FATF

FATF GUIDANCE

TRANSPARENCY AND BENEFICIAL OWNERSHIP

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FINANCIAL ACTION TASK FORCE

The Financial Action Task Force (FATF) is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. The FATF Recommendations are recognised as the global anti-money laundering (AML) and counter-terrorist financing (CFT) standard.

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TABLE OF ACRONYMS

AML/CFT	Anti-Money Laundering / Countering the Financing of Terrorism (also used for *Combating the Financing of Terrorism*)
ACWG	Anti-Corruption Working Group
BO	Beneficial Ownership
CDD	Customer Due Diligence
CEO	Chief Executive Officer
CFATF	Caribbean Financial Action Task Force
CFO	Chief Financial Officer
CFT	Counter-Terrorist Financing
DNFBP	Designated Non-Financial Business or Profession
FATF	Financial Action Task Force
FI	Financial Institution
FIU	Financial Intelligence Unit
IO	Immediate Outcome
IN	Interpretive Note
ML	Money Laundering
NPO	Non-Profit Organisation
OECD	Organisation for Economic Co-operation and Development
PDG	Policy Development Group
R.	Recommendation
STaR	Stolen Asset Recovery Initiative
TCSP	Trust or Company Service Providers
TF	Terrorist Financing
UNODC	World Bank and United Nations Office of Drugs and Crime

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GUIDANCE ON TRANSPARENCY AND BENEFICIAL OWNERSHIP (RECOMMENDATIONS 24 & 25)

I. INTRODUCTION

1. Corporate vehicles[1]—such as companies, trusts, foundations, partnerships, and other types of legal persons and arrangements—conduct a wide variety of commercial and entrepreneurial activities. However, despite the essential and legitimate role that corporate vehicles play in the global economy, under certain conditions, they have been misused for illicit purposes, including money laundering (ML), bribery and corruption, insider dealings, tax fraud, terrorist financing (TF), and other illegal activities. This is because, for criminals trying to circumvent anti-money laundering (AML) and counter-terrorist financing (CFT) measures, corporate vehicles are an attractive way to disguise and convert the proceeds of crime before introducing them into the financial system.

2. The misuse of corporate vehicles could be significantly reduced if information regarding both the legal owner and the beneficial owner, the source of the corporate vehicle's assets, and its activities were readily available to the authorities.[2] Legal and beneficial ownership information can assist law enforcement and other competent authorities by identifying those natural persons who may be responsible for the underlying activity of concern, or who may have relevant information to further an investigation. This allows the authorities to "follow the money" in financial investigations involving suspect accounts/assets held by corporate vehicles. In particular, beneficial ownership information[3] can also help locate a given person's assets within a jurisdiction. However, countries face significant challenges when implementing measures to ensure the timely availability of accurate beneficial owner information. This is particularly challenging when it involves legal persons and legal arrangements spread across multiple jurisdictions.

3. The Financial Action Task Force (FATF) has established standards on transparency, so as to deter and prevent the misuse of corporate vehicles. The FATF Recommendations require countries[4] to ensure that adequate, accurate and timely information on the beneficial ownership of corporate vehicles is available and can be accessed by the competent authorities in a timely fashion. To the extent that such information is made available,[5] it may help financial institutions (FIs) and designated non-financial businesses and professions (DNFBPs) to implement the customer due diligence (CDD) requirements on corporate vehicles including to identify the beneficial owner, identify and manage ML/TF risks, and implement AML/CFT controls based on those risks (including

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1 This paper uses the term corporate vehicles to mean *legal persons* and *legal arrangements*, as defined in the glossary of the *FATF Recommendations*.

2 FATF (2006), and FATF & CFATF (2010).

3 The term *beneficial owner* is defined in chapters IV, and the terms *beneficial ownership information* are defined with respect to legal persons and legal arrangements in chapters V and VI respectively.

4 All references in this guidance paper to country or countries apply equally to territories or jurisdictions.

5 The Interpretive Note to Recommendation 24 at paragraph 13 requires countries to consider facilitating timely access by FIs and DNFBPs to a company's 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).

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suspicious activity reporting and sanctions requirements). The availability of such information, however, does not exempt FIs and DNFBPs from their other obligations under Recommendations 10 and 22. They should, in any case, not rely exclusively on such information. Concern over the misuse of corporate vehicles led the FATF to strengthen and clarify the standards on transparency.[6] While the high-level policy objectives remain unchanged, further detail was included in the standards to ensure that the mechanisms for implementation are understandable. The revision of the standards was intended to provide clarity to countries on how to achieve effective implementation.

4. Other international bodies are also taking concrete action to promote the transparency of corporate vehicles. For example, in 2013 G8 countries endorsed core principles on beneficial ownership, consistent with the FATF standards, and published action plans setting out the steps they will take to enhance transparency.[7] As well, the G20 Leaders publicly encouraged all countries to tackle the risks raised by opacity of corporate vehicles, and committed to leading by example in their implementation of the FATF standards on beneficial ownership, which are also relevant for tax purposes.[8] In addition, the OECD Working Group on Bribery considers in its monitoring reports whether lack of access to information about the beneficial ownership of legal persons is an obstacle to the effective enforcement of the offence of bribing a foreign public official.[9]

5. The purpose of the FATF standards on transparency and beneficial ownership is to prevent the misuse of corporate vehicles for money laundering or terrorist financing. However, it is recognised that these FATF standards support the efforts to prevent and detect other designated categories of offences such as tax crimes and corruption. In this respect, the measures that countries implement to enhance transparency in line with the FATF Recommendations may provide a platform to more effectively address serious concerns such as corruption, as well as to meet other international standards.[10]

6. Implementation of the FATF Recommendations on transparency and beneficial ownership has proved challenging.[11] Consequently, the FATF has developed this guidance paper to assist countries in their implementation of Recommendations 24 and 25, as well as Recommendation 1 as it relates to understanding the ML/FT risks of legal persons and legal arrangements. The audience of this guidance is primarily policy makers and practitioners in national authorities and the purpose is to assist them to identify, design and implement appropriate measures to prevent the misuse of corporate vehicles in line with the FATF standards. The guidance also explains the connection between CDD measures and specific transparency measures, and it may be useful to financial institutions and DNFBPs in their implementation of AML/CFT preventive measures. This guidance paper covers:

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6 The FATF Standards comprises the FATF Recommendations and Interpretive Notes, which were revised in February 2012 and have been endorsed by more than190 countries across the globe.

7 G8 Leaders Communiqué from the 2013 Lough Erne Summit.

8 G20 Leaders' Declaration (St. Petersburg Summit, 6 September 2013), and the G20 Communiqué from the Meeting of G20 Finance Ministers & Central Bank Governors (Moscow, 19-20 July 2013).

9 Monitoring reports on implementation of the *OECD Convention on Combating the Bribery of Foreign Public Officials in International Business Transactions* by its Parties can be found at: www.oecd.org/daf/anti-bribery/countryreportsontheimplementationoftheoecdanti-briberyconvetion.htm.

10 Such as the *United Nations Convention Against Corruption (UNCAC),* the *Criminal Law Convention on Corruption,* and the *OECD Convention on Combating the Bribery of Foreign Public Officials in International Business Transactions.*

11 See the results of the mutual evaluation reports of FATF and FATF-style regional bodies (FSRBs).

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a) An overview of how corporate vehicles can be misused and the challenges for countries in implementing measures to prevent such abuse (Section II)

b) The definition of beneficial owner (Section III)

c) Guidance to countries on effective mechanisms to combat the misuse of legal persons and legal arrangements (Section IV)

d) Guidance to countries on implementing measures to enhance the transparency of legal persons (Section V)

e) Guidance to countries on implementing measures to enhance the transparency of legal arrangements (Section VI)

f) The relationship between standards on transparency and beneficial ownership (Recommendations 24 & 25), and other Recommendations (CDD requirements (Recommendations 10/22 and wire transfers (Recommendation 16)) (Section VII)

g) Access to information by competent authorities (Section VIII), and

h) Guidance on international cooperation involving beneficial ownership information (Section IX).

7. This guidance is non-binding and does not override the purview of national authorities. It is intended to complement existing FATF guidance and other ongoing work[12] by building upon the available research, including relevant FATF typologies reports, and the experiences of countries. It also takes into account work being undertaken by other international bodies which are focusing on ensuring the transparency of corporate vehicles.

[12] In particular, FATF is developing guidance on the implementation of a risk-based approach for financial institutions and DNFBPs, including trust and company service providers, which, when complete, will complement this paper.

II. THE MISUSE OF LEGAL PERSONS AND ARRANGEMENTS

8. A number of important studies by the FATF,[13] and the World Bank and United Nations Office of Drugs and Crime's (UNODC) Stolen Asset Recovery Initiative (StAR)[14] have explored the misuse of corporate vehicles for illicit purposes, including ML/TF. In general, the lack of adequate, accurate and timely beneficial ownership information facilitates ML/TF by disguising:

- the **identity** of known or suspected criminals,
- the true **purpose** of an account or property held by a corporate vehicle, and/or
- the **source or use** of funds or property associated with a corporate vehicle.

9. For example, beneficial ownership information can be obscured through the use of:

a) **shell companies**[15] (which can be established with various forms of ownership structure), especially in cases where there is foreign ownership which is spread across jurisdictions

b) **complex ownership and control structures** involving many layers of shares registered in the name of other legal persons

c) **bearer shares** and **bearer share warrants**

d) **unrestricted use of legal persons as directors**

e) **formal nominee shareholders and directors** where the identity of the nominator is undisclosed

f) **informal nominee shareholders and directors**, such as close associates and family, and

g) **trusts and other legal arrangements** which enable a separation of legal ownership and beneficial ownership of assets.

h) **use of intermediaries in forming legal persons**, including professional intermediaries.

10. These problems are greatly exacerbated when different aspects of a corporate vehicle implicate numerous countries. Criminals often create, administer, control, own, and financially operate corporate vehicles from different countries, thereby preventing competent authorities in any one jurisdiction from obtaining all relevant information about a corporate vehicle which is

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13 FATF (2006) and FATF & CFATF (2010).

14 *The Puppet Masters* report was published in 2011 by the World Bank / UNODC StAR. This comprehensive report examined over 150 cases of large scale corruption and found that most cases of large-scale corruption involve the use of one or more corporate vehicles to conceal beneficial ownership. The report examines the use of legal structures to hide stolen assets, outlines in detail how corporate vehicles can be used to facilitate corruption, identifies significant challenges that countries face when seeking to implement measures to prevent corporate vehicles being misused in corruption schemes, and provides recommendations to countries on how to address these challenges.

15 For the purpose of this paper, shell companies are considered to be companies that are incorporated that have no significant operations or related assets.

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subject to an investigation into ML/TF, or associated predicate offences such as corruption or tax crimes. Generally, corporate vehicles can be created with ease in multiple countries, with ready access to the international financial system, and with beneficial owners and trust or company service providers (TCSPs) or other relevant professional advisors residing outside the jurisdiction where the corporate vehicle was created. Multi-jurisdictional structures (structures consisting of a series of corporate entities and trusts created in different countries) can be particularly difficult to trace when transactions between related entities that appear legitimate are used to launder criminal proceeds. In such instances, delays in obtaining the international cooperation needed to follow the money trail ultimately frustrate or undermine the investigation.

11. Companies with certain characteristics may present higher ML/TF risks. These include company structures that promote complexity and increase the difficulty for authorities to obtain accurate beneficial ownership information (e.g. shell companies and bearer shares) when conducting investigations involving corporate vehicles suspected of misuse.

12. Trusts can also be used to conceal the control of assets, including the proceeds of crime. For example, a trust may be created in one jurisdiction and used in another to hold assets across jurisdictions to disguise the origins of criminal proceeds. It may be used to enhance anonymity by completely disconnecting the beneficial owner from the names of the other parties including the trustee, settlor, protector or beneficiary.

13. The lack of access to beneficial ownership information of corporate vehicles by law enforcement and other competent authorities is a significant impediment, for example when such information is not held by any party. The availability of beneficial ownership information assists competent authorities by identifying those natural persons who may be responsible for the underlying activity of concern or who have information to further the investigation. This makes corporate vehicles less attractive for criminals. Financial institutions and DNFBPs also play an important role by obtaining beneficial ownership information which helps prevent the misuse of corporate vehicles in the financial system. However, countries face significant challenges when implementing measures to ensure the availability of accurate beneficial owner information. In many countries, information on the beneficial owner (in addition to the legal owner) of a corporate vehicle is not available as it is not collected and sufficiently verified at the time the corporate vehicle is created, nor at any stage throughout its existence. This frustrates the efforts of, law enforcement and other competent authorities to 'follow the money' in financial investigations that involve a corporate vehicles.

14. In practice, sophisticated schemes to launder the proceeds of crime often use a range of different corporate vehicles rather than just a single corporate vehicle. The same underlying principles for transparency apply to both legal persons and legal arrangements. However, the way in which measures are implemented can differ due to the particularities of the various corporate vehicles and therefore this paper will separate the guidance relating to the transparency of legal persons and that relating to legal arrangements.

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III. THE DEFINITION OF BENEFICIAL OWNER

Box 1. **Definition of 'beneficial owner' from the Glossary to the *FATF Recommendations***

Beneficial owner refers to the natural person(s) who ultimately[50] owns or controls a customer[51] 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.

[50] Reference to "ultimately owns or controls" and "ultimate effective control" refer to situations in which ownership/control is exercised through a chain of ownership or by means of control other than direct control.

[51] This definition should also apply to beneficial owner or a beneficiary under a life or other investment linked insurance policy.

Note: Footnote reference numbers from the Glossary to the *FATF Recommendations*

LEGAL PERSONS

15. The FATF definition of beneficial owner in the context of legal persons must be distinguished from the concepts of legal ownership and control.[16] On the one hand, legal ownership means the natural or legal persons who, according to the respective jurisdiction´s legal provisions, own the legal person. On the other hand, control refers to the ability of taking relevant decisions within the legal person and impose those resolutions, which can be acquired by several means (for example, by owning a controlling a block of shares). However, an essential element of the FATF definition of beneficial owner is that it extends beyond legal ownership and control to consider the notion of ultimate (actual) ownership and control. In other words, the FATF definition focuses on the natural (not legal) persons who actually own and take advantage of capital or assets of the legal person; as well as on those who really exert effective control over it (whether or not they occupy formal positions within that legal person), rather than just the (natural or legal) persons who are legally (on paper) entitled to do so. For example, if a company is legally owned by a second company (according to its corporate registration information), the beneficial owners are actually the natural persons who are behind that second company or ultimate holding company in the chain of ownership and who are controlling it. Likewise, persons listed in the corporate registration information as holding controlling positions within the company, but who are actually acting on behalf of someone else, cannot be considered beneficial owners because they are ultimately being used by someone else to exercise effective control over the company.

16. Another essential element to the FATF definition of beneficial owner is that it includes natural persons on whose behalf a transaction is being conducted, even where that person does not have actual or legal ownership or control over the customer. This reflects the distinction in customer due diligence (CDD) in Recommendation 10 which focuses on customer relationships and the occasional customer. This element of the FATF definition of beneficial owner focuses on individuals that are central to a transaction being conducted even where the transaction has been

[16] Interpretive Note to Recommendation 24 at paragraph 3.

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deliberately structured to avoid control or ownership of the customer but to retain the benefit of the transaction.

17. The beneficial ownership information that should be collected and maintained on legal persons is outlined further below in Section V.

LEGAL ARRANGEMENTS

18. The FATF definition of beneficial owner also applies in the context of legal arrangements, meaning the natural person(s), at the end of the chain, who ultimately owns or controls the legal arrangement, including those persons who exercise ultimate effective control over the legal arrangement, and/or the natural person(s) on whose behalf a transaction is being conducted. However, in this context, the specific characteristics of legal arrangements make it more complicated to identify the beneficial owner(s) in practice. For example, in a trust, the legal title and control of an asset are separated from the equitable interests in the asset. This means that different persons might own, benefit from, and control the trust, depending on the applicable trust law and the provisions of the document establishing the trust (for example, the trust deed). In some countries, trust law allows for the settlor and beneficiary (and sometimes even the trustee) to be the same person. Trust deeds also vary and may contain provisions that impact where ultimate control over the trust assets lies, including clauses under which the settlor reserves certain powers (such as the power to revoke the trust and have the trust assets returned). This may assist in determining the beneficial ownership of a trust and its related parties. Further guidance on how to manage this in practice is set out below in Section VI.

19. The beneficial ownership information that should be collected and maintained on legal arrangements is outlined further below in Section VI.

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IV. EFFECTIVE MECHANISMS TO COMBAT THE MISUSE OF LEGAL PERSONS AND ARRANGEMENTS

20. The purpose of this guidance is to assist countries with the implementation of Recommendations 24 and 25.

Box 2. **Recommendation 24 – Transparency and beneficial ownership of legal persons**

Countries should take measures to prevent the misuse of legal persons for money laundering or terrorist financing. Countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities. In particular, countries that have legal persons that are able to issue bearer shares or bearer share warrants, or which allow nominee shareholders or nominee directors, should take effective measures to ensure that they are not misused for money laundering or terrorist financing. Countries should consider measures to facilitate access to beneficial ownership and control information by financial institutions and DNFBPs undertaking the requirements set out in Recommendations 10 and 22.

Box 3. **Recommendation 25 – Transparency and beneficial ownership of legal arrangements**

Countries should take measures to prevent the misuse of legal arrangements for money laundering or terrorist financing. In particular, countries should ensure that there is adequate, accurate and timely information on express trusts, including information on the settlor, trustee and beneficiaries, that can be obtained or accessed in a timely fashion by competent authorities. Countries should consider measures to facilitate access to beneficial ownership and control information by financial institutions and DNFBPs undertaking the requirements set out in Recommendations 10 and 22.

21. In February 2013, the FATF agreed to a methodology for the assessment of a country's technical compliance with the *FATF Recommendations* and for reviewing the level of effectiveness of a country's AML/CFT system.[17] For the purpose of the assessment, effectiveness is the extent to which financial systems and economies are protected from the threats of money laundering and the financing of terrorism and proliferation. The FATF assesses effectiveness primarily on the basis of eleven Immediate Outcomes. This includes an assessment of Immediate Outcome 5 (IO.5) on legal persons and arrangements. IO.5 and the characteristics of an effective system are as follows:

[17] FATF (2013a).

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Box 4. **Immediate Outcome 5**

Legal persons and legal arrangements are prevented from misuse for money laundering or terrorist financing, and information on their beneficial ownership is available to competent authorities without impediments.

Legal persons and legal arrangements are prevented from misuse for money laundering or terrorist financing, and information on their beneficial ownership is available to competent authorities without impediments.

Characteristics of an effective system

Measures are in place to:

- prevent legal persons and legal arrangements from being used for criminal purposes;
- make legal persons and legal arrangements sufficiently transparent; and
- ensure that accurate and up-to-date basic and beneficial ownership information is available on a timely basis.

Basic information is available publicly, and beneficial ownership information is available to competent authorities. Persons who breach these measures are subject to effective, proportionate and dissuasive sanctions. This results in legal persons and legal arrangements being unattractive for criminals to misuse for money laundering and terrorist financing.

22. Compliance with Recommendations 24 and 25 is intrinsically linked with the effectiveness of the measures assessed in Immediate Outcome 5 to prevent the misuse of legal persons and arrangements for ML/TF. Recommendations 24 and 25 require countries to ensure that competent authorities have timely access to adequate, accurate and up-to-date beneficial ownership information. As a result, measures to implement Recommendations 24 and 25 are fundamental to implement an effective system. Given the links between the Recommendations and effectiveness, this guidance is designed to assist countries to implement Recommendations 24 and 25 in a way that achieves effectiveness.

V. ENHANCING THE TRANSPARENCY OF LEGAL PERSONS (R.24)

23. Countries should take measures to prevent the misuse of legal persons for ML/TF by ensuring that legal persons are sufficiently transparent, in line with Recommendation 24 and its Interpretive Note. The fundamental principle is that countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities. This section outlines the key issues for consideration for the implementation of Recommendation 24 and provides guidance for countries in this respect.

DEFINITION OF "LEGAL PERSONS"

24. Recommendation 24 applies broadly to "legal persons" meaning any entities, other than natural persons, that can establish a permanent customer relationship with a financial institution or otherwise own property. This can include companies, bodies corporate, foundations, anstalt, partnerships, or associations and other relevantly similar entities that have legal personality.[18] This can include non-profit organisations (NPOs) that can take a variety of forms which vary between jurisdictions, such as foundations, associations or cooperative societies.

SCOPE OF RECOMMENDATION 24

25. Much of Recommendation 24 speaks of how to apply comprehensive AML/CFT measures to companies. However, this does not mean that other types of legal persons are not covered. Recommendation 24 specifically requires countries to apply similar measures as those required for companies to foundations, anstalt, and limited liability partnerships, taking into account the specificities of their different forms and structures.[19]

26. For any other type of legal person that may exist in the country, the specific measures to be taken should be determined on the basis of a risk-based approach. In particular countries should review the ML/TF risks associated with these other types of legal person, take into account their different forms and structures and, based on the level of risk, determine measures that will achieve appropriate levels of transparency. At a minimum, these other types of legal persons should record and keep accurate and current similar types of basic information as required for companies, and the competent authorities should have timely access to such information. Additionally, competent authorities should have timely access to adequate, accurate and timely beneficial ownership information for these other types of legal person.[20]

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18 Glossary to the *FATF Recommendations.*

19 Interpretive Note to Recommendation 24, par. 16.

20 Interpretive Note to Recommendation 24, par. 17.

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UNDERSTANDING THE RISK ASSOCIATED WITH LEGAL PERSONS

27. As a starting point, countries must understand the legal persons that exist in their jurisdiction and the associated risks. Specifically, countries should have mechanisms to:

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) creating those legal persons; and (ii) obtaining and recording basic and beneficial ownership information on those legal persons

c) make the above information publicly available, and

d) assess the ML/TF risks associated with the different types of legal persons.[21]

28. Countries should conduct a comprehensive risk assessment of legal persons, and this should form part of the broader assessment of the ML/TF risks in the country.[22] This should include consideration of the relevant legal and regulatory contextual issues particular to the country. As part of the risk assessment, countries are recommended to review cases in which corporate vehicles are being misused for criminal purposes for the purpose of identifying typologies which indicate higher risk. This risk assessment should not only consider the domestic threats and vulnerabilities associated with legal persons incorporated under the laws of the jurisdiction, but should also consider international threats and vulnerabilities associated with legal persons incorporated in another jurisdiction yet administered in the home jurisdiction and bank accounts of domicile, particularly when jurisdictions with weak AML/CFT controls are involved. When assessing the risks associated with different types of legal persons, tries should also consider assessing the risks of specific jurisdictions, and types of service providers.[23]

BASIC OWNERSHIP INFORMATION

Company registries

29. The Interpretive Note to Recommendation 24 requires countries to ensure, as a necessary prerequisite, that basic information on companies is obtained and recorded by the company registry. This should include the following:[24]

- the company name, proof of incorporation, legal form and status, the address of the registered office, basic regulating powers (for example, memorandum and articles of association), and a list of directors

30. This information held by the company registry should be made publicly available.[25]

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21 Interpretive Note to Recommendation 24 at paragraph 2.

22 Under Recommendation 1, countries are required to identify, assess and understand the ML/TF risks. See the FATF (2012).

23 World Bank / UNODC StAR report (2011), p. 66.

24 Interpretive Note to Recommendation 24, par. 5.

25 Interpretive Note to Recommendation 24, par. 13.

Companies

31. Companies should be required to obtain and record basic information which should include the following:[26]

a) the company name, proof of incorporation, legal form and status, the address of the registered office, basic regulating powers (for example, memorandum and articles of association), a list of directors, and

b) a register of their shareholders or members, containing the number of shares held by each shareholder and categories of shares (including the nature of the associated voting rights). This can be recorded by the company itself or by a third person under the company's responsibility, and the information should be maintained within the country at a 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

32. The fundamental requirement of Recommendation 24 is that countries should ensure that there is adequate, accurate and timely information available on the beneficial ownership of all legal persons, and that their authorities can access this information in a timely manner.[27] Beneficial ownership information of legal persons should be determined as follows:

Step 1 (a) The identity of the natural persons (if any, as ownership interests can be so diversified that there are no natural persons, whether acting alone or together, who exercise control of the legal person through ownership) who ultimately have a controlling ownership interest in a legal person, and

(b) to the extent that there is doubt as to whether the persons with the controlling ownership interest are the beneficial owners, or where no natural person exerts control through ownership interests, the identity of the natural persons (if any) exercising control of the legal person through other means.

Step 2 Where no natural person is identified under (a) or (b) above, financial institutions should identify and take reasonable measures to verify the identity of the relevant natural person who holds the position of senior managing official.[28]

33. The following are some examples of natural persons who could be considered as beneficial owners on the basis that they are the ultimate owners/controllers of the legal person, either through their ownership interests, through positions held within the legal person or through other means:

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26 Interpretive Note to Recommendation 24, par. 4.

27 Interpretive Note to Recommendation 24, par. 1.

28 Interpretive Note to Recommendation 10, par. 5(b)(i).

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Natural persons who may control the legal person through ownership interests

a) **The natural person(s) who directly or indirectly holds a minimum percentage of ownership interest in the legal person (the threshold approach)**. For example, Recommendation 24 allows the determination of the controlling shareholders of a company based on a threshold (for example, any persons owning more than a certain percentage of the company, such as 25%).[29] The *FATF Recommendations* do not specify what threshold may be appropriate. In determining an appropriate minimum threshold, countries should consider the level of ML/TF risk identified for the various types of legal persons or minimum ownership thresholds established for particular legal persons pursuant to commercial or administrative law. The ownership interest approach suggests that it is likely that there could be more than one beneficial owner (for example, with a threshold of more than 25%, there could be a maximum of three beneficial owners). In any case, a percentage shareholding or ownership interest should be considered as a key evidential factor among others to be taken into account. It is also important to highlight that this approach includes the notion of indirect control which may extend beyond formal ownership or could be through a chain of corporate vehicles. Ultimately, countries should implement the concept of ownership interest that is sufficiently clear, practical, workable and enforceable for the full range of legal persons administered in a country.

b) **Shareholders who exercise control alone or together with other shareholders, including through any contract, understanding, relationship, intermediary or tiered entity (a majority interest approach)**. It is also important to highlight that this approach includes the notion of indirect control which may extend beyond legal (direct) ownership or could be through a chain of corporate vehicles and through nominees. This indirect control could be identified through various means, as shareholder's agreement, exercise of dominant influence or power to appoint senior management. Shareholders may thus collaborate to increase the level of control by a person through formal or informal agreements, or through the use of nominee shareholders. Countries will need to consider various types of ownership interests and the possibilities that exist within their country, including voting or economic rights. Other issues worth considering are whether the company has issued convertible stock or has any outstanding debt that is convertible into voting equity.

Natural persons who may control the legal person through other means

c) **The natural person(s) who exerts control of a legal person through other means** such as personal connections to persons in positions described above or that possess ownership.

d) **The natural person(s) who exerts control without ownership** by participating in the financing of the enterprise, or because of close and intimate family relationships, historical or contractual associations, or if a company defaults on certain payments.

[29] Interpretive Note to Recommendation 24, par. 1.

Furthermore, control may be presumed even if control is never actually exercised, such as using, enjoying or benefiting from the assets owned by the legal person.

Natural persons who may exercise control through positions held within a legal person

e) **The natural person(s) responsible for strategic decisions that fundamentally affect the business practices or general direction of the legal person**. Depending on the legal person and the country's laws, directors may or may not take an active role in exercising control over the affairs of the entity, but identification of the directors may still provide useful information. However, information on directors may be of limited value if a country allows for nominee directors acting on behalf of unidentified interests.

f) **The natural person(s) who exercises executive control over the daily or regular affairs of the legal person through a senior management position**, such as a chief executive officer (CEO), chief financial officer (CFO), managing or executive director, or president. The natural person(s) who has significant authority over a legal person's financial relationships (including with financial institutions that hold accounts on behalf of a legal person) and the ongoing financial affairs of the legal person.

OTHER MEASURES TO ENHANCING TRANSPARENCY

34. Recommendation 24 also requires countries to implement the following fundamental requirements to enhance the transparency of legal persons:

a) *Keep information accurate and up to date:* Basic and beneficial ownership information on all legal persons (including information provided to a company registry) should be accurate and updated on a timely basis.[30] This requirement may be explained in two parts. First, this information should be current and accurate at the time the legal person is created. Second, over time, the information must be kept accurate, and as current as possible meaning that, when changes occur, the information is updated promptly.

b) *Have sanctions for failing to comply:* Countries should ensure that any legal or natural person failing to comply with the requirements of Recommendation 24 is subject to liability and effective, proportionate and dissuasive sanctions, as appropriate.[31] The application of sanctions is outlined further below in the section on mechanisms for obtaining beneficial ownership information.

c) *Implement measures to overcome specific obstacles to the transparency of companies:* Countries must also take specific measures to prevent the misuse of other mechanisms that are frequently used to disguise ownership of companies, including bearer shares,[32] bearer share warrants, nominee shares and nominee directors.[33]

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30 Interpretive Note to Recommendation 24, par. 11.

31 Interpretive Note to Recommendation 24, par. 18.

32 The glossary of the *FATF Recommendations* defines *bearer shares* as negotiable instruments that accord ownership in a legal person to the person who possesses the bearer share certificate.

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Recommendation 24 gives countries some flexibility to choose which measures to implement, given their particular circumstances.[34]

35. The Interpretive Note to Recommendation 24 requires countries to take measures to prevent the misuse of bearer shares and bearer share warrants, for example, by applying one or more of the following mechanisms:[35]

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, and/or

d) requiring shareholders with a controlling interest to **notify the company**, and the company to **record their identity**.

36. The Interpretive Note to Recommendation 24 also requires countries to 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 this information to be included in the relevant register, and/or

b) requiring nominee shareholders and directors to be licensed, for their nominee status to be recorded in company registries, for the nominees to maintain information identifying their nominator, and make this information available to the competent authorities upon request.[36]

37. Other types of disclosure measures can also be useful to prevent the misuse of nominee shareholder and director arrangements. For example:

a) Where the nominator is a legal person, countries should consider requiring disclosure of the identity of any natural persons who own or control the nominator.

b) Where a director is a legal person, countries should consider requiring at least one director to be a natural person, or the provision of information of any natural person who controls the director.

c) TCSPs often serve as nominee directors and shareholders as a way to ensure that the names of the entity's beneficial owners are not recorded.[37] TCSPs are required to be subject to AML/CFT obligations and should be supervised (Recommendations 22 and

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33 Nominee arrangements, whereby individuals assume a management or ownership position on behalf of an unnamed principal, are often involved in grand schemes corruption, and pose significant obstacles to the usefulness of company registries: World Bank / UNODC StAR report (2011), pp. 51 and 72.

34 Interpretive Note to Recommendation 24, par. 14 to 15.

35 Interpretive Note to Recommendation 24, par. 14.

36 Interpretive Note to Recommendation 24, par. 15.

37 World Bank / UNODC StAR report (2011), p. 60.

28), including for CDD which includes beneficial ownership information, Where nominee services are commonplace, a country should consider a licensing regime for nominee shareholders and directors. Such a regime would require the licenced nominee to maintain information on the person on whose behalf they are acting.

d) Criminals often use informal nominee arrangements whereby friends, family members or associates purport to be the beneficial owners of corporate vehicles. This can be particularly challenging given the informal and private nature of such arrangements. This issue can be addressed by placing obligations on the nominee to disclose to the company registry the identity of the person on behalf of whom they are acting and imposing sanctions for false declarations.

e) Measures to complement disclosure, such as increased accountability or awareness of accountability, to deter the misuse of such arrangements.

MECHANISMS AND SOURCES FOR OBTAINING BENEFICIAL OWNERSHIP INFORMATION OF LEGAL PERSONS

38. Information that relates to the beneficial ownership of corporate vehicles can be found in a number of different places, including company registries, financial institutions, DNFBPs, the legal person itself, and other national authorities, such as tax authorities or stock exchange commissions. The *FATF Recommendations* recognise these different sources and the need to provide flexibility for countries to implement the requirements in a manner that corresponds with their legal, regulatory, economic and cultural characteristics. An effective system is one that prevents the misuse of legal persons for criminal purposes. The interpretative note to Recommendation 24 states that it is very likely that countries will need to utilise a combination of mechanisms to achieve this objective. Whichever mechanism(s) is used, the fundamental requirement relating to beneficial ownership information remains the same. Countries should ensure that either:

1. information on the beneficial ownership of a company is obtained by that company and available at a specified location in their country; or
2. there are mechanisms in place so that the beneficial ownership of a company can be determined in a timely manner by a competent authority.[38]

39. Persons who breach these measures should be subject to effective, proportionate and dissuasive sanctions. An effective system may include a combination of the mechanisms outlined below. Such a system ensures that competent authorities have timely access to information held by the full range of parties that collect and hold ownership information, including financial institutions, DNFBPs, company registries, and/or companies themselves. Countries should consider these characteristics of an effective system when developing and implementing mechanisms in line with this guidance for the implementation of Recommendation 24.

40. For companies, Recommendation 24 sets out three options for the practical steps that countries could take to ensure that beneficial ownership information is obtained and available.

[38] Interpretive Note to Recommendation 24 at par. 7 and Immediate Outcome 5 of the *FATF Methodology*, FATF (2013a).

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Countries may choose the mechanisms they rely on to ensure the availability of beneficial ownership information on companies. In particular, 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[39] to obtain and hold up-to-date information on the companies' beneficial ownership, and/or

c) using existing information, including: (i) information obtained by financial institutions and/or DNFBPs, in accordance with Recommendations 10 and 22; (ii) information held by other competent authorities on the legal and beneficial ownership of companies; (iii) the basic information held by the company; and (iv) available information on companies listed on a stock exchange, where disclosure requirements ensure adequate transparency of beneficial ownership.

41. While the implementation of any of these mechanisms may be sufficient to meet the standards, in practice, since they do not exclude each other, countries may use a combination of these mechanisms to achieve the objectives of Recommendation 24.[40] Countries should consider the feasibility of the possible mechanisms based on their particular circumstances and risk assessment. In determining the appropriate mechanism, countries should seek to strike an appropriate balance between allowing the legitimate operation of corporate vehicles and the need to combat ML/TF. This guidance paper is not intended to indicate a preference for any of the mechanisms offered. Rather, it provides guidance for determining and implementing measures.

Mechanism #1 – Company registries

42. Countries may implement Recommendation 24 by requiring company registries to obtain and hold up to date information on beneficial ownership.[41]

43. Company registries[42] are a valuable source of information about the ownership of legal persons. Pursuant to Recommendation 24, all companies created in a country should be registered in a company registry which should record and maintain (at a minimum) basic information on a company, including company name, proof of incorporation, legal form and status, address of the registered office, basic regulating powers and list of directors.[43] The basic information held by

[39] Measures taken should be proportionate to the level of risk or complexity induced by the ownership structure of the company or the nature of the controlling shareholders.

[40] Interpretive Note to Recommendation 24, par. 8.

[41] Interpretive Note to Recommendation 24, par. 8(a). While par. 8(a) includes requiring companies or company registries to obtain and hold beneficial ownership information, issues relating to companies holding such information are discussed under Mechanism #2 below.

[42] Interpretive Note to Recommendation 24 (footnote 40) defines a *company registry* as a register in the country of companies incorporated or licensed in that country and normally maintained by or for the incorporating authority. It does not refer to information held by or for the company itself.

[43] Interpretive Note to Recommendation 24, par. 4(a) and 5.

registries should be made publicly available to facilitate timely access by financial institutions, DNFBPs and other competent authorities.[44] A well-resourced and proactive company registry holding beneficial ownership information can be an effective mechanism because it allows law enforcement authorities to access such information from a single source.

44. The role of company registries varies greatly between countries, as does the level and quality of information obtained on companies. Countries should be aware of any issues that could negatively impact the reliability of the information contained in the company registry. For example, many company registries play a passive role, acting as repositories of information or documents, rather than undertaking checks or other measures to ensure that the information they receive is accurate. Additionally, in many countries, company registry information is not always reliably kept up to date. Where these issues exist, countries should consider taking measures to enhance the reliability of information contained in their company registry.

45. Certainly, a well-resourced and proactive company registry holding beneficial ownership information can be an effective mechanism because it allows competent authorities to access such information from a single source. Company registries often do not collect beneficial ownership information and were traditionally established to facilitate company formation and access to related information for trade purposes. Consequently, most countries seeking to implement the beneficial ownership requirements through an existing company registry may need to substantially change its role, functions and resourcing. Below are some examples of considerations for countries seeking to establish a registry of beneficial ownership.

a) Are the registry's statutory objectives sufficiently broad to cover the role of collecting, verifying and maintaining beneficial ownership information? Should the company registry be required to verify beneficial ownership information and should it be given AML/CFT obligations?

b) Does the company registry authority have sufficient human and capital resources to enable it to undertake the additional functions of collecting, verifying and maintaining beneficial ownership information? A good understanding and knowledge of corporate law is necessary to determine the beneficial owner of a complicated legal structure.

c) Are there mechanisms for ensuring that the beneficial ownership information provided to the registry is accurate and up to date? Are individual applicants who form legal persons required to submit accurate beneficial ownership information to the registry when the legal person is created? Does the registry verify the accuracy of the information it receives using reliable, independent source documents, data or information? For example, could the provision of beneficial ownership information to the company registry be made a condition for incorporation?

d) How are changes in the beneficial ownership information monitored and recorded over time? Are legal persons and/or beneficial owners required to provide information to the registry within a defined time period once any changes are made?

[44] Interpretive Note to 24, par. 13.

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e) Is there a competent authority with responsibility for enforcing these requirements? Are there effective, appropriate and dissuasive sanctions for failing to comply with these requirements? Are legal persons and/or beneficial owners who fail to comply with disclosure and updating requirements (for example, by failing to disclose, or submitting inaccurate or incomplete information) subject to liability and sanctions?[45]

f) Is the information held by the registry available to competent authorities in a timely manner? Does the system allow the registry to be searched using multiple fields? Does the registry provide authorities with direct access through remote login or similar mechanisms? Or do authorities have to request information from the registry?

g) Is the information held by the registry subject to limited availability or is it publicly available?[46] Beneficial ownership information may, as required by the FATF standards, be available only to selected competent authorities (including law enforcement), and possibly to financial institutions and DNFBPs. Consideration should be given to how technological advances may allow registries to provide public access (although this may raise and need to be balanced against privacy issues). For example, although this is not required by the FATF Recommendations, some countries may be able to provide public access to information through a searchable online database which would increase transparency by allowing greater scrutiny of information by, for example, the civil society, and timely access to information by financial institutions, DNFBPs and overseas authorities.

h) Are there jurisdictional or constitutional impediments to implementing an effective registry of beneficial ownership? For example, in some countries, state/provincial level authorities have responsibility for creating and regulating legal persons, and there are constitutional impediments that limit the national authorities' jurisdiction to impose beneficial ownership requirements on those authorities. Even where constitutional impediments do not exist, it is challenging to ensure the consistent application of beneficial ownership requirements on all the registries within a provincial/state-based system. Countries facing these challenges must still ensure that their company registries hold basic information, but may need to combine this with other measures to ensure the timely availability of adequate and accurate beneficial ownership information. Another legal impediment for some jurisdictions is whether data protection laws conflict with the sharing of beneficial ownership information as described in (g).

[45] See Interpretive Note to 24 and World Bank / UNODC StAR report (2011), par. 75.

[46] See Interpretive Note to 24, par. 13

Box 5. **Example features – Company registry holds beneficial ownership information**

A mechanism which provides for the company registry to hold beneficial ownership (BO) information could include some or all of the following features:

- Companies are required to provide basic and BO information for the company registry upon registration.
- Companies are required to provide basic and BO information both annually and when changes occur to ensure that the information is up-to-date.
- Companies are required to make a declaration regarding the beneficial owner and the ownership structure. This could include the provision of copies of documentation for the verification of identity.
- The company registry authority is required to verify the identity of the beneficial owners.
- Companies that fail to provide BO information are subject to dissuasive administrative sanctions, such as restrictions on incorporation, and such sanctions are applied.
- The provision of false information is subject to proportionate and dissuasive administrative and criminal sanctions for the company. The company's representative could also be held personally liable.
- The company registry authority regularly applies such sanctions when obligations are breached.
- The company registry authority takes a proactive role, including checking of information against other sources (such as shareholder, population or national identity registers), to identify anomalies or inconsistencies.
- Information in the company register is recorded digitally and is searchable. The search function supports searches by multiple fields.
- Competent authorities have access to the company registry online, including full search capability.
- The company registry authority has the capability to identify indicators of misuse or unusual activity (red flags) in the database.
- Basic information on the company is publicly available, BO information could also be made publicly available, or available to financial institutions and DNFBPs.
- The company registry authority may also obtain and hold shareholder information on companies in addition to beneficial ownership information.
- The company registry authority collects information on the board of directors, senior management and the natural person authorized to act on behalf of the company. In addition, directors are required to be natural persons.
- The measures under this mechanism are combined with aspects of mechanism 2 (outlined below) given that the company will be providing information to the registry.

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Mechanism #2(a) – Require companies to hold beneficial ownership information

46. Countries may implement Recommendation 24 by requiring companies themselves to obtain and hold up-to-date information on beneficial ownership.[47] As a starting point, countries should require companies to maintain a list of their shareholders or members.[48] Below are some considerations for countries taking this approach:

a) Companies keep shareholder registers, such as shareholder lists, that are then available to competent authorities.[49] However, shareholder registers contain information on legal ownership, but not necessarily on beneficial ownership.

b) Are there mechanisms in place to ensure that the beneficial ownership information collected by companies is accurate and up-to-date? Do companies have powers to require updated information from their shareholders (including the power to request beneficial ownership information at any time)? If so, are there sanctions for failing to respond or provide false information for the legal person and its representatives (for example, could the company apply to the court for an order subjecting the shares to restrictions, such as, the suspension of dividends)?

c) Are shareholders required to disclose the names of person(s) on whose behalf shares are held? When there are any changes in ownership or control, are shareholders required to notify the company within a set time period?

d) If countries choose to implement this mechanism, how will companies become aware of their obligations? Have the authorities provided guidance to companies or shareholders explaining their obligations, and is this guidance publicly available?

e) Are competent authorities able to access this information in a timely manner? How can the competent authorities obtain beneficial ownership information without alerting the company of a potential investigation? Is beneficial ownership information required to be accessible within the country of incorporation? How are companies that have no physical presence in the country of incorporation dealt with?

f) Are legal persons obligated to keep updated the list of their representatives, including their roles, functions and authority?

Mechanism #2(b) – Require companies to take reasonable measures

47. Countries may also implement Recommendation 24 by requiring companies to take reasonable measures to obtain and hold up-to-date information on their beneficial ownership.[50] Countries should establish a clear and practical framework to outline the meaning of reasonable measures in this instance. The extent to which companies take measures to obtain and hold up-to-date beneficial ownership information should be proportionate to the level of ML/TF risk or

[47] Interpretive Note to Recommendation 24, par. 8(a).

[48] Interpretive Note to Recommendation 24, par. 6.

[49] FATF (2006), p. 13.

[50] Interpretive Note to Recommendation 24, par. 8(b).

complexity induced by the ownership structure of the company or the nature of the controlling shareholders. In addition to the considerations identified above under mechanism 2, the following are considerations for countries taking this approach:

a) Has the country identified and assessed the ML/TF risks associated with legal persons, to enable it to implement a risk-based approach as is required by Recommendations 1 and 24?

b) Has the country established a legal or enforceable framework setting forth a mechanism governing how companies should take 'reasonable measures' to obtain and hold up-to-date beneficial ownership information? Is it based on the country's understanding of ML/TF risks, through a comprehensive risk assessment? Are there different requirements for different types of companies?

c) Are companies permitted flexibility to determine what measures are reasonable? If so, is there a minimum level of action that the company should take? Have authorities provided companies with clear guidance on what measures they expect companies to take in certain circumstances? If the company is implementing their measures based on ML/TF risks, do companies have a good understanding of their ML/TF risks?

Box 6. **Example features – Companies holding beneficial ownership information**

A mechanism which provides for companies to hold, or take reasonable measures to hold BO information, could include some or all of the following features:

- Companies are required to hold beneficial ownership information, and they are provided with the authority to request information from shareholders on the beneficial ownership of shares.
- Companies can seek to apply restrictions against shareholders for failure to provide BO information through appropriate courts or authorities, such as in relation to shareholder voting rights, or the sale of shares.
- The provision of false information by shareholders is subject to dissuasive administrative or criminal sanctions.
- Shareholders are required to provide information on changes to beneficial ownership without delay.
- Companies are required to provide lists of shareholders and beneficial owners to competent authorities upon request in a timely manner.
- Failure by a company to provide the information to authorities is subject to sanctions, which may include administrative penalties or restrictions on incorporation.
- Lists of shareholders and beneficial owners are required to be held, and provided, in electronic form.
- Where lists of shareholders and beneficial owners are held with a third party provider on the company's behalf, the company remains liable for the obligations.

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- Companies are required to understand and hold information on their ownership structure, including any chain of ownership.
- Where BO information cannot be identified, companies are required to publish this fact on their website.
- Any companies exempt from holding BO information are exempt by the country on the basis of low ML/TF risk.
- Beneficial ownership information is required to be held in the country of incorporation.
- Companies and shareholders are made aware of their obligations through the provision of guidance and awareness raising activities, for example through the provision of information to companies upon registration.

Mechanism #3 – Reliance on existing information

48. Countries may also implement Recommendation 24 by using existing information collected on the beneficial ownership of corporate entities to identify beneficial owner.[51] Possible sources of information include: company registries and other types of registries (such as, land, motor vehicle and moveable property registries); financial institutions and DNFBPs; other authorities (such as supervisors or tax authorities; information held by stock exchanges, and commercial databases.[52] The identification by other authorities (for example tax authorities or financial supervisors) of information that can be useful for AML/CFT purposes may assist in enhancing companies' co-operation and improve the mechanisms for determining beneficial ownership. Below are some considerations for countries taking this approach.

a) Do the competent authorities (particularly law enforcement) know where beneficial ownership information is held? Do they have timely access to such information where appropriate? Do the law enforcement authorities have sufficient powers? Are there mechanisms in place to facilitate authorities' access to information held by other authorities (such as tax authorities, supervisory authorities, or land titles offices) so that it can be effectively used in investigations? Are there sufficient mechanisms for information sharing between competent authorities?

b) In relation to tax information, are other competent authorities (particularly law enforcement) aware of the information collected and maintained by tax authorities? The extent to which tax authorities collect information on the ownership and control of legal persons varies greatly from country to country, depending on the tax regime.[53]

c) Are commercial databases available which might contain beneficial ownership information? Many offer risk management services which collect data on corporate entities, and are primarily used by the private sector when carrying out CDD.

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51 Interpretive Note to Recommendation 24, par. 8(c).

52 World Bank / UNODC StAR report (2011), pp. 51 and 77.

53 World Bank / UNODC StAR report (2011), p. 82.

49. There are also a number of specific considerations when relying on the CDD information obtained and held by financial institutions and DNFBPs as outlined below:

a) Do financial institutions and DNFBPs adequately implement CDD obligations, including measures to identify and verify the identity of the beneficial owner, as is required by Recommendations 10 and 22? Are financial institutions and DNFBPs adequately supervised (Recommendations 26 and 28)?

b) Have financial institutions and DNFBPs been provided with sufficient guidance on how to properly conduct CDD (Recommendation 34)? Such guidance will facilitate implementation of the CDD requirements, thereby improving the quality and sufficiency of information on beneficial ownership being collected by these entities. For example, such guidance could identify the types of documents or resources which can be used to verify the legal status and indirect or direct ownership and control of legal persons created within the country.[54]

c) Can competent authorities access the CDD information held by financial institutions and DNFBPs in a timely manner (Recommendation 30)? Do competent authorities have sufficient processes and procedures, and established relationships, in place to avoid undue delays in receiving information from financial institutions and DNFBPs and ensure that information can be accessed in a timely manner? Do financial institutions and DNFBPs possess a good understanding and knowledge of corporate law to assist in determining the beneficial owner of a complicated legal structure?

d) How will competent authorities be aware of the existence of the legal person's accounts held by a financial institution (Recommendation 31)? For example, does the jurisdiction have a mechanism to identify the holders of bank accounts or a similar mechanism that may assist competent authorities, upon appropriate authority, to identify the relevant financial institutions to approach in a timely manner.

e) How will competent authorities be aware of DNFBPs, including TCSPs, with whom the legal person is a customer? Are TCSPs subject to registration or licencing requirements, enabling them to be identified and contacted easily?

Box 7. **Examples features – other sources and a combined approach**

A mechanism which establishes a combined approach for beneficial ownership could include some or all of the following features:

- Financial institutions carry out CDD and understand their CDD obligations with respect to beneficial ownership, and are subject to AML/CFT supervision, in line with Recommendation 10.
- If the company registry does not obtain and hold information on the beneficial owner, it may hold information relevant for beneficial ownership including directors, senior

[54] See section VII of this paper for a more comprehensive discussion of the CDD requirements applicable to financial institutions and DNFBPs, and how effective implementation of those CDD requirements can help countries meet their obligations under Recommendations 24 and 25.

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management and the company's representative.

- BO information held by the tax authority is accessible in a timely manner to competent authorities, and law enforcement authorities are aware of the information available and have mechanisms for timely access to it.
- Competent authorities are able to identify financial institutions that may hold BO information in a timely manner, for example, through a national register of bank accounts.
- Competent authorities are able to identify TCSPs that may hold BO information in a timely manner, for example through a central register of transactions of shares, or a register of TCSPs, or any other mechanism the supervisor uses to identify TCSPs.
- Other information on accurate and current beneficial ownership is available from asset registries such as for land, property, vehicles, shares or other assets.

OTHER MEASURES TO ENHANCE THE TRANSPARENCY OF COMPANIES

50. Regardless of which of the above mechanisms is used, Recommendation 24 specifically requires countries to establish mechanisms to ensure that companies co-operate with competent authorities to the fullest extent possible in determining the beneficial owner. Countries have three options for facilitating such cooperation which may be used alone or in combination.[55]

a) Require companies to authorise[56] at least one natural person resident in the country of incorporation to be accountable to the competent authorities for providing all basic information and available beneficial ownership information, and giving further assistance to the authorities as needed.

b) Require companies to authorise a company service provider (for example, a lawyer, accountant or other TCSP) in the country to be accountable to the competent authorities for providing such information and assistance.

c) Take other comparable measures which can effectively ensure a company's cooperation.

51. Additionally, companies and all the persons, authorities and entities mentioned above (or if the company is being dissolved, its administrators, liquidators or other persons involved in the dissolution), are required to 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.[57]

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55 Interpretive Note to Recommendation 24, par. 9.

56 Board members of senior management may not require specific authorisation by the company, as this might already fall within the scope of their authority.

57 Interpretive Note to Recommendation 24, par. 10.

52. Below are some considerations for countries implementing these requirements:

a) Are companies aware of their obligations to give assistance to the authorities? Have the authorities provided guidance to companies explaining their obligations, and is this guidance publicly available?

b) Where countries have implemented a mechanism that allows companies to cooperate with the competent authorities through another person in the country, is that person readily identifiable to the competent authorities? Is the person required to respond in a timely fashion to authorized requests for beneficial ownership information from competent authorities? Is the person aware of its obligations to maintain and produce adequate, accurate and current beneficial ownership information to the authorities?

c) Is there a competent authority with responsibility for enforcing these requirements? Are there effective, appropriate and dissuasive sanctions for failing to comply with these requirements? Are third parties who are responsible for cooperating with the authorities subject to liability and sanctions for failure to comply with these obligations?

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VI. ENHANCING TRANSPARENCY OF LEGAL ARRANGEMENTS (RECOMMENDATION 25)

53. Countries should take measures to prevent the misuse of legal arrangements for ML/TF by ensuring that legal arrangements are sufficiently transparent, in line with Recommendation 25 and its Interpretive Note. In particular, countries should ensure that there is adequate, accurate and timely information on express trusts (including information on the settlor, trustee and beneficiaries) that can be obtained or accessed in a timely fashion by competent authorities. This section outlines the key issues for consideration and provides guidance to countries for the implementation of the obligations in Recommendation 25 to enhance the transparency of legal arrangements.

SCOPE OF RECOMMENDATION 25

54. Recommendation 25 applies broadly to "legal arrangements" meaning express trusts[58] or other similar arrangements, including fiducie, treuhand and fideicomiso.[59]

55. Much of Recommendation 25 focuses on how to apply comprehensive AML/CFT measures to trusts. Trusts enable property to be managed by one person on behalf of another, and are a traditional feature of common law. They also exist in some civil law countries or are managed by entities in these countries, and have a wide range of legitimate uses (for example, the protection of beneficiaries, the creation of investment vehicles and pension funds, and the management of gifts, bequests or charitable donations). Given the ease with which some types of trust can be established, the involvement of an external professional such as a notary or TCSP is not always necessary to establish one. Specific registration requirements for trusts are uncommon, though information may be required in tax declarations if the administration of the trust generates income. On the other hand, trusts usually do not possess a separate legal personality and so cannot conduct transactions or own assets in their own right, but only through their trustees.

56. Some countries have implemented measures that may improve the transparency of trusts including: establishing registration or other regulatory regimes for charitable trusts; imposing responsibilities on relevant DNFBPs including lawyers or TCSPs; imposing requirements to involve specific types of regulated entities in the formation of trusts; collection of information by tax administrations or other competent authorities; establishing registries of professional trustees; and establishing trust registries.

57. For other legal arrangements that have similar structures or functions, Recommendation 25 specifically requires countries to take similar measures to those required for trusts, with a view to achieving similar levels of transparency. At a minimum, countries should ensure that information

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58 The term *express trust* is defined in the glossary to the *FATF Recommendations* to mean a trust clearly created by the settlor, usually in the form of a document (such as a written deed of trust). They are to be contrasted with trusts which come into being through the operation of the law and do not result from the clear intent or decision of a settlor to create a trust or similar legal arrangements (such as a constructive trust).

59 Glossary to the *FATF Recommendations.*

similar to that specified in respect of trusts should be recorded and kept accurate and current, and that such information is accessible in a timely way by competent authorities.[60]

UNDERSTANDING THE RISK ASSOCIATED WITH LEGAL ARRANGEMENTS

58. As a starting point, countries should understand the legal arrangements that exist in their jurisdiction and the associated ML/TF risks. Countries should conduct a comprehensive risk assessment of legal arrangements, and this should form part of the broader assessment of the ML/TF risks in the country.[61] This should include consideration of the relevant legal and regulatory contextual issues particular to the country. As part of the risk assessment, countries are recommended to identify typologies which indicate higher risks by reviewing cases where trusts and other legal arrangements are being misused for criminal purposes. When assessing the risks associated with different types of legal arrangements, countries could consider assessing the risks of specific jurisdictions, and types of service providers.[62] This risk assessment should consider both the threats and vulnerabilities associated with legal arrangements that can be created in the jurisdiction, as well as the threats and vulnerabilities associated with legal arrangements created under the law of another jurisdiction and operating in the jurisdiction performing the risk assessment.

REQUIREMENTS FOR TRUST LAW COUNTRIES

59. Trust law countries[63] should require the trustees of any express trust governed under their law to obtain and hold adequate, accurate, and current beneficial ownership information regarding the trust. This information should be kept as accurate, current and up-to-date as possible by updating it within a reasonable period following any change. In this context, beneficial ownership information includes:

a) information on the identity of the settlor, trustee(s), protector (if any), beneficiary or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust, and

b) basic information on other regulated agents of, and service providers to the trust, including investment advisors or managers, accountants, and tax advisors.[64]

60. The purpose of these requirements is to ensure that trustees are always responsible for holding this information (whichever country the trustee is in, and regardless of where the trust is located). In most instances, this is information that the trustee would normally have in any case because holding it is either a legal requirement, or a practical necessity in meeting the responsibilities of a trustee. It is important to ensure that the trustee identifies any person who

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60 Interpretive Note to Recommendation 25 at paragraph 9.

61 Under Recommendation 1, countries are required to identify, assess and understand the ML/TF risks. See FATF (2012).

62 World Bank / UNODC StAR report (2011), p. 66.

63 For the purposes of this guidance paper, a *trust law country* is any country whose law allows for the creation and recognition of trusts.

64 Interpretive Note to Recommendation 25, par. 1.

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owns or controls the trust in whatever capacity they may be in. As noted, beneficial ownership information for legal arrangements includes information on the identity of the settlor, trustee, beneficiaries or class of beneficiaries, protector (if any) and any other person exercising control over the trust. The specific parties involved may vary depending on the nature of the trust and countries should establish mechanisms based on the nature of express trusts being established under their laws.

61. It is not necessary for countries to include these requirements in legislation, provided that appropriate obligations to such effect exist for trustees (for example, through common law or case law).[65] It is not expected that a trust law country would be required to enforce such requirements globally on every trust governed by their law—only that it is an obligation on the trustee which could be enforced (with appropriate sanctions) by any competent authority with competence to deal with the trust.

COMMON REQUIREMENTS FOR ALL COUNTRIES

62. Recommendation 25 includes requirements for all countries, whether they recognise trust law or not. The *FATF Recommendations* recognise that many countries do not have trust law and may not give legal recognition to trusts and there is no requirement for countries to do so. However, even though many countries do not have trust law and may not recognise trusts, people in those countries frequently create trusts–governed by the law of a different country—as a way to manage their assets. This means that if a trust is created under the law of one country, but the trust is administered (and the trustee and trust assets are located) in a different country, the latter is likely to have more contact with the trust and its assets, as well as persons or entities involved in the trust. Therefore, that country should be the country responsible for the trust and implement appropriate sanctions as necessary.

63. For this reason, Recommendation 25 places specific requirements on all countries, irrespective of whether the country recognises trust law. In particular, all countries should implement the following measures:

a) Require that trustees disclose their status to financial institutions and DNFBPs when forming a business relationship or carrying out an occasional transaction above the threshold.[66] The trustee needs to actively make such disclosure (and not only upon the request of a competent authority). Trustees should not be prevented from doing this even if, for example, the terms of the trust deed require them to conceal their status. The only source of information on the trustee often available comes from the business relationship of a financial institution/DNFBP and the trustee.

b) Require professional trustees to maintain the information they hold for at least five years after their involvement with the trust ceases. Countries are also encouraged to

[65] Interpretive Note to Recommendation 25, par. 8.

[66] See Recommendation 10 for further details on the thresholds for occasional transactions.

extend this requirement to non-professional trustees and the other relevant authorities, persons and entities.[67]

OTHER POSSIBLE MEASURES

64. Countries are encouraged to ensure that other relevant authorities, persons and entities hold information on all trusts with which they have a relationship. Potential sources of information on trusts, trustees, and trust assets are:

a) registries (for example, a central registry of trusts or trust assets), or asset registries for land, property, vehicles, shares or other assets

b) other competent authorities that hold information on trusts and trustees (for example, tax authorities which collect information on assets and income relating to trusts), and

c) other agents and service providers to the trust, including investment advisors or managers, lawyers, or trust and company service providers.[68]

65. Countries should also consider measures to facilitate the access of financial institutions and DNFBPs to the information held by these other authorities, persons and entities.

66. Although the above measures are not required, countries could consider their implementation (alone or in combination) to help meet the standards of Recommendation 25 for countries to ensure that the competent authorities have timely access to the beneficial ownership information on trusts. Below are some considerations for countries choosing to implement this approach.

a) ***Registries:*** Although not required the FATF Recommendations, a centralised registry of trusts to which disclosure must be made of the information pertaining to all trusts (including information on the settlor and beneficiary) could be an effective mechanism as it would provide timely information on the trust and (if kept accurate) could provide competent authorities with access to necessary information for disclosure and international cooperation. Centralised trust registries would also ensure that beneficial ownership information is freely available to competent authorities across jurisdictions in a timely manner, without tipping off a trust under investigation. For example, establishing a central trust registry may be an effective approach where a limited number of trusts exist in a country. However, for some countries, requiring the registration of trusts would require changes to the legal basis of trusts. In common law countries for instance, trusts, unlike companies, are private arrangements that are not created by, nor need to be acknowledged by the state in order to exist. Although most countries do not require trusts to register, they may still require the registration of

[67] Interpretive Note to 25, par. 5 (Other authorities, persons and entities who might be holding useful information on trusts includes trust registries, tax authorities, agents and services providers to the trust, including investment advisors or managers, lawyers, or TCSPs).

[68] Interpretive Note to Recommendation 25, par. 3.

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trust information (including information on the settlor and beneficiary/beneficiaries) in at least some specific circumstances. For example, some countries require trusts with a charitable purpose to register as charities, either with a dedicated charities regulator or with the tax authorities responsible for administering any tax exemptions given to charitable organisations. Such arrangements often apply to both charitable trusts and to legal persons which are charities.

b) ***Other competent authorities:*** In many countries, tax authorities are the most extensive source of information on the ownership and control of trusts, though they will only hold information if the trust generates tax liabilities in the jurisdiction. Typically, if a trust receives income above a specific threshold, the trustee must file a tax return with the tax authorities on behalf of the trust. Such a tax return may include information regarding the trust's trustee, the settlor, and each beneficiary with taxable income from the trust in that taxation period. However, not all countries require information on beneficiaries to be included. Countries should review the information collected by other authorities and consider approaches to ensure that competent authorities have timely access to information already being collected on trusts for other purposes. Some countries have agreements for the automatic exchange of tax information which may provide for greater exchange of information on trusts between different jurisdictions. In particular, through this system, banks will report certain beneficial ownership information for tax purposes on an annual basis to a domestic tax authority on a trust that holds an account with the bank and where the beneficiary is resident of a foreign jurisdiction. The domestic tax authority will automatically pass on that information to the foreign jurisdiction's tax authority. Whether the foreign jurisdiction's tax authority can pass on this information to other competent authorities must be examined in light of the confidentiality and data safeguards included in the legal instrument providing for automatic exchange of tax information.

c) ***Other agents and service providers to the trust:*** Recommendation 22 requires all lawyers, notaries, other independent legal professionals and accountants to be subject to record keeping requirements when they are creating, operating or managing a legal arrangement. Recommendation 22 also requires all TCSPs to be subject to record keeping requirements when they are acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another form of legal arrangement. Countries could also consider a centralised registry of professional trustees (or any other equivalent mechanisms) to ensure that the regulator identifies all trustees established in a given jurisdictions. This could facilitate timely access by the competent authorities to beneficial ownership information held by the trustee in the country.

OTHER REQUIREMENTS AND A COMBINED APPROACH

67. In many countries, a combined approach using several of these sources of information may be the most effective approach to ensure that competent authorities can access information in a timely fashion. An effective approach is one that prevents the misuse of legal arrangements for criminal purposes and includes measures that make legal arrangements sufficiently transparent by ensuring

that accurate and up-to-date basic and beneficial ownership information is available to competent authorities on a timely basis.[69] Persons who fail to comply with their obligations established in line with the *FATF Recommendations* should be subject to effective, proportionate and dissuasive sanctions. Such a system ensures that competent authorities have timely access to information held by parties that collect and hold basic and beneficial ownership information. Regardless of which approach is chosen, countries should ensure that there are clear responsibilities and consider these characteristics of an effective system when developing and implementing mechanisms in line with this guidance for the implementation of Recommendation 25.

68. Countries should hold trustees liable for failing to perform their obligations as outlined above, or make them subject to effective, proportionate and dissuasive sanctions (whether criminal, civil or administrative) for failing to comply. Countries should also ensure that there are effective, proportionate and dissuasive sanctions, whether criminal, civil or administrative, for failing to grant to competent authorities timely access to information regarding the trust.[70]

Box 8. **Example features – trusts and other legal arrangements**

A mechanism to ensure the availability of beneficial ownership information on trusts and other legal arrangements could include some or all of the following features:

- Trustees are required to obtain and hold information on the trustee, the settlor, the protector (if any), the beneficiaries or class of beneficiaries, and any other person exercising control over the trust.
- Trustees are required to hold the information in electronic form, and are required to provide it to competent authorities upon request within a set time period,
- The obligations on professional trustees are supervised and enforced by a competent authority and trustees are subject to dissuasive and proportionate sanctions for failure to hold the required information, or for failing to grant to competent authorities timely access to information regarding the trust.
- Trustees of express trusts are required to disclose their status to financial institutions. Sanctions apply for the provision of false information such as administrative penalties.
- TCSPs, lawyers and accountants carry out CDD and understand their CDD obligations with respect to beneficial ownership, and are subject to AML/CFT supervision, in line with R.10.
- A country has established a central registry of trusts which includes information on the trustee, the settlor, the protector (if any), the beneficiaries or class of beneficiaries, and any other person exercising control over the trust. The example features identified above in relation to a company registry are relevant.

69 See Immediate Outcome 5 of the *FATF Methodology*, FATF (2013a).

70 Interpretive Note to Recommendation 25, par. 11.

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VII. RELATIONSHIP BETWEEN BENEFICIAL OWNERSHIP OBLIGATIONS AND OTHER RECOMMENDATIONS (CDD AND WIRE TRANSFERS REQUIREMENTS)

69. One way to fulfil the obligations under Recommendations 24 and 25 is to rely on the CDD information collected and maintained by financial institutions and/or DNFBPs pursuant to Recommendations 10 and 22, combined with adequate law enforcement powers to obtain access to that information.[71] However, having adequate powers for law enforcement to obtain beneficial ownership information is not sufficient to meet the requirements of Recommendations 24 and 25 if that information simply is not obtained and maintained in the first place. Therefore, under such an approach, the effective implementation of the CDD requirements in Recommendations 10 and 22 relating to beneficial owners relates directly to the obligations under Recommendations 24 and 5.

70. Under Recommendations 10 and 22, financial institutions and DNFBPs are required to implement CDD measures,[72] including identifying and verifying the identity of their customers, when:

a) establishing business relations[73]

b) carrying out occasional transactions above USD/EUR 15 000 or wire transfers in the circumstances covered by the Interpretive Note to Recommendation 16

c) there is a suspicion of ML/TF, or

d) the financial institution/DNFBP has doubts about the veracity or adequacy of previously obtained customer identification data.

71. Under Recommendations 10 and 22, countries should require financial institutions and DNFBPs to identify and take reasonable measures to verify the identity of the beneficial owner such that the financial institution/DNFBP is satisfied that it knows who the beneficial owner is. For legal persons, they this should include the natural person(s) (if any) who ultimately have a controlling ownership interest, or to the extent that there is doubt as to whether the persons with the controlling ownership interest are the beneficial owners, the identity of the natural persons (if any) exercising control of the legal person through other means. Where this does not lead to a natural person, this should include the relevant natural person who holds the position of senior managing official.[74] For legal arrangements, this should the identity of the settlor, trustee(s), protector (if any), beneficiaries or class or beneficiaries, or any other person exercising control over the trust.[75]

72. In addition, countries should require financial institutions and DNFBPs to understand the ownership and control structure of the customer. They should conduct ongoing CDD on the business relationship, and scrutinise transactions throughout the course of that relationship to ensure that

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71 See guidance on Recommendation 24 and 25 below for further details.

72 For further guidance on the application of the risk-based approach to CDD, see the FATF RBA guidance.

73 The *FATF Recommendations* do not define this notion. It is left to countries to decide whether business relations are established.

74 Interpretive Note to Recommendation 10, par. 5(b)(i). This process is described in further detail above at par. 32.

75 Interpretive Note to Recommendation 10, par. 5(b)(ii).

the transactions being conducted are consistent with the institution's knowledge of the customer and its business and risk profiles, including, where necessary, the customer's source of funds.[76] To ensure that financial institutions and DNFBPs understand the ML/TF risks in relation to corporate vehicles, countries should take steps to identify and assess the risks and make information available to them.[77] Financial institutions and DNFBPs should be required to record the CDD procedures performed and maintain these records for at least 5 years, in line with Recommendation 11.[78] When accepting business through a third party introducer, a financial institutions or DNFBP should always be sure to immediately obtain information on the beneficial ownership of the client. Copies of the underlying documentation that confirm the client and BO information should be available to the financial institution or DNFBP upon first request as envisaged by R17.

73. When considering the implementation of the CDD requirements in the context of legal arrangements, the financial institution is required to:

a) identify and verify the customer's identity (for example, a trust), and

b) identify and verify the identity of any person acting on behalf of the customer, for example the trustee of the trust, and verify that any person purporting to act on behalf of the customer is so authorised.[79]

74. Correspondingly, trustees are required to disclose their status to the financial institution when, as a trustee, they are forming a business relationship or carrying out an occasional transaction above the threshold.[80] The financial institution is also obligated to identify the beneficial owners of the trust and take reasonable measures to verify the identity of such persons. For a trust, this would mean the verifying identity of the settlor, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust (including through a chain of control/ownership). As noted above, financial institutions should understand the ownership and control structure of the trust (which may be set out in the trust deed).[81]

75. It is also essential to have effective monitoring and supervision of financial institutions and DNFBPs[82] to ensure that they are complying with CDD requirements. Implementation of the CDD requirements should form part of any comprehensive mechanism to increase transparency of corporate vehicles. It is particularly important to extend these requirements to businesses and professions which are often involved in the creation and management of corporate vehicles (such as lawyers, notaries, accountants and TCSPs).

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76 The CDD obligations are outlined in full in Recommendation 10 and the Interpretive Note to R.10.

77 Interpretive note to Recommendation 1, par. 3.

78 For example, in the context of implementing INR10, para 5 (b) (i), cases should be documented where there is doubt as to whether the persons with the controlling ownership interest are the beneficial owners, or where no natural person exerts control through ownership interests.

79 Interpretive note to Recommendation 10, par. 1 and 4.

80 Interpretive note to Recommendation 25, par. 2.

81 Interpretive note to Recommendation 10, par. 5 and 5(b)(ii).

82 See the definition of DNFBPs in the glossary to the *FATF Recommendations*.

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WIRE TRANSFERS AND BENEFICIAL OWNERSHIP AS PART OF CDD

76. In relation to wire transfers, the circumstances covered by the Interpretive Note to Recommendation 16 include wire transfers above USD/EUR 1 000.[83] This means that financial institutions should undertake CDD when carrying out cross-border wire transfers above USD/EUR 1 000, including the requirement to identify and take reasonable measures to verify the identity of the beneficial owner of the originator or beneficiary, as outlined above. In addition, Recommendation 16 also requires financial institutions to take further measures such as collecting certain originator information and ensuring that this information accompanies a wire transfer.[84]

TRUST AND COMPANY SERVICE PROVIDERS (TCSPS)

77. In many countries, trust and company services (such as company formation and management) are offered by a range of different types of entities, including regulated professionals, such as lawyers and accountants. Although lawyers and accountants are usually subject to regulation of their primary profession or business, they are not always subject to comprehensive AML/CFT and CDD requirements. As well, in many countries, trust and company services are also offered by other companies that specialise in providing trust and company services, but which may not be regulated in relation to their profession or business. In the absence of specific AML/CFT regulation and a designated supervisor, such specialists may be left unregulated. TCSPs play an important role in undertaking CDD on their clients both during the establishment of corporate vehicles and their ongoing management.

78. The lack of AML/CFT regulation of legal professionals and TCSPs limits a country's ability to ensure the transparency of corporate vehicles under Recommendations 24 and 25. Another common challenge is that, even where legal professionals and TCSPs are subject to AML/CFT requirements, deficiencies often exist in how the CDD obligations with respect to beneficial ownership are being implemented. Supervision for compliance with these requirements is often ineffective. For these reasons, beneficial ownership information of legal arrangements may not be available. To address these issues, countries should ensure that all legal professionals and TCSPs are required to conduct CDD pursuant to Recommendation 22.[85]

ISSUES RELATING TO THE LEGAL PROFESSION

79. Another issue (as lawyers often act as trustees and/or nominees) is that, where lawyers have AML/CFT obligations, practical issues often arise relating to legal professional privilege. Indeed, the right of a client to obtain legal representation and advice, be candid with his legal adviser and not fear later disclosure of those discussions to his prejudice is an important feature of the legal profession.[86] The scope of legal professional privilege and legal professional secrecy is often

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83 Interpretive Note to Recommendation 16, par. 5.

84 Interpretive Note to Recommendation 16, par. 11-18.

85 To assist countries, the FATF has published *Guidance on the Risk-Based Approach for TCSPs* (2009). The FATF is currently updating this guidance in line with the revised FATF Recommendations.

86 This is recognised as an aspect of the fundamental right of access to justice laid down in the *Universal Declaration of Human Rights*. This right is recognised in the *FATF Recommendations* which exclude information covered by legal professional privilege or professional secrecy from the obligation to file a

contained in constitutional law or is recognised by common law, and is tied to fundamental rights laid down in treaty or other international obligations.[87] The scope of legal professional privilege and legal professional secrecy depends on the constitutional and legal framework of each country, and in some federal systems, of each state or province within the country. In addition, the scope of legal professional privilege and legal professional secrecy, and the associated obligations, may also vary across different types of legal professionals within a country and the types of services being offered by them to the legal arrangement.

80. However, investigators have found that a frequent obstacle to accessing information about corporate vehicles is the use of client privilege to refuse to divulge information relevant to the ownership and control of a corporate vehicle.[88.] The recent FATF study on Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals also legal professional privilege and legal professional secrecy could impede and delay the criminal investigation.[89] This is appropriate when such claims are made correctly and in accordance with the law. However, some of the case studies do evidence that occasionally extremely wide claims of privilege are made which exceed the generally understood provisions of the protections within the relevant country. To help address these issues, competent authorities and professional bodies should work to ensure that there is a clear and shared understanding of the scope of legal professional privilege and legal professional secrecy in their own country.[90] In particular, countries should ensure that there is a clear understanding of what is, and what is not covered to ensure that investigations involving suspected corporate vehicles are not inappropriately impeded.[91]

suspicious transaction report and provides that it is a matter for each country as to what those terms cover.

87 FATF (2013b).

88 World Bank / UNODC StAR report (2011), p. 94.

89 FATF (2013b), p. 31.

90 FATF (2013b), p. 85. To assist countries, the FATF has published *Risk Based Approach Guidance for Legal Professionals* (2008). The FATF is currently updating this guidance in line with the revised FATF Recommendations.

91 World Bank / UNODC StAR report (2011), p. 106.

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VIII. ACCESS TO INFORMATION BY COMPETENT AUTHORITIES

81. Competent authorities (particularly law enforcement authorities) should have adequate powers, mechanisms and expertise to access, in a timely manner:

a) the basic and beneficial information on legal persons held by relevant parties,[92] and

b) the information held by trustees and other parties, including information held by financial institutions and DNFBPs on: (a) the beneficial ownership of the trust; (b) the residence of the trustee; and (c) any assets held or managed by the financial institution or DNFBP, in relation to any trustees with which they have a business relationship, or for which they undertake an occasional transaction.[93]

82. Cooperation between government entities holding such information is essential and communication mechanisms should be established in legislation or regulations to ensure information held by other government entities is accessible in a timely manner. To facilitate their implementation of these requirements, it is useful for the competent authorities (particularly law enforcement authorities):

to know what basic and beneficial ownership information is available in the country, and which relevant parties are holding it, and to understand the laws in their country relating to trusts and other legal arrangements.

83. The results of the FATF mutual evaluations have highlighted the fact that in many countries, law enforcement and other competent authorities do possess adequate powers and expertise to obtain information. However, such powers on their own are insufficient to meet the requirements of Recommendations 24 and 25, if adequate information on beneficial ownership is not collected and maintained in the first place. Consequently, it is essential that countries also implement measures to ensure that accurate beneficial ownership information on corporate vehicles will be collected and maintained in the country (see sections IV, V and VI of this paper for examples of such measures).

[92] Interpretive Note to Recommendations 24, par. 12.

[93] Interpretive Note to Recommendation 25, par. 4.

IX. INTERNATIONAL COOPERATION

84. Beneficial owners and TCSPs for any particular corporate vehicle may reside outside the jurisdiction where the corporate vehicle is created. A common law enforcement concern is the difficulty to obtain information on the ownership of foreign companies and trusts, and little, if any, cooperation on identifying beneficial ownership in some countries. As a result, criminals choose to conceal their identities behind a chain of different companies that are incorporated in different jurisdictions. To address this issue, countries where corporate vehicles are established should be able to obtain basic information and beneficial ownership information (even on those beneficial owners residing abroad), and maintain such information so that it can be used in investigations. In turn, those countries where beneficial owners and/or TCSPs reside need to respond to requests to identify the beneficial ownership of legal persons or legal arrangements. This should include the full cooperation of jurisdictional authorities in locating beneficial owners that are wanted pursuant to an international ML/TF investigation. The exchange of information with a foreign counterpart is a critical component of measures to obtain information on a corporate vehicle. It is also noted that the ability of the authorities to access information related to the beneficial owners of legal persons and legal arrangements in foreign jurisdictions is a key aspect to enhancing transparency for tax purposes.

85. The general international cooperation requirements in the *FATF Recommendations*[94] also apply to beneficial ownership information. However, to ensure that there is an improvement in the practical level of international cooperation, Recommendations 24 and 25 contain specific requirements to provide cooperation on identifying the beneficial ownership of corporate vehicles. This includes:

a) facilitating access by foreign competent authorities to basic information held by company registries (for example, by making this information available online, or if it is not available on-line, by having an efficient mechanism through which foreign authorities can request information)

b) facilitating access by foreign competent authorities to any information held by registries or other domestic authorities on legal arrangements

c) exchanging information on shareholders (including when it is held by the company or stock exchange) to enable foreign authorities to quickly move along a chain of legal ownership, and domestically available information on the trusts or other legal arrangements, and

d) using their competent authorities' powers to obtain beneficial ownership information on behalf of foreign counterparts (for example, at the request of foreign authorities, not only when conducting their own investigations).

86. As a starting point, competent authorities could consider providing their foreign counterparts with information on how they can access publicly available information. For example, countries must have mechanisms in place to identify and describes the different types, forms and basic

[94] As set out in Recommendations 37-40.

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features of legal persons in the country. In addition, basic and/or beneficial ownership information held by various registries or by companies themselves may be publicly available and accessible via the Internet. Competent authorities could consider providing a step-by-step guide on how to access this information, particularly with countries that make frequent requests in this regard. This would allow law enforcement and other competent authorities to check, as a first step, the information that is publicly available before making a formal request for information, such as through mutual legal assistance. Competent authorities should also consider establishing procedures to facilitate requests from their foreign counterparts. This may include procedures to facilitate access to information held by other domestic authorities and companies.

87. In order to monitor compliance with these obligations for legal persons and legal arrangements, countries are required to monitor the quality of the assistance which they receive from other countries.[95]

[95] Par. 19 of Recommendation 24, and par. 10 of Recommendation 25.

X. CONCLUSION

88. As financial institutions and DNFBPs implement AML/CFT measures, corporate vehicles are increasingly attractive to criminals for the purpose of disguising their identity and distancing themselves from their illicit assets. Increasing the transparency of corporate vehicles is an effective way to prevent their misuse for criminal purposes, including for the commission of offenses such as money laundering or terrorism financing, corruption, tax fraud, trafficking and other organized crime related offences. The FATF has strengthened the *FATF Recommendations* to ensure that countries implement measures aimed at improving availability of both basic and beneficial ownership information of corporate vehicles. This will ensure that competent authorities have the information they need for investigations when suspected corporate vehicles are involved.

89. The FATF recognises that there are significant challenges to the implementation of measures to prevent the misuse of corporate vehicles and provides this guidance to support countries in their efforts. While this guidance supports the implementation of Recommendations 24 and 25, other standards such as CDD requirements are also relevant in this area, and countries should take a holistic approach to ensure transparency of corporate vehicles.

90. Countries continue to develop effective mechanisms and good practices to ensure transparency, particularly as the standards on beneficial ownership in the *FATF Recommendations* were revised in 2012. The FATF remains committed to work to support countries' efforts to implement effective mechanisms to enhance the transparency of corporate vehicles. In this respect, the FATF will continue to monitor developments in this area, and work with the international community to ensure that countries can learn and benefit from the practical experience of others.

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ANNEX 1

TABLE 1 – RECOMMENDATION 24 – OVERVIEW OF THE BASIC REQUIREMENTS[96]

Initial obligations (INR.24.2)		
• Understand what types of legal persons are in the country, and describe processes for creating them and obtaining basic and beneficial ownership information - Make this information publicly available • Understand and assess the ML/TF risks associated with the various types of legal persons		
Implement measures to enhance transparency of companies (INR.24.3-10, 13-15)		
Basic information of companies		
Countries should: • Establish a company registry	Companies should: • Record basic information about the company • Maintain an up-to-date shareholder register	Company registries should: • Record basic information about the company
Beneficial ownership information on companies		
Countries should use ***one or more*** of the following mechanisms:		
Mechanism #1 – Company Registries • Obtain and hold up-to-date information on the beneficial ownership of companies	***Mechanism #2a - Companies*** • Obtain and hold up-to-date information on their beneficial ownership, or ***Mechanism #2b - Companies*** • Take reasonable measures to identify their beneficial owners	***Mechanism #3 – Rely on existing information*** held by • ***Registries*** • ***FIs and DNFBPs***, including CDD information (R.10/22) • ***Companies*** • ***Other competent authorities*** (e.g. supervisors, tax authorities) • ***Stock exchanges***
Other measures to enhance transparency of companies (regardless of which mechanism was chosen)		
• Require companies to ***cooperate with authorities***, including requiring either a natural person and/or DNFBP in the country who is authorised to cooperate with authorities on behalf of the company, and/or other comparable measures. • Require companies and other to ***retain records for at least 5 years***.		
Implement measures to overcome specific obstacles to the transparency of companies		
Bearer shares & bearer share warrants – either: • Prohibit them • Convert them into registered shares/warrants • Immobilise them, or • Require controlling shareholders to notify the company, so it can update its records	Nominee shareholders and directors – either: • Require nominees to disclose to the company registry that they are nominees, and the identity of the person who nominated them • License nominees, and requiring them to retain records of who has nominated them	

[96] This table represents an overview of the requirements in Recommendation 24 and does not limit or alter in any way the requirements.

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Implement measures to enhance transparency of foundations, anstalt & limited liability partnerships (INR.24.16)
Take similar measures as those required for companies, taking into account their different forms and structures
Implement measures to enhance transparency of other types of legal persons (INR.24.17)
Implement measures determined on the basis of a risk-based approach, taking into account the ML/TF risks associated with other types of legal persons, and their different forms and structures • Other types of legal persons should record and keep accurate and current similar types of basic information as required for companies (minimum) • Adequate, accurate and current beneficial ownership information should also be available • Objective is to achieve appropriate levels of transparency, taking into account the level of risk
Fundamental requirements to be implemented for all legal persons (INR.24.11 and 18)
• Ensure that basic and beneficial ownership information is ***accurate and up-to-date*** • Establish effective, proportionate and dissuasive ***sanctions*** for non-compliance
Powers of law enforcement and other competent authorities (INR.24.12)
Ensure that law enforcement and other competent authorities have ***all the powers necessary*** to obtain timely access to basic and beneficial ownership information on legal persons
International cooperation (INR.24.19)
Provide international cooperation relating to basic and beneficial ownership information (R.37-40).

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TABLE 2 – RECOMMENDATION 25 – OVERVIEW OF THE BASIC REQUIREMENTS & OTHER MEASURES[97]

Implement measures to enhance transparency of trusts (INR.25.1-3, 5)
Trust law countries
• Require the ***trustee to hold beneficial ownership information*** about the parties to the trust (including the settlor, trustee(s), protector, beneficiaries or class of beneficiaries, and any other person exercising effective ultimate control over a trust) • Require the ***trustee to hold basic information on other regulated agents of, and service providers*** to the trust
All countries
• Require ***trustees to disclose their status*** to any financial institution or DNFBP with whom they do business • Require ***professional trustees to maintain information*** on the trust for at least 5 years
Other possible measures
Countries are encouraged to ensure that other authorities and entities which are likely to do business with trusts, record information about the trust. **Sources of information** include: • ***Registries*** such as a trust registry, or asset registries for land or other assets. • ***Other competent authorities*** such as tax authorities • ***Other agents of, and service providers to the trust*** such as investment advisors, managers, lawyers or TSCPs Consider ***facilitating the access of financial institutions/DNFBP to information*** held by others
Implement measures to enhance transparency of similar legal arrangements (fiducie, treuhand, fideicomiso) (INR.25.9)
Take similar measures as those required for trusts, with a view to achieving similar levels of transparency • At a minimum, ***similar information should be recorded, kept accurate and current, and be accessible*** in a timely way to the competent authorities
Fundamental requirements to be implemented for all legal arrangements (INR.25.6-8, 11)
• Ensure that basic and beneficial ownership information is ***accurate and up-to-date***. • Establish effective, proportionate and dissuasive ***sanctions*** for non-compliance.
Powers of law enforcement and other competent authorities (INR.25.4)
Ensure that law enforcement and other competent authorities have ***all the powers necessary*** to obtain timely access to basic and beneficial ownership information on legal arrangements, regardless of which party holds it
International cooperation (INR.25.10)
Provide international cooperation relating to basic and beneficial ownership information (R.37-40).

97 This table represents an overview of the requirements in Recommendation 25 and does not limit or alter in any way the requirements.

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