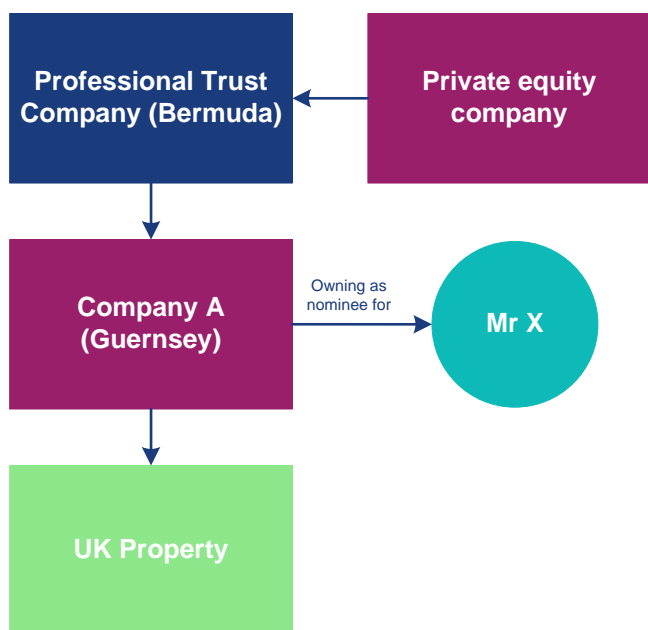


Overseas Entity Case Studies

Example 1: Nominee Company



Facts

- The legal title of a UK property (“**Property**”) is owned by a Guernsey company (“**Company A**”)
- Mr X provided all the funds for the purchase of the property but instructed the professional trust company to establish and manage Company to hold the property for him
- Under the terms of a declaration of bare trust dated March 2020, Company A owns the property as bare trust for Mr X, the sole beneficial owner
- 100% shares of Company A are owned by a professional trust company that is owned by a private equity company
- The directors of Company A are officers of the professional trust company
- Apart from in respect of the property and under the terms of the bare trust arrangement, Mr X has no interaction with Company A and cannot control its activities or management.

Is this arrangement caught by the Economic Crime (Transparency and Enforcement) Act 2022?

Is the registered legal proprietor a company, body corporate, partnership or other legal entity that is a legal person - *yes, Company A is the legal owner of the Property at the Land Registry.*

Is it governed by the law of the UK – *no, it is governed by the law of Jersey.*

Therefore the legal owner is an “*overseas entity*” and must take reasonable steps to identify its beneficial owners and make an application to register with Companies House.

Who are the registerable beneficial owners (“RBOs”) of Company A?

The only RBO is the professional trust company as it owns 100% of Company A’s shares so it will be considered a RBO under condition 1. It may also satisfy one of the other conditions 1-4. The professional trust company is not acting as a trustee of a trust and so it does not need to consider condition 5.

Mr X is not an RBO as he does not meet any of the conditions under the Act:

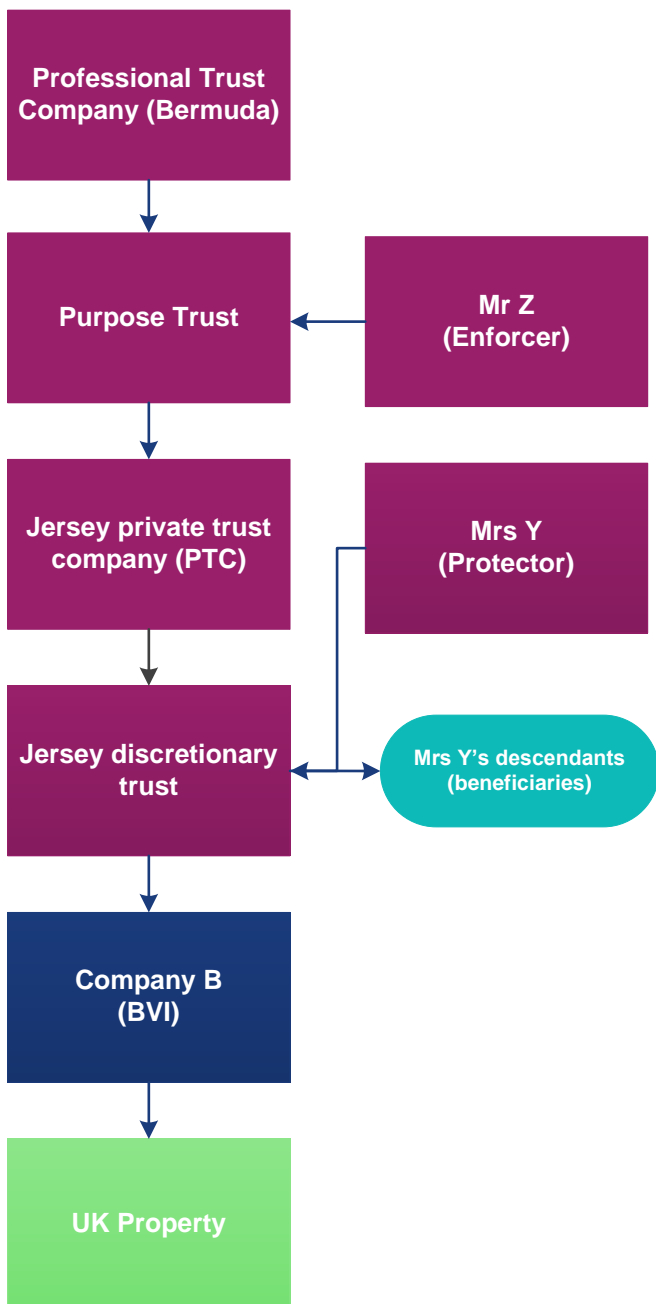
- Condition 1 is that Mr X holds, directly or indirectly, more than 25% of the shares in Company A. This is not met as Company A is wholly owned by the professional trust company
- Condition 2 is that Mr X holds, directly or indirectly, more than 25% of the voting rights in Company A. This is not met
- Condition 3 is that Mr X holds the right, directly or indirectly, to appoint or remove a majority of the board of directors of Company A. This is not met
- Condition 4 is that Mr X has the right to exercise, or actually exercises, significant influence or control over Company A. We would argue that this is not met. Mr X has control over what Company A does in its capacity as bare trustee of the property but it does not control Company A itself. For example, Company A could enter into similar arrangements with 50 other people and Mr X’s consent or even knowledge of this would not be required
- Condition 5 requires that a trust (or similar) meets at least one of the conditions above. Here, a trust does not own Company A, so this condition is not met.

What information must be provided to Companies House?

As the overseas entity, Company A must submit a statement to Companies House confirming:

- the required information about itself and
- the required information about the professional trust company.

Example 2: Nominee Company



Facts

- A UK property is owned by an offshore BVI company, (“**Company B**”)
- Company B is owned 100% by a Jersey private trust company, the PTC, as trustee of a Jersey discretionary trust
- The Trust was set up in 2000 by Mrs Y for the benefit of her three (named) children and future grandchildren
- Mrs Y is the protector of the Jersey discretionary trust
- Mrs Y now has four adult grandchildren and five minor grandchildren
- The directors of the PTC are a professional trust company

- 100% of the shares of Company B are owned by the professional trust company as trustee of a purpose trust
- Mr Z is the enforcer of the purpose trust.

Is this arrangement caught by the Economic Crime (Transparency and Enforcement) Act 2022?

Is the registered legal proprietor a company, body corporate, partnership or other legal entity that is a legal person - *Yes, Company B is the legal owner of the property at the Land Registry.*

Is Company B governed by the law of the UK – No, it is governed by the law of BVI.

Therefore Company B, the legal owner, is an “*overseas entity*” and must take reasonable steps to identify its beneficial owners and make an application to register with Companies House.

Who are the registerable beneficial owners (“RBOs”) of Company B?

The PTC is an RBO as it owns 100% of Company B’s shares and therefore fulfils condition 1 (and also probably conditions 2-4).

The PTC owns shares in Company B as trustee of the Jersey discretionary trust. Condition 5 must therefore be considered. Anyone who has the right to exercise, or actually exercises, significant influence or control over the Jersey discretionary trust will also be an RBO. Mrs Y is likely to be an RBO as she is the protector of the Jersey discretionary trust.

The professional trust company is also an RBO of Company B. It “*indirectly*” owns shares in Company B as it has the majority stake in the PTC, which owns Company B. The professional trust company therefore also satisfies condition 1 in respect of Company B. The professional trust company holds its indirect interest in Company B in its capacity as trustee of the purpose trust. Condition 5 must also therefore be considered. Mr Z is the enforcer of the purpose trust and is therefore likely to an RBO of Company B.

What information must be provided to Companies House?

As the overseas entity, Company B must submit a statement confirming:

- the required information about itself and
- the required information about the PTC as the RBO of Company B
- the required information about the professional trust company as the RBO of Company B due to owning “*indirectly*”
- the required information about Mrs Y and Mr Z
- the required information about the Trust
- the required information about the purpose trust.