



Transparency of Beneficial Ownership Information for Corporate Entities and Trusts in the Czech Republic

Technical Paper

Terence Donovan
Jan Šamánek

Appendices

Supported by a grant from Norway
Design: FAÚ MF ČR
Print: MF ČR
Prague 2015

*Project to strengthen anti-corruption
and anti-money laundering systems
in the Czech Republic*



**Programme Area 25: Capacity building and Institutional Cooperation between Beneficiary State
and Norwegian Public Institutions, Local and Regional Authorities**

Project to strengthen anti-corruption and anti-money laundering systems in the Czech Republic

Technical Paper:

Transparency of Beneficial Ownership Information for Corporate Entities and Trusts in the Czech
Republic

Appendices

International analysis prepared by:
Terence Donovan, Council of Europe Consultant

Domestic analysis prepared by:
Jan Samanek, FIU Consultant



FATF GUIDANCE

TRANSPARENCY AND BENEFICIAL OWNERSHIP

October 2014



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.

For more information about the FATF, please visit the website:

www.fatf-gafi.org

© 2014 FATF/OECD. All rights reserved.

No reproduction or translation of this publication may be made without prior written permission.

Applications for such permission, for all or part of this publication, should be made to
the FATF Secretariat, 2 rue André Pascal 75775 Paris Cedex 16, France
(fax: +33 1 44 30 61 37 or e-mail: contact@fatf-gafi.org).

TABLE OF CONTENTS

TABLE OF ACRONYMS.....	2
I. INTRODUCTION	3
II. THE MISUSE OF LEGAL PERSONS AND ARRANGEMENTS	6
III. THE DEFINITION OF BENEFICIAL OWNER.....	8
Legal Persons.....	8
Legal Arrangements	9
IV. EFFECTIVE MECHANISMS TO COMBAT THE MISUSE OF LEGAL PERSONS AND ARRANGEMENTS ..	10
V. ENHANCING THE TRANSPARENCY OF LEGAL PERSONS (R.24).....	12
Definition of “legal persons”	12
Scope of Recommendation 24	12
Understanding the risk associated with legal persons.....	13
Basic ownership information	13
Beneficial ownership information.....	14
Other measures to enhancing transparency.....	16
Mechanisms and sources for obtaining beneficial ownership information of legal persons	18
Other measures to enhance the transparency of companies	27
VI. ENHANCING TRANSPARENCY OF LEGAL ARRANGEMENTS (RECOMMENDATION 25).....	29
Scope of Recommendation 25	29
Understanding the risk associated with legal arrangements.....	30
Requirements for trust law countries	30
Common requirements for all countries.....	31
Other possible measures.....	32
Other requirements and a combined approach	33
VII. RELATIONSHIP BETWEEN BENEFICIAL OWNERSHIP OBLIGATIONS AND OTHER RECOMMENDATIONS (CDD AND WIRE TRANSFERS REQUIREMENTS).....	35
Wire transfers and beneficial ownership as part of CDD.....	37
Trust and company service providers (TCSPs)	37
Issues relating to the legal profession.....	37
VIII. ACCESS TO INFORMATION BY COMPETENT AUTHORITIES	39
IX. INTERNATIONAL COOPERATION	40
X. CONCLUSION.....	42
BIBLIOGRAPHY	43
ANNEX 1.....	44
Table 1 – Recommendation 24 – Overview of the basic requirements.....	44
Table 2 – Recommendation 25 – Overview of the basic requirements & other measures.....	46

TABLE OF ACRONYMS

AML/CFT	Anti-Money Laundering / Countering the Financing of Terrorism (also used for <i>Combating the Financing of Terrorism</i>)
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

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

I. INTRODUCTION

1. Corporate vehicles¹—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 information³ 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 countries⁴ 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

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).

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:

⁶ The FATF Standards comprises the FATF Recommendations and Interpretive Notes, which were revised in February 2012 and have been endorsed by more than 190 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/countryreportsonteimplementationoftheoecdanti-briberyconvention.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).

- 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 work¹² 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

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.

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.

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 ultimately⁵⁰ owns or controls a customer⁵¹ 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.

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.

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).

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

¹⁸ Glossary to the *FATF Recommendations*.

¹⁹ Interpretive Note to Recommendation 24, par. 16.

²⁰ Interpretive Note to Recommendation 24, par. 17.

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, countries 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

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:

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).

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

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.

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

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).

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 measures³⁹ 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 registries⁴² 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.

- 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.

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.

- 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.

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.

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 authorise⁵⁶ 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

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

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.

- 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?

53. 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?

VI. ENHANCING TRANSPARENCY OF LEGAL ARRANGEMENTS (RECOMMENDATION 25)

54. 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

55. Recommendation 25 applies broadly to “legal arrangements” meaning express trusts⁵⁸ or other similar arrangements, including fiducie, treuhand and fideicomiso.⁵⁹

56. 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.

57. 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.

58. 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

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

59. 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

60. Trust law countries⁶³ 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

61. 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

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.

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.

62. 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

63. 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.

64. 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

65. 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

66. 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.

67. 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.

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

68. 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.

69. 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.

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

70. 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.

71. 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 relations⁷³
- 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.

72. 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

73. 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

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.

74. 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

75. 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

76. It is also essential to have effective monitoring and supervision of financial institutions and DNFBPs⁸² 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).

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*.

WIRE TRANSFERS AND BENEFICIAL OWNERSHIP AS PART OF CDD

77. 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)

78. 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.

79. 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

80. 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

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.

81. 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.

VIII. ACCESS TO INFORMATION BY COMPETENT AUTHORITIES

82. 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

83. 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.

84. 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

85. 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.

86. 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).

87. 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.

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.

88. 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

89. 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.

90. 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.

91. 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.

BIBLIOGRAPHY

FATF (2006), *The Misuse of Corporate Vehicles, including Trust and Company Service Providers*, FATF, Paris, France www.fatf-gafi.org/documents/documents/themisuseofcorporatevehiclesincludingtrustandcompanyserviceproviders.html

FATF & CFATF (2010), *Money Laundering Using Trust and Company Service Providers*, FATF, Paris, France www.fatf-gafi.org/documents/documents/moneylaunderingusingtrustandcompanyserviceproviders.html

FATF (2012), *FATF Recommendations*, FATF, Paris France www.fatf-gafi.org/topics/fatfrecommendations/documents/fatf-recommendations.html

FATF (2012), *FATF Guidance: National money laundering and terrorist financing risk assessment*, FATF, Paris, France www.fatf-gafi.org/documents/documents/nationalmoneylaunderingandterroristfinancingriskassessment.html

FATF (2013a), *FATF Methodology for assessing technical compliance with the FATF Recommendations and the effectiveness of AML/CFT systems*, FATF, Paris, France

FATF (2013b), *Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals*, FATF, Paris, France www.fatf-gafi.org/documents/documents/mltf-vulnerabilities-legal-professionals.html

World Bank / UNODC StAR report (2011), E van der Does de Willebois, EM Halter, RA Harrison, Ji Won Park and JC Sharman (2011), *"The Puppet Masters: How the Corrupt Use of Legal Structures to Hide Stolen Assets and What to Do About it"*, World Bank and United Nations Office on Drugs and Crime's StAR Initiative

ANNEX 1

TABLE 1 – RECOMMENDATION 24 – OVERVIEW OF THE BASIC REQUIREMENTS⁹⁶

Initial obligations (INR.24.2)		
<ul style="list-style-type: none"> 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: <ul style="list-style-type: none"> Establish a company registry 	Companies should: <ul style="list-style-type: none"> Record basic information about the company Maintain an up-to-date shareholder register 	Company registries should: <ul style="list-style-type: none"> Record basic information about the company
Beneficial ownership information on companies		
Countries should use <i>one or more</i> of the following mechanisms:		
Mechanism #1 – Company Registries <ul style="list-style-type: none"> Obtain and hold up-to-date information on the beneficial ownership of companies 	Mechanism #2a - Companies <ul style="list-style-type: none"> Obtain and hold up-to-date information on their beneficial ownership, or Mechanism #2b - Companies <ul style="list-style-type: none"> Take reasonable measures to identify their beneficial owners 	Mechanism #3 – Rely on existing information held by <ul style="list-style-type: none"> 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)		
<ul style="list-style-type: none"> Require companies to <i>cooperate with authorities</i>, 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 <i>retain records for at least 5 years</i>. 		
Implement measures to overcome specific obstacles to the transparency of companies		
Bearer shares & bearer share warrants – either: <ul style="list-style-type: none"> 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: <ul style="list-style-type: none"> 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.

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).

TABLE 2 – RECOMMENDATION 25 – OVERVIEW OF THE BASIC REQUIREMENTS & OTHER MEASURES⁹⁷

Implement measures to enhance transparency of trusts (INR.25.1-3, 5)
Trust law countries
<ul style="list-style-type: none"> Require the <i>trustee to hold beneficial ownership information</i> 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 <i>trustee to hold basic information on other regulated agents of, and service providers</i> to the trust
All countries
<ul style="list-style-type: none"> Require <i>trustees to disclose their status</i> to any financial institution or DNFBP with whom they do business Require <i>professional trustees to maintain information</i> on the trust for at least 5 years
Other possible measures
<p>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:</p> <ul style="list-style-type: none"> <i>Registries</i> such as a trust registry, or asset registries for land or other assets. <i>Other competent authorities</i> such as tax authorities <i>Other agents of, and service providers to the trust</i> such as investment advisors, managers, lawyers or TSCPs <p>Consider <i>facilitating the access of financial institutions/DNFBP to information</i> held by others</p>
Implement measures to enhance transparency of similar legal arrangements (fiducie, treuhand, fideicomiso) (INR.25.9)
<p>Take similar measures as those required for trusts, with a view to achieving similar levels of transparency</p> <ul style="list-style-type: none"> At a minimum, <i>similar information should be recorded, kept accurate and current, and be accessible</i> in a timely way to the competent authorities
Fundamental requirements to be implemented for all legal arrangements (INR.25.6-8, 11)
<ul style="list-style-type: none"> Ensure that basic and beneficial ownership information is <i>accurate and up-to-date</i>. Establish effective, proportionate and dissuasive <i>sanctions</i> for non-compliance.
Powers of law enforcement and other competent authorities (INR.25.4)
<p>Ensure that law enforcement and other competent authorities have <i>all the powers necessary</i> to obtain timely access to basic and beneficial ownership information on legal arrangements, regardless of which party holds it</p>
International cooperation (INR.25.10)
<p>Provide international cooperation relating to basic and beneficial ownership information (R.37-40).</p>

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

Annex II - Jersey

REVIEW OF TRANSPARENCY OF BENEFICIAL OWNERSHIP OF COMPANIES

CONSULTATION PAPER

Background

1. In June 2013, in concert with the G8, Jersey published an Action Plan to prevent the misuse of legal persons and legal arrangements. That Action Plan, which is attached as Annex 1 to this paper, included a commitment to "Undertake a general review of corporate transparency, having regard for the development of international standards and their global application, starting with the publication of a pre-consultation paper before the end of 2013".
2. The UK Government made the improvement in the transparency of the ownership and control of legal persons and legal arrangements a cornerstone of its G8 Presidency. All G8 countries agreed to publish Action Plans and the UK sought and obtained the agreement of the Crown dependencies and Overseas Territories to do likewise.
3. To sustain their leadership position the UK Government Department for Business Innovation & Skills (BIS) issued a Discussion Paper in July 2013 entitled "Transparency & Trust: Enhancing the Transparency of UK Company Ownership and Increasing Trust in UK Business".
4. In September 2013 the G20 issued a Leaders' Declaration following their St Petersburg Summit in which they stated: "We encourage all countries to tackle the risks raised by opacity of legal persons and legal arrangements, and we commit to take measures to ensure that we meet the FATF standards regarding the identification of the beneficial owners of companies and other legal arrangements such as trusts that are also relevant for tax purposes. We will ensure that this information is available in a timely fashion to law enforcement, tax collection agencies and other relevant authorities in accordance with the confidentiality legal requirements, for example through central registries or other appropriate mechanisms. We ask our Finance Ministers to update us by our next meeting on the steps taken to meet FATF standards regarding the beneficial ownership of companies and other legal arrangements such as trusts by G20 countries leading by example."
5. In October 2013 the UK Government Cabinet Office published a report entitled "Open Government Partnership UK National Action Plan 2013 to 2015". In this document the UK states that it "is committed to lead by example to implement international standards on transparency of ownership and control to tackle the misuse of companies and legal arrangements. In particular, the UK has committed to place a requirement on companies to obtain and hold adequate, accurate and

current information on their beneficial ownership – defined as “the natural person(s) who ultimately owns or controls a legal person or arrangement.”

6. On the 15th November 2013 the UK Prime Minister wrote to the President of the European Council. That letter is attached as Annex 2. In it he states that “Europe must now, through the 4th Money Laundering Directive (MLD), visibly lead global efforts to strengthen transparency of company beneficial ownership. As you know, I put this issue at the heart of the UK’s G8 Presidency this year because of the overwhelming evidence behind the need to act. Put simply, a lack of knowledge about who ultimately owns and controls companies facilitates illicit domestic and cross-border money laundering, corruption, tax evasion and other crimes”.
7. The UK Government has encouraged the Crown Dependencies and Overseas Territories to join the UK at the vanguard of company transparency. Jersey’s commitment to consult on corporate transparency has been welcomed and the UK Government has said that it looks forward to discussing the outcomes of this consultation.
8. The UK Prime Minister in his letter to the President of the European Council stressed the need to recognise the important differences between companies and trusts and that the solution for addressing the potential misuse of companies may well not be appropriate generally. To tackle tax evasion and prevent the misuse of trusts, he states that the EU must continue supporting efforts by OECD and G20 countries to agree a new single global standard on automatic tax information exchange, with which efforts Jersey is actively engaged. This paper focusses only on the international action to improve the transparency of the beneficial ownership of companies.

Jersey’s current position

9. In its Action Plan Jersey stated that it is fully committed to implementing the revised Financial Action Task Force (FATF) standards in order to improve the transparency of the ownership and control of legal persons and legal arrangements. FATF Recommendation 24 is concerned with legal persons (i.e companies, foundations, limited liability partnerships and other types of legal persons). FATF Recommendation 25 is concerned with legal arrangements (i.e express trusts and other types of legal arrangements with a similar structure or function).
10. For companies the FATF in its Methodology for assessing technical compliance with the FATF recommendations and the effectiveness of AML/CFT systems states:
“Countries should require that all companies created in a country are registered in a company registry, which should record the company name, proof of incorporation, legal form and status, the address of the registered office, basic regulating powers,

and a list of directors. This information should be publicly available.” For beneficial ownership information the recommendation calls for one or more mechanisms to ensure that it is available at a specified location in the country concerned; or can be otherwise determined in a timely manner by a competent authority. The FATF do not specifically mandate a central register for beneficial ownership information and there is no requirement for the information to be publicly available.

11. The Action Plan sets out Jersey’s existing strong record as follows –

- It requires beneficial ownership to be disclosed to the Jersey Financial Services Commission (the “Commission”) at the time of incorporation of a company, and the Commission holds this information in a central register;
- The Commission has a long-standing statutory duty to have regard to the need to protect the integrity of Jersey in commercial and financial matters before agreeing to a request to incorporate a company;
- Trustees are bound to hold information on the settlors and beneficiaries of trusts under the provisions of Common Law (supported by Case Law), Trusts Law and anti-money laundering requirements;
- The Commission actively supervises compliance by trust and company service providers with a requirement that they must collect and hold information on beneficial ownership for all legal persons and arrangements;

12. It was also pointed out that this strong record is recognised by –

- The IMF in its assessment of Jersey’s compliance with the then FATF recommendations, published in 2009, which found that Jersey was fully compliant with recommendation 33 (legal persons) and largely compliant with recommendation 34 (legal arrangements);
- The World Bank in the StAR project report “The Puppet Masters” which uses the Jersey “model” to describe conditions under which the company registry can be considered a viable option for providing beneficial ownership information (the Jersey Model is attached as Annex 3).

Since the Action Plan the Global Forum on Transparency and Exchange of Information for Tax Purposes has rated Jersey as largely compliant overall, and Jersey was found to be fully compliant in meeting the standard for the availability of ownership information.

13. Jersey’s Action Plan is but one part of a comprehensive programme of support for a number of international initiatives of relevance for the enhancement of

transparency and information exchange. A list of the steps taken over the past year is included as Annex 4 to this paper.

General review of transparency of beneficial ownership of companies

14. From Jersey's experience it is considered that to ensure that the international requirement of adequate, accurate and current information on beneficial ownership is met most effectively the process should include the following –

- An active company registry staffed by experts that not only calls for information on beneficial ownership on incorporation but also runs that information through independent checks and also has the power to refuse incorporation when the activities/beneficial owners are considered 'sensitive'.
- A tight definition of beneficial ownership;
- The licensing and active supervision of trust and company service providers (TCSPs) with requirements to ensure that information on the beneficial ownership of the companies they administer is adequate, accurate and current;
- Strict limitations placed on who may apply to incorporate a company;
- Legislation to ensure that, in accordance with the international obligations entered into, the information that is available can be readily provided to tax authorities and law enforcement authorities when sought;
- A power to strike off a company where it is no longer provided with any company administrative, trustee or fiduciary service by a TCSP.

Jersey meets all of these requirements presently, with the exception of the last bullet point which will be indirectly addressed by Companies Law Amendment No.

11. It is also worthy of mention that whereas the G8 are focussing on the requirements only in respect of companies incorporated in member jurisdictions, the requirements placed by Jersey on the TCSPs apply equally to companies they administer that have been incorporated elsewhere.

[Question:

Are there any steps that the Jersey Financial Services Commission could take to further ensure that adequate, accurate and current information on beneficial ownership is available in Jersey?]

15. The view is advanced by the international standard setters that, with the adoption of automatic exchange of information (AEOI), the tax authorities and law

enforcement authorities should be able to have access to information on beneficial ownership other than on specific request. This could be achieved through providing those authorities with the opportunity to access a central secure site on a country approved basis, with that access being limited to those jurisdictions that meet certain conditions. For example, countries that can show that they are compliant with international standards on mutual administrative assistance on AML and tax matters, and in particular that the standards on confidentiality are in place and are effectively applied.

16. To assist in achieving this a requirement would need to be placed on the TCSPs to inform the Company Registry of any change in the beneficial ownership from that identified at the time of incorporation. This would also call for a clear definition of what is meant by 'beneficial ownership'. The UK Government's Discussion Paper states: "FATF defines a 'beneficial owner' as the natural person who ultimately owns or controls a legal person or arrangement. The proposed EU Money Laundering Directive interprets this as the individual who owns or controls 25% plus one share of the entity through direct or indirect shareholding; or who exercises control over the management of the entity through other means. This corresponds to the current definition in the UK anti-money laundering framework, [.....] We think this definition should apply in respect of the information to be held in the registry."
17. A further issue is one of timescale. The Jersey Action Plan refers to 'having regard for the development of international standards and their global application'. This poses two questions – who is the standard setter and what constitutes global application. If the G8 and G20 are accepted as the standard setters to be followed by the OECD and the EU should this be seen as a sufficient statement of principle? What then should be seen as a required indicator of global application? Should it be the adoption of the standard by all the G8, G20, OECD, EU and other major financial centres such as Singapore and Hong Kong China?

[Questions

- **Should enabling legislation be drafted to provide for Regulations to be made in due course requiring TCSPs from an agreed future date to notify the Company Registry both of beneficial owners pre-incorporation and of any change in beneficial owners from that identified at the time of incorporation;**
- **What would be a reasonable period within which notification of any change in beneficial owners would be required;**
- **Should provision be made for information on beneficial ownership to be held on a secure site to be accessed by tax authorities and law enforcement authorities**

when certain conditions are met, particularly in relation to the international standards on confidentiality;

- How should 'beneficial ownership' be defined;
- Should there be any exemptions from a central register of beneficial ownership for certain types of companies; if so, what types of companies should be exempt;
- What level of global application of an accepted international standard should be required, to ensure that Jersey's competitive position is not seriously adversely affected.]

Action being taken by other jurisdictions

18. The progress to-date by the G8 members is set out in "The 2013 UK G8 Presidency Report" published by the UK Government. The relevant extract from this Report is included as Annex 5 to this paper. This shows that only the UK and France have so far expressed support for a publicly accessible central registry of company beneficial ownership. As far as the Island's main competitors are concerned the position is understood to be as follows –

- Guernsey and the Isle of Man have also given to the UK a commitment to engage in a consultative process;
- BVI and Cayman have issued consultation papers;
- No specific proposals for change appear to have been made to-date by Ireland, Luxembourg or the Netherlands but all will be subject to the requirements included in the 4th AML Directive when it is adopted;
- Hong Kong China, Singapore and Switzerland do not appear to have announced any proposals.

19. The UK Government has referred to the following benefits that it believes would come from having a central register open to the public, a policy proposal that is supported by NGOs such as Christian Aid –

- **the public will be able to help ensure the accuracy of the information on beneficial ownership held by the Company Registry.** The UK Company Registry does not engage in the vetting of company incorporations as is the case with the Jersey Registry. Also those engaged in the incorporation and administration of companies in the UK are not subject to the same requirements or supervision, nor threat of penalties, in carrying on business as is the case with the licensing and regulation of TCSPs in Jersey. It is as yet unclear whether the UK will require the information on changes in beneficial

ownership (however this term is eventually defined) to be provided on the annual company returns or as and when the change takes place. It is open to question whether expecting the public to play a key part in seeking to ensure the accuracy of information held by the central registry is the most effective way of proceeding. As noted earlier in this paper the Jersey 'Model' approach is much more likely to ensure that information held on a central register, of interest to tax authorities and law enforcement authorities, is adequate, accurate and current.

- **It will help banks and other regulated businesses conduct their customer due diligence (CDD) requirements.** It is not unusual for financial institutions to ask the authorities to provide lists to help them with CDD. An example of this is a call for the authorities to provide a list of politically exposed persons. The counter view of many regulatory authorities, including the Jersey Financial Services Commission, is that there is a real danger that if the authorities produce lists the financial institutions will use those lists for protection and will not engage in the degree of independent CDD that they should be undertaking.
- **It will help individuals and companies identify who really owns the companies they are doing business with.** The UK Government appears to be focussing on trading companies and there is little if any consideration given in the published documents to how this argument applies where a private investment holding company is incorporated to hold investments on a personal basis with no business engagement. The UK decision has sought to balance the interests of promoting positive corporate behaviour and transparency against concerns expressed around competitiveness impacts and transparency. Clearly the balance between transparency and privacy could be significantly different depending on whether a trading company or a private investment holding company is being considered.
- **It will help promote sound business behaviour and help authorities, including those in developing countries, to prevent the misuse of companies for illicit activities and tax evasion.** The question this poses is whether those in the developing countries should be expected to rely on interrogating voluminous public company registers or whether there is not a more effective way of meeting their requirements through AEOL.

[Question:

Do the reasons advanced by the UK for a central register open to the public apply to Jersey or is it considered that the objectives of tackling illicit activities can be better

met by an alternative approach and one that is better suited to the circumstances of Jersey]

20. The UK has recognised that there may be legitimate instances where exemptions to public exposure may be necessary to protect individuals at risk. Further information on the UK thinking on this and other detailed aspects of the proposal to have a public register, and the nature of the primary legislation to be introduced, is awaited.

21. The Law Society of England and Wales in its response to the BIS discussion paper (www.lawsociety.org.uk/representation/policy-discussion) identified the following examples of where beneficial owners of companies may legitimately wish to keep their identities private –

- By investors in companies that carry out activities which are legitimate but may be controversial. Beneficial owners could be open to harassment and/or physical harm if their identities were revealed;
- By wealthy individuals who may be targeted for possible kidnapping or extortion;
- By companies that are seeking to invest in competitors or potential acquisition targets;
- By investors who may be concerned that their interest in a particular company may trigger market speculation;
- To avoid assisting identity theft and other criminal activities.

22. The International Finance Centre Forum in its response to the BIS discussion Paper also highlights the drawbacks of a public register (www.ifcforum.org/knowledge-centre.php).

23. A point made in the letter from the UK Prime Minister to the President of the European Council is “as we clamp down on the misuse of companies, we must take care not to displace illicit activity elsewhere”. Jersey is very aware of this danger. It is why Jersey with its strict controls has a total of only some 30,000 companies incorporated, a number that pales into insignificance when compared with the number of companies formed by non-residents of the USA through the use of LLCs in Delaware and other states.

[Question:

Are the concerns regarding a central register open to the public, identified through the UK consultation exercise, shared and are there any other concerns which should be highlighted.]

Overview of Questions:

- Are there any steps that the Jersey Financial Services Commission could take to further ensure that adequate, accurate and current information on beneficial ownership is available in Jersey.
- Should enabling legislation be drafted to provide for Regulations to be made in due course requiring TCSPs at an agreed future date to notify the Company Registry both of beneficial owners pre-incorporation and of any change in beneficial owners from that identified at the time of incorporation;
- What would be a reasonable period within which notification of any changes in beneficial owners would be required;
- Should provision be made for information on beneficial ownership to be held on a secure site to be accessed by tax authorities and law enforcement authorities when certain conditions are met, particularly in relation to the international standards on confidentiality;
- How should 'beneficial ownership' be defined;
- Should there be any exemptions from a central register of beneficial ownership for certain types of companies; if so, what types of company should be exempt;
- What level of global application of an accepted international standard should be required, to ensure that Jersey's competitive position is not seriously adversely affected.
- Do the reasons advanced by the UK for a central register open to the public apply to Jersey or is it considered that the objectives of tackling illicit activities can be better met by an alternative approach and one that is better suited to the circumstances of Jersey
- Are the concerns regarding a central register open to the public, identified through the UK consultation exercise, shared and are there any other concerns which should be highlighted.

[Note: The consultation period will end on Wednesday 30th April 2014. Those who wish to do so may submit their responses through Jersey Finance Limited (william.byrne@jerseyfinance.je) who have agreed to distribute the paper to their members. Alternatively, responses may be submitted to the Chief Minister's Dept (c.powell@gov.je). The paper is available on the government web-site (www.gov.je/consult)]

Chief Minister's Dept
3th February 2014/CP

ANNEX 1

JERSEY ACTION PLAN TO PREVENT THE MISUSE OF LEGAL PERSONS AND LEGAL ARRANGEMENTS

Jersey is fully committed to implementing the revised Financial Action Task Force (FATF) standards in order to improve the transparency of the ownership and control of legal persons and legal arrangements. This is a matter of good corporate governance as a means to tackle a wide range of illicit activity.

Jersey's record in this respect is already very strong. In particular:

- It requires beneficial ownership to be disclosed to the Jersey Financial Services Commission (the "Commission") at the time of incorporation of a company, and the Commission holds this information in a central register;
- The Commission has a long-standing statutory duty to have regard to the need to protect the integrity of Jersey in commercial and financial matters before agreeing to a request to incorporate a company;
- Trustees are bound to hold information on the settlors and beneficiaries of trusts under the provisions of Common Law (supported by Case Law), Trusts Law and anti-money laundering requirements;
- The Commission actively supervises compliance by trust and company service providers with a requirement that they must collect and hold information on beneficial ownership for all legal persons and arrangements;
- 39 TIEAs or DTAs to the current international standard have been signed and in the past three years over 140 requests for information have been received, of which a significant number have sought information on the beneficial ownership of companies and the beneficiaries of trusts, which have been able to be responded to fully and to the satisfaction of the requesting jurisdiction;
- In February 2010 the Jersey authorities hosted a conference, attended by representatives from 26 developing countries, the theme of which was how Jersey could assist such jurisdictions in the pursuit of those engaged in financial crime, including fiscal crime. One of the outcomes of the conference was a need to provide developing countries with assistance in improving the capacity of their tax administrations in combating tax evasion/avoidance. The Jersey authorities have approached the African Tax Administration Forum (ATAF), the OECD, the EU and individual jurisdictions (Norway and the UK) with offers of assistance either independently or jointly.

Inter alia, this very strong record is recognised by:

- The IMF in its assessment of compliance with the then FATF Recommendations, published in 2009, which found that Jersey was fully compliant with recommendation 33 (legal persons) and largely compliant with recommendation 34 (legal arrangements); and
- The World Bank in the StAR project report “the Puppet Masters” which uses the Jersey “model” to describe conditions under which the company registry can be considered a viable option for providing beneficial ownership information (see attached).

Jersey has access to all the information on beneficial ownership that is required to meet the present international standards and to respond effectively to requests for information from tax authorities or law enforcement agencies as required by statute.

Jersey’s current requirements for company incorporation and the on-going administration of companies by regulated trust and company service providers could not be met if companies did not know their ownership. Therefore any international obligation placed on companies to know their ownership can be expected to be readily met.

Should international agreement be reached that steps should be taken to allow tax authorities and law enforcement agencies to have access to beneficial ownership information held on a central registry, Jersey will comply with any new international standard in this respect that has global application covering G8, G20, OECD, and EU member jurisdictions plus other major financial centres. Because of the quality of the beneficial ownership information already held in the Island such compliance will present far less of a challenge for Jersey than for most if not all other jurisdictions.

Reflecting its commitment to all the relevant international standards, and to reinforce further the existing strong record, Jersey is committed to taking the following further actions:

1. **Conduct, and share the findings of, a national assessment of money laundering and terrorist financing risks by 2015**, co-ordinating action by the public and private sector to assess risks, apply resources and mitigate those risks;
2. **Take steps to fill any gaps in satisfying the requirements of the revised FATF recommendations 24 (legal persons) and 25 (legal arrangements) ahead of a compliance assessment by MONEYVAL in 2015;**
3. **Undertake a general review of corporate transparency, having regard for the development of international standards and their global application, starting with the publication of a pre-consultation paper before the end of 2013;**
4. **Support the international organisations (G8, G20, OECD, EU) and individual jurisdictions in their reviews of corporate transparency, by sharing**

expertise/practices and offering technical assistance on how to implement the Jersey “model” on company incorporation and the supervision of trust and company service providers;

5. **Support the promotion internationally of the Statement of Best Practice for Trust and Company Service Providers** issued by the Offshore Group of Banking Supervisors (now the Group of International Finance Centre Supervisors);
6. **Support improvements in international cooperation, including the timely and effective exchange of basic and beneficial ownership information, in compliance with international standards;**
7. **Continue to play an active role in the work of the European Business Registry.**

17 June 2013

ANNEX 2

PM letter on beneficial ownership

15 November 2013

David Cameron has written to the President of the European Council about action needed to tackle tax evasion and corporate secrecy.

Contents

I wrote to you just over six months ago, ahead of the May European Council, emphasising the need to inject the political will necessary to tackle the serious global challenges of tax evasion and corporate secrecy. Since then, good progress has been made across this agenda through the G8, the G20 and the continued efforts by the European Union under the Irish and Lithuanian Presidencies.

However, our work is far from finished. Europe must now, through the 4th Money Laundering Directive (MLD), visibly lead global efforts to strengthen transparency of company beneficial ownership. As you know, I put this issue at the heart of the UK's G8 Presidency this year because of the overwhelming evidence behind the need to act. Put simply, a lack of knowledge about who ultimately owns and controls companies facilitates illicit domestic and cross-border money laundering, corruption, tax evasion and other crimes.

There is growing momentum building behind action on the issue. G8 Leaders agreed in June that companies should be required to obtain and hold adequate, accurate and current information on their beneficial ownership. The UK strongly supports this very same commitment in the European Commission's MLD proposal. And I was pleased that G20 Leaders vowed to lead by example in ensuring that the relevant Financial Action Task Force standards in this area are met.

Specifically, the UK committed in June to hold company beneficial ownership information in a central registry, and to consult on whether this information should be publicly accessible. After listening carefully to businesses, NGOs, technical experts and other groups, I announced two weeks ago that the UK's central register of beneficial ownership will be open to the public. I concluded that a publicly accessible registry provides the best outcome for sound corporate behaviour; more effective law and tax enforcement; and for helping authorities, including those in developing countries, prevent misuse of companies for illicit purposes.

I believe this will prove a significant step towards breaking through the walls of corporate secrecy. But as I warned earlier this year, illicit finance is a global problem that can only be

addressed effectively through collective action. I hope other Governments will join the UK in making an even bigger difference by taking swift action on company beneficial ownership. In Europe, our first collective step should be to mandate, through the MLD, the establishment of public central registries of company beneficial ownership as the cutting-edge benchmark for countries and major financial centres to emulate across the world. Central registries will not only enable law enforcement and tax authorities to access, discreetly and at short notice, critical information for cross-border investigations; public scrutiny of this information through public registries will also increase the likelihood of inaccuracies and omissions being identified and rectified.

But as we clamp down on the misuse of companies, we must take care not to displace illicit activity elsewhere. Currently, authorities are gaining access to more information than ever before on trusts, especially off-shore trusts, through the automatic tax information agreements being concluded by UK and other EU countries. To tackle tax evasion and prevent the misuse of trusts, the EU must continue supporting efforts by OECD and G20 countries to agree a new single global standard on automatic tax information exchange by next February.

I know some want Europe to go even further to prevent the abuse of trusts and related private legal arrangements. It is clearly important we recognise the important differences between companies and trusts. This means that the solution for addressing the potential misuse of companies – such as central public registries – may well not be appropriate generally. Nonetheless, as Europe leads from the front on company beneficial ownership, I look forward to looking properly at the arguments around trusts and other legal arrangements in order to determine what further action we might take.

I am copying this letter to the President of the European Commission, the President of the European Parliament and other members of the European Council.

BOX 4.1 The Jersey Model

Conditions under which the company registry can be considered a viable option for providing beneficial ownership information

Condition 1. The registry is active and alert, that is, it verifies the information supplied to it, or checks it for accuracy (can be based on risk).

- *Beneficial ownership information provided at the time of application is checked against an external database (see World-Check, <http://www.world-check.com/>) and an internal regulatory database. Applicants often need to be (and in practice frequently are) asked to provide additional information.*
- *Jersey publishes a list of activities that they consider to be "sensitive." They make it clear that, in cases in which a company intends to be conducting any of these activities, more information must be provided at the time of application for incorporation. This policy is currently being reviewed, and its scope is likely to be extended to take account of the countries in which the company will conduct its activities and the parties with whom the company will be engaging in those activities.*

Condition 2. The registry enforces compliance with legal registration requirements and with updating requirements when information changes.

Trust companies that fail to provide adequate information and that otherwise fail to comply with obligations set forth in the Companies Law are brought to light in the extensive dialogue that takes place between the Registry and the Trust Company Business division. Only trust companies regulated by the Jersey Financial Services Commission and Jersey-resident individuals are able to file applications to incorporate a Jersey company.

Condition 3. The registry (particularly the staff responsible for reviewing and approving information for acceptance into the registry) is sufficiently expert and knowledgeable on the concept of beneficial ownership and knows how to identify, in a complex corporate structure, the natural person who is the beneficial owner. If the registry is unable to internalize such specialized experience, a simplified definition of beneficial owner (focusing on percentage shareholding or possibly the natural person with the largest share or controlling stake) might be preferable.

- *Applications for registration can be approved only at the director level, where there is sufficient experience to understand beneficial ownership. Jersey recently created a new deputy director post in the Registry to strengthen experience within the division.*

Sources: Authors' interview with Jersey Financial Services Commission. See also Companies (Jersey) Law 1991, available at <http://www.jerseyfsc.org/registry/legislation/index.asp>.

ACTION TAKEN IN SUPPORT OF CURRENT INTERNATIONAL INITIATIVES.

- Jersey in May 2013 committed to join the initiative of the G5 countries on automatic exchange of information (AEOI) . The timetable for establishing the international standard for automatic exchange is September 2015. We would expect to agree automatic exchange information in accordance with this timetable.
- Jersey is closely involved with the G5 countries, and now a total of 36 countries, in progressing the G20/OECD work on the global standard on tax information exchange. Jersey joined in the joint statement issued on the 28 November 2013 committing to the early adoption of the Common Reporting Standard
- We support the St Petersburg G20 Summit Leaders Declaration in September 2013 which covered tax avoidance by multinational companies, tax information exchange and the need to work with developing countries.
- We have joined with the G8 in the publication of an Action Plan in July 2013 for further enhancing the transparency of the ownership and control of legal persons and legal arrangements.
- Jersey has agreed to join the Multi-lateral Convention on Mutual Assistance in Tax Matters, which will be effective from 1 May 2014.
- Jersey has also agreed to automatic exchange of information under the EU Savings Directive.
- Jersey has been invited to become a vice-chair of the AEOI working group of the Global Forum on Tax Transparency, which will monitor the implementation of the new international standard, as requested by the G20.
- Jersey has signed intergovernmental agreements for improving international tax compliance with the USA for FATCA and with the UK for FATCA like.
- Jersey has signed 33 Tax Information Exchange Agreements and 8 Double Taxation Agreements to the international standard. The policy being pursued is to complete negotiations and sign agreements with all G20, OECD and EU Member States.
- Jersey has been rated by the Global Forum as largely compliant a rating that matches that of Germany, the UK and the USA.

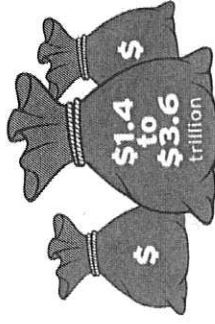
TRANSPARENCY OF COMPANIES and LEGAL ARRANGEMENTS and ANTI MONEY LAUNDERING

Commitments made

We will:

- lead by example in our implementation of the Financial Action Task Force (FATF)¹ standards;
- publish national Action Plans setting out concrete steps to ensure companies know who really owns and controls them (beneficial ownership), including ensuring that this information is available in a timely fashion to relevant authorities, for example through central registries;
- launch an inaugural G8 Public-Private Sector Dialogue² on anti-money laundering and combating terrorist finance (AML/CTF) in Eastern and Southern Africa; and
- work with our FATF partners to ensure ambitious progress at a global level.

Money laundering constitutes 2-5% of global GDP, according to the World Bank. That's between \$14 and \$3.6 trillion.



Progress since June

- G8 members have all published national Action Plans to tackle the misuse of companies and legal arrangements based upon common principles agreed at the Lough Erne Summit.
- The **United States** has committed to support central registries at state level.
- On December 11, 2013, **Canada** launched a broad consultation on the Canada Business Corporations Act (CBCA), which includes the issue of corporate transparency and improved access to accurate and timely beneficial ownership information by competent authorities, possibly through the establishment of a central repository of corporations incorporated under the CBCA.
- **Germany** is preparing detailed measures to further enhance transparency of ultimate beneficiaries of companies and legal arrangements, enabling these entities to hold adequate, accurate and current information on their beneficial ownership.
- **Italy** will assess whether beneficial ownership information could be made available through the central registry of companies.
- The **UK** will establish a publicly accessible central registry of company beneficial ownership and is undertaking a wider review of corporate transparency. All the UK's Overseas Territories and Crown Dependencies have published Action Plans and have committed to consult on establishing central registries of company beneficial ownership, or where these exist, assessing their effectiveness.
- **France** supports the creation of a centralised public registry to identify the beneficial owners of legal persons, so that it provides adequate, accurate and current information on their beneficial ownership. France implements legislation and regulation of trusts and other legal arrangements, including foreign trusts, in order to be able to identify tax beneficial owners of trusts of all kind. Trustees are liable to sanctions if they do not comply with these obligations.

¹ The FATF is an inter-governmental body which "recommends international standards of regulatory and supervisory standards for financial entities, administrative controls, and financial institutions, and to the countries, and their authorities, to implement these standards, and to ensure that these standards are effective in practice." The FATF is a multi-lateral body which is not a treaty organisation. It is a forum for the exchange of views and information on money laundering and terrorist financing.

What next?

- **Russia** has introduced additional supervisory measures and has passed legislation to establish an obligation on companies to identify their beneficial owners.
- **Japan** has established a national panel on AML which is due to report by the end of 2013 on a framework for dealing with beneficial ownership.
- **G20** leaders have committed to increase transparency of company ownership and control. Finance Ministers will report back on progress at the next G20 leaders' Summit in 2014.
- The **G8** launched the inaugural Public-Private Sector Dialogue on AML/CTF in Namibia in September 2013. This event raised awareness of the importance of robust regimes to tackle illicit finance, establishing new relationships between experts from across the G8 and Eastern and Southern Africa.
- Building on the G8 initiative, the FATF will lead a project on effective supervision and enforcement, drawing on lessons learnt and sharing best practice amongst all members.

Collective global action is essential to tackling international illicit finance. G8 members will continue to implement commitments made in their beneficial ownership Action Plans, ensuring that they meet the G8 common principles on tackling misuse of companies and legal arrangements. We will also work closely with other countries to ensure wide and ambitious implementation of the agreed international standards. A Financial Action Task Force follow-up of the implementation of G8 Action Plans should be presented in 2014. G20 Finance Ministers will report on the steps taken to meet Financial Action Task Force standards on beneficial ownership by the next G20 Summit in November 2014.



■ Countries represented at the G8 Public-Private Sector Dialogue

Countries represented at the G8 Public Private Sector Dialogue on Anti-Money Laundering and Combating Terrorist Finance.

Angola
Botswana
Canada
Comoros
Equatorial Guinea
Ethiopia
Kenya
Lesotho
Malawi
Mauritius
Mozambique
Namibia
Nigeria

Russia
(attended as the FATF President)
Rwanda
Seychelles
South Africa
Swaziland
Tanzania
Uganda
Zambia
Zimbabwe

UK
United Arab Emirates
US

The G8 will support continued public and private sector engagement to raise awareness and share expertise on these issues in Eastern and Southern Africa as well as other regions, potentially including through further Dialogues. The G8 will also share lessons learned and best practice with the Financial Action Task Force to drive forward work on enforcement and supervision to ensure that country regimes are not just technically compliant with international standards, but are also effective.



G8 Action Plan Principles to prevent the misuse of companies and legal arrangements

Subject to our different constitutional circumstances, and understanding that a one-size-fits all approach may not be the most effective, the G8 endorses the following core principles that are fundamental to the transparency of ownership and control of companies and legal arrangements. These core principles, consistent with the FATF standards, are essential to ensure the integrity of beneficial ownership and basic company information, the timely access to such information by law enforcement for investigative purposes, as well as, where appropriate, the legitimate commercial interests of the private sector.

The G8 also commits to publish national Action Plans based on these principles that set out the concrete action each of us will take to counter money laundering and tax evasion. To ensure G8 members are held to account for their commitments, the G8 agrees to a process of self reporting through a public update on the progress made against individual action plans and to inform the Financial Action Task Force.

1. **Companies should know who owns and controls them and their beneficial ownership and basic information should** be adequate, accurate, and current. As such, companies should be required to obtain and hold their beneficial ownership and basic information, and ensure documentation of this information is accurate.
2. **Beneficial ownership information on companies should be accessible onshore** to law enforcement, tax administrations and other relevant authorities including, as appropriate, financial intelligence units. **This could be achieved through central registries of company beneficial ownership and basic information at national or state level.** Countries should consider measures to facilitate access to company beneficial ownership information by financial institutions and other regulated businesses. Some basic company information should be publicly accessible.
3. Trustees of express trusts should know the beneficial ownership of the trust, including **information on beneficiaries and settlors. This information should be accessible by law enforcement, tax administrations and other relevant authorities including, as appropriate, financial intelligence units.**
4. **Authorities should understand the risks to which their anti-money laundering and countering the financing of terrorism regime is exposed and implement effective and proportionate measures to target those risks.** Appropriate information on the results of the risk assessments should be shared with relevant authorities, regulated businesses and other jurisdictions.
5. **The misuse of financial instruments and of certain shareholding structures** which may obstruct transparency, such as bearer shares and nominee shareholders and directors, should be prevented.
6. **Financial institutions and designated non financial businesses and professions, including trust and company service providers, should be subject to effective anti-money laundering and counter terrorist financing obligations** to identify and verify the beneficial ownership of their customers. **Countries should ensure effective supervision of these obligations.**
7. **Effective, proportionate and dissuasive sanctions should be available** for companies, financial institutions and other regulated businesses that do not comply with their respective obligations, including those regarding customer due diligence. These sanctions should be robustly enforced.
8. **National authorities should cooperate effectively domestically and across borders** to combat the abuse of companies and legal arrangements for illicit activity. Countries should ensure that their relevant authorities can rapidly, constructively, and effectively provide basic company and beneficial ownership information upon request from foreign counterparts.

G20 High-Level Principles on Beneficial Ownership Transparency

The G20 considers financial transparency, in particular the transparency of beneficial ownership of legal persons and arrangements, is a high priority. The G20 Leaders' Declaration from St Petersburg states, 'We encourage all countries to tackle the risks raised by the opacity of legal persons and legal arrangements'. In order to maintain the momentum, Leaders called upon Finance Ministers to update them by the 2014 G20 Leaders' Summit on the steps taken by G20 countries 'to meet FATF standards regarding the beneficial ownership of companies and other legal arrangements such as trusts by G20 countries leading by example.'

At their meeting in Sydney in 2014, Finance Ministers and Central Bank Governors requested the ACWG provide them with an update before their April meeting on concrete actions the G20 could take to lead by example on beneficial ownership transparency and the implementation of relevant FATF standards. Following the G20 ACWG meeting in Sydney, ACWG co-chairs reported to Finance Ministers and Central Bank Governors that the ACWG agreed that G20 countries will lead by example by developing G20 High-Level Principles on Beneficial Ownership Transparency that will set out concrete measures G20 countries will take to prevent the misuse of and ensure transparency of legal persons and legal arrangements.

Improving the transparency of legal persons and arrangements is important to protect the integrity and transparency of the global financial system. Preventing the misuse of these entities for illicit purposes such as corruption, tax evasion and money laundering supports the G20 objectives of increasing growth through private sector investment.

The G20 is committed to leading by example by endorsing a set of core principles on the transparency of beneficial ownership of legal persons and arrangements that are applicable across G20 work streams. These principles build on existing international instruments and standards, and allow sufficient flexibility to for our different constitutional and legal frameworks.

1. Countries should have a definition of 'beneficial owner' that captures the natural person(s) who ultimately owns or controls the legal person or legal arrangement.
2. Countries should assess the existing and emerging risks associated with different types of legal persons and arrangements, which should be addressed from a domestic and international perspective.
 - a. Appropriate information on the results of the risk assessments should be shared with competent authorities, financial institutions and designated non-financial businesses and professions (DNFBPs¹) and, as appropriate, other jurisdictions.

¹ As identified by the Financial Action Task-force

- b. Effective and proportionate measures should be taken to mitigate the risks identified.
 - c. Countries should identify high-risk sectors, and enhanced due diligence could be appropriately considered for such sectors.
- 3. Countries should ensure that legal persons maintain beneficial ownership information onshore and that information is adequate, accurate, and current.
- 4. Countries should ensure that competent authorities (including law enforcement and prosecutorial authorities, supervisory authorities, tax authorities and financial intelligence units) have timely access to adequate, accurate and current information regarding the beneficial ownership of legal persons. Countries could implement this, for example, through central registries of beneficial ownership of legal persons or other appropriate mechanisms.
- 5. Countries should ensure that trustees of express trusts maintain adequate, accurate and current beneficial ownership information, including information of settlors, the protector (if any) trustees and beneficiaries. These measures should also apply to other legal arrangements with a structure or function similar to express trusts.
- 6. Countries should ensure that competent authorities (including law enforcement and prosecutorial authorities, supervisory authorities, tax authorities and financial intelligence units) have timely access to adequate, accurate and current information regarding the beneficial ownership of legal arrangements.
- 7. Countries should require financial institutions and DNFBPs, including trust and company service providers, to identify and take reasonable measures, including taking into account country risks, to verify the beneficial ownership of their customers.
 - a. Countries should consider facilitating access to beneficial ownership information by financial institutions and DNFBPs.
 - b. Countries should ensure effective supervision of these obligations, including the establishment and enforcement of effective, proportionate and dissuasive sanctions for non-compliance.
- 8. Countries should ensure that their national authorities cooperate effectively domestically and internationally. Countries should also ensure that their competent authorities participate in information exchange on beneficial ownership with international counterparts in a timely and effective manner.

9. Countries should support G20 efforts to combat tax evasion by ensuring that beneficial ownership information is accessible to their tax authorities and can be exchanged with relevant international counterparts in a timely and effective manner.
10. Countries should address the misuse of legal persons and legal arrangements which may obstruct transparency, including:
 - a. prohibiting the ongoing use of bearer shares and the creation of new bearer shares, or taking other effective measures to ensure that bearer shares and bearer share warrants are not misused; and
 - b. taking effective measures to ensure that legal persons which allow nominee shareholders or nominee directors are not misused.

The G20 is committed to leading by example in implementing these agreed principles. As a next step, each G20 country commits to take concrete action and to share in writing steps to be taken to implement these principles and improve the effectiveness of our legal, regulatory and institutional frameworks with respect to beneficial ownership transparency.



Company ownership:

which places are the most
and least transparent?





Introduction

Money launderers, corrupt politicians, arms traffickers and tax dodgers often rely on two things to move their dirty money: company structures that allow them to hide their identity, and banks and other professionals willing to do business with them.

The issue of hidden company ownership has received high-level political attention recently. At the G8 summit in June 2013 in Northern Ireland, the G8 leaders promised to take some first steps to deal with the problem. All of the G8 countries produced a 'beneficial ownership action plan' stating what they would do to improve company ownership transparency. In addition, all of the UK's Crown Dependencies and the seven Overseas Territories that have significant financial centres also did the same.

Since the G8 summit, there have been a number of additional announcements, the most significant of which was that the UK government committed to putting information on the beneficial owners of British companies in the public domain, and France indicated that it intends to do the same. Three of the UK's Overseas Territories

announced that they would consult on whether to create such a public registry at the time of the G8, and since then an additional two Overseas Territories have announced the same. In September 2013, the leaders of the G20 countries kept the issue of company ownership transparency on the table at the summit in St Petersburg.ⁱ

What's needed is clear: the names of the ultimate, 'beneficial' owners of companies, trusts and other corporate vehicles need to be made public. It is only by putting this information in the public domain that tax inspectors and others will be able to easily access this information; that businesses will be able to know who they are doing business with; and that citizens will be able to know who owns the companies that provide their services and extract their resources.

Global Witness' investigations have demonstrated the problems that hidden company ownership poses for citizens around the world. For example, in the Democratic Republic of Congo, which is wealthy in natural resources but has some of the poorest people in the world, state mining assets were sold off by the government at way below commercial valuations to a series of British Virgin Islands companies whose full list of owners are secret, but which are associated with an Israeli diamond billionaire

who is a close friend of the Congolese president. The mines were then sold onto the world market at much higher prices, so who pocketed the difference? We do not know because company ownership is secret in the British Virgin Islands. It certainly was not the Congolese people, who have a right to know and who we calculate lost out on \$1.3 billion from these sales – that's twice the health and education budget combined.ⁱⁱ Similarly, the son of Equatorial Guinea's President used a California shell company to purchase a \$30 million mansion in Malibu and a British Virgin Islands (BVI) shell company to purchase a \$37.5 million Gulfstream jet, despite his modest official salary.ⁱⁱⁱ

Both of these countries, Congo and Equatorial Guinea, are rich in natural resources, but flounder at the bottom of the human development index.

The beneficial ownership action plans that have been produced do not promise an equal amount of progress; some are better than others. Those places that promise more transparency deserve recognition, and similarly, the places that have not yet embraced this move towards greater transparency deserve exposure.

As a result, we – Global Witness and Christian Aid – have graded a number of different jurisdictions as to what they are doing to improve company ownership transparency. We have concentrated on company ownership transparency, as opposed to that of trusts or foundations, as this is the area in which there have been recent developments. (Improvements in the transparency of ownership of other legal arrangements, such as trusts are just as necessary however.) Company ownership transparency is just one aspect of the financial transparency that is necessary for citizens to be able to hold companies and governments to account, albeit an important one. Good performance on beneficial ownership doesn't necessarily mean good performance on other issues; for a wider look at financial transparency across different jurisdictions, see the Tax Justice Network's Financial Secrecy Index.^{iv}





We have included the G8 countries, all of the UK's Crown Dependencies and Overseas Territories that have significant financial centres, and two other places that incorporate a lot of companies (Hong Kong and Singapore). These groups are sometimes characterised as being 'onshore', 'offshore' and 'midshore'. Our grades reveal that, at least as far as beneficial ownership transparency is concerned, such groupings have little meaning. 'Onshore' is in no way synonymous with transparency; and by contrast some 'offshore' places are considering opening up. We hasten to add that while none of the UK's Crown Dependencies or Overseas Territories have yet committed to full public disclosure, the intention of some to consult on this represents a promising development. We will follow this process closely in the coming months and hope that in a year's time, there will be many more jurisdictions receiving a green light. We will also be holding governments to account for the promises that they have made.

Given that a couple of countries – the UK and France – have said that they will create a public registry of beneficial ownership and a number of other places are holding consultations on whether to create a public registry, we have included some thoughts in the second half of this briefing document on how to implement such a register so that it actually does help prevent tax dodgers and criminals from moving dirty money around the world.



Which jurisdictions are the most and least transparent with respect to company ownership?

We have graded each jurisdiction as being either 'green', 'yellow', 'orange' or 'red', with green being the most transparent and red the least. Our criteria for awarding each of these grades are below:

-  **Green:** the jurisdiction must have a public registry of beneficial ownership [none have this yet], or have promised to create such a public registry.
-  **Yellow:** the jurisdiction must have launched a consultation on having a public registry of beneficial ownership, or have promised to launch a consultation. We have defined 'promised to launch a consultation' as being a statement that they will carry out a consultation, a national assessment or that they will 'consult'. Statements promising that they will 'consider' this action have not been included as it was necessary to draw the line somewhere.
-  **Orange:** the jurisdiction must have a private registry of beneficial ownership, or have promised to create such a private registry.
-  **Red:** the jurisdiction does not fall into any of the above categories.

Consensus on the need for a public register is shared widely, not just among transparency campaigning groups, but also from within the business community with, for example, European banks,^v the UK's Confederation of British Industry^{vi} and the UK's Institute of Directors^{vii} all backing the standard.

A transparency measure needs to be exactly that: transparent. A private registry, no matter how well implemented, is simply not that much help. It does not

allow citizens, journalists and others to hold companies to account. It does not ensure that law enforcement and tax authorities have quick and guaranteed access to beneficial ownership information. It does not provide businesses with important information on their partners, investors, suppliers and customers. It does not allow the people of Congo to know who has bought their natural resources at a fraction of their real value.

While we acknowledge that some jurisdictions already do a lot of work to establish information on beneficial ownership, we hold the position that there is a significant gap between holding that information in private, and making it open and accessible to the public. We therefore make the judgement that jurisdictions which have strongly indicated their intention to move to a public register or consult on this issue, receive a more positive rating than those where significant information may already be kept privately. To compile the rankings we have had to make judgement calls when interpreting the intentions of jurisdictions based on statements in the public domain. In some cases of ambiguity this has included direct correspondence with the relevant administration. We are happy to have a dialogue with any of the governments about their rating, and encourage them to share and publicise their progress on these issues.

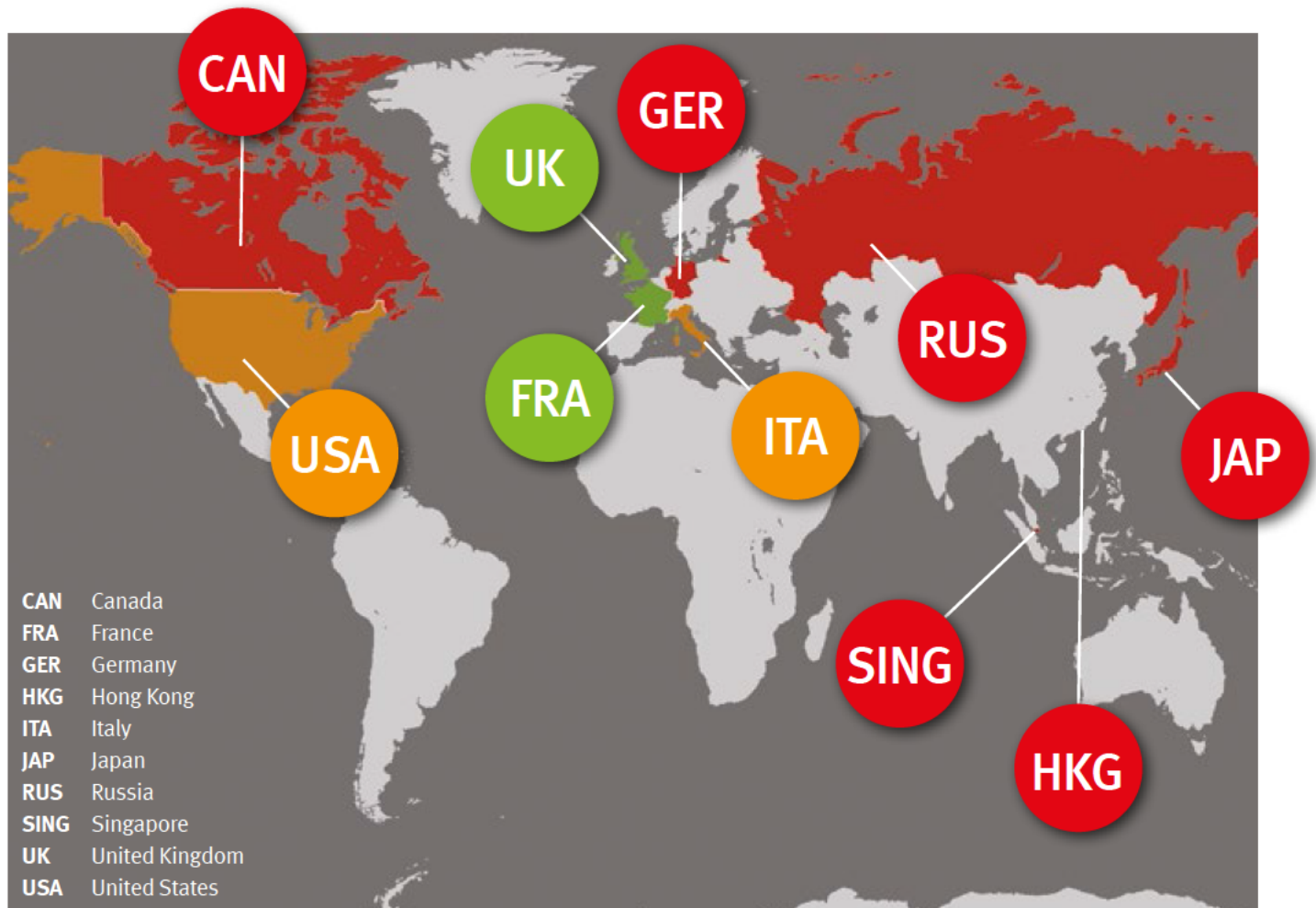


In doing this, we are aware that we have effectively placed the bar higher than the Financial Action Task Force does – the body that sets the global anti-money laundering recommendations. The Financial Action Task Force’s recommendation on beneficial ownership states that ‘competent authorities’ should be able to find out who owns and controls companies.^{viii} As discussed above, however, only giving access to competent authorities is not enough; everyone needs to be able to see this information. The global consensus on this issue is also shifting, reflected by the commitments made by the UK

and others. The UK should use its influence – and, where it exists, in some cases direct control – over the Overseas Territories and Crown Dependencies to get them to meet this emerging standard.

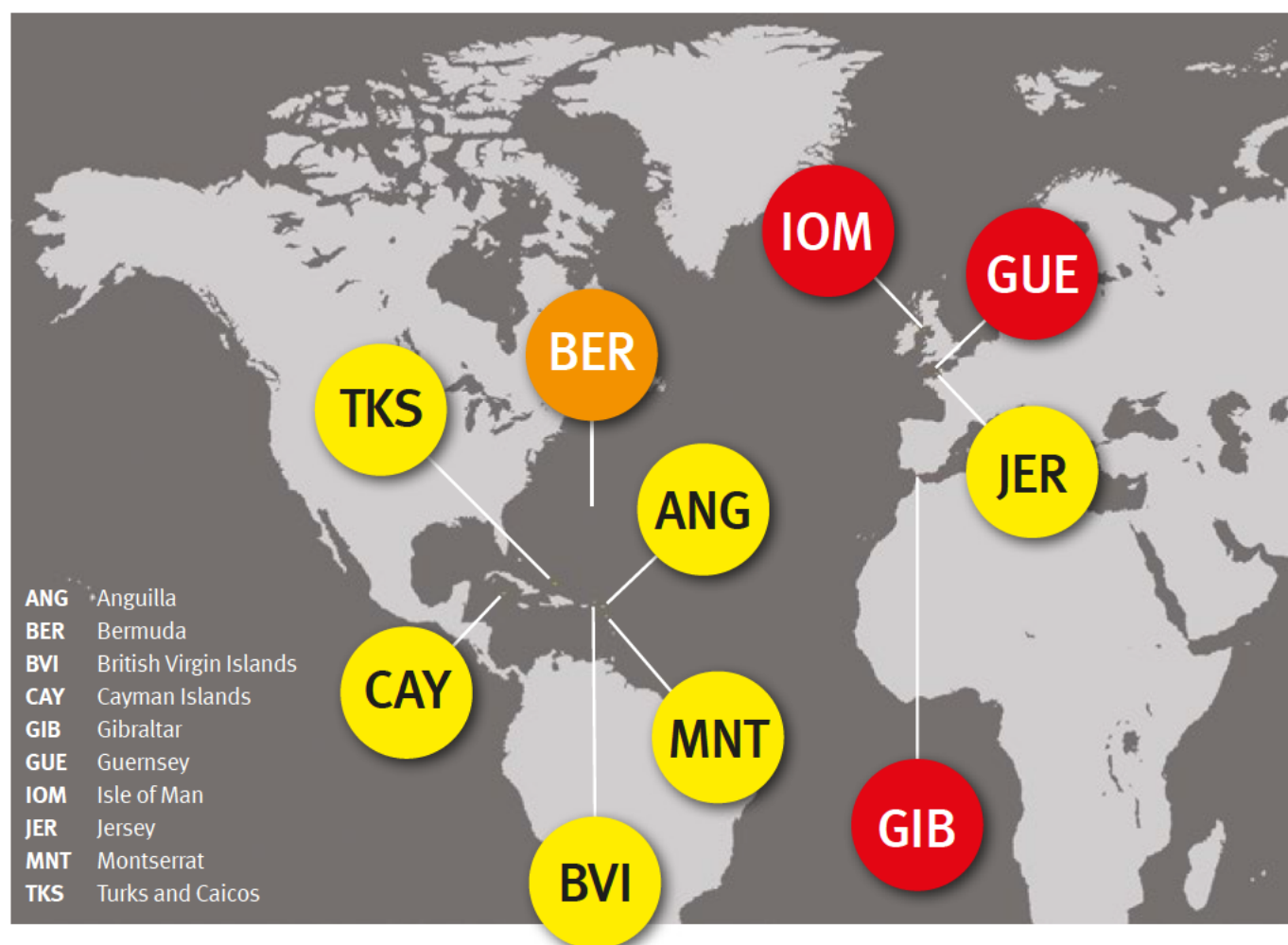
Our grading scheme awards the same rating for having done something as having promised to do it; we are taking promises at face value. We appreciate of course that not all political promises are fulfilled, and will be watching and commenting on their implementation.

The G8, Hong Kong and Singapore



Jurisdictions	Traffic light grading	Current situation / What they've promised on BO registries
UK United Kingdom	● Green	At the 2013 G8 summit, the UK government committed to create a central registry of who ultimately owns British companies, and to consult on whether this information should be made public. In October 2013 it was announced that the beneficial ownership information will be made public for all to see – the first time that any country will have done this. ^{ix}
FRA France	● Green	France intends to create a public register of the beneficial ownership of French companies. France's Minister of Economy and Finance, Pierre Moscovici, has said that his country supports public registries ^x and French officials have said the same thing in private meetings. Even though France has not made any official announcement that it will create a public registry of beneficial ownership, we have taken these two bits of evidence to imply that they will. We would encourage France to make a clear public statement that it supports public registries.
ITA Italy	● Orange	Italy supports the creation of private registries of beneficial ownership. In its G8 beneficial ownership ^{xi} action plan the government of Italy stated that it will 'assess' whether beneficial ownership information should be available on its public corporate register. We felt that 'assess' was too vague a word to be awarded a yellow rating as it is not clear what process it involves. We encourage Italy to hold a public consultation on this topic. ^{xii}
USA United States	● Orange	In its G8 beneficial ownership action plan the government of the United States stated that it will continue to advocate for comprehensive legislation to require identification and verification of beneficial ownership information at the time a company is formed. Passage of the current bills in Congress would mandate that beneficial ownership information be collected by a) regulated company service providers, b) state-level registries and/or c) the Treasury Department. The Administration did not commit to making this information public and the bills do not require that beneficial ownership information be placed in the public domain; they leave it up to the state to decide. It is expected that this information will remain private. ^{xiii} This US administration has also made this commitment in its Open Government Partnership action plans. Note that we have been generous in awarding the US government an orange rating given that they have only committed to create private registries of beneficial ownership that contain information about some, but not all American companies.
GER Germany	● Red	In its G8 beneficial ownership action plan, the German government proposes creating an 'account data retrieval system' – essentially a means by which law enforcement and other authorities can access the beneficial ownership information collected by banks. While this would be an improvement on the status quo, such a system would not provide beneficial ownership information on all German companies as there is an obvious loophole: companies incorporated in Germany but with bank accounts elsewhere. As such, as we have graded Germany as red. ^{xiv}
RUS Russia	● Red	The Russian government is not considering creating a registry of beneficial ownership. ^{xv}
CAN Canada	● Red	In its G8 beneficial ownership action plan, the Canadian government says that it will consult stakeholders on the 'possibility of establishing a central registry for entities incorporated under the Canada Business Corporations Act'. It is plausible that this consultation will include a question on whether Canada should collect beneficial ownership information in the registry, but given that the action plan does not state this, we have assumed that it will not and have graded Canada accordingly as red. ^{xvi}
JAP Japan	● Red	The Japanese government is not considering creating a registry of beneficial ownership. ^{xvii}
SING Singapore	● Red	Singapore does not have a register of beneficial ownership and as far as we are aware, is not considering creating one. ^{xviii}
HKG Hong Kong	● Red	Hong Kong does not have a register of beneficial ownership and as far as we are aware, has not made any recent statements on the issue. ^{xix}

The UK's Crown Dependencies and Overseas Territories



Jurisdictions	Traffic light grading	Current situation / What they've promised on BO registries
BVI British Virgin Islands	Yellow	In October 2013, the government of the British Virgin Islands launched a public consultation on beneficial ownership, including the question of whether they should have a public registry. ^{xx}
CAY Cayman Islands	Yellow	Media articles report that the government of the Cayman Islands intends to launch a consultation on public registries of beneficial ownership in November 2013. ^{xxi}
ANG Anguilla	Yellow	In its G8 beneficial ownership action plan the government of Anguilla stated that it will carry out a public consultation on whether beneficial ownership information should be a) held centrally and b) made public. No time line was given as to when the consultation would be carried out. ^{xxii}
TKS Turks and Caicos	Yellow	In its G8 beneficial ownership action plan the government of The Turks and Caicos Islands stated that it will carry out a consultation on whether beneficial ownership information should be a) held centrally and b) made public. It is not clear whether this will be a public consultation, but for the purposes of this document, we have given them the benefit of the doubt. We encourage Turks and Caicos to specify that this will be a public consultation. No time line was given as to when the consultation would be carried out. ^{xxiii}
MNT Montserrat	Yellow	In its G8 beneficial ownership action plan the government of Montserrat stated that it will consult

Jurisdictions	Traffic light grading	Current situation / What they've promised on BO registries
		relevant stakeholders on whether beneficial ownership information should be a) held centrally and b) made public, and that it will do this by December 2014. 'Consulting stakeholders' is not necessarily equivalent to holding a public consultation, but we have erred on the generous side and awarded Montserrat a yellow rating for this. We encourage Montserrat to specify that this will be a public consultation. ^{xxiv}
JER Jersey	● Yellow	Jersey intends to carry out a consultation on whether to create a public registry of beneficial owners. ^{xxv} Jersey already has a private registry of beneficial ownership that is partially kept up to date. The Jersey Financial Services Commission collects information on, and grants approval for, the beneficial owners of all new companies. In addition, the Commission collects information on, and grants approval for, changes in beneficial ownership if a) the new owner controls more than 25% of the company and b) the company is not receiving services from the Trust and Company Service Provider. ^{xxvi} In other words, up-to-date information on beneficial ownership is partially stored in a centralised register, and partially held by company service providers.
BER Bermuda	● Orange	Bermuda has a private registry of beneficial ownership. The Bermuda Monetary Authority collects and verifies information on the beneficial owners of all new Bermuda companies. The Authority is required to keep this information up to date for all beneficial owners who are non-residents. ^{xxvii} In its G8 beneficial ownership action plan, the government of Bermuda states that it will 'review and consider' having a central registry for beneficial ownership. ^{xxviii}
IOM Isle of Man	● Red	In its G8 beneficial ownership action plan the government of the Isle of Man stated that it will carry out a national assessment by 2014 which looks at whether a centralised registry containing information on beneficial ownership would improve transparency. We encourage the Isle of Man to consult on whether to make beneficial ownership information public, rather than simply making it centralised. ^{xxix}
GIB Gibraltar	● Red	In its G8 beneficial ownership action plan the government of Gibraltar stated that it will consider the benefits of setting up a centralised registry of beneficial ownership. However, Gibraltar also stated that even if it considered that having a centralised registry would improve transparency, it would only implement this if G8 countries, and the Crown Dependencies and other Overseas Territories did the same. As a result, we have graded Gibraltar as red, as in effect it has stated that it is not going to make beneficial ownership information transparent in the near future. ^{xxx}
GUE Guernsey	● Red	In its G8 beneficial ownership action plan the government of Guernsey stated that it will carry out an assessment of the costs and benefits of a central register of beneficial ownership information. However, Guernsey also stated that even if it found that the benefits of a centralised register outweighed the costs, it would not implement such a register until G8 countries and other Crown Dependencies and Overseas Territories did the same. As a result, we have graded Guernsey as red, as in effect it has stated that it is not going to make beneficial ownership information transparent in the near future. ^{xxxi}

Implementing a public register of beneficial ownership: how to make it work

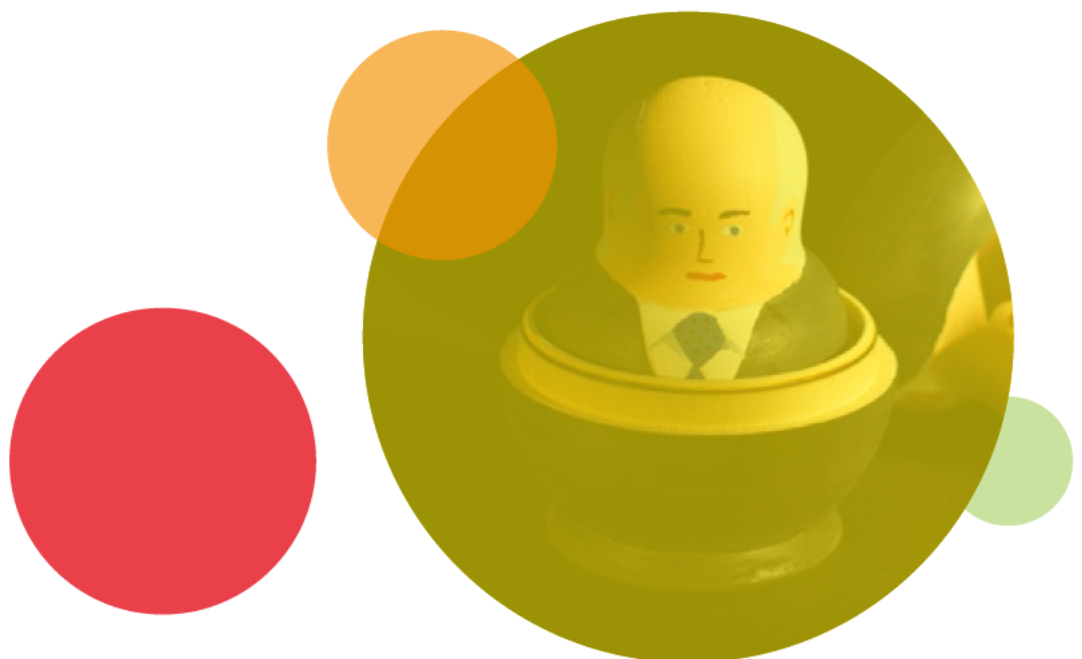
Requiring companies to submit beneficial ownership information necessarily imposes a small amount of red tape on them. To justify doing this, it is essential that any public register of beneficial ownership delivers benefits that are far bigger.

Two cost benefit analyses have been carried out (by the UK and the EU) into the effectiveness of creating a public registry of beneficial ownership. Both concluded that the potential benefits far outweigh the costs. But the benefits will only be reaped if the registry is implemented well. A poorly implemented registry, that imposes red tape on business yet does not deliver benefits to society would be a missed opportunity. Below are our thoughts on the requirements of a good quality public register.

- **Open data.** Beneficial ownership information should be available for free as machine readable open data. The UK's Companies House is already moving towards publishing more of its information in this format. For example, in November 2013, it published

company accounts, in a computer-readable format for free, allowing users the flexibility to manipulate the information and combine it with other sources.

- **Means of control.** The registry should contain a description of how the beneficial owner exercises control over the company, such as names of the chain of companies that demonstrate this person is the beneficial owner, or any other means by which this person exercises control over the company. This would allow third parties, such as banks, law enforcement or journalists to verify the information independently, by cross-checking it against existing shareholder registries. Without information on the means of control, the beneficial ownership information is totally unverifiable.
- **Verification.** The information in the register needs to have undergone some basic verification. In some cases, this could be possible via cross-checking other databases, such as those held by passport authorities, vehicle licensing authorities and electoral registers.
- **Frequency of update.** The information on the identity of the beneficial owner(s) should be required to be submitted annually, and should also be required to be submitted within a certain number of days of any change in beneficial ownership. Simply having an annual update requirement is not enough as it provides an obvious loophole for any money launderer: become the beneficial owner after the annual update has just been submitted.
- **Penalties.** Significant penalties need to be imposed on



people and companies who lie about their beneficial owners. This a) acts to dissuade people from fronting a criminal company, and b) allows law enforcement to impose a penalty on a company they very much suspect of being a criminal front, but can not quite prove.

- **Trusts.** If a trust is part of a company structure, information on the trust needs to be collected and published. This should include details of the settlor, beneficiaries, trustees and anyone else who exercises effective control over the trust.
- **Date of birth.** The registry needs to contain sufficient information on beneficial owners for them to be

identified. It is no good simply listing the owner as being a John Smith. The information should include the beneficial owner's date of birth and nationality, as is currently required in the UK for directors.

- **Contact information.** The registry needs to include a means of contacting the beneficial owner, such as a business address.
- **Responsibility to provide the information.** A company should be legally required to find out the identities of its beneficial owners; and a beneficial owner should be legally required to inform a company that they are the ultimate owner.

Conclusion

A few years ago, company ownership transparency was an obscure topic. But during 2013, the issue has received high level political attention, and significant advances as well as some big promises have been made. The pressure remains on the world's major economies, and on the jurisdictions that incorporate large numbers of companies to open up. In these rankings we have taken the commitments at face value, and rewarded those who have agreed to consider and consult on public registries. We intend to update this measure of company ownership transparency in the future to assess whether the recent promises that have been made have been fulfilled, how genuine those consultations have been and to highlight those places that are making improvements, and those that have failed to address the problem of hidden company ownership.



Endnotes

- i G20 leaders' declaration, September 2013, <http://www.g20.org/load/782795034>
- ii Global Witness reports and press releases, see <http://www.globalwitness.org/campaigns/corruption/oil-gas-and-mining/secret-sales>
- iii Permanent Subcommittee on Investigations, United States Senate, Keeping Foreign Corruption out of the United States: Four Case Histories, 2010
- iv Tax Justice Network, Financial Secrecy Index 2013, <http://www.financialsecrecyindex.com/>
- v In a written response to the Financial Action Task Force, the European Banking Federation stated that it was in favour of public registries of beneficial ownership, <http://www.fatf-gafi.org/media/fatf/documents/publicconsultation/First%20public%20consultation%20document%20responses%20financial%20sector%20part%202.pdf>
- vi Katja Hall, CBI Chief Policy Director, said: "Businesses back the creation of a beneficial ownership register which will support efforts to promote transparency and stamp out illicit financial activity." "The real prize is the ability to track ownership information around the world. Now that the UK has chosen to make this a public register, ensuring that others follow our lead will be critical to its success and to maintaining a level playing field." <http://www.cbi.org.uk/media-centre/press-releases/2013/10/cbi-responds-to-pm-announcement-on-beneficial-ownership>
- vii Institute of Directors, Enhancing the transparency of UK company ownership and increasing trust in UK business, 16 September 2013, <http://www.iod.com/influencing/policy-papers/corporate-governance/enhancing-the-transparency-of-uk-company-ownership-and-increasing-trust-in-uk-business>
- viii Financial Action Task Force, International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation, The FATF Recommendations, 2012, http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf. Recommendation 24 states that 'Countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons [i.e. companies] that can be obtained or accessed in a timely fashion by competent authorities'
- ix 'G8 Action Plan Principles to prevent the misuse of companies and legal arrangements', 18 June 2013. 'UK Action Plan to prevent misuse of companies and legal arrangements', 18 June 2013. David Cameron's speech at the Open Government Partnership summit, London, 31 October 2013, <https://www.gov.uk/government/speeches/pm-speech-at-open-government-partnership-2013>
- x Speech by Pierre Moscovici, 11 October 2013., <http://www.cfr.org/france/conversation-pierre-moscovici/p31546>
- xi Conversations with Italian officials, 2013
- xii http://www.tesoro.it/ufficio-stampa/comunicati/2013/documenti/Italyxs_Action_Plan_to_enhance_transparency_and_prevent_the_misuse_of_companies_and_trusts_-_Allegato_al_comunicato_nx_97.pdf
- xiii <http://www.whitehouse.gov/the-press-office/2013/06/18/united-states-g-8-action-plan-transparency-company-ownership-and-control>
- xiv http://www.bundesregierung.de/Content/DE/StatischeSeiten/Breg/G8G20/Anlagen/g8-lough-erne-deutscher-aktionsplan.pdf;jsessionid=5FA57A17530978836EB8F8309522C2E9.s2t2?__blob=publicationFile&v=2
- xv http://www.fedsfm.ru/en/international-cooperation/action_plan
- xvi <http://pm.gc.ca/eng/media.asp?id=5547>
- xvii <http://www.mofa.go.jp/files/000006562.pdf>
- xviii Financial Action Task Force, mutual evaluation of Singapore, 2008, <http://www.fatf-gafi.org/topics/mutualevaluations/documents/mutualevaluationofsingapore.html>
- xix Financial Action Task Force, mutual evaluation of Hong Kong, 2008, <http://www.fatf-gafi.org/topics/mutualevaluations/documents/mutualevaluationofhongkongchina.html>
- xx <http://www.bvi.gov.vg/sites/default/files/Consultation%20Paper%20on%20Beneficial%20Ownership%20Information.pdf>
- xxi <http://www.compasscayman.com/caycompass/2013/11/06/Public-to-weigh-in-on-beneficial-ownership-registry/>
- xxii <http://www.gov.ai/documents/Anguilla%20Action%20Plan%20To%20Prevent%20Misuse%20Of%20Companies%20And%20Legal%20Arrangements.pdf>
- xxiii http://www.tcineWSnow.com/documents/action_plan_to_prevent_misuse_of_legal_persons_and_arrangements.pdf
- xxiv <http://www.gov.ms/wp-content/uploads/2012/06/Final-action-plan-on-beneficial-ownership.pdf>
- xxv Conversations with Jersey officials, 2013
- xxvi IMF, Jersey: Financial Sector Assessment Program Update, 2009, <http://www.imf.org/external/pubs/ft/scr/2009/cr09280.pdf>
- xxvii Caribbean Financial Action Task Force, mutual evaluation of Bermuda, 2008, <http://www.fatf-gafi.org/countries/a-c/bermuda/documents/mutualevaluationofbermuda.html>
- xxviii <http://www.royalgazette.com/assets/pdf/RG140491730.pdf>
- xxix <http://www.gov.im/lib/docs/cso/actionplan.pdf>
- xxx https://www.gibraltar.gov.gi/images/stories/PDF/finance/GIB_ACTION_PLAN_LEGAL_PERSONS_ARR_3_SEPT_2013.pdf
- xxxi <http://www.gov.gg/article/108000/Guernsey-publishes-action-plan-on-beneficial-ownership>



global witness

Christian Aid is a Christian organisation that insists the world can and must be swiftly changed to one where everyone can live a full life, free from poverty.

We work globally for profound change that eradicates the causes of poverty, striving to achieve equality, dignity and freedom for all, regardless of faith or nationality. We are part of a wider movement for social justice.

We provide urgent, practical and effective assistance where need is great, tackling the effects of poverty as well as its root causes.

Christian Aid
35 Lower Marsh
London
SE1 7RL

www.christianaid.org.uk

Global Witness is a UK-based nongovernmental organisation which investigates the role of natural resources in funding conflict and corruption around the world.

Global Witness
Buchanan House
30 Holborn
London EC1N 2HS

mail@globalwitness.org
www.globalwitness.org

References to 'Global Witness' in this report are to Global Witness, a company limited by guarantee and incorporated in England (company number 2871809).

ISBN: 978-0-9926910-0-4

