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GUIDELINE FOR THE APPLICATION AND INTERPRETATION OF THE TERM 'BENEFICIAL OWNERSHIP' AND THE IDENTIFICATION OF BENEFICIAL OWNERS OF COMPANIES

Commercial Registry- Beneficial Ownership Guideline No. of 2023

GUIDELINE FOR THE APPLICATION AND INTERPRETATION OF THE TERM 'BENEFICIAL OWNERSHIP' AND THE IDENTIFICATION OF BENEFICIAL OWNERS OF COMPANIES.

1. This Guideline is issued pursuant to Regulation 5 of the Anti-Money Laundering and Countering the Financing of Terrorism (Miscellaneous) Regulations 2023. For the purpose of this guideline, any reference made to 'companies' includes a company or other body corporate that is incorporated or continued under the Companies Act, Cap 89:01.
2. Where a non-profit organization is registered under the Companies Act, the Commercial Registrar shall consult with the Guyana Compliance Commission pursuant to Regulation 3 of the Anti-Money Laundering and Countering the Financing of Terrorism (Miscellaneous) Regulations 2023 (*Hereinafter "AMLCFT (Miscellaneous) Regulations"*).

INTRODUCTION

3. The global threats of money laundering, and the financing of terrorism and proliferation of weapons of mass destruction mean that businesses are also susceptible to being misused for carrying these and other illicit activities. Often times, the individual perpetrators behind these nefarious activities hide behind businesses and complex corporate structures; employing a multitude of measures and going to great lengths to conceal their identities.

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4. The availability of information on the beneficial owners of legal entities and arrangements is an integral part of global transparency standards, and is a key requirement in combatting Money Laundering , Terrorist Financing and Proliferation Financing. In order to ensure that business entities are free from misuse for illicit activities, and therefore protect the legitimate financial system from illegitimately acquired funds, Guyana has introduced measures to identify the individual persons behind corporate entities.

5. **The AMLCFT (Miscellaneous) Regulations 2023** provides that the Registrars (which include the Commercial Registrar pursuant to Regulation 2), shall ensure that the Financial Intelligence Unit and relevant competent authorities under the Act have access to basic and beneficial ownership information on body corporates in a prompt manner.

6. As such, the Commercial Registry hereby issues these guidelines pursuant to Regulation 5 of **the Anti-Money Laundering and Countering the Financing of Terrorism (Miscellaneous) Regulations 2023** which provides that *‘The Commercial Registrar shall issue guidelines on the application of the term ‘beneficial ownership’ and the identification of beneficial owners whether by reference to thresholds in respect of ownership or control or otherwise. ‘*

7. In promoting transparency of beneficial ownership, legal persons must give effect to the requirements provided in this guideline in relation to identifying and verifying the beneficial owners of a legal entity, keeping the beneficial ownership information accurate and up-to-date so that it can be accessed in a timely manner, notifying the Commercial Registrar that the beneficial ownership information has been kept in accordance with the relevant legislation and also of any changes thereto, as well as

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providing access to beneficial ownership information to the Commercial Registrar or a person designated to do so.

BACKGROUND

8. The Financial Action Task Force (FATF) has included beneficial ownership requirements in their standards and conduct assessments of jurisdictions on the availability of beneficial ownership information to the relevant authorities in each country.
9. In 2022, Guyana implemented its National Policy and Strategy for Combatting Money Laundering, Terrorism Financing, and the Financing of Proliferation 2021-2025 with ***Strategic Objective 8 of the National Policy titled- "Ensuring Adequate, Accurate and Up-to-date information on Beneficial Ownership and control of legal persons and legal arrangements.*** As such, this Guideline serves as one of the measures to achieve this objective.
10. The Obligation to maintain a record of beneficial ownership of companies is contained in Sections 470 and 470A of the Companies Act as amended by the Anti-Money Laundering and Countering of Financing of Terrorism Act 2009 as amended by AMLCFT Amendment Act No. 15 of 2016 and AMLCFT Amendment Act No. 17 of 2018) which provides:

Section 470

"470. The Registrar must maintain a Register of Companies in which to keep the name of every body corporate-

(a) That is-

- (i) Incorporated under this Act***
- (ii) Continued as a company under this Act***
- (iii) Registered under this Act; or***
- (iv) Restored to the register pursuant to this Act; and***

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(b) That has not been subsequently struck off that Register.

Section 470A

(1) The Registrar shall ascertain the beneficial ownership of any company and shall ensure in a timely manner that the information about beneficial ownership and the control of trusts or other legal arrangements in the Register is adequate, accurate, and current.

(1A) A registered company shall provide the relevant information of beneficial ownership to the Registrar on a regular basis or on demand from the Registrar and where a registered company contravenes the provisions of this subsection any of its directors shall be liable on summary conviction to a fine of not less than ten million dollars nor more than forty million dollars and to imprisonment for a term not exceeding three years.'

(1B) The Registrar shall keep, update and maintain beneficial ownership information and the control of companies, trust and other legal arrangements obtained in accordance with this section in the Register.

11. To ensure compliance of companies with this obligation, the AMLCFT (Miscellaneous) Regulations 2023, established that every body corporate shall provide accurate and up to date beneficial ownership information to its respective Registrar.

Regulation 4 of the AMLCFT (Miscellaneous) Regulations 2023

4. (1) Every body corporate shall provide accurate and up to date beneficial ownership information to its respective Registrar.

(2) When a body corporate-

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(a) *has a change in registered office or principal place of business;*
or

(b) *has a change in beneficial ownership, director, or partner,*

the body corporate shall within one month of such change, notify its respective Registrar.

(3) *Where any person fails to notify its respective Registrar as required under subsection (1), that person is liable to-*

(a) *a fine of two hundred thousand dollars for each failure to notify in accordance with subsection (1); or*

(b) *be struck off the register of its respective Registrar.*

12. This Guideline is to be read in conjunction with the relevant statutory provisions set out in Companies Act, Anti-Money Laundering and Countering the Financing of Terrorism Act 2009 as amended, the Anti-Money Laundering and Countering the Financing of Terrorism Regulations and amendments thereto; the AMLCFT (Miscellaneous) Regulations, the Guyana Compliance Commission Act, the Anti-Terrorism and Terrorist Related Activities Act and other relevant legislation.

BENEFICIAL OWNERS

13. Pursuant to Section 2 of the AML/CFT Act 2009 as amended, '*Beneficial Owner*' means ownership by a natural person or persons who ultimately exercise individually or jointly, voting rights representing at least twenty-five per cent of the total shares, or otherwise have ownership rights of a legal entity; or ownership by a natural person or persons who ultimately owns or controls a customer or the person on whose behalf a

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transaction is being conducted and includes those persons who exercise ultimate effective control over a legal person or arrangement.”

14. This means that a Beneficial Owner cannot be other companies, trusts or other legal persons or arrangements, it must be a natural person(s).
15. Pursuant to the Companies Act, Cap 89:01, ‘Beneficial interest’ or ‘beneficial Ownership’ includes ownership through a trustee, legal representative, agent or other intermediary’.
16. When an individual is the sole shareholder of a company and controls it directly, that individual is the beneficial owner of the company. However, it is not always easy to identify the natural person behind a company. Some entities are established in such a way that the identity of the beneficial owner is hidden. There may be several layers involved in the ownership structure; perhaps an entity or even a chain of entities between a company and its beneficial owner, as outlined in Figure 1 below.

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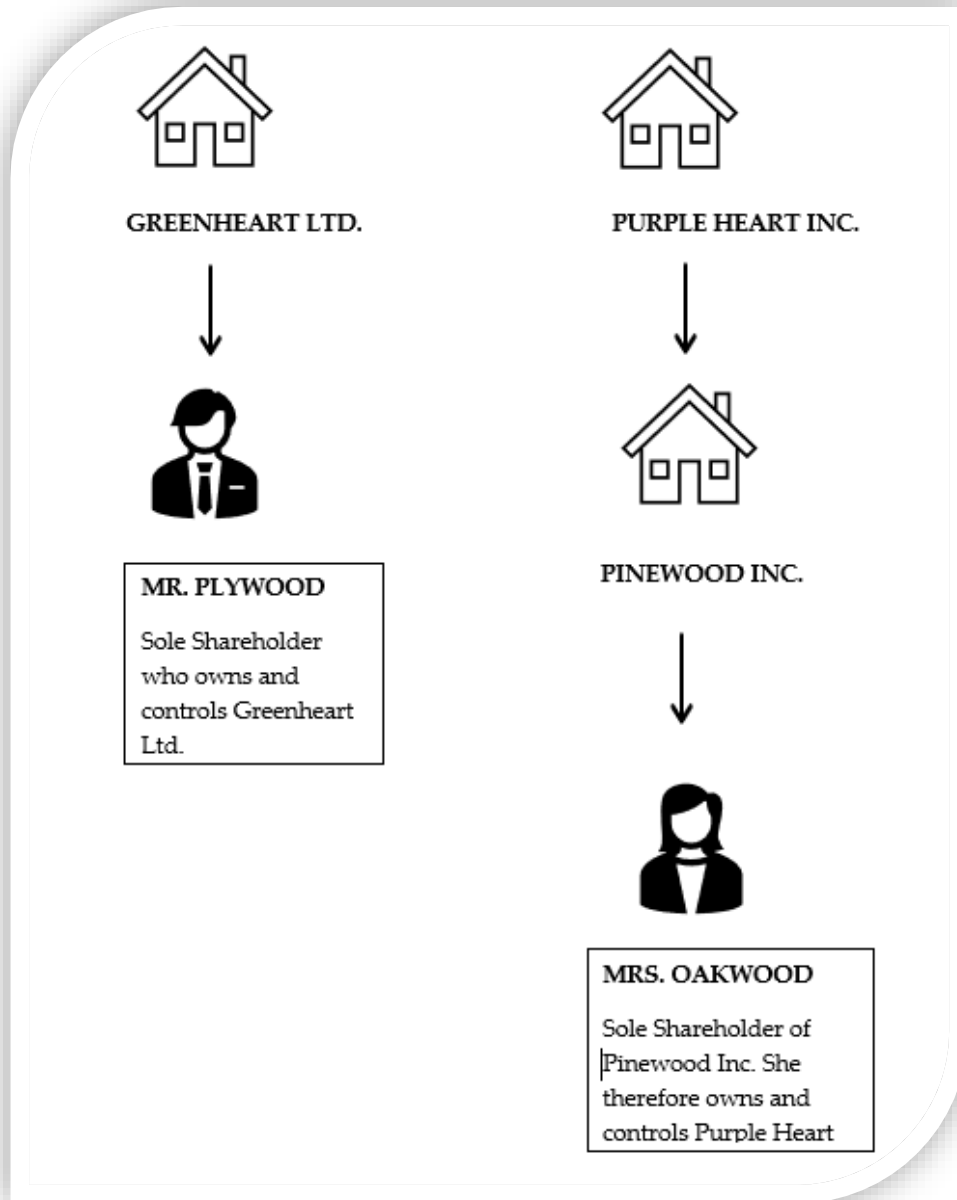


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Figure 1



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17. Because economic activity can be conducted through complex systems of legal vehicles, the anonymity of such structures enables perpetrators of illegal activities to hide from law enforcement. International standards require that jurisdictions are assessed on the timely and accurate availability of beneficial ownership information in their systems. Jurisdictions must ensure there is adequate, accurate and up-to-date information on beneficial ownership of legal persons in the jurisdiction, and that such information can be provided to a competent authority in a timely manner.
18. The strength of each country's system for availability of and access to information on beneficial owners in their jurisdictions, is an important factor in deciding whether countries would be listed as a country with a poor AML/CFT regime, or even a threat of such a listing could have dire consequences on a country such as international distrust, economic sanctions and other prohibitive measures by other countries and international organisations.
19. Beneficial Ownership can be exercised in many ways, both directly and indirectly. For example, a beneficial owner may hold a controlling ownership interest of a legal person, control of a significant percentage of voting rights, or can name or remove directors or influence over a veto of the entity's decision. Control may also be exercised through agreements (such as those made among shareholders) or even through family or other connections with decision-makers. Importantly a beneficial owner does not have to reside within the jurisdiction in order to exercise effective control over a company.
20. As such, determining the beneficial owner can be a complex process that must be undertaken on a case-by-case basis. This Guideline will provide clarification on the statutory definitions of beneficial interest, beneficial ownership and beneficial owner and ensure that a company is able to identify the natural persons who ultimately own or have control over that company.
21. Since beneficial ownership is not limited to ownership through the holding of shares in a legal entity, guidance will also be provided to ensure that all legal entities are able to comply with the requirements relating to beneficial ownership and maintenance of beneficial ownership information. This is particularly important as it relates to companies without share capital (non-profit companies) registered under and regulated by the Companies Act, Cap 89:01.

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LEGAL FRAMEWORK FOR THE PROVISION AND MAINTENANCE OF BENEFICIAL OWNERSHIP INFORMATION

22. All companies must maintain beneficial ownership information as outlined in Section 189(2) of the Companies Act, Cap 89:01 which states:

(2). A company shall prepare and maintain at its register of shareholders showing the following particulars no later than five weeks after such particulars are available to the company, but the validity of any entry shall not be affected by reason only that it was made at a later date –

- (a) The name and the latest known address of each person who is a shareholder.
- (b) A statement of the shares held by each shareholder.
- (c) The date on which each person was entered on the register as a shareholder and the date on which any person ceased to be a shareholder.

23. **Section 189(1)** of the Companies Act requires that the register be maintained at the registered office of the company.

24. It is also vital that Guyana can effectively regulate companies, to ensure that they are keeping with their record-keeping requirements. To this end, **Section 194** of the Companies Act, Cap 89:01 provides that the Registrar may require a company to produce any books, records or other documents required to be kept by the company under any provisions of the Act.

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25. Companies are also required to submit an annual statement by way of the Annual Return which certifies accurate and up-to-date beneficial ownership information pursuant to Division G of the Companies Act, 89:01.

26. Based on the foregoing, and to satisfy their obligations, companies must therefore:

- (a) Take steps to obtain information on the identity of natural person(S) who is/are their beneficial owner(s), noting that there may be several beneficial owners of a company.
- (b) Verify their identity.
- (c) Record details of how they meet the definition of beneficial owner.
- (d) Record the beneficial ownership information into the register of shareholders which is to be maintained at the registered office of the company.

27. Companies must ensure that the above measures are in place on a continuous basis. This obligation falls to the directors and officers of the company.

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IDENTIFYING, OBTAINING AND KEEPING THE BENEFICIAL OWNERSHIP INFORMATION ACCURATE AND UP TO DATE.

Company Limited by shares.

28. As a starting point, the beneficial owner of a company is a natural person who ultimately owns a body corporate or who exercises the ultimate ownership or control over the body corporate. The beneficial owner may be identified by using one or more of the criteria listed below. However, except for very simple company structures, share ownership might not equate to beneficial ownership, and thus companies must take steps to justify why they consider that meeting the share ownership threshold alone is sufficient to establish who the beneficial owner is. Companies should also consider and record their consideration of whether ultimate ownership or control is being exercised by the other means listed.

- (i) ***Holds at least 25% of the shares of the company or has a direct or indirect interest in at least 25% of the shares of the company.*** The Information in the register or List of shareholders (Section 123 of Companies Act, 89:01-Shareholders List) will establish whether any individual or corporate entity has an interest in at least 25% of the shares in the Company.

- (ii) ***Directly or indirectly holds at least 25% of the voting shares of the company. Voting shares confer the right of the holder to vote on resolutions on all or substantially all matters which require a shareholder's vote.*** If the shares are directly owned, information in the share register will determine if an individual or corporate entity has an interest of at least 25% of the voting shares of the company.

- (iii) ***Has the right to exercise ultimate ownership or control whether formal or informal over the company, or over the directors or the management of the***

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company, including means of control other than direct control. Ultimate ownership or control refers to situations where the company, the directors or the management of the company are required to act under the directions, instructions or wishes of a particular person or persons. An individual exercises ultimate ownership or control over a company when any recommendation made by him which influences the decision of the company, is always followed by the shareholders holding a majority of the voting rights in the company, or by the directors or management of the company. This includes a means of control other than direct control such as instances where an individual consistently exercises influence or control over the company or is consulted by the directors or managers in making decisions, on a consistent basis. Other examples include:

- Amending the company's business plan
 - Changing the nature of the company's business
 - Making decisions on borrowing funds from the lenders; and
 - Appointing or removing the chief executive officer
- (iv) **Has the right or power to directly or indirectly appoint or remove a director(S) who holds a majority of the voting rights at the meeting of directors.** An individual may have influence or control over the company if he directly or indirectly appoints or removes a director who holds a majority of the voting rights at the meeting of directors.
- (v) **Is a shareholder of the company, and under an agreement with another shareholder(s) of the company, controls a majority of the voting rights in the company.** Control over a company may be exercised through the cumulative effect of an agreement which leads to the effective control of a company.

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ILLUSTRATED EXAMPLES OF OWNERSHIP AND CONTROL

29. COMPANIES LIMITED BY SHARES: A NATURAL PERSON WHO HOLDS, DIRECTLY OR INDIRECTLY, NOT LESS THAN 25% OF THE SHARES OF THE COMPANY.

In *Figure 2* below, Mrs. Red wholly owns Blue Inc. through 100% ownership. Therefore in the absence of any evidence to suggest that there is another natural person controlling the company by other means, Mrs. Red is deemed the beneficial owner and her name must be entered in the register or shareholders list of Blue Inc.

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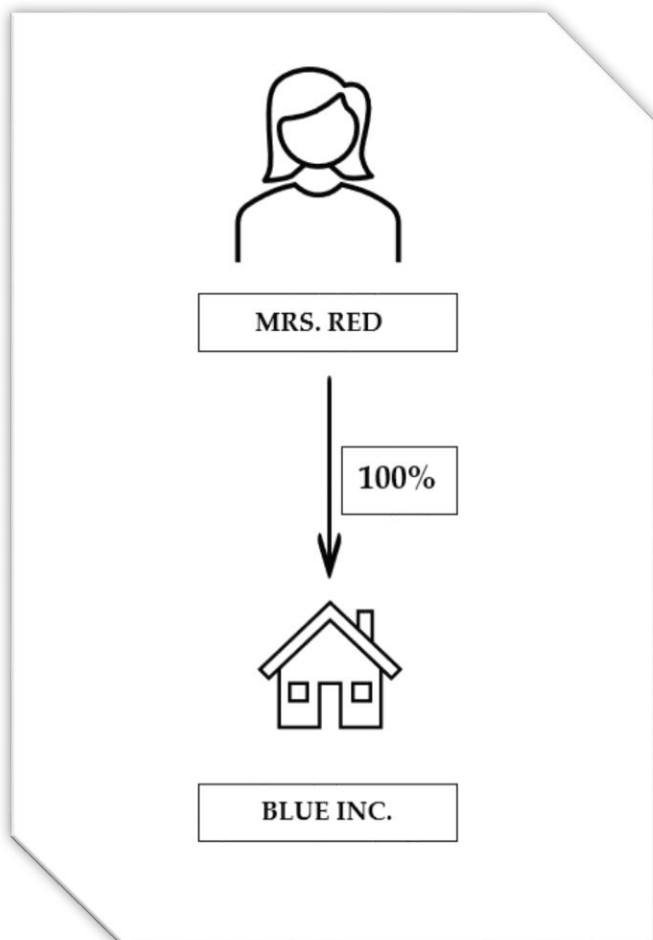


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Figure 2



In **Figure 3 Below**, Ms. Cedar, Mr. Maple and Dr. Elm each hold **not less** than 25% of the shares in Walnut Corporation. Therefore, in the absence of any evidence to suggest that there is another natural person controlling the company by other means, they are deemed the beneficial owners and their names must be entered in the register of Walnut Corporation.

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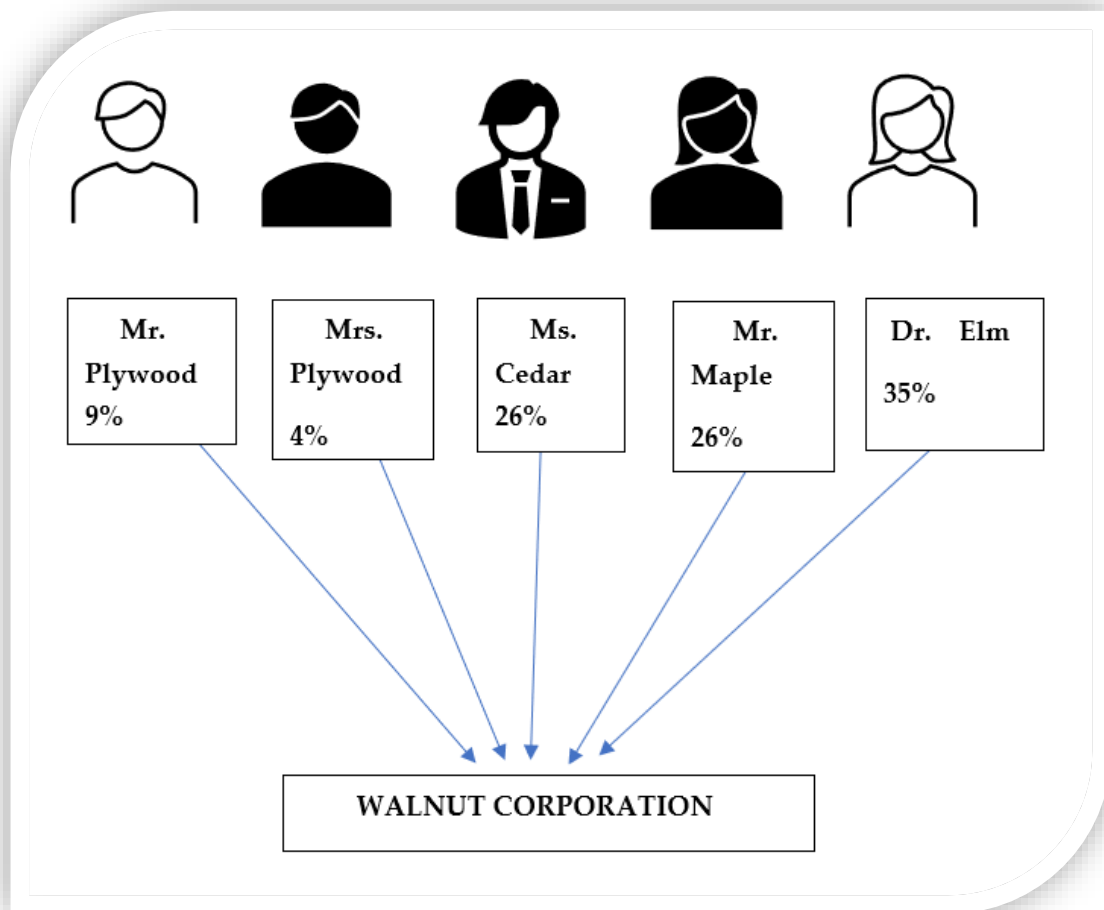


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Figure 3



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30. COMPANIES LIMITED BY SHARES: A NATURAL PERSON WHO DIRECTLY OR INDIRECTLY HAS INTEREST IN NOT LESS THAN 25% OF THE SHARES OF A COMPANY.

DIRECT INTEREST EXAMPLE: In Figure 4 Below, Ms. Green is deemed to have an interest in Leafley Inc. She holds 100% ownership of Tree House Inc which in turn holds 100% ownership of Leafley Inc. Therefore, in the absence of evidence that suggest that there is another natural person controlling the company by other means, Ms. Green is the beneficial owner of the shares and her name must be entered in the register of Leafley Inc.

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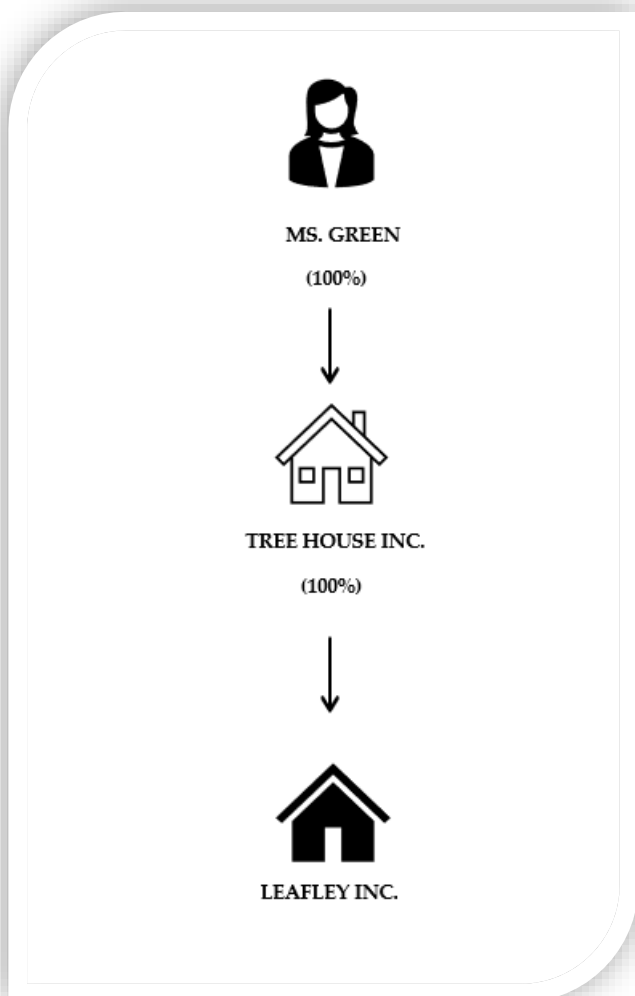


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Figure 4



INDIRECT INTEREST EXAMPLE: In Figure 5 Below, Greenhouse Inc. and Ms. Orchid each hold 50% of the shares in Garden Inc. Since Mr. Rose owns 100% of the shares in Greenhouse Inc., he has a 50% interest in Garden Inc. As such in the absence of any evidence to suggest that there is another natural person controlling the company by other means, Mr. Rose and Ms.

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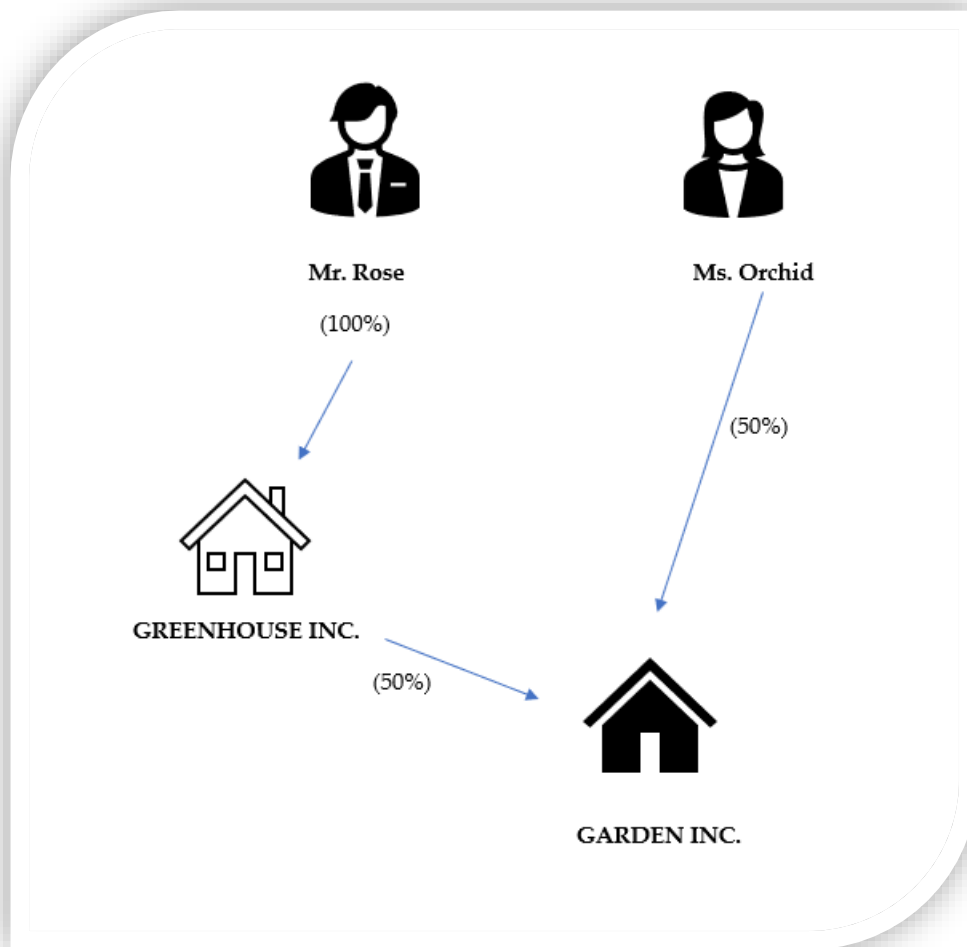
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Orchid are deemed the beneficial owners and both names must be entered in the register of Garden Inc.

Figure 5



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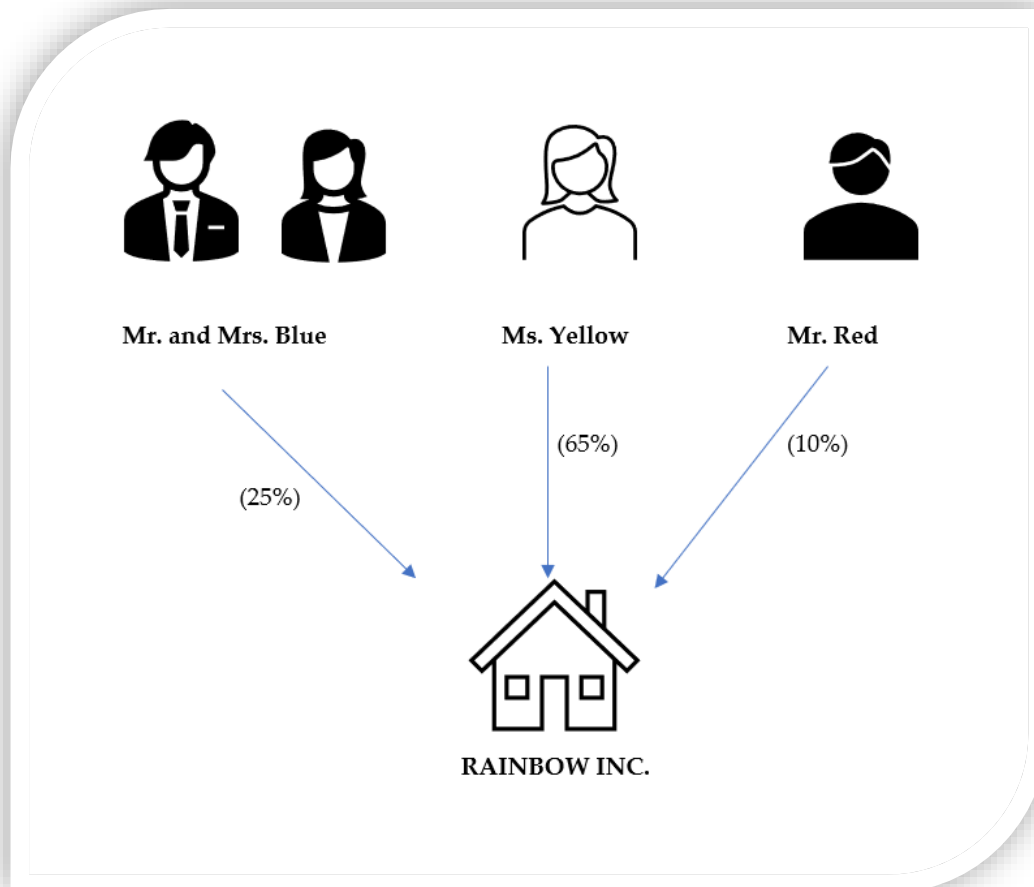
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JOINT INTEREST EXAMPLE: In Figure 6 Below, Mr. and Mrs. Blue jointly own 25% of the voting rights in Rainbow Inc. In the absence of any evidence to suggest that there is another natural person controlling the company by other means, both are deemed to be the beneficial owners together with Ms. Yellow and their names must be entered in the register of Rainbow Inc.

Figure 6



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JOINT ARRANGEMENT EXAMPLE: In **Figure 7 Below**, Mr. Blue, Mrs. Blue and Ms. Yellow have entered into an arrangement to exercise their votes in the same way. The arrangement means that their cumulative interest surpasses the 25% threshold. Therefore, in the absence of any evidence to suggest that there is another natural person controlling the company by other means, Mr. Blue, Mrs. Blue and Ms. Yellow are deemed to be the beneficial owners along with Mr. Red whose interest is 25%. Their names must be entered in the register as the beneficial owners of Rainbow Inc.

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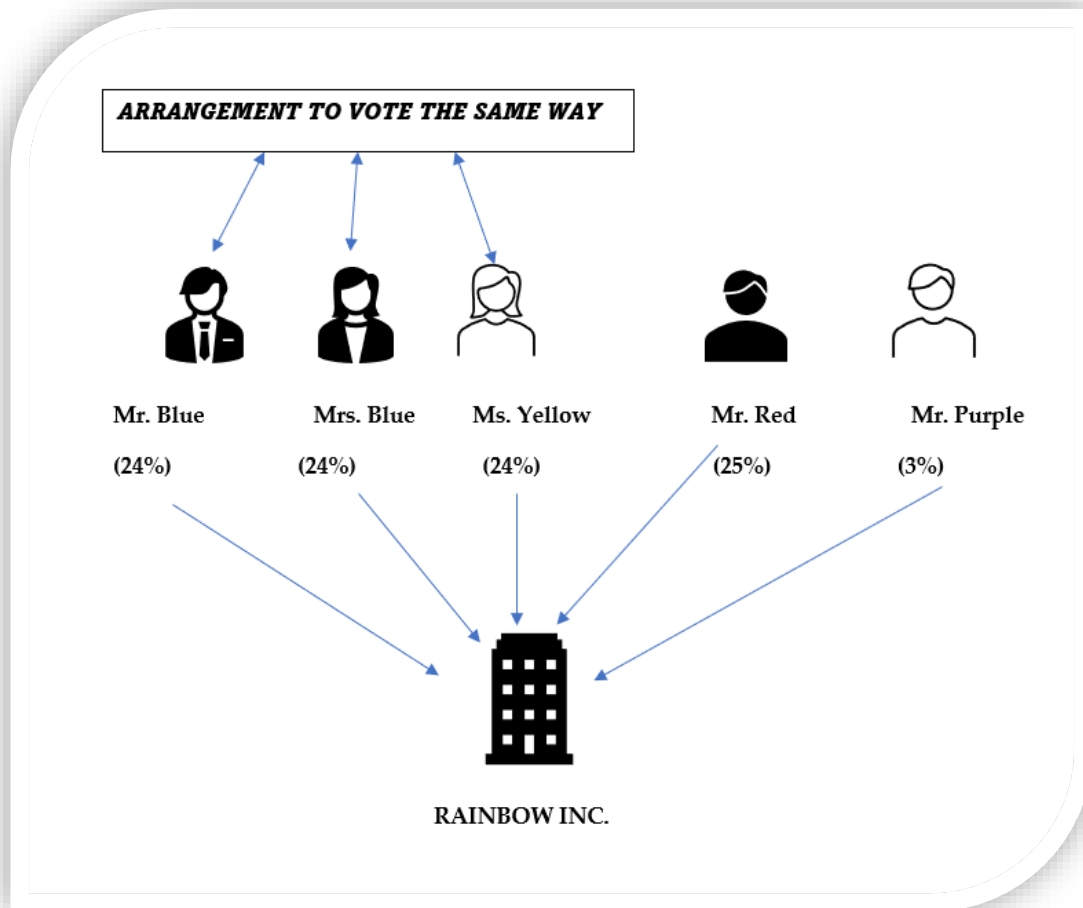


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Figure 7



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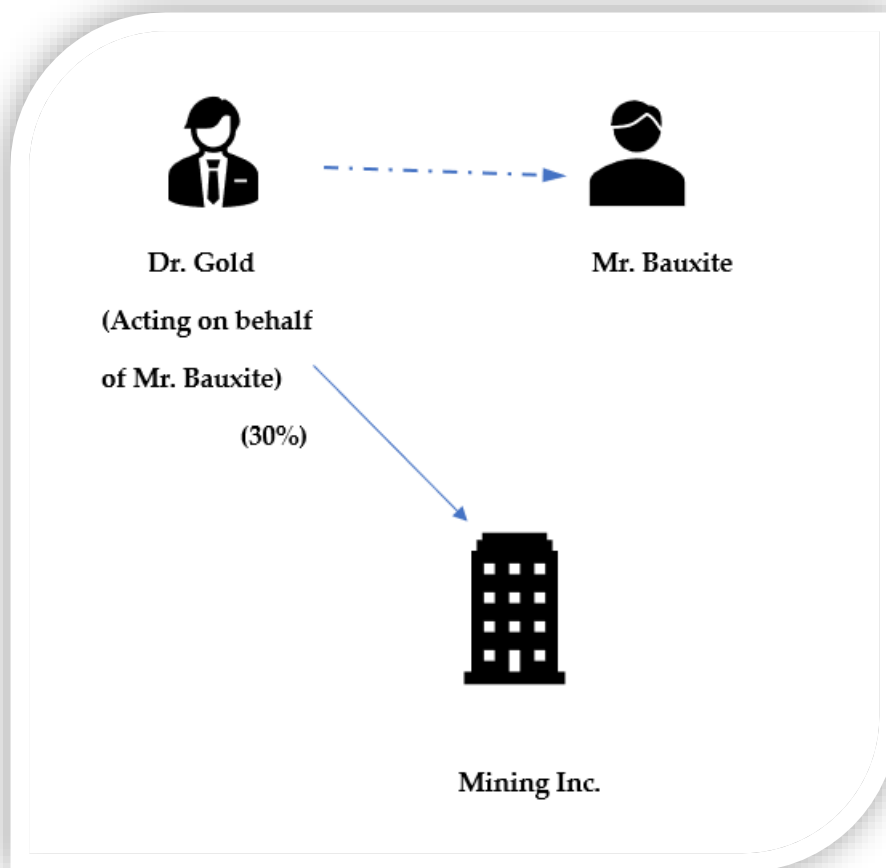
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SHAREHOLDER ACTING ON BEHALF OF ANOTHER PERSON- EXAMPLE: In Figure 8(a) Below, where the shareholder is acting on behalf of an individual or corporate entity, the company is required to take steps to identify the individual who has the ultimate influence or control over the company acting through that shareholder.

Figure 8(a)



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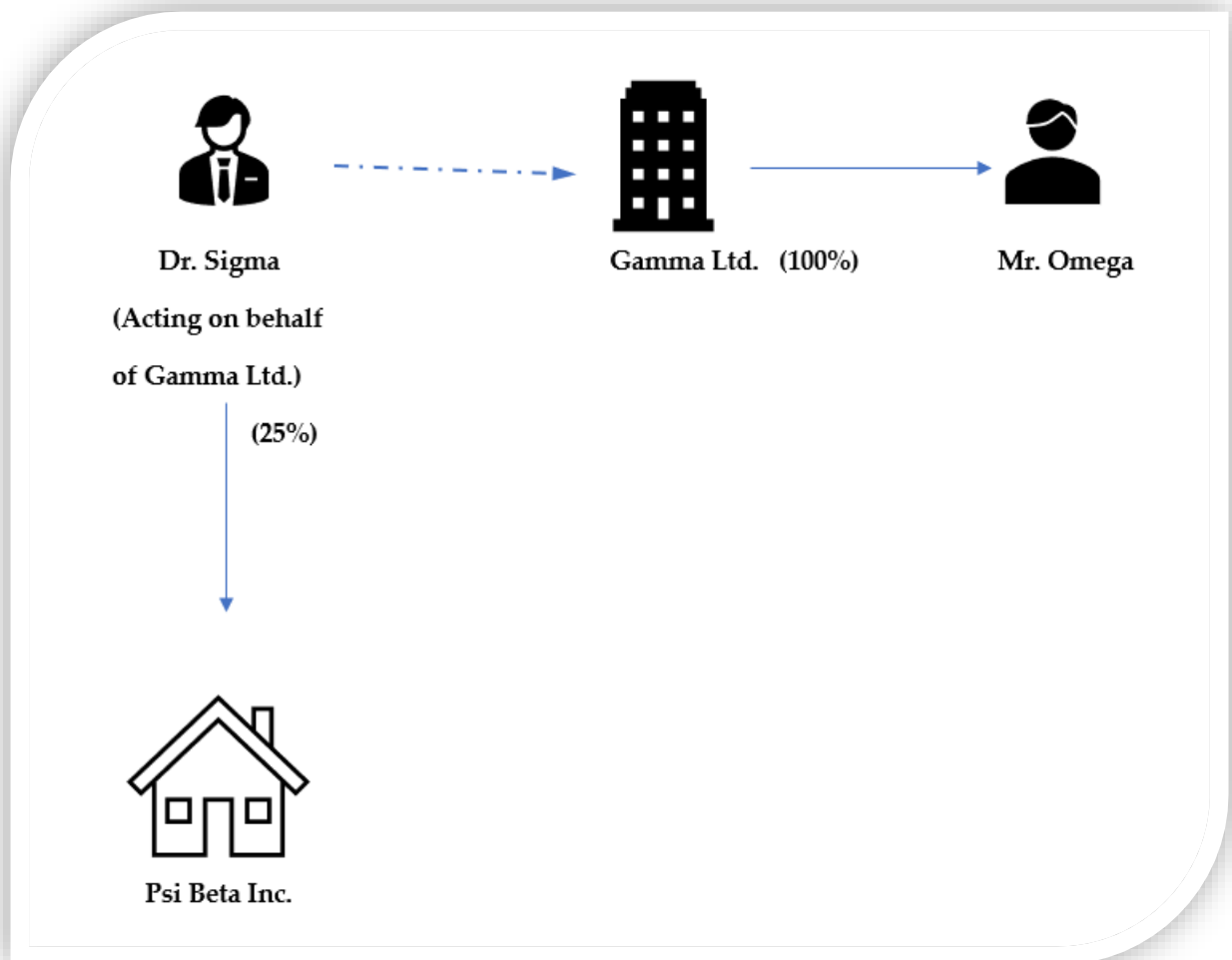
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In Figure 8 (b) Below, Mr. Omega has 25% interest in Psi Beta through the 25% ownership of Dr. Sigma. Dr. Sigma is acting on behalf of Gamma Ltd., which is wholly owned by Mr. Omega. As such, Mr. Omega's name must be entered in the register as a beneficial owner of Psi Beta Inc.

Figure 8(b)



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COMPANY WITHOUT SHARE CAPITAL

31. An individual (natural person) is deemed to be a beneficial owner of a company without share capital, if he meets any one or more of the following criteria:

- a. **Has the right to exercise ultimate ownership or control over a company when any recommendation made by him which influences the decision of the company, is always followed by the directors or management of the company.** This includes instances where an individual consistently exercises influence or control over the company or is consulted by the directors or managers in making decisions, on a consistent basis.
- b. Has the right or power to directly or indirectly appoint or remove a director (s). An individual may have influence or control over the company without share capital, if he directly or indirectly has the right to appoint or remove a director.
- c. Has the right to exercise, or actually exercises ultimate ownership or control, whether formal or informal, over the company. An individual exercises ultimate ownership or control over a company when any recommendation made by him which influences the decision of the company, is always followed by the directors or management of the company. This includes instances where an individual consistently exercises influence or control over the company or is consulted by the director or managers in making decisions, on a consistent basis. Other examples include:

- Amending the Company's business plan
- Changing the nature of the company's business
- Making any borrowing from the lenders
- Appointing or removing the chief executive officer

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MEASURE TO BE EMPLOYED FOR IDENTIFICATION OF BENEFICIAL OWNERS FOR ALL COMPANIES

32. In order to identify their beneficial owners, companies should employ the following actions:

- (i) Review all documents and information available to the company (e.g. register of shareholders, shareholders' agreements, certificates of incorporation, etc.
- (ii) Consider all interests in the company which are held by individuals, corporate entities, trusts, partnerships or other arrangements;
- (iii) iii. Consider any evidence that may show interests or rights held through alternative means or arrangements;
- (iv) iv. Maintain an internal policy on beneficial owner identification and require shareholders to notify the company of :
 - a. the identify of the beneficial owner; and
 - b. any changes in the beneficial ownership information.

33. Notwithstanding the above, a company may employ any other actions that it may deem necessary for the adequate identification of the beneficial owner depending on the circumstances of each company.

OBTAINING THE BENEFICIAL OWNERSHIP INFORMATION

34. As part of companies' internal policy on the identification of beneficial ownership, the companies should require shareholder to notify the company of the identify of the beneficial owner, and of any changes in the beneficial ownership information.

35. The following information in relation to the beneficial owners should be obtained:

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- a. Full name;
- b. Nationality(ies);
- c. Primary residential address (not a P.O Box);
- d. Contact information (email address, phone number, mailing address if different from residential address);
- e. Date of birth;
- f. National registration number or Passport No.;
- g. Type of Beneficial Ownership (direct/indirect);
- h. Details of ownership (including percentage of ownership or capital contribution, if any);
- i. Date of becoming/ ceasing to be a beneficial owner;
- j. Whether the beneficial owner has held prominent public office in Guyana, and elsewhere, and if so the details of holding that prominent public office.

VERIFYING THE BENEFICIAL OWNERSHIP INFORMATION

36. Companies must ensure that Beneficial ownership information is accurate. This involves verifying how the natural person(s) qualifies as a beneficial owner, and verifying their identity. The company should ensure that all relevant identity information is submitted and verified. A company is obliged to conduct verification of the beneficial ownership information when the name of a beneficial owner is entered on the register or when changes to the particulars of beneficial ownership information is entered on the register.
37. Notwithstanding the above, companies may voluntarily conduct verification of beneficial ownership information in the register of beneficial owners from time to time. This is in addition the requirements of the Companies Act re: submitting annual returns.

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SUPPORTING DOCUMENTS

38. In identifying and verifying the identity of a beneficial owner, a company must rely on sufficient information or documentation as a basis upon which the beneficial owner is identified and verified.
39. Such supporting documentation may include, but is not limited to, certified copies of a national identification card, passport or other similar documents, founding documents and agreements regulating the power to bind the company.
40. It is recommended that the supporting documents also be kept at the company's registered office

APPENDIX A- Sample Form – Beneficial Ownership Information (Companies may use to collect Beneficial Ownership Information)

It is recommended that this form be issued to:

- shareholders;
- if a shareholder is a legal person, the beneficial owners of that shareholder;
- persons who have an indirect interest in the shares of the company;
- persons can exercise control over the company;
- persons can exercise control over the directors or the management of the company;
- persons who can directly or indirectly appoint or remove a director(s) who hold a majority of the voting rights at meeting of directors;

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COMPANY NUMBER:

Please select the items which apply:

I am holding not less than 25% of the shares of this company []

I have a direct interest in not less than 25% of the shares of this company. []

I have an indirect interest in not less than 25% of the shares of this company []

I have the right to exercise ultimate ownership or control whether formal or informal over the company []

I have the right to exercise control over the directors or the management of the company; []

I have the right or power to directly or indirectly appoint or remove a director(s) who hold a majority of the voting rights at meeting of directors; []

I am shareholder of the company and, under an agreement with another shareholder of the company, control(s) alone a majority of the voting right in the company []

**If you have checked at least one of the above, you are deemed to be a beneficial owner.
Complete the following information:**

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Lot 1 Esplanade Road Road, New Amsterdam, Berbice
Assistant Registrar: 333-3410
General Office: 333-3420
Email: rezaamanra@gmail.com

Essequibo Sub-Registry
Supreme Court Building, Suddie, Essequibo Coast
Assistant Registrar: 774-4142
General Office: 774-4447
Email: andrewmuridall@yahoo.com

**Secretariat
Human Resource Department**
Lot 1 High & Commerce Streets, Newtown
Manager: (592) 225-4342
Email: hrmanagerdcra@gmail.com

Finance Department
Finance Manager: 225-4372
Finance Officer: 225-4347
Expenditure: 225-4361
Email: aalatchman@yahoo.com



DEEDS & COMMERCIAL REGISTRIES AUTHORITY

www.dkra.gov.gy



- (i) Full name (ii) Primary residential address (not a PO Box)
- (iii) Nationality(ies)
- (iv) Date of birth
- (v) National Registration/Passport No.
- (vi) Date of becoming a Beneficial Owner
- (vii) Email address

PLEASE SELECT THE ITEMS WHICH APPLY:

I am holding at least 25% of the shares of the company on behalf of another person as a trustee.
YES [] NO []

*If yes, the person on whose behalf you are holding the shares is deemed a beneficial owner.
Provide the details of the Beneficial owner as per items (i) to (vii) above.*

I hold at least 25% of the voting shares of the company and I have entered into an agreement or arrangement with another person who is entitled to control how I exercise my voting rights carried by my voting shares. []

If yes, the person with control over the exercise of your voting rights is deemed a beneficial owner. Provide details of:

- *The agreement or arrangement including the full name of the party/parties to the agreement or arrangement.*
- *The details of the person2 entitled to exercise control over your voting rights as per items (i) to (viii) above.*

Commercial Registry
Registrar: 225-4374
Deputy Registrar: 225-4296
General Office: 225-4358/4322
Email: commercialregistry@dcra.gov.gy

Deeds Registry
Lot 1 Avenue of the Republic & Charlotte Street
Stabroek, Georgetown
Registrar: 226-3083
Deputy Registrar: 226-8641
General Office: 225-1129
Email: deedsregistry@yahoo.com

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