

COMPLEX CORPORATE STRUCTURES: A RISK ASSESSMENT

by

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Abstract

Context

This dissertation aims to identify the key risk factors contributing to the complexity of corporate structures and provide a comprehensive framework for the assessment thereto. This in view that there is no clear guidance on how 'complex corporate structures' should be measured by different bodies within different sectors and leaves room for interpretation.

Complex structures are especially prevalent within the Financial Services industry due to a number of factors, including exposure to different jurisdictions, multiple ownership layers and variety of corporate entities involved in such setups.

Purpose

This study seeks to evaluate risks associated with the ownership and control structure of financial institutions licensed by the Malta Financial Services Authority.

This objective was achieved by gathering information from publicly available sources and analysing the various factors contributing to the complexity of corporate structures, such as the presence of entities incorporated in less transparent jurisdictions, use of complex corporate vehicles and elevated number of ownership layers.

Methodology

Higher risk scenarios, such as increased transparency risks, were identified using a risk scoring methodology specifically designed for this study. These scenarios are further illustrated through case studies that provide tangible evidence of sophisticated ownership structures being misused for activities such as money laundering, corruption, sanctions evasion, and other illicit activities.

The study is being performed through a systematic review, referring to literature that is relevant to the topics around the '*Risk*' '*Assessment*' of key '*Indicators*' of what is considered '*Complex*' in relation to '*Corporate*' '*Structures*'¹, in an attempt to address the following research question:

What are the key risk indicators contributing to 'Complex Corporate Structures' and how can these be assessed?

Results and findings

Throughout the qualitative review conducted on the key factors affecting complex corporate structures, the following key elements have been identified as the major risks affecting the factors that contribute to complexity of entities structures:

Complex Risk Indicator #1: Number of layers

Impact: **High**

Likelihood: **High**

¹ The words in *italics* are considered as the key words that are addressed during the study.

Inherent risk: **High**

Complex Risk Indicator #2: Geographic spread

Impact: **High**

Likelihood: **Moderate**

Inherent risk: **Moderate**

Complex Risk Indicator #3: The use of anonymity instruments

Impact: **High**

Likelihood: **Low**

Inherent risk: **Moderate**

Complex Risk Indicator #4: Sophisticated structures

Impact: **High**

Likelihood: **Moderate**

Inherent risk: **Moderate**

Complex Risk Indicator #5: The feature of nominees

Impact: **High**

Likelihood: **High**

Inherent risk: **High**

Complex Risk Indicator #6: Disproportional ownership of shares or voting rights

Impact: **High**

Likelihood: **High**

Inherent risk: **High**

The above risk assessment serves as guidance on the typical risk factors that affect complexity answering the research question put forward in this research study. The qualitative review conducted, as detailed in Chapter 4.4, helped in gaining an understanding of the characteristics that make up the 'Complex Risk Indicators' (CRIs) presented in this study.

Practical and Social Implications

Although intricate corporate frameworks may present justifiable commercial benefits, they also carry a great deal of threat to wider society problems including corporate responsibility, financial institution trust, and economic inequality. To tackle these obstacles, companies must pledge to operate in a socially responsible manner and increase regulatory monitoring and transparency. This topic is further analysed in section 5.3.

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Chapter 1: Introduction

*"Research is formalized curiosity. It is poking and prying with a purpose."
- by Zora Neale Hurston*

1.1 What are the key factors of Complex Corporate Structures?

Complex corporate structures are increasingly prevalent in today's globalized economy, fuelled by a number of factors including varied regulatory environments, tax regimes and advanced financial systems. These structures are frequently intricate, leading to less transparent beneficial ownership, thus making them difficult to understand, regulate, and manage.

The complexity of corporate structures can be heightened by several factors. The presence of multiple ownership layers, whereby legal entities make use of a layered hierarchical structure where a parent company owns numerous subsidiaries, which may themselves own additional subsidiaries or assets, is one of the most common traits of complex corporate structures. This multi-tiered approach creates an intricate ownership structure that can disguise the true owners of a legal entity and complicate efforts to enforce regulatory compliance. Tracing beneficial ownership becomes especially challenging when these ownership layers extend across multiple jurisdictions, each with its own legal and regulatory frameworks. This issue is heightened when ownership reaches more secretive jurisdictions, where the concealment of beneficial ownership remains of concern.

Cross-border operations add another layer of complexity as with these business models a separate legal entity is frequently established in multiple jurisdictions to take advantage of favourable strategic market positions, regulatory conditions or tax benefits. Each country involved in the corporate structure may hence present its own set of legal and regulatory requirements. This not only complicates regulatory oversight but also makes it challenging to assess the risks associated with the corporate structure, such as the inherent ability to exploit discrepancies between regulatory regimes that can facilitate tax avoidance, money laundering, and other illicit activities.

The use of more sophisticated corporate vehicles, such as trusts and nominee arrangements, is also a factor that increases the complexity of corporate structures. Trusts, where assets are held/managed by one party for the benefit of another, can obscure ownership and control by separating legal ownership from beneficial ownership. Similarly, nominee arrangements involve individuals or entities acting on behalf of others, often to maintain privacy or avoid regulatory scrutiny. These arrangements make it difficult for regulators and stakeholders to identify the true owners and controllers of corporate assets.

Rapidly evolving technological disruptions, such as digital financial services and blockchain technology, add new dimensions to corporate structures and financial transactions, further complicating the regulatory environment. For instance, the rise of cryptocurrencies and decentralized finance platforms introduces new challenges in tracking and managing corporate ownership and transactions.

The interplay between these and other factors forms an intricate corporate landscape, presenting significant challenges for regulators, policymakers, and other relevant stakeholders in their attempt to enforce regulations, combat financial crime and ensure corporate accountability.

1.2 How has the legislative framework evolved to address beneficial ownership concerns?

To combat terrorist financing and money laundering, the European Union (the 'EU') mandates that Member States keep a register of the beneficial owners of businesses and other legal arrangements incorporated within their borders. In the context of these requirements, beneficial owners are understood to be any natural person who ultimately owns or controls the legal entity.

In recent years, the EU has taken significant steps to increase beneficial ownership transparency as part of its continuous fight against money laundering and the funding of terrorism. In this regard, the EU legislator introduced a series of enhancements to the existing framework including a renewed focus on beneficial ownership.

The 4th Anti-Money Laundering Directive (4AMLD), specifically Articles 30 and 31, mandated that corporate and other legal entities must maintain accurate records of their beneficial owners and provide this information to:

- (i) competent authorities and Financial Intelligence Units, without any restriction;
- (ii) obliged entities, within the framework of customer due diligence; and
- (iii) any person or organisation that can demonstrate a legitimate interest.

Trusts were also subject to similar transparency requirements under the directive, however access to the central register was restricted to authorities and, in some cases, to obliged entities.

The 5th Anti-Money Laundering Directive ('5AMLD') amended the 4th Directive by introducing enhanced requirements for the accuracy and update of beneficial ownership information. It emphasized the need for Member States to ensure that central registers are kept current and accurate, and to establish mechanisms for reporting discrepancies. Additionally, the 5AMLD extended access to beneficial ownership information to the general public without the requirement to "demonstrate a legitimate interest." At the time, these amendments represented a significant step towards a more transparent and effective regulatory framework.

However, through joint cases C-37/20 and C-601/20, the EU Court of Justice (the 'CJEU') ruled that the new Article 30(5)(c) of the 5AMLD was invalid because it violated the rights to privacy and the protection of personal data. This in view that unrestricted access to beneficial ownership information by the general public could eventually result in abuse given the extent of personal information held within the registry. Accordingly, on 25th November 2022, the MBR announced that several Member States, including Malta, were indefinitely suspending public access to the Ultimate Beneficial Owner ('UBO') register.

1.3 Objectives of this research paper

As the business landscape continues to evolve, understanding and regulating these complex structures becomes increasingly critical. In this context, this research paper seeks to explore effective methods for identifying and evaluating complex corporate structures, with a specific focus on financial institutions that are licensed in Malta. Financial institutions serve as intermediaries in transactions, manage substantial financial assets, and provide essential services including investment services and asset management. Their central role in the financial system and their inherent vulnerability to risks associated with complex corporate structures make them particularly relevant to this study.

To accomplish the objectives of this research paper, extensive desktop research has been carried out by collecting and analysing data from multiple reputable sources, including but not limited to the:

- **Malta Business Registry ('MBR')** with regards to essential information on the registration and structure of companies operating in Malta;
- **Financial Intelligence Analysis Unit ('FIAU')** in relation to insights into financial transactions and anti-money laundering measures;
- **Malta National Risk Assessment** on a deeper understanding of the broader risk landscape in which financial institutions operate.

This comprehensive analysis serves as the foundation for developing a robust risk assessment methodology which was carefully designed and calibrated to evaluate the risk factors associated with complex corporate structures, providing a framework for understanding and managing the associated risks. This risk assessment methodology involves several steps, beginning with the identification and mapping of in-scope ownership structures to understand the true beneficial owners and moving on to the assessment of potential risks linked to these corporate structures by evaluating the influence of various factors in concealing ownership and facilitating illicit activities. (NC)1

Motivation of the study

The main aim of this study is to identify complex risk indicators affecting corporate structures which is critical due to modern economies becoming more integrated and complicated, becoming crucially relevant for global policymakers. This importance is seen in a number of crucial areas as detailed below:

Objective #1 - Preventing financial crimes

In order to conceal ownership, complicated corporate structures are frequently used in criminal activities like tax evasion, money laundering, and financing terrorism. Strong frameworks that are able to identify and reduce these dangers must be developed by policymakers. This entails the use of cutting-edge data analytics, international information exchange, and more stringent laws pertaining to beneficial ownership and transparency.

Objective #2 - Improving accountability and transparency

To guarantee that companies are held responsible for their activities, transparency in corporate ownership and financial operations is essential. Policies like the establishment of beneficial ownership registers, which demand thorough reporting and transparency of company structures, are essential. These safeguards aid in

preventing the improper use of intricate arrangements for tax evasion, wealth concealment, or unethical behavior. These rules are shaped in large part by international standards such as the recommendations made by the Financial Action Task Force (FATF).

Objective #3 - Boosting financial stability

Since such structures facilitate wealth concentration, tax evasion, and profit shifting, complex business structures can exacerbate economic instability. These actions have the potential to skew economic statistics, jeopardize public coffers, and increase inequality. Risk indicators that indicate when corporate structures are being exploited to rig markets or avoid financial obligations must be recognized by policymakers. By encouraging equitable taxes and averting damaging tax practices, policies like the OECD's Base Erosion and Profit Shifting (BEPS) effort seek to mitigate these risks.

Objective #4 - Encouraging international coordination

Global coordination is crucial for recognizing and reducing risks associated with complex corporate structures, as many firms are multinational in character. International coordination and regulatory harmonization are required to guarantee that no country serves as a shelter for illegal activity. Fostering cooperation and creating globally applicable policies are made possible by multilateral agreements and international organizations like the OECD and the G20.

Objective #5 - Protecting emerging markets

Developing nations are especially susceptible to the detrimental effects of intricate business structures, like money laundering and the erosion of tax bases. These actions rob developing countries of vital resources necessary for their progress. Global governments can safeguard these economies and guarantee that multinational firms make equitable contributions to the nations in which they conduct business by recognizing and addressing these risk indicators.

Objective #6 - Encouraging corporate ethic

Using sophisticated corporate structures can lead to the avoidance of social and environmental obligations. When these structures are being used to circumvent adhering to international corporate social responsibility (CSR) norms, policymakers must recognize it. To reduce these dangers, regulatory systems that uphold corporate accountability and promote moral business conduct are crucial.

Objective #7 - Adjusting to evolving risks

The digital economy and technology innovations, including cryptocurrencies and blockchain, create significant difficulties for spotting intricate risk indicators. In order to handle these new threats, policymakers must constantly modify their plans and make sure that corporate structures aren't utilized to circumvent laws. This calls for further investigation, financial support for emerging technologies, and the creation of flexible regulatory solutions.

Objective #8 - Global policy projects and suggestions

The significance of identifying complex risk indicators is underscored by global initiatives like the United Nations' focus on combatting illicit financial flows, the OECD's efforts on tax transparency, and the FATF's work on beneficial ownership transparency. These programs offer nations a framework within which they can create their own policies, all while supporting a cogent international policy.

The identification of complex risk indicators in corporate structures is globally relevant as it is imperative to avoid financial crimes, improve transparency, safeguard economic stability, and guarantee that firms make fair contributions to society. International cooperation amongst policymakers is required to develop strong, flexible frameworks that can successfully handle these issues.

1.4 Key thematic findings and recommendations

1.4.1 Malta's grey listing – response to immediate outcome 5 (IO5)

Mutual evaluations are a key component of the Financial Action Task Force's ('FATF') efforts to combat money laundering and terrorist financing on a global scale. These evaluations are comprehensive assessments conducted by the FATF to review a country's adherence to international AML/CTF standards. During such an exercise, a country's legal, regulatory and institutional frameworks are scrutinized to determine their effectiveness in combating financial crime. If significant deficiencies are identified, a country may be placed on the FATF's grey list, also known as the list of jurisdictions under increased monitoring. This implies that the country must undertake swift and effective corrective measures to address the identified shortcomings.

The FATF grey listing of Malta in June 2021 was a significant event which not only placed the country on heightened FATF surveillance but also raised questions about how well the nation can fight financial crime, especially considering that it serves as financial hub within the European Union. Malta's reputation suffered as a result of the grey listing and drove significant reforms, especially to increase beneficial ownership transparency. (Fitchratings.com, 2021)

Malta's alleged weakness in enabling transparency on the beneficial ownership of companies registered in the country was one of the main causes of the grey listing. Since beneficiary ownership transparency enables law enforcement to determine the individuals who ultimately own or manage legal entities, it is essential in the fight against financial crime. The nature of measures introduced to minimise this risk and Malta's success in being removed from the grey listing is further analysed in 'Chapter 5: Analysis and Results'.

1.5 Relevant limitations

In pursuit of the research objectives, due to the restricted access to the central beneficial ownership register following these changes, the MBR was approached to provide the required ownership information in relation to financial services licensees. Following this request, information supplied was limited to the following details on the UBO:

- Nationality
- Country of residence

Due to inherent limitations in the central registry, details regarding intermediate beneficial ownership could not be obtained directly from this source. To address these information gaps and develop a more comprehensive understanding of the corporate entities under review, an extended research approach was undertaken. This involved

gathering data from a range of publicly available reputable sources, including financial statements, corporate disclosures, and online databases.

Despite these efforts, obtaining a complete and transparent view of intermediate beneficial ownership proved difficult, particularly due to the involvement of multiple jurisdictions and the use of diverse corporate vehicles. Consequently, while the extended research efforts aimed to bridge the gaps left by the central registry and provide a more comprehensive picture of the relevant corporate structures, limitations in the availability of such information from publicly available sources inevitably impacted the overall depth of the analysis.

This limitation, which underscores the need for enhanced data access protocols to facilitate more effective analysis and oversight within the financial sector, is discussed in more detail in 'Chapter 4: Analysis and Results', where the specific challenges encountered in tracing these ownership layers are explored in greater detail. (NC)

1.6 Conclusion

The risk assessment of complex factors influencing organizational structures is a multifaceted process requiring thorough preparation, in-depth study, and continuous observation. Organisations may effectively navigate the hurdles posed by complex corporate structures, ensure compliance, lessen their vulnerability to financial crime, and preserve operational resilience by methodically identifying, evaluating, and managing risks. In sectors like financial services, where complexity-related risks can have far-reaching effects on the business and its stakeholders, this approach is especially important. (NC)

Chapter 2: Literature Review

"Complexity is the enemy of execution."

- by Tony Robbins

2.1 Setting the scene

2.1.1 Outline of the financial services sector in Malta

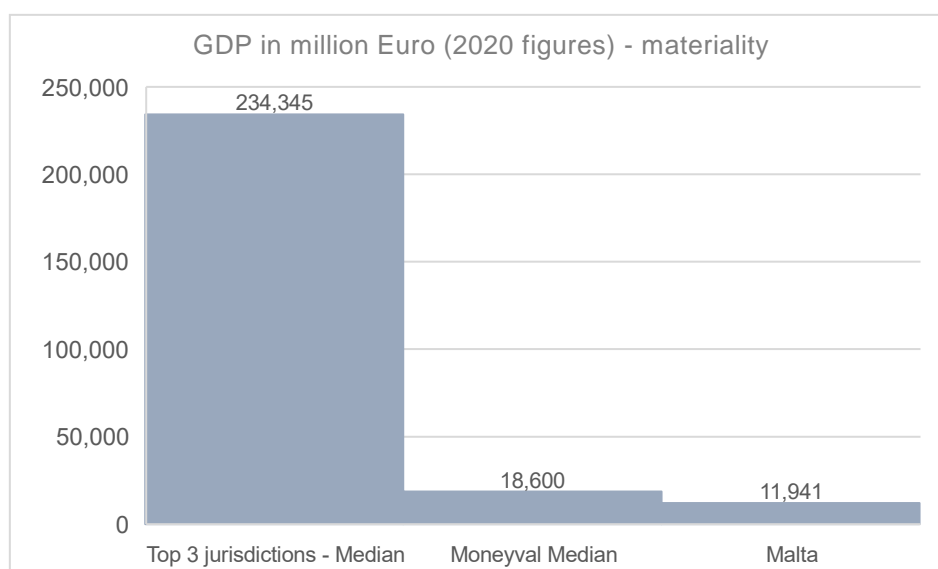
The financial services sector in Malta has seen substantial growth in recent years, particularly in relation to payment services and electronic money institutions where ten new licenses were issued to financial institutions during the three-year period ranging from 2019 to 2022. This growth is closely linked to the broader expansion of the payments industry across Europe, driven by a marked consumer preference for digital payments over traditional channels. The recent COVID-19 pandemic further accelerated this trend, as the use of cash declined and more consumers turned to digital payment options. Additional developments supporting the expansion of digital payments include shifts in the payment's environment, such as the introduction of instant payments and the continuous advancement of new technologies.

However, this period of growth was also marked by rigorous regulatory oversight. As a result of sustained supervisory efforts, twelve licenses were either surrendered or revoked between 2019 and 2022. This reflects the Maltese regulatory authorities' ongoing efforts to balance sectoral growth with the need for rigorous oversight to mitigate associated risks.

Despite the recent growth trends, Malta remains a relatively small financial hub. Indeed, according to statistics on materiality presented by MONEYVAL in preparation of the 6th round of evaluation procedures, Malta's financial sector is modest in size relative to its peers.

As shown in the chart below, the figures reported for Malta fall below the median of comparable jurisdictions and is significantly lower than that of the top three jurisdictions. This highlights Malta's position as a niche player in the global financial landscape, focusing on specialized areas such as electronic money and payment services rather than competing on scale.

Figure 1: GDP in million Euro (2020 figures), Source: Adapted from Malta NRA 23



According to an analysis of STRs received by the FIAU from financial services providers during the three-year period from 2019 - 2022, fraud is the most commonly suspected predicate offense, followed by tax-related offenses. The nature of the electronic money and payment services industry, which is heavily reliant on virtual transactions, inherently increases the likelihood of encountering fraudulent activities due to such factors as identity theft, document forgery, investment scams and card fraud.

Moreover, the FIAU's analysis exposes a growing trend in the servicing of corporate clients that are part of complex ownership structures. In particular, this trend raises significant concerns about the potential for foreign tax crimes, a threat that has been thoroughly examined in various legal frameworks, including the legal persons working paper. (Malta's National Risk Assessment 2023, NCC)

2.1.2 The regulatory backdrop

Over the years, Malta's financial services sector has evolved significantly, characterized by a dynamic regulatory environment that attracts a wide range of financial services providers. This regulatory environment is grounded in a comprehensive legal framework designed to preserve the integrity, stability and transparency of the financial services sector. As a member of the EU, Malta's regulatory environment is also influenced by EU directives and regulations, which are transposed into national law, ensuring that the country remains aligned with the broader European regulatory standards.

Central to Malta's regulatory framework is the Malta Financial Services Authority ('MFSA'), which was established in 2002 as the primary regulatory body overseeing all financial services activities in the country. The MFSA is responsible for the licensing, regulation, and supervision of financial institutions, ensuring that they continue to operate within the established legal and regulatory parameters. The Authority's role extends across a wide range of financial services, including banking, insurance, investment services, and pensions, as well as the supervision of trustees and company service providers.

Under the Financial Institutions Act (Chapter 376 of the Laws of Malta), the MFSA is specifically charged with the oversight of financial institutions, which can generally be divided into two distinct categories:

- (i) Organizations providing payment services and/or issuing electronic money, commonly referred to as 'payment institutions' or 'electronic money institutions';
- (ii) Financial organizations engaging in additional activities like lending, financial leasing, offering guarantees and commitments, money brokering as well as foreign exchange services.

The Financial Institutions Act provides the legislative framework that governs the operations of these institutions, setting out the conditions under which they must operate and the standards they must meet. These include, where relevant, the requirements of the second Payment Services Directive ('PSD2') and the second Electronic Money Directive ('EMD2').

In addition to the primary legislation, the Financial Institutions Act includes enabling provisions that allow the Minister responsible for financial services regulation to enact subsidiary legislation. This subsidiary legislation can address specific areas of regulation that require additional consideration, providing the flexibility needed to respond to changes in the financial services landscape. Furthermore, the MFSA, acting as the competent authority, is authorized to issue rules that expand on the provisions of the Financial Institutions Act. These rules offer further guidance on how the legislation should be interpreted and applied, ensuring that financial institutions have a clear understanding of their obligations.

The regulatory framework in Malta is designed to promote compliance among financial institutions, with the MFSA playing a key role in enforcing the underlying requirements. To this end, the Authority conducts regular inspections of licensed institutions to ensure they adhere to the applicable laws and regulations. This supervisory function is critical in maintaining the integrity of the financial system, as it helps to prevent financial crime, protect consumers, and maintain market stability.

The MFSA's supervision function is supported by a range of measures, such as fines, the suspension or revocation of licenses as well as other administrative penalties that can be imposed to licensed institutions that fail to meet their regulatory obligations. Within the context of enforcement, the MFSA is also empowered to take timely corrective measures to address issues of non-compliance, ensuring that financial institutions take the necessary steps to rectify any deficiencies in their operations.

The MFSA works closely with international regulatory bodies, including the European Banking Authority ('EBA') and the Financial Action Task Force ('FATF'), to ensure that Malta's regulatory environment meets global standards. This engagement serves several key purposes including enhancing regulatory consistency, facilitating cross-border supervision and sharing of information to stay abreast of recent developments and adapt the regulatory framework accordingly. (MFSA website)

2.1.3 Application of the Principle of Proportionality in the context of beneficial ownership requirements

The 'Treaty on the European Union' (the 'Treaty') serves as the foundational legal framework that brings in the principle of proportionality within EU law. In this regard, the Treaty explicitly states that "*the use of Union competences is governed by the*

principles of subsidiarity and proportionality," emphasizing that "*under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.*" These two principles are therefore central to the governance of EU competences, ensuring that any action taken by EU institutions or Member States is both appropriate and measured to ensure that it is introduced in a way that is not excessively burdensome in relation to the objectives it aims to achieve. (European Commission, MEMO/07/222)

The principle of proportionality is particularly relevant in the regulation of corporate governance and AML efforts. It ensures that the regulatory burden imposed on companies is commensurate with the risks they pose and that compliance measures are tailored to the specific characteristics of their corporate structure.

In the context of transparency around corporate structures, the EU's AML directives require that companies disclose information about their beneficial owners, but the level of detail required and the frequency of reporting can vary depending on the complexity and risk profile of the corporate structure. For example, a small family-owned business with a lean ownership structure may not require the same level of scrutiny as a large multinational with a complex web of subsidiaries and offshore entities. By applying the principle of proportionality, regulators can therefore ensure that their efforts are focused on high-risk areas, while avoiding unnecessary burdens, added costs and ineffective utilisation of resources on low-risk entities.

While the principle of proportionality is essential for effective regulation, it can also present challenges, particularly in the context of complex corporate structures that operate across multiple jurisdictions. Determining the appropriate level of regulatory intervention for different types of corporate structures requires careful assessment and judgment. Regulators must balance the need to mitigate risks with the need to avoid imposing excessive compliance costs on businesses.

2.2 Alignment on critical definitions

2.2.1 What is beneficial ownership?

As defined by FATF, a beneficial owner is "*...the natural person(s) who ultimately **owns** or **controls** a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.*"

2.2.2 Ownership

In the context of corporate entities, ownership establishes a legal relationship between the owner and the entity, defining their role, entitlements, and obligations within the framework of the organization's structure and operations. This ownership is represented through shares or other forms of equity which grant the holder specific rights, such as:

- The right to a share of the entity's profits or assets as well as a pre-determined stake in the residual value of the entity, particularly upon liquidation or sale;
- The ability to participate in decision-making processes, depending on the type and class of shares held;

- In some cases, ownership can provide a role in the governance or management of the entity, especially in family-owned businesses or other forms of closely held private companies;
- The right to sell or transfer ownership interests, subject to any restrictions set forth in the entity's governing documents or applicable laws.

2.2.3 Control

Control refers to the ability to influence or direct a company's management and policies, and can be exercised in a variety of ways. The most straightforward method of establishing control is by owning the majority of a company's voting shares. Indeed, majority shareholders are generally able to exert tangible influence on crucial matters such as electing the board of directors, steering the company's strategic direction, shaping the risk appetite and guiding the company's business model. Nevertheless, even without a shareholding majority, possessing a large percentage of shares can wield considerable power, especially if other shareholders are fragmented or inactive. On top of this, minority shareholders may even form strategic alliances or enter into voting agreements to pool their influence and shape corporate decisions.

In certain instances, control may be established through legislative or regulatory mechanisms. For example, in state-owned enterprises, the government often exerts substantial control over business decisions, shaping the company's direction and strategy. Additionally, specific regulatory frameworks may impose strict limits on the extent of control exerted by any single entity. This situation is particularly prevalent in essential or sensitive industries where the safeguard of public interest is required.

2.3 Introduction to Corporate Structures

Corporate structures are the frameworks that define how a company is legally organized and influence every aspect of a company's operations, from decision-making processes and governance practices to tax obligations and legal liabilities.

A well-defined corporate structure helps clarify the distribution of power among shareholders, directors and management, ensuring effective governance and operational efficiency. It also plays a key role in attracting investment, managing risks, and complying with regulatory requirements. As businesses evolve, their corporate structures may need to be adjusted to accommodate new strategies, market conditions, and legal considerations, making it a fundamental aspect of corporate strategy. Accordingly, the choice of corporate structure is critical as it impacts the way a business functions and grows.

The transparent disclosure of beneficial ownership is one of the most significant tools in the fight against illegal financial flows. However, verifying beneficial ownership information is often challenging, particularly when dealing with intricate corporate structures designed to obscure true ownership.

Below, is a closer look at a couple of tangible examples that illustrate both a straightforward corporate structure and a more complex one, highlighting the differences in transparency and the challenges posed by each in the effort to identify and verify beneficial ownership.

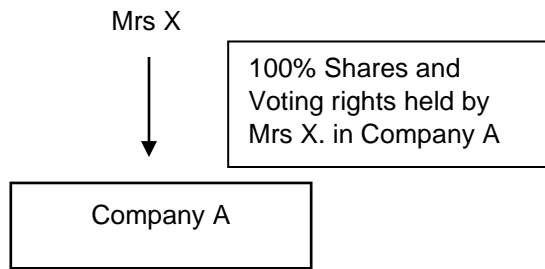


Figure 2: Simple corporate structure (Adapted from Knobel, 2022)

In contrast with leaner corporate structures and as illustrated below, complex ownership chains can hinder the identification of the ultimate beneficial owner because they typically involve several layers of less transparent corporate vehicles.

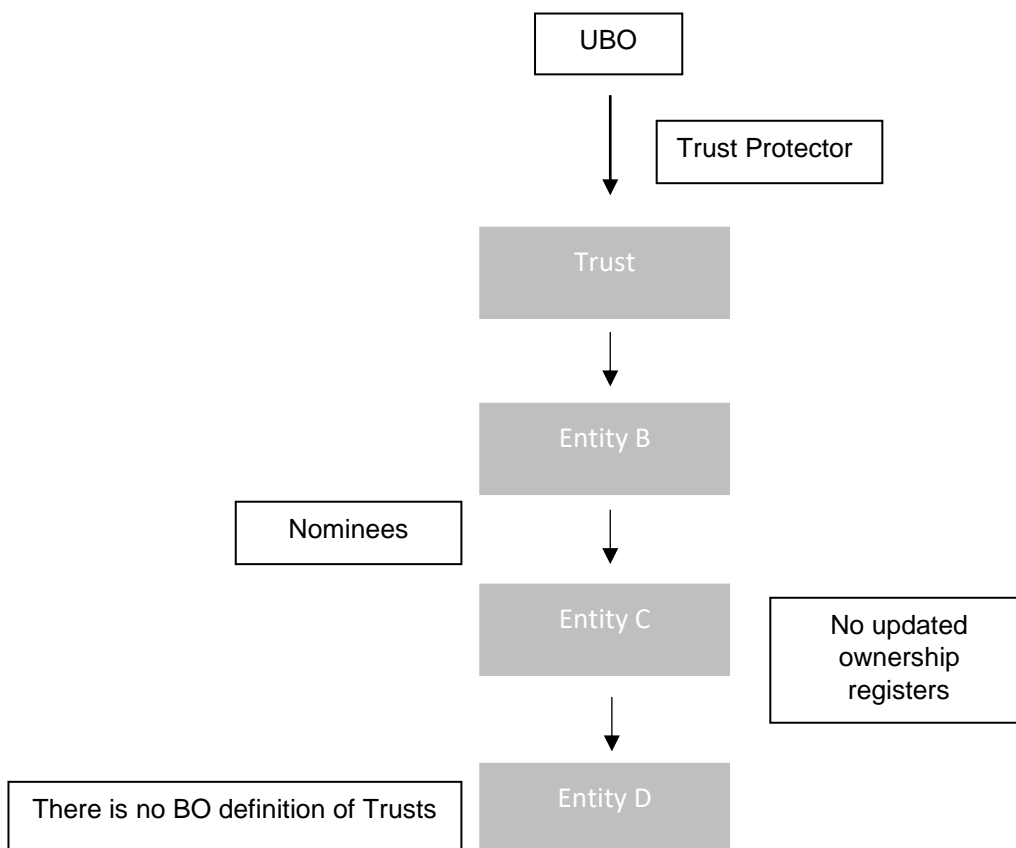


Figure 3: Complex Ownership structure (Adapted from Knobel, 2022)

2.2.1 Different types of legal entities that may appear in the corporate structure of financial institutions

A variety of legal entities, each with a distinct function within the corporate framework of financial institutions and other businesses, make up Malta's corporate landscape. These organizations are established to carry out particular tasks, control risks and guarantee that laws and regulations are followed.

Understanding the various categories of legal entities is critical for sound company governance and strategic administration. An outline of the main legal entities and other arrangements prevalent in Malta is provided below.

Limited Liability Company

Private limited company (Ltd): In Malta, this is the most common type of legal entity. It is distinguished by the fact that the liability of its shareholders is capped at the value of the shares held in the organisation. The popularity of this entity type lies in its adaptability, simplicity and ability to shield shareholders from significant financial loss. The limited liability structure is perfect for many smaller and medium-sized financial institutions since it enables private ownership and does not require public disclosure of the entity's financial information.

Public limited company (PLC): This type of legal entity is very common for larger businesses that need heavy investment in the form of capital to expand or take on big projects. Similar to private liability companies, shareholders' liability in public limited companies is capped at the value of the shares held in the organisation. However, in contrast to private limited companies, public limited companies have the ability to sell their shares to the general public on a stock exchange. As a result, public limited companies are required to follow public reporting standards and are therefore subject to more stringent regulatory scrutiny and transparency obligations.

Partnerships

The Companies Act (Chapter 386 of the Laws of Malta) provides for two types of partnerships: *en nom collectif* (general partnership) and *en commandite* (limited partnership). A Maltese partnership is recognized as a separate legal entity, distinct from its partners and possesses its own legal personality. This allows the partnership to own and hold property under any legal title, enter into contracts, and be subject to legal proceedings in its own name. The key characteristics and uses of partnerships can be summarised as follows:

Some of the traits that could make it challenging to determine who the genuine beneficial owner is in a complex ownership chain are potential red flags. It might not be able to identify the (final) beneficial owner at the top of the ownership chain if any of the layers hinder the identification of the legal owner above it.

(Knobel, 2022)

- **General partnership (Société en Nom Collectif):** In a general partnership, each partner is equally in charge of running the company and is accountable for all debts and liabilities of the company. Due to the high level of personal liability associated with this structure, it is less typical in financial organizations. Nonetheless, it might be applied in financial industry professional services like accounting or law companies, where partners take an active role in running the company.
- **Limited partnership (Société en Commandite):** In this kind of partnership, the liability of one or more limited partners is limited to their capital

contributions, whereas the liability of the general partner is unlimited. Investment funds frequently use limited partnerships, in which the general partner oversees the day-to-day operations of the fund while the limited partners provide capital and split earnings without being involved in day-to-day management. This structure is attractive for certain financial activities because it makes it possible to clearly define roles and risks. (NC)

Trusts

The establishment of trusts in Malta is governed by the Trusts and Trustees Act, which sets out the legal framework for the creation and regulation of trusts, as well as the authorization and supervision of trustees. The MFSA is the competent authority overseeing compliance with the Trusts and Trustees Act.

A trust is an obligation where trustees are bound to manage property for the benefit of specified beneficiaries who are either identifiable by name, or ascertainable by reference to a class or to a relationship to some person. With some limited exceptions, trusts are generally limited to a duration of 100 years unless terminated earlier.

The main parties involved in a trust include the settlor, who transfers assets to the trust; the trustee or corporate trustee, who manages the trust property; the beneficiaries, who are entitled to benefit from the trust; and the protector, who may have specific powers to oversee the trustees' actions. The trust deed is the legal document that establishes the trust and governs its terms.

In Malta, there are three main types of trusts, namely express trusts, implied or resulting trusts and constructive trusts, a high-level outline of which is provided below:

Express trusts: The settlor creates an express trust by transferring assets to the trustee to be managed on behalf of the beneficiaries by a formal declaration or instrument. Asset protection, wealth management, and estate planning are prominent uses for this kind of trust. Trusts can be used by financial institutions to manage client assets, provide for future generations or accomplish particular financial objectives.

Implied or resulting trusts: These trusts are created by the unexpressed but presumed intention of the settlor and arise when the actions or arrangements between parties suggest that one party is holding property on behalf of another, even without explicit trust documentation. Implied trusts are often used to address situations where property is acquired or managed in a manner that reflects fiduciary responsibilities, such as in cases of resulting trusts, where property is transferred under an arrangement that implies the settlor's intention for it to be held in trust. Under this type of trust arrangement, the property returns to the settlor upon termination.

Constructive trusts: Constructive trusts arise by operation of law and are not driven by the intention of the settlor. Indeed, this type of trust is imposed by courts to prevent unjust enrichment when someone unfairly holds assets or property that they have acquired illegally, for instance through fraud or theft. By way of a practical example, if a financial institution wrongfully transfers assets to itself from a client's account, a court may impose a constructive trust, requiring the institution to hold those assets in trust for the client until they are properly returned.

Foundations

Article 26 (6) of the Second Schedule of the Malta Civil Code states that “*Foundations may be established in one or two legal forms being either for the benefit of beneficiaries (called “beneficiary foundations”) or for the fulfilment of a specified purpose without beneficiaries (called “purpose foundations”)*”.

Private foundation: A private foundation is set up for individual or family needs and is frequently utilized for philanthropic contributions or as a means of preserving riches for future generations. Private foundations offer a structured approach to manage and distribute assets in accordance with the founder's desires.

Public foundation: Public foundations, as opposed to private ones, are created for philanthropic purposes or to achieve public goals. They provide funding to a range of organizations and causes, including community projects, healthcare initiatives, and educational activities. Financial firms frequently employ public foundations to meet their corporate social responsibility objectives since they are governed by legislation that guarantee accountability and transparency in their activities.

Once a foundation is registered with the Registrar for Legal Persons within the Malta Business Registry, it acquires legal personality. This enables a foundation to hold and administer a patrimony of assets and liabilities that are distinct from those of any other person.

Under Maltese law, founders are not liable for the obligations of the foundation except to the extent that they otherwise expressly agree. This limitation of liability is not applicable if they commit unlawful acts to the detriment of the foundation, whereby in such circumstance founders may be held liable for any damage suffered by the foundation.

Special Purpose Vehicles (SPVs)

SPV: Special purpose vehicles are created for specific financial transactions or projects, often to isolate financial risk or achieve particular regulatory objectives. SPVs are commonly used in securitization, project finance, and structured finance transactions. For example, an SPV might be set up to hold assets and issue securities

Although most foundations have measures in place to ensure that they are sufficiently independent from their founder, foundations can still be used as fronts for money laundering, particularly in cases where the founder is legally permitted to maintain influence over the foundation. The board of administrators is usually in charge of overseeing the operations of foundations.

According to the FATF study on beneficial ownership concealment, a very tiny proportion of case studies had a foundation in their corporate structure that was used to conceal beneficial ownership.

Concealment of Beneficial Ownership Group Egmont, 2018

costs)

Beyond the goal to maintain a barrier between beneficial and legal ownership, criminals can utilize applicable secrecy clauses to prevent law enforcement from learning the true ownership composition of businesses. Because tax authorities in various jurisdictions may interpret and regulate these legal arrangements differently, the risk is heightened when overseas trusts are involved. Tax authorities in different countries don't coordinate with one another, which leaves gaps that criminals can easily take advantage of, making it easier for them to hide illicit activity and mask the genuine ownership and control structure.

Offenders established legal entities and arrangements using foreign jurisdictions largely in the same proportions, according to examples analysed by the Egmont Group in a study to understand the vulnerabilities linked to the concealment of beneficial ownership and the misuse of professional service providers.

The difficulty and expense of establishing legal arrangements like trusts may limit their use when compared to the pervasive misuse of legal persons by criminals. Furthermore, the benefits of employing legal arrangements namely, the partition of beneficial and legal ownership might not outweigh the additional costs when considering the price, accessibility, and calibre of professional service providers.

Despite their practicality, shell companies are the most often used legal entity type in schemes and structures meant to hide beneficial ownership. The FATF research on the hiding of beneficial ownership has a strong emphasis on shell companies. Specifically, more than half of the 106 case studies included in the report specifically mention the use of shell companies inside the different corporate structures.

Though many nations may refer to legal persons generally rather than naming the precise kind of legal entity involved, the true shell company use is probably higher than reported. Because of this generality, the study may not accurately reflect the extent to which beneficial ownership is concealed through the use of shell corporations. This highlights the need for more accurate identification and regulation of these entities in anti-money laundering and counter-terrorist financing initiatives.

Concealment of Beneficial Ownership Group Egmont, 2018

backed by those assets, separating the financial risks from the parent company's balance sheet. This structure is valuable for managing complex financial arrangements and ensuring that risk is contained within the SPV.

Shell Companies

Shell companies are legal entities under law that are essentially only there on paper and have little or no real assets, operations, or commercial activity. They are usually registered in a country with tax laws that are advantageous, lax regulatory supervision

Although shelf firms are theoretically a means of concealing beneficial ownership, of the 106 case studies reviewed for the FATF's research on "Concealment of beneficial ownership," these companies were only referenced in two of the studies. But since some shelf firms are likely what the case studies call "shell companies," it's possible that using shelf companies to hide beneficial ownership occurs more frequently than what the study's findings indicate.

Concealment of Beneficial Ownership Group Egmont, 2018

or strong privacy rights. Shell companies are usually linked to illegal operations because of their ability to conceal ownership and financial transactions, even though they are frequently incorporated for legal objectives like managing assets, facilitating mergers, or acting as holding corporations.

Shelf companies are business entities that are legally registered and incorporated but have not yet engaged in any business activities. Indeed, these types of corporate entities are created with the intention of being "put on a shelf" until needed, hence the origination of their name. Typically shelf companies are created with the intention of being sold to individuals or businesses who want to avoid the time-consuming process of creating a new company from scratch. Just like shell companies, shelf companies have valid uses such as giving investors the ability to quickly obtain a corporate structure in order to meet an urgent demand.

2.2.2 The use of distinct legal entities in shaping corporate structures

When businesses grow in size and complexity, they often adopt intricate corporate structures involving different types of legal entities. In this process, such structures are carefully designed to include vertically integrated legal entities with a view to achieve specific strategic, operational and financial goals, such as risk management, tax optimization, regulatory compliance and operational efficiency. Vertical integration presents significant management, scalability and risk management challenges to efficiently coordinate the intricate network of processes created by this extension of control.

Some of the most common corporate structures shaping the financial institutions landscape in Malta are described below.

- **Holding company structures:** This setup consists of a parent legal entity (holding company) that owns the majority of shares in one or more subsidiary companies. The subsidiaries operate independently but are controlled by the holding company. This structure is widely adopted for its' strategic benefits, including centralized control, limited liability and optimized tax efficiency through the strategic location of subsidiaries in advantageous jurisdictions. A typical example of this corporate structure in financial services would consist in a holding company that oversees different legal entities which focus on their distinct line of business, for example banking, asset management and insurance services.
- **Operating company with subsidiaries:** In this instance, a business entity that directly engages in commercial activities (operating company) has a direct investment in one or more subsidiaries that focus on specific aspects of the business or operate in different markets or regions. Similar to holding company structures, this setup allows for specialization, risk isolation as well as easier management of diversified operations. Expanding on the previous example, in this scenario one of the operating entities, say the bank, holds a direct investment and oversees the wider operations of the financial group, in this case asset management and insurance services.
- **Conglomerates:** Conglomerate structures refer to more complex holding company structures where a parent company owns and controls a diverse range of subsidiary companies operating in various, often unrelated, industries. A practical example on the adoption of a conglomerate corporate structure would be a group of companies with multiple subsidiaries involved in sectors such as finance, manufacturing, real estate, and technology. This approach allows the parent company to leverage synergies across different business areas to help mitigate risks associated with market fluctuations in any single industry and provide opportunities for cross-industry growth and innovation.
- **Multinational corporations:** In its simplest form, a multinational corporation can be defined as a company that has business operations in at least one country other than that in which it is incorporated. In more complex scenarios, this structure encompasses operations across multiple jurisdictions through a network of subsidiaries and affiliates, each adapted to the needs of its respective market. Notwithstanding the underlying level of complexity, the common denominator for multinational corporations is that cross-border services are provided through a centralized management structure. A multinational corporation's international outreach allows companies to penetrate new markets, access a variety of resources and enhance their business processes through economies of scale.

However, challenges such as cultural differences and regulatory compliance increase the need for strong corporate governance practices across all entities involved.

- **Joint venture structures:** A joint venture is a partnership between two or more entities to undertake a specific project or business activity. In this arrangement, the partners pool agreed assets, such as capital, technology or intellectual property, to collectively manage and execute the intended business activity. Each partner in the joint venture shares in the associated risks and rewards, with their respective contributions and responsibilities typically outlined in a formal agreement which details how profits and losses will be distributed, how decisions will be made and how the venture will be governed. In line with their intended nature, joint ventures are often used to leverage complementary strengths, enter new markets or develop new products while sharing the financial and operational risks.
- **Private equity fund structures:** Private equity funds pool capital from investors to acquire, manage and control target companies. This setup typically involves a number of key stakeholders including a general partner, an entity responsible for managing the fund and making investment decisions; limited partners, investors who provide capital to the fund but do not engage in its management; and portfolio companies, businesses acquired by the private equity fund. This structure aims to optimize investment returns through the acquisition of promising or distressed assets, followed by active management and eventual sale of portfolio companies.
- **Dual-class share structures:** In dual-class structures, a company issues more than one class of shares, each with distinct voting rights and dividend entitlements. This structure, which may conflict with the 'one share, one vote' principle, typically involves one class of shares holding greater voting rights. This class is generally reserved for founders and key insiders, enabling them to maintain significant control over the company's strategic decisions. In contrast, other classes of shares may have limited or no voting rights and are typically sold to external investors, facilitating capital acquisition. This arrangement therefore allows the company to attract investment while ensuring that key stakeholders retain substantial influence and oversight, balancing external funding needs with internal governance control. (NC)

Chapter 3: Methodology

*"Methodology is more important than conclusions."
- by Karl Popper*

This chapter aims to provide a comprehensive overview of the methodology employed in this study.

3.1 Qualitative review for the analysis of complex corporate structures

To better understand and evaluate the inherent risks associated with complex corporate structures, an extensive thematic review focusing on financial services, regulatory compliance and anti-money laundering measures was carried out.

The methodology behind this thematic review is rooted in qualitative research which centres around a thorough evaluation of numerous academic papers, intelligence assessments, mutual evaluation reports, typology studies and academic reports. The sources for this qualitative research included various governments, international organizations and academic institutions that have contributed to our understanding of the risk factors influencing the complexity of corporate entities.

An integral part of this thematic review was a focused deep dive into selected case studies which provided concrete examples that outlined the practical applications of the theoretical concepts explored in the research. By identifying patterns and trends within these real-world scenarios, the study was able to derive valuable insights that informed the overall analysis and findings.

This dual approach, which combines the review of existing literature with lessons learnt from real-life case studies, ensures that the thematic review captures both the practical and conceptual dimensions of risk in complex corporate structures. The selected approach results in practical recommendations for policymakers, regulators and financial institutions in managing and mitigating the risks inherent in complex corporate structures.

The 'References' section of this study provides a detailed and comprehensive list of the public sources consulted during this research, allowing for further exploration of the topic by readers interested in the subject.

3.2 Outline of the key steps in the methodology

3.2.1 Data collection

Various techniques are available for gathering information from multiple sources in support of research and analysis. The choice of data collection methods depends on the context, research objectives and the nature of data that is available. The key methods for collecting data for the purpose of this study are detailed below.

Literature review

At the outset of this study, an extensive literature review was undertaken to gain deeper insights into the complex factors influencing corporate structures within regulated financial institutions in Malta.

The literature review served two primary purposes. Firstly, it established a theoretical framework for understanding the regulatory backdrop together with the most common types of legal entities used by financial institutions to shape their corporate structures. Secondly, the review helped identify key themes and risk indicators that would guide the subsequent phases of the research, ensuring that the study is both comprehensive and focused on relevant issues.

In addition to traditional literature, additional data points were sought from a variety of online sources such as websites, social media, online forums and other digital platforms. This approach proved essential in gathering additional contextual information related to regulated financial entities in Malta, adding depth to the research.

Secondary data analysis was also conducted to leverage existing data collected by other researchers, particularly in identifying risk factors that contribute to a corporate structure being classified as complex. This supplementary information was obtained through a targeted search of reliable online sources, using key terms such as "Complex" and "Corporate Structures" to ensure that the information gathered was relevant.

To maintain the relevance of the findings, the literature review focused on materials published within the last decade. This timeframe was deemed to be appropriate to ensure that the study reflects a comprehensive analysis while at the same time reflecting the latest industry practices and regulatory considerations, making the research both timely and applicable to current challenges in the financial sector.

A detailed understanding of the key highlights emanating from the literature review is included in Chapter 2 of this study.

Case studies

The in-depth analysis of selected case studies is a key component of the research, providing tangible examples of how complex corporate structures are employed within the financial services sector and highlighting the associated risks and challenges. These case studies were carefully selected to focus on a diverse range of organisational set-ups that is representative of different combinations of complex corporate structures, such as conglomerates and multinational businesses.

Each case study was critically reviewed to identify the specific inherent risks associated with its respective corporate structure and assess the effectiveness of any risk-reduction measures implemented thereto. As a result, this approach not only illustrates the practical implications of complex corporate structures but also reveals the strengths and weaknesses of the underlying risk management practices within the context of managing complex corporate structures.

While a number of case studies have been considered as part of the qualitative research, Chapter 4 section 3 provides a detailed overview of three selected case studies which have significantly informed the analysis and findings of this research.

Sample selection for the study

This study focuses on financial institutions registered in Malta and licenced by the MFSA. The selection of such institutions as subjects for research on complex corporate structures is primarily based on their inherently intricate operations. As a matter of fact, financial institutions manage a vast array of financial products, regulatory frameworks and risk management strategies that require sophisticated organisational and operational structures. Additionally, financial institutions often operate on a global scale, navigating diverse markets, legal environments and economic conditions, which further contribute to their complexity. Understanding these structures can provide valuable insights into how complexity impacts decision-making, risk management and overall organisational efficiency.

To ensure that the information gathered for this thematic review is both pertinent and reflective of the range of corporate structures employed by local financial institutions, the population of entities under consideration for the analysis encompassed the **entire population of 53, being all the registered financial institutions in Malta**. The inclusion of this entire population allowed for the identification of common patterns and unique variations, enabling the drawing of meaningful and representative conclusions about the risks associated with complex corporate structures.

The list of active registered financial institutions was sourced from the MFSA website with a cut-off date as at July 2024. The filters used to extract the population from the website, a screenshot of which is provided below for ease of reference, was as follows:

- Sector: Financial Institutions
- Authorisation: Financial Institutions

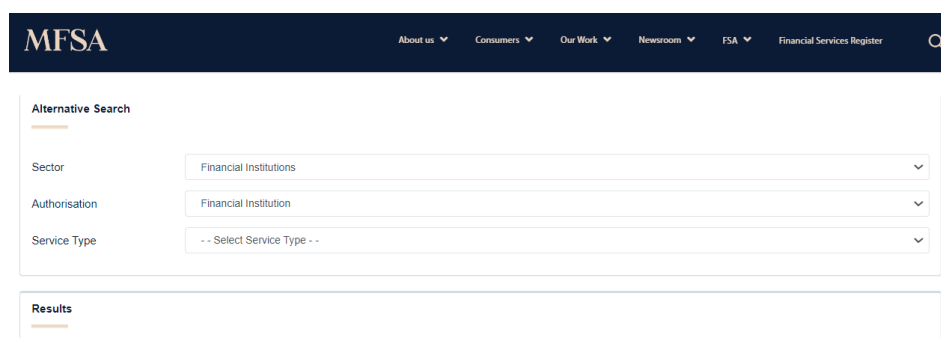


Figure 4: Extract from MFSA Financial Services Register

Direct communication

Beneficial ownership information is typically not publicly available, unless the entity is listed, featured in media reports that reveal the identity of beneficial owners or otherwise voluntarily discloses this information on its own website. Accordingly, after extracting the comprehensive list of all licensed financial institutions from the MFSA's website, a formal request was made to the Malta Business Registry to obtain detailed information on the beneficial ownership of these entities. This request was essential to overcome the challenges posed by the lack of publicly available information.

However, as elaborated in Section 1.5, 'Relevant Limitations', the process of acquiring beneficial ownership information encountered significant challenges due to recent regulatory developments in the context of the sensitive nature of the data analysed in

this study. Specifically, recent changes in GDPR regulations have restricted public access to beneficial ownership information. This data is now limited to 'Authorised Users' of the Malta Business Registry and can only be accessed by registered subject persons. Consequently, this restriction has impacted the availability of information and complicated efforts to obtain comprehensive details on ownership structures.

Following a series of email exchanges, the Malta Business Registry shared the nationality and residency of the UBOs of local financial institutions via a Microsoft Excel based extract. Despite this progress, several gaps in the intermediate beneficial ownership layers remained. To address these gaps, additional research was conducted using public sources to fill in the missing information as much as possible. However, due to inherent limitations in data accessibility and completeness, a comprehensive picture of corporate ownership could not be fully obtained in most cases. These challenges highlight the ongoing difficulty in achieving full transparency in complex corporate structures, emphasizing the need for more robust data-sharing mechanisms.

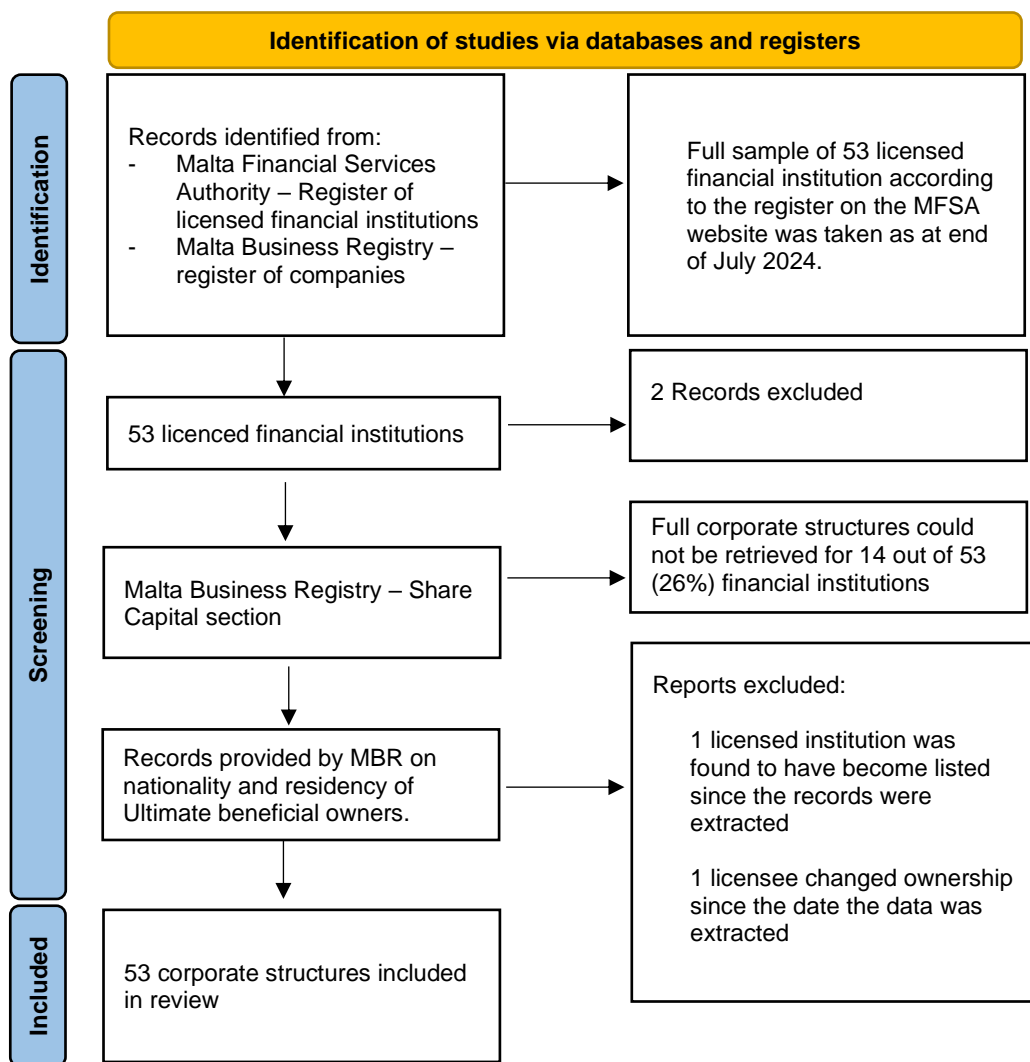


Figure 5: PRISMA Methodology for sample selection – Author's compilation

The information flow across the systematic review of the database is shown in the above flow diagram. It shows how many records were reviewed, how many were excluded from the database, whether they were included or not, and why they weren't.

Bias exclusions from sample selection

When particular groups or traits are either overrepresented or underrepresented in the sample, bias in sample selection arises and the results do not fairly represent the intended audience. The strategy adopted during this study to avoid bias in the selected sample, especially in relation to the case studies reviewed, is to research the most relevant, highest risk profile cases that shaped the financial services sector considered as such through public sources. The chosen relevant case studies relate directly to the industry that the study is based on, affecting directly the financial institutions being reviewed and analysed. (Indeed Editorial Team, 2021)

In relation to the data provided by the MBR for financial institutions, as already mentioned it was deemed appropriate to review the corporate structures of all licensed financial institutions as extracted from the MFSA register as at end of July 2024.

In order to avoid biases, the text of case studies identified as relevant for the study was reworded in own language, phrases, and framing techniques to lessen the likelihood of cultural bias. Before evaluating the facts of the cases at hand, further research was carried out seeking different sources for the same cases to ensure the correct resulting message is being conveyed through such studies.

3.2.2 Risk Assessment: analysis of results

The risk assessment of factors contributing to the complexity of corporate structures was carried out on the basis of a thematic analysis which enabled the examination of the data in a methodical way. This methodology made it possible to identify prominent risk variables and provided a detailed understanding of how these risks manifest themselves within the organisational structures of the locally registered financial institutions under review.

In addition to thematic analysis, a comparative analysis was employed to identify and evaluate risk variables that are common across different contexts and to highlight specific red flags unique to particular types of organisational structures. This comparative approach involved systematically examining the profiles of various corporate structures to uncover patterns, similarities, and discrepancies. By analysing key factors such as the geographical location of beneficial owners, the number of ownership layers and other inherent risks associated with these structures, the study aimed to delineate the impact of these variables on the overall risk landscape.

A comprehensive grasp of the internal and external components that add to a corporate entity's complexity was necessary for the multi-step risk assessment of complex issues affecting corporate structures conducted throughout this study. Particularly in industries like financial services where such complexities can obscure ownership, control, and financial operations, raising the risk of financial crime, regulatory breaches, and operational inefficiencies, this process was essential for identifying, evaluating, and mitigating risks associated with complex corporate structures.

While the methodological approach behind the risk assessment is elaborated below, the recurrent risk themes and patterns identified during the analysis of data gathered

through the literature review and from selected case studies are listed in 'Table 2: Complex Structure Risk Matrix' (refer to Chapter 4.4.2 Assessment of Risk Indicators).

3.2.2.1 Identification of risk factors

This step involved conducting extensive research through various reputable online sources to identify risk factors that influence the complexity of corporate structures. However, this task proved to be particularly challenging due to the absence of a universally accepted definition or an exhaustive list of risk factors that explicitly contribute to such complexity. The research revealed that while numerous studies and materials discuss risk factors in relation to corporate complexity, they often do so in a fragmented manner, without offering a comprehensive or standardized explanation of 'What is considered as Complex in corporate structures?'.

Through the detailed literature review, the closest report that went about listing a number of risk factors around transparency of corporate structures was 'Complex Ownership Structures: Addressing the Risks for Beneficial Ownership Transparency' by Andres Knobel, published by the Tax Justice Network in 2022. This paper explores the challenges posed by complex corporate structures in maintaining transparency regarding beneficial ownership and highlights how these structures can be exploited for illicit activities, including money laundering, tax evasion and corruption, by obscuring the true ownership and control of entities. In carrying out the detailed risk assessment, reference was made to this report on the basis that it is the most recent publication providing relevant and comprehensive insights on this subject.

3.2.2.2 Assessment of complex risk indicators

Following the exhaustive research to identify relevant risk factors, a detailed assessment of the factors contributing to complexity of corporate structures was carried out. This process included the creation of visual structures that mapped out the beneficial ownership of the financial institutions under review in an attempt to obtain a more comprehensive picture of the beneficial ownership layers within each entity's corporate structure. However, it was not possible to complete the mapping of the beneficial ownership for all 53 financial institutions being analysed in the study due to the lack of reliable public information for each ownership layer. As a result, the assessment of the 'Transparency' risk factor (which gauges the ease of tracking beneficial ownership and the availability of accurate information in public registries) was set as high. This classification reflects the difficulties encountered in obtaining comprehensive and trustworthy ownership data, highlighting significant transparency risks within these complex corporate structures.

The assessment of potential risk areas in the organizational structures of licensed financial institutions also sought to identify interdependencies, such as circular ownership, which can obscure true ownership and control. As a result, companies that appeared to be acting as operational or financial hubs within the corporate structure were highlighted as potential red flags, due to their central role in managing or obscuring the flow of funds.

The analysis also considered the regulatory and jurisdictional risks associated with these institutions. This included a review of the regulatory frameworks in the relevant jurisdictions, with a focus on potential threats such as tax evasion, the influence of secrecy laws and the risk of regulatory arbitrage. By leveraging the jurisdictional data on the residency and nationality of Ultimate Beneficial Owners, a comprehensive jurisdictional risk assessment was hence conducted. In cases where multiple UBOs

were present or where the country of nationality differed from the UBO's nationality, the jurisdiction deemed to have the highest risk was selected for the analysis.

For a thorough evaluation, several sources were consulted to assess jurisdictional risks (refer to Appendix 1 – Jurisdictional Risk Assessment). This appendix details the risk indicators and scoring applied to each country.

Throughout the risk assessment process, the need for additional research and potential mitigation measures was carefully considered at each stage, as discussed in Chapter 5: 'Discussion, Conclusions, and Recommendations'.

All risk factors were classified according to their potential for risk by applying the below risk scoring mechanism as per Risk Matrix below. Refer to Chapter 4.4.1 'Assessment of Risk indicators' for further details on this topic.

IMPACT	LIKELIHOOD			
	1	2	3	4
1	LOW RISK	LOW RISK	MODERATE RISK	HIGH RISK
2	LOW RISK	LOW RISK	MODERATE RISK	EXTREME RISK
3	MODERATE RISK	MODERATE RISK	HIGH RISK	EXTREME RISK
4	HIGH RISK	HIGH RISK	EXTREME RISK	EXTREME RISK

Figure 6: The Risk Matrix - Adapted from FIAUMAL, 2021

Impact and probability are two aspects that are evaluated in the matrix adopted to categorise risk factors according to the risk scoring technique used in the study. The total risk level is determined by the intersection of the ratings for each of these characteristics, which are graded on a scale from 1 to 4.

The Risk Scoring Methodology

Impact

- Refers to the seriousness or repercussions of a risk materialising.
- A rating between 1 (low impact) and 4 (high impact) is used.

Likelihood

- Represents the likelihood that the risk will materialise.
- A risk rating on a scale of 1 (low likelihood) to 4 (high likelihood) was also allocated in this case.

The Risk Matrix

- The two scales are combined into a 4x4 grid in the risk matrix. Based on the mix of impact and likelihood, each grid cell denotes a distinct risk category.
- Risk levels are divided into:

Low Risk (such as junctions that are 1x1 or 1x2.
Intersections that are 2x3 or 3x2 provide a *moderate risk*.
High Risk (such as junctions that are 3x4 or 4x3)
Extreme risk (such as a 4x4 intersection).

Classification of Risk:

- To help with prioritisation and management techniques, risks are categorised into one of these groups.

Extreme-risk locations necessitate prompt and substantial mitigation actions whilst *low-risk* circumstances may require little involvement.

This represents also taking a Risk based approach towards the assessment of complexity in corporate structures. The methodical framework in which each risk was assessed in relation to this matrix to guarantee uniformity and openness in risk management is in conformity to accepted norms or procedures in the industry.

3.2.2.3 Documentation of the risk assessment process

After evaluating the complexity risk factors, the associated threats were ranked in order of priority and severity. This ranking allows for targeted resource allocation, beginning with the most significant threats. The study also proposed mitigation strategies aimed at managing the complexity inherent in corporate structures, providing actionable recommendations based on the findings.

To ensure that the research provides practical outcomes, the risk assessment process was comprehensively documented and complemented by an organised reporting of the findings. Key deliverables included:

1. **Complex structure risk matrix:** A detailed table outlining identified risks, descriptions and corresponding risk scores. (See Section 4.4.2: Assessment of Risk Indicators)
2. **SWOT Analysis:** An analysis highlighting the threats and weaknesses posed by complex corporate structures, as well as the opportunities and strengths they might offer. (See Chapter 4: Analysis and Results)

3. **Jurisdictional risk scoring:** A weighted risk rating for all relevant countries, derived from multiple sources. (See Appendix 1)

3.2.3 Documentation of findings from the study

To provide a comprehensive understanding of the risks associated with complex corporate structures, the findings from the thematic and comparative analyses are detailed in 'Chapter 4: Analysis and Results'. This chapter offers an in-depth assessment of the various risk factors identified during the research, illustrating how these factors manifest within different organizational frameworks. The synthesis within this chapter also highlights effective practices for risk assessment and mitigation, which have been identified through an extensive review of the factors contributing to complexity in organizational structures. These practices, drawn from real-world examples and case studies, serve as practical guidelines for addressing and managing these inherent risks.

3.3 Limitations to the qualitative research methodology

The qualitative research methodology is an effective tool for examining difficult problems and developing a thorough grasp of social phenomena and human experiences. It uses a variety of techniques for data collecting and analysis to produce rich, in-depth insights that can guide practice, policy, and future study. The production of reliable and insightful qualitative research through these research methods enabled the detailed analysis of risk factors that contribute to the complexity of corporate structures.

The use of thematic reviews and qualitative data, while providing valuable insights, is not without limitations. One significant drawback is the potential for bias, as interpretations can vary depending on the researcher's perspective. This subjectivity can influence the outcomes of the analysis, particularly when examining complex organizational structures where data can be open to multiple interpretations. Additionally, qualitative research often lacks the statistical accuracy of quantitative methods, making it challenging to generalize findings across broader contexts. Furthermore, the depth and richness of qualitative data can sometimes lead to an overwhelming amount of information, complicating the synthesis and application of results. Further insights into the specific drawbacks of this research methodology is provided below:

- Since topics in thematic reviews are determined by the researcher's interpretation of the data, they are by their very nature subjective. This may result in prejudice, particularly when examining intricate corporate structures whose complexities may be seen differently by separate users.
- The results of thematic evaluations may not be widely applicable to different contexts because they usually concentrate on particular situations or examples. The capacity to generalize the findings may be restricted by the distinctive characteristics of complicated business structures in other industries or jurisdictions.
- Intricate financial and legal arrangements are frequently a part of complex company structures. By combining several problems under general themes, a thematic evaluation may oversimplify these complexities and possibly miss subtle case by case factors that are essential to comprehending the whole range of risks involved.

- The success of thematic evaluations depends on the availability of thorough and relevant data. The correctness of the evaluation is limited in the context of complex corporate organizations if crucial information is unavailable because of secrecy, legal constraints or a lack of transparency.
- Corporate structures can change quickly, particularly in reaction to market or regulatory developments. The thematic review was carried out at a moment in time, which may miss dynamics and ongoing development of the structures under study.
- Although thematic evaluations are a valuable source of qualitative information, they do not incorporate the quantitative analysis necessary to provide a more thorough knowledge of the risks related to intricate organizational structures. This made it very difficult to gauge the likelihood or impact risk ratings of risks that have been identified in Chapter 4: Analysis and results.

Overall, these limitations show that a thematic review should be used in conjunction with other techniques to produce a more thorough and reliable examination of complex corporate structures, even though it can be a useful tool for finding important themes and patterns.

To mitigate such limitations from the beginning of the study, direct communication with relevant stakeholders was sought via email. While communication with the MBR provided some additional insights, outreach to regulated financial institutions to request data on their corporate structures was unsuccessful. This was due to the sensitive data that is included in such information, which made it prohibitive to set interviews in order to gather such data.

Chapter 4: Analysis and results

“Without data, you're just another person with an opinion”

by W. Edwards Deming

4.1 Introduction

This chapter focuses on methodically identifying, classifying and assessing the various risks connected to complex organizational arrangements on the basis of information gathered throughout the research process.

From the study, the results show that predominantly the main features of complex structures typically include a multi-layered, multifaceted arrangement of several entities, including holding companies, subsidiaries, affiliates, joint ventures and special purpose vehicles (SPVs). These firms are frequently dispersed among several sectors and legal countries, creating a web of connected entities that may make it difficult to understand the precise connections between the main business and its operating divisions. The following are illustrative examples of some of the most prominent set-ups that, on their own or merged together, tend to heighten the complexity of corporate structures:

- A parent company having majority ownership of multiple subsidiaries, which however allows such subsidiaries to function as independent legal entities. Every subsidiary has its distinct operational focus and works in various industries or regions.
- Layered ownership whereby subsidiaries own other subsidiaries or affiliates, forming a structure similar to a pyramid, within the corporate hierarchy. This type of structure may make it more difficult to understand the financial linkages and general organizational structure.
- Multinational institutions with cross-border operations whereby multiple entities within a group of companies conduct business internationally by taking advantage of regional tax advantages, regulatory frameworks, and market conditions. This makes global expansion and operational diversification easier for the group.
- Holding companies that do not participate in the day-to-day operations of their subsidiaries, but rather exist solely to own shares in other businesses. These companies assist with the centralized administration and oversight of numerous subsidiaries.
- Interlocking directorates having a number of executives or board members holding several positions on various boards inside the company hierarchy.

Complex corporate structures do not bring only challenges and risks but also present various benefits and opportunities. On one hand, they offer significant operational flexibility, allowing companies to efficiently allocate resources and optimize tax liabilities. These structures can also help isolate financial risks by compartmentalizing different business units, thereby protecting the overall entity from localized issues. Strategic control is another advantage, enabling quick responses to market changes and regulatory demands across various regions.

However, these benefits come with noteworthy challenges. The opacity of complex structures often leads to difficulties in tracing ownership and control, which can result in regulatory and compliance issues. Additionally, managing such structures is resource-intensive, with significant legal, administrative, and compliance costs. Increased regulatory scrutiny and potential legal complications are constant risks.

The following SWOT analysis elaborates on the key strengths and weaknesses associated with complex corporate structures, along with the potential opportunities and threats they present.

Strengths:

- For **risk management** purposes, such structures separate the unique risks of individual subsidiaries, shielding the main business and other entities from possible damages.
- **Tax Optimization** is achieved by design through efficient mechanisms that benefit from the respective tax regimes in specific jurisdictions to minimize tax obligations.
- **Operational Flexibility** enables entities to function autonomously, adjusting to the demands and laws of the local market.
- **Strategic growth** is enabled through quick development and diversification as well as via partnerships, mergers and acquisitions.
- **Regulatory compliance** is obtained through a flexible set up which enables compliance with various regulatory requirements across multiple jurisdictions.

Weaknesses:

- **Complex management** is involved when coordinating several entities across multiple countries.
- **Increased compliance burden** in dealing with various regulatory regimes.
- **Heightened transparency concerns** due to the underlying complex layers, which make it difficult to separate the actual state of finances and operational activities.
- **Increased administrative and operational expenses** due the additional governance, auditing, and reporting systems.
- **Increased governance risks** adding to the possibility of fraud and mismanagement

Opportunities:

- Creating a **centralized governance structure** to supervise every subsidiary and provide uniform controls and regulations.
- **Frequent audits and compliance checks** to ensure all organizations follow the law and adhere to compliance requirements.
- **Clear and effective communication channels** for alignment and coordination between the parent firm and its subsidiaries.
- **Technology integration** to optimize workflows and improve transparency throughout the group of companies.
- **Designated management teams** for targeted supervision and operational excellence
- **Risk management procedures** to reduce risks related to the complex structures

Threats:

- **Diverse and widely distributed IT systems** among subsidiaries may result in a lack of consistency in security measures and heightened vulnerability to cyber-attacks.
- **Vulnerability to specific market hazards** and regional economic downturns is increased by exposure to a variety of economic settings.
- Higher possibility that different subsidiaries establish unique management styles and **different corporate cultures** that are at odds with the objectives of the group.
- Intricate arrangements found in complex structures are frequently exploitable or can result in unforeseen **legal problems**.

Figure 7: SWOT analysis of Complex Corporate Structures – Author’s compilation

4.2 Understanding complexity

4.2.1 The basic definition of complexity

According to the Cambridge Dictionary, complexity is defined as:

'the state of having many parts and being difficult to understand or find an answer to'

In the context of corporate structures, complexity often arises when there is a lack of immediate transparency regarding ownership or control. This issue becomes particularly pronounced when a company has multiple layers of shareholders, making it challenging to identify the true beneficial owners.

The challenge is further increased when shareholders are overseas entities, especially those based in tax havens or offshore jurisdictions. These regions are known for their stringent confidentiality laws, which can limit access to the identities of those in control of the business. This leads to a critical question: "How does this fuel a lack of transparency?". The answer often lies in the limited or incomplete information provided about ownership as illustrated below.

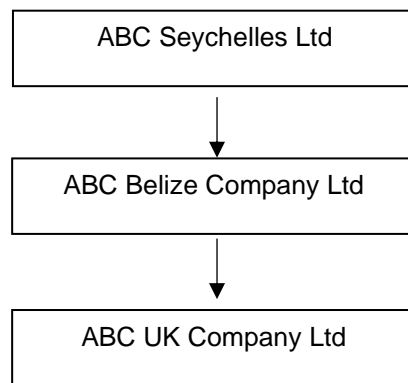


Figure 8: Illustration on the lack of transparency, adapted from Knobel,2022

In the example above, details of the beneficial ownership for ABC UK Company Limited can be sourced from the UK Companies House, a government agency responsible for registering and maintaining information on companies in the United Kingdom. However, unless a complete organisational structure or relevant ownership documentation is provided for the entire corporate structure by ABC UK Company Limited or its immediate parent, it is not possible to further understand the beneficial ownership of this group of companies. This is due to the fact that the immediate parent, ABC Belize Company Limited is registered in Belize, a country which is notoriously known for the lack of a public register which provides insights into beneficial ownership. The same concept applies to the ultimate parent company ABC Seychelles Company Limited which is registered in the Seychelles, a country with similar confidentiality rules to Belize.

4.2.2 Expanding the definition of complexity

'There may be legitimate needs for creating complex structures or at the very least, there may be legitimate constraints against simplifying complex structures that already exist (e.g. high economic costs).' (Knobel, A., 2022)

Complex ownership and control arrangements are not outright illegal. These corporate forms frequently have valid uses and aid in a variety of business, entrepreneurial endeavors, and personal financial management. All demographic categories are now more able to access global financial and business hubs due to advancements in communications technology, travel convenience and other aspects of globalization which are making international financial and business hubs more accessible to a wider range of people than just big businesses and wealthy individuals.

Many intricate ownership and control structures are legitimate, but they can also be used to hide riches, evade taxes, mask beneficial ownership, and launder money obtained from illegal activities. False invoicing, phoenix activities, fraudulent investment schemes, and other forms of fraud also require complex systems. Most case studies that included fraud, deceptive investment schemes, and tax evasion as base offenses also made use of intricate structures to hide beneficial ownership.

The Egmont Group / FATF

"Despite the legitimacy of many complex ownership and control structures, these structures can also be used to obscure beneficial ownership, avoid taxation obligations, conceal wealth, and launder the proceeds of crime." (The Egmont Group / FATF, 2018)

The *"Concealment of Beneficial Ownership"* report looks at over 100 case studies from 34 FATF Global Network jurisdictions, the experiences of law enforcement and other experts, input from the private sector as well as open-source intelligence and research reports to figure out how criminals hide beneficial ownership. The involvement of professional intermediaries in the process of beneficial ownership is one of the focus areas of this investigation, which examines the associated vulnerabilities.

Legal entities, particularly limited liability companies (or similar entities), are seen as being used in the construction of complex legal ownership structures, frequently involving shell companies, due to their ease of formation, which makes them particularly vulnerable. In such structures, professional service providers are frequently involved. Apart from the provision of advice around increased complexity, formal and informal use of nominee directors and shareholders also increases the risks by hiding the owner or controller physically receiving the laundered funds.

To safeguard the access to satisfactory, correct and appropriate information on the beneficial ownership and control of companies and other arrangements to authorities, the report highlights the importance of the effective implementation of the FATF Recommendations on beneficial ownership. (The Egmont Group / FATF, 2018)

FIAU

In the factsheet about the concealment of beneficial owners issued by the FIAU, typologies are also presented as indication of red flags for subject persons to be aware of. One of the main red flags when reviewing due diligence for corporate structures of customers is when dealing with mysteriously complicated structures. However, it is not clear what are the characteristics of such structures. The case study

'International Complex Structure' gives examples of several share transfers and unexplained transactions between different individuals in several jurisdictions however does not specify why the case is considered as a complex structure. (FIAU, 2021)

European Banking Authority

In line with the guidelines issued by the European Banking Authority (EBA) on the factors to be assessed for the identification of ML/TF risks related to distinct business relationships and occasional transactions ('The ML/TF Risk Factors Guidelines'), subject persons are urged to consider whether the customer's ownership and control structure is transparent. They should also take into consideration whether the customer's ownership and control structure is complex or opaque and if there is an obvious commercial or lawful rationale behind the structure.

Opaque or Complex ownership structures include for example, ownership or control involving entities such as trusts or special vehicles used as front companies, or the apparent lack of transparency in beneficial ownership with no legitimate business rationale.

The Guidelines also mention the risk indicators that businesses should take into consideration when determining the risk associated with a product, service, or transaction's transparency. These include indicators such as whether these allow the customer, beneficial owner or beneficiary structures to remain anonymous or make it easier to hide their identity. Examples of such structures include those products that use bearer shares, fiduciary deposits, offshore vehicles or some trust arrangements. Additionally, legal entities like foundations can also be structured to take advantage of anonymity and allow dealings with shell companies or companies with nominee shareholders. (European Banking Authority, 2021)

FATF/OECD

The joint FATF Egmont Group report provides insight on how legal persons can provide ways for criminals to obscure wealth and criminal assets. The report is intended to assist regulatory bodies in being aware of measures that can be implemented to disguise beneficial ownership from the real ultimate controllers.

Through the study on 106 case studies, the report revealed that **shell companies** are the most common legal entities used by criminals to obscure beneficial ownership. The definition of 'shell companies as per report is provided as an incorporation having *'no independent operations, significant assets, ongoing business activities, or employees.'*

Another key measure analysed by the report for masking beneficial ownership is the use of **nominee directors and shareholders**, mostly unofficial nominees or "straw men" such as spouses, children, extended family and other personal or business associates. In such instances, control was seen to be held through a mixture of layering and ownership patterns, as well as agents holding controlling interest in their name. These types of arrangements aid in surmounting jurisdictional controls and evade directorship bans imposed by certain countries. (FATF/OECD – Egmont Group of Financial Intelligence Units, 2018)

Another factor mentioned in the report is the inclusion of **trust and company service providers (TCSPs)** as professional intermediaries for helping in the setting up of legal entities. (FATF/OECD – Egmont Group of Financial Intelligence Units, 2018)

4.2.3 Consolidating the definition of complexity with insights from multiple sources

Although the various sources looking into the complexity of corporate structures outline valid factors contributing to measures on the concealment of beneficial ownership, the complexity involved is not specifically measured.

In summary, a number of factors can impact the level of complexity of corporate structures. These include the organisation's size, the sector it operates in, the locations of its operations, the legal frameworks in which it operates and the strategic business choices it makes. The following are some of the main elements that contribute to the **complexity of corporate structures**:

1. Geographic diversification

Companies that operate internationally have a number of legal, regulatory and tax systems to keep track of. The different corporate standards and cultural norms that exist make management and operations more difficult.

2. Business plans

Buying out or merging with other companies can result in the formation of complex corporate structures adding subsidiaries and joint ventures. This addition of layers of complexity involves spinning out separate companies or selling off sections of the corporation.

3. Diverse operations

To manage a large workforce dispersed over several sites, complex organizational structures are required. Also, business activities involving a wide range of products / services may need many divisions and specialized leadership teams that leads to the setup of complicated corporate structures.

Highly developed organizational and operational frameworks are necessary for complex, global supply chains. This includes complicated arrangements for keeping track of and integrating different information systems across the entire organization adding another layer of complexity.

4. Tax and legal entity structures

Adherence to a variety of international laws may necessitate the creation of specialized departments. Also, setting up entities within the structure across multiple jurisdictions that have the lowest tax rates possible presents challenges. In this scenario, a range of legal entity structures, such as holding companies, subsidiaries and special purpose vehicles may be established within the group in order to manage risk and accountability. Additionally, to manage many capital sources, including debt, equity, and hybrid instruments, complex financial restructuring may also be required. The requirement to adhere to different accounting standards, such as International Financial Reporting Standards and Generally Accepted Accounting Principles, in different jurisdictions makes financial management even more challenging for intricate group structures.

5. Ownership structures

Complex ownership arrangements, including those involving venture capital and private equity require specialized governance frameworks. Keeping officials

accountable for overseeing a group of stakeholders, including independent directors, can be difficult.

4.2.3 Indicators of legitimate vs suspicious complex structures

'By balancing the risks created by complexity against the legitimate reasons for having a complex ownership structure, different measures could be proposed and assessed, informed by a consideration of their proportionality and consequences for societies.' (Knobel, A., 2022)

A straightforward and observable method for distinguishing legal vehicles from illegal ones would be great. However, this cannot be established by merely examining an entity's structure. A legal entity, such as a company, is not itself illegal. The incorporation of the business is not explicitly prohibited in a secret jurisdiction, known as tax havens.

On the other hand, a legal vehicle's ownership and control structure may become increasingly complicated, which could be a sign of abuse. Corruption, money laundering, and tax evasion can all be carried out by people using elaborate legal pretenses. Another result of complexity is concealing the actual operations and functions of entities within a multinational group to commit tax or other abuses. (Knobel, A., 2022)

Differentiating between complicated corporate structures that have a valid business rationale behind their setup and those that are suspicious demands a methodical and cautious approach. Particular attention should be paid to markers that set apart legal company operations from those that may be illicit. The following serves as a guide to help recognize legitimate and illicit complex corporate structures:

Table 1: Legitimate vs suspicious structures - Author's compilation

Legitimate structures	Suspicious structures
Clear and justifiable business purpose, such as tax efficiency, regulatory compliance, risk management, or international expansion.	Clear or convincing business justification is absent or stated goals may appear ambiguous, inconsistent, or unduly complex with no apparent value.
Organisations with actual corporate presence in their respective jurisdictions, including offices, staff members, and operational activities.	The entities involved might be shell firms registered in different jurisdictions but having no workers, no physical presence, and no actual commercial activity.
Documentation outlining the reasoning behind the structure is easily accessible, visible, and consistent for regulators and auditors to analyse.	Incomplete, ambiguous, or purposefully hard to find documentation which raises questions about the true nature of the organization.
Legitimate structures usually have openly declared and easily recognized beneficial owners and ownership chains that are transparent and easy to follow. There will be only a limited number of layers between the running firm and the ultimate beneficial owner, which is justified by logical business requirements.	Beneficial ownership in such structures is sometimes concealed or masked through the employment of nominee shareholders, trustees, or anonymous corporations. Predominantly in secrecy or low-regulation areas, the structure may incorporate multiple layers of ownership across multiple jurisdictions, making it challenging to determine who the genuine owner is.
Entities register in countries that make sense for their activities, access to markets, and compliance with regulations. The local rules and regulations of the relevant jurisdictions, including those pertaining to taxes and reporting, are completely complied with by these structures.	Organisations are frequently incorporated in offshore financial hubs renowned for their low disclosure requirements, high degree of secrecy, and loose regulatory supervision. Instead of being motivated by real business needs, the choice of jurisdictions may seem to be primarily motivated by a desire to take advantage of legal loopholes, avoid paying taxes, or avoid inspection.
Financial transactions between the businesses in the structure are transparent, appropriately documented, and in line with the stated business goals. Tax optimization tactics do not appear to be aggressive tax avoidance or evasion measures, rather, they are legal and compliant with both domestic and international tax regulations.	Typically, intricate transactions could include payments that do not fit with the company's operations, payments that move in circles, or frequent transfers to countries that don't seem to have anything to do with the firm. The structure could entail aggressive tax planning, frequently involving profit shifting to low-tax jurisdictions, that seems to be intended to avoid taxes rather than optimize legal tax liability.
The establishment and upkeep of the structure is frequently aided by respectable financial and legal counsel who follow ethical and professional criteria across the globe. Advisors and corporate service providers behave honestly and cooperatively when interacting with regulatory bodies.	Legal and financial consultants operating in areas with little regulatory control or with a track record of involvement in questionable schemes may be part of the framework. Regulators may encounter resistance from advisors who withhold information or give inaccurate or partial explanations of the organisation and its goals.
Legal entities typically have a solid compliance history, which includes meeting reporting obligations, submitting taxes on time, and cooperating with audits. Strong internal controls, including as AML/CTF procedures, are frequently in place at these organizations to monitor and reduce potential risks.	Organizations may have a track record of non-compliance with regulations, which includes late filings, fines, penalties, and a lack of cooperation with law enforcement. There could be indications of attempts to evade or subvert regulatory scrutiny, as well as a lack of appropriate risk management procedures in the system.

It is necessary to do a thorough and comprehensive investigation of the goal, transparency, jurisdictional decisions, financial flows, adviser engagement, and compliance history in order to distinguish between legitimate and suspicious complex corporate structures when conducting a risk assessment. Complex structures are not intrinsically suspicious, but careful examination is necessary to make sure they aren't being utilised for illegitimate reasons due to their opacity and potential for misuse.

4.3 Analysis of international case studies identified in relation to complex corporate structures.

A number of real-life case studies have been hand-picked and reviewed to illustrate how different entities have used complex corporate structures for illicit purposes. Through this analysis, a number of high-risk factors that may indicate the misuse of complex corporate structures were identified and referred to when designing the methodology for the risk assessment carried out in this study.

The Wirecard scandal

One of the most well-known financial scams in recent times is the Wirecard case, which shows how intricate organizational systems may be leveraged to hide dishonest behavior. German fintech startup Wirecard was previously hailed as a fintech pioneer for its rapid development and innovation in the payments industry. But in the end, it turned out to be a huge illicit activity that used complex organizational structures to trick the public, authorities, and investors.

When Wirecard was first established in 1999, it concentrated on processing electronic payments before swiftly growing its global presence. The business rose to prominence in the German stock market by 2018 and was included in the esteemed DAX 30 index, which ranks the top 30 Frankfurt Stock Exchange businesses. Aggressive development, calculated acquisitions, and assertions of notable growth in emerging regions drove Wirecard's rise to the top.

The corporate complexity of Wirecard was the main factor behind the discovered fraudulent operations. In this case, the business used a number of complex arrangements to hide its actual financial situation and avoid regulatory attention.

- 1. Layered ownership and subsidiaries:** The corporate structure of Wirecard had a large number of affiliates and subsidiaries dispersed over several legal jurisdictions. These organizations were set up to handle various business functions, such as processing payments and purchasing companies across borders. In doing so, Wirecard established a network of linked businesses that made it challenging to track the movement of money and determine the group's actual financial situation.
- 2. Foreign entities and secrecy jurisdictions:** Wirecard set up branches in foreign jurisdictions renowned for their high privacy protection regimes and lax regulatory frameworks. Among these jurisdictions were Singapore and the Philippines, where Wirecard asserted to have substantial operations. By using corporate vehicles in such jurisdictions, Wirecard was able to hide who really owned and controlled its assets, which made it difficult for regulators and auditors to independently confirm the company's assertions.
- 3. Falsified financial documentation and misleading financial statements:** Wirecard prepared false financial documentation and misleading statements to back up its deceptive claims of expansion and profitability. Complicated frameworks made it possible to fabricate false revenue sources and exaggerated financial statements, which were then utilized to mislead regulators and investors. The group's external auditors examined the company's financial reports, but because Wirecard's processes were so complex, they were unable to identify the irregularities for years.

Unscrambling of the fraud

Investigative journalism and whistleblower revelations were the first to expose Wirecard's fraudulent activities. A number of articles highlighting disparities in Wirecard's financial procedures were released by the Financial Times in 2019, with a special emphasis on purportedly fraudulent transactions in Asia. When the corporation came under more examination, additional evidence that exposed the full scope of the deceit came to light.

The management of Wirecard was charged with fabricating income and exaggerating the company's financial situation in order to draw in investors and obtain loans. The use of intricate organizational structures made it more difficult for external parties to verify the company's real operations or carry out a thorough audit, which enabled this deceit.

Lessons learned from case study:

The Wirecard disaster highlights a number of important takeaways on the dangers of complex corporate systems.

- **Enhanced scrutiny of complicated entities:** The scandal outlines that complicated corporate structures, especially those with several tiers of subsidiaries and offshore entities, need to be thoroughly examined. To identify and stop fraudulent activity, regulators and auditors need to be consistently on the lookout for ownership and financial transaction irregularities.
- **Ensure transparency:** A major factor in the fraud's continued existence was the lack of visibility around Wirecard's activities, which was made possible by the company's intricate structure. Stricter disclosure laws and increased openness can both assist to reduce the dangers connected to opaque company structures.
- **Strengthening auditing and regulation procedures:** Auditing procedures need to be improved in light of Wirecard's auditors failing to find the fraud in spite of multiple warning signs. To guarantee that complex corporate structures are appropriately examined and regulated, stronger auditing standards and regulatory control are required.
- **International cooperation and information sharing:** The significance of international cooperation and information sharing between law enforcement and regulators is underscored by Wirecard's global operations. Financial fraud involving complex structures can be better detected and prevented with the help of effective cross-border coordination.

The Wirecard scandal is a perfect example that illustrates the risks that complicated business structures may present. Stakeholders can improve their defences against similar fraudulent schemes and fortify the integrity of the financial system by delving into the lessons learned through this case study and seeking to improve their control environment accordingly.

The Danske Bank money laundering case

One of the biggest cases in history, the Danske Bank scandal, shows how intricate organizational structures may be used to support illegal financial activity. The bank's Estonian branch, which handled almost €200 billion in suspect transactions between 2007 and 2015, was at the centre of the scandal. This synopsis delves into the ways in which the employment of complex corporate frameworks was crucial in hiding the sources and destinations of these investments, ultimately impairing the integrity of the financial system.

With its main office located in Denmark, Danske Bank is among the biggest banks in Northern Europe. Its Estonian unit, which served a sizable number of non-resident clients from Russia and other former Soviet states, was the main focus of the scandal. These customers made cross-border transactions through Danske Bank, many of which were subsequently determined to be questionable.

The prominence of complex structure in Danske's corporate scandal:

The use of intricate company structures to hide the true nature of the transactions and the identity of the beneficial owners was a defining feature of the Danske Bank affair. The following significant features demonstrate how these arrangements made the money laundering plan possible:

1. **Use of shell companies:** Throughout this affair, shell companies - entities lacking substantial assets or operations - were widely utilized. These businesses, which were frequently established in offshore jurisdictions, gave the fund managers a degree of anonymity. The money was moved through the financial system using these shell firms, which made it challenging to identify the recipients and sources of the transactions.
2. **Layering of transactions:** To hide the audit trail, layering entails generating several financial transactions. Money was transferred through a number of intricate transactions involving numerous accounts and companies in the Danske Bank corporate structure. Because of this layering, it was difficult for regulators and auditors to identify questionable activity and comprehend the actual movement of funds.
3. **Secrecy jurisdictions:** Known for their stringent confidentiality rules and lax disclosure requirements, secrecy jurisdictions were used to incorporate a large number of the shell firms implicated in the scam. The British Virgin Islands and the Seychelles were among these jurisdictions. The ultimate beneficial owners of the companies were almost impossible to identify due to the confidentiality given by these locations.
4. **Network of intermediaries:** A network of intermediaries, comprising attorneys, accountants, and other financial experts who assisted in establishing and overseeing the intricate business frameworks, formed an integral part of the scam. These middlemen were important in making the money laundering scheme possible by offering the know-how and support required to keep up the appearance of legal business operations.

With the disclosures of an internal whistle-blower in 2017, the Danske Bank scandal started to come to light. Howard Wilkinson, a former head of trading at Danske Bank's Estonian unit, revealed the scope of the questionable transactions. Journalists, authorities and law enforcement agencies conducted follow-up investigations that exposed the scope of the money laundering scheme.

Key findings:

- Most of the suspicious transactions involved large amounts of money transferred through multiple layers of shell companies and accounts, making it difficult to determine their legitimacy;

- Danske Bank's internal controls and compliance mechanisms were found to be insufficient, failing to detect or prevent the illicit activities despite numerous red flags; and
- The majority of the suspicious transactions were conducted through the bank's non-resident portfolio, which was primarily composed of clients from Russia, Azerbaijan, and Moldova.

Lessons learned

In the context of money laundering, the Danske Bank scandal highlights a number of important lessons regarding the hazards associated with intricate organizational structures.

The importance of *robust compliance and monitoring procedures* is highlighted by the crisis brought to light by the serious shortcomings in Danske Bank's compliance procedures. Financial institutions are required to put in place strong anti-money laundering measures, which include robust due diligence procedures, ongoing oversight and thorough examination of any questionable activity. This is in line with the requirement for local regulated entities to report any suspicious transactions as stipulated within the Implement Procedures published by the FIAU.

Through the Danske bank's case, the usage of shell corporations and secrecy jurisdictions highlighted the necessity for increased corporate structure transparency and disclosure which are paramount to improve transparency. Financial firms and regulators ought to push for improved disclosure laws and easier access to beneficial ownership data. However, the recent backtracking from proactive disclosure of beneficial ownership information which stemmed from conflicts with GDPR regulations means that access to such information is limited to 'Authorised Users' only. Accordingly, not only locally but also on an international level, it is increasingly becoming more difficult to identify beneficial owners, especially within a complex corporate structure.

The scandal also underscored the significance of international cooperation among regulatory bodies, law enforcement agencies and financial institutions, given the cross-border nature of the transactions. Fighting international money laundering and other organised crime networks requires effective information exchange and teamwork.

With the concept of proportionality in mind, in smaller jurisdictions with laxer regulations, the scandal exposed deficiencies in regulatory monitoring. Ensuring uniform enforcement across jurisdictions and fortifying regulatory frameworks are imperative in averting such future occurrences.

The Panama Papers: The use of complex structures

One of the biggest data leaks in history occurred in April 2016 when the Panama Papers were made public. They revealed how people and organizations all over the world utilize complex business structures to launder money, avoid paying taxes, and carry out illegal activities. More than 11.5 million papers from the Panamanian legal firm Mossack Fonseca, which described the establishment and upkeep of more than 214,000 offshore corporations, were leaked. This exposé brought to light the degree to which complex business structures and secrecy jurisdictions are used as cover for illicit financial measures.

The story behind the Panama Papers Scandal

Founded in 1977, Mossack Fonseca specialized in establishing offshore businesses and offered their clients a *veil of anonymity*. These organizations, which were frequently situated in *tax havens* with weak regulatory control, gave people and businesses the ability to conceal their assets and business dealings from the government. Many prominent people, including politicians, celebrities and corporate executives, whose identities were made public by the Panama Papers, were linked to these entities and their use for a range of illicit activities including tax evasion as well as lawful related purposes.

The exposure of schemes and mechanisms

The widespread use of *shell companies* was the main technique made public by the Panama Papers. These organizations were created only to retain money and carry out transactions in secret and lacked any notable operations or assets.

The widespread use of *bearer shares* was also exposed. This type of share makes it possible to transfer ownership without a legal record, thus hiding the real owner's identity. Under bearer share ownership, the owner would have a physical certificate that confers ownership of the business known as the bearer, issued by certain offshore firms.

When establishing offshore businesses, Mossack Fonseca frequently designated *nominee directors and stockholders*. Usually, these nominees were either firm employees or unaffiliated third parties that concealed the true identities of the beneficial owners from being discovered, not even by regulatory authorities.

A large number of the structures that were found had *complex ownership chains* with several tiers of corporations and trusts dispersed among several legal systems. Because of its complications, the regulator found it quite challenging to identify relationships.

The offshore entities were often registered in jurisdictions like the British Virgin Islands, Seychelles, and Panama itself, which are known for having *strict privacy laws and low regulatory requirements*. These jurisdictions were thus keeping these structures' set ups secretive due to lack of regulatory reporting.

The Panama Papers exposed a number of *public servants and politicians* who used offshore entities to conceal their wealth and evade investigation. For instance, the family of former Pakistani prime minister Nawaz Sharif was connected to a number of offshore businesses that were used to buy luxurious London homes. The intricacy of these configurations contributed to hiding the relationship between the Sharif family and the properties, making it more difficult to hold them responsible.

The Panama papers also revealed how firms and *business executives utilized complicated arrangements to evade taxes and engage in other illegal activity*. For example, it was discovered that the prime minister of Iceland had an unreported interest in an offshore business that held bonds worth millions of dollars from Iceland's bankrupt banks. Serious moral and legal concerns were brought up by his role being hidden through a network of offshore businesses.

Consequences for International Financial Transparency

The Panama Papers exposed the systemic flaws that permit the abuse of offshore structures, which had a significant impact on global financial transparency. The disclosures raised a number of important questions.

The necessity for increased beneficial ownership transparency was brought to light by the intricate and confidential nature of offshore arrangements. Money laundering, tax evasion, and other financial crimes are difficult to monitor when there is uncertainty about who ultimately controls a business.

International regulatory loopholes were exploited by persons and companies through the use of numerous jurisdictions with disparate regulatory standards. **Regulatory arbitrage**, which is further discussed in Section 4.4.1, is a trend that highlights the need for concerted international efforts to codify and implement transparency laws.

The participation of well-known institutions and public figures in these schemes brought up serious moral and legal issues. The disclosures spurred inquiries and changes in multiple nations with the intention of reducing the misuse of offshore entities.

Governments and international organizations responded to the Panama Papers by taking a number of actions to address the issues revealed, including:

1. Numerous nations have passed or reinforced legislation mandating the release of beneficial ownership details. By making it possible to identify a company's real owners, these regulations sought to discourage the use of shell corporations for illegal activities.

In the local scene, this was also the case until the EU legislation was against the wider sharing of beneficial information and required this information to be restricted as a consequence of GDPR legislations as explained in Chapter 1.2.

2. Financial institutions and intermediaries participating in the establishment and management of offshore organizations were subject to more stringent reporting obligations from regulatory bodies. These steps aimed to improve the financial system's accountability and openness.
3. Increased international collaboration in the fight against financial crime was sparked by the Panama Papers. Initiatives like the OECD's Common Reporting Standard (CRS) made it easier for bank account information to be automatically shared between countries, which aided in the detection and prevention of money laundering and tax evasion.
4. The disclosure increased public knowledge of the scope and consequences of illegal financial operations made possible by intricate corporate frameworks. The disclosures were utilized by civil society organizations and advocacy groups to demand increased responsibility and transparency in the global financial system.

The controversy surrounding the Panama Papers brought to light how frequently complex business structures are used to launder money and carry out illegal operations. The complex network of nominee directors, shell corporations, and

secrecy jurisdictions exposed the enormous obstacles regulators and law enforcement confront in maintaining financial transparency. In order to solve these issues, it is imperative that the ensuing policy reforms, strengthened reporting requirements, and international collaboration initiatives be implemented. ***Nonetheless, in order to stop the abuse of corporate structures for illegal reasons, cooperation and constant vigilance are required due to the persistent complexity of the world's financial institutions.***

Key Findings from the analysis of case studies

The main red flags and risk indicators that need to be considered when dealing with complex corporate structures identified from the case studies include the following:

Red flags and risk indicators of complex corporate structures	
1.	Significant amount of money moving through non-resident accounts
2.	Complicated web of intercompany exchanges
3.	Using companies that are registered in secrecy jurisdictions
4.	Inconsistencies between transaction patterns and company activity.
5.	A lack of openness in ownership arrangements.

Table 2: Red flags identified from case studies, Author's Compilation

4.4 Analysis of risk factors from the study of Complex Corporate Structures

A summary of the major risk factors that imply complexity featuring a complicated business structure is provided by 'Complex Ownership Structures: Addressing the Risks for Beneficial Ownership Transparency', a study by Andres Knobel with support from the Financial Transparency Coalition, that examines the following '**Complex risk indicator**' (CRI) that impact complexity and a description of each risk to provide guidance on whether complex ownership structures should be further regulated:

CRI #	Category	Description of Risk
1.	Number of layers	The longer the beneficial ownership chain, the higher the likelihood that one will withhold information about its legal owners.
2.	Geographic spread	An ownership chain's geographic spread increases the likelihood that legal ownership information will not be registered, disclosed or even exchanged in response to a request in at least one jurisdiction.
3.	Bearer shares	It is necessary to know who holds the physical bearer share at any given time to identify the owner.
4.	Sophisticated structures (for example discretionary trusts, shell companies, etc.)	Intermediate companies and trusts may create obstacles in obtaining a full picture of beneficial ownership for example, the identification of beneficial owners is more challenging when a shell company, as opposed to individuals, is made a party to the trust. Furthermore, in such a scenario the protector or economic settler, for example, will not be the only relevant parties to be identified.
5.	The feature of nominees	The actual legal and beneficial owner may be concealed by professional or de facto nominees
6.	Equity-related unequal or disproportional ownership of shares or voting rights	Small percentage of shareholding rights might disguise high voting power (for example, 99% of shares may be owned through a circular structure with the remaining 1% held by the ultimate beneficial owner who therefore enjoys 100% voting power)

Table 3: Transparency risk factors - Adapted from Knobel, 2022

In the following section, each of the above indicators is analysed with reference to insights derived from the detailed research to provide an understanding of how these influence the impact and likelihood shaping the risk assessment on the 'complexity' of corporate structures.

4.4.1 Assessment of the risk indicators identified for complexity of corporate structures

Complex Risk Indicator 1 – Number of layers

As discussed in Chapter 2, a key method used to disguise beneficial ownership involves the use of legal persons and arrangements to distance the beneficial owner from an asset through complex chains of ownership. Adding numerous layers of ownership between an asset and the beneficial owner in different jurisdictions and using different types of legal structures, can prevent detection and disturb investigations.

The use of many bank accounts, nominee directors and/or legal entities within a single legal structure can seriously hinder the ability of financial institutions, other authorities and FIUs to identify and confirm the beneficial owner. When formal ownership structures are spread across multiple jurisdictions, this becomes much more difficult. Even though numerous nations have made a concentrated effort to enhance the exchange of financial intelligence and corporate data, requests for mutual legal aid and other types of bilateral or multilateral information sharing are frequently delayed or made more difficult by different legal obstacles. Following extensive procedures for exchanging information with foreign counterparts, the information obtained frequently shows that the company of interest is controlled by a different legal entity or arrangement in a different nation. The FATF study showed that many jurisdictions face significant difficulties in maintaining current and accurate data on legal persons. Therefore, the more businesses and nations that are a part of a corporate structure, the more difficult it will be to identify the ultimate beneficial owner quickly.

More than half of the case studies examined in the study on the Concealment of beneficial ownership by the FATF made use of complicated ownership structures, whereby control was affected through a combination of direct and indirect channels. These complex structures were achieved through the establishment of chains of ownership, which often involved a number of legal persons and arrangements across multiple countries, distancing the beneficial owner from the assets of the primary corporate vehicle. In only a small number of cases did the beneficial owner retain legal ownership through a complicated structure without using an intermediary.

Generally, there only are few restrictions on the establishment of chains of ownership within and across jurisdictions. Legal persons are allowed to own shares in companies established in any country, while many countries also allow legal persons from other jurisdictions to be registered as the directors of companies. Shell companies and front companies feature prominently in most complex structures identified by FIUs and other competent authorities, while trusts and other legal arrangements are less frequently identified.

A Russian case study demonstrates how complex ownership structures, involving numerous foreign companies and bank accounts were used to disguise the beneficial ownership of embezzled public funds and other proceeds of crime.

A total of RUB 300 million (USD 11 million) in embezzled state funds were moved from Company K's account to Company R's account.

The suspect's Russian wife, a state official, controlled and operated Company R, a Delaware corporation. On the same day, Business R deposited USD 11 million as a loan into Business A's (BVI) bank account. After that, Company A sent Company D (US) almost USD 11 million so that it could buy property in France. Over USD 12 million was moved by Company D to a French Notaries Bureau. Data from the FIU of Luxembourg revealed that one of the US banks served as the suspect's wife's guarantor in a purchase agreement for the real estate and the shares of a French corporation. The transaction was carried out through S.S. firm, which was created and owned by the same person. It was a French subsidiary of Luxembourg based S.D. SA. These two chains were connected, according to the analysis, and the property was bought using public monies that had been embezzled for the state official's wife's benefit. (Concealment of Beneficial Ownership Group Egmont, 2018)

Local statistics on CRI 1

A risk assessment on legal persons was conducted by the MBR in August 2021, focusing on assessing the money laundering / terrorist financing (ML/TF) threats with particular reference to beneficial ownership, which report formed part of the submissions to the FATF as part of the actions taken to address the FATF action plan for Malta to be removed from the grey listing. The purpose of this risk assessment was to improve MBR's awareness of the possibility for a legal person to hide beneficial ownership. The "high-risk" legal entities for the concealing of beneficial ownership for money laundering purposes as of August 2021 were those without Maltese resident directors, **those with intricate and multi-layered organizational structures**, and those without a Maltese IBAN account. (Malta NRA 2023, NCC)

The following table extracted from the Malta NRA for 2023, presents the rating of ML threats for legal persons where the **highest ratings assessed prior to considering the effectiveness of mitigating measures refer to threats of laundering proceeds of crime through schemes using complex structures**, schemes involving abandoned commercial partnerships and incorrect beneficial owner used in ML schemes with tax crime as a predicate offence.

Table 4: Rating of ML/TF/PF/TFS threats – legal persons, adapted from Malta NRA '23

Threat	Impact	Likelihood	Threat level
ML schemes using complex structures	Severe	Likely	High
ML schemes involving abandoned legal persons (Maltese and Non-Maltese Involvement)	Severe	Likely	High
Incorrect BO used in ML schemes with tax crime as a predicate offence	Severe	Possible	Medium-high
Incorrect BO used in ML scheme with other predicate offences	Significant	Possible	Medium-high
Concealment of BO for ML/TF/PF or TFS	Significant	Possible	Medium-high
ML schemes involving unlicensed financial services	Significant	Possible	Medium-high
Unlawful behaviour in financial markets	Significant	Possible	Medium-high
Use of foundations and associations for ML Purposes	Significant	Possible	Medium-high
Illicit use of domestic bank accounts by legal persons with foreign links and complex structures	Significant	Unlikely	Medium

Another notable risk with a "medium-high" risk rating is in relation to *legal persons having multiple layered structures and multiple jurisdiction structures*. As illustrated below, other vulnerabilities include the employment of complex arrangements that make it difficult to ascertain beneficial ownership and those that lack a clear, reasonable, or commercial purpose. Out of the number of multi-layered legal persons in Malta:

- **31% have a two-layered ownership structure**, that is a legal entity registered in Malta with immediate parent companies that are directly owned by natural persons;
- **69% have at least two layers of ownership**, with about half of these having at least one immediate corporate shareholder which is registered outside of the country. (Malta NRA, 2023)

Spotlight on local findings –
Number of layers

From the analysis of the number of layers for locally registered financial institutions, the majority were found to have a maximum of three to four layers in their ownership structure. In view of the limitations in accessing beneficial ownership information outlined in Chapter 2, this analysis is heavily based on research from public sources. Accordingly, results may not provide a complete picture due to the lack of full ownership information that could be traced especially at the top of the beneficial ownership structure which featured international corporate entities.

As can be seen from the chart on the right, out of 53 corporate structures reviewed, 30 financial institutions, representing 57% of the total population have three to four layers within the ownership structure. Under this setup, the most common setup involves the local financial institution being owned by an immediate parent holding company, which in most cases is also registered in Malta. In turn, this entity is held by the ultimate beneficial ownership which is registered in Malta or abroad. In some cases, an added foreign corporate ownership layer was noted (mostly in cases whereby the beneficial owners are foreigners).

The illustration presented on the right refers to an anonymised case study of one of the financial institutions reviewed in the study, with a higher number of ownership layers within the structure. This case study was selected as an illustrative example as it also featured the use of different types of shares to manipulate control.

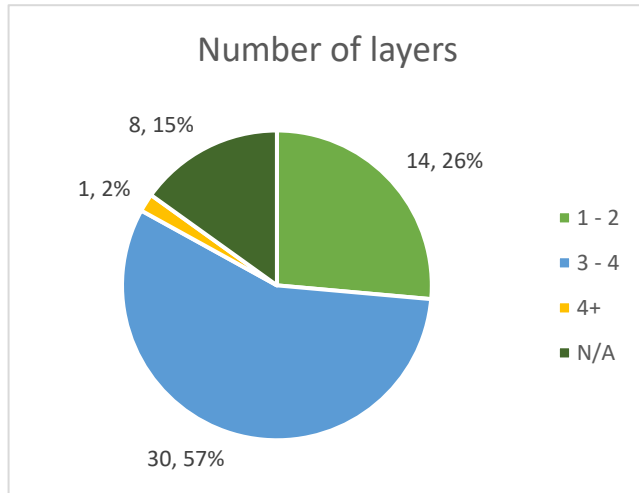


Figure 9: Local FIs – Number of layers, Author's compilation

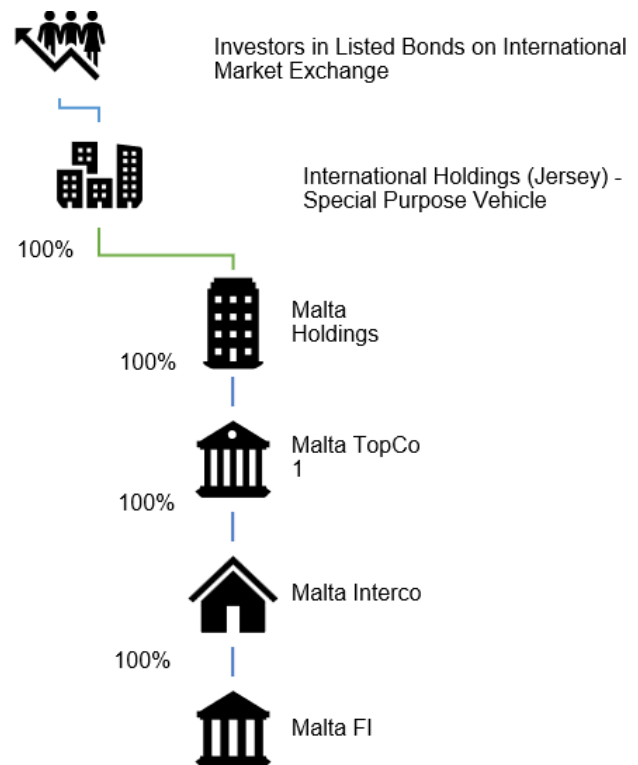


Figure 10: Malta FI – Multiple layers, Author's compilation

Complex Risk Indicator 2 – Geographic spread

Multijurisdictional Risk Evaluation of Intricate Corporate Frameworks

The practice of taking advantage of variations in regulatory frameworks across jurisdictions in order to obtain a competitive advantage is known as "regulatory arbitrage." This practice is common amongst businesses, financial institutions or individuals seeking to move their activities, assets or transactions to areas with more advantageous regulatory environments in order to achieve their intended objectives. This could entail picking a jurisdiction with laxer oversight, more liberal compliance standards or lower taxation rates.

Regulatory arbitrage might be especially relevant in the financial services industry. For example, in order to cut expenses or get out from under tougher laws back home, a financial institution relocates some of its operations to a nation with laxer financial regulations. This can entail actions like creating subsidiaries in offshore financial hubs or disguising ownership or control through intricate organizational structures.

This technique carries a high-risk profile even though it can have immediate financial rewards. By fostering a "race to the bottom" where jurisdictions strive to give the laxest restrictions, it can erode regulatory standards. As seen by the global financial crisis of 2008, where regulatory shortcomings aided in the failure of significant financial institutions, this might result in systemic dangers for the financial system. It also presents difficulties for regulators, who have to keep adapting to stop organizations from taking advantage of these variations.

The consequences of regulatory arbitrage extend to tax avoidance and evasion. Companies can drastically cut their tax obligations by moving their profits to low-tax jurisdictions, which costs governments money. International initiatives to address these issues have included the Base Erosion and Profit Shifting (BEPS) project of the OECD, which aims to increase transparency and collaboration among tax authorities.

In summary, while regulatory arbitrage can help companies streamline their operations, it also poses serious obstacles to preserving the integrity of regulations, the stability of the economy and equity in the global financial system.

Local scene on multijurisdictional risk evaluation within complex structures

The misuse of Maltese registered legal persons without any connection to or presence in Malta for money laundering or other forms of beneficial ownership concealment poses a serious threat as presented in the Malta NRA 2023. Because of this, situations may arise where a Maltese Corporate Service Provider provides a registered address or establishes a Maltese legal entity, but neither entity within the structure has any Maltese key officials and is fully controlled by foreigners, meaning it has no meaningful relationship to Malta. Out of the legal entities that were established in 2020, 5,263 corporations only had a registered office, that is no physical presence in Malta, and no other Maltese connection. 5,760 of the legal entities that were incorporated in 2021 had no local presence, and from the legal persons incorporated in 2022, 6,150 had no local presence.

With regards to the jurisdictions of the beneficial owners behind authorised financial institutions in Malta, 42% are Maltese nationals, 31% are EU/EEA nationals, 25% are non-EU/EEA nationals and only 2% are nationals of high-risk jurisdictions.

The use of multi-national complex systems can also contribute to the persistence of money laundering threats. In this case, local CSPs can be utilized in the layering

stage and to move cash through various businesses. Furthermore, there may be a lack of transparency in complicated arrangements since it may be difficult to determine who the ultimate beneficial owner of the entities involved is. As a result, the risk of BO concealment is, in fact, amplified in intricate arrangements that encompass several jurisdictions. (Malta NRA 2023, NCC)

Preface to the local findings on the geographic risk distribution of UBO country of residence and nationality

As detailed in Chapter 2, details on the country of residence and nationality of the UBOs behind financial institutions registered in Malta was provided by the MBR. These data points are based on information gathered by various subject persons through the Know Your Customer procedures carried out in fulfilment of the 'Proof of address' verification requirements.

From an analysis of the information shared by the MBR, 60 natural persons were identified as the respective UBOs of 49 of the locally registered financial institutions. No UBO information was available for the remaining 4 entities, all of which are listed on a European stock exchange.

For the purposes of the geographical risk assessment, in instances where multiple UBOs were identified for the same financial institution, the analysis of the underlying jurisdictional risks associated with both country of residence and nationality was based on the country presenting the highest risk. Furthermore, for listed entities, the analysis referred to the country where the shares of the respective financial institution are listed.

**Spotlight on local findings –
Geographic spread: Residence**

Based on the approach described above, adjacent visuals map out the jurisdictional distribution of the highest risk country of residence for the ultimate beneficial owners of locally registered financial institutions.

As can be seen from this analysis, out of 53 financial institutions reviewed at least 1 UBO of 5 financial institutions (9%) is linked to a High-risk country in terms of residence. These are Israel, Brazil, Ukraine, Thailand and China.

In the case of 47 financial institutions (89%), the highest jurisdictional risk associated to the corporate structure is Medium. In such instances, at least 1 UBO resides in a Medium risk country, mainly the EU, UK and USA. Out of these, at least 13 corporate structures, representing 25% of the total population of financial institutions, involve a Maltese resident.

For the remaining financial institution (2%), the underlying UBO resides in a Low risk jurisdiction, namely Switzerland.

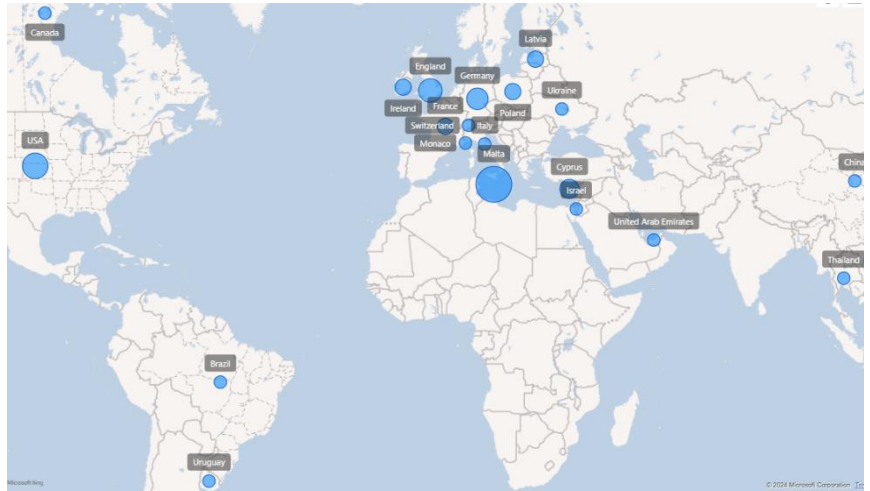


Figure 11: Mapping of residency of UBOs of Malta FIs

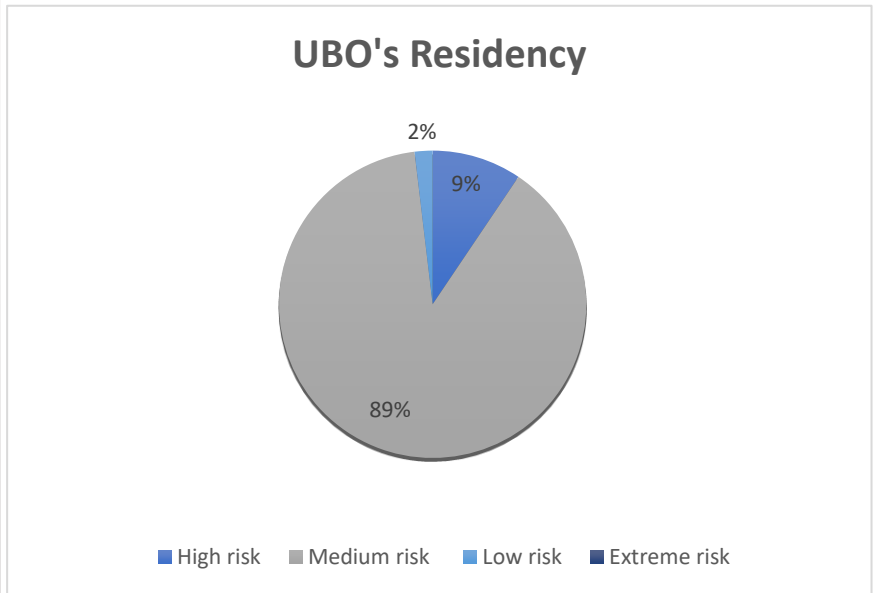


Figure 12: Residency of UBOs for Financial institutions reviewed, Author's compilation

**Spotlight on local findings –
Geographic spread: Nationality**

Similar to the analysis of the country of residence, Figure 11 depicts the geographical distribution of the highest jurisdictional risk presented by each financial institution registered in Malta, this time focussing on the nationality of the underlying UBOs.

As can be seen from the outcome of this analysis, out of the population of 53 locally registered financial institutions, at least 1 UBO of 7 financial institutions (13%) is linked to a High-risk country in terms of nationality. Nationalities present in this risk category are Israel, China, Brazil, Ukraine and India.

From the analysis conducted, the maximum jurisdictional risk associated to the nationalities present in the corporate structure of 45 financial institutions (representing 85% of the population) is Medium. This classification arises when at least one UBO is a national from a country deemed to carry a Medium risk, with the majority hailing from the European Union, the United Kingdom, and the United States. Notably, within this group, at least 10 corporate structures, representing 19% of all financial institutions examined, include a Maltese national as a UBO.

For the remaining financial institution (2%), the underlying UBO has a Low risk nationality, namely Switzerland.

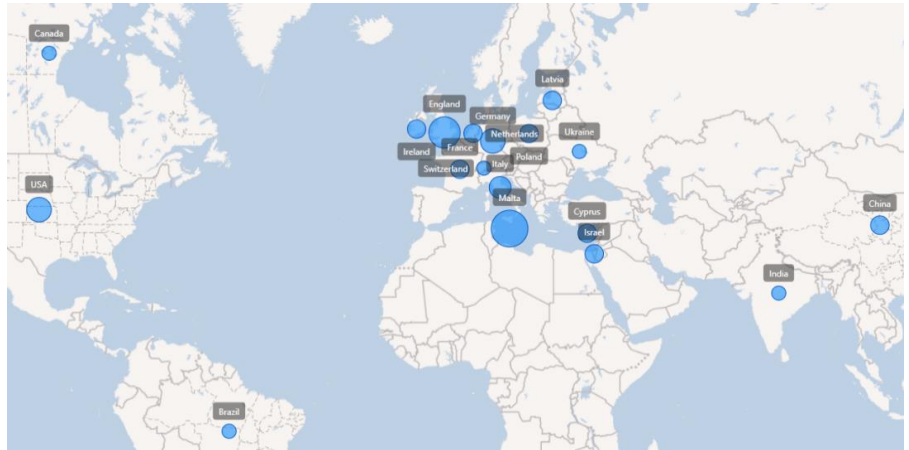


Figure 13: Mapping of UBOs Nationality, Author's compilation

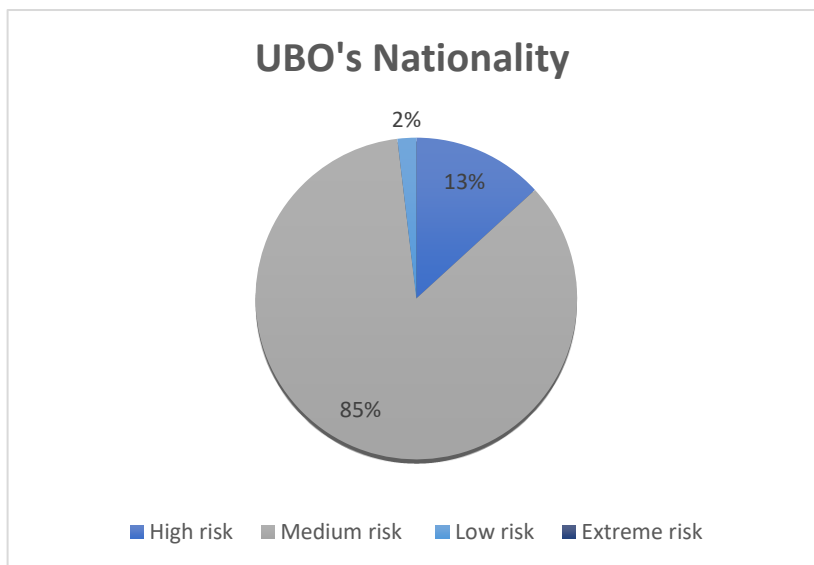


Figure 14: Nationality of UBOs for Financial institutions reviewed, Author's compilation

A comparative analysis of the insights derived from the geographical risk assessment of residence and nationality of UBOs suggests that most financial institutions are associated with medium risk jurisdictions, both in terms of UBO residence and nationality. The variance highlights minimal differences in risk categorization depending on whether residence or nationality is considered, with nationality presenting a slightly higher risk overall.

Findings from this comparative analysis suggest that, to enable the identification of the highest risk areas, both residence and nationality should be carefully evaluated when conducting jurisdictional risk assessments. This dual approach is an important consideration for regulatory focus and effective oversight.

Complex Risk Indicator 3 - The use of anonymity instruments

The use of anonymity instruments in corporate entities has long been a topic of concern and discussion. Specifically, anonymity instruments in the context of corporate entities refer to financial tools that allow for the ownership and transfer of assets or corporate control without revealing the identity of the owner.

The most well-known of these anonymity instruments is the bearer share. Bearer shares are a form of equity security where ownership is determined by physical possession of an underlying share certificate. Thus, whoever possesses the certificate is considered the legal owner. Unlike registered shares, where ownership details are recorded in a registry, bearer shares allow for complete anonymity, as the company issuing the shares does not need to know who holds them. Moreover, ownership of the shares can be transferred simply by handing over the physical certificate, making these instruments similar to cash in terms of transferability.

The concept of bearer shares dates back to the 19th century, originating as a means to facilitate the easy transfer of ownership in corporations. Before the advent of modern electronic registration systems, bearer shares provided a convenient way for investors to buy, sell and trade equity in companies, without the administrative burden of recording every transaction. The physical certificate served as proof of ownership and the transfer of ownership was as simple as handing over the certificate.

Over the years, bearer shares were increasingly legitimately used by investors who valued privacy, such as wealthy individuals who did not want their personal wealth or business interests publicly known. They were also used to facilitate the easy transfer of assets in regions or periods where formal financial systems were underdeveloped or unreliable.

Another legitimate use of bearer share was in international trade and investment. Investors from countries with unstable political or economic environments could invest in foreign companies without exposing themselves to the risk of expropriation or persecution by their own governments. The anonymity provided by bearer shares offered a layer of protection in these scenarios.

Despite their legitimate uses, anonymity instruments like bearer shares have significant risks, primarily due to the lack of transparency they afford. These risks include:

- The holder's identity is preserved since ownership is established solely by the physical possession of the share certificate. This anonymity can mask the genuine owners' identities in intricate corporate structures, making it challenging for authorities and regulators to determine who is in charge of the business.
- Bearer shares may be concealed behind numerous corporate organisations in different jurisdictions, making it even more difficult to determine who the beneficial owners are.
- For anti-money laundering systems, the anonymity of bearer shares is a major source of concern. The lack of requirement to maintain records or notify changes in ownership makes it simpler to transfer illegal money or assets across international borders covertly.
- There may be varied degrees of restrictions on the use of bearer shares depending on the jurisdiction. This may open the door to regulatory arbitrage in intricate corporate structures.

- Using bearer shares has the potential to compromise corporate governance. The corporation is more susceptible to fraud, embezzlement and other forms of abuse by anonymous shareholders because it is difficult to maintain appropriate responsibility in the absence of knowing who the shareholders are.

The high degree of anonymity makes bearer shares particularly risky from a regulatory standpoint. In fact, since ownership can change hands without any trace, bearer shares have historically also been used to conceal illicit activities, making it difficult for authorities to track financial flows and enforce regulations. Consequently, numerous international organizations, including the Financial Action Task Force and the Organization for Economic Co-operation and Development, have been advocating for the elimination of bearer shares or implementation of stricter regulations with a view to increase transparency in corporate ownership and reduce the risk of financial crimes.

In recent years, many countries that once permitted bearer shares have introduced reforms to either ban them or ensure they are converted to registered shares, which are easier to track and regulate. Failure to comply with such requirements, such as conversion or registration, is often subject to substantial fines or penalties from the respective authorities.

As at the date of this study, the number of countries that still allow the issuance of bearer shares is therefore extremely limited due to the heightened concerns over financial crimes like money laundering and tax evasion. Some of the jurisdictions where bearer shares may still be issued include Panama, where they are heavily regulated, and some small offshore jurisdictions like the Marshall Islands. However, even in these places, the bearer shares must often be "immobilized," meaning they are held by a custodian or fiduciary who records ownership details, thereby reducing the anonymity traditionally associated with these instruments.

The global crackdown on anonymity instruments like bearer shares is likely to continue in the coming years. As international cooperation in combatting financial crimes intensifies, the remaining jurisdictions that still allow these instruments will face increasing pressure to align with global standards.

Moreover, the rise of digital financial systems and blockchain technology presents new opportunities and challenges for anonymity in corporate ownership. While these technologies can enhance transparency and security, they also have the potential to create new forms of anonymity instruments that could be used to circumvent existing regulations.

Spotlight on local findings –
Use of anonymity
instruments

From the analysis conducted, and on the basis of the limited information available, there was no indication of the use of bearer shares across the respective corporate structures of Malta registered financial institutions.

This analysis suggests that the likelihood of bearer shares being used in the corporate structure of local financial institutions is low. However, due to the difficulty in sourcing conclusive information on the use of bearer shares without a complete picture of the organisational structure for all entities in scope, the inherent risk associated with such instruments remains high.

In 2017, Malta took decisive action by enacting legislation that effectively abolished the use of bearer shares. The Maltese Companies Act was amended to prohibit the issuance of share warrants to bearer and existing bearer shares were required to be converted into registered shares by a specified deadline.

Article 121 of the Companies Act as amended now states clearly:

“No company may issue a share warrant to bearer notwithstanding anything contained in its memorandum and articles of association.”

The abolition of bearer shares in Malta has had several positive outcomes. It has enhanced aligned the country with international best practices and demonstrated commitment towards the transparency of corporate ownership, making it easier to trace and investigate suspicious activities. Moreover, such reforms have helped in reducing Malta’s financial services sector exposure to reputational risks associated with financial secrecy and have thus made it more attractive to legitimate investors seeking a transparent and well-regulated environment.

Complex risk indicator 4 – Sophisticated structures

- The use of Trusts and other complex vehicles

Certain jurisdictions allow for the involvement of complicated corporate vehicles, such as private foundations, trusts and SPVs, that add to the complexity of the group's frameworks and hence increase the risk of secrecy. This is particularly relevant if not all parties to the legal vehicle are covered by relevant legislation.

"Legal arrangement" is defined by the European Commission (2021) as an express trust or an arrangement that functions or is structured similarly to an express trust, such as fiducie, certain Treuhand and fideicomiso kinds. According to FATF, an express trust is:

"a trust clearly created by the settlor, usually in the form of a document, e.g., a written deed of trust. They are to be contrasted with trusts which come into being through the operation of the law and which do not result from the clear intent or decision of a settlor to create a trust or similar legal arrangements (e.g., constructive trust)."

In accordance with the Trusts and Trustees Act, the following parties and components are pertinent to this sector:

- **Trustee:** the person or people holding the property or in whom the property is vested in terms of the trust agreement and in accordance with the provisions of Maltese law;
- **Beneficiary:** a person entitled to benefit under a trust or in whose favour a discretion to distribute property held in trust may be exercised;
- **Settlor:** the person who creates the trust and includes a person who provides trust property or makes a disposition on trust or to a trust. (Malta NRA 2023, NCC)

The MFSA created an online platform for the Trusts Ultimate Beneficial Ownership Register (TUBOR) to make it easier for trusts to electronically submit their beneficial ownership information and to give access to the parties who are legally entitled to access that information at different levels online.

A total of 3,486 trusts were reported on TUBOR as of May 2022. This number includes both foreign trusts (those governed by laws other than Maltese law as their proper law) and Maltese trusts (those controlled by Maltese law as their proper law).

In assessing the risk indicator of the misuse of trusts as a legal arrangement in complex structures the following data is relevant in assigning a higher risk rating to such:

11.8% of the individual settlors registered on TUBOR are Maltese nationals, while 12.8% of the individual settlors live in Malta, according to the examination of the detailed data. 52.6% of the legal entities were those that were registered in Malta.

Regarding EU and non-EU nationality on TUBOR, it was discovered that the **UK** accounted for a substantial portion of the **non-EU nationalities** with **63.3%**, followed by Malta with 11.8% and Italy with 4.4%. The low percentage share accounted for by the high-risk countries suggests that the threat is controlled, according to the report. Additionally, the data shows that while the percentages of settlors who reside in higher risk countries are higher than those who have a nationality from higher risk jurisdictions, they are still very small.

When evaluating the country of registration of the **settlers** of legal persons, Malta accounts for 52.6% of the reported settlers' country of registration, with the **EU** accounting for 62% of the total.

Regarding the **beneficiaries**, 11.8% of the individual beneficiaries are citizens of Malta, while 12.5% of the beneficiaries are Maltese citizens. Of the legal persons, 17.6% have their registration in Malta. Given the small percentage share accounted for by the high-risk countries, even with beneficiaries, the threat is minimal. Further information reveals that the beneficiaries of trusts managed by trustees or co-trustees who are non-EU legal persons do not live in nations that pose a high risk.

The fact that "the complex structure of trusts makes the identification of the beneficial owners difficult and requires further efforts to determine the true nature of the trust relationship" is one of the vulnerabilities identified by the EU SNRA (2022).

The attractiveness of trusts to non-residents, the lack of information about the kind of assets managed by trustees and where they are located, the challenge of determining the source of funds or wealth when the settlor is from a non-EU jurisdiction, the challenge of verifying the veracity of statements regarding beneficiaries living in non-EU nations, the amount of assets under trustee control, and the insufficient knowledge of legal arrangements by competent authorities are all factors that are taken into account. (Malta NRA, 2023)

The below table extracted from the Malta NRA results depicts the rating of threats as a result of the above risk indicators identified for the legal arrangements:

Table 5: Rating of threats – legal arrangements, adapted from Malta NRA '23.

Threat	Impact	Likelihood	Threat level
Abuse of trust structures for concealment of beneficiaries for ML	Significant	Possible	Medium-high
Abuse of trusts to enable the enjoyment of use of laundered funds including prevention of their confiscation	Significant	Possible	Medium-high
Abuse of trust structures for foreign tax crime purposes	Significant	Possible	Medium-high
Illicit funds settled in the trust	Significant	Likely	Medium
Abuse of trust structures for concealment of beneficiaries for TF, PF or sanction evading	Significant	Likely	Medium
Abuse of trust structures for domestic tax crime purposes	Significant	Likely	Medium

Since there can be several parties involved, such arrangements can get extremely complicated. A settlor, for example, is required to settle or create a trust. The individual (or entity) who actually contributed the assets to be settled in the trust is known as the economic settlor, and certain jurisdictions may make a distinction between this person and the legal or nominated settlor, who is named in the trust deed.

The trustee is a necessary third party in any trust. Typically, the trustee retains the trust assets in their names, but they are not their property and cannot profit from them in any way other than the agreed-upon payments for trustee services. Trusts cannot hold assets because they are typically not regarded as legal entities with legal personality in Common Law nations. The properties are held "in trust" by the trustee, meaning that neither the trustee's own wealth nor its creditors can access them.

In certain legal systems, the trustee may also be the settlor, or the trustee may be a company (referred to as a "corporate trustee"). In certain situations, the trustee may be under the ownership or control of that business. Any trust should, in theory, have beneficiaries, or at least beneficiary classes (like "the future grandchildren of X"). The settlor may be the sole beneficiary in a self-settled trust, or they may be additional beneficiaries depending on the jurisdiction. Nonetheless, trusts may contain "purposes" in addition to or even instead of beneficiaries in some jurisdictions, such as the Isle of Man.

Beneficiaries' rights could rely on the trustee's judgment to distribute funds to them if the trust is a discretionary trust. Discretionary beneficiaries may remain anonymous until they receive a pay out from the trust. The OECD's Common Reporting Standard facilitates the automatic sharing of bank account information and allows discretionary beneficiaries not to be identified until they obtain a distribution from the trust. Furthermore, distributions can be made undetected by pretending that the trust is carrying out fraudulent activities, instead of legitimate "distributions," such as a donation or the sale of trust property for a very low price.

The identification of the settlor, trustee, protector (if applicable), beneficiaries or classes of beneficiaries, and any other individuals having effective control over the trust is mandated by the Financial Action Task Force and some statutes, such as the EU Anti Money Laundering Directive (AMLD). Nevertheless, certain legal systems do not define beneficial ownership in the context of trusts, or they simply address the trustee, settlor, and beneficiary. These differences in the treatment of trusts, which by their nature are already complicated vehicles, creates further intricate measures that conceal the beneficiaries within the corporate structure. (*Knobel. A, 2022*).

Having legal entities as trustees also makes it more difficult because it makes it possible to manipulate corporate threshold regulations in order to avoid disclosure. The Financial Action Task Force (FATF) and the OECD's Global Forum on Exchange of Information both use the term "beneficial ownership" to describe beneficial ownership. There are no limits and all stakeholders, including beneficiaries, are required to be identified, irrespective of their stake in the trust's assets and earnings.

More than 60 nations set thresholds in their definitions of beneficial ownership for corporations, as detailed in the Tax Justice Network's State of Play of Beneficial Ownership Registration 2020. Individuals are often exempt from declaring themselves to be beneficial owners of a corporation until they cross the "more than 25 percent" threshold. Therefore, by involving a corporate trustee this avoids having to identify beneficiaries at the lower thresholds.

Some concluding remarks on the use of trusts in corporate structures are provided by the FATF/Egmont Group paper "Concealment of Beneficial Ownership":

In the case studies reviewed through the report, it was more common for a trust to engage with at least one company, but it seems uncommon for criminals to put up a complex structure including numerous trusts. A business or other legal entity was engaged in almost all of the cases where a formal arrangement was used. This indicates that schemes involving solely trusts may be more challenging for authorities to uncover, instead, trusts and similar legal arrangements are typically employed as a component of larger schemes rather than being used alone to keep assets and conceal beneficial ownership. The way the trust interacts with other legal entities

complicates matters further and makes it more difficult to determine beneficial ownership. (Concealment of Beneficial Ownership Group Egmont, 2018)

7 suspicious shell company indicators:

- Directorships with anomalies
- Mass registration
- Disparities in jurisdiction
- Circular ownership
- Age of key individuals who are outliers
- Dormancy
- Unusual Financial Situations

(Com, Kyc and Shellcompanies, n.d.)

- Shell Companies

- Shell corporations are widely employed in money laundering operations whereby they may be used to hide the source of illegal payments. Money can be laundered by criminals via a number of shell corporations, making it challenging to track the cash back to their original source.

- People and businesses can minimize or completely avoid paying taxes in their home countries by channelling income or assets through shell companies in low-tax nations. The intricate ownership arrangements of shell corporations may pose difficulties for tax authorities in identifying such initiatives.

- Organizations facing international sanctions may conceal their involvement in transactions by using shell firms to carry on with business as usual. This enables them to get over limitations put in place by national or international authorities.

- False invoicing, Ponzi schemes, and investment scams are just a few of the fraudulent schemes that might exploit shell firms. Fraudsters can fool regulators, creditors, or investors by putting on a show of validity.

- By hiding the flow of illegal money, shell corporations can aid in bribery and corruption. One way to channel bribes to public officials while hiding the identities of individuals involved is through the use of a shell business.

These flags, also known as risk markers for the possibility of existing shell companies, can assist businesses in focusing their investigations, carrying out risk analyses, and making confident decisions regarding the people they collaborate with.

Spotlight on local findings –
Sophisticated structures

Out of the 53 financial institutions reviewed it appears that only one has an evident shareholding entity that is a trust. However, the information for corporate structures has been gathered through public sources and may not be accurate.

The following illustration presents the anonymised case of the structure of this financial institution whereby the following complex risk indicators can immediately be identified:

- Trust company as shareholding entity to conceal identity of ultimate beneficiary
- UBO is resident in high risk country. The beneficial owner is assumed to be also a director of the financial institution from information on residency provided by the MBR.

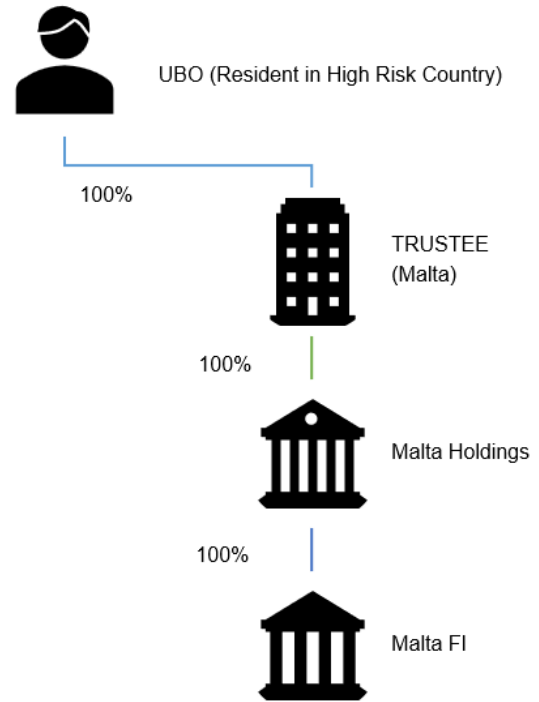


Figure 14: Example Malta FI Sophisticated Corporate Structure, Author's compilation

Local context on the instruments that conceal ownership

A usufruct is a legal concept in Malta that allows an individual (the usufructuary) to use and benefit from property that is owned by another (the bare owner) for a predetermined amount of time. The bare owner is still the legal owner of the property, even while the usufructuary has the right to utilize it and make money off of it (for example, by renting it out). In a variety of legal and financial circumstances, including family law, real estate transactions, and estate planning, this arrangement is typical.

The Civil Code (Chapter 16 of the Laws of Malta) governs usufruct in Malta. The applicable provisions guarantee that the property is protected and maintained throughout the term of the usufruct, as well as outlining the rights and responsibilities of the bare owner and usufructuary.

Usufruct is sometimes used in commercial agreements when one party has to utilize the property for a predetermined amount of time without becoming the owner. The key characteristics for such arrangements may create a difficulty in revealing the true beneficiary within a corporate structure if such agreement exists. This information will not be known unless there is knowledge of this arrangement in place. While the usufruct is in effect, the bare owner is still the legal owner of the property but is not entitled to utilize it or profit from it. The original owner regains complete ownership rights with the termination of the usufruct. (N.C)

Complex risk indicator 5: The feature of nominees

The registered owner of shares who holds such shares for the benefit of another individual is known as a *nominee shareholder*.

On the other hand, a *nominee director* is a director appointed to a company's board of directors to represent the appointer's interests.

Nominees acknowledge that they are legally liable for the company's operations and duties related to ownership or directorship in the nation where the business is incorporated. But occasionally, a nominee might serve as a proxy for another person and possess the title of director or shareholder. A trust agreement or civil contract between the nominee and the real director or shareholder may govern these arrangements.

In most nations, the employment of nominee directors and stockholders is a widespread occurrence. Certain situations in which nominee arrangements are allowed are also formally recognised by law in some countries (such as in respect to publicly traded firms). Nominees are used in several contexts, such as to protect the nominator from regulations pertaining to public disclosure or to satisfy legal requirements of the nation where the company is incorporated (e.g., rules pertaining to the presence of a domestic director). Formal nominee services are known to be provided by a variety of service providers, such as TCSPs, legal and accounting experts, and professional nominees (individuals who rent their identity information to businesses for nominee reasons alone, but give no more services to the owners).

Nominees have been used to mask ownership and control or to get around legislation intended to regulate foreign firm ownership and international commerce, even though their usage is generally permitted (or at least not illegal). FIUs and law enforcement organizations also record instances in which people who have been barred from serving as directors of a firm because of prior misconduct or who are known criminals employ nominee services. Because of this, it is possible to take advantage of the availability and usage of official nominee services to conceal beneficial ownership.

Slightly less than 50% of the case studies examined in the 'Concealment of beneficial ownership' research featured formal nominations either postponing the beneficial owner's identification or fabricating connections between businesses that have nominees in common to impede investigations.

Recommendation 24 of the FATF standards, which recommends that nations act to stop the misuse of nominee shares and nominee directors, takes these weaknesses into account. This recommendation requires that nominee directors and shareholders proactively declare their status and (for non-regulated nominees) their nominator to the company and to a registry or financial institution.

Case example extracted from the FATF– Egmont Group Report on the Concealment of Beneficial ownership:

A law company located in New Zealand was connected to individuals who were charged, detained, or found guilty of several offenses such as embezzlement, bribery, corruption, tax evasion, and money laundering.

This New Zealand law business formed companies and partnerships by utilising its staff as nominee directors and shareholders, keeping the identities of the beneficial owners, who were occasionally criminals and their allies, a secret. In addition, it was common for a chain of businesses to be formed, with one company holding shares in

another, which in turn held shares in yet others. This created extra complexity in the structure and further isolated the beneficial owner from the assets. Occasionally, a New Zealand-based (shell) corporation served as the trust's trustee.

Typically, all of the firms involved were shells, possessing nominated directors, shareholders, and addresses. This law business in New Zealand created intricate arrangements that can be used to conceal and safeguard the rich owners' assets. These structures included companies, partnerships, and trusts. Additionally, this New Zealand legal firm's overseas business associates occasionally established corporations abroad that were added to the structures, further complicating matters and impairing the effectiveness of the methods used to find hidden money and criminal activity. A person with such a setup would have had a complicated audit trail that would have been difficult to follow up on if suspicions were raised and they were looked into. There were compelling signs that this New Zealand law company had established networks for criminals.

The key risk indicators identified from this case include red flags that are common when such arrangements appear in the corporate structure:

- Prior conviction for significant crimes, tax evasion, or fraud
- The director or controlling shareholder(s) does not appear to have an active role in the company
- The director, controlling shareholder and/or beneficial owner are listed against the accounts of other legal persons or arrangements
- The company is under investigation or has known connections with criminals; the registered address is also listed against numerous other companies or legal arrangements.
- Entity or arrangement established in a low-tax jurisdiction, international trade hub, or financial centre
- Intricate corporate frameworks that do not seem to be justified by necessity or that do not make financial sense
- No real business activities are done
- Nominee owners and directors, including formal nominees
- Address for bulk registration
- Exclusively facilitates transit transactions and does not appear to produce wealth or revenue; the legal person lacks employees; the legal person is not physically present.

Spotlight on local findings – Nominees

From the study it can be seen that 5 out of 53 (9%) of financial institutions feature evident nominee shareholding entities within their structure.

The following table presents the countries where nominee shareholders are present. Furthermore, the illustration is an anonymised structure of one of the identified structures within the study. From public sources, only 33% of the structure could be traced, since Shareholder 1 is a nominee and Shareholder 3 is registered in Gibraltar, a country where no beneficial ownership information is disclosed.

	Jurisdiction of parent Co.	Jurisdiction of UBO	Nominee Jurisdiction
FI 1	Malta	German / Austria	Cyprus
FI 2	Gibraltar	Polish	Gibraltar
FI 3	Malta	Thailand	Malta
FI 4	Malta	US / Irish	Bermuda
FI 5	Isle of Man	Chinese	Isle of Man

Table 6: Malta FIs featuring nominee shareholders, Author's compilation

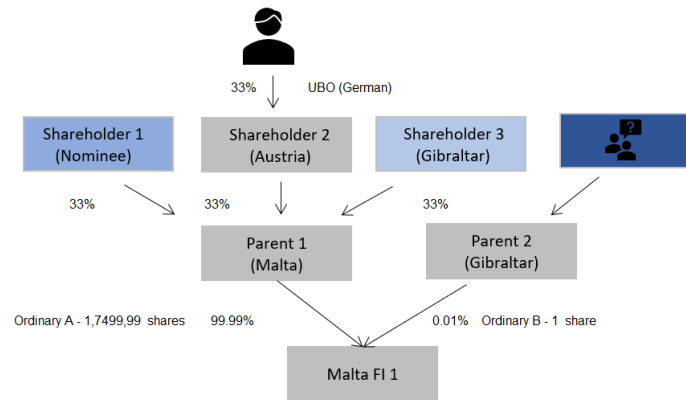


Figure 15: Example of Nominee of Corporate Structure, Author's compilation

Complex risk indicator 6: Disproportional ownership of shares or voting rights

Measures identified for the Concealment of beneficial ownership

- Circular ownership arrangements

Some corporate groups may attempt to take advantage of gaps in beneficial ownership laws by using **circular ownership** to construct intricate and ambiguous webs of control. People may attempt to take advantage of gaps in beneficial ownership laws by using circular ownership to construct intricate and ambiguous webs of control. For instance, a person may possess very few shares or voting rights in a business, far less than what is required to be regarded as a beneficial owner. However, by arranging the ownership structure so that one entity oversees the other, the person is able to keep control over the business while avoiding detection.

How to identify Circular ownerships?

In a multifaceted web of company ownership connections known as circular ownership, entities have perpetual control over one another. Although circular ownership structures are legal and can be used by investors and financial institutions to de-risk their investment portfolios and improve risk-adjusted performance, they can also be used to hide beneficial ownership, which puts them at risk of being connected to organized crime, money laundering, tax evasion, sanctions evasion, and other financial crimes.

Approximately 61,000 business entities worldwide have been identified by Moody's through its **Shell Company Indicator tool**² as having a circular ownership patterns within their structure. This clarifies the possible scope of usage and the channels via which illegal activity could occur. When combined with beneficial ownership information, increased due diligence can assist in uncovering key information about risk exposure and the identities of UBOs within intricate corporate structures of third-party businesses.

Access to beneficial ownership information kept in commercial registries, financial authorities, tax offices worldwide, and third-party databases can help identify a company's ultimate beneficial owners (UBO).

The below example refers to Jane Doe as having little shares and voting rights in Company A, much below the 25% threshold for beneficial ownership identification established by FATF and widely accepted in several locations. This is an example of circular ownership. Regulators and compliance teams are unaware that Jane also has substantial control over other businesses connected to Company A via a circular ownership structure. Even though it wouldn't be evident without further research, Jane is essentially the beneficial owner of Company A owing to this network of ownership.

² <https://www.moodys.com/web/en/us/kyc/products/shell-company-indicator.html>

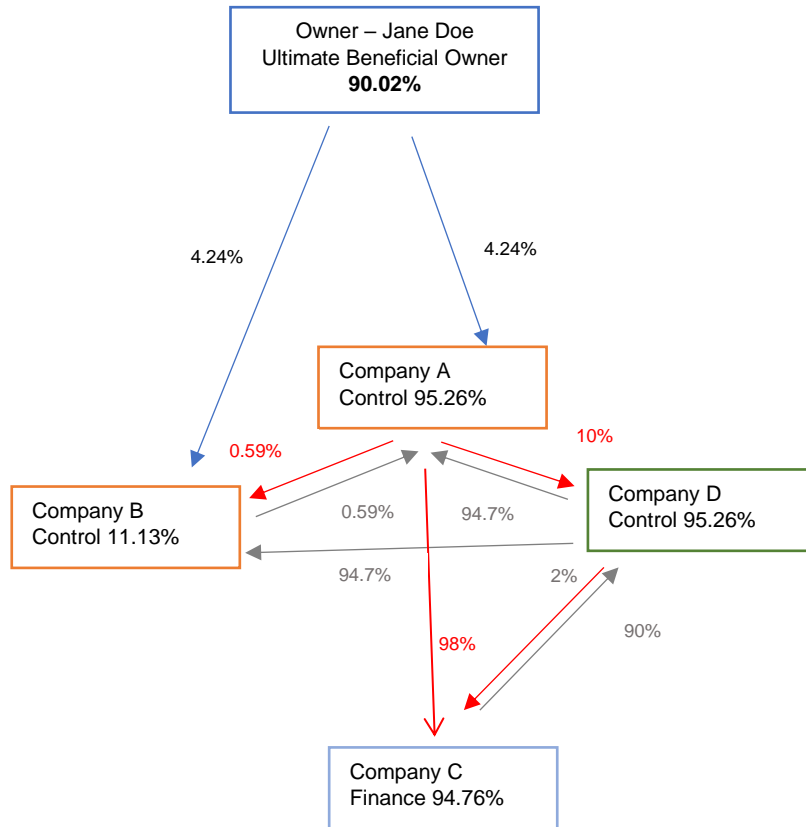


Figure 16: Example of circular ownership structure, adapted from Moodys.com, 2024

Even though Jane Doe only has a 4.24% direct ownership in Company A, she ultimately controls **90.02%** of the business.

Complicated ownership structures, especially when there are multiple tiers of intermediate organizations involved in various jurisdictions, might make it difficult to determine Jane's actual beneficial owner identity and consequently the risk she may represent.

Circular ownership structures are created and used by criminals and sanctioned individuals to finance terrorists, avoid paying taxes, launder money, and engage in other illegal actions while remaining hidden behind these complex frameworks. However, if one has access to the appropriate information and risk assessment tools, these structures can be comprehended and made explicit. (Moodys.com, 2024)

- Fragmented ownership

Ownership arrangements might give the impression that no one satisfies the condition to be categorized as a beneficial owner, directly or indirectly (for example stating that no owner holds 25% or more shareholding interest). However, as the below figure shows, by using shell firms, an individual can maintain control over a business even though they seem to have minimal ownership stake. Even though the UBO only possesses 3.4% of the company's shares, the individual in the scenario depicted below is still the beneficial owner of Company A because this person has authority over it. Therefore, Company D is responsible for Company C, and so on, with Company E at the head of the chain.

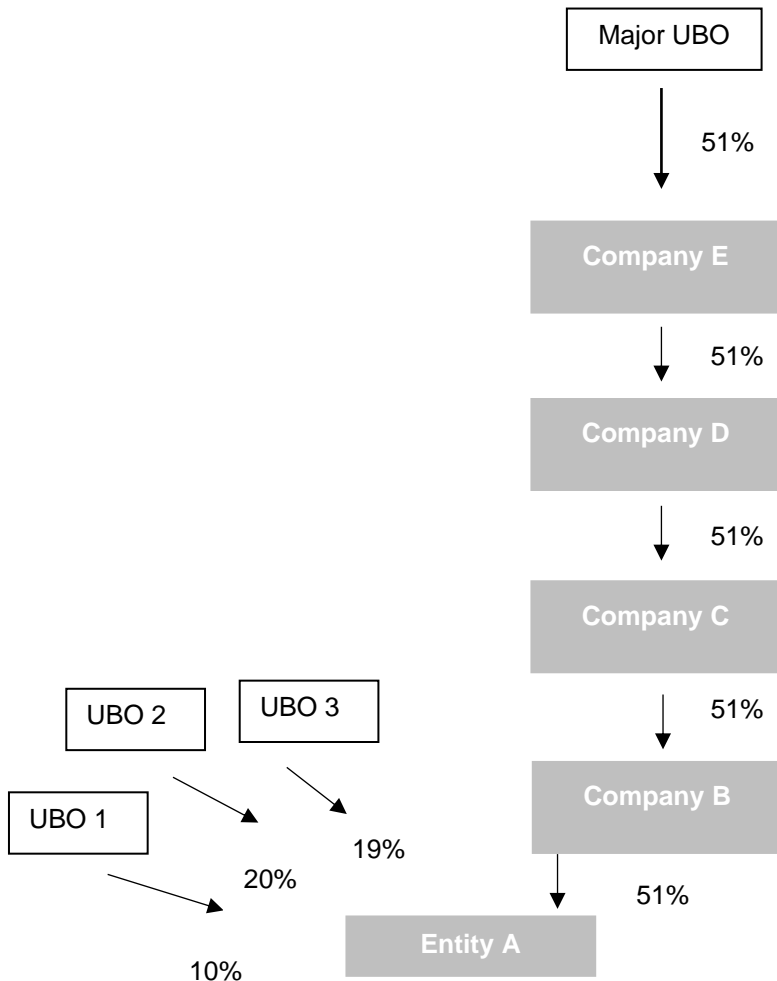


Figure 15: Complex Ownership structure – adapted from Knobel, 2022

- Coalition: Substantial voting rights but minority ownership

Shareholders with very little equity may be granted decisive authority under coalition ownership models. Generally, coalitions are inherently abusive, meaning that if beneficial ownership is set at 25%, then coalitions may wind up granting significant power to a beneficial owner who would not need to be acknowledged. According to Anders Rodenberg of Bureau van Dijk, a shareholder may gain controlling influence even with a mere 1% ownership stake. This might happen if the other two shareholders, each with 49.5% of the shares, are unable to achieve a majority on their own. If the two shareholders disagree, they will have to rely on their voting rights percentage.

Spotlight on local findings –
Circular ownership

One of the financial institutions from the study was identified as having circular ownership.

The following illustration is an anonymised structure of the financial institution. As can be seen the company has issued 2 classes of shares 'Ordinary A' and 'Ordinary B'.

Although documentation of the company is not available, as happens in the majority of cases with circular types of structures, the owner holds minimal 'voting' type shares in both the subsidiary (in this case Malta FI) but also has full ownership rights over the ultimate shareholding of the group.

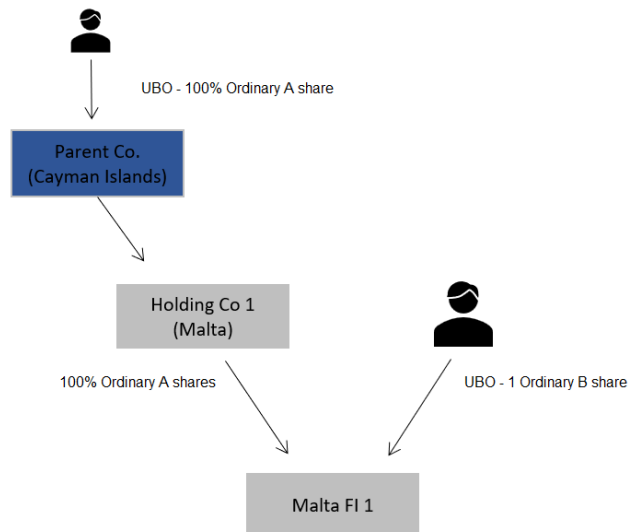


Figure 16: Malta FI structure example having circular ownership, Author's compilation

4.4.2 Risk rating of Complex Risk Indicators (CRIs)

The following section provides the overall risk assessment of each of the complex risk indicators identified that contribute towards the complexity characteristics of ownership structures. An analysis of the ‘*impact*’ and ‘*likelihood*’ risk ratings is also being provided below.

Table 7: Complex Structure Risk Matrix – Author’s Compilation

CRI #	Category	Description of Risk	Impact	Likelihood	Inherent Risk
1.	Number of layers	The likelihood that one will withhold information about its legal owners increases the longer the chain of entities in the structure	High	High	High
2.	Geographic spread	An ownership chain's geographic spread increases the likelihood that legal ownership information will not be registered, disclosed, or even exchanged in response to a request in at least one jurisdiction.	High	Moderate	Moderate
3.	The use of anonymity instruments	It is necessary to know who holds the physical bearer share at any given time to identify the owner.	High	Low	Moderate
4.	Sophisticated structures	Companies and trusts create obstacles, such as adding thresholds for requiring the identification of beneficial owners when a shell company, as opposed to individuals, is made a party to the trust.	High	Moderate	Moderate
5.	The feature of nominees	The actual legal and beneficial owner may be concealed by professional or de facto nominees	High	High	High
6.	Disproportional ownership of shares or voting rights	Small percentage of shareholding rights might disguise high voting power (for example if 99% are owned by a circular structure and 1% are maintained by the ultimate beneficial owner but has 100% voting power)	High	High	High

CRI #1 – Number of layers

Impact

As discussed in previous chapters, additional layers may make it more difficult to do due diligence, audits, and regulatory supervision by hiding the true ownership and control of the business. Therefore, the impact of this risk is considered as 'high'.

Likelihood

The likelihood that one link in the chain won't reveal who its true owners are, increases with chain length. The number of layers identified throughout the research study was majorly 3 to 4 layers of ownership.

Most of the entities that have been reviewed in the ownership chain of financial institutions are either local businesses or originate from EU/US based nations. Still it proved difficult to source publicly available, easily accessible legal ownership data on the shareholding entities within the structures to obtain complete picture of the beneficial owners. In many nations, there are no updated legal ownership registries available and there are even fewer nations with public or networked registries. In this regard, the likelihood of this risk has also been set as 'high'.

CRI #2 – Geographic spread

Impact

The higher the country's risk rating allocated through the 'Jurisdictional Risk Assessment, Appendix 1', the higher the risk that the entities operating in that country presents to the complexity of such a group structure. Therefore, having a high-risk country feature in the structure is considered to have 'high' impact on this risk.

Likelihood

The risk that legal ownership information won't be registered, revealed, or even exchanged in response to a request in at least one jurisdiction increases with the geographic spread of an ownership chain. The fact that during comparative analysis of the insights derived from the geographical risk assessment of residence and nationality of UBOs suggests that most financial institutions are associated with medium risk jurisdictions, both in terms of UBO residence and nationality, the likelihood of this risk has been set as 'moderate'.

CRI #3 – The use of anonymity instruments

Impact

To identify the owner, it is required to know who is holding the actual bearer share at any particular time. Therefore, the fact that such instruments provide complete anonymity has a 'high' impact on the risk of increased complexity within the corporate structure. The inherent risk associated with such instruments remains quite high, as it is difficult to find definitive information about the use of bearer shares without a thorough picture of the organizational structure for all firms in scope.

Likelihood

Based on the information that was available and the analysis that was done, there was no indication that bearer shares were used in any of the several corporate structures of financial institutions registered in Malta. According to this estimate, there is little chance that local financial institutions' corporate structures will adopt bearer

shares since the use of such has been abolished through legislation. In this regard the likelihood of this risk occurring was set as 'low'.

CRI #4 – Sophisticated structures

Impact

The coexistence of corporations and trusts poses challenges and raises the bar for identifying beneficial owners for example in cases when a shell company is added to the trust rather than an individual. Also, since many countries do not have a definition of beneficial ownership for trusts that includes all pertinent stakeholders or do not even mandate that trusts be registered. the impact of such risk occurring was set to 'high'.

Likelihood

From the study, it appears that one of the 53 financial institutions under investigation clearly feature a trust as a shareholding entity within the corporate structure. Nevertheless, the data pertaining to corporate structures was obtained from publicly accessible sources and might not be precise. As such, the likelihood of this risk was set as 'moderate' since from data obtained from the qualitative research it appears that the use of sophisticated structures is more evidently present.

CRI #5 – Feature of nominees

Impact

As explained in the previous sections, the increased risk for having nominee shareholding parties within the structure increases the transparency risk for beneficiaries and therefore the impact risk was set as 'high'.

Likelihood

In the absence of accurate data, the likelihood risk rating has been set as 'high' due to the numerous nominees identified within the study based solely on publicly available information.

CR #6 - Disproportional ownership of shares or voting rights

Impact

The fact that high voting power may be concealed by a small percentage of shareholder rights (for instance, if 100% of the voting power is held by the ultimate beneficial owner and 1% is owned by a circular structure), provides a higher risk due to lack of apparent beneficial ownership and not enough information on the underlying voting rights is evident. This sets a 'high' impact risk score for increased complexity.

Likelihood

Although not many structures have featured the use of disproportion voting rights, this was not clear and information was not available during the research to be able to identify controlling rights within the structure. Also, since not all the layers within the corporate structures could be deduced from public sources, a full picture of the likelihood of this risk could not be provided. However, this is a common trend for ultimate beneficiaries to keep control over lower entities within the group by owning only 1 different type of ordinary share for example. As such the likelihood of this complex risk factor has also been set as 'high'.

4.5 Measures for managing the risks in complex corporate structures

Following the thorough analysis of risk indicators affecting the complexity of corporate structures from all aspects identified throughout the study, the following measures can be summarised as measure that organisations can implement to minimize the risks of complex structures and preserve the advantages by exploiting to the best potential the opportunities that such set-ups offer while at the same time managing the threats that can be presented if not controlled. A proactive approach when faced with complex structures guarantees the organisation's stability, transparency, and general improved performance.

Entities need to create robust governance structures within their complex structures and centralise supervision of every subsidiary for guaranteed uniform application of rules and regulations which will definitely help in achieving organised and stronger governance frameworks for the group of entities. Also, assigning competent and experienced executives to oversee and manage the activities of subsidiaries will ensure activities of the group are coordinated uniformly and having a central point of contact for managing any issues encountered.

Enhancing regulatory compliance by conducting routine compliance audits and reviews to guarantee compliance with national and international regulations will help entities manage the risk on non-compliance due to complexities in corporate structures. Also establishing thorough compliance programs and provide continual training for staff members will ensure knowledge on abiding by the relevant regulatory requirements.

By implementing cutting-edge financial reporting tools entities having complex structures will improve financial transparency by giving real-time visibility into all entities' financial activity. Establish uniform guidelines for financial reporting and carry out frequent internal audits.

Companies operating through intricate groups can create a strong framework for risk management that recognizes, evaluates, and reduces risks throughout the whole organizational structure. Will make a stronger risk management framework. The use of data analytics and technology to monitor risk indicators and take preventative action will assist in providing reliable data and information on risk trends.

By maximising efficiency in operations entities in intricate complex structures need to simplify operations by coordinating systems and procedures amongst subsidiaries. Assessing and modifying organizational structures on a regular basis will cut down on duplication and boost productivity throughout the group.

Entities should boost cybersecurity and IT systems to apply uniform cybersecurity guidelines and protocols to every organization in the complex corporate structure. Companies need to test and update IT systems frequently to guard against data breaches and cyberattacks.

Corporate entities in complex corporate structures need to encourage alignment of cultures and promote a single company culture by means of cooperative training initiatives, regular communication, and common values. The promotion of cooperation and knowledge exchange between various subsidiaries will enable the improved configuration of the corporate structure.

Companies need to control legal hazards by hiring knowledgeable legal counsel to handle intricate legal agreements and guarantee that all necessary laws are being followed. Contracts should be reviewed and amended on a regular basis to consider the most recent business and regulatory landscapes that affect the group entities.

Chapter 5: Discussion, Conclusions and Recommendations

5.1 The impact of Malta's grey listing on improving transparency of beneficial ownership

5.1.1 FATF assessments on Malta

In November 2018, Moneyval, the European regional FATF organization, conducted an evaluation of Malta. In July 2019, the Mutual Evaluation Report (MER) was released. Although this was Moneyval's fifth assessment of Malta, it was the first time the organization had applied the 2013-adopted fourth-round FATF evaluation methodology. This involved not just technical conformity with the FATF Recommendations, but also the practical efficacy of anti-money laundering and counter-financing of terrorism (AML/CFT) procedures are highlighted by the fourth-round approach.

The following refer to the key issues identified with respect to the risk assessment on Malta's transparency issues carried out by Moneyval:

- Incomplete and inaccurate beneficial ownership data

The FATF expressed concerns over the completeness and correctness of the data on beneficial ownership that the Maltese government possesses. It was observed that certain businesses incorporated in Malta were not giving proper information about their beneficial owners, making it more difficult for regulatory agencies and law enforcement to identify the real owners hiding behind intricate corporate structures.

- Inadequate beneficial ownership verification mechanisms

The absence of reliable methods to confirm the veracity of the beneficial ownership data supplied by businesses was another problem. Effective verification procedures are necessary to reduce the possibility that the data on file was inaccurate, out-of-date, or purposefully deceptive, which would have undermined the transparency initiatives.

- Restricted access to beneficial ownership data

The FATF also highlighted the problems pertaining to the access of data to beneficial ownership. Malta has set up a central registration for beneficial ownership, nonetheless, questions were raised regarding the public's and competent authorities' ease of access to this data. It is essential to have fast and dependable access to this data in order to recognize and deal with possible financial crimes.

5.1.2 Malta's response to the grey listing

The financial sector in Malta was significantly impacted by the grey listing. It made it more difficult for Malta to draw in foreign investment and resulted in heightened surveillance of financial activities involving Maltese entities. Due to the increased risks involved in conducting business in a country that is on the grey list, the listing also forced financial institutions and other stakeholders to re-evaluate their partnerships with Maltese peers.

Reforms and improvements in the areas under scrutiny had to be accelerated by the grey listing. In response to the FATF's concerns, the Maltese government and regulatory agencies, in particular the FIAU and the MFSA, moved swiftly. As a result of these initiatives, Malta was taken off the grey list in June 2022 after the FATF acknowledged the significant advancements made in enhancing beneficial ownership transparency and fortifying the AML/CTF system as a whole.

Malta implemented a number of changes in reaction to the grey listing with the goal of enhancing beneficial ownership transparency and allaying FATF concerns. Among them were:

1. Strengthening the beneficial ownership register

Malta pledged to improve the central beneficial owner registry, making sure that the data it had was correct, current, and easily available to the appropriate authorities. This involved strengthening the verification procedures and placing more stringent obligations on businesses to reveal the identities of their beneficial owners.

2. Increased enforcement and penalties

The Maltese government stepped up their efforts to hold businesses accountable for their failure to disclose beneficial ownership in a transparent manner. Stricter sanctions for non-compliance as well as increased efforts to look into and prosecute financial crime cases connected to ambiguous ownership structures were part of this.

3. Enhanced collaboration with international organisations:

In order to improve information exchange and coordination in the battle against money laundering and terrorism funding, Malta additionally reinforced its collaboration with international organizations and other jurisdictions. In order to bring Malta's regulatory structure into compliance with global best practices, this involved close collaboration with the European Union and the FATF.

The FATF's decision to place Malta on a grey list highlighted how crucial beneficial ownership transparency is to a successful AML/CTF program. Although Malta's financial industry faced difficulties at first as a result of the grey listing, major reforms that improved the financial system's integrity and openness eventually resulted from it. The incident serves as a prompt of the continued efforts made worldwide to guarantee that financial hubs function in an accountable and transparent manner, especially in a world where intricate company structures can readily mask the real ownership and control of assets.

5.2 The need for Regulatory Authorities to understand complex structures

Financial institutions and regulators can use a number of approaches to evaluate complex structures for AML purposes in an efficient manner. These strategies include:

5.2.1 Enforcing AML and CTF Regulations Effectively

Regulatory authorities have a duty to implement improved financial crime preventive and detective measures such that the following is ensured.

- Adopting the **risk-based approach** by determining and evaluating the risks connected to the various entities and layers that make up the structure. Considering elements such as the incorporation jurisdiction, the kinds of entities utilized, and the types of transactions. To determine the level of risk connected to each structural element, a risk rating system should be created (refer to the 'Complex Structure Risk Matrix' in the 'Analysis and Results' section). This may entail calculating scores according to elements including ownership opacity, structural complexity, and past AML problems.

- Implementing thorough processes for **due diligence and Know Your Customer (KYC)** procedures to obtain comprehensive data about the entities and their owners. This entails securing supporting documentation and confirming the beneficial owners' identities.

- For high-risk businesses, such as those with complex ownership structures or those located in secretive jurisdictions, apply enhanced due diligence techniques. This could entail ongoing observation and more in-depth research, requesting further documentary evidence.

- Mapping and analysing complicated company structures using **data analytics and technology tools**. A few examples of tools that can be used to depict and measure complexity include entity relationship diagrams and ownership mapping software. The implementation of sophisticated transaction monitoring technologies is recommended to identify any anomalous or dubious activity occurring within complex frameworks. The capacity for detection can be improved via automated alerts and pattern recognition.

For regulatory bodies to successfully monitor, control, and prevent financial crimes, they must possess a thorough understanding of complex business structures. Complying with rules and regulations, safeguarding the economy, and preserving the integrity of financial systems all depend on this understanding.

In order to determine the real beneficial owners of corporate companies, regulators must investigate beneficial ownership layers that are not evident. This is essential in the attempt of discontinuing anonymous ownership, a typical strategy employed by people and groups to cover up illegal activity. Even if this information is not made public, the requirement to submit detailed information in relation to beneficial owners of the proposed subject person should be implemented as a pre-requisite. Also, through ongoing monitoring procedures carried out, regulators should re-verify beneficial owners have not changed or are being concealed. Should this information not be made available to the authorities within a certain timeframe, the entity should be reported.

Regulators can identify warning signs of possible financial crimes by having a thorough understanding of the complexities of complicated structures. These could include the use of offshore jurisdictions with a reputation for having loose regulatory standards, ownership chains that are extremely complex, and frequent ownership transfers.

5.2.2 Enhancing transparency and accountability

To combat the misuse of complex structures, regulatory authorities need to encourage transparency around beneficial ownership. This involves requiring companies to disclose information about their ultimate beneficial owners and making this information accessible to regulators and, in some cases, the public.

To keep tabs on the operations of entities with intricate structures, authorities need to set up reliable monitoring and reporting systems. This entails conducting routine audits and inspections as well as analysing financial transactions and looking for suspect activity using cutting-edge technologies.

International cooperation is crucial because complex structures frequently includes numerous jurisdictions. It is imperative for regulatory bodies to participate in international information exchange and cooperation in order to track the movement of money and pinpoint the individuals engaged in unlawful operations.

It is essential to harmonize regulatory standards across jurisdictions in order to properly regulate complex institutions. This lessens the likelihood of regulatory arbitrage, in which organizations take advantage of variances in laws to evade inspection and monitoring.

5.2.3 Adjusting to new developments in technology and trends

As new technology and instruments emerge, the financial landscape is always changing. It is imperative that regulatory bodies remain up-to-date on these advancements and comprehend the potential ways in which they could be employed within intricate frameworks for both lawful and unlawful intentions.

Authorities can get help from regulatory technology (RegTech) solutions in handling the complexity of today's financial systems. Artificial intelligence, blockchain, and big data analytics are examples of tools that can improve the efficiency of monitoring, analysing, and regulating complex institutions.

5.2.4 Sustaining investor confidence and market integrity

The integrity of financial markets can be compromised by the improper usage of complicated structures. Authorities support the upkeep of fair and transparent markets, which are necessary for economic stability and progress, by guaranteeing strict regulation and oversight.

Markets that investors believe to be transparent and well-regulated are more likely to attract their attention. Authorities can boost investor trust and draw in sustainable investment by exhibiting a deep understanding of intricate institutions and implementing strict laws.

5.3 Practical and social implications of complex corporate entities

The illegal use of complex structures frequently makes economic inequality worse. It can aid rich people and corporations to conceal assets and avoid paying taxes.

However, applying efficient regulation lowers economic inequality and promotes a more equitable allocation of resources.

Complex systems that enable financial crimes can have a wide range of social repercussions, such as financing drug trafficking, terrorism, and other criminal activity. Comprehending and managing these frameworks is essential to safeguarding society against such detrimental effects.

Broader societal issues including economic inequality, confidence in financial institutions, and the possibility of corporations dodging social responsibilities are all greatly impacted by complex corporate structures.

5.3.1 Financial inequality

Multi-layered subsidiaries and offshore organisations are common components of complex corporate structures, which can be utilized to transfer earnings to low-tax jurisdictions and so lower a company's overall tax burden. The act of avoiding paying taxes reduces the amount of money that the government receives and may be allocated to social welfare, healthcare, and education. As a result, small enterprises and individuals bear an increasing share of the tax burden, which exacerbates economic inequality. As wealth concentrates at the top, public support for lower-income groups declines, hence widening the income gap.

5.3.2 Confidence in monetary institutions

The public's confidence in financial institutions may be damaged by the complexity and opacity of intricate corporate structures. The notion that the financial system is biased in favour of the wealthy and powerful is fuelled by corporate actions such as tax evasion and legal loophole exploitation. The loss of trust is exacerbated by well-publicized incidents in which companies are shown to have engaged in unethical behaviour or to conceal liabilities through intricate organizational systems. Broader societal discontent and a lack of faith in the economy as a whole may result from this loss of trust in financial institutions.

5.3.3 Business abuse and ignorance of social responsibilities

Complicated organisational structures may encourage dodging social and environmental obligations. Companies might, for instance, engage in activities like labour exploitation and environmental protections that are prohibited in more regulated contexts by using subsidiaries in nations with lax rules. Furthermore, because the real owners or controlling entities may be concealed behind a maze of legal agreements and layers of businesses, it may be challenging to hold corporations accountable for their deeds. Due to this lack of responsibility, corporations are able to evade their social obligations, which include contributing to the communities in which they operate, paying fair salaries, and upholding environmental norms.

5.3.4 Legal and Moral Issues

In addition, the usage of sophisticated structures may give rise to moral and legal questions, especially when it comes to potential money laundering, regulatory arbitrage, and tax evasion. These actions have the potential to weaken the rule of law and level the playing field so that only those with the means to manoeuvre through

intricate legal and financial systems can gain an advantage. This compromises the integrity of the legal and regulatory systems in addition to making inequality worse.

5.3.5 Effects on International Development

Multinational firms' usage of intricate corporate structures may have a detrimental effect on emerging nations globally. Profit-shifting tactics frequently result in large tax revenue losses for these nations, which limits their capacity to make investments in infrastructure, healthcare, and education. Because money is concentrated in rich nations and tax havens, this impedes economic progress and maintains global inequality while poor nations struggle to provide basic services to their citizens.

5.3.6 Social Unity

Social cohesion can break down if big businesses are perceived as abusing intricate systems to avoid making their fair share of contributions to society. People who believe they are paying an unfair amount of taxes may become irate and more resentful of the public. This may strengthen political division, give rise to populist movements, and result in stricter regulatory reactions, all of which could hinder lawful commercial operations.

5.4 Ongoing global regulatory efforts in managing complex corporate structures

International regulations to manage intricate company structures

Global regulatory initiatives are progressively concentrating on controlling the hazards linked to intricate company frameworks, which have the potential to conceal ownership, expedite tax evasion, and promote financial offenses like money laundering and financing of terrorism. In order to improve transparency, enforce compliance, and protect the integrity of the global financial system, international organisations, national regulators, and financial institutions are coordinating their efforts.

Financial Action Task Force (FATF): With its establishment of guidelines for discouraging the funding of terrorism and money laundering, the FATF has been a driving force in the global regulatory environment. Improving beneficial ownership transparency by revealing the real people who run or profit from a firm, who are frequently obscured by organizational layers, is one of its main goals. As already highlighted earlier in the study, FATF's Recommendation 24 greatly reduces the opacity that complex company structures can provide by requiring nations to make sure that authorities have access to accurate and current information on beneficial ownership.

OECD and Base Erosion and Profit Shifting (BEPS): The BEPS project of the OECD focuses on tax avoidance tactics that take advantage of loopholes and inconsistencies in tax laws, which are frequently made possible by intricate corporate arrangements. BEPS Action 13, for example, makes it more difficult for multinational

firms to move earnings to low-tax jurisdictions by requiring them to record their operations on a country-by-country basis.

EU Directives: The 4th and 5th Anti-Money Laundering Directives (AMLD) are just two of the major measures the EU has taken to improve business transparency. Stronger due diligence procedures and the creation of beneficial ownership records are mandated by these guidelines in order to stop the improper use of business entities for illegal activities.

National regulatory measures

Some nations have been enacting more stringent laws to conform to global norms such as the following examples:

United States: A major step towards increased corporate transparency is the requirement that U.S. businesses and LLCs reveal their beneficial owners to the Financial Crimes Enforcement Network (FinCEN) under the Corporate Transparency Act of 2021.

United Kingdom: The UK has proposed steps to analyse foreign corporations owning property in the UK, as well as established a public beneficial ownership record through the Economic Crime (Transparency and Enforcement) Act 2022.

Singapore: By mandating that businesses keep beneficial owner records and making sure that the information is available to authorities, Singapore has improved its regulatory environment.

Consequences for International Companies

Multinational corporations (MNCs) are affected in a number of ways by the worldwide movement for increased accountability and transparency. They must now provide more specific information about their ownership arrangements, cash flows, and tax policies. Significant expenses may be incurred for the administrative load, legal compliance, and perhaps operational reorganization necessary to comply with new rules.

MNCs are under more public, investor, and regulatory scrutiny as transparency rises. Previously lawful but opaque practices, including aggressive tax planning, may now be seen adversely and cause reputational harm. Such corporations that operate across borders have to deal with a variety of regulatory obligations. Corporate structures or business models may need to be modified in order to comply with local laws and global standards. Failure to abide with the new standards may result in severe consequences, such as fines, lawsuits, and license suspensions. MNCs have to exercise caution to ensure that their actions comply with both local and global legislation.

Implications for global financial stability

Maintaining global financial stability requires managing intricate business arrangements. The following refer to some of these measures:

Mitigating systemic risks: These policies serve to reduce systemic risks resulting from hidden liabilities, tax evasion, and money laundering by enhancing transparency and narrowing the paths available for illicit financial operations. This strengthens the stability of the world financial system.

Enhancing fairness and equity: By making sure businesses pay their fair share of taxes and adhere to international regulations, these initiatives contribute to levelling the playing field and lessening the economic distortions brought on by tax evasion and other types of regulatory arbitrage.

Increasing trust in financial markets: Global financial markets are expected to see a rise in trust as transparency increases and the regulatory framework solidifies. Increased investment, better market efficiency, and general economic expansion may result from this.

Supporting development goals: By increasing tax collections and providing more resources for development, these regulatory initiatives can help developing nation where illicit financial flows and the erosion of tax bases have a substantial impact as well as promote global economic stability and reduce inequality.

The regulatory landscape for multinational firms is changing due to global efforts to manage complex corporate structures, which has significant consequences for the stability of the global financial system. As international regulatory frameworks increasingly prioritize openness and accountability, MNCs need to adjust to a new era of compliance and scrutiny. These adjustments are necessary to lower financial crime, enhance market integrity, and guarantee the steady and equitable operation of the global financial system.

Concluding remarks

Modern financial systems are so complex that regulation must be sophisticated and nuanced. Regulatory bodies need to gain a thorough grasp of intricate business frameworks in order to identify, stop, and lessen the dangers related to financial crimes. This entails preserving the integrity of financial markets, promoting global collaboration, adjusting to new technology, and improving accountability and transparency. By doing this, regulatory bodies can contribute to a more stable and just financial system by safeguarding the economy, enforcing compliance, and upholding the rule of law.

References

MFSA. (2018). Home - MFSA. [online] Available at: <https://www.mfsa.mt/>.

FIAU Malta. (n.d.). *Home*. [online] Available at: <https://fiaumalta.org/>.

FIAUMAL, W. (2021). IMPLEMENTING PROCEDURES. [online] Available at: https://fiaumalta.org/app/uploads/2023/07/20211018_Implementing-Procedures-Part-I-v.2.pdf.

Money Laundering, Terrorist and Proliferation Financing and Targeted Financial Sanctions Malta's National Risk Assessment 2023 National Coordinating Committee on Combating Money Laundering and Funding of Terrorism. (2023). Available at: https://www.ncc.gov.mt/wp-content/uploads/2024/01/PublicNRA_Dec2023.pdf.

Concealment of Beneficial Ownership Group Egmont. (2018). Available at: <https://www.fatf-gafi.org/content/dam/fatf-gafi/reports/FATF-Egmont-Concealment-beneficial-ownership.pdf>.

Knobel, A., 2022. Complex Ownership Structures: Addressing the Risks for Beneficial Ownership Transparency. Available at SSRN 4040794.

Com, M., Kyc and Shellcompanies (n.d.). Looking inside the shell Moody's Shell Company Indicator. [online] Available at: <https://www.moody's.com/web/en/us/site-assets/ma-kyc-looking-inside-shell-moodys-shell-company-indicator.pdf> [Accessed 13 Aug. 2024].

Yamamura, S. and Lassalle, P. (2020) "Proximities and the emergence of regional industry: evidence of the liability of smallness in Malta," *European planning studies*, 28(2), pp. 380–399.

van Duyne, P.C., Harvey, J. and Gelemerova, L. (2018) "A 'Risky' Risk Approach: Proportionality in ML/TF Regulation," in *The Palgrave Handbook of Criminal and Terrorism Financing Law*. Cham: Springer International Publishing, pp. 345–374.

Moodys.com. (2024). Circular ownership and understanding beneficial ownership. [online] Available at: <https://www.moody's.com/web/en/us/kyc/resources/insights/circular-ownership-and-complex-corporate-structuring.html> [Accessed 20 Aug. 2024].

The misuse of corporate vehicles registered in Malta -Focus on Beneficial Ownership concealment - Red flags and case studies Intelligence Factsheet. (n.d.). Available at: https://fiaumalta.org/wp-content/uploads/2021/12/FIAUIntelligence-FactSheet_Misuse-of-companies_BOconcealment-2.pdf [Accessed 26 Aug. 2024].

Fitchratings.com. (2021). Available at: <https://www.fitchratings.com/research/sovereigns/no-immediate-impact-on-maltas-ratings-from-greylisting-30-06-2021>.

Final Report Guidelines on customer due diligence and the factors credit and financial institutions should consider when assessing the money laundering and terrorist

financing risk associated with individual business relationships and occasional transactions ('The ML/TF Risk Factors Guidelines') under Articles 17 and 18(4) of Directive (EU) 2015/849. (2021). Available at:

https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Guidelines/2021/963637/Final%20Report%20on%20Guidelines%20on%20revised%20ML%20TF%20Risk%20Factors.pdf.

CFI (2020). *Business Structure*. [online] Corporate Finance Institute. Available at: <https://corporatefinanceinstitute.com/resources/management/business-structure/>.

Agius, L. (2022). *The Aftermath Following The Removal Of Public Access To Beneficial Owner's Personal Data On Publ*. [online] Mondaq.com. Available at: <https://www.mondaq.com/data-protection/1260096/the-aftermath-following-the-removal-of-public-access-to-beneficial-owners-personal-data-on-public-registries> [Accessed 26 Aug. 2024].

Indeed Editorial Team (2021). How To Avoid Researcher Bias (With Types and Examples). [online] Indeed Career Guide. Available at: <https://www.indeed.com/career-advice/career-development/how-to-avoid-researcher-bias>.

Appendices

Score	Rating
<1	Low risk
1 < 2	Medium risk
2 < 3	High risk
3 < 4	Prohibited (extreme risk)

Appendix 1 – Jurisdictional risk scoring (Author's Compilation)

Jurisdiction	JRA RISK SCORE	Jurisdiction	JRA RISK SCORE	Jurisdiction	JRA RISK SCORE
Afghanistan	3	Croatia	2.06	India	3
Albania	2.33	Cuba	1.86	Indonesia	2.38
Algeria	3	Cyprus	1.86	Iran	3
Angola	2.48	Czechia	2	Iraq	3
Argentina	3	Democratic Republic of the Congo	3	Ireland	2
Armenia	1.98	Denmark	1.5	Israel	2.06
Australia	2.08	Djibouti	3	Italy	1.9
Austria	1.83	Dominica	1.96	Jamaica	2.03
Azerbaijan	2.39	Dominican Republic	2.23	Japan	2.04
Bahamas	2.01	Ecuador	2.28	Jordan	2
Bahrain	2	Egypt	2.29	Kazakhstan	2.35
Bangladesh	2.23	El Salvador	3	Kenya	2.66
Barbados	1.94	Equatorial Guinea	4	Korea, North	4
Belarus	2.26	Eritrea	3	Korea, South	2
Belgium	1.85	Estonia	1.96	Kosovo	2
Benin	2.08	Eswatini	2.57	Kuwait	2
Bhutan	1.79	Ethiopia	2.11	Kyrgyzstan	2.48
Bolivia	2.33	Europe	1.5	Laos	3
Bosnia and Herzegovina	3	Fiji	2.04	Latvia	1.84
Botswana	1.91	Finland	1.28	Lebanon	2.29
Brazil	2.47	France	1.95	Lesotho	2.32
Bulgaria	2.04	Gabon	2.53	Liberia	2.49
Burkina Faso	2.15	Gambia	2.24	Libya	4
Burundi	3	Georgia	2.05	Lithuania	1.88
Cabo Verde	2.25	Germany	1.86	Luxembourg	1.81
Cambodia	2.47	Ghana	1.79	Madagascar	2.51
Cameroon	2.57	Greece	1.89	Malawi	2.19
Canada	2	Grenada	2.02	Malaysia	1.97
Central African Republic	2.37	Guatemala	2.27	Maldives	3
Chad	2.52	Guinea	2.19	Mali	2.53
Chile	2.01	Guinea Bissau	3	Malta	1.81
China	2.24	Guyana	2	Mauritania	2.34
Colombia	1.99	Haiti	3.01	Mauritius	1.83
Comoros	3	Honduras	2.24	Mexico	2.34
Congo	3	Hong Kong	2.25	Moldova	1.91
Costa Rica	2.17	Hungary	1.85	Mongolia	2.21
Cote d'Ivoire	2.4	Iceland	1.65	Montenegro	2.13

Jurisdiction	JRA RISK SCORE	Jurisdiction	JRA RISK SCORE
Morocco	2.33	Somalia	4
Mozambique	2.6	South Africa	1.84
Myanmar	2.44	South Sudan	3.75
Namibia	2.03	Spain	1.89
Nepal	2.34	Sri Lanka	2.17
Netherlands	1.95	Sudan	3
New Zealand	1.62	Suriname	2.14
Nicaragua	2.85	Sweden	1.4
Niger	2.42	Switzerland	1
Nigeria	2.43	Syria	3.75
North Macedonia	2.05	Taiwan	2
Norway	1.66	Tajikistan	3
Oman	2.25	Tanzania	2.25
Pakistan	2.11	Thailand	3
Panama	2.39	Timor-Leste	2
Papua New Guinea	3	Togo	3
Paraguay	2.18	Trinidad and Tobago	2.5
Peru	2.32	Tunisia	2
Philippines	2.27	Turkey	3
Poland	1.98	Turkmenistan	4
Portugal	1.93	Uganda	3
Qatar	1.77	Ukraine	3
Romania	1.93	United Arab Emirates	2
Russia	3.25	United Kingdom	2
Rwanda	2	United States of America	2
Saint Lucia	1.79	Uruguay	2
Saint Vincent and the Grenadines	2	Uzbekistan	3
Sao Tome and Principe	2	Vanuatu	2.5
Saudi Arabia	1.82	Venezuela	4
Senegal	2.15	Vietnam	2.4
Serbia	2.2	Yemen	3.75
Seychelles	1.89	Zambia	3
Sierra Leone	2.48	Zimbabwe	3
Singapore	1.46		
Slovakia	2		
Slovenia	1.85		
Solomon Islands	2.2		