



BETTINGER-TORRES
A S E S O R E S



BENEFICIAL OWNER



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As of 2022, a new tax obligation named “**Beneficial owner (UBO)**” has been enacted, by which every legal entity, legal figure or trust must identify, as well as keep its detailed information ready for submission if required by the Mexican tax authority.





WHAT IS ITS PURPOSE?

- To identify who is really behind the companies or as beneficiaries of a transaction or business.
- It comes as one of the recommendations made by the Financial Action Task Force of the OECD (FATF).

This information can be used by the authority for:



Improving the vision in taxpayer auditing.



Joint and several tax liability to partners, shareholders and administrators, as well as criminal-tax responsibilities (e.g. smuggling, tax fraud, etc).



Inhibiting the use of strawmen to hide the true identity of the owner of the company or business.



Break the corporate veil of companies to identify all the people behind them.





WHAT DOES IT INVOLVE?

- 1** Companies must identify and keep accurate, complete and updated information on their beneficial owners.
- 2** The beneficial owner can be a natural person or group of natural persons that have the control or benefits of a company.
- 3** In the case of trusts, beneficial owners will be settlors and trustees, or ultimately, those exercising control.
- 4** In addition, it must be identified whether the beneficiary is indirectly so through a chain of ownership (by other legal entities) or by control (by legal entities or legal figures).
- 5** There is no obligation to report, unless requested by the authority.





WHO DOES APPLY TO?



Legal entities.



Settlors and trustees.



Contracting parties or members
of any legal figure.



Advisors and public notaries
involved in the incorporation of
companies or legal figures.



Financial institutions, in the case of
bank accounts.



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HOW TO IDENTIFY THE BENEFICIAL OWNER?

Direct

Indirect

STEP 1

Who is the person receiving the benefit?

BENEFIT

Dividends

Profits

STEP 2

Who exercises rights over a good or service of the company?

RIGHTS

Use

Enjoyment

Benefit

Disposal

Consumption

STEP 3

Who exercises control of the company?

Does it impose share decisions or can it dismiss the majority of the directors?

Does it have more than 15% of the voting rights?

Does it direct the administration, strategy or policies of the company?



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PENALTIES

1

For not having, keeping or presenting the information of the beneficial owner.

FINES: \$1.5 million pesos to \$2 million pesos per beneficial owner.

2

For not keeping information up to date.

FINES: \$800 thousand to \$1 million pesos per beneficial owner.

3

For submitting incomplete, inaccurate information, with errors or in a different form than that required.

FINES: \$500 thousand to \$800 thousand per controlling Beneficiary

Additionally, failure to comply with the obligation could lead to the suspension of digital stamps, which would prevent the company from issuing digital tax invoices (CFDI).





INFORMATION THAT COMPRISES THE FILE OF THE BENEFICIAL OWNER

The following information must be submitted for each natural person who qualifies as a beneficial owner.

- Full name.
- Date of birth and death, if any.
- Sex.
- Country of origin and nationality.
- CURP or its equivalent, if you are a foreign national.
- Country or jurisdiction of residence for tax purposes.
- Type and number of official identification.
- Key in the RFC or tax identification number, or its equivalent, if you are a resident abroad.
- Marital status, with identification and tax regimen of the spouse, or identification of the concubine, if applicable.
- Contact information: email and telephone numbers.
- Home address and fiscal address.
- Relationship with the legal entity or capacity that holds in the trust or legal figure.
- Degree of participation in the moral person.
- Description of the form of participation or control (direct or indirect).





INFORMATION THAT COMPRISES THE FILE OF THE BENEFICIAL OWNER

The following information must be submitted for each natural person who qualifies as a beneficial owner.

- ✓ Number of shares, partnership interests, participations or rights or equivalents; series, class and nominal value of the same, in the capital of the moral person.
- ✓ Place where the shares, partnership interests, participations or other equivalent rights are deposited or in custody.
- ✓ Specific date from which the natural person acquired the status of controlling beneficiary of the legal person, trust or any other legal figure.
- ✓ Data regarding who or who hold the position of sole administrator of the legal entity or equivalent.
- ✓ In the event that the legal entity has a board of directors or equivalent body, of each member of said board.
- ✓ Type of modification of the participation or control in the moral person, trust or any other legal figure.
- ✓ Date of termination of the participation or control in the moral person, trust or any other legal figure.





HOW CAN WE HELP YOU?

ALTERNATIVE 1

- ✔ Carry out the analysis to identify the beneficial owners.
- ✔ Compilation of the files in compliance with the new obligation to have them available for the authority, thereby avoiding sanctions.
- ✔ Integration of a file for each beneficial owner once identified, to have it available for the authority, thereby avoiding sanctions.

ALTERNATIVE 2

- ✔ Preparation of a process manual, which would include, among others, the applicable legal framework, definitions, criteria to identify each controlling beneficiary, roles and persons responsible for identification, obligations to be fulfilled, checklist of information to be collected, mechanisms for safeguarding information, formats for identification and data protection, etc.



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