



Transparency & Beneficiary Ownership of Legal Persons

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1. Competent authorities should be able to obtain, or have access in a timely fashion to, adequate, accurate and current information on the beneficial ownership and control of companies and other legal persons (beneficial ownership information) that are created in the country. Countries may choose the mechanisms they rely on to achieve this objective, although they should comply with the minimum requirements set out below. It is also very likely that countries will need to utilise a combination of mechanisms to achieve the objective.

2. As part of the process of ensuring that there is adequate transparency regarding legal persons, countries should have mechanisms that:

- (a) identify and describe the different types, forms and basic features of legal persons in the country.
- (b) identify and describe the processes for: (i) the creation of those legal persons; and (ii) the obtaining and recording of basic and beneficial ownership information;
- (c) make the above information publicly available; and
- (d) assess the money laundering and terrorist financing risks associated with different types of legal persons created in the country.

BASIC INFORMATION

3. In order to determine who the beneficial owners of a company are, competent authorities will require certain basic information about the company, which, at a minimum, would include information about the legal ownership and control structure of the company. This would include information about the status and powers of the company, its shareholders and its directors.

4. All companies created in a country should be registered in a company registry. Whichever combination of mechanisms is used to obtain

and record beneficial ownership information, there is a set of basic information on a company that needs to be obtained and recorded by the company as a necessary prerequisite. The minimum basic information to be obtained and recorded by a company should be:

- (a) company name, proof of incorporation, legal form and status, the address of the registered office, basic regulating powers (e.g. memorandum & articles of association), a list of directors, and
- (b) a register of its shareholders or members, containing the names of the shareholders and members and number of shares held by each shareholder and categories of shares (including the nature of the associated voting rights).

5. The company registry should record all the basic information set out in paragraph 4(a) above.

6. The company should maintain the basic information set out in paragraph 4(b) within the country, either at its registered office or at another location notified to the company registry. However, if the company or company registry holds beneficial ownership information within the country, then the register of shareholders need not be in the country, provided that the company can provide this information promptly on request.

BENEFICIAL OWNERSHIP INFORMATION

7. Countries should ensure that either: (a) information on the beneficial ownership of a company is obtained by that company and available at a specified location in their country; or (b) there are mechanisms in place so that the beneficial ownership of a company can be determined in a timely manner by a competent authority.

8. In order to meet the requirements in paragraph 7, countries should use one or more of the following mechanisms:

- (a) Requiring companies or company registries to obtain and hold up-to-date information on the companies' beneficial ownership;
- (b) Requiring companies to take reasonable measures to obtain and hold up-to-date information on the companies' beneficial ownership;
- (c) Using existing information, including: (i) information obtained by financial institutions and/or DNFBPs, in accordance with Recom-

mendations 10 and 22 (of the FATF Recommendations); (ii) information held by other competent authorities on the legal and beneficial ownership of companies (e.g. company registries, tax authorities or financial or other regulators); (iii) information held by the company as required above in Section A; and (iv) available information on companies listed on a stock exchange, where disclosure requirements (either by stock exchange rules or through law or enforceable means) impose requirements to ensure adequate transparency of beneficial ownership.

9. Regardless of which of the above mechanisms are used, countries should ensure the companies cooperate with competent authorities to the fullest extent possible in determining the beneficial owner. This should include:

- (a) Requiring that one or more natural persons resident in the country is authorized by the company, and accountable to competent authorities, for providing all basic information and available beneficial ownership information, and giving further assistance to the authorities; and/or
- (b) Requiring that DNFBP in the country is authorised by the company, and accountable to competent authorities, for providing all basic information and available beneficial ownership information, and giving further assistance to the authorities; and/or
- (c) Other comparable measures, specifically identified by the country, which can effectively ensure cooperation.

10. All the persons, authorities and entities mentioned above, and the company itself (or the administrators, liquidators, or other persons involved in the dissolution of the company), should maintain the information and records referred to for at least five years after the date on which the company is dissolved or otherwise ceases to exist, or five years after the date on which the company ceases to be a customer of the professional intermediary or the financial institution.

TIMELY ACCESS TO CURRENT AND ACCURATE INFORMATION

11. Countries should have mechanisms that ensure that basic information, including information provided to the company registry, is accurate and updated on a timely basis. Countries should require that any available information referred to in paragraph 7 is accurate and is kept as current and up-to-date as possible, and the information should be updated within a reasonable period following any change.

12. Competent authorities, and in particular law enforcement authorities, should have all the powers necessary to be able to obtain timely access to the basic and beneficial ownership information held by the relevant parties.

13. Countries should require their company registry to facilitate timely access by financial institutions, DNFBPs and other countries' competent authorities to the public information they hold, and, at a minimum to the information referred to in paragraph 4(a) above. Countries should also consider facilitating timely access by financial institutions and DNFBPs to information referred to in paragraph 4(b) above.

OBSTACLES TO TRANSPARENCY

14. Countries should take measures to prevent the misuse of bearer shares and bearer share warrants, for example by applying one or more of the following mechanisms: (a) prohibiting them; (b) converting them into registered shares or share warrants (for example through dematerialisation); (c) immobilising them by requiring them to be held with a regulated financial institution or professional intermediary; or (d) requiring shareholders with a controlling interest to notify the company, and the company to record their identity.

15. Countries should take measures to prevent the misuse of nominee shares and nominee directors, for example by applying one or more of the following mechanisms: (a) requiring nominee shareholders and directors to disclose the identity of their nominator to the company and to any relevant registry and for information to be included on the relevant register; or (b) requiring nominee shareholders and directors to be licensed, for their nominee status to be recorded in company registries, and for them to maintain information identifying their nominator, and make this information available to the competent authorities upon request.

INTERNATIONAL COOPERATION

Countries should rapidly, constructively and effectively provide international cooperation in relation to basic and beneficial ownership information, on the basis set out in Recommendations 37 and 40 (of the FATF Recommendations). This should include (a) facilitating access by foreign competent authorities to basic information held by company registries; (b) exchanging information on shareholders; and (c) using their powers, in accordance with their domestic law, to obtain beneficial ownership information on behalf of foreign counterparts. Countries should monitor the quality of assistance they receive from other countries in response to requests for basic and beneficial ownership information or requests for assistance in locating beneficial owners residing abroad.

Source

The FATF Recommendations

Interpretative Note to R24

(Transparency and Beneficial Ownership of Legal Persons) p. 83-86



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