



# BENEFICIAL OWNER (BO)

## What does BENEFICIAL OWNER (BO) mean?

The BO is always one or more natural persons who ultimately own or control a legal entity or arrangement, such as a company, foundation, partnership or trust. Sometimes it is expressed as the Ultimate Beneficial Owner, or UBO, but it means the same thing.

## Who needs to know about BO?

Anyone with a business, or a bank account or similar, needs to know about BO. It applies to individuals, companies, foundations, partnerships and trusts.

## What do I need to do?

If this applies to you, you need to know who the BO is. As part of its audits or other investigations, the Department of Customs and Inland Revenue (DCIR) will ask you who the BO is. Vanuatu Financial Services Commission (VFSC) and your bank or similar institution will also ask you.

## What if I'm in business by myself as an individual, or my bank account or similar is just in my name?

In this case, you as an individual are the BO.

## How can I get more information?

After reading this document, if you need more information, please go to the DCIR website at the Exchange of Information page:

<https://customsinlandrevenue.gov.vu/home/section/inland-revenue/international.html>.

Or you can phone the Vanuatu Competent Authority on 33094, send them an email at [vca@vanuatu.gov.vu](mailto:vca@vanuatu.gov.vu), or visit the DCIR Taxpayer Services counter.



If you need to know about your BO requirements with VFSC, or with your bank or similar institution, please contact them directly.

## Why is BO important in Vanuatu, if we don't have income tax?

The availability of BO information is now a key requirement of international tax transparency and the fight against tax evasion and other financial crimes. People from all around the world may want to set up legal entities or arrangements, or open bank or similar accounts, in Vanuatu.

Knowing the identity of the natural persons behind the legal entities and arrangements in Vanuatu helps Vanuatu preserve the integrity of its own tax, financial and banking systems. Vanuatu also has information sharing agreements with over 130 countries (treaty partners). Knowing the beneficial owner gives treaty partners a means of better achieving their own tax goals. Transparency of ownership of legal entities and arrangements is also important in fighting other financial crimes, such as corruption, money laundering, and terrorist financing, so that the real owners cannot disguise their activities and hide their assets and the financial trail from law enforcement authorities using layers of legal structures spanning multiple countries.

## What is the law in Vanuatu?

Under the Tax Administration Act No.37 of 2018 (TAA), as part of their record keeping requirements, a business must keep records that enable the identity of the person (and if the person is an entity, the BO of that entity), to be available at any time.

## General Rules

- An entity can have more than one Beneficial Owner.
- BO may be traced through any number of persons or arrangements of any description.
- The records of BO must be adequate, accurate and **up to date**.
- For a natural person: the records must identify the person, or
- For an entity: the records must identify the BO of the entity.
- **Up to date** means:
  - **If beneficial owner changes:** the business updates its records within 10 days;
  - **If the person suspects a change:** the person confirms and validates the change and updates the records within 10 days;
  - **Otherwise,** the person must check the BO at least once every 12 months.



- The records need to be kept throughout the life of the business, and for 5 years after the business ceases to exist.

The TAA and accompanying Regulations set out rules for identifying the BO of a Company, Foundation, Partnership and Trust.

There are several criteria by which the BO of an entity can be identified. If a natural person meets one or more of those criteria, they are a BO. Therefore, an entity can have several BO's.

**See the following pages for guidance and examples on how to identify a BO.**



## BO of a Company:

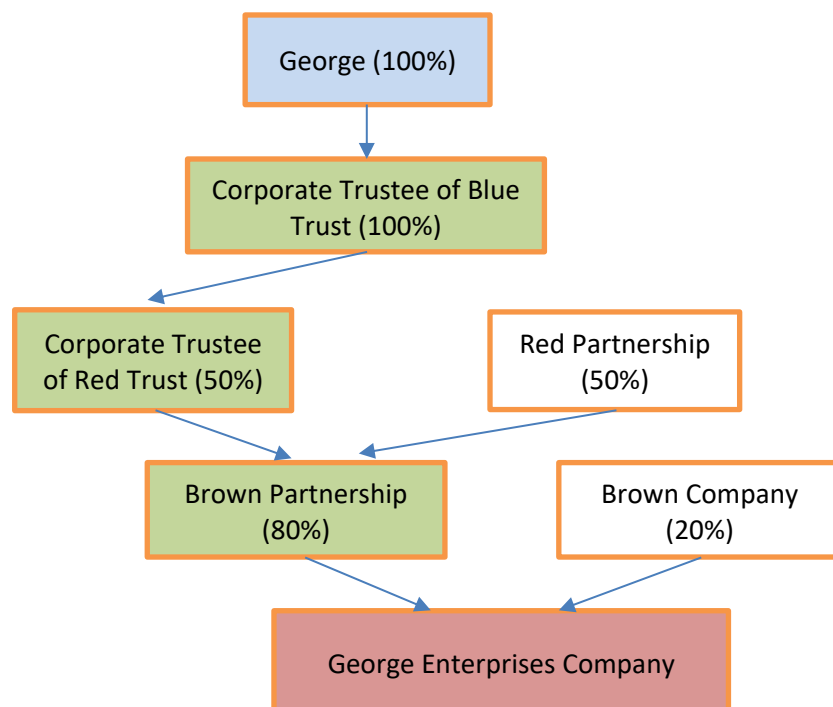
### Company Criterion 1:

The natural person who:

- Ultimately owns or controls the company, in whole or in part through:
  - Shares, voting rights, or other membership interests.

**Example of BO under Company Criterion 1:** George owns 40% of the shares in a company named “George Enterprises Company”, but through a chain of trusts, partnerships and other companies:

- George owns 100% of the shares of the Trustee of Blue Trust.
- The Trustee of Blue Trust owns 100% of the shares of the Trustee of Red Trust
- Red Trust is 50% partner of Brown Partnership
- Brown Partnership owns 80% of the shares of George Enterprises Company.
- In tracing through the share ownership we see that George owns 40% of the shares of George Enterprises Company (100% x 100% x 50% x 80%).
- He owns George Enterprises Company in part, so that makes him a BO of that company.
- There may be other BO's of George Enterprises Company also. We need to consider other criteria for the interposed companies, trusts and partnerships. See further examples on the following pages.





**Example of NOT a BO under Company Criterion 1:** Matilda owns 100 shares in a company with an issued capital of 10,000 shares. Matilda is one of 1,000 shareholders. She does not control the company, only by way of voting with 999 other shareholders. She only owns 100/10000, 1% of the shares. So, we cannot say she OWNS or CONTROLS the company, even in part. She is not a BO.

## **Company Criterion 2:**

### **The natural person who:**

- **Exercises control of the company via other means, including:**
  - **Absolute decision or veto rights or another arrangement;**
  - **Controls decisions through personal connections to those owning or controlling the company, or through financing of the company, historical or contractual association, or the use or benefit of the company's assets.**

**Examples of BO under Company Criterion 2:** All of the following natural persons control the company via other means, and so each is a BO:

- A family member in a family company, who makes all decisions about running the company.
- A person who approves all decisions regarding the company
- A person who has financed the company
- A person who lives rent-free in a house which is owned by the company.



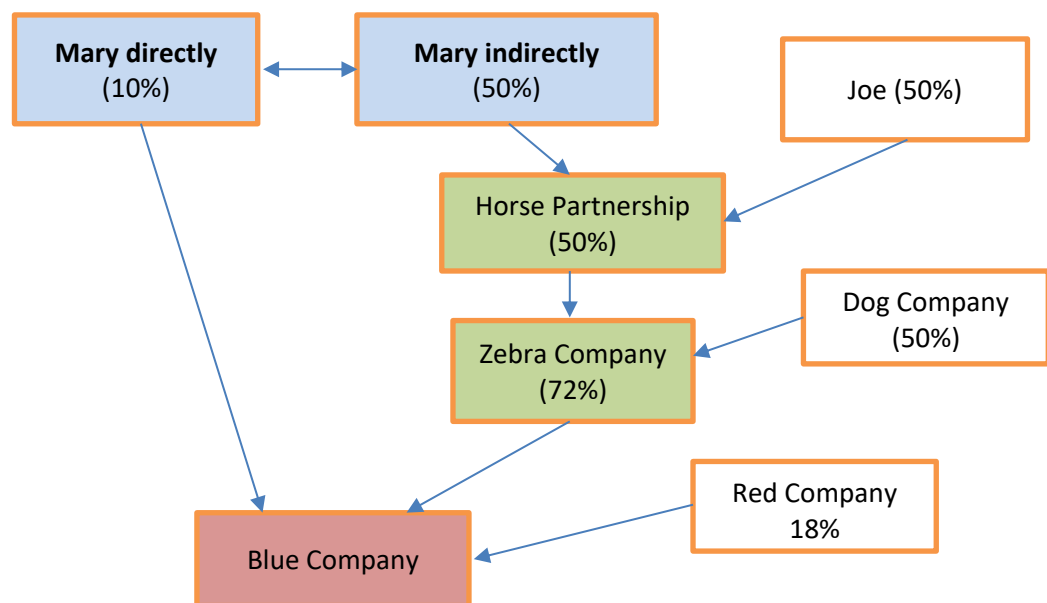
### Company Criterion 3:

#### The natural person who:

- Has a membership interest of 25% or more of the company, including ownership exercised through a chain of ownership.

#### Example of BO under Company Criterion 3:

- Mary owns 10% of Blue Company directly, and a further 18% through a chain of partnerships and other companies.



- In the above diagram, we see that **Mary directly owns 10%** of the shares of Blue Company.
- To work out how many shares Mary owns indirectly:
  - Mary is a **50%** partner in Horse Partnership (Joe is the other 50% partner)
  - Horse Partnership owns **50%** of the shares in Zebra Company (Dog Company owns the other 50% of the shares)
  - Zebra Company owns **72%** of the shares in Blue Company (the remaining shares in Blue Company are 10% owned directly by Mary, and 18% owned by Red Company).
  - Therefore, by calculating through the chain of entities, we can calculate **Mary's indirect ownership in Blue Company:**
    - $50\% \times 50\% \times 72\% = 18\%$
- Therefore, **Mary's total ownership of Blue Company is:**
  - $10\% \text{ directly} + 18\% \text{ indirectly} = 28\%$ . This exceeds 25%, so Mary is a BO of Blue Company.



- There may be other BO's of Blue Company also. We need to consider other criteria for the interposed companies and partnerships. See further examples on the following pages.
- Joe also indirectly owns 18% of the shares in Blue Company, through the same calculation as Mary's indirect ownership. But since this is his only ownership in Blue Company, he does not exceed the 25% criteria and so he is not a BO of Blue Company under this criterion.

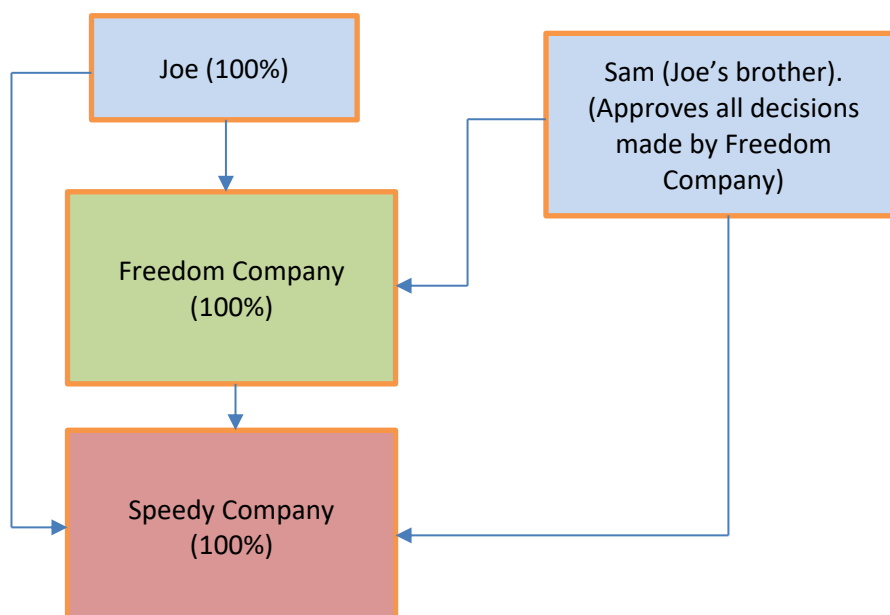
#### Company Criterion 4:

##### The natural person who:

- Exercises control over the legal person or legal arrangement. Applies to any natural person acting alone or together through any formal or informal arrangement.

##### Example of BO under Company Criterion 4:

- Speedy Company is 100% owned by Freedom Company.
- Freedom Company is 100% owned by Joe.
- Sam is Joe's brother. Sam and Joe have an informal agreement that Sam will approve all decisions made by Freedom Company.
- **Joe is a Beneficial Owner of both Freedom Company and Speedy Company, because he owns 100% of Freedom Company which owns 100% of Speedy Company.**
- **Sam is also a Beneficial Owner of both Freedom Company and Speedy Company. Sam exercises control over a company (Freedom Company), which is part of the chain of ownership between Speedy Company and Joe.**







### **Company Criterion 5:**

#### **The natural person who:**

- **Holds the position of senior management. This only applies if a natural person cannot be found under Company Criteria 1, 2, 3 and 4.**

#### **Example of Beneficial Owner under Company Criterion 5:**

- Happy Company is owned by 1,000 shareholders, each own 1 share each.
- No one person controls the company. Each of the 1,000 shareholders is eligible to vote for the Board of Directors.
- Each Director receives a set honorarium each year. The amount received does not vary with the performance of Happy Company.
- The Board of Directors appointed a senior manager to run the company.
- Company Criteria 1, 2, 3 and 4 cannot be applied because no natural person can be found who owns or controls the company. Therefore, under Company Criteria 5, the BO is the senior manager.

### **BO of a Foundation:**

#### **Foundation Criterion 1:**

##### **The natural persons who:**

- **are the founder, members of the foundation council and all beneficiaries;**

#### **Foundation Criterion 2:**

**Any other natural person exercising control.**

#### **Foundation Criterion 3:**

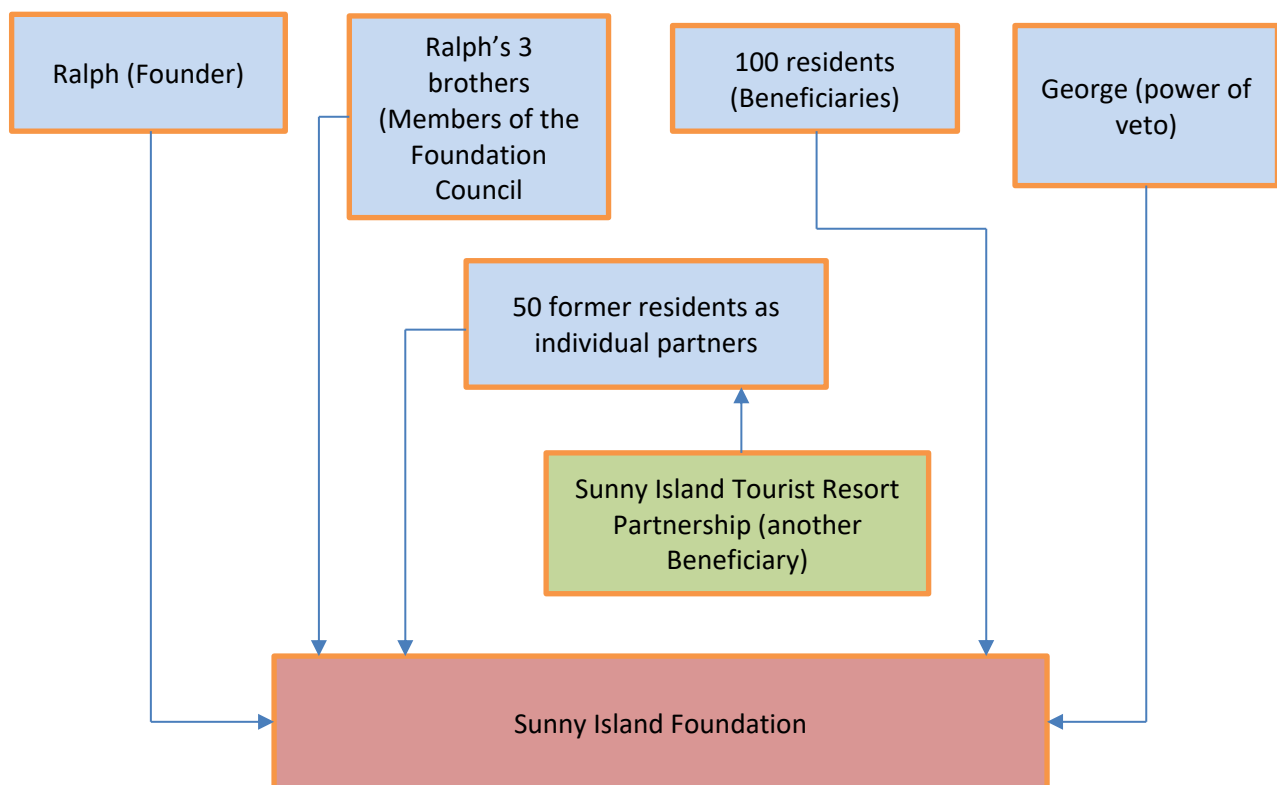
**If the founder, member of the foundation council or beneficiaries are an entity (company, partnership or trust), the BO of the Foundation will have to be traced through a chain of persons or arrangements. In this case, use the methodology appropriate to the type of entity to determine the BO of that entity. The BO of the entity will also be a BO of the Foundation.**





### Examples of BO's under Foundation Criteria 1, 2 and 3:

- The **Sunny Island Foundation** has been set up to preserve the environment and culture of Sunny Island, for the benefit of its current residents and some of its former residents.
- **The following are all BO's of the Sunny Island Foundation:**
  - Ralph (the founder of the foundation)
  - Ralph's three brothers (members of the foundation council)
  - 100 residents of Sunny Island (the beneficiaries of the foundation)
  - George (as the traditional owner of Sunny Island), has a direct interest in the welfare of Sunny Island and its residents. He exercises control over the **Sunny Island Foundation** by his power of veto over any decision the Foundation makes.
- Also, the **Sunny Island Tourist Resort Partnership** is one of the beneficiaries of the **Sunny Island Foundation**. To determine the BO of the **Sunny Island Tourist Resort Partnership**, use the methodology appropriate to a Partnership. See next section: **BO of a Partnership**.
  - Using the Partnership methodology, the BO's of the **Sunny Island Tourist Resort Partnership** are also BO's of the **Sunny Island Foundation**.



The blue shaded boxes are all BO's.



## **BO of a Partnership:**

### **Partnership Criterion 1:**

#### **The natural persons who:**

- **Are partners.** This applies to all partners, irrespective of how many partners there are.

### **Partnership Criterion 2:**

**Any other natural person exercising control.**

### **Partnership Criterion 3:**

**If a partner is an entity (company, foundation, partnership or trust), therefore the BO of the Partnership will have to be traced through a chain of persons or arrangements. In this case, use the methodology appropriate to the type of entity to determine the BO of that entity. The BO of the entity will also be a BO of the Partnership.**

#### **Examples of BO's under Partnership Criteria 1, 2 and 3:**

- **Moon Beach Partnership:**
  - **Criterion 1:** 10 residents of Moon Beach are partners, and so they are BO's.
  - **Criterion 2:** An elder at Moon Beach can exercise control over Moon Beach Partnership. He is also a BO.
  - **Criterion 3:** Rainy Company is also a partner. We have to use the methodology applicable to a Company, to work out the BO's of Rainy Company. They will also be BO's of the Moon Beach Partnership.



## BO of a Trust:

### Trust Criterion 1:

#### The natural persons who:

- Are the settlor, trustee, protector, beneficiary, and class of beneficiaries.

### Trust Criterion 2:

Any other natural person exercising control.

### Trust Criterion 3:

For a Legal Arrangement other than a Trust, the persons performing similar roles as under Trust Criteria 1 and 2.

### Trust Criterion 4:

If the roles listed in Trust Criteria 1 and 3 are performed by an entity (company, foundation, partnership or trust), therefore the BO of the Trust or Legal Arrangement will have to be traced through a chain of persons or arrangements. In this case, use the methodology appropriate to the type of entity to determine the BO of that entity. The BO of the entity will also be a BO of the Trust.

### Examples of BO's under Trust Criteria 1, 2, and 4:

- **The Pizza Family Trust** manages investments for the Pizza family. The BO's would be:
  - **Trust Criterion 1:**
    - **Mary Pizza – the settlor.** This is the person who set up the Trust, by donating money to it.
    - **Fred Pizza – the protector.** This is the person who oversees the trustee.
    - **Alan and Cindy Pizza. They are the beneficiaries of the Trust.**
  - **Trust Criterion 2:**
    - **Frank Pizza – exercises ultimate effective control of the Trust.** He is a respected cousin of the Pizza family. Under the trust deed, all investment decisions must be approved by him.
  - **Trust Criterion 4:**
    - The trustee is a company – **Pizza Company.** Using the methodology appropriate to a Company, we have to trace the BO's of **Pizza Company.** They will also be BO's of **The Pizza Family Trust.**