

# Beneficial Ownership and Control: Trust Associated Complexities

## Supplemental FAQs for Trust Company Service Providers (TCSPs)

### Background

The Jersey Financial Services Commission (JFSC) recognises the complexities associated with the application of the three tier test in a scenario where a Jersey registered Corporate or Legal Entity<sup>1</sup> is owned or controlled<sup>2</sup> by a trustee.

These Supplemental FAQs have been designed, on request from industry, to assist TCSPs to complete the C17S form (or equivalent) and any subsequent forms when a change of beneficial ownership or control occurs.

**Please note that:**

- › **Separate rules and *thresholds* apply to incorporations. Please refer to the guidance issued concerning the C2A form in this respect.**
- › **Compliance with the enhancement to the beneficial ownership and control reporting regime to the Companies Registry at the JFSC is separate and *in addition* to a TCSPs obligations to identify the beneficial owners and controllers of its customers under the Money Laundering (Jersey) Order 2008 and as outlined in the Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism (AML/CFT).**

TCSPs should remember that the objective of the enhancements made to the Beneficial Ownership Register is to enable continued transparency and information exchange with law enforcement agencies and tax authorities, sometimes on short notice, as to who owns or controls the Corporate and Legal Entity, i.e. who *can* be seen as ‘pulling the strings?’.

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<sup>1</sup> Corporate and Legal Entities means: Companies registered under the Companies (Jersey) Law 1991; Foundations registered under the Foundations (Jersey) Law 2009; Incorporated Limited Partnerships registered under the Incorporated Limited Partnerships (Jersey) Law 2011; Limited Liability Partnerships registered under the Limited Liability Partnerships (Jersey) Law 1997; Limited Partnerships registered under the Limited Partnerships (Jersey) Law 1994 and Separate Limited Partnerships registered under the Separate Limited Partnerships (Jersey) Law 2011.

<sup>2</sup> The beneficial owner and controller regime is being implemented to meet with Government of Jersey policy and to comply with international standards. The terminology used is strictly confined to the beneficial owner and controller regime administered by the Companies Registry at the JFSC.

## 1. When is notification required?

It is important to remember that information concerning trusts is only to be provided where there is a trustee owning or controlling a Corporate or Legal Entity.

- › **Scenario 1:** If the trustee has a 25% or more shareholding (i.e. 'legal ownership') in the Corporate or Legal Entity (directly or indirectly), then disclosure of the information in terms of the parties mentioned under FAQ 2 below needs to be made to the JFSC.
- › **Scenario 2:** If a trustee has less than a 25% shareholding in the Corporate or Legal Entity (directly or indirectly), *however, can exercise control over the Corporate or Legal Entity* (e.g. by way of voting rights), then disclosure of the information in terms of the parties mentioned under FAQ 2 below needs to be made to the JFSC.
- › **Scenario 3:** If a trustee has less than a 25% shareholding in the Corporate or Legal Entity, *with no control over the Corporate or Legal Entity* (e.g. holds insufficient voting right to achieve control or to exert significant influence directly or indirectly), then disclosure of the information in terms of the parties mentioned under FAQ 2 below will *not* need to be made to the JFSC.

## 2. What is required to be disclosed?

The JFSC feels it appropriate to reflect the AML/CFT regime, which sets requirements and provides guidance in relation to the application of identification measures for the purpose of collecting information concerning beneficial owners and controllers in the context where a trustee owns and/or controls a Corporate or Legal Entity.

Save in respect of a TCSP that has already submitted a C17S form or equivalent (see FAQ 5 below for further information), disclosure will be required of an individual. This means that TCSPs must continue to 'drill down' until an individual has been identified.

In summary, TCSPs will need to provide information about the following parties to the Companies Registry at the JFSC.

### Scenario 1:

- › The Trustee;
- › The Settlor;<sup>3</sup>
- › The Protector;
- › Any individual beneficiary with a 'vested' interest. Details as to the meaning of a vested interest is set out below in FAQ 3 below; and
- › Any person who otherwise exercises ultimate effective control over the trust e.g. a 'co-trustee' or a 'power holder'. This point is explained further in FAQ 4 below.

### Scenario 2:

- › The Trustee;
- › The Settlor;<sup>4</sup>
- › The Protector; and
- › Any person who otherwise exercises ultimate effective control over the trust e.g. a 'co-trustee' or a 'power holder'. This point is explained further in FAQ 4 below.

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<sup>3</sup> No disclosure is required in terms of a deceased Settlor.

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### 3. Who is a beneficiary of a trust with a vested interest?

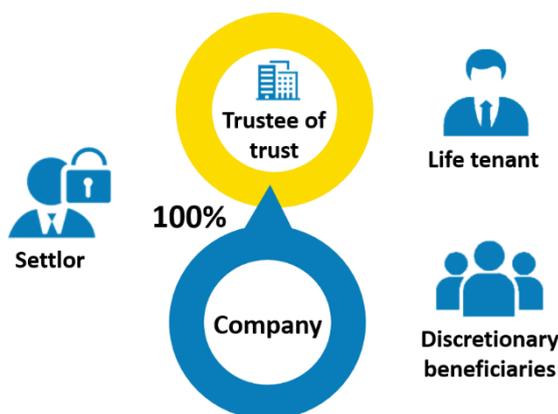
Under **Scenario 1**, TCSPs must consider whether a beneficiary needs to be disclosed as an owner. In such circumstances, the Companies Registry of the JFSC requires TCSPs to identify individuals having or being granted a life interest or absolute interest in trust property. For the avoidance of doubt, the Companies Registry of the JFSC is not collecting a historical chronology of changes since registration, it simply requires information as at the date of submission of the C17S form (or the equivalent form depending on the Corporate and Legal Entity).

To confirm, the Companies Registry of the JFSC does not require TCSPs to register individuals who may receive a distribution by virtue of the future exercise of trustee’s discretion from a discretionary trust. The Companies Registry of the JFSC confirms that the intention is not to create a register of transactions.

The below examples identify where a TCSP may need to consider disclosing information relating to beneficial ownership.

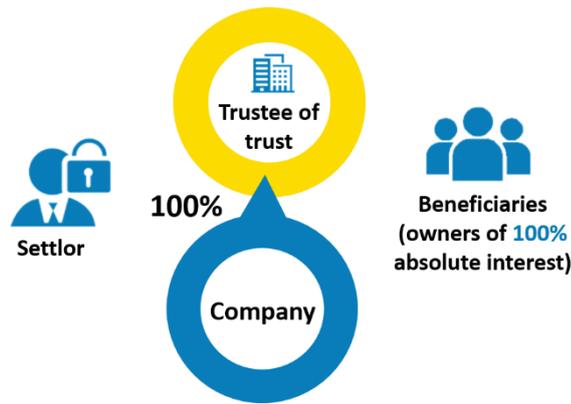
#### Examples of Beneficiaries with an absolute vested interest disclosable to the JFSC

##### Example 1:



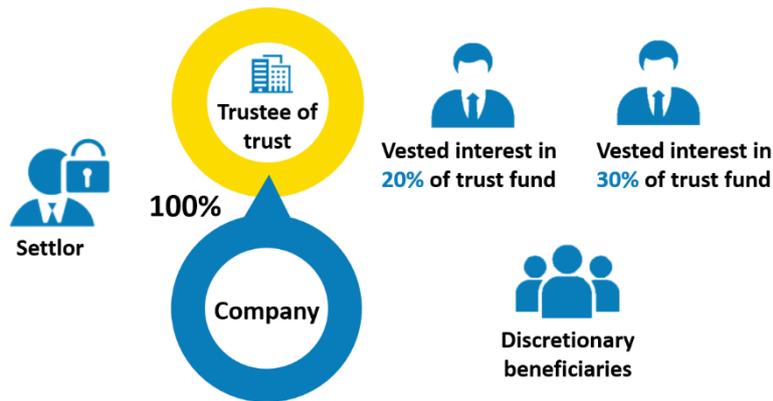
**Parties to disclose:** In addition to the trustee, in this example the settlor and life tenant must be disclosed to the JFSC. For the avoidance of doubt, the discretionary beneficiaries do not need to be disclosed unless such right becomes absolute or in circumstances where they are deemed as a controller (such as a Power Holder explained in FAQ 4 below).

**Example 2:**



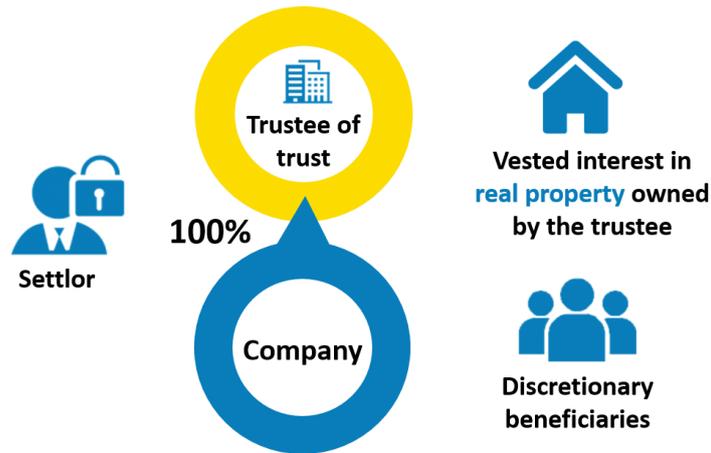
**Parties to disclose:** In addition to the trustee and settlor, in this example, the beneficiary class as a whole is identifiable. The beneficiaries hold an absolute interest in the trust, hence the trustee no longer has discretion. The beneficiaries are the beneficial owners with a vested interest and therefore such ownership must be disclosed to the JFSC.

**Example 3:**



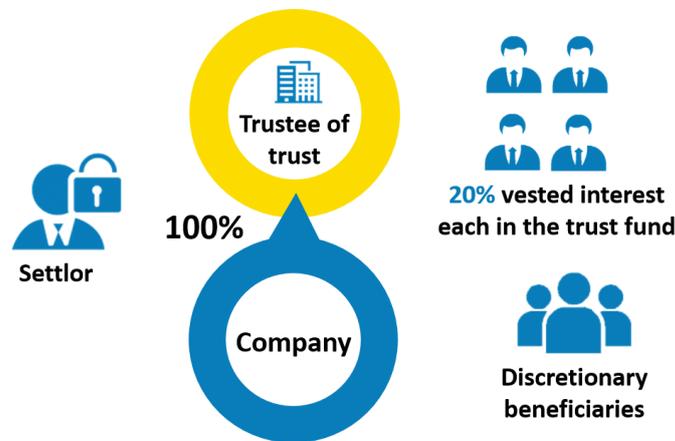
**Parties to disclose:** In addition to the trustee and settlor, in this example the beneficiaries with vested interest must be disclosed to the JFSC irrespective of the percentage held. For the avoidance of doubt, the discretionary beneficiaries do not need to be disclosed unless such right becomes absolute or in circumstances where they are deemed as a controller (such as a Power Holder explained in FAQ 4 below).

**Example 4:**



**Parties to disclose:** In addition to the trustee and settlor, in this example the beneficiaries with life interests or other absolute interests in the real property that are not discretionary (or remain contingent) must be disclosed. For the avoidance of doubt, the discretionary beneficiaries do not need to be disclosed unless their status as a discretionary beneficiary changes, for example to a life in possession interest. To clarify, no disclosure is required in terms of a discretionary beneficiary with a licence to occupy a real property.

**Example 5:**



**Parties to disclose:** In addition to the trustee and settlor, in this example the owners of the 80% absolute vested interest must be disclosed to the JFSC irrespective of the percentage held. For the avoidance of doubt, the discretionary beneficiaries do not need to be disclosed unless such right becomes absolute or in circumstances where they are deemed as a controller (such as a Power Holder explained in FAQ 4 below). A discretionary distribution by the Trustee to a discretionary beneficiary does not in itself cause such a beneficiary to have a vested interest.

## 4. Who is ‘any person that otherwise exercises ultimate effective control’ over the Corporate or Legal Entity?

Under **Scenarios 1 and 2**, TCSPs must consider whether any person otherwise exercises ultimate effective control over a trust. This will include a right to exercise ‘ultimate effective control’ which, if exercised, would give rise to the actual exercise of significant influence or control over the trustee. This right to exercise ultimate effective control over the trustee may result in that person having **indirect** control in relation to the Corporate or Legal Entity. This would be the case *regardless of whether or not they actually exercise that right*. A person has the right to exercise ultimate effective control over a trustee if that person has the right to direct or influence the running of the activities of the trustee in terms of the trust. Such persons are often referred to as ‘Power Holders’, for example:

- a. Right to appoint or remove a trustee, except through application to the courts or as a result of a breach of fiduciary duty by the trustee;
- b. Right to direct or veto the distribution of funds or assets;
- c. Right to direct or veto investment decisions of the trustee;
- d. Right to amend the trust deed; or
- e. Right to revoke the trust.

## 5. Does the TCSP need to complete and submit a C17S form in its own capacity and are multiple disclosures required?

Yes, all Jersey Corporate and Legal Entities must submit a C17S form.

*Once a Jersey regulated TCSP has completed its C17S form*, the register of beneficial ownership and control will hold all the necessary information relating to the TCSP in accordance with the Exchange of Notes with the UK Government. This means that once the TCSP has completed its C17S and, where the TCSP is acting as a ‘Trustee’ as outlined in either Scenario 1 or 2 of FAQ 2 above, the TCSP will not need to disclose the beneficial owners and controllers again (as this would be a duplicated effort in terms of the submissions). Disclosure should be limited to the Jersey regulated TCSPs name and address which is to be provided in the ‘controller’ section of the C17S form (or the equivalent form depending on the Corporate and Legal Entity).

For the avoidance of any doubt, TCSPs that are not regulated by the JFSC must still provide full details of all beneficial owners and controllers. A non-Jersey regulated TCSP must therefore provide all details when acting as a ‘Trustee’ as outlined in either Scenario 1 or 2 in FAQ 2 above (as applicable).

To clarify, just because there is reference to a Jersey regulated corporate trustee owning or controlling a Corporate or Legal Entity, does not mean that there is no further obligation to identify and report to the Companies Registry the individuals listed in either Scenario 1 or 2 of FAQ 2 above (as applicable).

The JFSC recommends all Jersey regulated TCSPs to submit their C17S (or equivalent forms depending on the Corporate or Legal Entity) as soon as possible as this will allow them to take advantage of the limited disclosure requirement when acting as a ‘Trustee’ which owns and/or controls a Corporate or Legal Entity.

## 6. Does this guidance cover a trustee of a charitable trust?

In short, yes - this guidance also covers a trustee of a charitable trust.

## 7. Does this guidance cover a trustee of a private trust company (PTC)?

Yes. The limited exemption that a PTC has is from registration with the JFSC.

## 8. In the case of a non-charitable purpose trust, do Enforcers need to be disclosed in the same way as Protectors are disclosed for other trusts?

Yes.

## Miscellaneous FAQs

## 9. Can the TCSP contact the Companies Registry to find out what information is held on the Beneficial Ownership Register?

No. Only an individual can make a data subject access request to see the information the JFSC holds in respect of *that individual*.

**The JFSC strongly recommends each TCSP to maintain complete and orderly records of all submissions and to recommend its customers to do the same.**

## 10. How can the TCSP cater for its ‘four/six eyes’ procedure when submitting the C17S form?

The C17S form can be completed and placed in a ‘cart’ on the web portal. Reviewers can access the draft C17S form from the cart to review the information prior to final submission of the C17S form to the JFSC.

## 11. What does the term ‘administration’ mean in the C17S form?

Whilst it is not the role of the JFSC to provide legal advice, we acknowledge that the term ‘administration’ is not defined in law and has not been tested in a regulatory context in a Jersey court. It is our interpretation that ‘administration’ within the context of the Beneficial Ownership Register would include the provision of any service specified within Article 2(4) of the Financial Services (Jersey) Law 1998. By way of example, the provision of a registered office and the provision of a company secretary are both services specified within Article 2(4) of the Financial Services (Jersey) Law 1998.

## **12. Will TCSPs need to provide information regarding the original parties in FAQ 2 above, as well as the new parties in FAQ 2 above, when a trust has been re-settled?**

Yes.

## **13. If the trustee is under the direction of a Court, will the officers of the Court need to be disclosed?**

No.

## **14. At what point does an individual at the top of a chain of entities with a small and indirect shareholding or ownership in the Corporate or Legal Entity become disclosable? For example, a Corporate or Legal Entity may be 25% owned by another Corporate or Legal Entity, which is 50% owned by another Corporate or Legal Entity, in which an individual has a 25% holding?**

The individual will always be disclosable if s/he can exercise control over a Corporate or Legal Entity. This is still the case, even where the direct or indirect shareholding or ownership interest in the Corporate or Legal Entity may be less than 25%.

## **15. Why do the FAQs not mirror the Persons of Significant Control regime in the UK?**

The beneficial owner and controller regime is being implemented to meet with Government of Jersey policy. Of note, the Persons of Significant Control regime in the UK is a public register and therefore a comparison with this regime is not deemed to be appropriate for this jurisdiction.

We stress that Jersey is by no means the only jurisdiction that is undergoing changes to the beneficial ownership and control reporting regime. All Crown Dependencies and Overseas Territories are in the process of adopting changes in 2017.

## **16. Should the TCSP consider its terms and conditions with customers in light of the establishment of a Beneficial Ownership Register?**

**The JFSC would strongly encourage TCSPs to review all terms and conditions with customers to ensure proper and adequate reporting arrangements are in place before 30 June 2017.**

## **17. Did the JFSC consult industry representatives when drafting this guidance?**

Yes, the JFSC consulted with STEP, JATCo and the JBA.