



HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ

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Thank you for writing to me regarding your concerns on the definition of beneficial ownership in the draft Money Laundering Regulations 2007. As the consultation on our draft Regulations has now closed and we have had time to consider representations and meet with interested parties, I believe it would be useful to update you on our current thinking on how best to implement the requirement to identify and verify the beneficial owner with regard to trusts.

We have considered carefully yours and other's representations on three core areas of the definition of beneficial ownership, namely who controls the trust, who is a beneficial owner of the trust, and the treatment of entitlement to income. I would like to use this letter to set out our proposals in these three areas. We have also considered carefully the issue of discretionary trusts, following a number of suggestions for how the term "beneficial ownership" should relate to them. I would like to outline our proposals on this point as well. I would be grateful for your comments on these proposals by 18th June

I, like you, believe that who controls the flow of monies in and out of a trust is of particular importance. While informal influence over a trust is also potentially at risk of being abused by criminals, on balance I propose that to require the regulated sector to look for all those who have influence over a trust is a disproportionate response. Therefore I propose limiting identification requirements to legal control only. Having said that, given the risks associated with control of a trust it is important for the regulated sector to seek to identify all those in a position of control, be it direct or indirect and exercisable in relation to capital or income. We propose to take into account different aspects of control including powers of veto and powers to add beneficiaries. Such powers have also been suggested by other consultees. We also propose removing the 25% limit for control as in the vast majority of situations the controller will have control over the whole trust and it will often be impracticable to require a calculation to be made where there is control only over part of the trust.



The issue of ownership is complex, and as you and others have pointed out the concept has limited application in English trust law. I believe that it is important that any requirements that are imposed should be as clear and certain as possible. The definition should include, as you propose, all those with a vested interest, and should extend to both indefeasible and defeasible interests. This provides certainty while reflecting the existing economic reality.

A further issue is whether the amount of a vested interest should be calculated by reference to capital only or income and capital. Following discussion with yourselves and others we are persuaded that the 25% test presents real difficulties that would be impracticable and disproportionate for the regulated sector to apply if income were included. I therefore propose that vested interests should be calculated for this purpose by reference only to capital.

As you and other acknowledge the risks of money laundering are high in discretionary trusts and in particular when funds are paid out of such trusts. It is our view, however, that the Directive does not envisage the identification (as beneficial owners) of discretionary beneficiaries who receive distributions from the trust (other than those who have vested interests). We have carefully considered whether it is possible to require identification either when beneficiaries are added to a discretionary class or when they receive a distribution. These were both suggestions from some consultees. It is our view that both options would impose significant burdens on the regulated sector. While certain sectors, such as professional trustees, may be able to identify beneficiaries when they are added to a class or on payout, it is at this stage not clear how other parts of the regulated sector such as financial institutions or accountants would be able to identify such persons in a timely manner. What they can and must do, however, is monitor closely any transactions within a trust and report anything suspicious.

Therefore I propose at this time not including specific requirements in this respect but addressing the risks through ensuring that all those who have legal control over a trust are identified, and that ongoing monitoring of such trusts is undertaken. I would ask industry to work closely with law enforcement on providing guidance as to what activity in relation to discretionary trusts firms should have regard to when conducting monitoring.

You have asked that clarification to the definition be made in the Regulations. I am persuaded of your and other's arguments on this and therefore would propose a revised definition be incorporated in the Money Laundering Regulations 2007 in the form of the attached draft at the end of this letter. This definition also includes our proposed approach to identifying the beneficial owner of an estate of a deceased person during the course of its administration.



Before we finalise the Regulations I would welcome your comments on this revised definition by 18th June. My officials are writing in parallel to other interested parties including relevant supervisors, trade associations and SOCA for their comment as well.

Yours sincerely,

A handwritten signature in black ink, appearing to be "Ed Balls".

ED BALLS MP

Proposed definition of beneficial owner

Meaning of beneficial owner

1.—(1) Subject to paragraphs (2) to (6), “beneficial owner” means any individual who ultimately owns or controls the customer or on whose behalf a transaction or activity is being conducted.

(2) In the case of a body corporate, “beneficial owner” means any individual who—

- (a) as respects any body other than a company listed on a regulated market, ultimately owns or controls (whether through direct or indirect ownership or control, including through bearer share holdings) more than 25% of the shares or voting rights in the body; or
- (b) otherwise exercises control over the management of the body.

(3) In the case of a trust, “beneficial owner” means—

- (a) any individual who is entitled to a specified interest in at least 25% of the capital of the trust property;
- (b) as respects any trust other than one which is set up or operates entirely for the benefit of individuals falling within paragraph (a), the class of persons in whose main interest the trust is set up or operates;
- (c) any individual who has control over the trust.

(4) In paragraph (3) -

“control” means a power (whether exercisable alone, jointly with another person or with the consent of another person) under the trust instrument or by law to —

- (a) dispose of, advance, lend, invest, pay or apply trust property;
- (b) vary the trusts;
- (c) add or remove a person as a beneficiary or to a class of beneficiaries;
- (d) appoint or remove trustees; or
- (e) direct, withhold consent to or veto the exercise of a power such as is mentioned in sub-paragraph (a), (b), (c) or (d);

“specified interest” means a vested interest which is —

- (a) in possession or in remainder or reversion; and
- (b) defeasible or indefeasible.

(5) In the case of a legal entity (other than a body corporate) or a legal arrangement (other than a trust) “beneficial owner” means—

- (a) where the individuals who benefit from the entity or arrangement have been determined, any individual who benefits from at least 25% of the property of the entity or arrangement;
- (b) where the individuals who benefit from the entity or arrangement have yet to be determined, the class of persons in whose main interest the entity or arrangement is set up or operates;
- (c) any individual who exercises control over at least 25% of the property of the entity or arrangement.

- (6) For the purposes of these Regulations, the beneficial owner of the estate of a deceased person in the course of administration is the personal representative within the meaning of the Trustee Act 1925^a.
- (7) In this regulation, “arrangement”, “entity” and “trust” means an arrangement, entity or trust which administers and distributes funds.

^a 1925 c.19. See section 68(9).