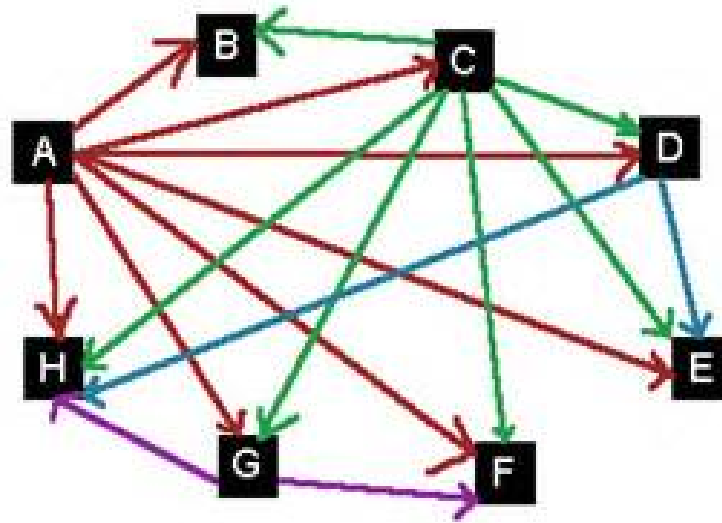


# Complex Relationships



# Complex Relationships

(Adjective)

- The definition of complex is complicated or made up of many parts.
  - An example of complex is a math problem requiring many steps to solve.
  - An example of complex is the design of a spider web.



# Complex Relationships

## THE CUSTOMER:

- A local Florida LLC
- Wants to open a DDA and apply for a Construction Loan

## Loan Request:

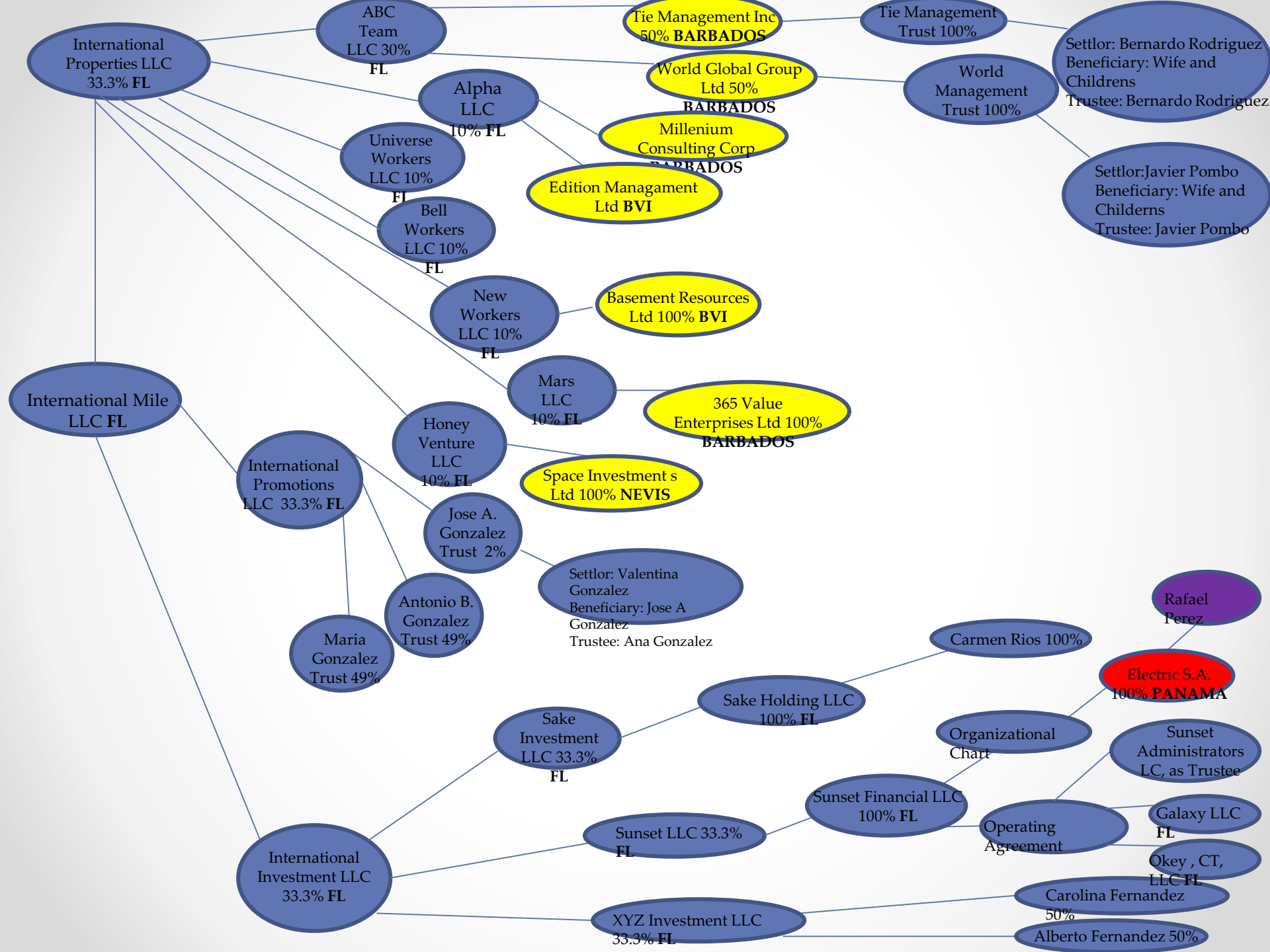
- Hotel Construction Loan for \$20MM;
- Hotel located in the heart of Miami;

# A look at the Corporate Structure

Need to conduct due diligence on the beneficial ownership structure. Need to drill down to a warm body. Behind a local LLC you may discover a complex scenario which includes:

- PICS;
- PEPS;
- Offshore companies;
- Trusts;
- BEARER SHARE ENTITY.





# Who is behind door # 3?

Structures set up to hide beneficial ownership are often very sophisticated and take extensive advantage of legal and regulatory loopholes. Understanding who the customer is, is a basic cornerstone of know-your-customer due diligence.



# Top Secret

Knowing and identifying the natural persons who exercise ultimate effective control may be cumbersome to accomplish. Entities may have several layers of ownership, which may be created to protect the names of natural persons who “ultimately” own the organization from undue liabilities (i.e. legal, tax, etc.) or for other reasons, all of which may be perfectly legal.

These legal arrangements can be very complicated, more so when they are specifically designed to protect the name of natural persons; also some governments boast their secrecy laws as an attractive incentive to incorporate legal arrangements in their jurisdiction.

While unpeeling layers of corporate structure you need to develop an understanding of not only “your customer” but also associated companies and individuals involved, including nominees, fiduciaries and other third parties involved .





# Which to choose?

FinCEN's expectation is that a financial institution will identify the natural person or persons who exercise control of a legal entity customer through a 25% or greater ownership interest, regardless of how many corporate parents or holding companies removed the natural person is from the legal entity customer. However, this threshold will be considered as the minimum standard, and it does not preclude a regulated entity from applying a lower threshold. In fact, it is likely that many organizations will apply the 10% threshold to meet FATCA requirements. FinCEN's rule is not final yet, but it appears that few changes, if any, will be made to the proposed rule.

# Business Entities

Let's look at a basic overview of the most common types of entities used in today's business environment and what you need to know and look for.



# Entity Jurisdictions

## Domestic (U.S.)

- In the U.S., entities are state-specific, but all states allow for the same basic types of domestic entities
- In Florida business entities are registered with the Dept. of State
  - Florida Secretary of State's corporate website – [www.sunbiz.org](http://www.sunbiz.org)
  - Most domestic entities require a “Registered Agent” to be filed with the Secretary of State
    - Registered agent can be an individual or entity
    - Main purpose is for service of process
- Foreign (both non-Florida and non-U.S.) if doing business in Florida are required to qualify to do business

# Entity Jurisdictions (cont'd.)

## Domestic (U.S.) (Cont'd.)

- Delaware is a very popular jurisdiction. Why?
  - Delaware statutes and case law are “pro-business”:
    - very few restrictions on how you can choose to operate
    - very few protections afforded to shareholders



# Entity Jurisdictions (cont'd.)

## Offshore Jurisdictions

- Offshore Jurisdictions refer to locations where entities are typically registered as a means to receive some sort of beneficial tax treatment (“Tax Haven”).
- There are over 15 jurisdictions throughout the world that are considered offshore jurisdictions.
- Some common offshore jurisdictions are:
  - British Virgin Islands (BVI)
  - Cayman Islands
  - Barbados
  - Panama
  - Curaçao/Aruba
  - Nevis

# Entity Jurisdictions (cont'd.)

## Foreign Jurisdictions

- Foreign Jurisdictions refer to entities registered outside the United States in non-Tax Haven jurisdictions.
- Some common foreign jurisdiction entities frequently doing business in Florida are registered in :
  - Mexico
  - Colombia
  - Venezuela
  - Spain

# Entity Classifications

Domestic Classifications include:

- Sole Proprietorship
- Corporation – (“Corp”)
- Subchapter S Corporation – “S” Election (“S Corp”)
- Limited Liability Company (“LLC”)
- General Partnership (“GP”)
- Limited Partnership (“LP”)
- Limited Liability Partnership (“LLP”)
- Professional Association (“PA”)

# Entity Classifications

Offshore Jurisdiction Classifications include:

- International Business Corporation (“Corp”)
- Limited Corporation (“Ltd”)
- Trusts
- Foundations



# Entity Classifications

Foreign Jurisdiction Classifications include:

- Sociedad Anonima (“SA”) or Compañía Anonima (“CA”) or Public Limited Company (“plc”) ≈ Corporation
- Sociedad Limitada (“SL”) or Private Limited Company (Ltd.) – No domestic equivalent. A form of privately held corporation.
- (Associated Name) y Compañía (“ y Cia”) ≈ General partnership
- Sociedad en Comandita (“S en C”) ≈ Limited Partnership
- Empresa Unipersonal (“EU”) – Domestic equivalent of a Sole Proprietorship
- Sociedad Anonima de Capital Variable (“SA de CV”) – No domestic equivalent . A form of corporation commonly used in Mexico

# What is the ownership?

- Ownership
  - One individual
  - Multiple individuals
  - More than 100 owners (S Corp restriction)
  - Corporate owners
  - Bearer shares
  - Beneficial owners
  - Multiple ownership classes
  - High turnover among owners

# Individual Entity Analysis

## (FL) Sole Proprietorship

- Ownership: Single owner
- Revenues and Expenses: All income flows to owner (personal bank account issues)
- Creditor Protection: None – 100% personal liability
- Maintenance Cost: Very simple to establish and maintain as no separate tax returns are needed
- Formation Documents: None required (in Florida), however, if conducting business under a name other than individual name, then a fictitious name registration must be filed – this is common set up in foreign jurisdictions
- Governing Documents: None

# Individual Entity Analysis

## (FL) CORPORATION

- Ownership:
  - At least one owner, (no maximum)
  - Ownership is evidenced by share certificates and stock ledger
  - Multiple shareholder classes allow for varying rights among shareholders
  - Beware of layers – know your ultimate owners
- Revenues and Expenses:
  - All income taxed at the entity level
  - Double taxation issue when dividends are issued
- Creditor Protection: Total creditor protection, so long as corporate formalities are followed (“piercing the corporate veil”). Shareholder liability limited to capital contribution.
- Management: Board of Directors and Officers (as dictated in the Bylaws)
- Formation Documents: Articles of incorporation
- Governing Documents: Bylaws and Shareholder Agreements, voting agreements

# Individual Entity Analysis

## (FL) CORPORATION – “S” Election

- Ownership:
  - At least one shareholder, (maximum 100)
  - Ownership is evidenced by share certificates and stock ledger
  - Only one shareholder class permitted
  - All U.S. persons
- Revenues and Expenses:
  - Income flows through to each shareholder
  - No double taxation issue
- Creditor Protection: Total creditor protection, so long as corporate formalities are followed (“piercing the corporate veil”). Shareholder liability limited to capital contribution.
- Management: Board of Directors and Officers (as dictated in the Bylaws)
- Formation Documents: Articles of incorporation and IRS Form 2553 (“S” election)
- Governing Documents: Bylaws and Shareholder Agreement, voting agreements

# Individual Entity Analysis

## (FL) SINGLE MEMBER – LIMITED LIABILITY COMPANY (“LLC”)

- Ownership:
  - Single member
  - Ownership is evidenced by membership interests or units (certificated or uncertificated)
- Revenues and Expenses:
  - Income flows through to member
  - No double taxation issue
- Creditor Protection: Total creditor protection, so long as corporate formalities are followed (“piercing the corporate veil”). Member liability limited to capital contribution.
- Management: Either member or manager managed (as dictated in the Operating Agreement)
- Maintenance Cost: Easy to establish and maintain. Single member LLC is considered a “disregarded” entity for tax purposes and does not need to file a tax return – can elect to be treated as corporation
- Formation Documents: Articles of Organization
- Governing Documents: Operating Agreement

# Individual Entity Analysis

## (FL) MULTI-MEMBER - LIMITED LIABILITY COMPANY (“LLC”)

- Ownership:
  - 2 or more members, (no maximum)
  - Ownership is evidenced by membership interests or units (certificated or uncertificated)
  - Multiple ownership classes permitted
- Revenues and Expenses:
  - Income flows through to each member
  - No double taxation issue
- Creditor Protection: Total creditor protection, so long as corporate formalities are followed (“piercing the corporate veil”). Member liability limited to capital contribution.
- Management: Either member or manager managed (as dictated in the Operating Agreement)
- Maintenance Cost: Easy to establish and maintain. Multi-member LLC must file a partnership tax return (IRS Form 1065) annually.
- Formation Documents: Articles of Organization
- Governing Documents: Operating Agreement

# Individual Entity Analysis

## (FL) GENERAL PARTNERSHIP

- Ownership:
  - 2 or more partners, (no maximum) – cannot be a partnership if only one partner
  - Ownership is evidenced by partnership agreement
  - Multiple ownership classes permitted
- Revenues and Expenses:
  - Income flows through to each partner
  - No double taxation issue
- Creditor Protection: All partners are totally liable for the partnership's debts
- Management: In principle all partners participate equally in managing the partnership
- Maintenance Cost: Easy to establish and maintain. Partnership must file a partnership tax return (IRS Form 1065) annually.
- Formation Documents: None required, unless conducting business under a name other than the names of the partners, in which case a fictitious name filing must be filed – although not required partnership registration can be filed in Florida
- Governing Documents: Partnership agreement (but not necessary)



# Individual Entity Analysis

## (FL) LIMITED PARTNERSHIP

- Ownership:
  - At least 1 general partner and 1 limited partner, (no maximums)
  - Ownership is evidenced by partnership agreement
  - Multiple ownership classes permitted, so long as every general partner has unlimited liability
- Revenues and Expenses:
  - Income flows through to each partner
  - No double taxation issue
- Creditor Protection: General partners are liable for the partnership's debt, limited partners are not
- Management: Limited to general partner
- Maintenance Cost: Easy to establish and maintain. Partnership must file a partnership tax return (IRS Form 1065) annually.
- Formation Documents: Certificate of limited partnership (discloses only General Partner)
- Governing Documents: Partnership agreement (but not necessary)

# Individual Entity Analysis

## (FL) LIMITED LIABILITY PARTNERSHIP

- Ownership:
  - At least 2 partners, (no maximums)
  - Ownership is evidenced by partnership agreement
  - Multiple ownership classes permitted,
- Revenues and Expenses:
  - Income flows through to each partner
  - No double taxation issue
- Creditor Protection: All partners are protected from personal liability for partnership obligations; liable for personal responsibility – malpractice?
- Management: All partners participate equally in managing the partnership
- Maintenance Cost: Easy to establish and maintain. Partnership must file a partnership tax return (IRS Form 1065) annually.
- Formation Documents: Statement of Qualification (discloses name of at least 2 partners)
- Governing Documents: Partnership agreement (but not necessary)

# Individual Entity Analysis

## (FL) PROFESSIONAL ASSOCIATION

- Ownership:
  - At least 1 licensed professional, (no maximums)
  - Ownership is evidenced by shares
  - Only licensed professionals from the same profession
- Revenues and Expenses:
  - All income taxed at the entity level
  - Double taxation issue when dividends are issued
- Creditor Protection: Total creditor protection, so long as corporate formalities are followed (“piercing the corporate veil”) – is equivalent to a corporation
- Management: Officers
- Maintenance Cost: Easy to establish and maintain, however, separate tax returns must be filed on behalf of the entity, typically increasing maintenance cost.
- Formation Documents: Articles of Incorporation
- Governing Documents: Bylaws and Shareholder Agreement – other voting agreements

# Offshore Jurisdictions

Things to be aware of when dealing with offshore jurisdictions:

- Bearer Shares

- Review organizational documents carefully
- Ensure that right to issue bearer shares is not present in organizational documents
- Be aware of custodial relationships for shares
- Follow Bank's policies on this issue

- Trusts and Foundations

- Very common
- Need to delve into ultimate beneficial owners
- Be aware of your tax responsibilities

- Very often structures can be very complex – with entities in a variety of offshore and foreign jurisdictions

# Foreign Jurisdictions

Things to be aware of when dealing with foreign jurisdictions:

- Make sure you understand the documents that govern the entity – usually documents are very lengthy and complex
- Understand the ownership structure – multiple layers
- Acting under Powers of Attorney is common – very different than in the U.S.
  - Need to understand the relative powers of parties
  - Resolutions that are common here are not as common in these jurisdictions
- Understand authentication requirements

# Questions?

