



**Office of Prevention and Fight against Money
Laundering**



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Unofficial translation

ORDER

no.36 of 23.08.2018

**Regarding the approval of the
Guidance on identification of the
beneficial owner**

In accordance with the provisions of art. 5 par. (2) letter b) par. (5) (10) - (13) and (15), art. 8 par. (2) letter a) par. (7), art. 9 par. (2), art. 14 and art. 22 par. (1) letter k) of Law no. 308 of 22.12.2017, on the prevention and combating of money laundering and terrorist financing,

I ORDER:

1. To approve the „Guidance on identification of the beneficial owner”, according to Annex 1.
2. To approve „Typologies of ownership and control structures”, according to Annex 2.
3. To approve the "List of questions for self-assessment" according to Annex no. 3.
4. In case of new provisions or requirements, the Office for Prevention and Fight against Money Laundering will submit proposals for amending and completing the procedure on how to identify the beneficial owner of the reporting entities mentioned in art. 4 par. (1) of the Law no. 308 of 22.12.2017 “On prevention and combating money laundering and terrorist financing”.
5. Interaction with reporting entities, the supervisory bodies of the reporting entities and the control over the execution of this Order is carried out by the Supervision and Compliance Service.
6. This Guide enters into force on August 21, 2018.

Director

Vasile ŞARCO

GUIDANCE ON IDENTIFICATION OF THE BENEFICIAL OWNER

Chapter I GENERAL PROVISIONS

1. The Guidelines on the identification of the beneficial owner (hereinafter referred to as the "Guide") approved by the Anti-Money Laundering Service (hereinafter referred to as "the Office") are intended to establish the minimum requirements for the reporting entities referred to in art. 4 par. (1) of the Law no. 308 of 22.12.2017 "On the Prevention and Combating of Money Laundering and Terrorist Financing" (hereinafter "Law 308/2017") regarding the identification of the beneficial owner. The present Guide aims to establish appropriate procedures for identifying, documenting, verifying, analyzing and updating effective information/data on the beneficial owners and the ownership and control structure of the clients of the reporting entities.
2. The Office and supervisory bodies will periodically assess the system of identification of the beneficial owner and inform the reporting entity about compliance or non-compliance with the relevant legislation.
3. The legal framework for identifying the beneficial owner of the clients of the reporting entities is Law no. 308 of 22.12.2017 "On prevention and combating money laundering and terrorist financing", Directive (EU) 2015/849 of the European Parliament and of the Council of 20.05.2015 "On the prevention of the use of the financial system for the purpose of money laundering or terrorist financing", Financial Action Task Force (FATF-GAFI) standards, unanimously recognized rules of international law, international treaties to which the Republic of Moldova is a party and other normative acts regulating relations in this field.
4. For the purposes of this guide the term "**beneficial owner**" shall have the following meanings:
 - a. **beneficial owner** - a natural person that ultimately owns or controls a natural or legal person or beneficiary of an investment company or manager of the investment company, or a person in whose name an activity is carried out or a transaction is performed and/or who owns, directly or indirectly, the right of ownership or control of at least 25% of the shares or of the voting rights of the legal person or of the goods under fiduciary administration;
 - b. if, after exhausting all possible means, and provided that there are no grounds for suspicion, does not identify any person as beneficial owner, the individual acting as the administrator of the legal entity client shall be considered to be the beneficial owner.
5. Other terms and definitions related to the field of prevention and combating money laundering and terrorist financing are used in the meaning and significance assigned by Law 308/2017.

Chapter II

IDENTIFICATION OF THE EFFECTIVE BENEFICIARY

- 6.** Natural and legal persons running a variety of commercial, entrepreneurial and social activities. Under certain conditions, they may be used for illicit purposes, including money laundering, associated activities, and terrorist financing. These phenomena occur because some people, in their attempt to avoid measures to prevent and combat money laundering and terrorist financing, use various legal entities or legal constructions as an attractive means of disguising, hiding and camouflaging illegal profits before introducing them into the legal circuit. Misuse of legal entities or legal constructions can be significantly reduced if the information on the beneficial owner, the source and origin of the assets/funds and the specificity of the activity is available to reporting entities and supervisory bodies. Identifying the real beneficial owners can become a complicated exercise, especially when using nominal natural persons or intermediaries.
- 7.** Data on beneficial owners ensures the enforcement of the provisions of art. 5, 7 and 8 of Law 308/2017 and offers reporting entities the ability to establish and measure the risk of money laundering and terrorist financing associated with certain clients, thereby preventing the use of reporting entities in illicit activities.
- 8.** The information on beneficial owners helps competent authorities to identify persons who are responsible for illegal activities and provides the ability to track movements of goods under potential investigation by the competent authorities.
- 9.** The reporting entities may encounter significant difficulties in the process of implementing measures to identify the beneficial owner and the ownership and control structure of the client, this stage may become complicated especially if it involves natural and legal persons from multiple jurisdictions.
- 10.** The lack of reliable information on the beneficial owner facilitate disguise of:

 - a. the identity of those responsible, suspected or known to have committed crimes;
 - b. the real purpose of the assets owned by natural and legal persons;
 - c. the source and origin of goods.
- 11.** The identity of the beneficial owner may be hidden by using:

 - a. fictitious companies that can be founded in different jurisdictions and by using different legal or corporate forms;
 - b. complex property and control structures that may include multiple ownership levels and control/influence instruments such as share packages or shareholdings in other legal entities;
 - c. mandates, empowers or powers of attorney;
 - d. legal entities as directors or managers of companies;
 - e. formal and/or nominal shareholders or administrators where the identity of the beneficial owner is undetected/undeclared (use of interleaved individuals to hide the true identity of the beneficial owner);
 - f. trusts or other legal constructions that allow the beneficial owner/owner to be legally separated from the actual recipient of the goods as a last resort;
 - g. the use of natural and legal persons as intermediaries in the process of creating legal entities.
- 12.** Identifying the required share part or share package does not necessarily mean the automatic identification of the beneficial owner. The reporting entities will consider the

possibility that a particular person is only the legal/nominal/interposed customer of his client beneficiary. The identification of the beneficial owners will also be extended to legal entities that hold other legal entities, obtaining data on the entire chain of ownership and control of the client. In these cases, the reporting entities will seek to identify and verify the natural person (s) owning the ownership or ultimate control, including other means of control.

13. The reporting entities are required to identify, document, verify, analyze and update the information/data on the identity of the actual beneficiaries of their clients and their ownership and control structure. In the process of identifying the beneficial owner (and/or its authorized representative), the reporting entity will use the risk-based approach to ensure that all the measures applied guarantees that the actual beneficial owner is known (the real beneficiary).

14. In the process of identifying the beneficial owner, the reporting entities will ask their clients for the following information on the beneficial owners (and/or their authorized representatives):

a. For natural persons:

- name and surname;
- date and place of birth;
- citizenship;
- identity card data: the state identification number (fiscal code), the serial number and number, the release date, the code of the issuing body (if any) or other unique indices of the identity card containing the holder's photograph (passport, identity card, residence permit issued by the empowered authorities of the Republic of Moldova, other identity documents);
- home address and/or residence;

b. For legal entities and individual entrepreneurs or other types of activity, the reporting entities will obtain at least the following information:

- the full and abbreviated name (if any), the form of legal organization;
- headquarters and mailing address, other than headquarters (if any);
- state registration information: state identification number (fiscal code) and date of state registration according to the registration certificate and/or the extract issued by the competent authority with the right to register;
- the authenticated copy of the constituent documents, as subsequently amended and supplemented, if applicable;
- information on the identity of the persons invested with the right to lead and represent the legal person and the individual entrepreneur or who practice another type of activity;
- telephone number, fax, email, if applicable;
- the nature and purpose of the activity.

15. In cases where it is not possible to identify and verify the beneficial owners (and/or their authorized representatives), the reporting entity shall any business relationship or will terminate any business relationship with an existing client. In this case, the reporting entity will consider submitting special forms for the reporting of suspicious activities or transactions to the Office in accordance with the provisions of Article 11 of Law 308/2017. In this case, the reporting entities are entitled not to explain to the client the reason for the refusal.

16. By derogation from point (15), the reporting entity may identify the beneficial owner after establishment of the business relationship if there is a low risk of money laundering and terrorist financing, including on the basis of the criteria set out in art. 7 par. (3) of Law 308/2017.

At the request of the reporting entity, customers or their representatives are required to provide all the information, documents and copies necessary to implement the measures to identify the beneficial owners (and/or their authorized representatives) and, in the event of new circumstances, update, on their own initiative, the data already presented. The accuracy and authenticity of the submitted documents are obligatorily certified by the clients in the manner established by the legislation.

17. Documents are submitted by the client in original or copied (photocopy) legalized in the appropriate manner, unless otherwise provided by law. In the case of presentation of copies of documents (photocopy), the reporting entity requests the submission of the original documents to verify that the copy (photocopy) of the documents corresponds to their original.

18. When documenting and certifying the identity of the beneficial owner, both natural and legal persons, the reporting entity shall visually analyze the aspect of the submitted bills in order to be convinced that they are true and valid at the time of their presentation.

19. In the process of verifying the identity of the beneficial owners, the reporting entities can obtain additional information and other credible and independent public and private sources. The reporting entities may use additional sources of information:

- a. the register of beneficial owners of legal entities and individual entrepreneurs kept by the state registration authority;
- b. registries and databases of the competent authority for the registration of non-commercial organizations;
- c. the registry of the competent authority responsible for identifying the beneficial owners of the clients of investment firms;
- d. databases on population evidence and documentation;
- e. databases on legal entities and data from the State Register;
- f. register and databases of real estate and land;
- g. commercial databases;
- h. exchanging information with other reporting entities;
- i. databases of supervisory bodies and competent authorities;
- j. the similar sources of information identified in letter a) -i) from other states;
- k. other public and private sources available in open access, including the media.

20. The reporting entities shall update as necessary the information and data on the beneficial owners and the structure of ownership and control of the permanent clients depending on the degree of submission to the money laundering and terrorist financing risks established by the reporting entity internally but not less than once year.

21. Where significant changes have been made to the beneficial owners or the ownership and control structure of the client on the basis of the documents and information submitted by the latter, the reporting entities shall update and verify the identity of the beneficial owner following the change.

22. For non-commercial organization customers who are engaged in gaining and distributing funds or goods for charitable, humanitarian, religious, cultural, educational, social or other mutual benefit purposes, the reporting entities shall apply the necessary measures for the proper identification and verification of the beneficial owner (and/or its authorized representative) and ownership and control of the non-commercial organization. The provisions of this point are also applied to the subsidiaries and/or representative offices of foreign non-commercial organizations operating on the territory of the Republic of Moldova.

23. Where appropriate, as far as possible, the reporting entities shall identify and verify:

- a. the beneficial owners of the main partners/donors/providers from which non-commercial organizations receive donations, financial aid or material support.
 - b. the beneficial owners of the main recipients/beneficiaries of donations, financial aid or material support.
 - c. the mechanism and channel of receiving and distributing donations/financial aid/material support.
- 29.** If the reporting entity establishes discrepancies in the accuracy of the data about the beneficial owner (and/or his authorized representative) of the non-commercial customer, the reporting entity will contact the customer directly or by telephone to confirm/to obtain additional data. In the situation referred to in this point, the non-commercial organization will provide in writing to the reporting entity the information and documents explaining the inconsistencies mentioned.

Chapter III

REPORTING SUSPECT ACTIVITIES AND TRANSACTIONS

- 30.** If, following the analysis of the documents and information obtained from the client for the purpose of identifying the beneficial owner (and/or his /her representative), the reporting entity establishes discrepancies regarding the correctness of the data about the beneficial owner (and/or its representative) will perform the following actions:
- a. conducts in this regard a detailed analysis of the information available to understand unclear aspects;
 - b. asks the client to explain inconsistencies with the submission of the necessary documents and information;
 - c. verify information and data obtained from credible and independent sources;
 - d. directly contacts (by phone or email) the beneficial owner to confirm/deny available information or to obtain additional data.
- 31.** If all the means referred to in point 30 are exhausted and the reporting entity finds reasonable suspicion that the data relating to the beneficial owner are true or expressly states that the effectively declared beneficial owner is an interposed or nominal person, it shall refrain from initiating the business relationship, or if the relationship was initiated, it will cease in accordance with the provisions of art. 33 of Law 308/2017 with immediate notification to the Office of this fact, in accordance with the Instructions on the reporting of activities or transactions falling within the scope of Law no.308 of 22.12.2017 approved by the Order of the Director of the Office no.18 of 08.06.2018.
- 32.** If during the identification of the beneficial owner has been established the fact that he is part of the lists of persons, groups and entities involved in terrorist activities or the proliferation of weapons of mass destruction, the reporting entity shall apply the provisions of art. 34 of Law 308/2017.

Chapter IV

INTERNAL CONTROL PROCEDURES AND REQUIREMENTS FOR DATA STORAGE

- 33.** The reporting entities are required to develop, approve and apply internal policies, procedures and practices for identifying the beneficial owner and its ownership and control

structure. Internal policies, procedures, and practices shall establish requirements for identifying the beneficial owner (and/or actual customer representatives) of the client that are prepared by the reporting entity on the basis of the legislation on preventing and combating money laundering and terrorist financing, the recommendations and instructions of the supervision bodies, and relevant international and national practices. Internal policies, procedures, and practices for identifying the beneficial owner shall include at least sources of information and methods of identification, documentation, verification and updating the data of the beneficial owners (and/or the representatives of beneficial owners) of the clients of the reporting entities, as well as the criteria and risk attribution factors for beneficial owners.

34. Internal policies, procedures and practices are approved and applied in a proper manner and on request they shall be submitted to the bodies with supervisory functions of the reporting entities to determine whether or not they comply with legislation on preventing and combating money laundering and terrorist financing.

35. The reporting entities keep records related to the measures taken to identify the beneficial owners for each individual customer and present them, upon request to the Office for Prevention and Fight against Money Laundering and/or to the bodies with supervision functions of the reporting entities.

36. The reporting entities keep records related to the measures taken to identify all beneficial owners for each individual customer so that they can present, upon request to the Office for Prevention and Fight against Money Laundering and to the bodies with supervision functions of the reporting entities. For a period of 5 years after the completion of the business relationship, the reporting entities keep all the documents and information about the beneficial owners and their ownership and control structure obtained during the application of customers due diligence measures, including copies of identification documents, the archive of the primary accounts and documents, business correspondence, results of analyzes and researches carried out on the identification of the beneficiary owners (and/or their representatives) during the active business relationship and for a period of 5 years after its termination or after the date of the occasional transactions. The reporting entities shall keep records of all documents and information on the ownership and control structure of the client within the timeframe set out in this paragraph.

TYOLOGIES OF OWNERSHIP AND CONTROL STRUCTURES

a. Simple ownership and control structures

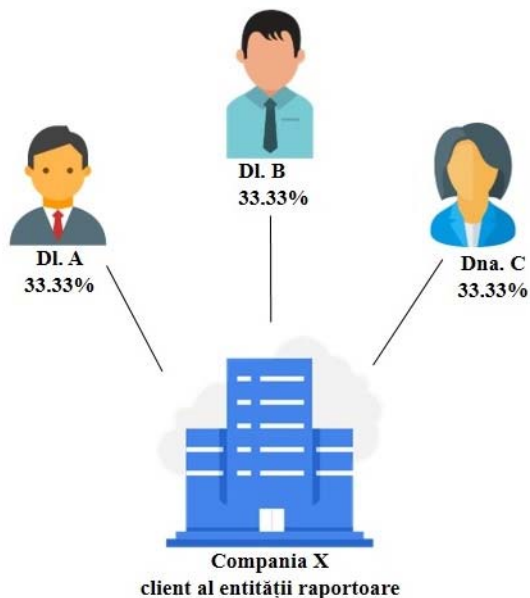


Fig. no. 1. Simple ownership and control structure

Figure no. 1 represents a simple ownership and control structure in which there 3 beneficial owners are identified based on the criteria of determining the natural persons holding a share greater than 25% of the Company's share capital.

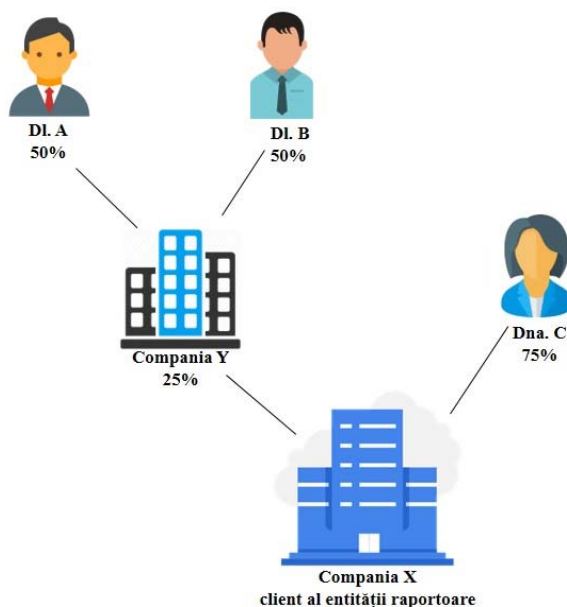


Fig. no. 2. Simple ownership and control structure

Figure no. 2 represents a two-tier simple property and control structure where only one beneficial owner is identified based on the criteria of determining the natural person holding a share greater than 25% of the Company's share capital.

b. Complex ownership and control structures

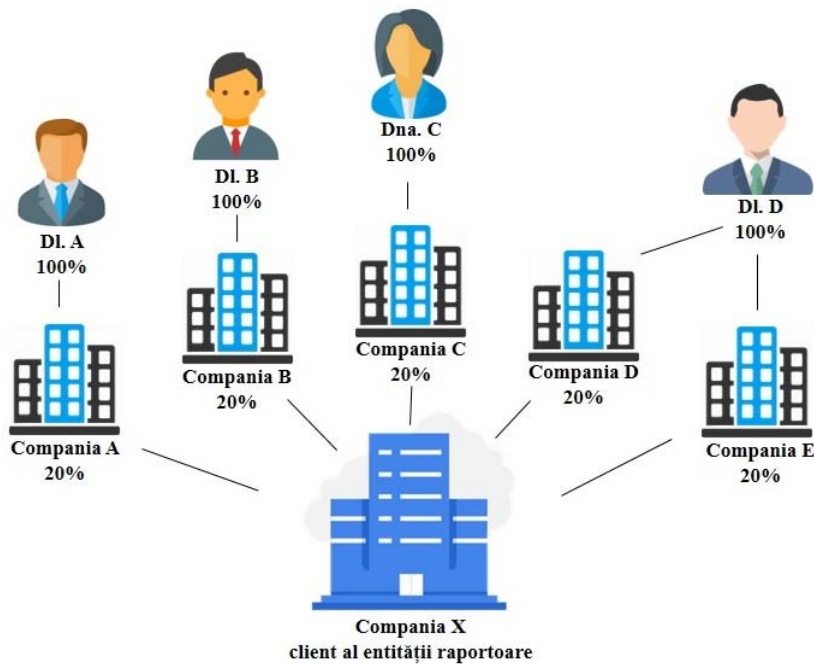


Fig. no. 3. Complex ownership and control structure

Figure no. 3 represents a complex structure of property and control with two levels composed of several links both natural persons and legal entities. Once the reporting entity has identified the entire set of participants, the beneficial owner (Mr. D) who ultimately holds 40% of the Company's share capital was established.

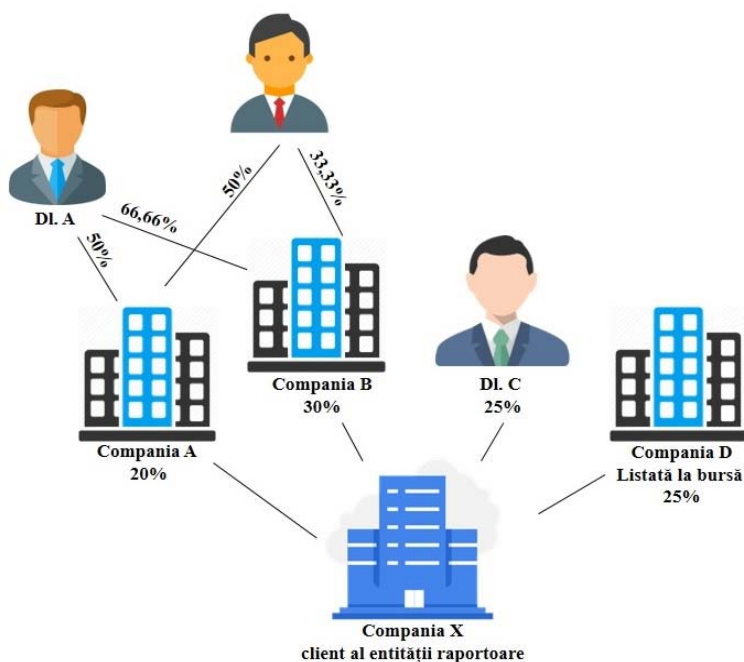


Fig. no. 4. Complex ownership and control structure

Figure no. 4 is a complex structure of property and control with two levels composed of several links and participants, including a stock listed company. In the process of establishing the entire property and control structure, 2 individuals (Mr. A and Mr. C) were identified which ultimately own 25% of the Company's share capital and voting rights, respectively.

LIST OF ASSESSMENT QUESTIONS

1. What is the meaning of the beneficial owner term?

- In the context of legislation on the prevention and combating of money laundering and terrorist financing, the term beneficial owner will have the following meaning:
 - a. **beneficial owner** - a natural person that ultimately owns or controls a natural or legal person or beneficiary of an investment company or manager of the investment company, or a person in whose name an activity is carried out or a transaction is performed and/or who owns, directly or indirectly, the right of ownership or control of at least 25% of the shares or of the voting rights of the legal person or of the goods under fiduciary administration;
 - b. if, after exhausting all possible means, and provided that there are no grounds for suspicion, does not identify any person as beneficial owner, the individual acting as the administrator of the legal entity client shall be considered to be the beneficial owner.

2. What are the situations for which reporting entities apply measures to identify the beneficial owners of its customers?

- The reporting entities shall identify the beneficial owners of their clients in accordance with the situations described in Art. 5 par. (1) of Law 308/2017.

3. Under what circumstances is it possible to identify the beneficial owners after establishing the business relationship?

- The reporting entity can identify the beneficial owner after setting up the business relationship if there are low risks of money laundering and terrorist financing, including on the basis of the criteria set out in Article 7 paragraph (3) of Law 308/2017.

4. Under which criteria do the reporting entities apply enhanced precautions measures to their clients and their beneficial owners?

- The reporting entities apply enhanced precautionary measures to their clients and their beneficial owners, in addition to those provided for in art. 5 of Law 308/2017, in situations which by their nature may present an increased risk of money laundering or terrorist financing , at least in the manner established by art. 8 of Law 308/2017, as well as in other situations, according to the criteria and factors established by the bodies with supervisory functions.

5. What sources can be used to verify the identity of the beneficial owner?

- The reporting entities may use the following sources of verification:
 - a. the register of beneficial owners of legal entities and individual entrepreneurs kept by the state registration authority;
 - b. registries and databases of the competent authority for the registration of non-commercial organizations;

- c. the registry of the competent authority responsible for identifying the beneficial owners of the clients of investment firms;
- d. databases on population evidence and documentation;
- e. databases on legal entities and data from the State Register;
- f. register and databases of real estate and land;
- g. commercial databases;
- h. exchanging information with other reporting entities;
- i. databases of bodies with supervisory functions and competent authorities operating at national and international level;
- j. similar sources of information identified in letter a) - i) from other states;
- k. other public and private sources available in open access, including the media.

6. What is the frequency with which reporting entities are required to update information about beneficial owners of permanent clients?

- The reporting entities update the information and data on the beneficial owners and the structure of property and control of the permanent clients if necessary, but not less than once a year.

7. What are the additional measures that will be applied by the reporting entities if it establishes business relationships with a customer whose beneficial owner is a politically exposed person?

- In addition to the precautionary measures provided for in art. 5 of Law 308/2017, reporting entities shall undertake the following measures:
 - a. developing and implementing appropriate risk management systems, including risk based procedures, to determine whether a client, potential client or client of a client is a politically exposed person;
 - b. obtaining the approval of a person with senior management positions in establishing or continuing business relationships with such clients;
 - c. the adoption of appropriate measures to establish the source of the goods involved in the business relationship or the transaction with such clients;
 - d. to carry out increased and continuous monitoring of the business relationship.

8. What are the minimum requirements for internal control procedures to identify the beneficial owner?

- Internal policies, procedures, and practices for identifying the beneficial owner will include at least sources of information and how to identify, document, verify and update the data on the beneficial owners (and/or their representatives) of the clients of the reporting entities, as well as the criteria and factors for assigning the degree of risk to the beneficial owners.

9. What is the minimum term for which reporting entities are required to keep all the documents and information regarding the beneficial owners of their clients?

- The reporting entities shall keep for a period of 5 years all the documents and information about the beneficial owners and the ownership and control structure of them, obtained in the course of applying customer precautions.

10. What are the actions that will be undertaken by the reporting entity if it establishes that the declared beneficial owner is an interposed or nominal person?

- If it has been expressly established that the declared beneficial owner is an interposed or nominated person, the reporting entity will immediately inform the Office for Prevention and

Fight against Money Laundering using a special reporting form for suspicious activities and transactions with the disclosure of the necessary information that confirms the established suspicions.

11. In what situations do the reporting entities apply the precautionary measures to the beneficial owners of their clients?

- The reporting entities shall, on their own initiative or on request, stop the activities and transactions in favor of their clients for a period of up to 5 days in accordance with art. 33 of Law 308/2017, if it identifies well-founded and relevant circumstances that the beneficial owners (and/or their authorized representatives) of the clients of the reporting entities are involved in money laundering, related offenses, terrorist financing or proliferation of mass destruction weapons.

12. In what situations will the reporting entity apply international restrictive measures to the beneficial owners of its customers?

- If the reporting entity, in the process of identifying, checking or updating the information on beneficial owners or the ownership and control structure of the client, establishes that the beneficial owner (and/or his authorized representative) or a natural or legal person in the ownership and control of the client is part of the lists referred to in art. 34 par. (11) of Law 308/2017, the reporting entity shall apply without delay and for an indefinite period restrictive measures on the means of goods which are directly or indirectly controlled by such persons, groups or entities.