

BANKING AGENCY OF REPUBLIKA SRPSKA

**GUIDELINES FOR IDENTIFICATION
OF THE BENEFICIAL OWNER**

Banja Luka, March 2024

Pursuant to Article 22, Paragraph 1, Item f) of the Law on the Banking Agency of Republika Srpska ("Official Gazette of Republika Srpska" No. 59/13 and 4/17), Article 22, Paragraph 4, Item m) of the Statute of the Banking Agency of Republika Srpska ("Official Gazette of Republika Srpska" No. 63/17), pursuant to Article 101 of the Law on anti-money laundering and counter-terrorism financing ("Official Gazette of BiH", No. 13/24) and pursuant to Article 47 of the Decision on managing anti-money laundering and counter-terrorism financing risk ("Official Gazette of Republika Srpska", No. 22/24), the Director of the Banking Agency of Republika Srpska issued the

GUIDELINES FOR IDENTIFICATION OF THE BENEFICIAL OWNER

1. General provisions

1.1 These Guidelines provide instructions to organizations of the banking system of Republika Srpska (hereinafter: OBS), which are supervised by the Banking Agency of Republika Srpska, regarding the obligation to implement measures to identify and verify the beneficial owner, in accordance with the provisions of the Law on anti-money laundering and counter-terrorism financing ("Official Gazette of BiH", No. 13/24) (hereinafter: the Law on anti-money laundering and counter-terrorism financing) and the Decision on managing anti-money laundering and counter-terrorism financing risk.

2. Use of definitions

2.1 The definitions used in these Guidelines shall have the same meaning as in the Law on anti-money laundering and the by-laws of the Banking Agency of Republika Srpska in which they are defined.

3. Procedure for determining the beneficial owner

3.1 Beneficial owners

3.1.1. When understanding the ownership and control structure of a legal entity, OBS shall, at a minimum, undertake the following steps:

- 1) request information on the beneficial owner from the client;
- 2) record the information and data obtained;
- 3) undertake all measures required to verify the information and data obtained in accordance with the Law on anti-money laundering and counter-terrorism financing and in accordance with the by-laws.

3.1.2. The steps listed under 2) and 3) shall be applied by OBS depending on the client's risk assessment.

3.2 Register of beneficial ownership

3.2.1. OBS should use beneficial ownership information from the beneficial ownership register to the extent that it is available to them, taking into account that the use of beneficial ownership information from the register alone does not fully satisfy their duty to undertake appropriate measures based on a risk assessment to determine and verify the identity of the beneficial owner.

3.2.2. OBS should undertake additional steps to identify and verify the beneficial owner, in particular where the risk associated with the business relation is higher or where OBS are not certain that the persons listed in the register are the ultimate beneficial owners.

3.3. Control by other means

3.3.1. The requirement to identify and undertake all necessary and reasonable measures to verify the identity of the beneficial owner of the client applies only to a private individual who is the ultimate owner of the client and/or a private individual who has the right to significantly

influence the decision-making of the management body of the company and/or receives, manages or distributes assets for a specific purpose. However, in order to comply with the obligations stipulated by the provisions of the Law on anti-money laundering and counter-terrorism financing, OBS should undertake reasonable measures to understand the ownership and control structure of the client.

- 3.3.2. The measures that OBS should undertake to understand the ownership and control structure of the client should be sufficient to enable OBS to reasonably satisfy themselves that they understand the risk associated with different levels of ownership and control. In particular, OBS should ensure that the ownership and control structure of the client is not unduly complex/non-transparent and that the complex/non-transparent ownership and control structure has a legitimate legal or economic reason.
- 3.3.3. In order to fulfill their obligations under the Law on anti-money laundering and counter-terrorism financing, OBS shall be obliged to notify the Financial Intelligence Unit of the State Investigation and Protection Agency (hereinafter: FIU) immediately and without delay, if, among other things, they cannot identify and verify the beneficial owner of the client, as well as if there is a suspicion that the ownership and control structure of the client raises suspicions and/or if they have reasons to suspect that the funds are property benefits obtained from illegal activity or are related to terrorist financing.
- 3.3.4. OBS should pay particular attention to persons who may exercise “control by other means”. Examples of “control by other means” that OBS should consider include, but are not limited to:
 - 1) control without direct ownership, (for example, through close family relationships or historical or contractual associations);
 - 2) use, enjoyment or benefit from assets owned by the client;
 - 3) responsibility for strategic decisions that significantly affect the business practices or management of the entity.
- 3.3.5. OBS should undertake measures to document the verification of the client’s ownership and control structure based on a risk assessment.

3.4. Determining client's senior management

- 3.4.1. In the case of legal entity clients, OBS should make every effort to identify the beneficial owner who has voting rights or other rights, based on which it participates in the management of the legal entity, has a dominant position in the management of the legal entity's assets and/or a person who indirectly provides or insures funds and on that basis has the right to significantly influence the decision-making of the legal entity's management body when deciding on financing and operations.
- 3.4.2. OBS should identify senior managers of the client as beneficial owners only in the following cases:
 - 1) they have exhausted all possible means of identifying the private individual who ultimately owns or controls the client;
 - 2) their inability to identify the private individual who ultimately owns or controls the client does not raise suspicions of money laundering and/or terrorist financing and
 - 3) they are satisfied that the reasons given by the client as to why it is not possible to establish why the private individual who ultimately owns or controls the client cannot be identified/verified are justified.
- 3.4.3. When deciding which and how many senior managers should be identified as the beneficial owner, OBS should consider who has ultimate and overall responsibility for the client and who makes binding decisions on behalf of the client.
- 3.4.4. In such cases, OBS should clearly document their reasons for identifying a senior manager rather than the beneficial owner of the client, and keep records of their actions.

3.5. Identification of the beneficial owner of a public administration or a state-owned legal entity

- 3.5.1. In the case where the client is a public administration (ministry, administrative body and entity entrusted with public powers) or a legal entity owned by the state, OBS should follow the guidelines for identifying senior management, described above under Item 3.4. In such cases, especially if the risk associated with a particular business relation is increased, for example if the state-owned legal entity is from a country associated with high levels of corruption, OBS should undertake measures based on a risk assessment to determine that the client, the person identified as the beneficial owner, has duly authorized OBS client to act on its behalf.
- 3.5.2. OBS should also consider the possibility that the client's senior management may be a politically exposed person. In that case, OBS is obliged to apply enhanced identification and monitoring measures to that senior manager, and assess the extent to which the politically exposed person can influence the client and whether this creates an increased risk of money laundering and/or financing of terrorist activities, and whether it is necessary to apply enhanced identification and monitoring measures to the client.

3.6. Beneficial owner identification measures

- 3.6.1. In order to fulfill the obligations stipulated by the Law on anti-money laundering and counter-terrorism financing and the by-laws, OBS shall be obliged to verify the identity of the client and the identity of the beneficial owner of the client on the basis of reliable and independent information and data, regardless of whether they were obtained remotely, electronically or in the form of documents.
- 3.6.2. OBS shall be obliged to stipulate in their policies and procedures which information and data will be considered reliable and independent for the purpose of identifying and monitoring the client. Within the framework of the aforementioned OBS, they should define and determine:
- 1) what makes data or information reliable and
 - 2) what makes data or information independent.
- 3.6.3. When determining the reliability of data, OBS should take into account different degrees of reliability, which should be determined based on:
- the extent to which the client had to undergo certain checks in order to obtain the information or data;
 - the official status, if any, of the person or institution that carried out those checks;
 - the level of assurance associated with any digital identification system used and
 - the possibility of falsification of the provided information or data on identity.
- 3.6.4. When determining the independence of data, OBS should consider different degrees of independence, which should be determined based on the extent to which the person or institution that originally published or provided the data or information:
- is connected to the client through direct personal, professional or family ties and
 - is able to unduly influence the client.
- 3.6.5. In most cases, OBS may consider that information or data published by the state/government provides the highest level of independence and reliability.
- 3.6.6. OBS should assess the risks of each type of evidence provided and the application of identification and verification methods, and ensure that the selected method and type are proportionate to the risk of money laundering and/or terrorist financing associated with the client.

3.7. Identification without the personal presence of the client

- 3.7.1. In order to comply with the provisions of the Law on anti-money laundering and counter-terrorism financing and the by-laws, and in situations where a business relation is initiated,

established or conducted with a client who is not personally present or if occasional transactions are carried out without the personal presence of the client, OBS should:

- 1) undertake appropriate measures to ensure that the client is truthfully identified and
- 2) assess whether the fact that it is a relation or occasional transaction with a client who is not personally present leads to an increased risk of money laundering and/or terrorist financing and, if so, adjust its client identification and monitoring measures accordingly.

3.7.2. In cases where the identified risk is related to a business relation or occasional transaction with a client who is not personally present, OBS should apply enhanced identification measures and conduct enhanced ongoing client monitoring.

3.7.3. OBS shall be obliged to take into account the fact that the use of electronic means of identification does not in itself lead to an increased risk of money laundering and/or terrorist financing if a high level of security is ensured by these electronic means in accordance with the relevant regulations governing the field of qualified electronic certificates for electronic signatures or electronic seals.

4. Final provisions

4.1. Examples of the implementation of measures to identify the beneficial owner of a client are provided in the Annex to these Guidelines and constitute an integral part thereof.

4.2. These Guidelines shall enter into force on the date of their adoption and shall be published on the official website of the Banking Agency of Republika Srpska.

Number: D-5/24

Date: 20 March 2024

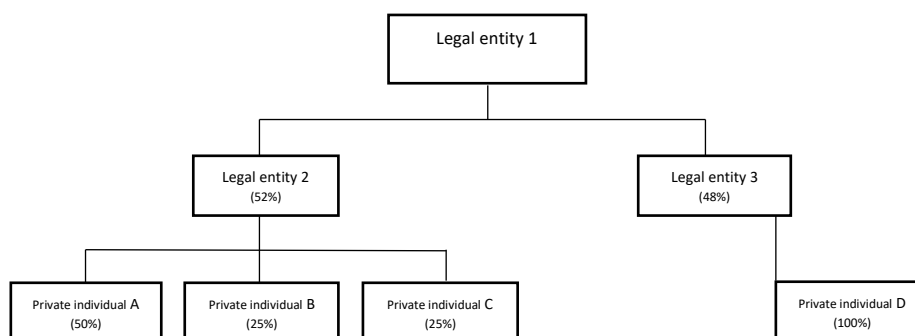
Director

Srđan Šuput

Examples of implementing measures to identify the client beneficial owner

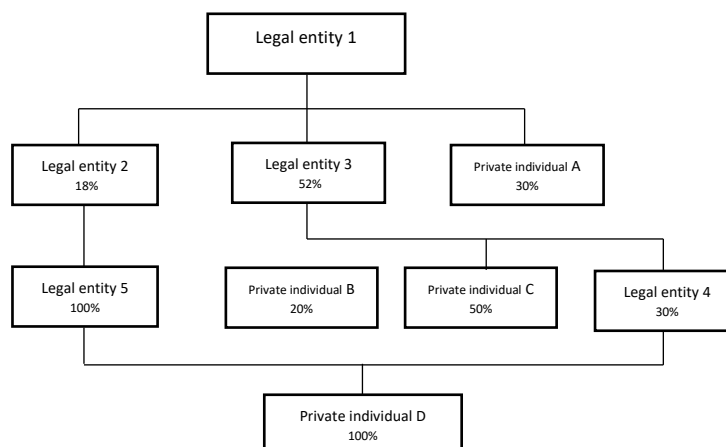
The following are examples of how OBS should act when implementing measures to identify and verify the identification of beneficial owners.

Example 1.



In example 1, the beneficial owners of legal entity 1 are private individuals A and D. Legal entity 2 holds 52% of the shares in legal entity 1, and the remaining 48% is held by legal entity 3. Private individual A holds 50% of the shares of legal entity 2, and thus does not have a majority stake (more than 50%) in a legal entity that holds more than 25% of the shares in legal entity 1. However, private individual A is an indirect owner of legal entity 1 with a total of 26% of the shares (50% of 52%), and is considered the beneficial owner. Private individual D holds 100% of the shares of legal entity 3, and thus has an indirect ownership interest in legal entity 1 of 48% (100% of 48%). Private individual D has a majority stake (more than 51% of shares) in legal entity 3, which has more than 25% ownership of shares in legal entity 1, and also has a total of shares (48%) in legal entity 1 that is more than 25%.

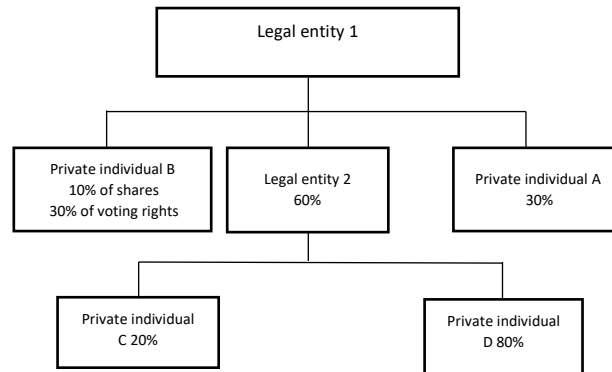
Example 2.



In example 2, the beneficial owners of legal entity 1 are private individuals A, C, and D. Legal entity 2 has 18% of the shares in legal entity 1, legal entity 3 has 52% of the shares in legal entity 1, while private individual A is the direct beneficial owner with 30% of the shares in legal entity 1. In the second line of ownership, only private individual C owns a sufficient percentage of the shares (26% of the shares in legal entity 1 indirectly through legal entity 3 (50% of 52%)) to be considered the beneficial owner. Private individual B has 10.4% (20% of 52%) of the shares in legal entity 1 and therefore does not have a sufficient percentage of the shares to be considered the beneficial owner. In the third line of ownership, private individual D qualifies as the beneficial owner since ultimately owns 33.6% of the stake in legal entity 1 – since private individual D owns 100% of the shares in legal entity 5, it is considered to own 18% of the shares in legal entity 1 through legal entity 5 and legal entity 2, and 15.6% of the shares in legal entity 1

through legal entity 4 and legal entity 3. Therefore, the private individuals who ultimately own more than 25% of the shares in legal entity 1, directly or indirectly, are private individuals A, C and D – directly in the case of private individual A and indirectly in the case of private individuals C and D.

Example 3.



In Example 3, the beneficial owners of legal entity 1 are private individuals A, B and D. Legal entity 2 holds 60% of the shares in legal entity 1, private individual A holds 30% of the shares, and private individual B holds 10% of the shares and 30% of the voting rights in legal entity 1. Private individual B must also be identified as the beneficial owner, given that he holds 30% of the voting rights in legal entity 1, even though he only owns 10% of the shares in legal entity 1. In the first line of ownership, private individual A directly holds 30% of the shares in legal entity 1 and qualifies as the beneficial owner. Private individual B holds only 10% of the shares in legal entity 1 and does not exceed the threshold of 25% plus one share. However, each share directly held by private individual B in legal entity 1 carries three (3) votes and therefore private individual B has 30% of the voting rights in legal entity 1, and qualifies as a beneficial owner. In the second line of ownership, private individual D qualifies as a beneficial owner, since he ultimately owns 48% (80% of 60%) of the shares in legal entity 1 through his 80% of stake in legal entity 2, which holds 60% of the shares of legal entity 1. Private individual C ultimately holds 12% (20% of 60%) of the shares in legal entity 1 and therefore does not have a sufficient percentage of shares to qualify as a beneficial owner.

Banking Agency of
Republika Srpska