



JA Del Río

# Mexican Ultimate Beneficial Owner (UBO) rules



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# Speakers



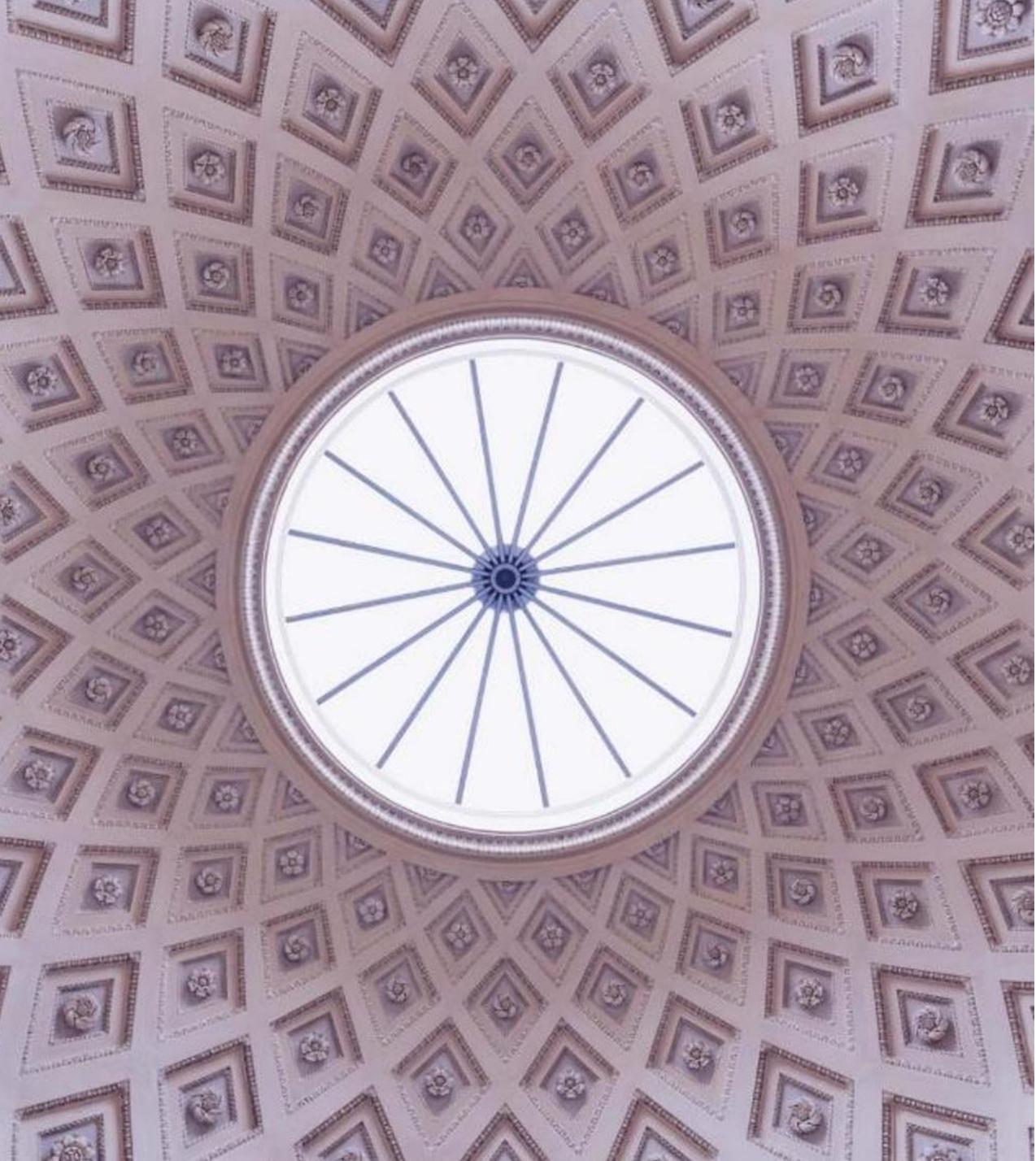
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# Agenda

1. Introduction
2. Executive summary: Ultimate Beneficial Owner
3. What is a Ultimate Beneficial Owner?
4. Obligations
5. Identifiable data of the Ultimate Beneficial Owner
6. What does it mean to be registered as a Ultimate Beneficial Owner?
7. Chain of Ownership and Chain of Control
8. Governing Body
9. Company Incorporation
10. Non-compliance penalties
11. Conclusion



## Introduction

Derived from the reforms of the Mexican Federal Tax Code and from the 2022 Mexican Tax Reform, effective as of January 2022, legal entities, fiduciaries, settlors or trustees, as well as the contracting or integrating parties – in the case of any other legal form— are obligated to collect, keep, verify and keep updated, as part of their accounting, the information corresponding to their respective Ultimate Beneficial Owners and to keep the said information available in case the tax authority requires it.

*Ultimate Beneficial Owner shall be understood in practice as any individual or group of individuals who participate in a legal entity, trust, or any other legal form.*

# Introduction

In order to comply with the aforementioned legal provisions, (i) legal entities; (ii) fiduciaries, settlors or trustees; (iii) the contracting parties or members of any other instrument or legal form other than legal entities or trusts; (iv) notaries public; and (v) any other person who intervenes in the execution of contracts or legal acts that give rise to the constitution of legal entities or the execution of trusts or any other legal form, must implement the internal control procedures duly documented, necessary to obtain and keep, among others, the information that allows:

- To properly identify, verify, and validate the Ultimate Beneficial Owners of legal entities, trusts, and any other legal form.
- To obtain, maintain, and keep available the reliable, complete, adequate, accurate and updated information regarding the personal details of the Ultimate Beneficial Owners, as well as the documentation that supports it and the supporting documentation of the internal control procedures, including that related to the ownership interest of the Ultimate Beneficial Owners in the capital of the legal entity, the relationship or chain of ownership of the said interest in the event that the Ultimate Beneficial Owner holds indirect ownership through other legal entities, and the relationship or ascending chain of control, in cases where the Ultimate Beneficial Owner holds control indirectly through other legal entities, trusts or any other legal form.
- To allow the timely access of the tax authorities and grant them all the facilities to access the information, records, data and documents related to the Ultimate Beneficial Owners.





# Introduction

## *Origins of the concept*

As part of the 2022 Tax Reform, the concept of Ultimate Beneficial Owner is introduced into the tax regulations, which seeks to establish a legal framework that guarantees compliance with minimum international standards of transparency.

## *Reform of Current Legislation*

For this reason, Articles 32- B Ter, 32 - B Quater, 32-B Quinquies, 32 - D, 84 - M and 84 - N are added to the Federal Tax Code

## *International Regulatory Framework*

The reason for which Mexico introduces this concept of Ultimate Beneficial Owner in its legislation is to follow-up on the invitation issued to the G20 with the intention of harmonizing criteria with the recommendations of the Financial Action Task Force (FATF) that complies with the intentions of facilitating and making transparent the exchange of information related to fiscal matters of the 20 largest economies on the planet.

# What is a Ultimate Beneficial Owner?

The Ultimate Beneficial Owners (UBO) are the persons who obtain a benefit from their participation in the reporting parties or who exercise control over the said party.

Who are they?

In other words, a UBO is an individual or group of individuals who “are the true owners or benefit financially from a commercial company, or legal vehicle, trust, association, etc.”

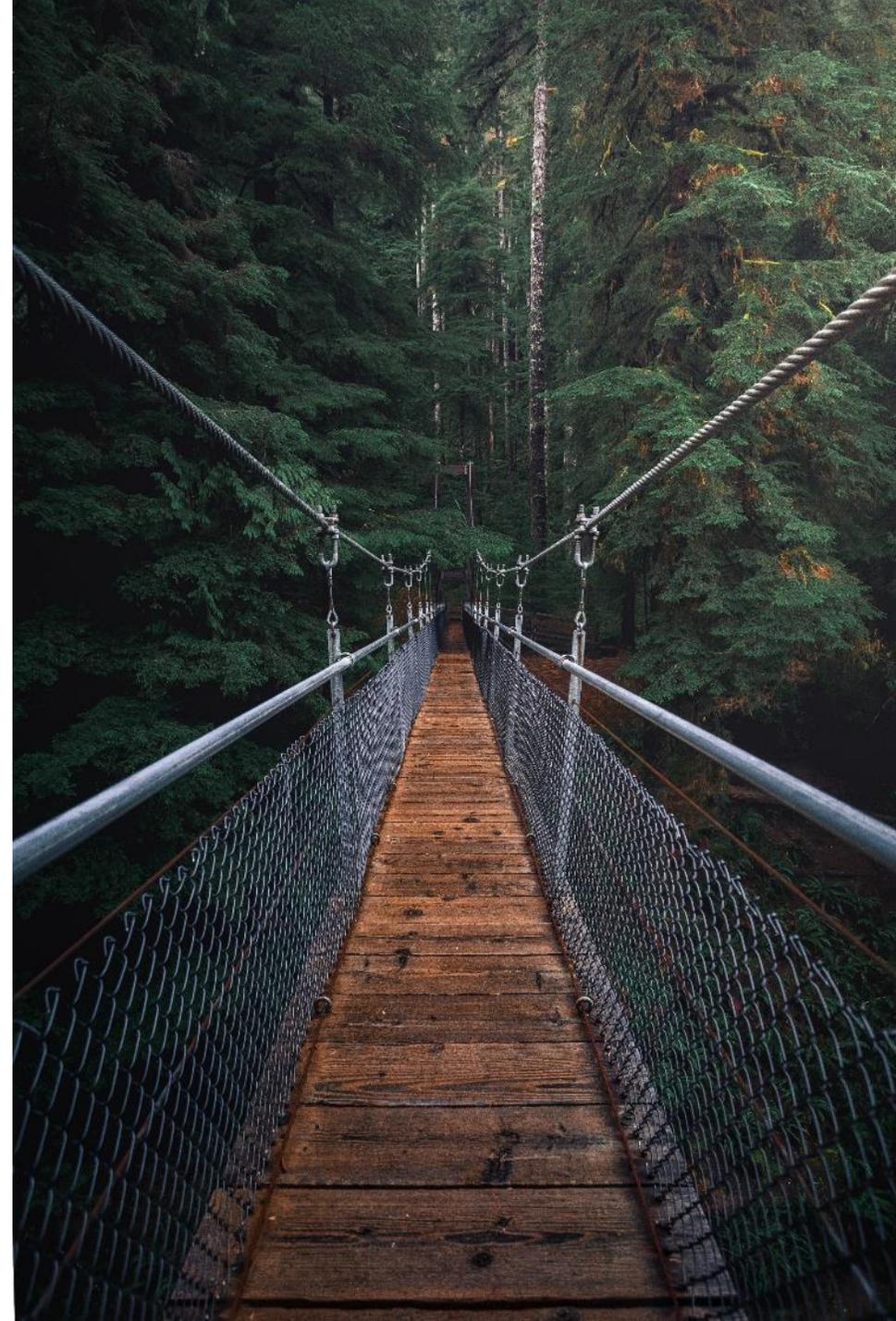
- OECD definition: Manual on ultimate beneficial owner.

How many can exist in companies?

The number of UBOs in a company can be unlimited, so the analysis of the persons potentially involved must be extensive and complete, in order to analyze their operations, since a characteristic of a UBO is that they are individuals.

Obligations that must be fulfilled

In accordance with Article 32-B TER of the Federal Tax Code, the main objective of the obligation consists of (continues):



# Obligations



## 32 - B TER/CFF:

- In accordance with Article 32-B TER of the Federal Tax Code, [CFF in Spanish], the main objective of the obligation involves:

- a) Legal entities,
- b) Fiduciaries, settlors, or trustees, in the case of trusts,
- c) And the contracting parties or any other legal form:

They are required to obtain and keep, as part of their accounting and provide the Tax Administration Service [in Spanish: SAT], when required, complete and updated information on their UBO. Furthermore, the authority may require information from third parties related to the reporting parties with the associated individuals.

- Moreover, the following individuals will be obligated to obtain the information to identify the UBO and adopt reasonable measures to verify their identity:

- a) Notaries,
- b) Brokers,
- c) Any person who intervenes in the formation or execution of contracts or legal acts that give rise to the constitution of the said individuals or the execution of trusts of any other legal figure.
- d) Financial entities and members of the financial system.

Important: This new obligation does not replace the notice of changes in the shareholding structure, nor the obligations regarding anti-money laundering, nor any other that are similar per se.

*What obligations must the UBO fulfill?*

# Obligations

*Are there any additional obligations?*

The liable parties must not only identify the UBOs, but also document the internal controls to identify, verify, and validate the information of the UBOs.

Likewise, and despite the fact that it is incidental in relation to tax matters, it is important that regulated entities bear in mind the obligations related to the protection of personal data during the processing of information.

*When should this obligation be fulfilled?*

There is no periodic date on which the taxpayer must comply with the obligation; however, it is indicated that the taxpayer must provide the related information to the UBO no later than 15 days after the authority has made a request for this information, with the possibility of an extension of 10 additional days.

*What happens if it is not fulfilled?*

The fines for violations in the UBO registry range from \$500,000 to \$2,000,000 MXN for each UBO that is part of the company (Legal Entity) Trust, or legal form that is not reported to the authority.

Additionally, the following penalties may be incurred:

- Temporary restriction on the use of Digital Stamps [in Spanish: CSD].
- UBOs may not be contracted by any authority, public body, or entity that manages resources from the Federation.
- The offending party becomes subject to a judgment of non-compliance.

# Obligations

1-. Identify the UBOs.  
Obtain, validate, and verify their information.

2-. Identify the companies that act as brokers in the evaluated company and the UBO. These intermediate-sized enterprises are the “control chains”. The information obtained must be part of the accounting.

How to fulfill your obligations?

3-. Retain information resulting from internal controls, and likewise, as part of accounting.

4-. Update the information every time there is a change in the data of the UBO or of the control chains.

*Important:*

The obligation is fulfilled by delivering to the Tax Administration Service [SAT], when required, the registration of the direct and indirect UBOs within the legal deadline of 15 days.

## Step 2

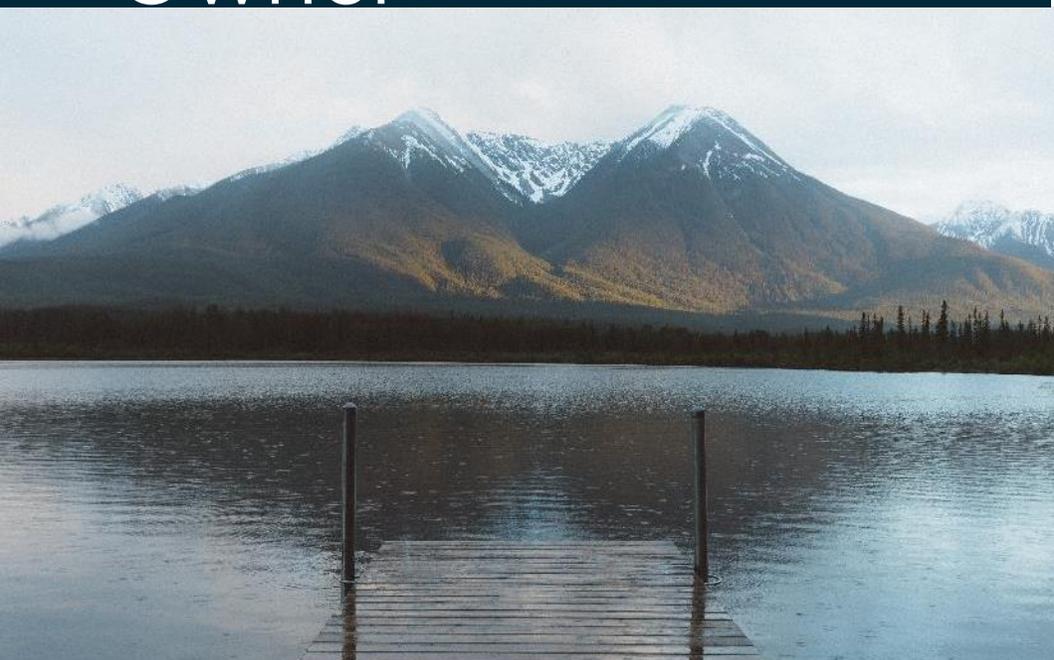
# Identifiable Data of the Ultimate Beneficial Owner

## 1/2

- I. Full names and surnames, which must correspond to the official document with which the identity has been accredited.
- II. Alias.
- III. Date of birth. When applicable, date of death.
- IV. Sex.
- V. Country of origin and nationality. If more than one, identify them all.
- VI. Population Registration Code, [in Spanish: CURP], or its equivalent, concerning other countries or jurisdictions.
- VII. Country or jurisdiction of residence for tax purposes.
- VIII. Type and number or code of official identification.
- IX. Code in the Federal Registry of Taxpayers [in Spanish: RFC], or tax identification number, or its equivalent, if you are a resident abroad, for tax purposes.
- X. Marital status, with identification of the spouse and property regime, or identification of the common-law partner, if applicable..
- XI. Contact information: e-mail, and phone numbers.

## Step 2

# Identifiable Data of the Ultimate Beneficial Owner



2/2

**XII.** Home address and fiscal domicile.

**XIII.** Relationship with the legal entity or status that he/she is responsible for, or the trust or the legal figure, as appropriate.

**XIV.** Interest in the legal entity or in the trust or legal figure, which allows it to exercise the rights of use, enjoyment, possession, exploitation or disposal of a good or service or to carry out a transaction.

**XV.** Description of the form of interest or control (direct or indirect).

**XVI.** Number of shares, partnership interests, stakes or rights or equivalents; series, class and par value of the same, in the capital of the legal entity.

**XVII.** Place where the shares, partnership interests, stakes or other equivalent rights are deposited or in custody.

**XVIII.** Specific date on which the individual acquired the status of Ultimate Beneficial Owner of the legal person, trust, or any other legal entity.

**XIX.** If applicable, provide the data mentioned in the preceding sections regarding who holds the position of sole administrator of the legal entity or equivalent. In the event that the legal entity has a board of directors or equivalent body, of each member of the said board.

**XX.** Date on which a change occurred in the interest or control in the legal entity, trust, or any other legal form.

**XXI.** Type of modification of the interest or control in the legal entity, trust, or any other legal form.

**XXII.** Date of termination of the interest or control in the legal entity, trust, or any other legal form.

# Step 2.5 Identifiable Data of the Chain of Ownership

## Additionally:

- I. Name, designation, or corporate name of the legal entities, trusts, or legal forms that have interest or control over the legal entity, trusts, or legal forms.
- II. Country or jurisdiction of establishment, constitution, or registration.
- III. Country or jurisdiction of residence for tax purposes.
- IV. Code in the RFC [Federal Registry of Taxpayers] or tax identification number, or its equivalent, if you are a resident abroad, for tax purposes
- V. Fiscal domicile.



# What does it mean to be registered as a UBO?

The fact that a person is registered as UBO does not imply that the latter must meet additional obligations in fiscal matters; that is, it does not stem directly from a greater tax burden. It is neither administrative, nor does it assume new obligations with the tax authority.

Being registered as UBO results in greater oversight with the taxpayer, as the authorities have greater ability to compare their information with various other databases at different levels (national and international government agencies).

One of the main points of UBO registration is to provide the Mexican tax authority with the ability to provide information on UBOs to any foreign authority, when it is required through an information exchange procedure.

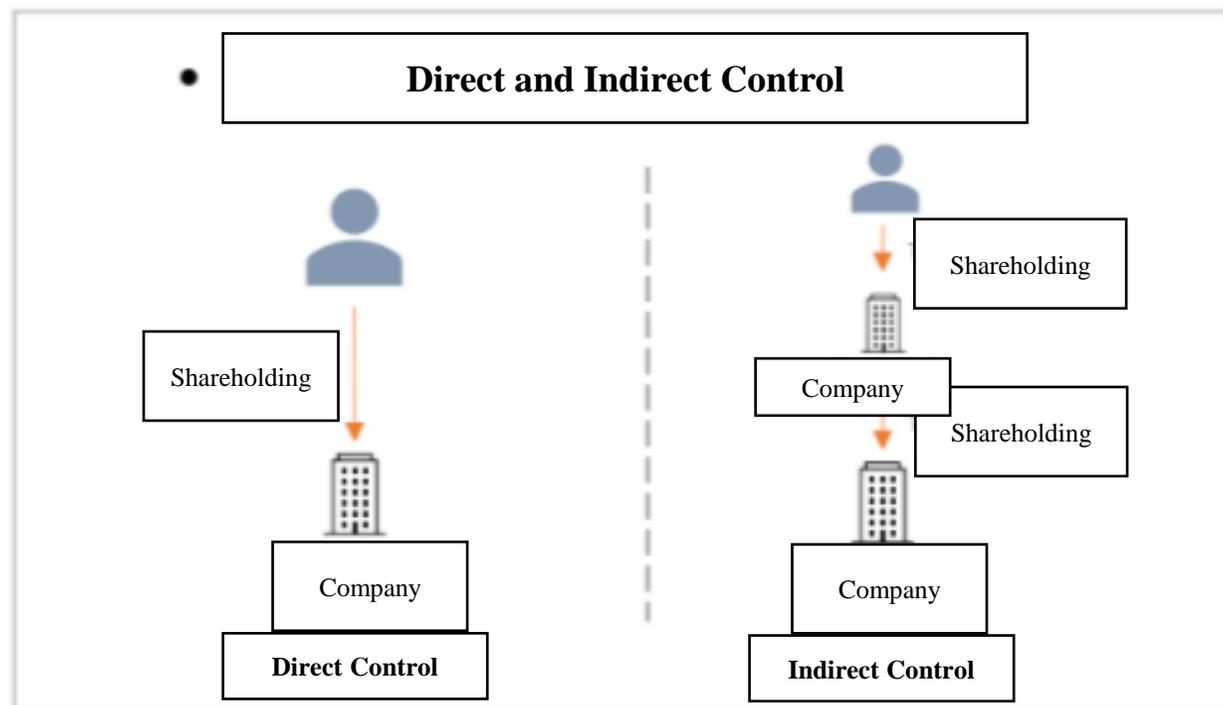
# Conclusion

As we have determined, current Mexican legislation is much stricter, since any person who benefits from a legal entity or any other legal form will be considered as a Ultimate Beneficial Owner.

## Analysis of the alleged benefit:

Likewise, the Federal Tax Code tells us that, unlike the international guides, that a person is benefited when he/she obtains directly, indirectly, the benefit derived from his/her interest in a legal entity or any legal act. That is why the code emphasizes the interpretation of the following assumptions:

1. The regulations consider that the UBO obtains the benefit directly or through an intermediary or "any legal act".
2. That the benefit to appear as UBO must come from the interest of the individuals in the legal entity. And, although the term "interest" is not defined, it is understood that this can be interpreted as ownership of the capital stock or the asset, or a stake can also be understood as any other form of activity in favor of the legal entity (partners, statutory auditors, board members, etc.)



# Chain of Ownership

## Regulation 2.8.1.20

Chain of Ownership is understood as the assumption in which indirect ownership is held through other legal entities (the UBO as a partner is identified).

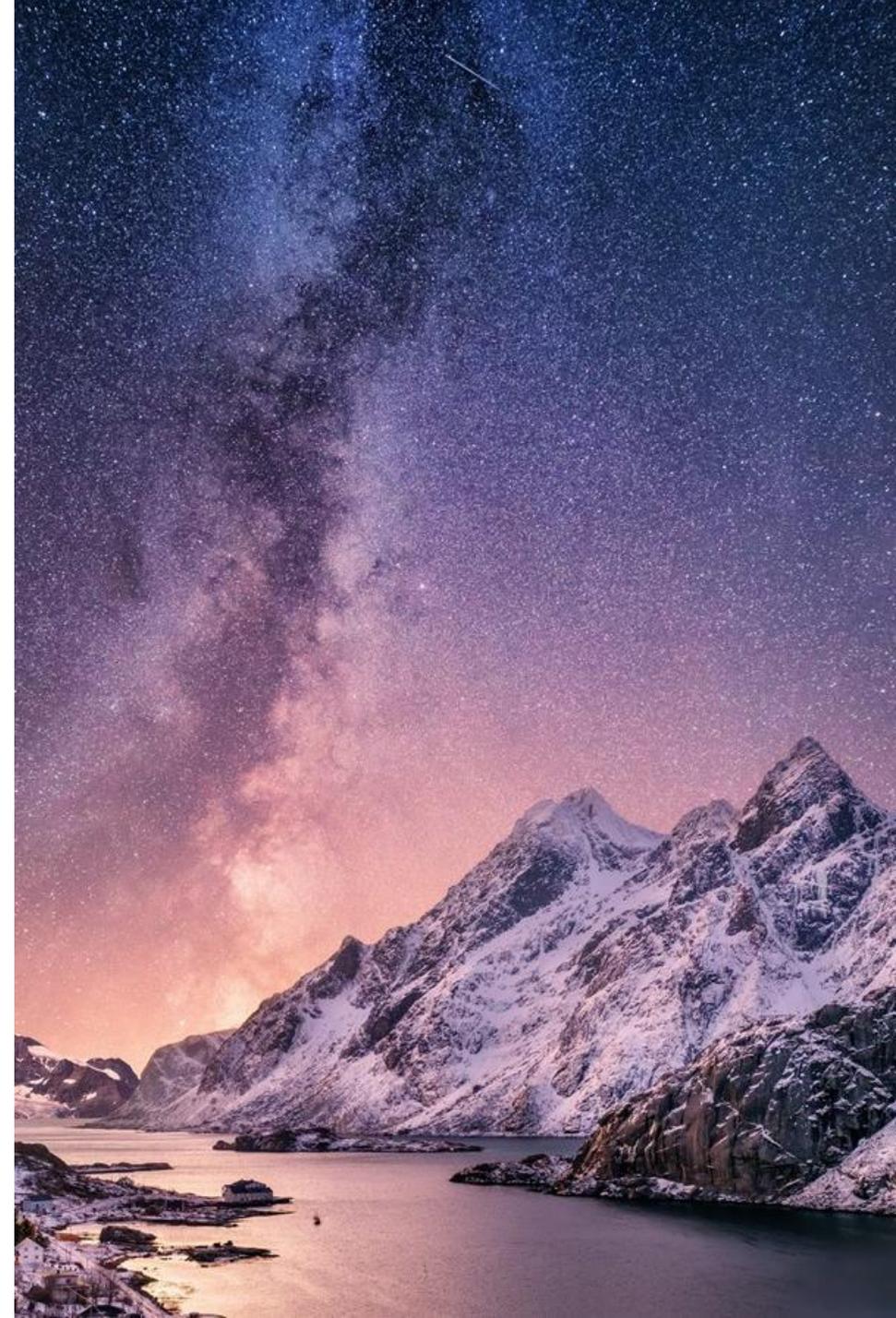
# Chain of Control

The chain of control is understood as the assumption in which control is held indirectly, through other legal entities, trusts, or any other legal form (the UBO as a partner cannot be fully identified).

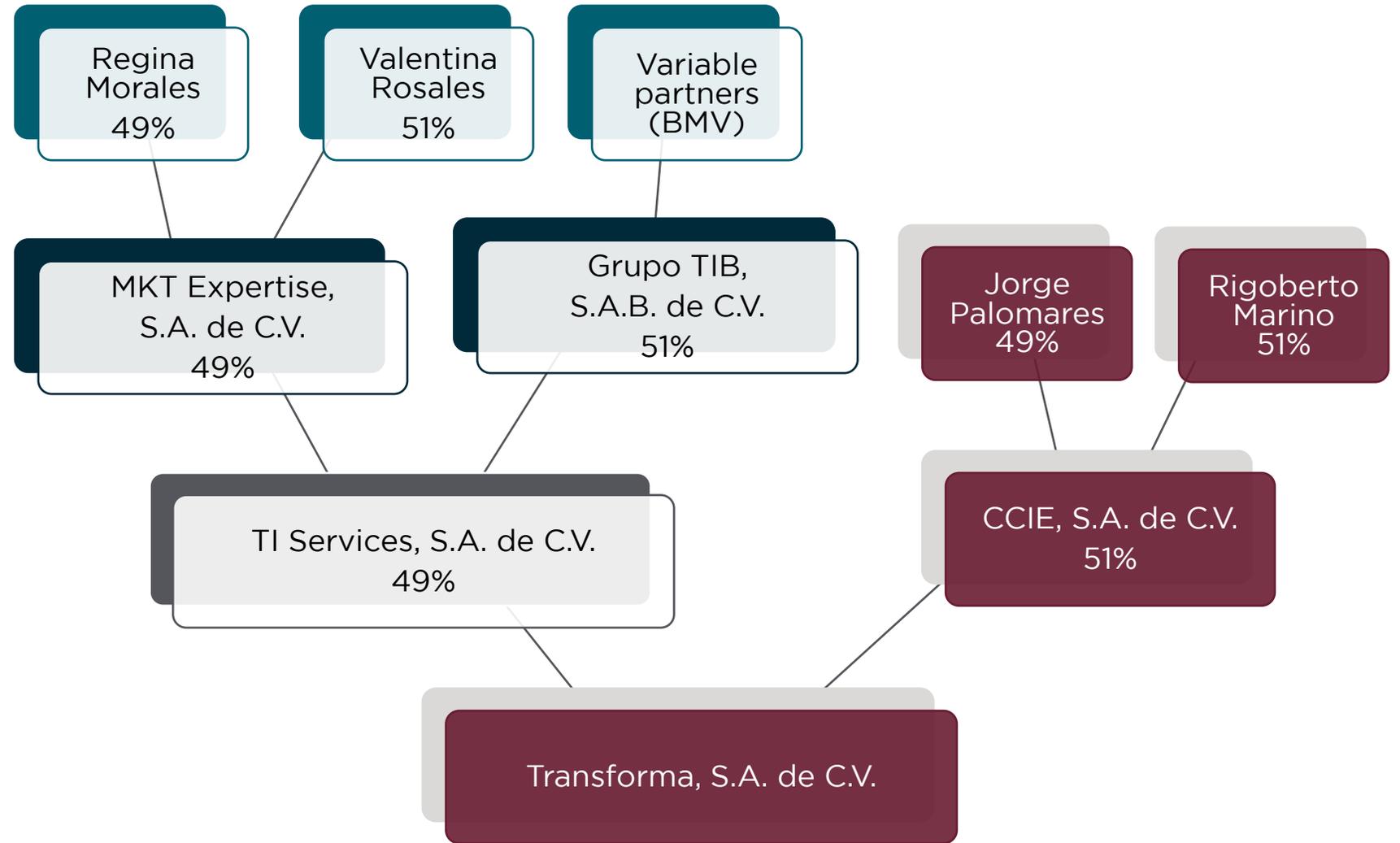
# Administrative Body (UBO)

## Regulation 2.8.1.20

When no individual is identified using the criterion established in this regulation, in relation to Article 32-B Quater of the Federal Tax Code, [CFF], the individual who occupies the position of sole administrator of the legal person or equivalent will be considered the Ultimate Beneficial Owner. In the event that the legal entity has a board of directors or equivalent body, each member of the said board will be considered as the Ultimate Beneficial Owner of the legal entity.



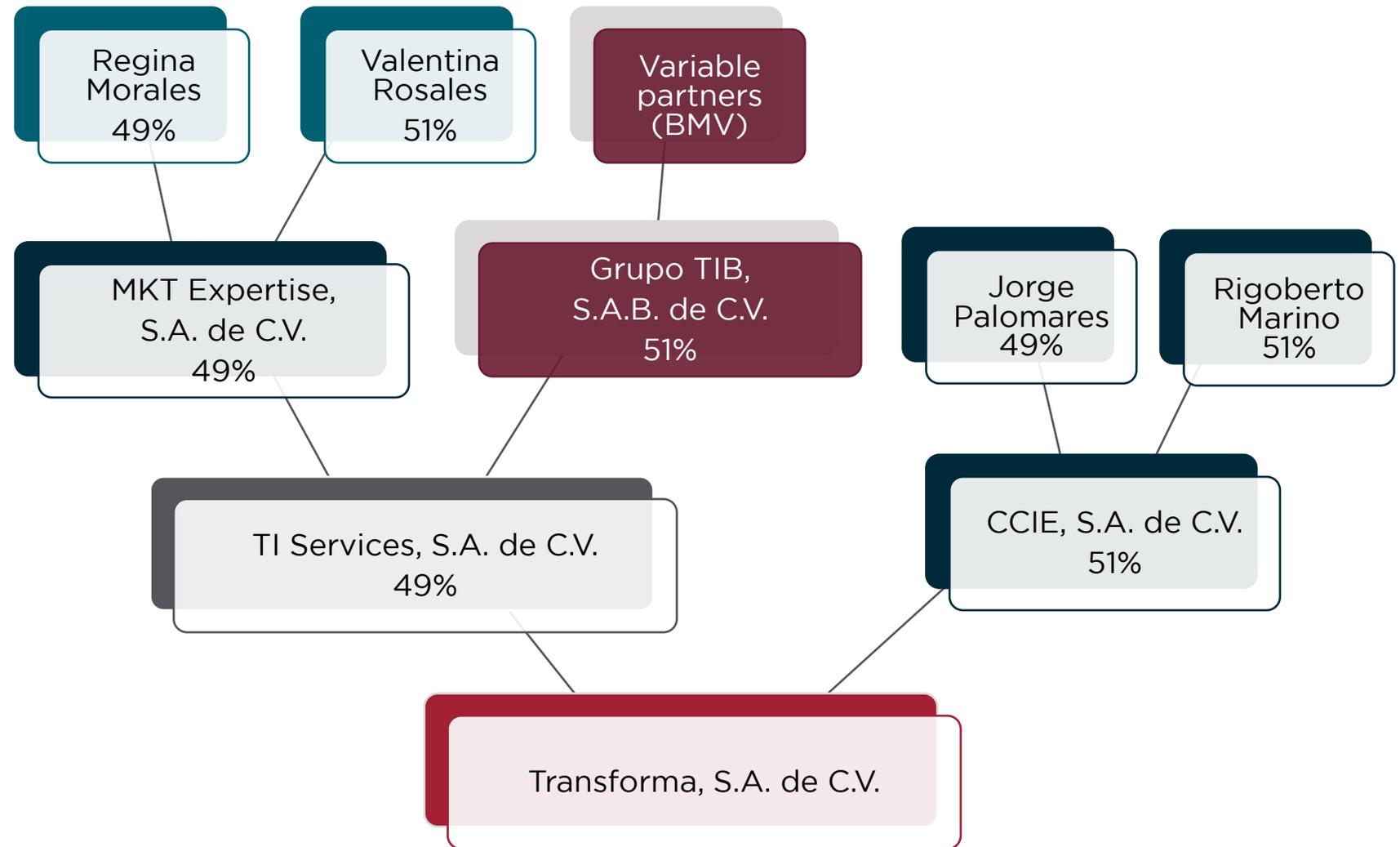
# Example 1



*\*Note:*

Jorge and Rigoberto are direct UBOs of CCIE, and with Transforma, SA de CV, there is a chain of ownership.

## Example 2



*\*Note:*

Variable Partners with Grupo TIB are direct UBOs, however, as it is not possible to identify them, the "chain of control" is updated.



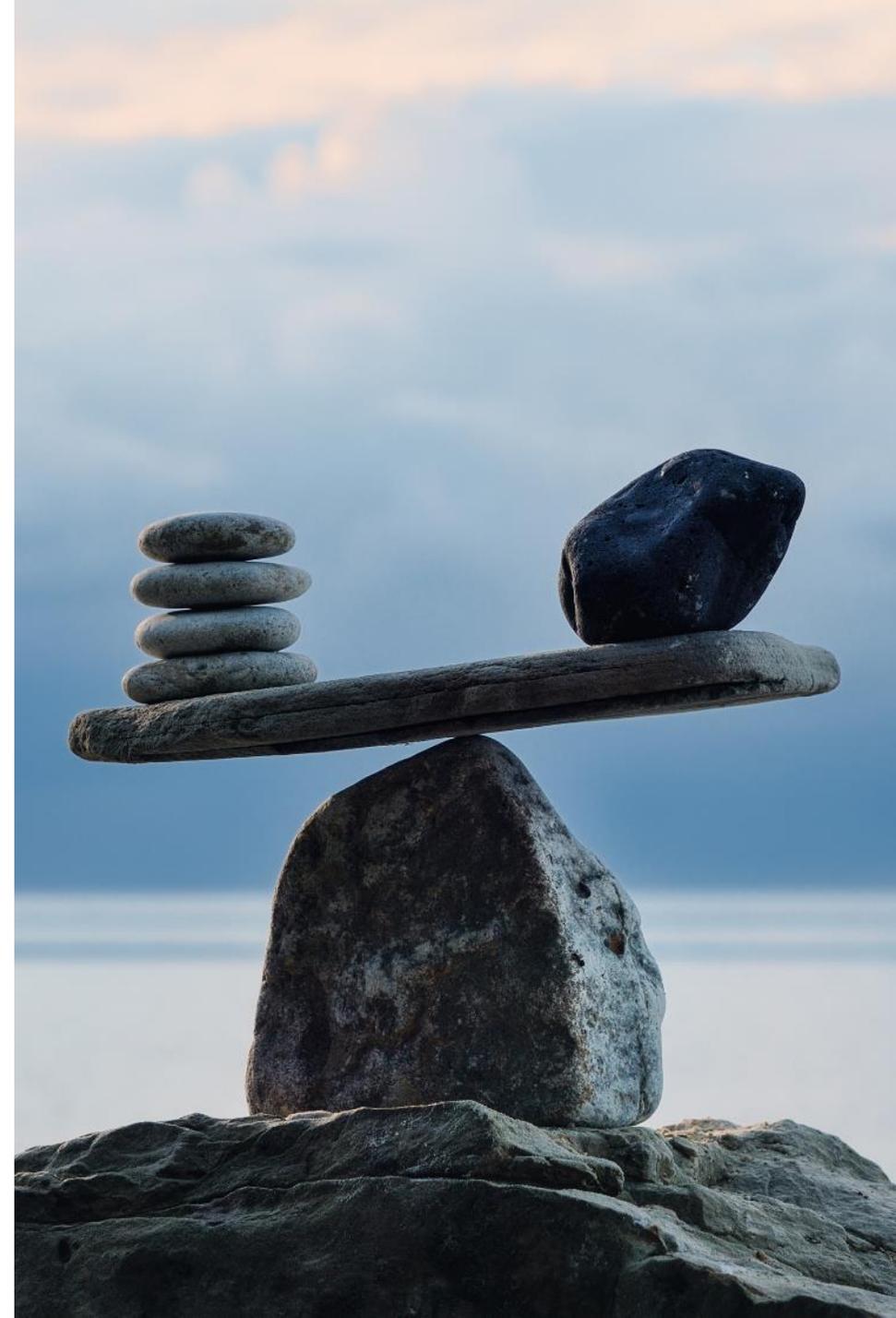
## Company Incorporation

When the Tax Administration Service, [SAT], requires information regarding the Ultimate Beneficial Owners to notaries, brokers, and any other person who intervenes in the formation or execution of contracts or legal acts that give rise to the constitution of legal entities or the execution of trusts or any other legal form, it will do so through a request for information that will notify them in accordance with the provisions of Article 134 of the Federal Tax Code [CFF].

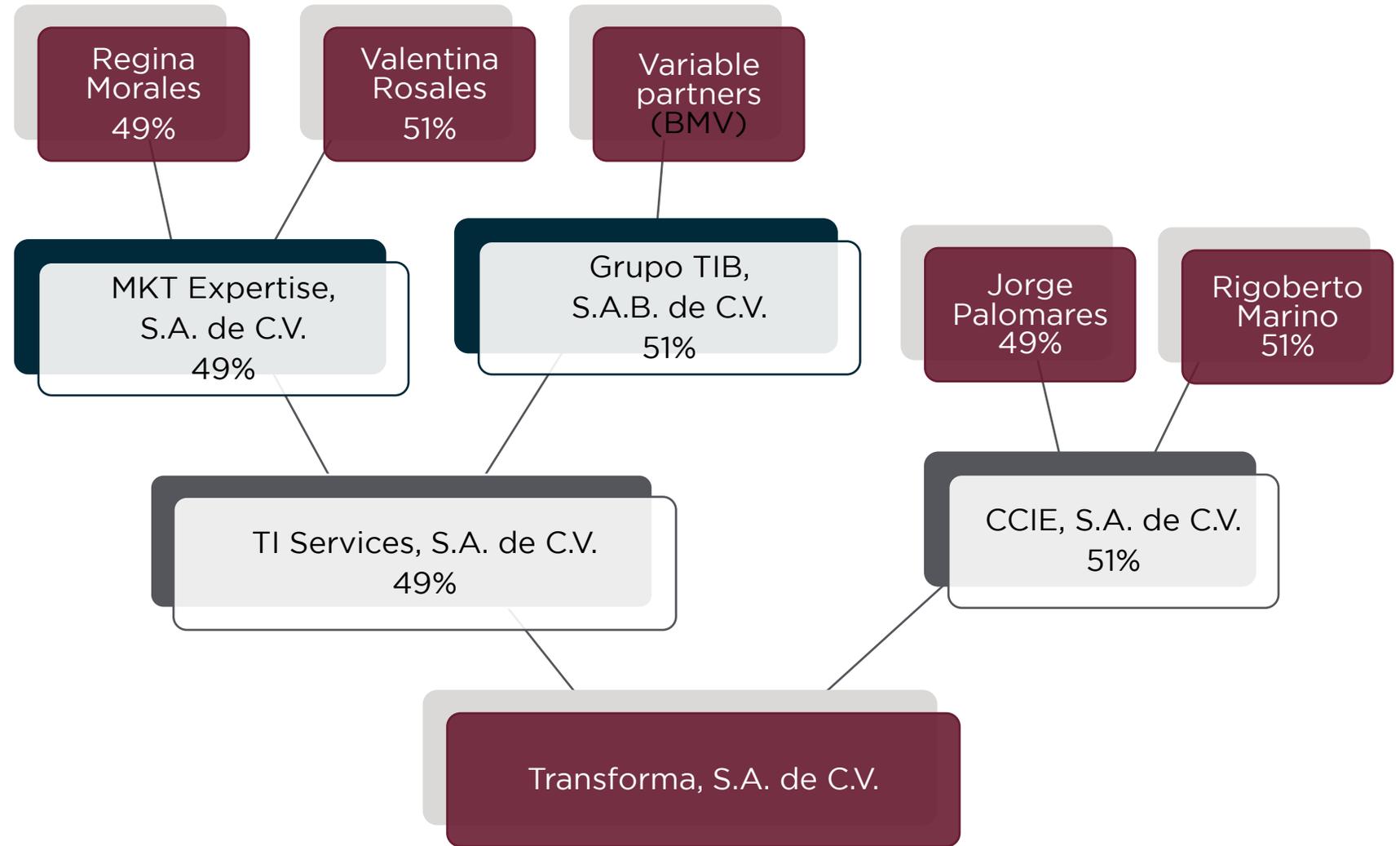
# Corporate Structure

The individuals or legal entities who wish to establish a company must submit to the notary public an organizational chart that reflects the corporate structure of the legal entity partners, up to and including the individuals who exercise control in the company, otherwise, the notaries may refuse to establish the corporation for not having fully identified the identity of the partners and specifically of the Ultimate Beneficial Owners (UBO), if there will be indirect control over the company, that is, through an intermediate legal entity there is a **CHAIN OF OWNERSHIP**.

**PUBLIC COMPANIES, ANONYMOUS TRUSTS:** If one of the partners turns out to be a public company, an anonymous trust, or some other form in which it is not possible to establish a partner (UBO), the sole general administrator or all of the shareholders will have to be considered as UBOs. (CHAIN OF CONTROL).



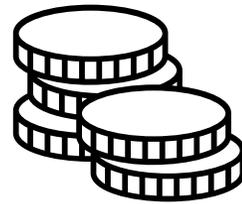
# Example



*\*Note:*

For an incorporation, the information of all the partners is required and, where appropriate, of the administrative body if it is not possible to fully identify the partners and if there is a chain of title.

# Non-compliance Penalties



CFF 84-M and  
84-N

*Article simplified*

Taxpayers who fail to comply will be subject to penalties for each omitted beneficiary in accordance with the following:

- From **1.5 to 2 million pesos** for not obtaining, retaining, or presenting the said information.
- From **800 thousand to 1 million pesos** for not maintaining the information updated.
- From **500,000 to 800,000 pesos** for submitting information that is incomplete or inaccurate, with errors, or in a manner different from that indicated in the provisions.

# UBOs in the United States (1/2)

On December 7, 2021 FinCEN issued a notice of proposed rule making (NPRM) promulgating proposed regulations to require reporting companies to disclose information about their beneficial owners and company applicants.

In summary, the NPRM addresses those persons subject to the contemplated filing requirements, when reporting is required, and what information must be reported. In general, the reporting requirements target smaller entities that may be less regulated and perhaps not subject to other reporting requirements which law enforcement could otherwise utilize to deter criminal activities and other illicit acts. **Entities operating in a highly regulated**



<i>Summary Chart</i>	United States
Who must report?	Corporations, limited liability companies, or similar entity that were either (1) created by the filing of a document with a secretary of state or similar office under the law of a State or Indian Tribe or (2) formed under the law of a foreign country and registered to do business in the US.
What must be reported?	Per each UBO, the following must be disclosed: (1) Full legal name; (2) Date of birth; (3) Current residential address or business street address, as applicable; and, (4) Unique identifying number from an acceptable identification document or by FinCEN identifier.
Who is a UBO?	Any individual who directly or indirectly, through any contract, agreement, understanding, relationship or otherwise either: (a) Exercises substantial control over the reporting entity; or (b) Owns or controls at least 25% of the ownership interests of the entity.

# UBOs in the United States

(2/2)

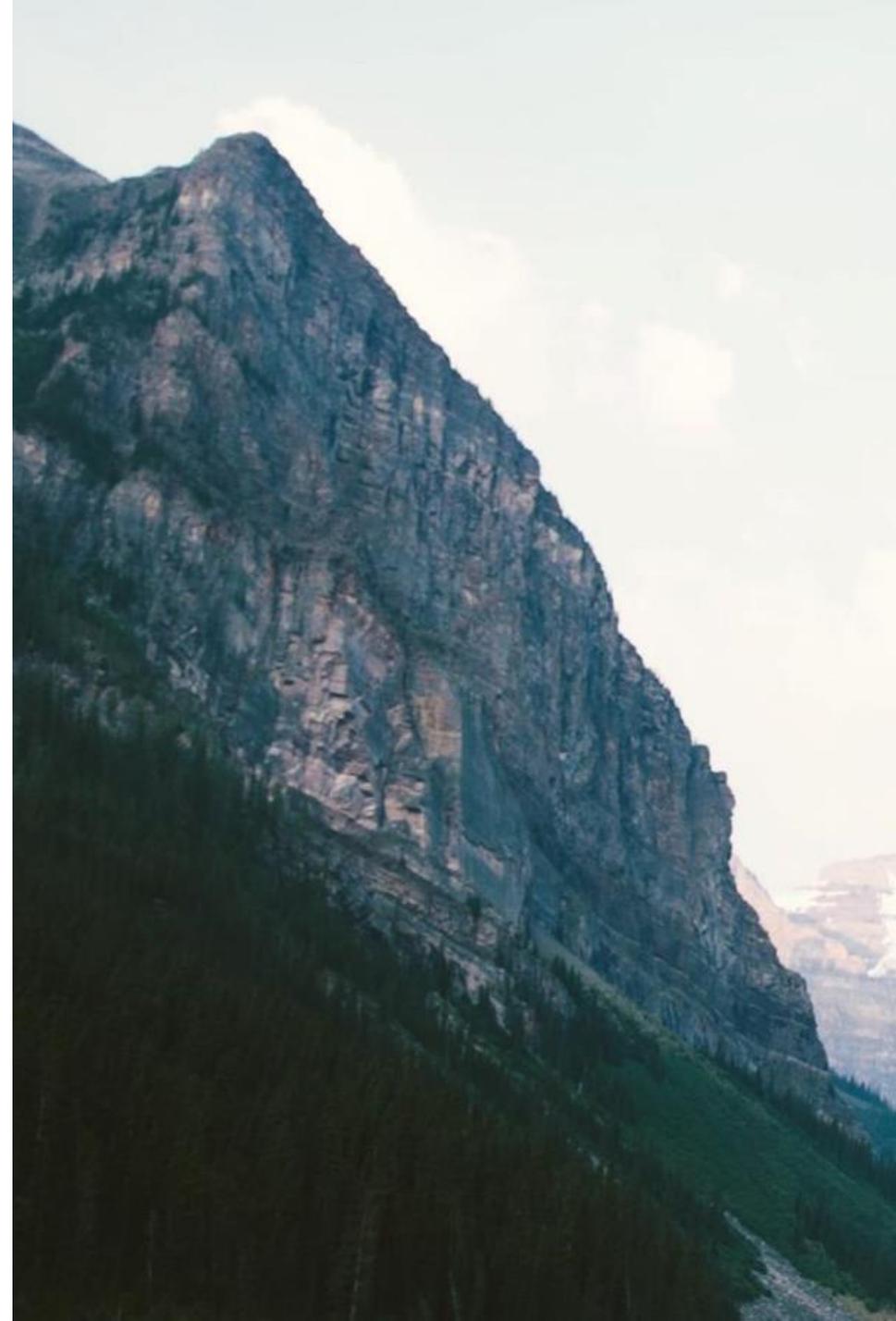
<i>Summary Chart</i>	United States
When must be reported?	<b>Within 14 calendar days</b> of the date of registration for entities coming into existence/registration in the US after the proposed regulations come into effect. <b>Not later than one calendar year</b> after the effective date of the regulations for reporting entities that were in existence before the proposed regulations.
Penalties	Civil penalty of up to \$500 USD for each day the violation continues. Moreover, under extreme circumstances such person may be subject to a fine of up to \$10,000 USD and/or imprisonment for up to two years.
Other considerations	A reporting entity is also required to disclose information about a company applicant. A company applicant is any individual who files a document that creates a domestic reporting entity or who first registers a foreign reporting entity with a secretary of state or similar office in the United States.



# Conclusion

The authority issued certain recommendations:

- In file 3.3.1 it is mentioned that changes can be made to the UBO as long as this is due to changes external to it, such as the changes inherent to the board of directors or sole administrator.
- It is recommended that there be internal updating policies, which include that at least 2 or 3 times per year there is contact with the UBO in order to confirm that there are no changes to report, and where appropriate, make the relevant updates.
- Obtain the verification and validation of the documentation provided by the UBO.
- Document the contacts made with the UBO in order to update his/her information.
- Contact the UBO when there is a request from the authority in order to confirm the most recent information.
- It is recommended that all internal controls be supported and documented in a single document.
- Lastly, it is recommended that the information be legible, logically structured, and available, in order to guarantee the prompt provision of the information to the authorities in case it is required.





# Let's talk!

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