's beneficial owners through the official website of the registration authority in the jurisdiction where the customer was registered. In the case that the bank is unable to obtain such information, it may entrust the overseas representative offices of R.O.C., the representative offices of the jurisdiction in in Taiwan, or the bank's overseas branches to help obtain such information.
- (ii) In addition, a bank may carry out the verification based on the past experience in KYC (e.g. credit report), the customer's official website, the public information provided by network media or a professional third party (public notary, CPA, lawyer, and tax authority, etc.).

(II) Where a bank is unable to obtain the evidence supporting the identification of beneficial owners, it may refer to the paragraph III(III) of Suggested Best Practices.

### III. Foreign financial institutions established in a jurisdiction that fails to adopt FATF standards, or the investment vehicles managed by such financial institutions

- (I) In the case that such customer does not meet the requirements of subparagraph VII.(iii) 3, 5 or 9 of Article 4 of the Model Guidelines, or meets such requirements but is in the situation described in subparagraph III of Paragraph 1 of Article 6 of the Model Guidelines or has issued bearer shares, a bank shall still identify and verify such customers' beneficial owners.
- (II) A bank may refer to the list of "FATF high-risk and other monitored jurisdictions"<sup>19</sup>(namely, the lists of "High-risk jurisdictions subject to a Call for Action"<sup>20</sup> and "Jurisdictions under Increased Monitoring"<sup>21</sup>) notified by

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<sup>19</sup> <https://www.fatf-gafi.org/countries/#high-risk>

<sup>20</sup> <https://www.mjib.gov.tw/EditPage/?PageID=497e1e11-cc63-446d-b58f-cc3c6bfa41bb>

<sup>21</sup> <https://www.mjib.gov.tw/EditPage/?PageID=e5bd8f22-5f6f-4b09-8688-632cd37b2692>

the competent authority), and treat such jurisdictions as those failing to adopt FATF standards.

(III) Identification of common beneficial owners and explanations:

- (i) In the case that the customer is a mutual fund that is an entity described in paragraph III of the Appendix: given that a mutual fund holders are decentralized, the requirements of paragraph III(I)(i) of Suggested Best Practices may not apply, the identification focuses on paragraph III(I)(ii) or (iii) (if applicable). Generally speaking, the persons who are described in the paragraph III(I)(ii) include the persons who may control, manage or direct the fund operators, fund managers or general partners. The persons who are described in paragraph III(I)(iii) include the fund operators, fund managers, managing member (if the fund is a limited company), or general partners (if the fund is a limited partnership), etc.
- (ii) In the case that the customer is a private equity or hedge fund that is an entity described in paragraph III of the Appendix: in consideration of the relatively low number of private equity or hedge fund holders, the requirements of paragraph III(I)(i) of Suggested Best Practices may apply, the identification shall remain starting from such step while other explanations are identical to those in described in paragraph III(III)(i) of the Appendix.

#### IV. Partnership

A bank shall identify the beneficial owners by the type of partnership as follows:

- (I) Partnership: the partners who meet the description in paragraph III(I)(i) of Suggested Best Practices. In the case that no such person exists, or that that bank is unable to obtain the information about percentage of capital funded by the partners or doubts the identification results, the bank shall identify all partners.

(II) Limited partnership<sup>22</sup>:

- (i) The natural persons who meet the description in paragraph III(I)(i) of Suggested Best Practices.
- (ii) In the case that no such person exists, or that the bank doubts the identification results, the bank shall identify all general partners and the representatives of limited partners. In the case that a general partner is a legal person, the bank shall also identify the legal person's beneficial owners.

V. Non-profit organizations

- (I) The non-profit organizations ("NPO") may be divided into two types: established upon registration (e.g. foundations and private schools, etc.) and established without registration (e.g. temples which have not registered with the competent county/city government).
- (II) For the NPOs established upon registration, the examples of beneficial owners that are relatively common are provided as follows:
  - (i) Responsible person, representative.
  - (ii) Chairman of Board, or chairman of directors.
  - (iii) Director.
  - (iv) Chairperson.
  - (v) Principal, vice principal.
  - (vi) Dean, deputy dean.
  - (vii) Supervisor.
  - (viii) Chief executive officer, executive secretary.
  - (ix) Chairperson.
  - (x) Founder.
  - (xi) Founder's family members and close associates.

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<sup>22</sup> Refer to Article 4, Paragraph 2 of Article 6, Article 24, and Article 26-1 of the "Limited Partnership Act" of Ministry of Economic Affairs.

- (xii) Major donor.
  - (xiii) Authorized management, or authorized Signatories.
- (III) A bank may identify the beneficial owners listed in last subparagraph through the following documents (if applicable):
- (i) Certificate of registration for legal person.
  - (ii) List of directors.
  - (iii) Articles of association or operating management.
  - (iv) Articles of donation.
  - (v) Financial statements.
  - (vi) Certificate of registration for temple, list of deacons (only applicable to religious non-profit organizations)<sup>23</sup>.
  - (vii) Other reliable documents.
- (IV) A bank may verify the information of beneficial owners provided by NPO customers established upon registration through the following public information sources:
- (i) Judicial Yuan’s “Legal person and marital property registration announcement” website<sup>24</sup>.
  - (ii) Ministry of Interior’s “Cooperative & Civil Associations Preparatory Office” website<sup>25</sup>.
  - (iii) Ministry of Interior’s “NPO Information Platform” website<sup>26</sup>.
  - (iv) National Religion Information Network - website for religious organization list search<sup>27</sup>.
  - (v) Social and Family Affairs Administration, Ministry of Health and Welfare, “National Social Welfare Foundations” website<sup>28</sup>.
  - (vi) Department of Medical Affairs, Ministry of Health and Welfare,

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<sup>23</sup> Refer to the “The Ministry of the Interior’s Approval and Supervision Guideline on Review of National Religious Foundations” and “Directions for Temple Registration”.

<sup>24</sup> <http://cdeb.judicial.gov.tw/abbs/wkw/WHD6K00.jsp>

<sup>25</sup> [https://group.moi.gov.tw/sgms/html/new\\_search\\_team!searchteam.action](https://group.moi.gov.tw/sgms/html/new_search_team!searchteam.action)

<sup>26</sup> <https://npo.moi.gov.tw/npom/>

<sup>27</sup> <https://religion.moi.gov.tw/Religion/FoundationTemple?ci=1>

<sup>28</sup> <https://sowffd.sfaa.gov.tw/fsfundPublic/index/resourceMap>

- “Financial Reports of Medical Foundations” website<sup>29</sup>.
- (vii) Ministry of Education’s “Educational Foundations” website<sup>30</sup>.
- (viii) Ministry of Culture’s “Foundations” website<sup>31</sup>.
- (V) With respect to the temples which were established without registration, a bank may treat any monks or Taoist priests (no matter what the title is), disciples, or specific persons of the temples who have management authority<sup>32</sup> as the beneficial owners.

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<sup>29</sup> <https://dep.mohw.gov.tw/DOMA/cp-3175-15984-106.html>

<sup>30</sup> <https://foundation.moe.edu.tw/eFound/web/FoundationQuery/FrontDeskFoundationSearch.aspx>

<sup>31</sup> [https://www.moc.gov.tw/informationlist\\_392.html](https://www.moc.gov.tw/informationlist_392.html)

<sup>32</sup> Refer to Article 6 of the Ministry of Interior's “Act of Supervising Temples”.