

Conducting Customer Due Diligence – Part I

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ADVOCATES

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Agenda

- Introduction
- Overview of CDD
- Who is the customer?
- Identification and verification
- Natural Persons
- Legal Persons
- Beneficial owners
- Authenticity Checks
- Customer vs Agent



Introduction



What is Customer Due Diligence (CDD)?

CDD is the gathering of all relevant information about a customer and his affairs

It is the information that enables a Subject Person to assess the extent to which a customer exposes them to a range of risks – including the risk of involvement in ML/FT

Why do we carry out CDD?

Determine who the customer is

Determine who the BO is (where applicable)

Verify customer & BO (where applicable)

Determine whether such person is acting on behalf of another person

Establish purpose and intended nature of the business relationship & risk profile of customer

In the case of a business relationship, monitor the same on an ongoing basis

Benefits of CDD

To safeguard against:

A subject persons
products/services
being used for
ML/FT purposes



Regulatory,
reputational and
financial
repercussions



Potential
enforcement action

Value of CDD

- Two other main benefits result from obtaining CDD information:
 - The first is its use in deciding whether to acquire a prospective customer;
 - The second is its use in facilitating the effective monitoring of customer relationships for unusual and potentially suspicious activity

The key to obtaining maximum value from CDD information is to USE it. The mistake subject persons commonly make is obtaining and documenting CDD information but then failing to refer to it before conducting transactions. These mistakes can prove to be costly.

Failure to use CDD information

- CSP manages and controls a customer company and its files show that it was set up for investment-holding purposes
- 3 years after its incorporation, the company enters into an agency agreement for the procurement of contracts and receives large commission payments.
- No questions are raised by the CSP, which fails to take account of the CDD information in its own files that indicates that the company wasn't actually set up to trade.
- It later transpires that the agency activity was illegal, and that the commissions received were the proceeds of crime.
- The directors of the CSP are asked to explain why they didn't regard it as unusual for an investment-holding company that they were managing and controlling, to begin trading.
- The CSP is unable to provide an acceptable explanation.

Who is the customer?

- A person (whether legal or natural)
- Who seeks to form a business relationship (i.e. a prospective customer); or
- With whom a business relationship is formed (i.e. existing customer); or
- For whom an occasional transaction is carried out.

Business Relationship

- As per the PMLFTR, a “business relationship” means a business, professional or commercial relationship between two or more persons, at least one of which is acting in the course of either relevant financial business or relevant activity, and which has, or is expected to have at the time when the contact is established, an element of duration.

Occasional Transaction

- “Occasional transaction” means any transaction or service carried out or provided by a subject person for his customer, other than a transaction or service carried out or provided within a business relationship, and includes the following:
 - Single transaction of a specified amount (€15,000, €10,000, €1,000, €2,000) according to the nature of the relevant activity/SP – the €2,000 threshold applies to gaming and casino licences for instance;
 - A series of linked transactions that add up to the specified amount;

Occasional Transaction (cont.)

- For the avoidance of doubt, the **formation of companies, trusts, foundations or similar structures, and/or the provision of tax advice** (without the provision of additional services that lead to the establishment of an enduring relationship) by a subject person, shall be considered to constitute an occasional transaction.
- By way of example, CDD measures should be undertaken by the subject person even when incorporating a company with a share capital amounting to €1,200. Given that the formation of a new company (without the provision of additional services following incorporation, which would lead to the establishment of a business relationship, such as the provision of directorship services and/or company secretarial services) is by definition an occasional transaction, CDD measures should be applied irrespective of whether the initial share capital is of a minimal amount.
- Similarly, the provision of tax advice is by definition also an occasional transaction where CDD measures should be applied, irrespective of the values involved.



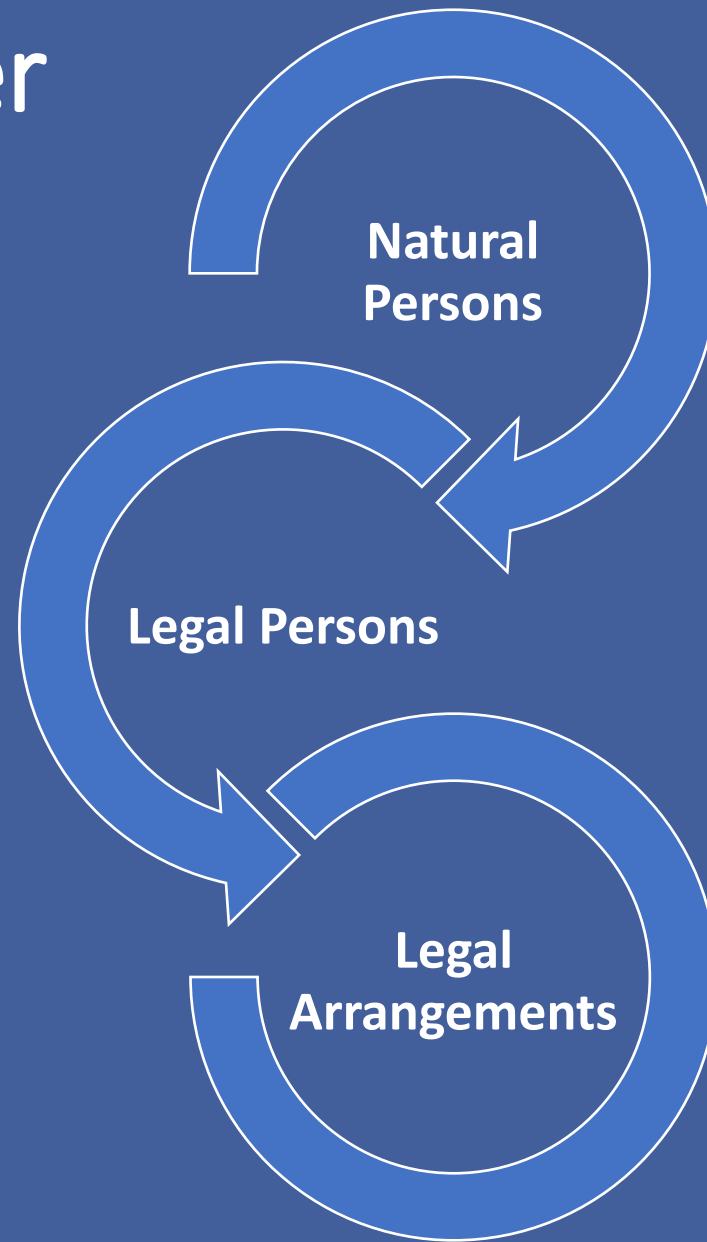
Customer Risk Profile

A subject person will only be able to apply the provisions of its CAP once it has understood the risk inherent in a particular business relationship or an occasional transaction.

The subject person has to carry out an assessment of the particular risks it will be exposed to in providing its services or products, either in the course of a business or as a one-off event (i.e., occasional transaction), to specific customers linked to particular jurisdictions through one or more channels.



Type of Customer



Customer vs Agent

- Where the customer is represented by another person acting as agent, the subject person is required to carry out additional measures over and above identifying and verifying the identity of the customer and the BO:
 - ensure that the agent is duly authorised in writing to act obo the customer; and
 - identify and verify the identity of the agent – if the agent is a natural person, then full ID&V needs to take place; if it is a legal entity, then subject persons **do not** have to establish its ownership and control structure, identify who its BOs are, and identify and verify the entity of its officers and/or employees who provide instructions to the subject persons.
 - seek to understand the rationale behind such arrangement and why the customer did not seek to contact the subject person directly.

Customer vs Agent (cont.)

Circumstances which the subject person must have regard to when determining whether the customer is acting obo another person include:

- _ from where the subject person is receiving instructions;
- _ the source of the funds;
- _ the destination of the funds;
- _ payment references or rationale;
- _ unusual delay in answering questions



Beneficial Owners

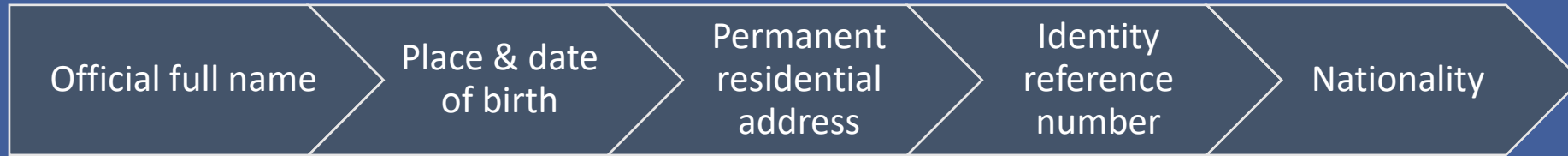
A natural person who ultimately owns or controls the customer

A natural person on whose behalf or for the benefit of whom a transactions is being conducted

Identification and Verification



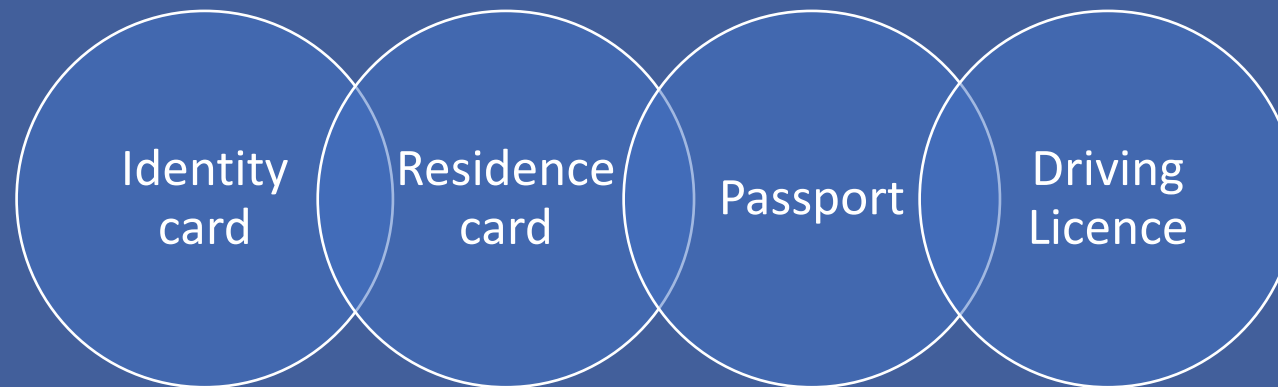
Natural person: *Identification*



This procedure should apply in the same manner with respect to both a resident and non-resident applicant for business

Natural Person: Verification of Identity

- A valid, unexpired government issued document that contains photographic evidence of identity:



Natural Persons: Verification of Address

- a) correspondence from a central or local government authority, department or agency;
- b) an official conduct certificate;
- c) any other government-issued document not mentioned above;
- d) a recent statement or reference letter issued by a recognised credit institution or entity carrying out relevant financial business in Malta, or equivalent activities in a Member State of the EU or in a reputable jurisdiction;
- e) a recent utility bill;
- f) a lease contract or agreement; and
- g) any other document as may be specified in sectoral Implementing Procedures issued by the FIAU.

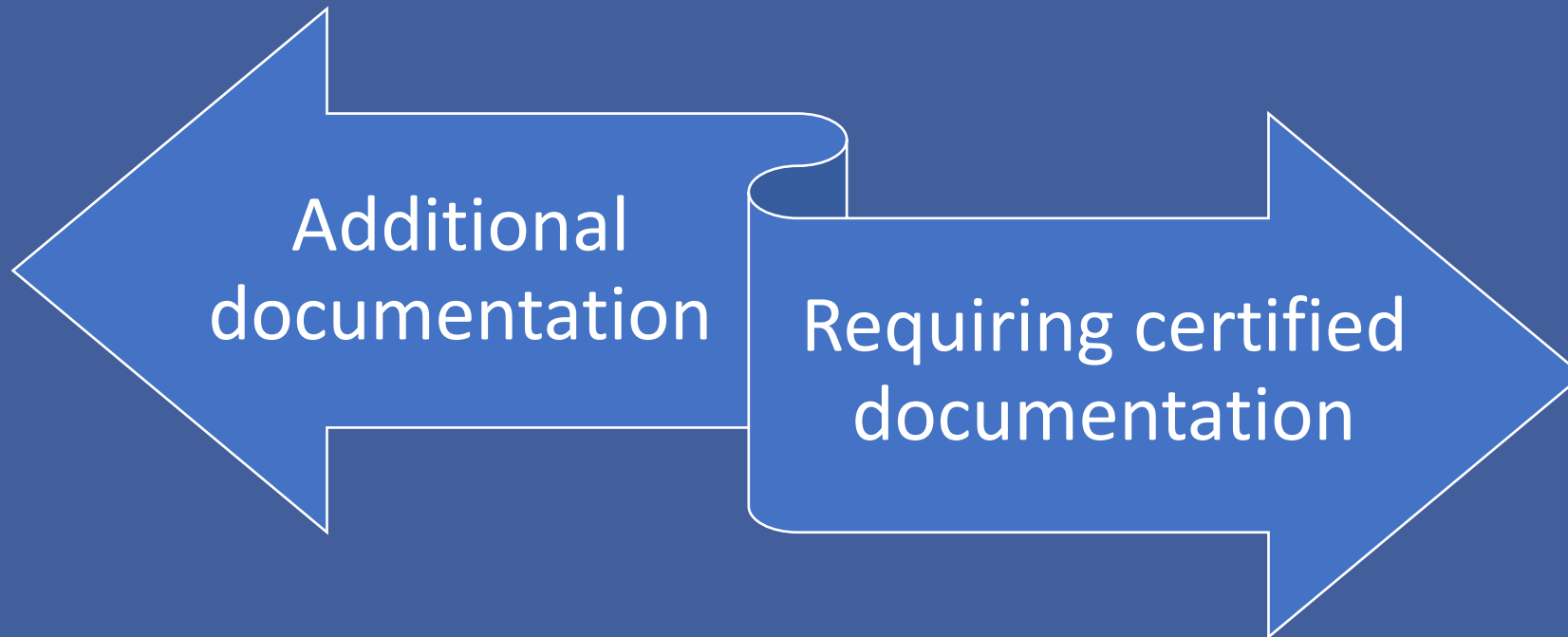
Natural Persons: Verification in Exceptional Scenarios

- a) when a customer only has a temporary address and has no permanent residential address elsewhere, such as seasonal workers, a letter from a director or manager of the employer confirming the residence at a stated address and indicating the expected duration of employment would be sufficient;
- b) when a customer resides on a yacht, the customer's residential address may be verified by obtaining documentation relating to the chartering of the yacht and berthing agreements;
- c) when the customer is residing in a nursing home or similar residential care institution, the subject person may verify the customer's residential address by obtaining a letter from the director or manager of the home/institution confirming the customer's residential address;
- d) when the customer is homeless or a member of the travelling community, subject persons must gather sufficient information and, where available, documentation on the customer's situation and frequent whereabouts;

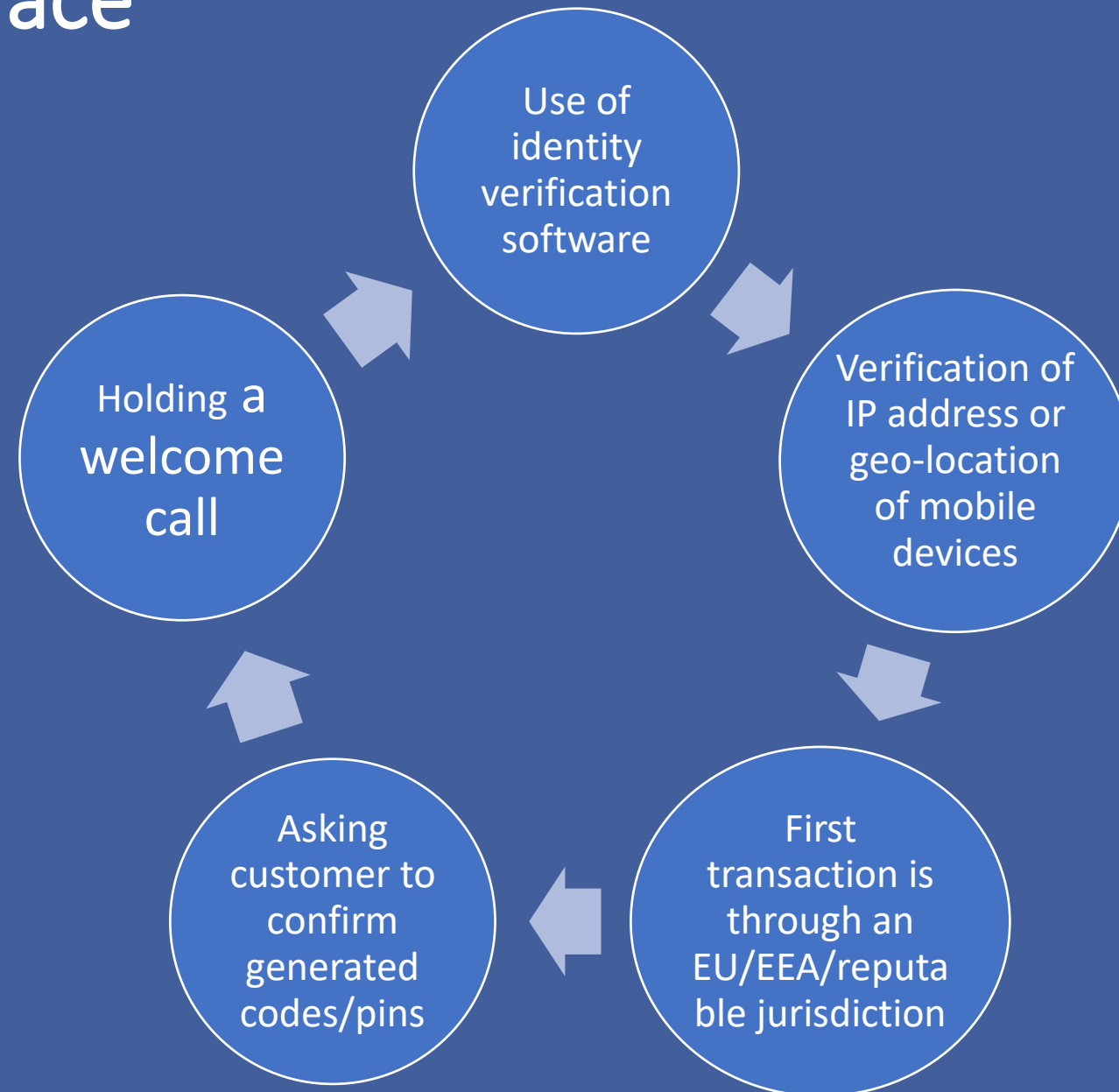


Non-face-to-face verification

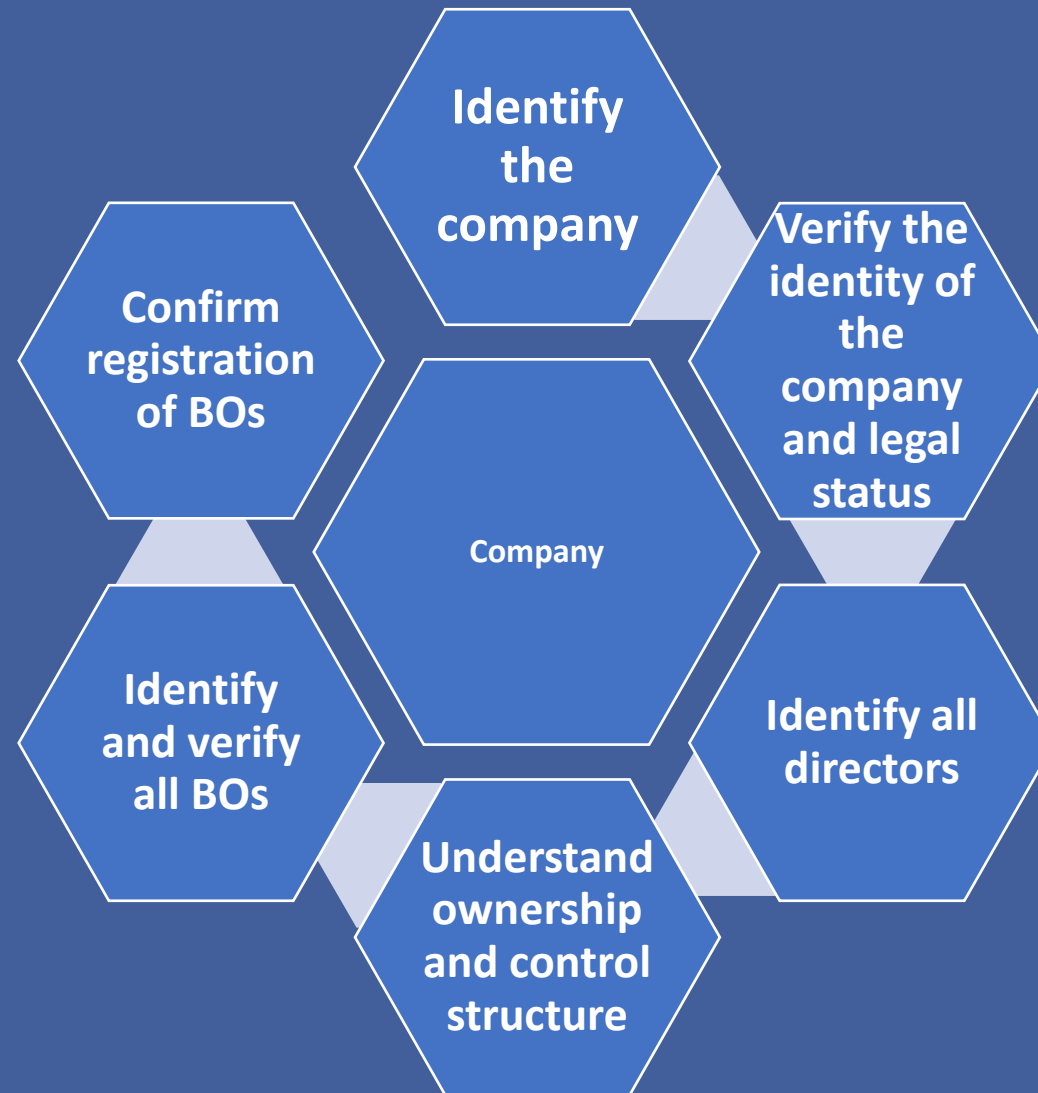
Verification on the basis of documents:



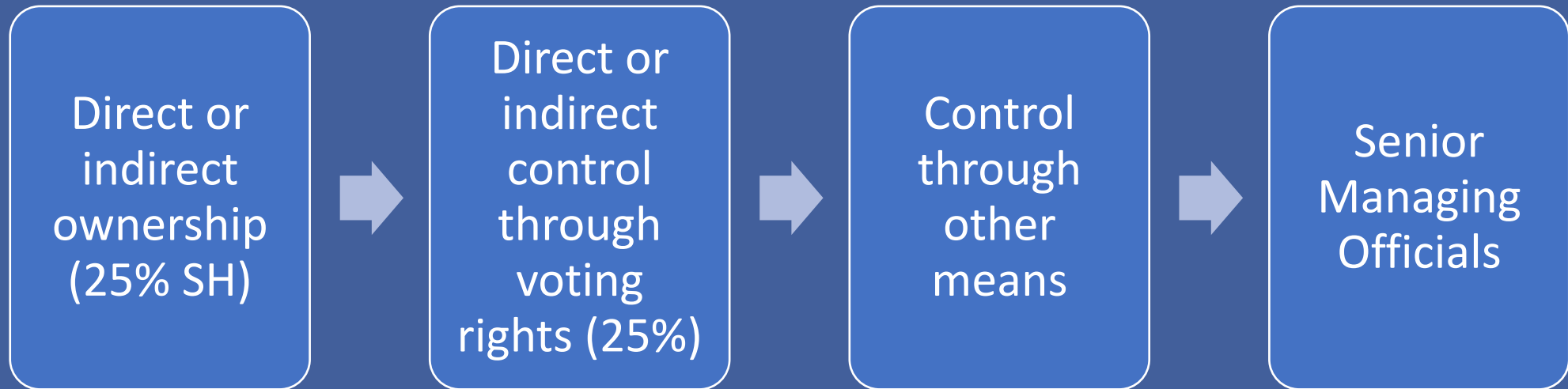
Additional measures for non-face-to-face



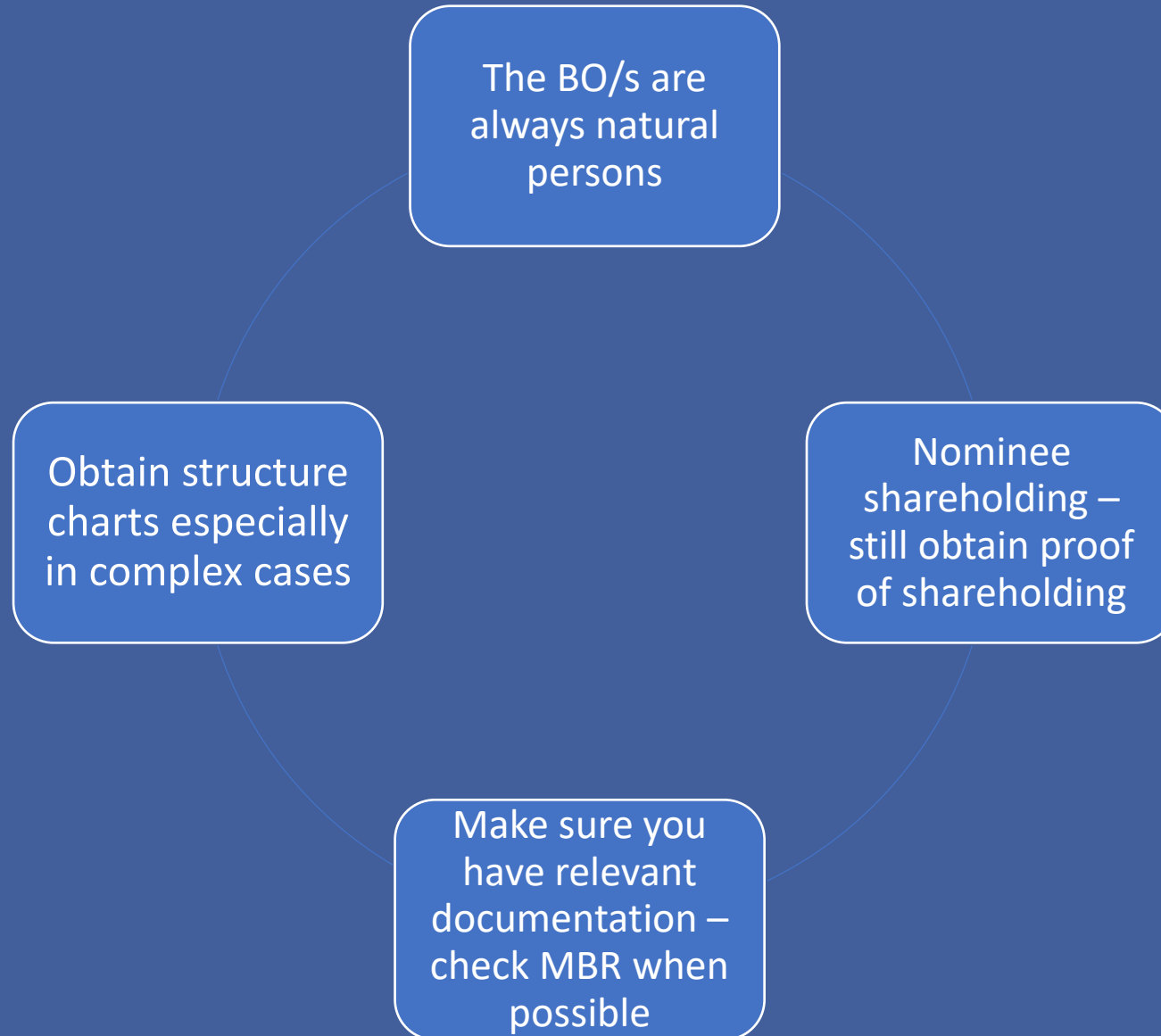
Identification and Verification: Company



Beneficial Owners: ID&V



Beneficial owners: Identification



Confirm Beneficial Owners

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MBR MALTA BUSINESS REGISTRY

Other Links Beneficial Owners

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Companies

Company Registration Number

Enter your email address before proceeding to pay to view the BO Details. After payment is verified, you can view the details from here or access the link received by email

Kindly note that viewing of the BO Details will only be available for 1 hour from confirmation of payment.

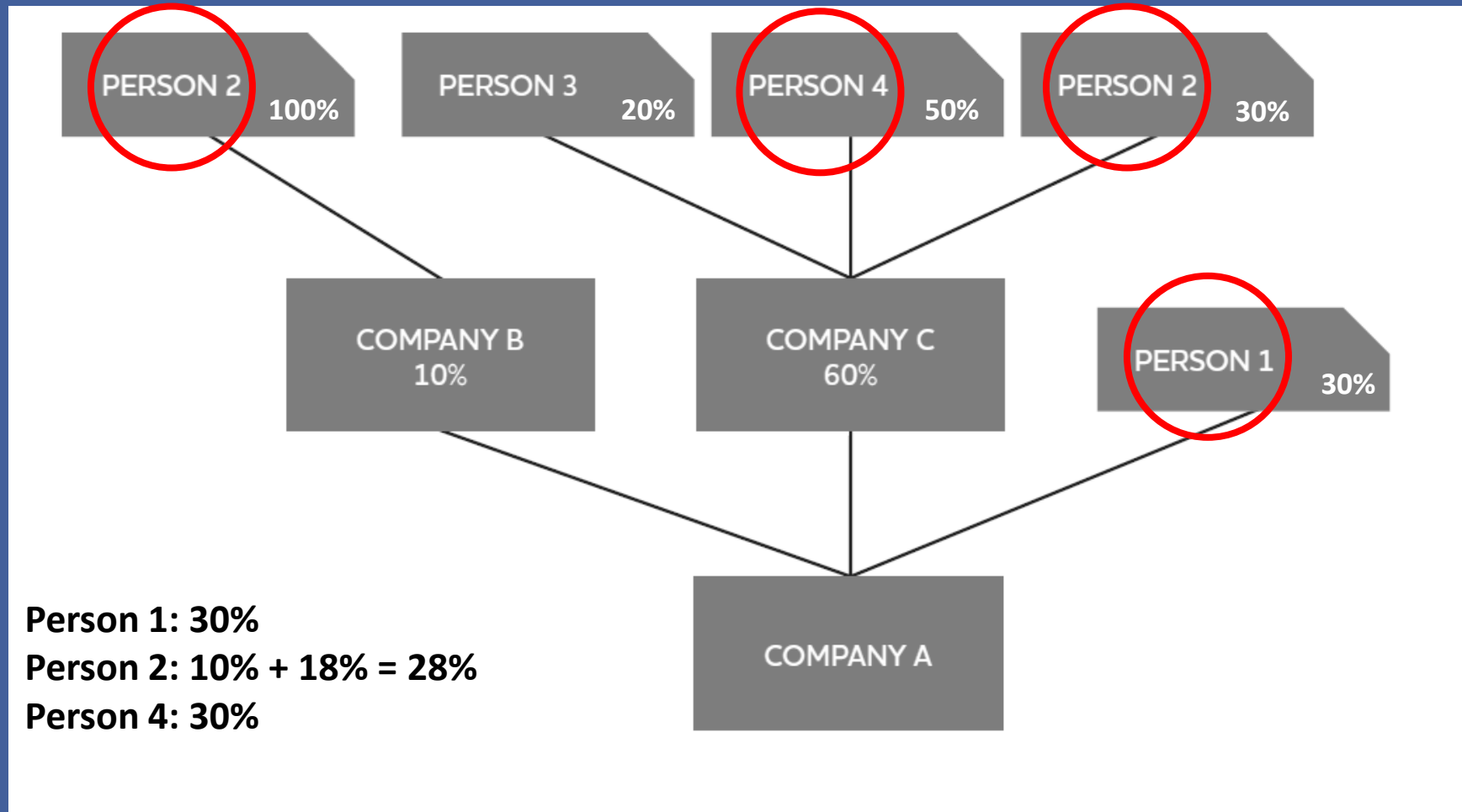
Email Address

Confirm Email Address

Kindly click on this link to pay in order to view the Beneficial Owners of the company

By continuing, you are agreeing that you are using the system in terms of the Prevention of Money Laundering and Funding of Terrorism Regulations providing services in or from Malta, and that you are accessing the information on the beneficial ownership of the company for the purpose of carrying out customer due diligence in accordance with the said regulations.

BO examples – Example 1

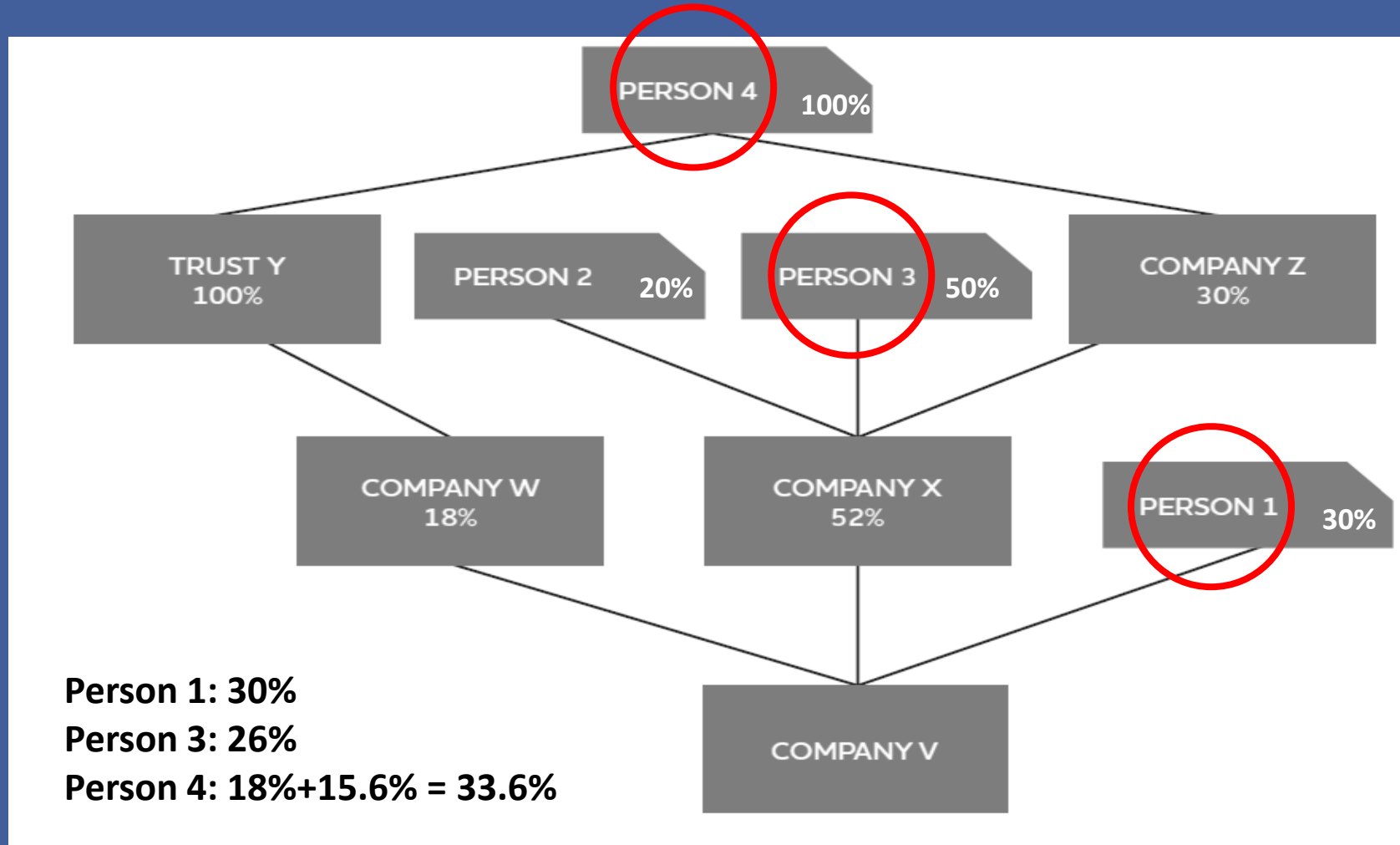


BO examples – Example 1

Key take away: It is important to establish and figure out the customer's entire corporate structure to be in a position to understand whether an individual features within an ownership structure through more than 1 entity. In such cases, all holdings of that same individual are to be assessed since, through the different holdings within the structure he may hold a sufficient % of shareholding that would make him a BO.



BO examples – Example 2



BO examples – Example 2

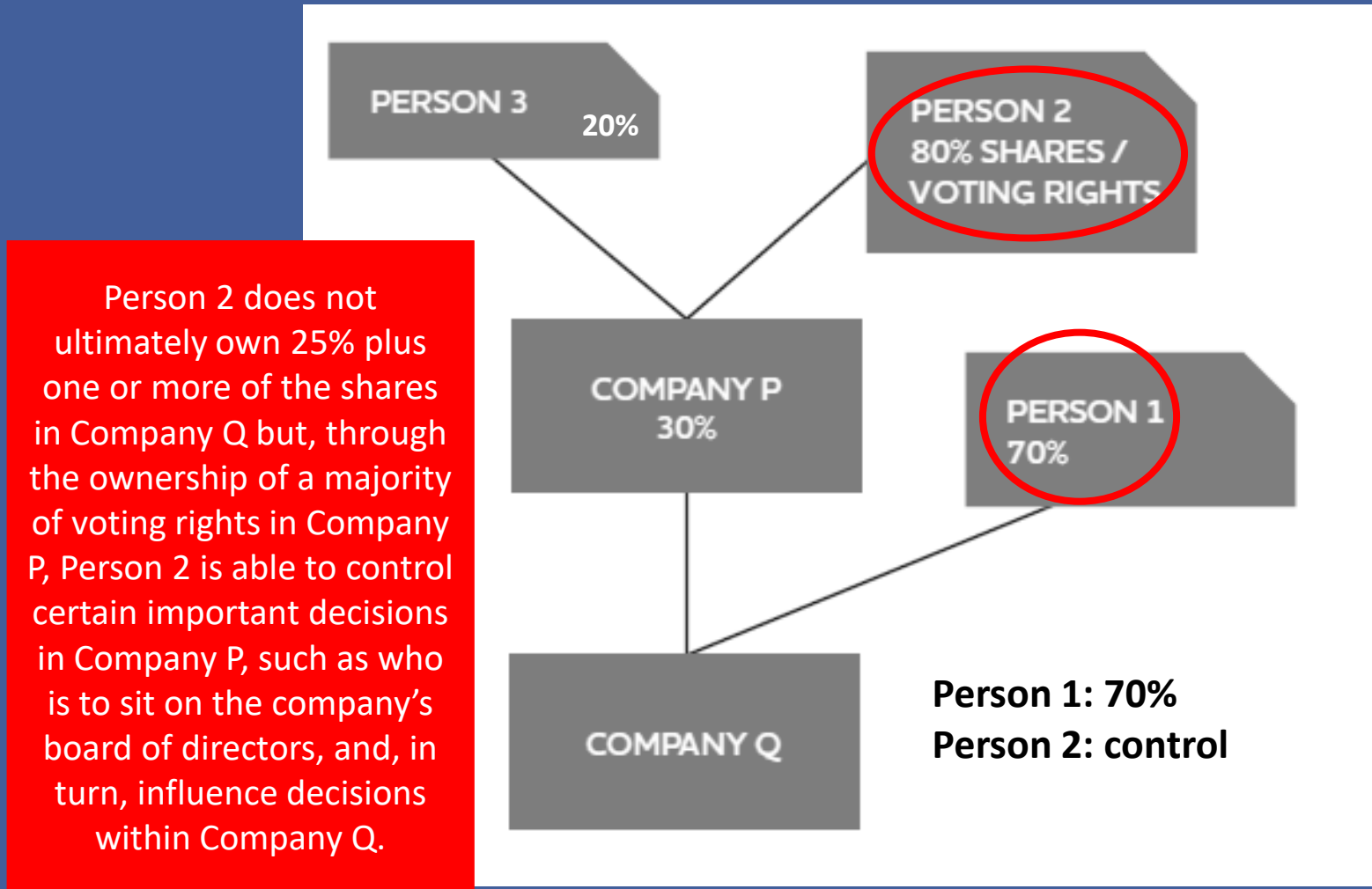
Key take away: Whenever the shares in a body corporate (the customer) are held in trust, the subject person is not expected to identify and verify all of the beneficial owners of the trust (i.e. the parties indicated in paragraph (b) of the definition of beneficial owner provided for in the PMLFTR) as the beneficial owners of the said shares.

Given that the customer would here be the body corporate and not the trust itself, determination of the beneficial ownership of the shares and of the body corporate itself requires that the subject person:

- a) identifies who is the beneficiary of the trust; and
- b) considers whether the said benefit, together with any other direct or indirect interest that individual may have within the body corporate, is sufficient to meet the conditions at law to be considered as a beneficial owner of the said body corporate (that is, whether the beneficiaries are ultimately entitled to 25%+1 or more of the shares, or more than 25% of the voting rights). Where this is **not** the case, it is **those persons exercising control via other means** that would qualify as the beneficial owners, and in the absence of anyone of the kind, the beneficial owner would be the **senior management officials of the customer** (i.e. the company).

The same would also find application in situations where instead of a trust, there would be a foundation.

BO examples – Example 3



Identifying the customer's senior managing officials

- Firms should resort to identifying the customer's senior managing officials as beneficial owners **only if**:
 - They have exhausted all possible means of identifying the natural person who ultimately owns or controls the customer;
 - Their inability to identify the natural person who ultimately owns or controls the customer does not give rise to suspicions of ML/TF; and
 - They are satisfied that the reason given by the customer as to why the natural person who ultimately owns or controls the customer cannot be identified is plausible.
- Firms should consider who has **ultimate and overall responsibility** for the customer and **takes binding decisions** on the customer's behalf.
- In those cases, firms should clearly document their reasons for identifying the senior manager, rather than the customer's beneficial owner, and must keep records of their actions.

Identifying the customer's senior managing officials

Key take away: One situation in which senior managing officials will have to be identified as beneficial owners is in respect of **State-owned enterprises or public administration authorities**. This is an interpretation laid down by the EBA in its the **Risk Factor Guidelines**.

Bearer Shares

- Companies whose share capital is issued in the form of bearer shares or that issue warrants to bearer are likely to pose increased difficulties for subject persons to determine beneficial ownership. Subject persons should exercise additional care and diligence when carrying out CDD measures on companies having bearer shares because these companies pose higher risks of ML/FT.
- Companies that issue bearer shares are frequently incorporated in high-risk jurisdictions. In this regard, additional measures are required to be undertaken by subject persons to mitigate the risk of ML/FT.
- In the event that the customer, or any company within the customer's ownership and control structure, is a company with bearer shares, subject persons have to determine the beneficial owners of these companies by applying additional measures.

Bearer shares (cont.)

- For example, where a bearer share certificate is issued in a jurisdiction that requires the holder to **notify the company of their shareholding and the company to record their identity in a register**, subject persons must:
 - Require a copy of this register signed and certified as a true copy by the company secretary, director or agent; and
 - Obtain a written undertaking that the Subject person will be notified if the bearer share certificate is transferred to any other person.

In the light of the higher ML/FT risk that these companies may present, subject persons must desist from establishing a business relationship with, or carry out an occasional transaction for, any such company when it is not possible to determine the beneficial owners of the bearer shares.

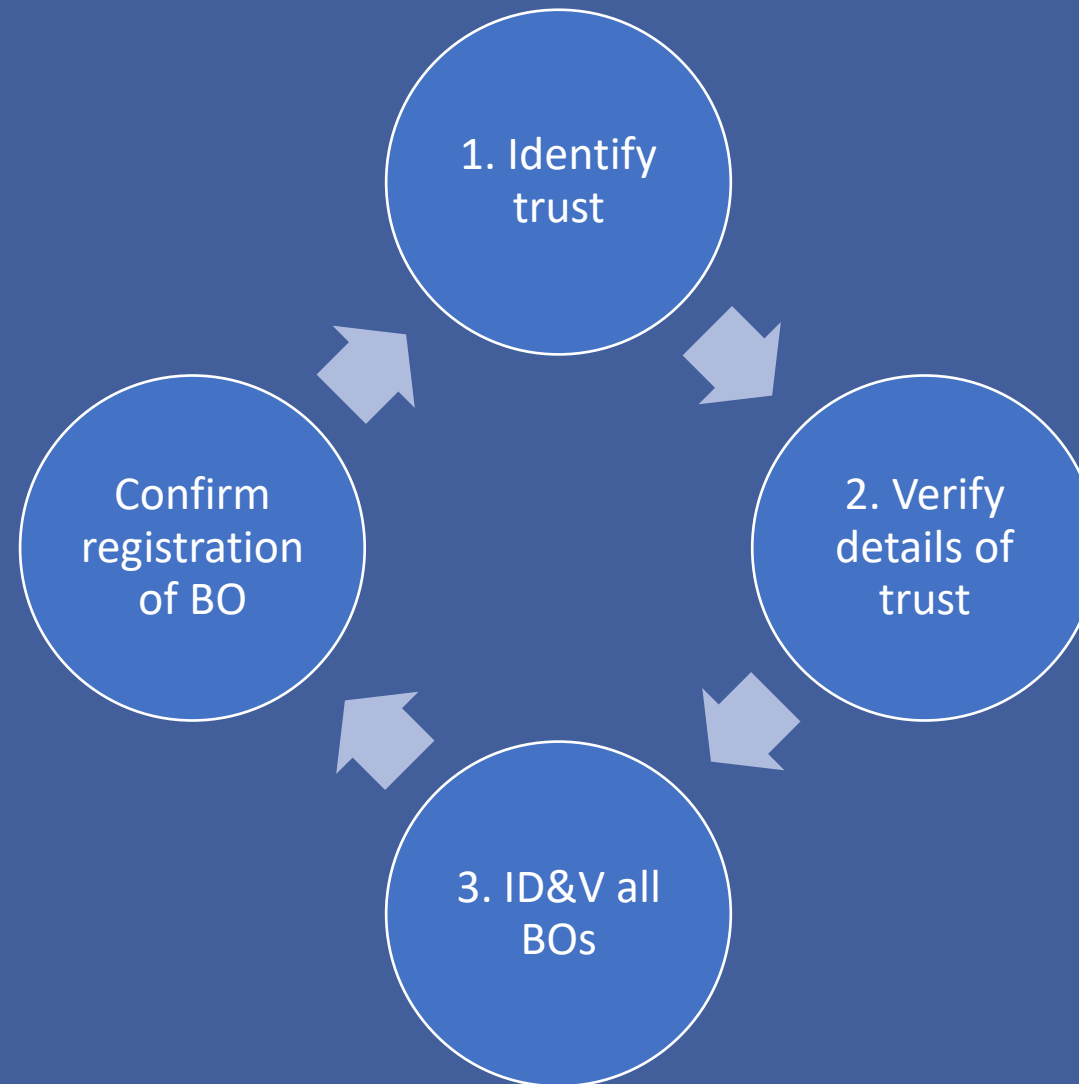
Trusts



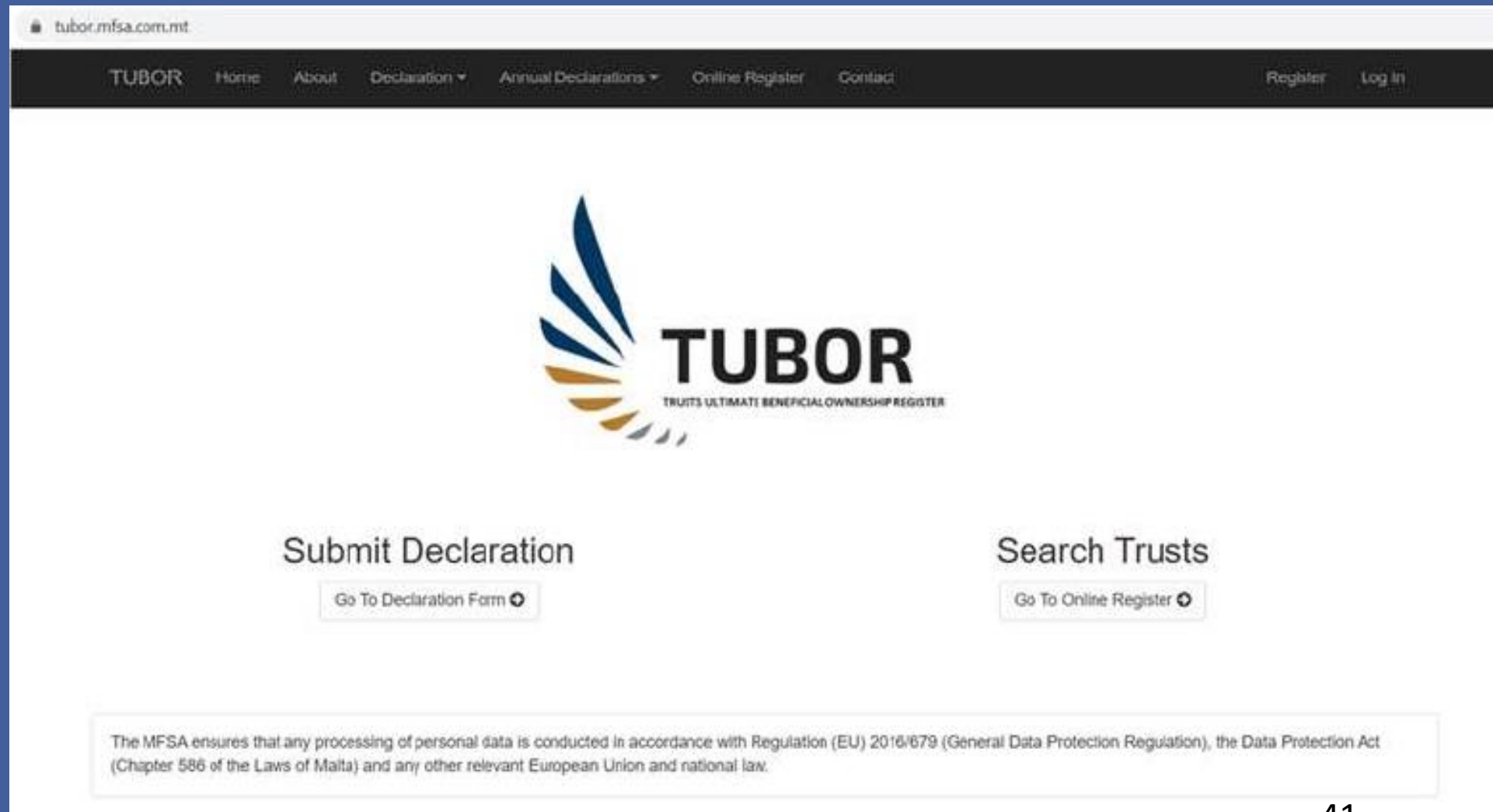
Legal persons: ID&V

Nature of principal	Identification & verification procedures
Foundation or Association	<ul style="list-style-type: none">• Identification: official full name; registration number; date of incorporation or registration; and registered address• Verification: certificate of registration; most recent version of the constitutive document• Identify all persons vested with administration and representation• Establish ownership and control structure• Foundations: identify the founder, any person who has endowed the foundation and any person who has been assigned rights in respect of the foundation
Trusts	<ul style="list-style-type: none">• Identify the trust: full name of the trust, nature of the trust (e.g., discretionary trust, testamentary trust, bare trust) as well as its object and purpose (e.g., wealth management, estate planning), country of administration and applicable law, and registration number if applicable• Verify the existence of the trust by requesting a copy of the trust deed or an extract of same showing the above information• Identify all beneficial owners• Obtain copy of the authorisation of the trustee if regulated

Identification and Verification



Confirmation of Beneficial Owners



The screenshot shows the TUBOR website interface. At the top, the address bar displays 'tubor.mfsa.com.mt'. The navigation menu includes 'TUBOR', 'Home', 'About', 'Declaration', 'Annual Declarations', 'Online Register', and 'Contact'. On the right side of the menu, there are links for 'Register' and 'Log In'. The main content area features the TUBOR logo, which consists of a stylized blue and orange wing-like graphic to the left of the text 'TUBOR' and 'TRUSTS ULTIMATE BENEFICIAL OWNERSHIP REGISTER'. Below the logo, there are two primary action buttons: 'Submit Declaration' with a sub-button 'Go To Declaration Form', and 'Search Trusts' with a sub-button 'Go To Online Register'. At the bottom of the page, a disclaimer states: 'The MFSA ensures that any processing of personal data is conducted in accordance with Regulation (EU) 2016/679 (General Data Protection Regulation), the Data Protection Act (Chapter 586 of the Laws of Malta) and any other relevant European Union and national law.'

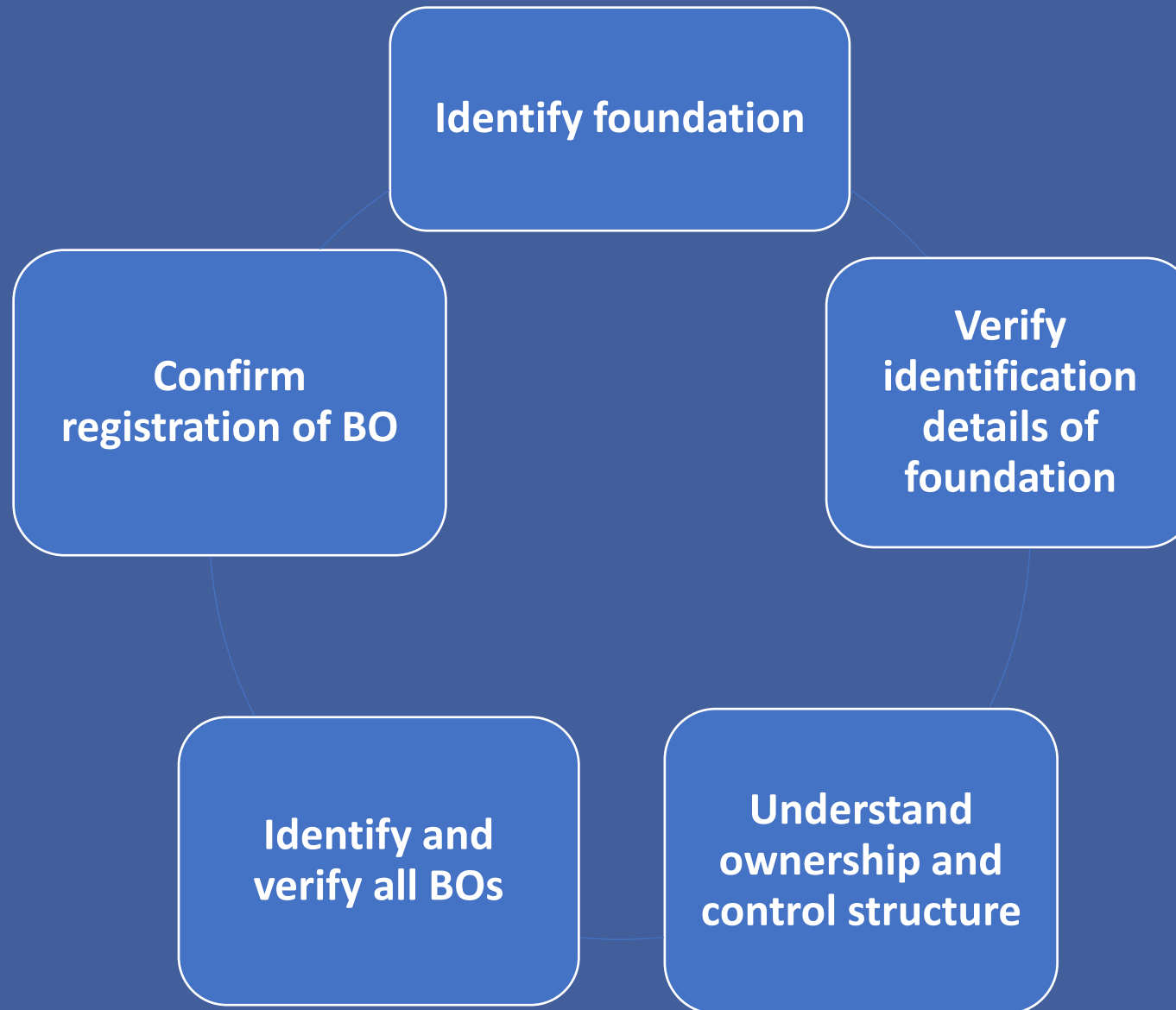
Trusts: Beneficial Ownership

- i. Settlor(s)
- ii. Trustee(s)
- iii. Protector(s)
- iv. Determined beneficiaries (or, if not yet determined, class of persons in whose main interest the trust is set up or operates)
- v. Other natural person(s) exercising ultimate control over the trust

Associations/Foundations



Identification and Verification



Beneficial Ownership

- The Founder;
- The Administrator;
- Member(s) of supervisory council;
- Beneficiaries in whose main interest the foundation is set up and operates;
- Any other natural person exercising ultimate control

Any questions?



Thank you

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