



Ultimate Beneficial Owners (UBO)

Preamble

The fight against money laundering and corruption has made financial transparency a global priority, Pakistan being no exception. To achieve transparency and enforce accountability, Companies are increasingly expected to understand who they are doing business with to combat fraud, money laundering, and financing of terrorism. Identifying the Ultimate Beneficial Owners (UBO) is a part of Anti Money Laundering (AML) efforts and Know Your Customer (KYC) processes.

Ultimate Beneficial Owners (UBO)

The term UBO has gained importance as efforts are being made against money laundering. An “Ultimate Beneficial Owner” is a person who has a significant stake in the Company and/or on whose behalf the business is conducted. Formally, a UBO is defined as “a natural person who ultimately owns or controls a Company, whether directly or indirectly, through at least twenty-five percent (25%) shares or voting rights or by exercising effective control”.

Natural Person / Legal Person

Natural person is a living being and is different from artificial/legal person. A legal person is established under or through a law e.g. a limited liability Company, partnership. Under FATF recommendations a UBO must be a natural person.

Role of SECP

SECP is the corporate regulator in Pakistan and amongst its other responsibilities; it has been tasked with keeping a watch on Companies to ensure compliance with Anti Money Laundering Act and FATF recommendations. To identify who the UBOs of a Company are, SECP has designed a number of forms and mandated the Companies to file them with SECP.

Form 40 (only for Public Companies)

SECP has initiated steps to cancel the securities of bearer nature as a part of AML compliance. Forms 40 and 41 have been designed for this purpose. Form 40 is a public notice to the holder of securities of bearer nature issued by the Company. This notice contains every person who is a holder of such securities is advised to surrender the securities of a bearer nature issued in the Company name at the Company's registered office address, before the expiration of three months of notice issued by SECP.

Form 41 (only for Public Companies)

It is a Register containing particulars of the holder of securities of bearer nature and particulars of such securities, which have been surrendered or cancelled.

Form 42

Form 42 is a notice to every member for providing particulars of ultimate beneficial owner of the Company. This notice requires every member of the Company who is not the ultimate beneficial owner and who directly holds at least 25% shares or voting rights in the Company to submit a declaration to the Company providing information and particulars of the ultimate beneficial owner(s), as defined in Regulations.

Form 43

Form 43 is a declaration to be submitted to the Company by every member, either natural or legal person, in respect of his/its complete particulars. These particulars include:

- Date of acquisition of shares/control/interest;
- Percentage of shares/control/interest;
- Particulars of ultimate beneficial owners (where the member is a legal person).

Form 44

This form is a declaration by member about change of ultimate beneficial owners or particulars thereof.

Form 45

This form is the declaration of compliance with provisions the Companies Act, 2017 that a Company is required to file with SECP to ensure that whether:

- a) Company has issued Notice as per Form 42;
- b) Company has received Declaration from members as per Form 43;
- c) Company has noted accurate particulars of its Ultimate beneficial owners received as per Form 43;
- d) The Board of Directors of the Company has authorized its Chief Executive Officer to provide the information as required under the Regulations.

Register of Ultimate Beneficial Owners (UBO)

Every Company shall be required to maintain a register of ultimate beneficial owners shall, within fifteen days from the receipt of declaration received from its members, and thereafter along with its annual return, submit to the registrar concerned a declaration of compliance, as per Form 45.

Provided that in case of listed Companies, a copy of the said form shall also be filed with the Commission.

Date and Filing of Notice and Documents

In some cases, identifying the UBO is not an easy task, mostly in cases where a multi layered ownership structure exists. Therefore, Law has placed obligation both on Company and the receiver of notice by issued the Company.

A Company is required to take reasonable measures to identify and obtain the information of its ultimate beneficial owners by issuing a notice to every member. In response, every person to whom the notice has been issued shall submit a declaration to the Company within fourteen days of the notice, indicating the name, address and other particulars as specified therein.

Any person becoming a new member subsequently shall also, within a period of fourteen days of his name being entered in the register of members, submit the said declaration to the Company.

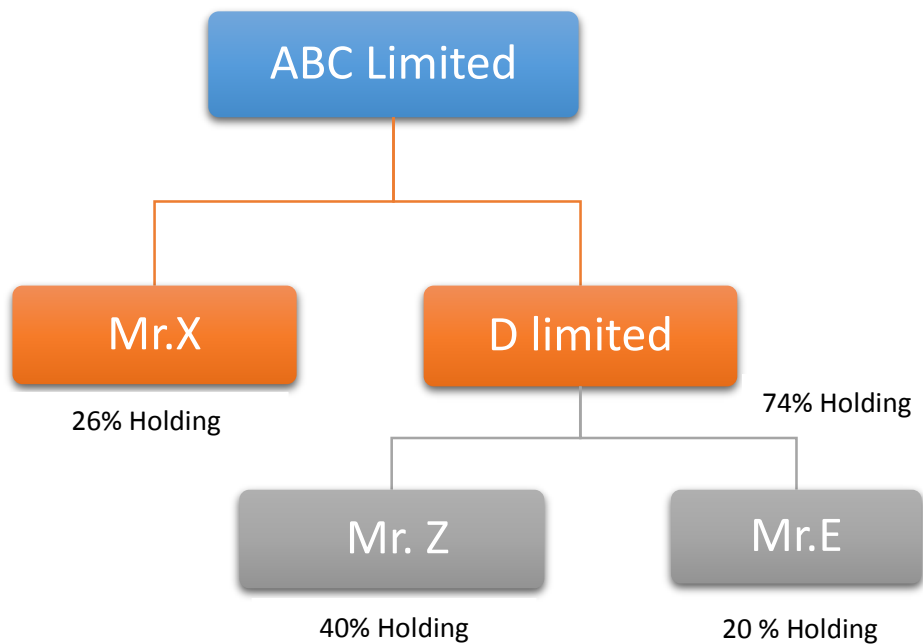
Where any change occurs in the particulars of ultimate beneficial owner or his ownership of the Company, the person, is required to submit a declaration to the Company stating the nature of change and other particulars as mentioned therein. The time threshold is fourteen days.

Contraventions

Any contravention or default shall be liable to penalty.

- In case of a director or officer of the Company or any other person, to a penalty which may extend to rupees one million (1 Million).
- In case of Company penalty may extend to rupee Ten million (10 Million).

Example of UBO



Here Mr. E is also Beneficial Owner as he indirectly holds 29.6% in ABC limited

Working of 29.6% (40% * 74%= 29.6%)

Explanation:

If a shareholder owns 20% of the shares in a particular entity, shareholder becomes 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 above for example, if Company ABC limited is owned to the extent of 74% by Company D limited, and ABC limited is owned to the extent of 40% by a natural person, then the said Person is an indirect owner of ABC limited through D limited, to the extent of 29.6% ownership in ABC limited (40% of 74%).



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