# GUIDANCE ON DETERMINING UBOS UNDER UBO REGULATIONS

## Guideline

## Registrar of Companies

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# 1. INTRODUCTION

This guidance is issued by the Registrar pursuant to Article 7(3)(a)(iii) of the Operating Law in respect of the application of the UBO Regulations.

This guidance is indicative only and is subject to the discretion of the Registrar in accordance with the provisions of applicable law.

The Registrar has issued separate guidance on Exempt Entities under the UBO Regulations. Please refer to that guidance for further information on exempt entities.

# 2. TERMS AND DEFINITIONS

| Sr.No. | Term | Definition |
|---|---|---|
| 2.1 | DIFC | Dubai International Financial Centre |
| 2.2 | Commencement Date | means 12 November 2018 |
| 2.3 | Company | a Public Company, Private Company or Recognised Company in the DIFC as defined in the Companies Law, DIFC Law No. 5 of 2018. |
| 2.4 | FATF | the Financial Action Task Force. |
| 2.5 | Foundation | a Foundation as defined in the Foundations Law, DIFC Law No. 3 of 2018. |
| 2.6 | Individual Shareholder | a natural person that is a direct shareholder of a Company. |
| 2.7 | NPIO | an Incorporated Organisation as defined in the Non Profit Incorporated Organisations Law, DIFC Law No. 6 of 2012. |
| 2.8 | OECD | the Organisation for Economic Cooperation and Development. |
| 2.9 | Operating Law | means the Operating Law, DIFC Law No. 7 of 2018. |
| 2.10 | Partnership | a General Partnership, Recognised General Partnership, Limited Partnership, Recognised Limited Partnership, Limited Liability Partnership or Recognised Limited Liability Partnership which has been incorporated, registered or continued in the DIFC under a Prescribed Law. |
| 2.11 | Prescribed Law | the meaning given to the term in the Operating Law |
| 2.12 | Registered Person | the meaning given to the term in the Operating Law. |
| 2.13 | Registrar | the DIFC Registrar of Companies. |
| 2.14 | UBO Regulations | the Ultimate Beneficial Ownership Regulations 2018. |

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**A term that is not defined in this guidance has the same meaning it has under the Operating Law or the UBO Regulations, as applicable.

## 3. RATIONALE FOR INTRODUCING UBO REGULATIONS

a. The UBO Regulations have been enacted to ensure the DIFC's compliance in respect of international initiatives such as the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes and FATF's recommendations on measures related to anti-money laundering ("AML") and combatting the financing of terrorism ("CFT").

b. Knowing the identity of the natural persons who ultimately control Registered Persons is important to enable the relevant authorities in the DIFC to comply with their obligations to prevent harmful tax practices and to fight financial crimes such as corruption, money laundering and terrorist financing.

## 4. OVERVIEW

The table below gives a snapshot of the natural persons who would normally be the Ultimate Beneficial Owners of Registered Persons in the DIFC:

| Type of Legal entity | Test 1: Ownership | Test 2: Control | Test 3: Management |
|---|---|---|---|
| **Company** | Anyone who:<br>• owns ≥ 25% of the shares of the Company<br>• owns ≥ 25% of the voting rights of the Company; or<br>• has the right (as a result of its share ownership) to appoint or remove the majority of directors<br><br>All Individual Shareholders (or an individual who controls a body corporate shareholder) owning ≥ 25% of the shares or voting rights in the DIFC Company; or have the right (through ownership) to appoint or remove the majority of directors. | Anyone who indirectly controls (other than by ownership):<br>• ≥ 25% of the shares of the Company<br>• ≥ 25% of the voting rights of the Company; or<br>• the right to appoint or remove the majority of directors<br><br>OR<br><br>Anyone who exercises significant control or influence over the Company in the DIFC<br><br>E.g. the Chairman of the board or CEO of the Company if they have extensive or largely unfettered power | Every member of the board of directors is deemed to be an Ultimate Beneficial Owner |
| **Partnership – General Partnership ("GP")** | All partners of the DIFC GP.<br><br>(If this number is too large use Tests 2 & 3) | Anyone who exercises significant control or influence over the GP in the DIFC<br><br>E.g. the managing partner(s) | Every partner who is involved in the management of the GP is deemed to be an Ultimate Beneficial Owner |

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| | | | |
|---|---|---|---|
| **Partnership – Limited Partnership ("LP")** | All the general partners of a DIFC LP<br><br>(If this number is too large use Tests 2 & 3) | Anyone who exercises significant control or influence over the LP in the DIFC<br><br>E.g. a limited partner with significant control and/or a fund manager of a fund) | Every general partner of the LP is deemed to be an Ultimate Beneficial Owner |
| **Partnership - Limited Liability Partnership ("LLP")** | All the members of the LLP.<br><br>(If this number is too large use Tests 2 & 3 | Anyone who exercises significant control or influence over the LLP in the DIFC<br><br>E.g. the managing partner(s) or designated members | Every member who makes up the board of the LLP is deemed to be an Ultimate Beneficial Owner |
| **NPIO** | n/a*<br>*There are no owners of an NPIO | Anyone who exercises significant control or influence over the Board of the NPIO or the property or activities of the NPIO | Every member of the board of the NPIO is deemed to be an Ultimate Beneficial Owner |
| **Foundation** | n/a*<br><br>*There are no owners of a Foundation | Anyone who exercises significant control or influence over the Council of the Foundation or the property or activities of the Foundation<br><br>This could be the Founder if powers are reserved to the Founder under the Charter and By-laws | Every member of the council of the Foundation is deemed to be an Ultimate Beneficial Owner |

*Note: The above table should not be considered in isolation, but interpreted in accordance with the rest of these guidance.

Tests 1 – 3 above must be applied in order. Test 1 on ownership should be applied first. Test 2 should only be applied if:

(a) Test 1 is not applicable;

(b) no person can be identified using Test 1; or

(c) where there is reason to believe that another person is also ultimately exercising control over the Registered Person by other means.

Test 3 is based on a deeming provision in the UBO Regulations and should only be used if no natural person can be identified using Tests 1 and 2.

Under the UBO Regulations all Registered Persons in the DIFC must:

(a) identify the natural persons that own or control the entity;

(b) establish and maintain its own private register of beneficial owners; and

(c) notify the Registrar of its Ultimate Beneficial Owners as well as any changes to them.

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# 5. DETERMINING THE BENEFICIAL OWNERS OF A COMPANY

The Ultimate Beneficial Owner of a Company is defined in Regulation 3.1.1(a) as a natural person who owns or controls directly (refer to points 3.2 – 3.3 below) or indirectly (refer to points 3.4 – 3.9):

(a) 25% or more of the shares of the Company;

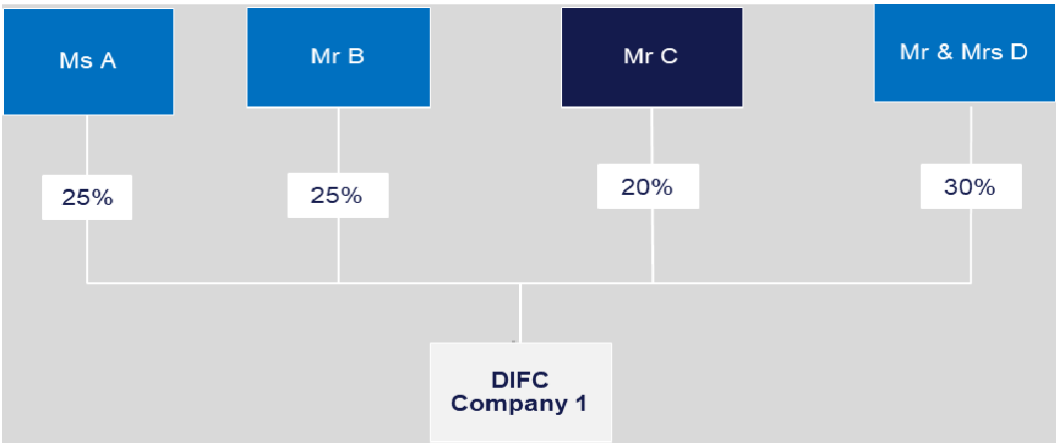
(b) 25% or more of the voting rights in the Company; or

(c) the right to appoint or remove the majority of the Directors of the Company.

## 5.1 Test 1: Ownership

A person who holds shares or voting rights in a Company directly in his or her own name is an Individual Shareholder. In Figure 1 below, Ms A, Mr B and Mr & Mrs D are all beneficial owners of the DIFC Company 1. Note that Mr & Mrs D are joint holders of the shares and as a result each person is treated as owning the entire 30% of the shares. Therefore both Mr & Mrs D are also beneficial owners of Company 1.

*Figure 1:*




Although Individual Shareholders will be recorded on the register of shareholders maintained by the Company and also disclosed as a shareholder on the public

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register maintained by the Registrar, if the Individual Shareholder beneficially owns 25% or more of the shares, he or she must also be recorded on a separate Beneficial Ownership Register and reported to the Registrar in that capacity (refer to Part 8 on the Beneficial Ownership Registers, notices and fines). By entering an Individual Shareholder on the Beneficial Ownership Register, the Company is confirming that the Individual Shareholder is also an Ultimate Beneficial Owner of the Company.

### 5.2 Indirect Ownership

In addition to the Individual Shareholders who fall within points 3.2 – 3.3 above, other Individual Shareholders and natural persons who indirectly own 25% or more of the shares or voting rights in the Company or have the ability to appoint or remove the majority of the directors of the Company, are also Ultimate Beneficial Owners. Such persons must be recorded in the Beneficial Ownership Register and reported to the Registrar (refer to Part 8 of this guidance on Beneficial Ownership Registers, notices and fines).

Some examples of indirect Ultimate Beneficial Ownership include (but are not limited to):

(a) a shareholder of a body corporate shareholder or parent of the DIFC Company who (indirectly) owns 25% or more of the shares (refer to points 3.6 and 3.7 below for further explanation) or voting rights in the DIFC Company;

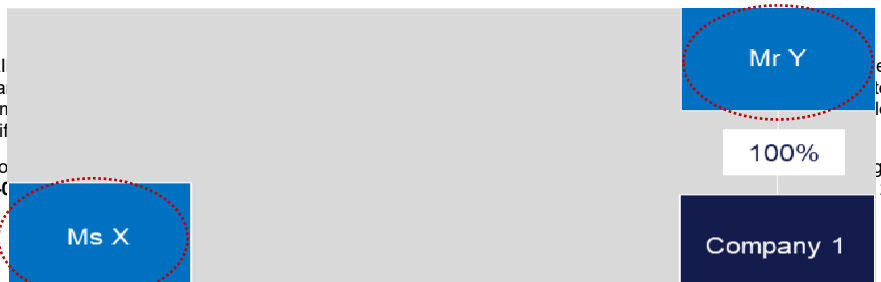
(b) an Individual Shareholder who owns less than 25% of the Shares in the Company, but who has preferential shares (eg as one of the initial shareholders or incorporators) that enable him/her to exercise 25% or more of the voting rights of the Company or the right to appoint or remove the majority of the directors of the Company;

(c) where an Individual Shareholder owns 25% or more of the shares as a nominee shareholder or a trustee, the beneficial owner of the shares is the Ultimate Beneficial Owner. Please refer to the example in 3.8 below for further explanation.

*Body corporate shareholders:* A person holds shares or voting rights indirectly where the ownership structure involves one (1) or more entities. In such cases, the chain of ownership must be 'looked through' in order to determine whether there are any natural persons who indirectly hold 25% or more of the shares in the Company. In Figure 2 below, Ms X is an Individual Shareholder who owns 50% of the shares in DIFC Company 2, while MR Y is the 100% owner of Company 1, which in turn owns 50% of the shares in DIFC Company 2 and is therefore an indirect owner of 50% of the shares in DIFC Company

2. Accordingly both Ms X and Mr Y are the Ultimate Beneficial Owners of DIFC Company 2.

*Figure 2:*

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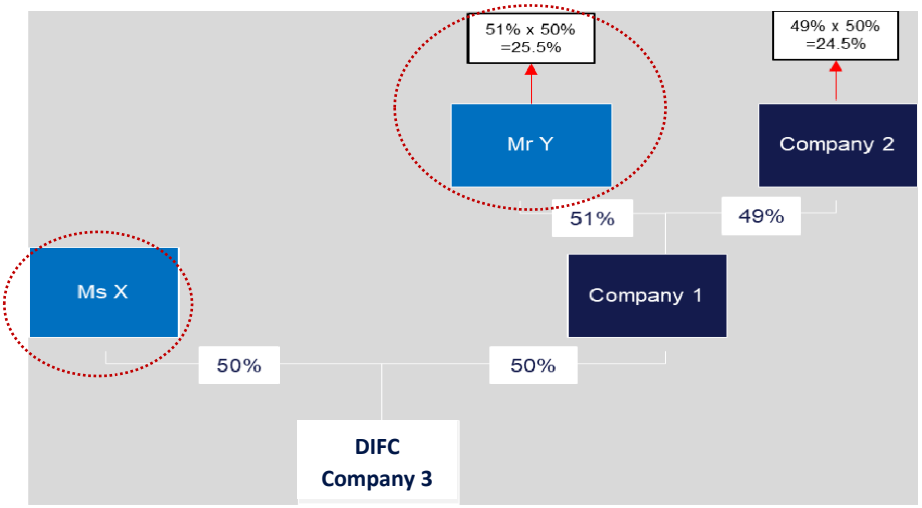
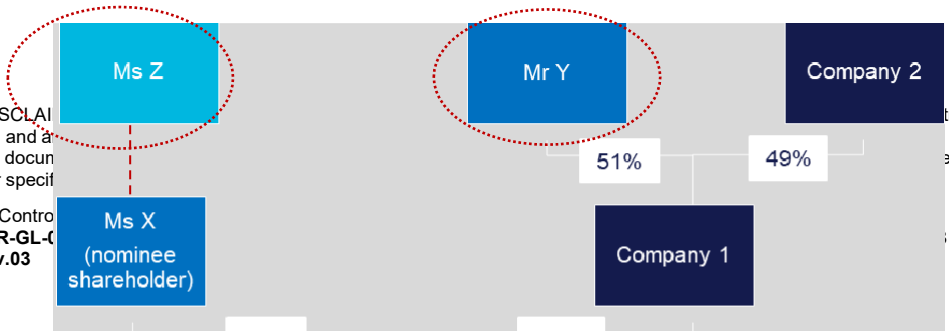
In determining whether a body corporate shareholder has a natural person that meets the 25% ownership or control threshold in the DIFC Company, a calculation must be done. In the simple example below, Ms X would be an Ultimate Beneficial Owner as she directly owns more than 25% of the shares in the DIFC entity as an Individual Shareholder. Mr Y would also be an indirect shareholder as he owns 51% of Company 1 which in turn owns 50% of the DIFC entity. Therefore Mr Y's indirect shareholding in the DIFC Entity is 25.5% and he would therefore also be an Ultimate Beneficial Owner of the DIFC Entity. In most cases there would be no need to look at the shareholders of Company 2 as it has a 24.5% ownership interest in the DIFC Entity, which is below the 25% threshold set by the UBO Regulations.

*Figure 3:*




*Nominee Shareholders:* In the above example, if Ms X was a nominee shareholder holding the shares on behalf of Ms Z then Ms Z would be an Ultimate Beneficial Owner of the DIFC Entity (see Figure 4 below). In this case Mr Y and Ms Z would be the Ultimate Beneficial Owners of the DIFC Entity.

*Figure 4:*

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Please refer to Annex 1 of this guidance which contains examples of more complicated ownership structures that involve multiple body corporate shareholders.

### 5.3 Test 2: Control

Any person who:

(a) controls[1] 25% or more of the shares or voting rights in the Company or has the ability to appoint or remove the majority of the directors of the Company; or

(b) exercises significant control or influence

over the Company[2], will also be an Ultimate

Beneficial Owner of the Company.

Some examples of Ultimate Beneficial Ownership through control include (but are not limited to):

(a) an Individual Shareholder or indirect shareholder who owns less than 25% of the shares in the Company, but who has entered into an arrangement with other shareholders of the Company to enable him/her to control 25% or more of the voting rights of the Company or the appointment or removal of the majority of the directors of the Company (refer to 3.13 and Figure 5 below for further explanation);

(b) any third party who has entered into an arrangement with the shareholder(s) of the Company to control 25% or more of the voting rights of the Company or the appointment or removal of the majority of the directors of the Company (refer to 3.14 and Figure 6 below for further explanation);

(c) any person who has the right under the Articles of Association to exercise control over 25% or more of the voting rights of the Company

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or has the ability to appoint or remove the majority of the directors of the Company;

(d) any person who has an indirect ownership in a Company of less than 25% but who owns a majority interest in a body corporate shareholder that holds 25% or more of the voting rights in the DIFC Company (refer to 3.15 and Figure 7 below for further explanation);

(e) where the Chairman or certain Board member(s) of the Company exercise significant control or influence over the Company and are able to direct the activities of the board or management of the Company; and

(f) where the CEO or some other person exercises extensive or largely unfettered control or influence over the activities or management of the Company (e.g. without requiring board approval).

A person who falls within the examples in 3.11 above will be an Ultimate Beneficial Owner of the Company even if they do not have any ownership interest (directly or indirectly) in the DIFC Company, on the basis that they exercise control over the Company by other means. Such persons must also be recorded in the Beneficial Ownership Register and reported to the Registrar (refer to Part 8 on Beneficial Ownership Registers, notices and fines).

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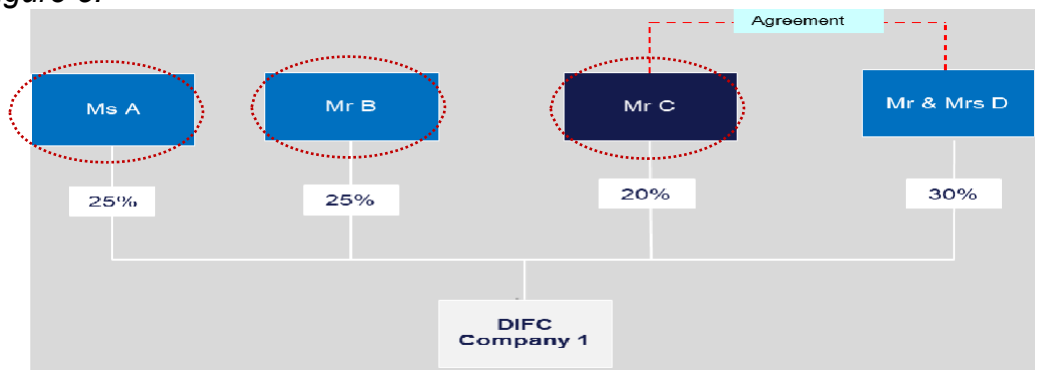
[1] directly or indirectly (other than through ownership)

[2] for example the Company is required or accustomed to act on the instructions of this person, or normally acts on such person's instructions.

*Control by Individual Shareholder:* In Figure 1 (above, replicated and modified below in Figure 5), if there was an agreement between Mr C and Mr & Mrs D, under which Mr & Mrs D must exercise their rights in the way that Mr C directs, this would means that Mr C is an Ultimate Beneficial Owner (despite having less than 25% ownership), on the basis that he controls 50% of the voting rights in DIFC Company
1. In this case the Ultimate Beneficial Owners of DIFC Company 1 will be Ms A, Mr B and Mr C.

*Figure 5:*




*Control by third parties:* In Figure 2 (above, replicated and modified below in Figure

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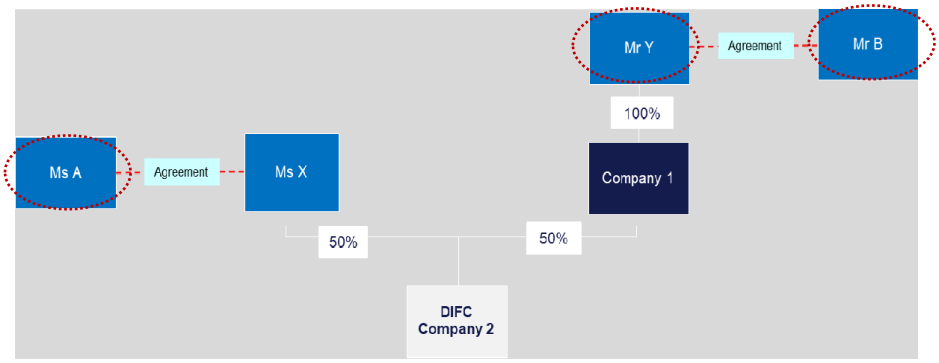
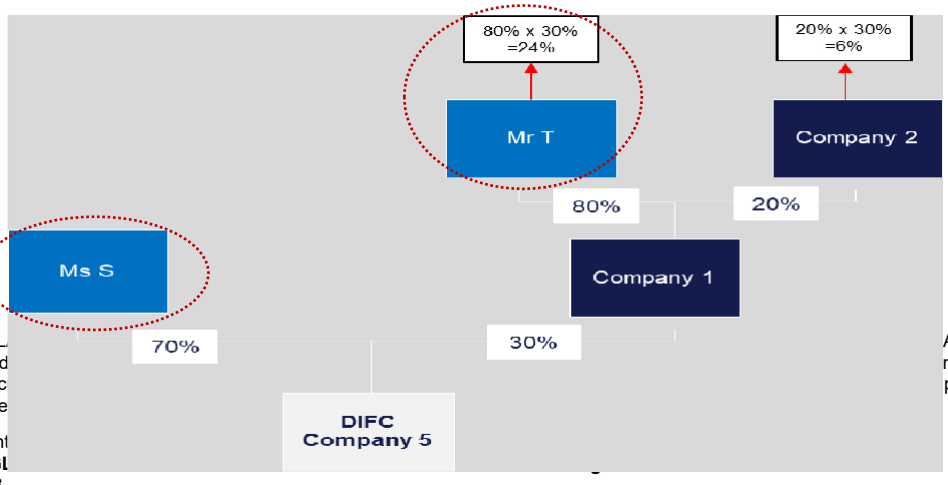
6) Ms X (directly) and Mr Y (indirectly) were the Ultimate Beneficial Owners of DIFC Company 2 (refer to 3.6 above for an explanation). However if Ms X entered into an agreement with Ms A (a third party) under which Mrs X agrees to exercise her rights in the way that Ms A directs, then Ms A (not Ms X) will be an Ultimate Beneficial Owner of DIFC Company 2. Similarly If Mr Y also entered into a separate agreement with Mr B under which Mr Y must obtain the consent of Mr B before exercising his voting rights in relation to Company 1 (and DIFC Company 2), but is not bound to act on Mr B's direction, then both Mr Y and Mr B will also be Ultimate Beneficial Owners of DIFC Company 2 because they both control the exercise of Mr Y's rights. In this case the third parties Ms A and Mr B become Ultimate Beneficial Owners of DIFC Company 2 due to their control over Ms X and Mr Y's rights in the company.

*Figure 6:*




*Control through body corporate shareholder:* In Figure 7 below Ms S is an Individual Shareholder who owns 70% of the shares in DIFC Company 5 and is therefore an Ultimate Beneficial Owner. MR T on the other hand is the 80% owner of Company 1, which in turn owns only 30% of the shares in DIFC Company 5 and is therefore an indirect owner of 24% of the shares in DIFC Company 5 and would not be an Ultimate Beneficial Owner due to his ownership interest being below the threshold. However Mr T has a majority stake in Company 1 which holds 25% or more of the voting rights in DIFC Company 5 and accordingly Mr T is able to control 25% or more of the voting rights in DIFC Company 5. Therefore both Ms S and Mr T are the Ultimate Beneficial Owners of DIFC Company 5.

*Figure 7:*

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### 5.4 Test 3: Management

If no natural person can be identified using Test 1 (ownership) and Test 2 (control) above, then Test 3 will deem each member of the board of directors of the DIFC Company to be the Ultimate Beneficial Owner of the Company. Please refer to Part 7 on deemed Ultimate Beneficial Owners for further information.

Any person identified as an Ultimate Beneficial Owner using Tests 1 – 3 above must be recorded in the Company's Beneficial Ownership Register and notified to the Registrar. Please refer to Part 8 on Beneficial Ownership Registers, notices and fines for further information.

## 6. DETERMINING THE BENEFICIAL OWNERS OF A PARTNERSHIP

The Ultimate Beneficial Owner of a Partnership is defined in Regulation 3.1.1(b) of the UBO Regulations as a natural person who exercises significant control or influence over the activities of the Partnership.

### 6.1 Test 1 - Ownership

Although the above definition is based on control, the ownership test (subject to 4.5 below) can still be used to determine the Ultimate Beneficial Owners of a Partnership, who would normally be as follows:

(a) in the case of a General Partnership - each partner[3];

(b) in the case of a Limited Partnership – each general partner[4]; and

(c) in the case of a Limited Liability Partnership – each member.

Where the partner or member identified in 4.2 above is a body corporate, the Ultimate Beneficial Owner will be the natural person(s) who control that body corporate. Points 3.6 and 3.7 above on body corporate shareholders and Part 7 (on deemed Beneficial Owners) may be used as a guide to determine the Ultimate Beneficial Owner(s) of the body corporate.

However, the Partnership Agreement or other governance documents of the Partnership may provide for another arrangement, and the governance of each Partnership should be carefully considered in order to determine the Ultimate Beneficial Owners of that Partnership.

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In the case where the Partnership has numerous General Partners[5] or members, such that none of them actually exercise significant control or influence over the Partnership, then Test 2 (control) should be used (refer to Part 4B below).

[3] as all partners are jointly and severally liable under the General Partnership Law, DIFC Law No. 11 of 2004.

[4] as the general partner of a Limited Partnership has control of the management and can bind the Limited Partnership.

## 6.2 Test 2 - Control

The UBO Regulations uses the control test to define the Ultimate Beneficial Owners of a Partnership (refer to 4.1 above). Therefore anyone who exercises significant control or influence over the Partnership (regardless of whether they are a partner or member) will be an ultimate Beneficial Owner of the Partnership. For example, in the case of a Limited Partnership a limited partner, a fund manager of a fund[6] or some other person who exercises significant control or influence over the Limited Partnership or who can direct the activities of the partnership, will also be an Ultimate Beneficial Owner.

Where the Partnership has a large number of General Partners or members and the management of the Partnership is conducted by a smaller group (eg a management committee or designated members), the members of that smaller group will be the Ultimate Beneficial Owners of the Partnership.

Alternatively, the ownership and control thresholds that apply to Companies may also be used as a guide to determine the Ultimate Beneficial Owners of a Partnership. Accordingly, consideration could be given to any person(s) who have or are entitled to control (directly or indirectly):

(a) at least a 25% of the capital or profits of the Partnership;

(b) at least 25% of the voting rights in the Partnership; or

(c) appoint or remove the majority of the board or management committee of the Partnership.

## 6.3 Test 3 – Management

If no natural person can be identified using Test 1 (ownership) and Test 2 (control) above, then Test 3 will deem each:

(a) General Partner of a General Partnership or a Limited Partnership and where there are a number of such partners – each partner who is involved in the management of the Partnership; or

(b) member of the board of the Limited Liability Partnership or every designated member of the partnership,

to be an Ultimate Beneficial Owner. Where any such partner(s) are a body

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corporate, the Ultimate Beneficial Owner will be the natural person(s) who control that body corporate

Please refer to Part 7 on deemed Ultimate Beneficial Owners for further information.

Any person identified as an Ultimate Beneficial Owner using Tests 1 – 3 above must be recorded in the Partnership's Beneficial Ownership Register and notified to the Registrar. Please refer to Part 8 on Beneficial Ownership Registers, notices and fines for further information.

[5] General Partners means all the partners of a General Partnership and/or the General Partner(s) of a Limited Partnership (whichever is applicable).

[6] Where the fund is under a Limited Partnership structure

# 7. DETERINING THE BENEFICIAL OWNERS OF NPIOs

The Ultimate Beneficial Owner of an NPIO incorporated in the DIFC is defined in Regulation 3.1.1(c) of the UBO Regulations as a natural person who exercises significant control or influence over the activities of the Board of the NPIO or the person that administers the property or carries out the objects of the NPIO.

As an NPIO does not have 'owners' as such, its Ultimate Beneficial Owners are likely to be the members of its board or anyone who controls the board.

In the event that a member of the board (also referred to as a founding member) is a body corporate, it will be the natural person who controls that body corporate. Please refer to Part 7 on deemed Ultimate Beneficial Owners for further information.

*Exemption:* NPIOs are eligible for exemption under Regulation 2.1(d) of the UBO Regulations if they submit an undertaking to the Registrar, signed by its founding members, stating that it does not, as its primary function, engage in raising or disbursing funds for charitable, religious, cultural, educational, social, fraternal or similar purposes.

An NPIO claiming the exemption under Regulation 2.1(d) of the UBO Regulations will also need to submit the declaration referred to in point 4.3 above on an annual basis as part of its Confirmation Statement, in order to continue to be eligible for the exemption. Should the NPIO fail to do so, it will no longer be eligible for the exemption and will be required to comply with Regulations 3-6 of the UBO Regulations, maintain its own Beneficial Ownership Register and notify the Registrar of its Ultimate Beneficial Owners (refer to Part 8 on Beneficial Ownership Registers, notices and fines). Failure to do so will result in fines of up to US$25,000 per contravention.

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# 8. DETERMINING THE BENEFICIAL OWNERS OF FOUNDATIONS

The Ultimate Beneficial Owner of a foundation registered or continued in the DIFC ("Foundation") is defined in Regulation 3.1.1(c) of the UBO Regulations as a natural person who exercises significant control or influence over the activities of the Council of the Foundation, or the person(s) who administers the property or carry out the objects of the Foundation.

The Ultimate Beneficial Owners of a Foundation are likely to be the members of the Council (please refer to Part 7 on deemed Ultimate Beneficial Owners for further information) and/or the Founder of the Foundation (if powers are reserved to the Founder under the Charter and By-laws of the Foundation).

In the event that a member of the Council or the Founder is a body corporate, it will be the natural person(s) who control that body corporate. Points 3.6 and 3.7 above on body corporate shareholders and Part 7 (on deemed Beneficial Owners) may be used as a guide for determining the Ultimate Beneficial Owner of the body corporate.

Any person identified as an Ultimate Beneficial Owner of the Foundation must be recorded in the Foundation's Beneficial Ownership Register and notified to the Registrar. Please refer to Part 8 on Beneficial Ownership Registers, notices and fines for further information.

# 9. DEEMED ULTIMATE BENEFICIAL OWNERS

If no natural person can be identified as an Ultimate Beneficial Owner of the DIFC entity in Parts 3 – 6 above under the ownership or control tests, then every member of the DIFC Entity's Governing Body (as outlined below) will be deemed to be an Ultimate Beneficial Owner:

(a) in the case of a Company, every director of the DIFC Company (that makes up the board of directors) will be deemed to be an Ultimate Beneficial Owner;

(b) in the case of a Partnership, each:

(i) partner of a General Partnership;

(ii) general partner of a Limited Partnership; and

(iii) each member of a Limited Liability Partnership; and

where the Partnership has a large number of General Partners or members and the management of the Partnership is conducted by a smaller group (eg a management committee or designated members), the members of that smaller group will be deemed to be the Ultimate

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Beneficial Owners of the Partnership;

(c) in the case of an NPIO, every member of the board (also referred to as a founding member) will be deemed to be an Ultimate Beneficial Owner; and

(d) in the case of a Foundation, every member of the Council will be deemed to be an Ultimate Beneficial Owner.

Where a member of the governing body identified in 7.1(a) – (d) above is a body corporate, the natural person(s) who control the body corporate[7] will be deemed to be an Ultimate Beneficial Owner of the DIFC entity.

## 10. BENEFICIAL OWNERSHIP REGISTERS, NOTICES AND FINES

The UBO Regulations require all Registered Persons (ie all DIFC entities) to maintain its own private Beneficial Ownership Register and to keep this information up to date and accurate, unless they are exempt under Regulation 2.1 of the UBO Regulation[8]. It also requires DIFC entities to notify the Registrar of their Ultimate Beneficial Owners and any changes to them. Please.

All Ultimate Beneficial Owners identified under Parts 3 – 7 (as applicable) must be:

(a) recorded on a private Beneficial Ownership Register maintained by the DIFC Entity in accordance with Regulation 4.1.4 of the UBO Regulations within:

(i) ninety (90) days of the Commencement Date for entities that were already in existence on that date (Regulation 4.1.2);

(ii) within thirty (30) days of being incorporated, registered or continued in the DIFC, for entities established after the Commencement Date (Regulation 4.1.3); or

(iii) within thirty (30) days of becoming an Ultimate Beneficial Owner or any changes to the details of such a person (Regulation 4.1.1),

as applicable and:

(b) notified to the Registrar within:

(i) the period specified in 8.2(a)(i) above (Regulation 6.1.2(a)) ; or

(ii) within thirty (30) days of any change to the Beneficial

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Ownership Register (Regulation 6.2.1).

A Registered Person established after the Commencement Date is deemed to have provided details of its Ultimate Beneficial Owner(s) to the Registrar as part of the application for incorporation, registration or continuation (Regulation 6.1.3).

In addition, any entity that is partially exempt from the UBO Regulations under Regulation 2.2 must also be recorded in the Beneficial Ownership Register. Please refer to the Guidance on Exempt Entities for further information on Registered Persons and beneficial owners that qualify for either a full or partial exemption from the UBO Regulations and the details that must be maintained in the Beneficial Ownership Register in respect of such entities.

A Registered Person that fails to meet the requirements in points 8.1 – 8.3 above is liable to a fine of up to US$25,000 for each contravention under the UBO Regulations.

[7] Points 3.6 and 3.7 above on body corporate shareholders may be used as a guide for determining the Ultimate Beneficial Owner of the body corporate.
[8] Unless they are completely exempt from the UBO Regulations under Regulation 2.1 of the UBO Regulations. Please refer to the Guidance on Exempt Entities for further details on exempt entities.

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# 11. ESTABLISHING CONTROL THROUGH OTHER MEANS (REGULATION 3.1.4)

## 1. General principle

For the purposes of Regulation 3.1.4 of the Ultimate Beneficial Ownership Regulations, a natural person may exercise control over a Registered Person through means other than ownership, voting rights or formally enforceable legal rights.

The assessment should be one of substance rather than form. Regard should be had to whether, taking into account all relevant facts and circumstances, a natural person has the ability in practice to exercise significant or decisive influence over the Registered Person or its Governing Body, including where such influence arises through informal arrangements, relationships or economic dependence.

The existence of a legal or contractual right to exercise control is not necessary where the evidence demonstrates that such control is in fact exercised.

## 2. Circumstances which may indicate control through other means

Without limitation, circumstances that may indicate that a natural person exercises control through other means include where that person:

2.1 has a personal, family or other close relationship with a shareholder, director, partner, founder, council member or other person through whom he or she is able in practice to direct or materially influence decisions of the Registered Person;
2.2 provides, controls or is materially responsible for financing the Registered Person in circumstances giving that person significant influence over its strategic or operational decisions;
2.3 exercises influence through loans, debt instruments, guarantees, security arrangements or other financing arrangements, particularly where the Registered Person or its owners are economically dependent upon that person;
2.4 exercises influence by reason of a historical, contractual, commercial or other association with the Registered Person or persons formally controlling it;
2.5 has the practical ability to appoint, remove, select or influence the appointment of members of the Governing Body or senior management, notwithstanding the absence of a formal legal right to do so;
2.6 routinely gives directions, instructions or wishes that the Registered Person, its Governing Body, shareholders or senior management follow or are accustomed to follow;
2.7 controls decisions through a nominee shareholder, nominee director, intermediary, family member, associate or other person acting formally in his or her own name;
2.8 exercises control pursuant to an informal understanding, voting arrangement, side agreement or concert-party arrangement;

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2.9 has the ability to determine or materially influence strategic decisions relating to the business, assets, financing, distributions or general direction of the Registered Person;

2.10 uses, enjoys or derives substantial benefit from assets held by the Registered Person in circumstances indicating that the Registered Person or its assets are effectively being operated for that person's benefit; or

2.11 otherwise possesses sufficient economic, personal, contractual or practical influence that the Registered Person or its Governing Body is required or **accustomed in practice** to act in accordance with that person's instructions or wishes.

## 3. Important qualification: relationship or financing alone is not enough

The mere existence of any of the relationships or arrangements referred to above does not, of itself, establish ultimate beneficial ownership. The relevant question is whether the relationship or arrangement confers, or results in the exercise of, actual significant or effective control over the Registered Person.

For example:

(a) a parent-child relationship does not automatically make both persons UBOs;
(b) an ordinary commercial lender does not become a UBO merely by providing finance;
(c) a professional adviser does not become a UBO merely because the Registered Person follows professional advice;
(d) a minority investor with standard minority-protection rights does not necessarily exercise control.

## 4. Evidence that should be considered

In assessing whether a natural person exercises control through other means, a Registered Person should consider all relevant circumstances and should not limit its assessment to constitutional documents or legally enforceable agreements.

Relevant evidence may include:

(a) board and shareholder minutes;
(b) patterns of decision-making;
(c) correspondence, emails and instructions;
(d) financing arrangements and guarantees;
(e) shareholder or voting agreements;
(f) powers of attorney;
(g) nominee arrangements;
(h) evidence as to who negotiates material transactions;
(i) evidence as to who determines business strategy;
(j) arrangements governing distributions or access to assets;
(k) family or personal relationships where coupled with evidence of actual influence;
(l) the source of capital or financial support; and
(m) the conduct of directors, shareholders or senior management over time.

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## 5. Regulation 3.1.4 considered in the context of nominee control

The existence of a nominee shareholder or nominee director arrangement may be relevant evidence of control through other means. In particular, where another natural person is the person whose directions, instructions or wishes a nominee director or shareholder is accustomed or required to follow, that person should be considered for identification as an Ultimate Beneficial Owner in accordance with the Regulations.

## 6. Record Keeping

Registered Persons should retain adequate records demonstrating the reasonable steps taken to identify any person exercising control through other means and the basis upon which their determination was reached.

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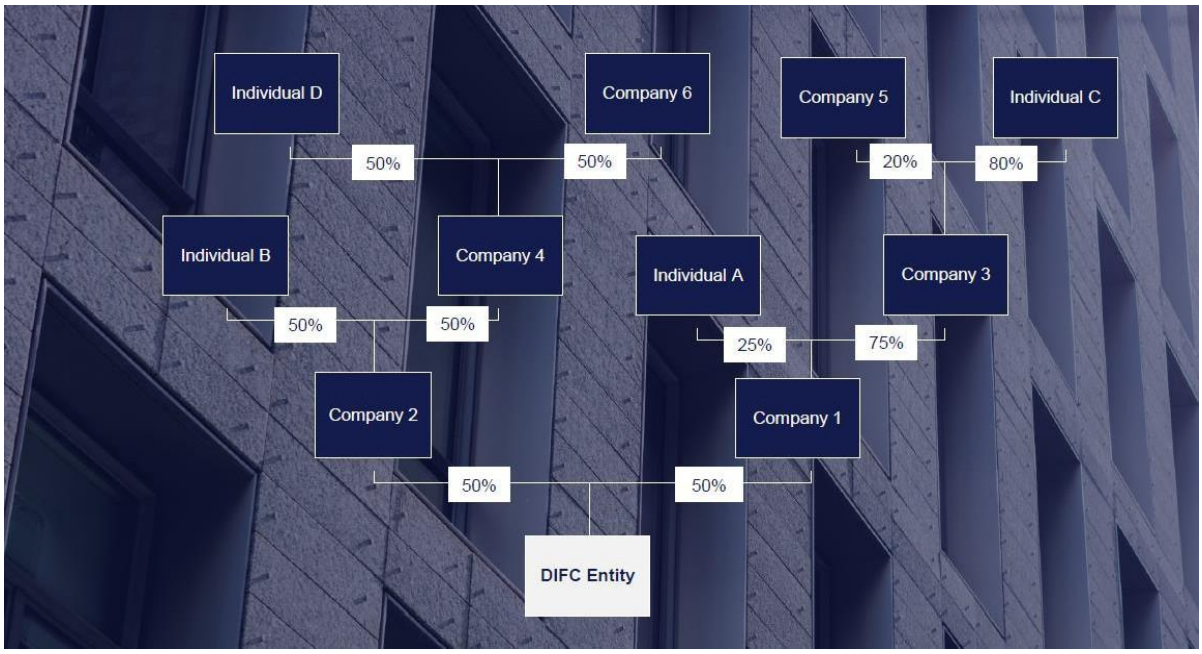
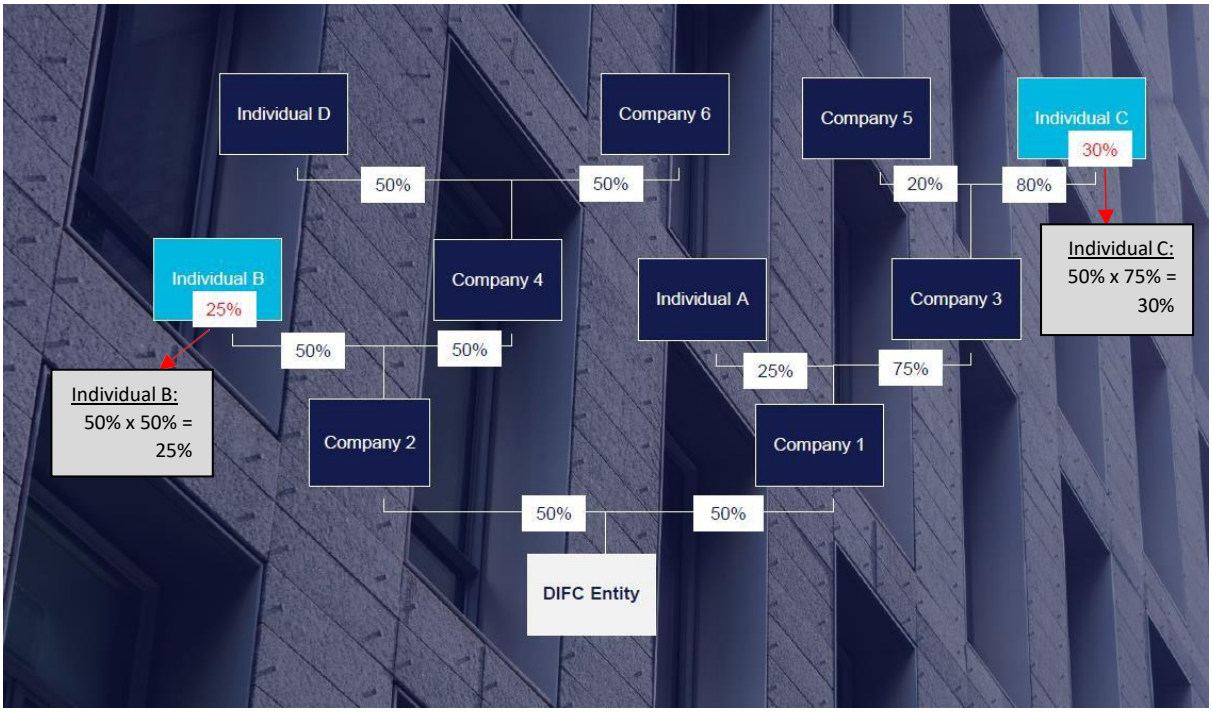
# 12. ANNEX 1 - EXAMPLES

## Example 1




## Example 1 - answer




## Example 2

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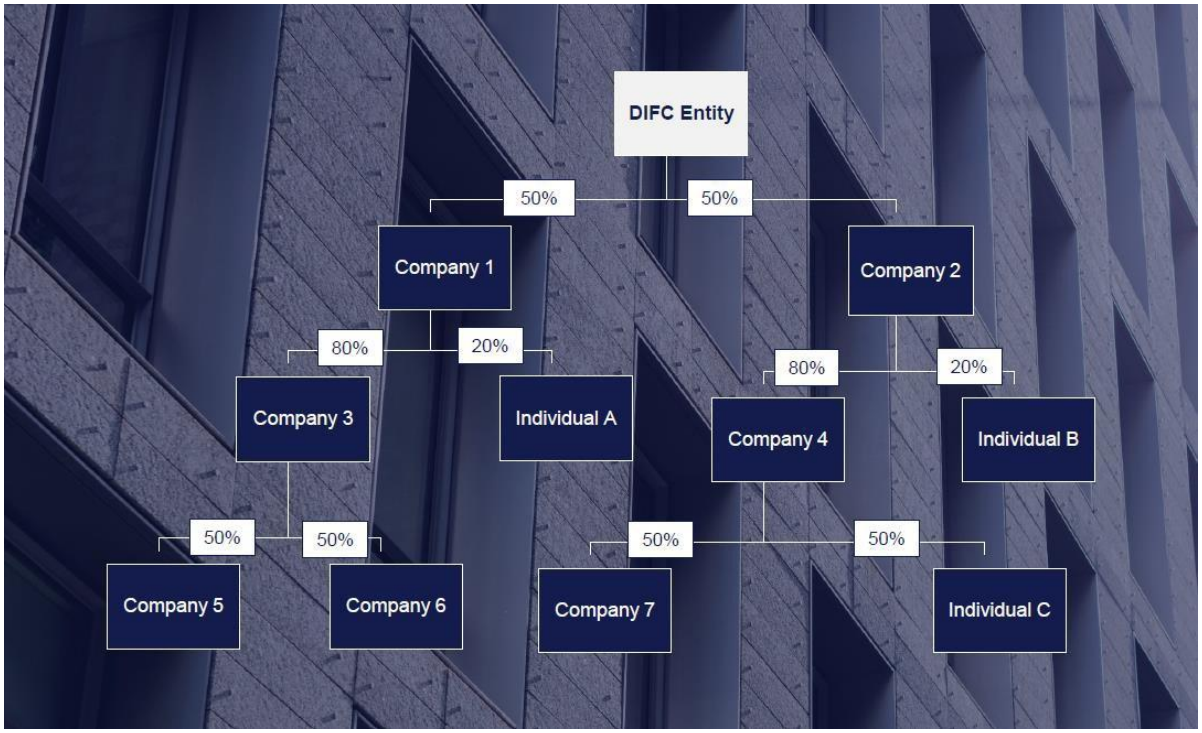
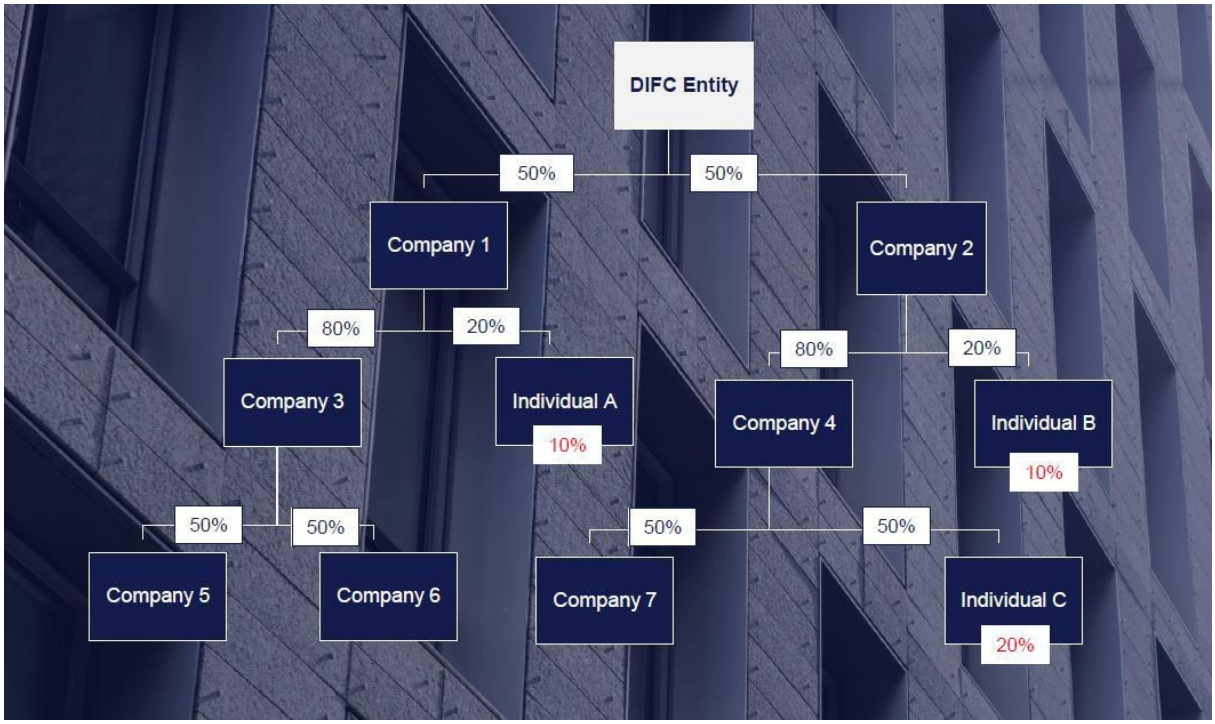



Example 2 – calculations




Example 2 – Answer

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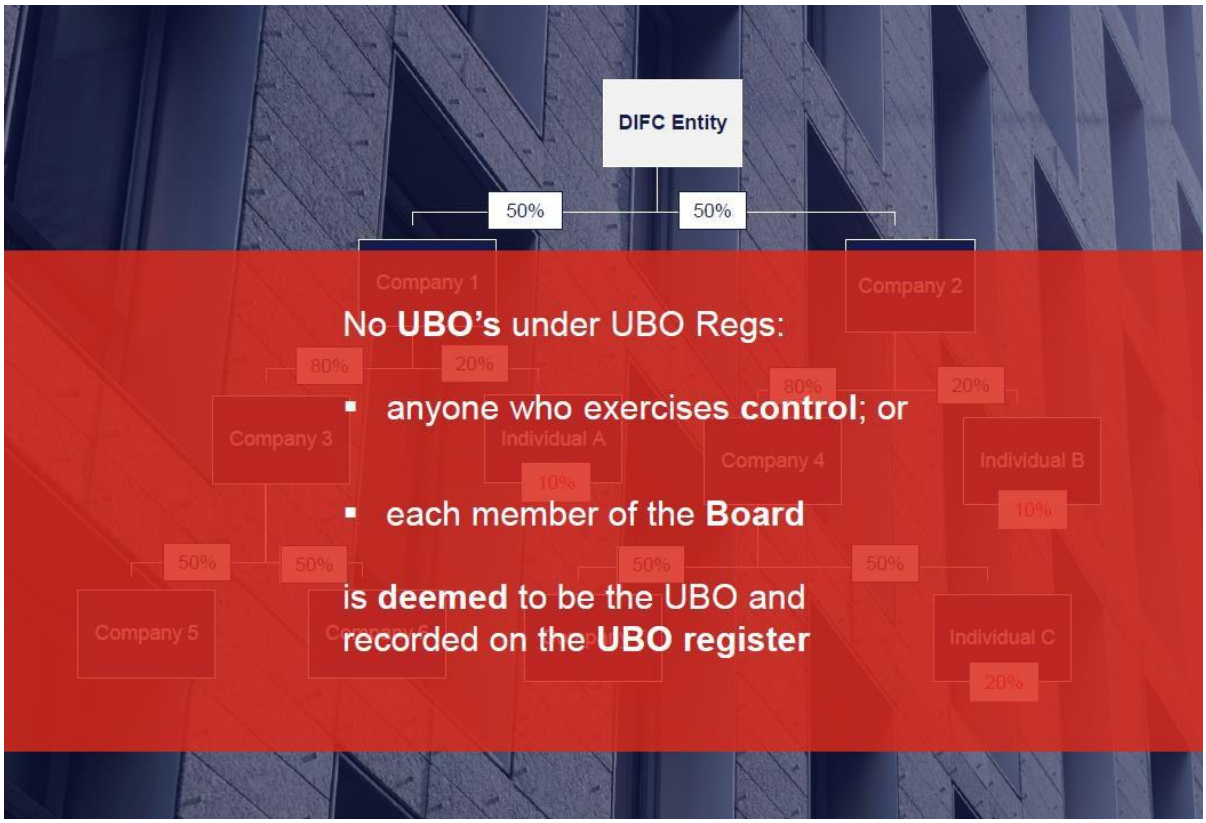


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