

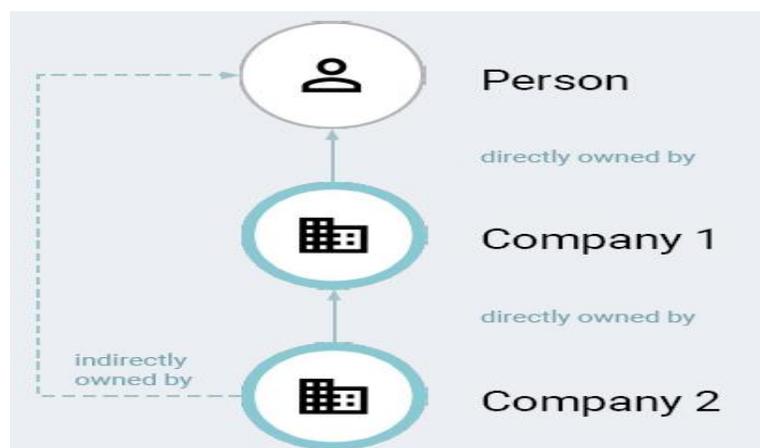


## Frequently Asked Questions (FAQs) on Ultimate Beneficial Ownership

### Q1. How would you differentiate between direct or indirect ownership or control?

A. Direct owner refers to individuals and entities who directly own shares in any legal entity. For example, if you own 20% of the shares in a particular entity, you become a direct owner. A direct owner need not necessarily be an individual (natural person) and can also be another entity as in the case where the parent company is a direct owner in its direct subsidiary.

A person can be an indirect owner, if a company or any other business entity in which he has shares, owns another company, as illustrated below. For example, if Company 2 is owned to the extent of 20% by Company 1, and Company 1 is owned to the extent of 50% by a natural person, then the said Person is an indirect owner of Company 2 through Company 1, to the extent of 10% ownership in Company 2 (50% of 20%).



### Q2. Which companies are required to comply with the provisions of Circular no. 16 of 2018 read with Circular no. 20 of 2018?

- A. The aforesaid Circulars are only applicable upon those companies which have:
- One or more legal persons/companies as their member or shareholder, AND

- b. Such legal persons/companies hold not less than 10% ownership or control rights in the companies subject to requirement of these Circulars

Because a company is not directly aware of the pattern of shareholding of the legal persons appearing as its members, it would determine the status of Ultimate Beneficial Ownership (UBO) of the natural persons who are the members or shareholders of the legal persons, after obtaining information in respect of them. Only if the indirect shareholding of any such natural person, which is arrived at by multiplying his ownership percentage in the legal person with the ownership percentage of the legal person in the company, is not less than 10%, his particulars would be entered in the register of UBO to be maintained by the company.

For instance, as per illustration given in Q1 above, assume that Company 2 has a legal person Company 1 as its member with 80% of its share capital held by it, and Company 1 has a natural person Mr. X with 20% shares in Company 1. Mr. X would be classified as a UBO through the following calculation:

Mr. X direct percentage shareholding in Company 1 = 20%

Mr. X indirect shareholding in Company 2

= (Shareholding percentage of Company 1 in Company 2) X (Shareholding percentage of Mr. X in Company 1)

= 80% X 20% (i.e. 20% of 80%)

= 16%

In the given illustration, Mr. X holding more than 16% shares in Company 2 through Company 1 would be classified as a UBO in Company 2. Company 2 would be required to enter particulars of Mr. X as specified in Circular no. 16 of 2018 in its register of UBO. For

**Q3. What is the mechanism for obtaining UBO information by a company, having legal person(s) as its members, from ultimate beneficial owners?**

**A.** Following procedure is to be followed to ensure compliance with the requirements to obtain and maintain ultimate beneficial ownership information.

- 1) In respect of members of a company, say Company X, who are natural persons and hold not less than 10% ownership or controlling rights in it, no information would be required to be entered in the register of UBO because their particulars would already being maintained and recorded in the register of members of Company X under section 119 of the Act read with regulation 19 of the Regulations.
- 2) Company X will circulate the letter requiring ultimate beneficial ownership information from those members who:
  - (i) are legal persons, i.e. other than natural persons or individuals, and
  - (ii) have not less than 10% ownership or controlling stake in Company X;

- 3) A Company Y which is a member of Company X and in receipt of the above letter from Company X will then;
  - (i) in respect of its members who are natural persons and hold not less than 10% ownership or controlling interest, extract information from its register of members required under section 119 of the Companies Act, 2017 read with regulation 19 of the Companies (General Provisions & Forms) Regulations, 2018, for provision to Company X. It may be noted that the sets of information required vide clause 4 of circular no. 16 and that vide regulation 19 of the Regulations are almost identical;
  - (ii) in respect of its members who are legal persons and hold not less than 10% ownership or controlling interest, circularize the requirement as requested by Company X;
- 4) If there is another company or legal person in the ownership chain which is a member of Company Y, as per sr. no. 3(ii) above, the aforesaid process as mentioned in sr. no. 3(i) above will be repeated, until the natural person or individual exercising ultimate ownership or control and lying at the end of the ownership chain is reached;
- 5) Company Y will provide the information available with it in its register of members in respect of members who are natural persons as at sr. no. 3(i), and that received from members who are legal persons as at sr. no. 3(ii) and 4 above, to Company X;
- 6) Company X will enter the particulars of those natural persons who are members of Company Y and of any other legal person up the ownership chain, and have ultimate shareholding or controlling interests of not less than 10% in Company X through Company Y, in the register of ultimate beneficial ownership as specified in terms of Circular no. 16 of 2018;

To illustrate, assume that Company X has Company Y as its member with 50% shareholding in it, and Company Y has two individuals as members i.e. Mr. A and Mr. B with 90% and 10% shareholding respectively in Company Y. In this case, the indirect or ultimate beneficial ownership of Mr. A in Company X would be 45% ( $50\% \times 90\%$ ) and that of Mr. B in Company X would be 5% ( $50\% \times 10\%$ ). Accordingly, particulars of Mr. A would be required to be maintained by Company X.

For the purpose of compliance with Circulars no. 16 and 20 of 2018, Company X would enter the particulars of Mr. A in its register of ultimate beneficial ownership only. The ultimate or indirect shareholding of 5% possessed by Mr. B in Company X being less than the requisite ultimate shareholding of 10% would not be reflected on the said register.

**Q4. Assume that a company has five members including three natural persons and two legal persons with varying ownership percentages, how would it determine the UBOs whose particulars would be needed to be entered in the UBO register?**

**A.** Let's assume that Company A has the following members, as appearing on its register of members required to be maintained under section 119 of the Companies Act, 2017:

Member	Ownership percentage
Mr. X	10%
Mr. Y	10%
Mr. Z	10%
Company B	30%
Company C	40%

Company B again has two natural persons Mr. BA and Mr. BB as its members holding 70% and 30% shares, respectively. Company C is a single member company with all its shares held by Mr. CA.

The ultimate beneficial owners of Company A in the given illustration would be as follows:

Natural Persons	Registered Member of	Direct shareholding in Company A	Indirect shareholding in Company A	UBO (minimum 10% indirect shareholding threshold)
Mr. X	Company A	10%		No
Mr. Y	Company A	10%		No
Mr. Z	Company A	10%		No
Mr. BA	Company B		21% (70% of 30%)	Yes (UBO of Company A)
Mr. BB	Company B		9% (30% of 30%)	No
Mr. CA	Company C		40% (100% of 40%)	Yes (UBO of Company A)

Company A would obtain UBO information through Companies B and C following the mechanism, as illustrated in Q3 above.

Based on the aforesaid illustration, Company A would determine the ultimate beneficial ownership by calculating the product of shareholding of Company B in it and the shareholding of the natural persons who are members of Company B, with similar exercise to be carried out in case of Company C.

Mr. BA and Mr. CA would qualify for classification and recording of particulars as UBO in the records of Company A.

**Q5. How would you differentiate between beneficial ownership and legal ownership?**

**A.** Ownership is the right to possess, use, sell, donate or give as a gift any asset or property belonging to a person known as the “owner.” An owner can either be a beneficial owner or a legal owner.

A legal owner is essentially the 'official' or 'formal' owner of a property. The legal owner of an asset may either be a natural person or a legal person that holds the legal title of that asset.

On the other hand, a beneficial owner is the person with the right to enjoy or benefit from the property – this can include the right or entitlement to any income from the property. In majority of the situations, the same person is the legal owner as well as the beneficial owner. A beneficial owner must always be a natural person, as a legal person cannot exert “ultimate” control over an asset or entity. This is due to the fact that legal persons are always controlled, directly or indirectly, by natural persons.

**Q6. What is the purpose behind the requirement to maintain ultimate beneficial ownership information by the companies?**

**A.** The requirement to maintain UBO information is aimed at determining the true owners of a company. Under normal circumstances, a company’s corporate ownership structure comprises a few individuals or natural persons holding shares in the share capital of the company, called as shareholders or members. The particulars of such members are already required to be maintained in a ‘register of members’ under section 119 of the Companies Act, 2017. Detailed particulars to be maintained in the said register are specified in terms of regulation 19 of the Companies (General Provisions & Forms) Regulations, 2018 (the “Regulations”).

However, there might be certain cases where legal persons or corporate entities are appearing as members of the company in which case the required particulars as to the true owners, being the ultimate shareholders, would not be available. Information about the actual (ultimate) owners and shareholders is the most significant information for a large number of stakeholders of a company who may comprise creditors, tax authorities, corporate registry, major suppliers, major customers, financial institutions, etc.

For instance, a financial institution before establishing a banking relationship with a company would be interested in knowing the material particulars of a company including its shareholders, members and directors, as part of its KYC/CDD obligations. This information is obtained through the corporate registry in the form of statutory returns, financial statements and other documents of the company. However, in certain cases, the members appearing on the returns are themselves companies or other legal persons whose shareholders and members are not apparent from the said documents. In such a case, the financial institution would be interested in knowing the ultimate individual owners who are natural persons exercising the ownership and control rights, and enjoying the cash flow rights in the company with whom the financial institution is contemplating to establish a business relationship.

Accordingly, the State Bank of Pakistan, vide its BPRD Circular Letter no. 18 of 2018 issued on October 19, 2018, has required all the banks and DFIs to enhance their efforts to obtain relevant information with the objective to know the ultimate beneficial ownership of accounts/transactions. Vide the same circular letter, reference has been made to SECP’s Circular no. 16 of 2018 dated

August 29, 2018 as available on SECP’s website at <https://www.secp.gov.pk/laws/circulars/> through which SECP has directed all companies to enhance their efforts to obtain and maintain up-to-date ultimate beneficial ownership information.

**Q7. Who needs information on beneficial ownership and control?**

A. Beneficial ownership information is necessary to detect and prevent tax evasion, corruption, money laundering, terrorist financing, and other illicit behavior involving one or more companies. Public trust in companies and markets largely depends on the existence of an accurate disclosure regime that provides transparency in the beneficial ownership and control structures of companies.

BO information assists financial institutions in applying adequate customer verification procedures before commencement of the relationship with their customers. This is also likely to assist the companies themselves in understanding their ultimate owners/controllers where there are complex corporate ownership and/or control structures.

Different authorities may have a recognisable legal interest in obtaining information on beneficial ownership and control in order to investigate suspected illicit activities. Law enforcement authorities investigating and prosecuting money laundering and other crimes, tax authorities verifying compliance with tax laws, and securities regulators investigating market manipulation, unlawful insider trading, and fraud are just some of the authorities who may require information on beneficial ownership and control. Courts may also need such information in the context of corporate self-dealing and other litigation cases. Legal and beneficial ownership information can assist law enforcement and other competent authorities by identifying those natural persons who may be responsible for the underlying activity of concern, or who may have relevant information to further an investigation.

**Q8. How the regulatory requirements for maintenance of register of members required under section 452 of the Companies Act, 2017 differs from the register of ultimate beneficial owners?**

A. The regulatory requirements for the two different provisions are compared below:

	<u>Circular nos. 16 and 20 of 2018 read with section 453 and 510 of Companies Act, 2017</u>	<u>Circular no. 32 of 2017 read with section 452 of Companies Act, 2017</u>
<b>Applicability</b>	All the companies having natural persons as ultimate beneficial owners (UBO) with <u>not less than 10% ownership/ control rights in that company through legal persons</u>	Every substantial shareholder (having not less than 10% interest), officer of the company or the company itself, having <u>shareholding or other interest in a foreign company or body corporate</u>

<b>Represents</b>	<b>Ultimate Ownership of the company</b>	<b>Investment by substantial shareholders, officers or the company</b>
<b>Information to be maintained by the company</b>	Yes	Yes
<b>Information to be notified to the registrar or Commission</b>	No, unless demanded	Yes
<b>Information is publicly available</b>	No	Yes
<b>Information to be provided to other authorities</b>	Yes, as may be demanded by other authorities from the companies	Yes, by the Commission
<b>Penal provision for non-compliance</b>	Yes	Yes

**Q9. What is the role and purpose of Financial Action Task Force?**

**A.** The **Financial Action Task Force (FATF)**, an inter-governmental body formed to coordinate efforts on Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT), has issued a set of 40 recommendations which serve as international standards for combating ML/TF. Pakistan is a member of APG- a FATF Styled Regional Body, and is required to adopt FATF standards as per membership obligations and also to comply with the UN Resolution.

**FATF recommendation 24** require countries to take measures to prevent the misuse of legal persons for ML/TF purposes, and ensure that there is adequate, accurate and timely information available with the companies on the ultimate (actual) beneficial ownership and control of legal persons that can be accessed in a timely manner by competent authorities

**Q10. What are the requirements for provision of UBO information to regulatory authorities?**

**A.** Circular no. 16 of 2018 specifies the following requirements for provision of information to regulatory authorities or agencies:

- ▶ SECP may require the information from a company or a class or classes of companies relating to its/their ultimate beneficial owners or changes thereto within such time period as specified in the notice.

- ▶ Companies shall also provide this information to any other authority or agency of the Government pursuant to the powers to call for information entrusted by law to such authority or agency.
- ▶ Each company shall authorize its chief executive officer or one of its directors to provide the requisite information to the concerned authorities, and provide further assistance as may be needed.

**Q11. Is it required to maintain a register of ultimate beneficial ownership in case there is no ultimate beneficial owner of the company as defined in circular no. 20 of 2018?**

**A.** In such a case, the company would not be required to maintain the register of UBO.

**Q12. Is it required to regularly or periodically submit the information of ultimate beneficial owners to SECP?**

**A.** No, there is no periodic or regular reporting requirement for submission of this information to SECP. However, in terms of para xx circular no. 16 of 2018, SECP may require any company or class or classes of companies to submit this information through a notice within such time period as may be specified in the notice. Any company maintaining this information shall also be bound to provide the same to any other authority or agency of the Government as required.

**Q13. How would you differentiate between a legal person and a natural person?**

**A.** **Legal persons** are any legal entities which are formed and established through a law, such as public companies, private companies, limited liability partnerships, associations not for profit, etc. registered under the Companies Act, 2017.

FATF recommendations define legal persons as any entities, other than natural persons, that can establish a permanent customer relationship with a financial institution or otherwise own property. This can include companies, bodies corporate, foundations, partnerships, or associations and other relevantly similar entities that have legal personality.

**Natural persons** are living human beings or individuals, who for the purpose of FATF recommendations, shall be recognized as ultimate beneficial owners if exercising ownership and control rights in companies indirectly through legal persons.

Both a legal person as well as a natural person can establish a permanent customer relationship with a financial institution or otherwise own property.

**Q14. What is the difference between a member and a shareholder?**

**A.** A shareholder is a person who owns the share in a company whereas a member is a person whose name is entered or recorded in the register of Members maintained by the Company. The name of a person will be entered or recorded in the register of members, in the capacity of a subscriber upon registration of a company, and later if any person agrees in writing to become a member of the company.

Every member may not be a shareholder and likewise every shareholder may not be a member.

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