

Luxembourg, 20 December 2019

To all professionals under AML/CFT
supervision of the CSSF

CIRCULAR CSSF 19/732

Re: Prevention of Money Laundering and Terrorist Financing: Clarifications on the Identification and Verification of the Identity of the Ultimate Beneficial Owner(s)

Ladies and Gentleman,

1. The purpose of this circular is to provide guidance to all professionals subject to AML/CFT supervision of the CSSF in relation to the legal requirements applicable to the identification and verification of the identity of the ultimate beneficial owner with a view to enhancing financial transparency.
2. The concept of **ultimate beneficial ownership**¹ (*hereinafter* referred to also as UBO) is not novel as the term “beneficial owner” already appeared in the first anti-money laundering directive dating from 1991.² Yet, said first anti-money laundering directive did not define the concept of beneficial owner and contained little detail on the relevant procedures with regards to customer identification and verification obligations including of beneficial owners (*know your customer*). This gap was filled with the adoption of the third anti-money laundering directive as a definition of what constitutes a beneficial

¹ The French equivalent is *bénéficiaire effectif*. The terms *bénéficiaires économiques* and *bénéficiaires réels* have equally been used in the past but are however no longer applicable.

² Council Directive (EU) 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering.

owner was provided for in Article 3(6).³ The fourth anti-money laundering directive⁴ (*hereinafter* “4AMLD”) has provided significant clarifications⁵ in view of the concrete implementation of the beneficial owner concept while simultaneously taking into account the 2012 FATF Recommendations, particularly Recommendations 10, 24, 25, its interpretive notes, as well as immediate outcomes 4 and 5 described in the FATF Methodology for assessing the effectiveness of AML/CFT systems.

3. As the practical implementation of these FATF Recommendations has proved challenging for professionals, FATF has equally developed a guidance paper⁶ on transparency and beneficial ownership⁷ in 2014 and continues to provide guidance on the topic with the aim of creating an effective system that prevents *i.a.* the misuse of legal persons and legal arrangements for criminal purposes.⁸ The latest document of the FATF in that respect containing practical guidance is the paper on Best Practices on beneficial ownership for legal persons of October 2019⁹.
4. Several provisions of the 4AMLD have to be read in conjunction to identify the ultimate beneficial owner, notably Articles 3(6) and 3(12) which contain definitions, Article 13 with regards to customer due diligence obligations and Articles 30 and 31 concerning the establishment of a central register on beneficial ownership information. To be noted

³ Directive (EU) 2005/60 EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

⁴ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC.

⁵ Articles 30 and 31.

⁶ FATF Guidance, Transparency and beneficial ownership, 14 October 2014, available at: <http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf>

⁷ Three mechanisms are suggested in this guidance paper: Firstly the creation of company registers, secondly to require and hold beneficial ownership information, and thirdly, to rely on existing information. A combination of mechanisms (the multi-prong approach) using several sources of information is considered by FATF to be the most effective.

⁸ See also the FATF paper on “*The Misuse of Corporate Vehicles, Including Trust and Company Service Providers*”, 13 October 2006, available at: <http://www.fatf-gafi.org/media/fatf/documents/reports/Misuse%20of%20Corporate%20Vehicles%20including%20Trusts%20and%20Company%20Services%20Providers.pdf>

⁹ <http://www.fatf-gafi.org/media/fatf/documents/Best-Practices-Beneficial-Ownership-Legal-Persons.pdf>

that Article 30 has been modified pursuant to the fifth anti-money laundering directive¹⁰ (*hereinafter* “5AMLD”).

5. The Luxembourg law of 13 February 2018 has implemented the 4AMLD requirements on professional obligations with respect to the beneficial owner through amendments in the law of 12 November 2004 on the fight against money laundering and terrorist financing¹¹ (*hereinafter* “the AML/CFT law”).¹² The most relevant Articles of the AML/CFT law in relation to the ultimate beneficial owner are thus Article 1(7) and Article 3(2), as well as Article 1(2) of the Grand-Ducal Regulation of 1 February 2010.¹³ The CSSF Regulation 12-02 of 14 December 2012¹⁴ (*hereinafter* “CSSF Regulation 12-02”), particularly Articles 3, 17, 21-23 and 25 should equally be taken into account.

6. The establishment of a central register on beneficial ownership information, recently introduced through the law of 13 January 2019¹⁵ and the Grand-Ducal Regulation of 15 February 2019 should also be taken into account. Moreover, the law of 10 August 2018 on information to be obtained and held by trustees transposing Article 31 of the 4AMLD on the registry on *fiducies* and trusts¹⁶ should also be taken into consideration. The law establishing the central register on beneficial ownership information has entered into force on 1 March 2019 with a transition period of six months which has been extended for three months, thus until 30 November 2019.¹⁷

¹⁰ Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018. The consolidated version can be found here: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02015L0849-20180709&from=EN>.

¹¹ Law of 12 November 2004 on the fight against money laundering and terrorist financing transposing Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering and amending.

¹² The law has subsequently been amended notably by the laws of 17 April 2018 and of 10 August 2018.

¹³ Grand-ducal Regulation of 1 February 2010 providing details on certain provisions of the amended law of 12 November 2004 on the fight against money laundering and terrorist financing.

¹⁴ CSSF Regulation N° 12-02 of 14 December 2012 on the fight against money laundering and terrorist financing.

¹⁵ <http://data.legilux.public.lu/file/eli-etat-leg-loi-2019-01-13-a15-jo-fr-pdf.pdf>.

¹⁶ Loi du 10 août 2018 relative aux informations à obtenir et à conserver par les fiduciaires et portant transposition de l'article 31 de la directive (UE) 2015/849 du Parlement européen et du Conseil du 20 mai 2015 relative à la prévention de l'utilisation du système financier aux fins du blanchiment de capitaux ou du financement du terrorisme, modifiant le règlement (UE) n° 648/2012 du Parlement européen et du Conseil et abrogeant la directive 2005/60/CE du Parlement européen et du Conseil et la directive 2006/70/CE de la Commission, accessible at: <http://legilux.public.lu/eli/etat/leg/loi/2018/08/10/a702/jo>.

¹⁷ In line with Article 30(10) and Article 67 of the 5AMLD, the national central registers on beneficial ownership have to be interconnected by 10 March 2021 through a European Central Platform.

7. The purpose of this circular is to provide guidance to all professionals subject to AML/CFT supervision of the CSSF (*hereinafter* “professionals”) on the practical implementation of the identification requirements of the ultimate beneficial owner as well as on the reasonable measures that should be taken to verify the identity requirements, so that they are satisfied that they know who the ultimate beneficial owner(s) is (are). The identification goes beyond the mere collection of a name or document or check in a registry. This circular has thus to be read in conjunction with other CSSF circulars and regulations related to AML/CFT,¹⁸ as well as the applicable legal and regulatory framework. The examples provided in this circular are meant to assist the professionals in meeting their obligations but are not intended to be exhaustive examples. Professionals should develop AML/CFT policies, procedures, systems and controls that are adequate and effective considering the nature, scale and complexity of their respective businesses as well as their overall exposure to ML/FT risks.

8. Part I of the present circular outlines the UBO identification requirements for customers that are either natural persons, legal persons or legal arrangements. Part II outlines the verification of identity requirements. Finally, in Part III, useful indicators can be found to help detect potential concealment of beneficial ownership information.

I. Identification of the Ultimate Beneficial Owner

1. General Considerations

9. An ultimate beneficial owner is a natural person who ultimately owns or controls the customer or on whose behalf a transaction or activity is being conducted. In case of a legal entity, a clear distinction should be made between basic ownership information, namely concerning the immediate legal owner of the customer, and beneficial ownership information namely concerning the person(s) who ultimately own(s) or control(s) the customer. Generally, when implementing customer due diligence requirements, a holistic and risk-based approach should be adopted.¹⁹ Nonetheless professionals have to

¹⁸ *i.a.* but not limited to CSSF Circulars 17/650, 17/661, 18/698, accessible at: www.cssf.lu.

¹⁹ Article 3 (2a) of the AML/CFT law.

ascertain that they will effectively look for the natural person(s) who is/are to be considered as the ultimate beneficial owner(s).

10. Establishing who the ultimate beneficial owner is may not in every circumstance be a straightforward exercise and different measures would need to be taken depending on the legal form and ownership structure of the customer. Also, the fact that many customers and/or their ultimate beneficial owners may not be based in Luxembourg can pose additional challenges in fulfilling the UBO requirements. The extent and depth of the measures needed to establish beneficial ownership have thus to be commensurate *i.a.* with the complexity and the location of the customer.
11. While complex legal entity structures can have legitimate reasons, additional measures might have to be taken for understanding the structure and to be satisfied as to the identity of their ultimate beneficial owner(s). For example the lack of any obvious legitimate (commercial) purpose when using complex legal structures may trigger doubts on the real identity of the UBO(s) and could pose a higher risk of ML/TF that would need to be mitigated.
12. The ultimate beneficial owner is by definition a **natural person**. Therefore, the ultimate beneficial owner can only be an individual, and neither another legal person nor a legal arrangement. The ultimate beneficial owner should also be conceptually distinguished from:
 - The customer, which could be a natural person, a legal person or a legal arrangement; and
 - The beneficiaries of the contract or the transaction. The meaning of this term depends on the context, notably for insurance services or for trusts and legal arrangements. The beneficiary and the ultimate beneficial owner may in certain cases be the same, in particular where the customer is a natural person.
13. A business relationship or transaction can also involve several ultimate beneficial owners. Furthermore, ultimate beneficial ownership is by definition not static and can change over time. For example: Shared ownership can change as the business grows.

14. To identify the UBOs, professionals can make use of the publicly available records with information on ultimate beneficial owners (for example the information contained in the national register on beneficial ownership), request the customer for relevant data, require evidence of the beneficial owner's identity on the basis of documents or information of a reliable source from the customer, or obtain the necessary information by other means.
15. The aforementioned Luxembourg central register on beneficial ownership recently put in place constitutes a useful tool for the purposes of obtaining and verifying beneficial ownership information on Luxembourg legal entities. When identifying the ultimate beneficial owner(s) of their customers, professionals should collect proof of registration or an excerpt of the register.²⁰ Similar measures should be taken with respect to customers that are foreign legal persons or arrangements and where such type of registers are available for consultation without restrictions to foreign financial institutions.
16. Simultaneously however, and in accordance with Article 3(2a) of the AML/CFT law, professionals may not exclusively rely on beneficial ownership information contained in such a central register to fulfill their customer due diligence obligations²¹ as those go beyond information required for the purpose of Article 3(2) (b) of the AML/CFT Law and include measures for the purpose of Article 3(2) (a), (c) and (d). These central registers provide a useful basis of information, which in combination with other verification means, shall ensure the accuracy and adequacy of the beneficial ownership information (cross-checking).
17. In case no ultimate beneficial owner is identified as required by the laws and regulations, the business relationship cannot be established. In case of an existing business relationship, where it is not possible to identify the UBO, the transaction(s) should not be carried out or the business relationship should be terminated. Consideration should be given to file a report of ML/FT suspicions, in accordance with Article 3(4) of the AML/CFT law.

²⁰ Article 14 of the 5AMLD.

²¹ Article 3 (2a) of the AML/CFT Law.

2. Definition of the Ultimate Beneficial Owner

18. Article 1 (7) of the AML/CFT law defines the ultimate beneficial owner as follows:

*“Any natural person(s) who **ultimately owns or controls** the customer or any natural person(s) **on whose behalf** a transaction or activity is being conducted”.*

19. According to the FATF Recommendations, the definition of a beneficial owner also includes the *“person(s) who exercises ultimate effective control over a legal person/arrangement”*.²²

2.1 The Customer is a Natural Person

20. In case of a business relationship with a customer who is a natural person, the customer himself will usually be the ultimate beneficial owner. In line with Article 17 of the CSSF Regulation 12-02, the professional must always enquire whether the customer is acting for its own account or not. Where the declaration is negative, or where there exist elements of the transaction, or surrounding circumstances, or reasonable grounds that indicate that the customer is acting on behalf of (or fronting for) another person, appropriate inquiries should be made in order to determine if that person falls within the definition of UBO pursuant to Article 3 (2) b) of the AML/CFT law. Where the ultimate beneficial owner is a different person, said individual must be identified and reasonable measures must be taken to verify his/her identity.

2.2 Legal Persons or Legal Arrangements

21. This section outlines the legal framework applicable to identify the ultimate beneficial owner(s) of a legal person or legal arrangement. First, some general guidance will be given (2.2.1), second, the applicable legal framework (2.2.2) as well as the threefold “cascading procedure” will be addressed (2.2.3), and finally, some specific relationships will be explained (2.2.4).

²² Glossary of the FATF Recommendations, available at: <https://www.fatf-gafi.org/glossary/>.

2.2.1 General Guidance

22. In view of enhancing transparency, “*legal persons*” should be interpreted broadly, meaning generally any entity which has a legal personality and “*that can establish a permanent customer relationship with a financial institution or otherwise own property*”.²³ This includes but is not limited to companies, corporate bodies, foundations, partnerships or associations and other pertinently similar entities. Non-profit organizations (NPO’s) that can take a variety of forms, such as associations or cooperative societies, should also be included.
23. Legal arrangements may refer to express trusts²⁴ or other similar legal arrangements that may include (for AML/CFT purposes) *fiducies*, *Treuhand* and *fideicomiso*, which are not necessarily foreseen in the Luxembourg law. However, life insurance policies shall not be regarded as similar legal arrangements.
24. For any legal person or legal arrangement, the extent of the specific measures that have to be taken to understand the ownership structure and identify the ultimate beneficial owner should be determined depending on the complexity and the different legal forms and structures in order to achieve appropriate levels of knowledge and transparency related to ultimate beneficial ownership information.

2.2.2 Legal Framework Applicable to Legal Persons and Legal Arrangements

I. General Rules

25. Article 1 (7) (a) of the AML/CFT law provides that:

The concept of beneficial owner shall include at least:

²³ Glossary of the FATF Recommendations, available at: <https://www.fatf-gafi.org/glossary/j-m/>.

²⁴ According to the Glossary of the FATF Recommendations, *Express trust* refers to a trust clearly created by the settlor, usually in the form of a document e.g. a written deed of trust. They are to be contrasted with trusts which come into being through the operation of the law and which do not result from the clear intent or decision of a settlor to create a trust or similar legal arrangements (e.g. constructive trust).

a) *In the case of corporate entities:*

(i) Any natural person who **ultimately owns or controls** a legal entity through **direct or indirect ownership** of a sufficient percentage of the shares or voting rights or ownership interest in that entity, including through bearer shareholdings, or through **control via other means** other than a company listed on a regulated market that is subject to disclosure requirements consistent with Union law or subject to equivalent international standards which ensure adequate transparency of ownership information.

A shareholding of 25% plus one share or an ownership interest of more than 25% in the customer held by a natural person shall be an **indication of direct ownership**. A shareholding of 25% plus one share or an ownership interest of more than 25% in the customer held by a corporate entity, which is under the control of a natural person(s), or by multiple corporate entities, which are under the control of the same natural person(s), shall be an indication of **indirect ownership**;

(ii) If, after having exhausted all possible means and provided there are no grounds for suspicion, no person under point (i) is identified, or if there is any doubt that the person(s) identified are the beneficial owner(s), any natural person who holds the position of senior **dirigeant (manager)**.

II. Fiducies and Trust Specificities

26. In relation to *fiducies* and trusts incorporated/recognized in Luxembourg,²⁵ it should be noted that trusts and *fiducies* can be used to increase anonymity by adding an additional layer of complexity through the separation of beneficial and legal ownership. In a trust, a settlor transfers legal ownership including the right to control the property (legal title) to a trustee and the right to enjoy the benefits of the property (equitable) to beneficiaries. The trust instrument sets out the terms of such a transfer. As the legal title and control of property are disconnected from the equitable interests in the asset, different persons

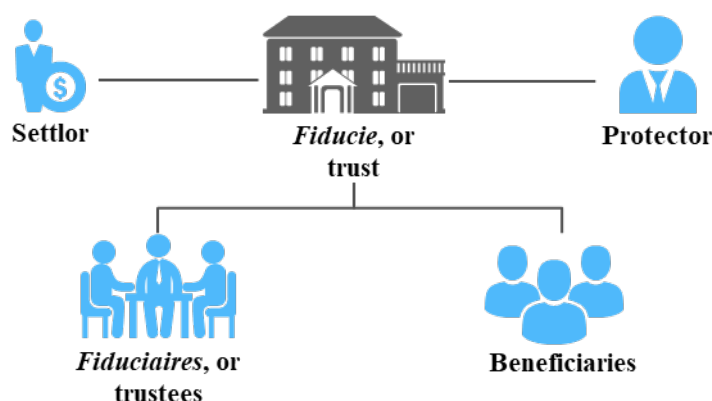
²⁵ Law of 27 July 2003 ratifying the Den Hague Convention of 1st July 1985 relating to the law applicable to the trust and its recognition; providing for a new regulation of fiduciary contracts; and amending the law of 25th September 1905 on the transcription of rights on immoveable property (as amended by the Law of 22nd March 2004).

might own, benefit from, and control the trust. If the settlor and beneficiary are the same, the legal and equitable title are said to merge and the trust ceases to exist. Where a legal is entirely or partially owned by a trust, the rules on identification of the UBO of legal entities and trusts apply simultaneously.

27. Article 1 (7) (b) of the AML/CFT law provides that the concept of beneficial owner shall include at least:

- (i) *The settlor, if any;*
- (ii) *Any fiduciaire or trustee);*
- (iii) *The protector, if any;*
- (iv) *The beneficiaries, or where the individuals benefiting from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;*
- (v) *Any other natural person exercising ultimate control or influence over the fiducie or trust by means of direct or indirect ownership or by other means.*

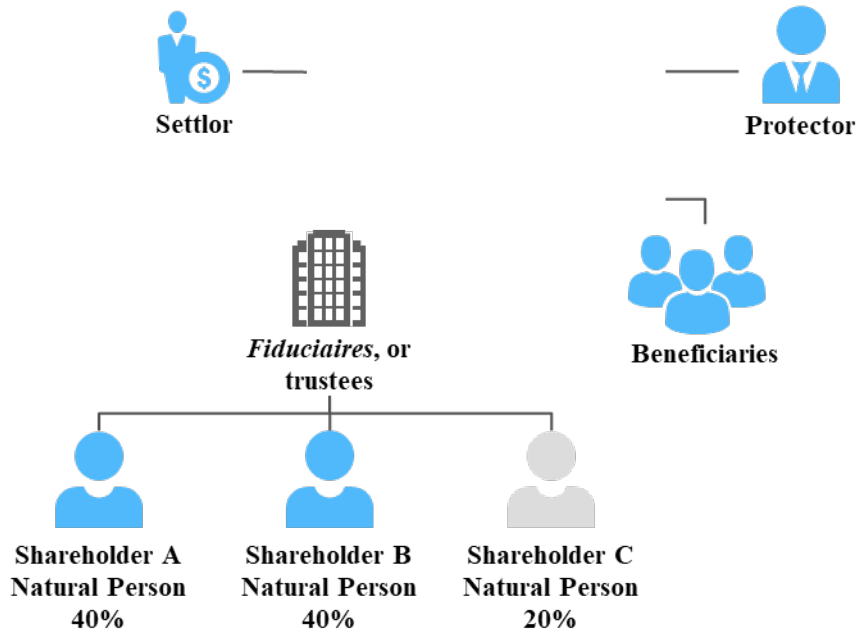
Figure 1: Trust Direct Ownership: All persons in blue have to be identified as UBOs



28. In the case of *fiducies* and trusts, control under point (v) means the power, either exercisable alone or jointly, to take certain actions. These actions include dealing with

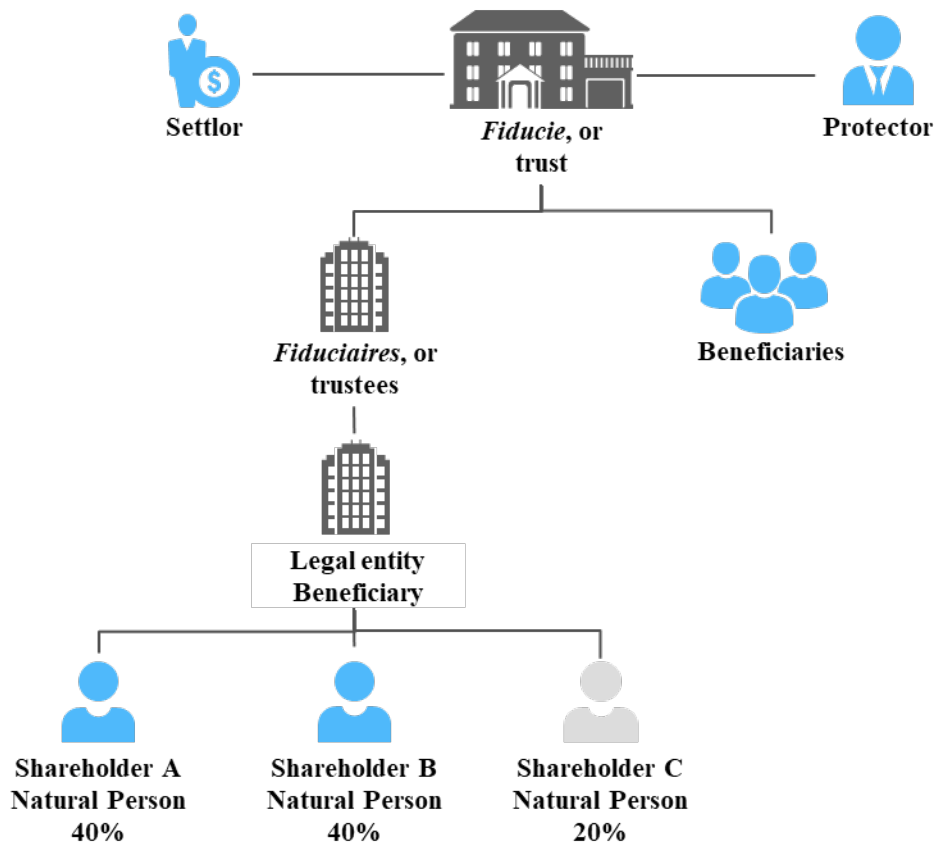
trust property, terminating or varying a trust, adding or removing beneficiaries, appointing or removing trustees, etc.

Figure 2: Trust: Indirect Ownership: All persons in blue have to be identified as UBOs



29. In relation to legal entities such as foundations and legal arrangements similar to trusts, Article 1 (7) (c) of the AML/CFT law provides that the concept of ultimate beneficial owner should at least include any natural person holding equivalent or similar positions as in the situation of *fiducies* or trusts.

Figure 3: Trust: Indirect Ownership



30. In case where the trust is 100% owned by a legal entity, the rules applicable to legal entities in view of identifying the UBO apply.

III. Exemption: Companies whose shares are admitted to trading on regulated markets (Union or equivalent)

31. The AML/CFT law²⁶ specifies that, in principle, it is not required to identify and verify the identity(ies) of the ultimate beneficial owner(s) of a customer whose shares are admitted to trading on a regulated market²⁷ in one or more EU Member States or EEA countries that is subject to disclosure requirements consistent with Union law or on a

²⁶ Article 1 (7) a) i).

²⁷ As defined under Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (“MiFID II”).

third country market that is subject to equivalent obligations which ensure adequate transparency of ownership information. It should be noted that under Union law, relevant disclosure obligations for major shareholders are set out under Chapter III of the Transparency Directive²⁸, and apply only for an issuer whose shares (or depository receipts representing shares) are admitted to trading on a regulated market. Therefore, issuers of securities other than shares (such as debt instruments), and issuers whose shares (or depository receipts presenting shares) are admitted to trading on a market other than a regulated market (such as an MTF), are not subject to the necessary transparency obligations and do not qualify for the exemption of Article 1 (7) a) i) of the AML/CFT law. Consequently, in the latter cases, UBO(s) should be identified and verified.

32. In other terms, the exemption only applies where the customer is an issuer of shares (or equivalent depository receipts representing shares) which are admitted to trading on a regulated market in the Union or on a third country market subject to disclosure obligations for major shareholders which are subject to equivalent international standards which ensure adequate transparency of ownership information.
33. The professional which intends to make use of this exemption should thus ensure that the customer is:
- A company whose shares (or equivalent) are admitted to trading on a regulated market in the EEA; or
 - A company whose shares are admitted to trading on a non-EEA market, but that it is subject to equivalent disclosure obligations to those mentioned above.
34. Where applicable, the professional should record the measures taken to ascertain the equivalence status of the market. The evidence of the admission to the regulated market should also be recorded. For companies whose shares are admitted to trading on a third country market which does not pass the equivalence requirements, the UBO should

²⁸ Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC.

always be identified and verified in the same manner explained in this circular as for unlisted companies.

35. Legal entity customers that do not fulfill these criteria are however subject to the identification of their ultimate beneficial owner(s) on the basis of the following threefold procedure.

2.2.3 Threefold Procedure to Determine Ultimate Beneficial Ownership

36. With regards to legal persons, Article 1 (7) of the AML/CFT law provides for a threefold procedure to determine ultimate beneficial ownership. The respective steps mentioned hereafter have to be followed until all ultimate beneficial owners have been correctly identified:

- i) Identify the natural person(s) who directly or indirectly holds or controls a sufficient percentage, namely 25% plus one, of the shares, voting rights or ownership in an entity;
- ii) Where no natural person can be identified under any of the scenarios under (i), identify any person who controls the legal entity via other means; and
- iii) After having exhausted all possible means and provided that there are no grounds for suspicion, where no person under point i) and ii) is identified, or if there is any doubt that the person(s) identified is/are the beneficial owner(s), identify any person who holds the position of senior managing official (*dirigeant principal*).

37. It is fundamental to stress that measures (i) and (ii) are not alternative options but cascading measures. Assessments under (i) and (ii) have thus each to be fully completed and formalized before resorting to measure (iii) which constitutes an express fallback option only applicable when all possible measures to identify the ultimate beneficial owner under (i) and (ii) have been exhausted and came to no result.

I) Direct or indirect ownership: The threshold approach

38. The prescribed indicative threshold referred to in Article 1(7)(a)(i) of the AML/CFT law should be understood as the natural person owning more than 25 % (i.e. at least 25 %

plus one) percent of shares or voting rights²⁹ of the legal person customer. Strictly speaking, from a mathematical point of view, and as a general principle when applying the threshold approach, a legal person customer could have between zero (because ownership is strongly diluted) and three ultimate beneficial owners. It should be stressed that a professional may adopt more stringent internal policies and procedures, for example by lowering the ownership threshold, particularly where ML/TF risks are identified to be higher.

39. References to the notions “*ultimately owns or controls*” and “*ultimate effective control*”, address situations where ownership or control is exercised through a chain of ownership by means of indirect control other than direct control. The ownership structure of the legal person defines the controlling ownership interest.

40. In a one-layer structure as illustrated in figure 4, where the customer himself is e.g. a legal entity, the professional has to examine whether natural persons can be identified as ultimate beneficial owners, *i.e.* natural persons who directly own more than 25% of the shares or voting rights of the customer.

41. In a multiple-layer structure as illustrated in figure 5, where the customer himself is e.g. a legal entity and where other legal persons are participating in the ownership structure of the customer, *i.e.* by holding more than 25% of the shares or the voting rights, the professional has then to examine whether natural persons can be identified as ultimate beneficial owners, through the chain of shareholdings. This process has to be repeated in a cascade manner, where multiple layers are present, until all ultimate beneficial owners with respect to the customer have been identified.

42. As a reminder, the persons to be identified as ultimate beneficial owners have always to be natural persons. In the context of the threshold approach and in accordance with notably Article 1 (2) of the Grand-ducal Regulation of 1 February 2010, this means that the professional will need to take reasonable measures to (a) understand the ownership and control structure of the customer. As a result, to understand the ownership structure

²⁹ Throughout this section, the example of shares will be used. However, voting rights or ownership interests could be used interchangeably as per the AML/CFT law.

of his customer, or where natural persons are not exclusively and/or directly involved in the ownership structure of the customer, the professional may need to look through several layers of legal entities to determine whether a natural person owns finally more than 25 percent of shares or voting rights or ownership interests of the legal person customer.

43. Finally, as stated in Article 23 of CSSF Regulation 12-02, the threshold of ‘more than 25 percent’ is only indicative entailing that the sole application of this threshold might in certain cases not suffice to identify the correct ultimate beneficial owner. Also, where a shareholder holding more than 25 percent has been identified, other UBOs might still be present and would need to be identified (either because they are also holding more than 25 percent of shares or voting rights or because they fall within other categories of UBOs).

➔ Illustrative examples

Figure 4: Simple One Layer Ownership Structure

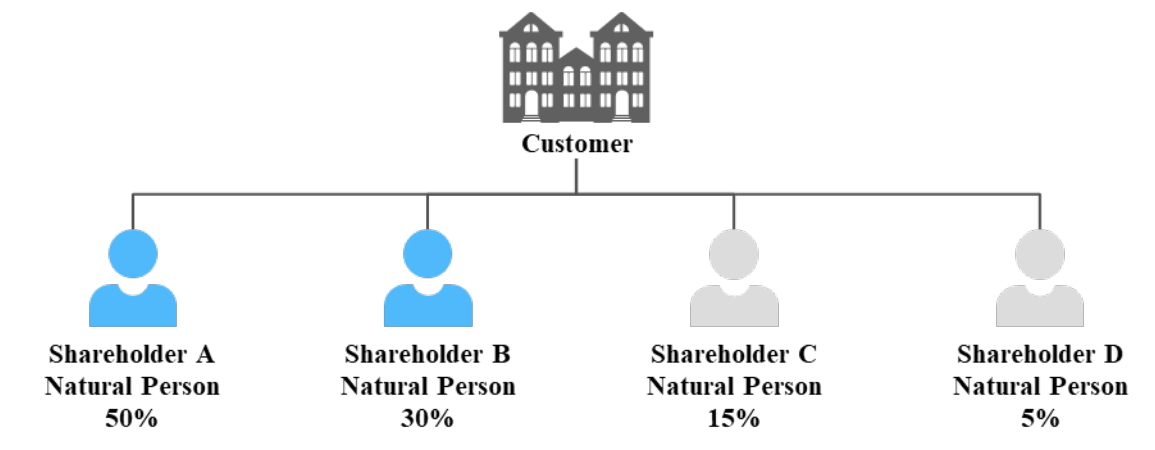
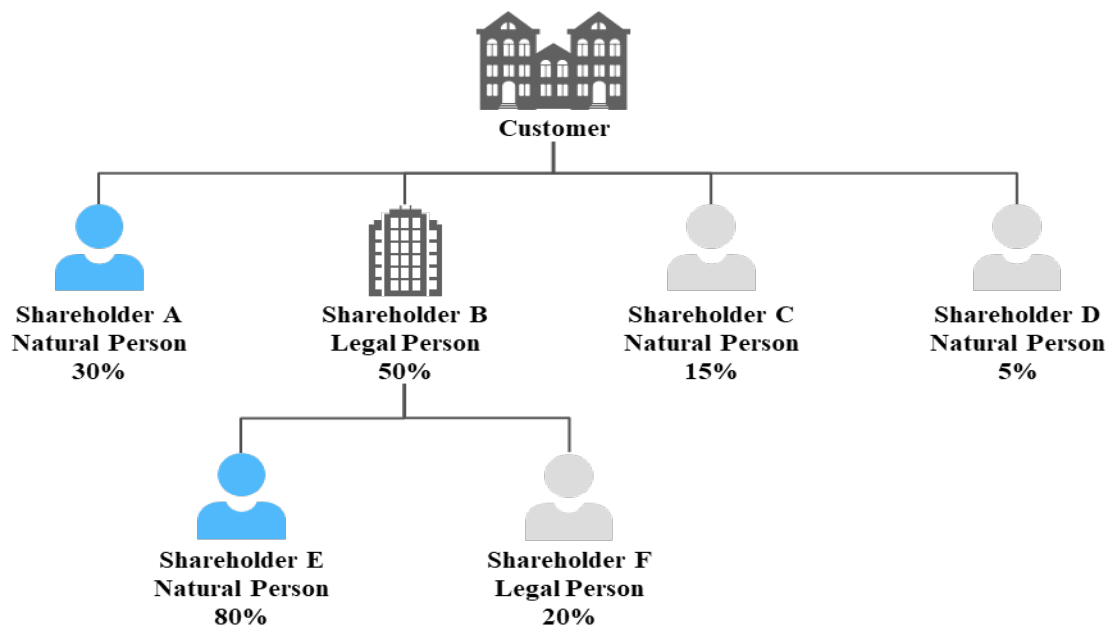


Table 4: Simple One Layer Ownership Structure³⁰

Shareholder	Type of shareholder	Type of ownership	Ownership	Beneficial owner
A	Natural	Direct	50%	✓
B	Natural	Direct	30%	✓
C	Natural	Direct	15%	X
D	Natural	Direct	5%	X

Figure 5: Multiple Layer Ownership Structure



44. In this example, shareholders A, B, C and D are the direct owners of the legal person customer. Shareholders E and F own the legal person customer indirectly through their ownership in shareholder B.

45. Shareholder A can be identified as ultimate beneficial owner through direct ownership as it is a natural person holding more than 25% of the shares in the customer. Shareholder B is not a natural person and can thus never be qualified as an ultimate beneficial owner. However, as shareholder B holds more than 25% of the shares in the customer, its own ultimate beneficial owners should be identified as they could be ultimate beneficial owners of the customer through indirect ownership, namely when they hold more than

³⁰ X: The orange cross in all the figures indicates that, *a priori*, those persons do not qualify as UBOs under this step of the assessment. However, the professional has the obligation to conduct a case by case analysis to ensure that all the correct UBOs are identified, notably also pursuant to point II) here below (“control via other means”).

25% of the shares of B. Therefore, shareholder E can be qualified as an ultimate beneficial owner through indirect ownership as it is a natural person owning 80% of shareholder B which itself owns 50% of the customer thus indirectly owning 40% of the customer (80% of 50%).

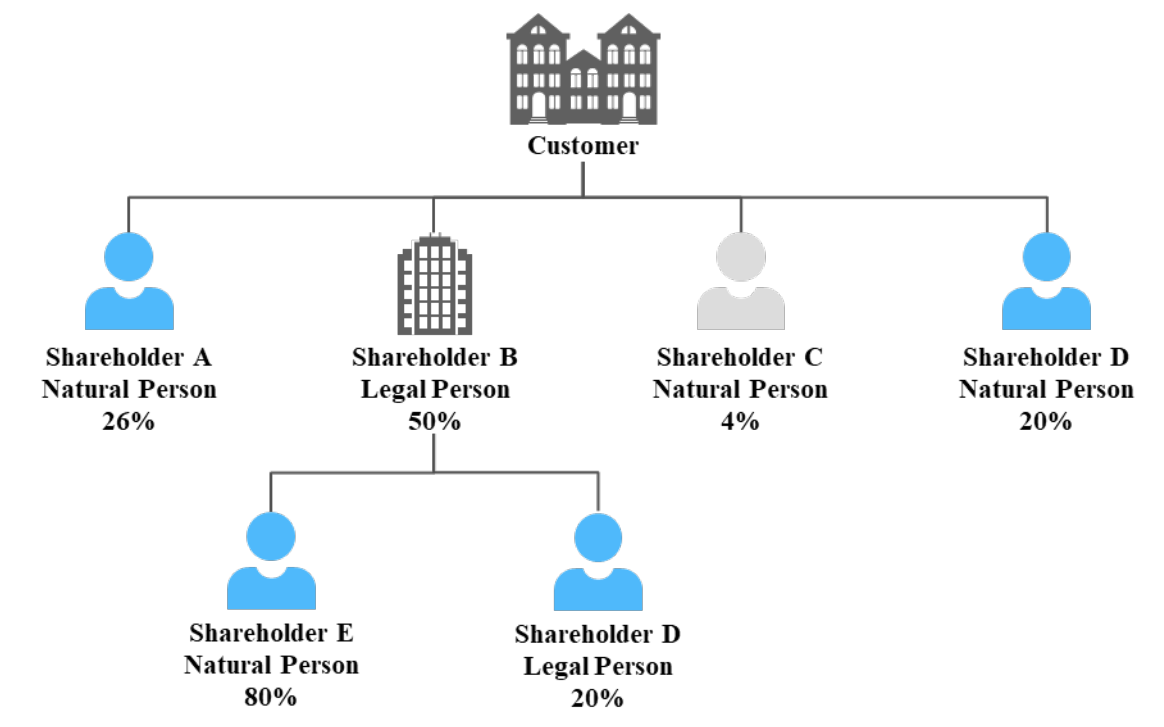
46. Shareholders C, D and F are not to be identified as ultimate beneficial owners under the threshold approach as they own less than 25% of the shares of the customer.

The table below summarizes the identification of the ultimate beneficial owners through direct and indirect ownership applying the threshold approach.

Table 5: Multiple Ownership Structure

Shareholder	Type of shareholder	Type of ownership	Ownership	Beneficial owner
A	Natural	Direct	30%	✓
B	Legal	Direct	50%	✗
C	Natural	Direct	15%	✗
D	Natural	Direct	5%	✗
E	Natural	Indirect	40%	✓
F	Natural	Indirect	10%	✗

Figure 6: Cumulative Ownership

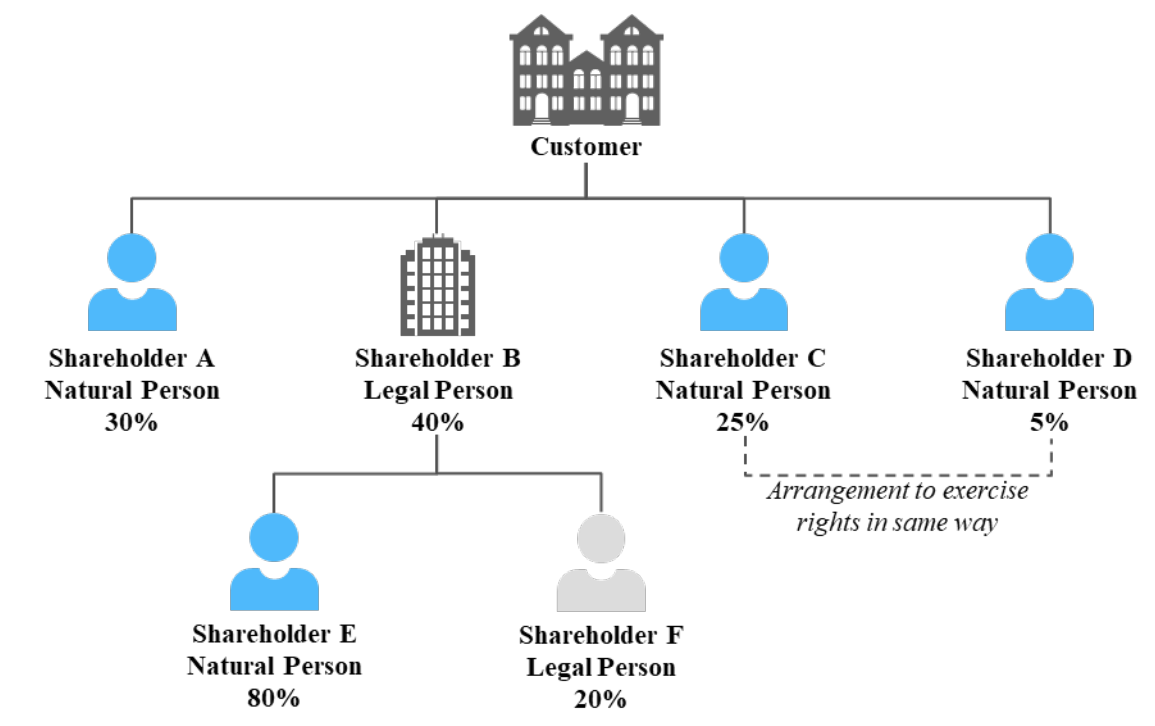


47. In this example (figure 6), shareholder D is the ultimate beneficial owner of the customer via cumulative ownership. Indeed, shareholder D is both a direct owner of 20% of the shares in the customer, and an indirect owner of 10% of the shares in the customer by holding 20% of the shares in shareholder B, which itself owns 50% of the shares in the customer. As a result, cumulatively shareholder D owns 30% of the customer and is thus an ultimate beneficial owner. The situation of the other shareholders is the same as under figures respectively 4 and 5.

Table 6: Cumulative Ownership

Shareholder	Type of shareholder	Type of ownership	Ownership	Beneficial owner
A	Natural	Direct	26%	✓
B	Legal	Direct	50%	✗
C	Natural	Direct	4%	✗
D	Natural	Direct (cumulative)	30%	✓
E	Natural	Indirect	40%	✓

Figure 7: In Concert Ownership



48. In this example (figure 7), shareholder C and D individually own not more than 25% plus one of shares in the customer, yet they have an arrangement to exercise their rights in the same way. Therefore, when known by professionals they must be treated as owing the sum of the shares and should thus be considered as joint or in concert beneficial owners.

Table 7: In Concert Ownership

Shareholder	Type of shareholder	Type of ownership	Ownership	Beneficial Owner
A	Natural	Direct	30%	✓
B	Legal	Direct	40%	✗
C	Natural	Direct (joint)	30%	✓
D	Natural	Direct (joint)	30%	✓
E	Natural	Indirect	32%	✓
F	Natural	Indirect	8%	✗

49. If no natural person can be determined applying the threshold approach, the second step of the procedure foreseen in the AML/CFT law comes into play, namely determining who exercises effective control via other means over the customer. Situations might exist where the two approaches have to be applied simultaneously.

II) Control Through any Other Means: Effective Control

50. In line with Article 23 of the CSSF Regulation 12-02, for some customers, after having applied the ownership threshold approach, it may become clear that ownership is spread over a large number of natural persons with none owning more than 25 percent of the shares or voting rights. In such cases, and as a simple mathematical application may not be considered sufficient, the ultimate beneficial owner(s) still need(s) to be identified via the second step of the procedure, namely identify the natural person(s) who control(s) the entity by any other means.

51. Control by “*any other means*” should be interpreted broadly, namely having the power to exercise or actually exercise dominant influence or control by any means to over the customer. Understanding the management and governance structure of the customer will assist to establish those natural person(s) with effective control over the customer. The circumstances of each individual case will be decisive.

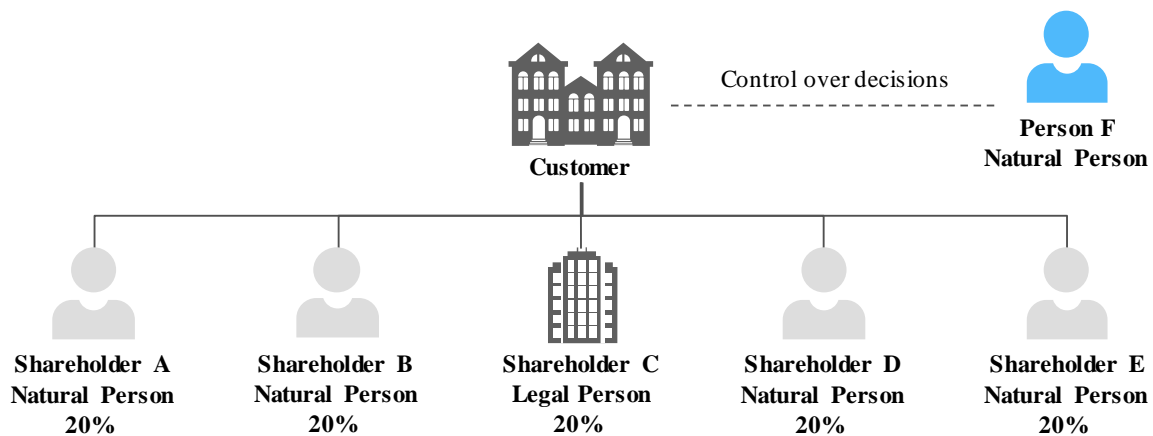
52. In determining the natural person(s) effectively controlling the customer which is not an individual (*i.e.* a legal entity or legal arrangement), the following non-exhaustive factors may be useful to consider, always on a case by case basis:

- Individuals granted control through shareholders agreements;
- Individuals with the ability to *de facto* control the customer;
- Individuals that sign orders or initiate transactions, or regularly intervene otherwise in the relationship without the need to exercise for example official/formal representative functions of the company;
- Individuals having the exclusive right to exercise the power to appoint or dismiss a majority of the members of the administrative, management or supervisory body of the legal person which determines the financial and business policy;
- Individuals responsible for essential managerial decisions;
- Individuals having the right to use all or part of the assets of a legal person;
- Former shareholder or management member exercising a significant influence on the legal entity;
- Personal relationships with the customer, for example family members,
- Individuals possessing a significant minority interest whereas the other shareholders have significantly lower participations;
- Individuals having the right to determine the financial and business policy of the customer on the basis of a domination agreement with the party directly involved or on the basis of a provision in the statutes of the party directly involved;
- With regards to special purpose vehicles, the indirect party bearing the majority of risks and opportunities of the party directly involved to achieve a narrowly and precisely defined objective of the parent company; etc.

53. It should also be noted that the exercise of control through a dominant influence is also conceivable through the interaction of different parallel strands within a legal entity customer. When for example, a shareholding is split into several vertical parallel strands of 25 % or less than 25% of shareholdings, which at higher level are brought together again in one natural person, then the latter can also qualify as the ultimate beneficial owner. Furthermore, control may be presumed even if control is never actually exercised, such as using, enjoying or benefiting from the property owned by the legal person.

➔ Some illustrative examples:

Figure 8: Decision Control over the Customer



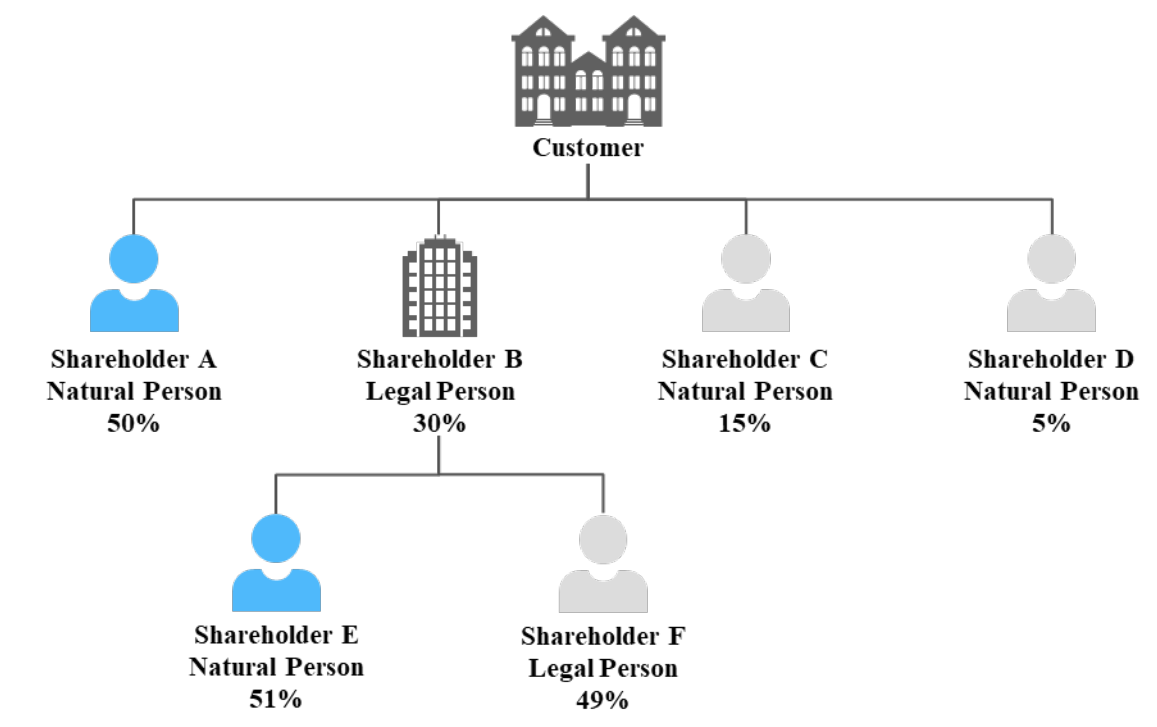
54. Figure 8 provides a plausible example of effective control via other means. Person F is a beneficial owner via its “*Control over decisions*” on the legal person customer. Indeed, Person F has control over the decisions made by another beneficial owner of the customer. This could be due the following reasons, among others, the following list not being exhaustive:

- Personal relationships, such as family members;
- Former shareholder or management member still exercising a significant influence on the legal entity; or
- Ownership of assets central to the running of the customer.

Table 8: Decision Control over the Customer

Shareholder	Type of shareholder	Type of ownership	Ownership	Beneficial owner
A	Natural	Direct	20%	✗
B	Natural	Direct	20%	✗
C	Legal	Direct	20%	✗
D	Natural	Direct	20%	✗
E	Natural	Direct	20%	✗
F	Natural	Decision control	0%	✓

Figure 9: Majority Control



55. In figure 9, Shareholder E indirectly owns 15.3 % of the shares in the customer via its ownership in Shareholder B and does consequently not reach the required more than 25% threshold. However, as Shareholder E owns a majority in Shareholder B (over 50% of the shares), it exercises *de facto* effective control over shareholder B. Both

Shareholder A and Shareholder E should thus be considered as ultimate beneficial owners.

Table 9: Majority Control

Shareholder	Type of shareholder	Type of ownership	Ownership	Beneficial owner
A	Natural	Direct	50%	✓
B	Legal	Direct	30%	✗
C	Natural	Direct	15%	✗
D	Natural	Direct	5%	✗
E	Natural	Indirect (majority)	15.3%	✓
F	Legal	Indirect	14.7%	✗

Figure 10: Decision Rights

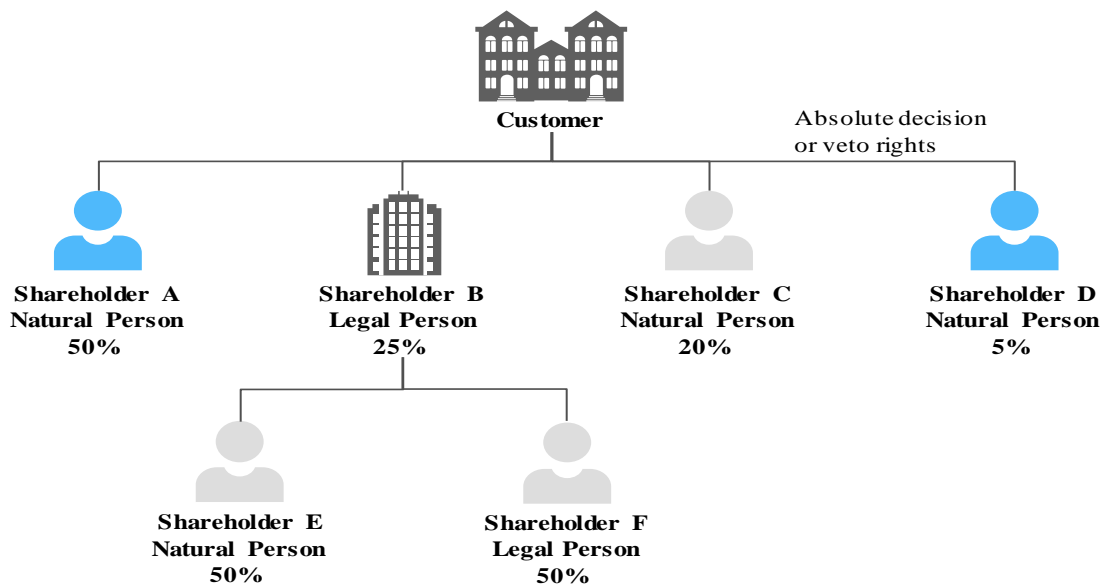


Table 10: Decision Rights

Shareholder	Type of shareholder	Type of ownership	Ownership	Beneficial owner
A	Natural	Direct	50%	✓
B	Legal	Direct	25%	✗
C	Natural	Direct	20%	✗
D	Natural	Decision rights	5%	✓
E	Natural	Indirect	12.50%	✗
F	Natural	Indirect	12.50%	✗

56. Shareholder D owns less than 25% of the shares in the customer, yet it has effective control via its absolute decision or veto rights over the customer. Examples of such rights can among others be: decision rights over the adoption or amendment of the customer's business plan, decision rights over the customer's borrowing decision, decision rights over the appointment or dismissal of the customer's Management, decision rights over the customer's incentive program, decision rights over the change of the customer's business nature, etc.

III) Natural Person Holding the Position of Senior Managing Official

57. Provided that it is impossible to identify the ultimate beneficial owner applying the threshold approach and to determine who is effectively in control of the customer by other means, and provided that there are no grounds for suspicion or any doubts in relation to the identity of the UBO, the third step comes into play. It consists in identifying the relevant natural person who holds the position of senior manager official (hereafter "SMO").

58. It should be stressed that this constitutes an express fall back or default option which allows to identify the senior managing official as the ultimate beneficial owner, being an individual who has knowledge of and sufficient connection to the legal person. In principle, the management as such does not exercise effective control because it acts in the interest of and represents the owners or persons controlling the company.

59. Customers should also not straight away designate merely their senior managing official as ultimate beneficial owner i.a. for the purpose of the central registry and the declaration required by Article 17 of the CSSF Regulation 12-02. It should also be noted that, in principle, one senior managing official, and this being a natural person, where appropriate, should be retained as ultimate beneficial owner. Where a collegial or jointly responsible body is in charge, more than one senior managing official can be designated as UBO.

60. The emphasis for determining the SMO should be on the actual senior managing responsibilities attributed and tasks performed rather than on the official title. The senior managing official can be understood as either the executive official or the member of the board of directors to whom the daily management has been delegated, and if no such delegation has taken place, the members of the board of directors. This will need to be considered on a case-by-case basis.

61. The professionals should keep records of all actions taken to identify the ultimate beneficial owner(s) under point (i), (ii) or (iii). Moreover, professionals should be ready to justify the measures they have taken, when requested.

Figure 11 : Senior Managing Official

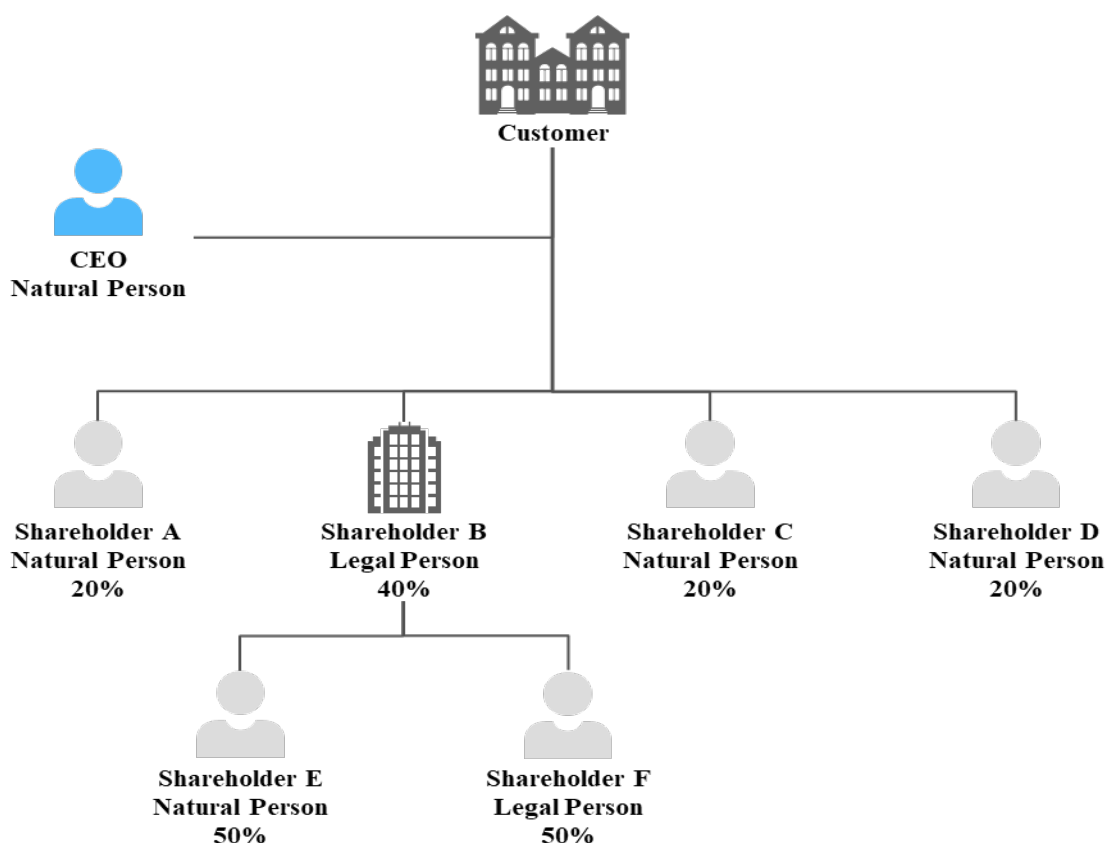
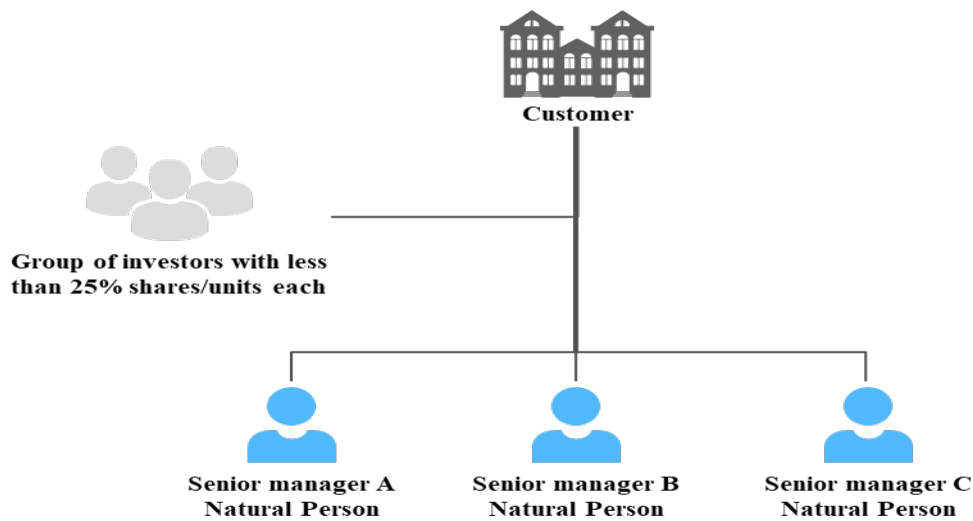


Figure 12: Senior Managing Official



In this example, the three senior managing officials should be identified as UBOs.

2.2.4 Specific Relationships (NPOs, Public Authorities, Bearer Shares and Pension Funds)

I) Non-profit Organizations, Charities or Similar Entities

62. Non-profit organizations are likewise obliged to establish an ultimate beneficial owner. In line with Article 1 of 21 April 1928,³¹ a non-profit organization (“NPO”) is characterized by the fact it does not carry out any industrial or commercial operations and does not have the goal of obtaining any financial gain for its members. As the organization’s income cannot be distributed to the members, the members cannot be regarded as the owners and thus also not as ultimate beneficial owners. Nonetheless, if a member has 25 percent plus one of the voting rights, he/she should be identified as UBO (example (1) hereafter). Otherwise, applying the threefold procedure described above, the managers that effectively and *de facto* control the non-profit organizations should be regarded as ultimate beneficial owner(s) (example (2) hereafter).

³¹ Loi du 21 avril 1928 sur les associations et les fondations sans but lucratif.

63. The FATF glossary defines an NPO as: “a legal person or arrangement or organization that primarily engaged in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of ‘good work’.”³²

64. As examined by FATF,³³ NPOs can be misused in a variety of ways and for different purposes, in particular within the context of terrorism financing, as well as proliferation financing. The NPO should have a clear governance structure, particularly with regards to the role of the governing board. Bearing in mind a risk-based approach, certain red flags should be considered, for example directors or managers having a history of extremism or even a criminal or terrorism-related record when identifying beneficial ownership.

Figure 13: Example ASBL (1)

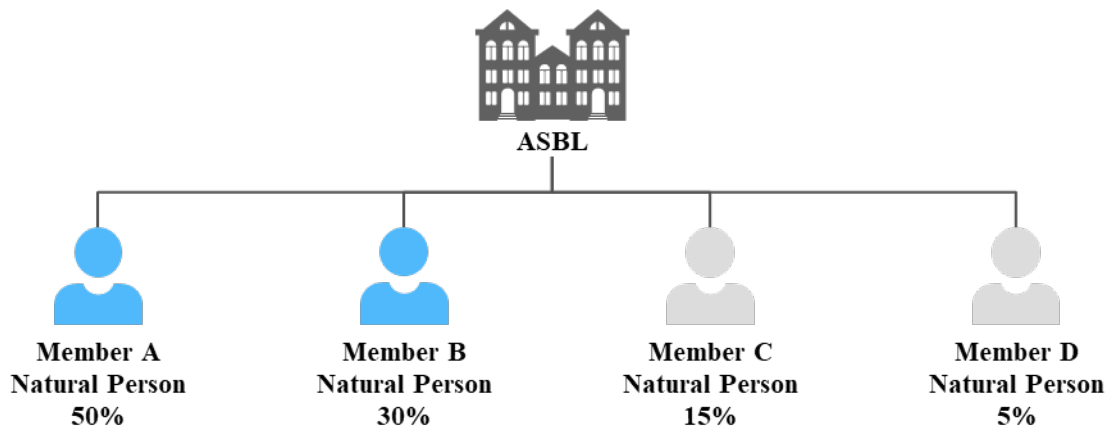


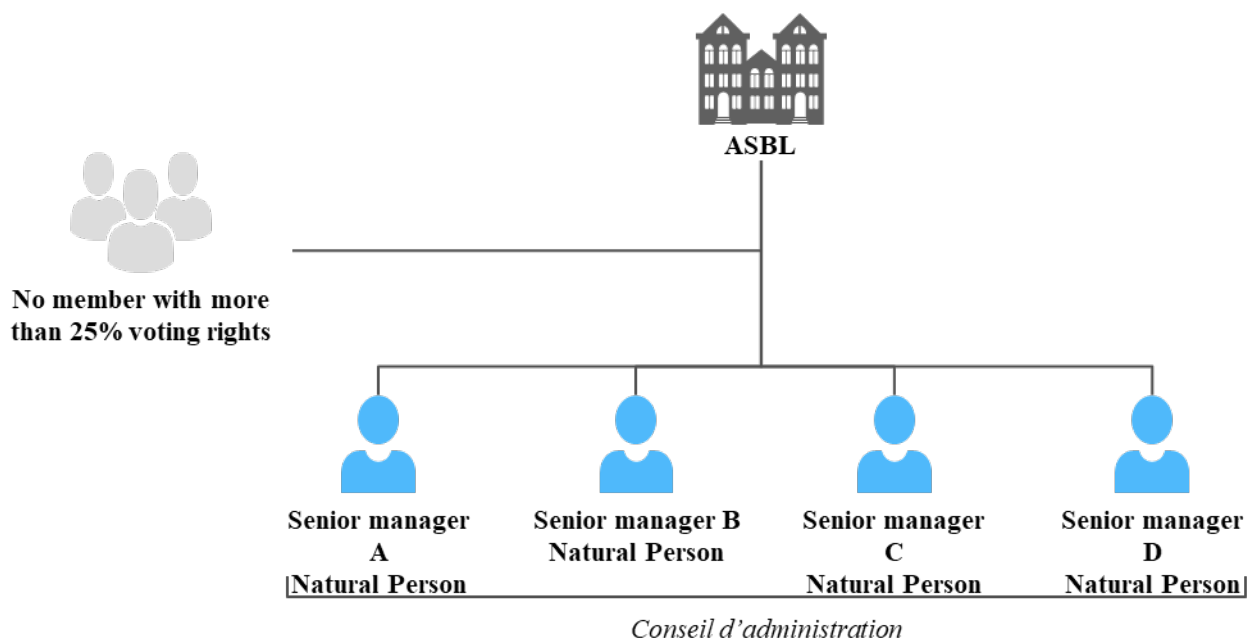
Table 13: Example ASBL (1)

Member	Voting rights	Beneficial owner
A	50%	✓
B	30%	✓
C	15%	✗
D	5%	✗

³² Glossary of the FATF Recommendations, available at: <https://www.fatf-gafi.org/glossary/n-r/>.

³³ FATF, June 2015, Best Practices, Combatting the Abuse of Non Profit Organizations (Recommendation 8), available at: <https://www.fatf-gafi.org/media/fatf/documents/reports/BPP-combating-abuse-non-profit-organisations.pdfnon>

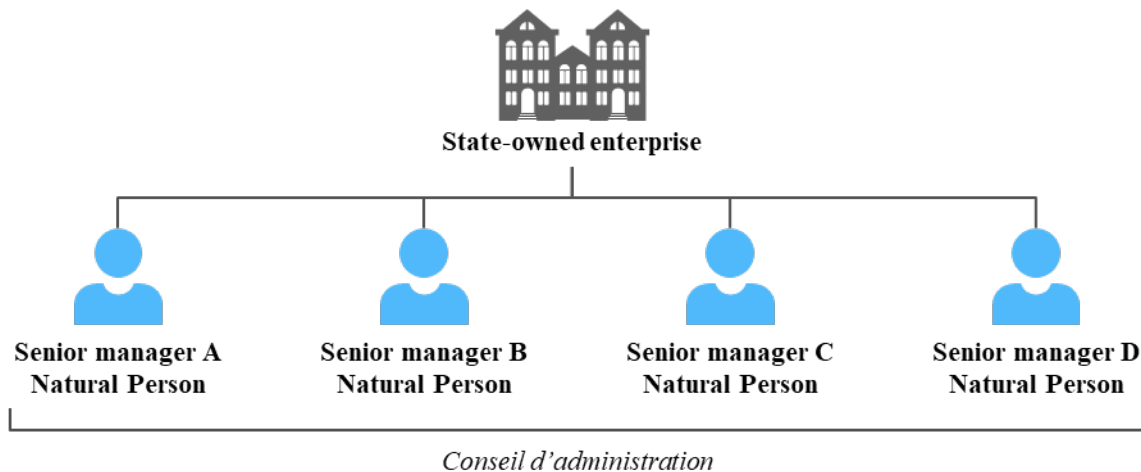
Figure 14: Example ASBL (2): The members of the board (*Conseil d'administration*) are to be considered as UBOs



II) Public Administration or Public Establishments

65. With respect to public authorities or public bodies, professionals also need to identify the UBO of these authorities or bodies. As usually neither the threshold nor the effective control test can be applied in this case, by default, the senior managing official needs to be identified as UBO. The SMO is the person to whom the daily management of the public entity has been delegated according to legal or statutory provisions. As the case may be, members of the management body or Board of Directors will be identified as UBO. If representatives of the State are members of the executive committee or the Board of Directors, it is the responsible minister ("*Ministre de tutelle*") of that representative who shall be identified and for example registered in the register.

Figure 15: Public Administration: The members of the board (*Conseil d'administration*) are to be considered as UBOs



III) Bearer Shares

66. Bearer shares are company shares that exist in certificate form and are legally owned by whomever has physical possession of the bearer certificate at any given time. Luxembourg limited liability companies (*Société Anonyme*) and corporate partnerships limited by shares can issue bearer shares. Since 2014 bearer shares of Luxembourgish companies have been immobilized in Luxembourg and there exist stringent regulations regarding holding and keeping bearer shares.³⁴ As a result of these regulations, bearer shares must be held by a professional depositary, namely: a professional, a notary, a lawyer or a Luxembourg certified public accountant. Consequently, problems relating to identifying the holders of these shares are mitigated and compliance with these rules by professionals is supervised by the CSSF.

³⁴ Law of July 29, 2014 related to the immobilization of bearer shares and units and to the maintenance of a register of registered and bearer shares.

67. Nonetheless, extra vigilance is required in case of foreign companies with capital in the form of bearer shares that would not be subject to such disclosure regulations in their country. Indeed, in such cases it is often challenging to identify the ultimate beneficial owner(s). Companies that issue bearer shares are frequently incorporated in high risk jurisdictions. Professionals should adopt procedures to establish the identities of the holders and UBOs of such shares and to ensure that they are notified without delay whenever a change of holder and/or ultimate beneficial owner occurs.

IV) Pension Funds/ Superannuation Funds or Similar Relationships

68. Luxembourg, as other countries, offers a variety of legal vehicles for pension fund pooling. In determining the extent of customer/beneficial owner due diligence measures for this type of customers, and mindful of the risk-based approach, the professional should take into account whether the customer/product is a pension, superannuation or similar scheme which provides retirement benefits for employees, secondly, whether contributions are made by an employer or by way of deduction from employees' wages, and lastly whether the scheme rules do not permit the assignment of a member's interest under the scheme.

69. If these conditions are met, and where the risks related with such a scheme are considered as low, the professional may identify the senior managing official of the legal vehicles as ultimate beneficial owner and not the employees, beneficiaries of the pension fund.

70. However, where a pension scheme does not meet said criteria, all the beneficiaries of such pension schemes will have to be identified if they hold more than 25% of the member's interest of the relative scheme. Where none of the beneficiaries identified holds more than 25% plus one of the member's interest scheme, step 2 needs to be applied to identify the UBO. Only if no UBO can be identified under step 2, step 3 has to be applied.

II. Documentation and Verification of the Identity of the Ultimate Beneficial Owner

71. Once the ultimate beneficial owner has been identified, pursuant to Article 3(2) (b) of the AML/CFT law, the professional should take reasonable measures to verify the identity of the UBO(s).

72. Consideration should also be given as to whether the documents relied upon could be falsified. Appropriate steps should be taken to be reasonably satisfied that the documents provide in fact evidence of the ultimate beneficial owner's identity, particularly when the documents are provided in a foreign language.

73. For the purpose of this circular and Article 3 (2) b) of the AML/CFT law, the following information on the ultimate beneficial owner should thus be collected, as foreseen in Article 21 of the CSSF Regulation 12-02, read in conjunction with Articles 16 and 22 (1) of the CSSF Regulation 12-02:

- Surname and first name;
- Place and date of birth;
- Nationality;
- Address;
- Where appropriate, official national identification number.

74. Where legal persons or arrangements are in between the customer and the natural person – beneficial owner, the following information shall be recorded:

- Denomination;
- Legal form;
- Address of the registered office and, if different, a principal place of business;
- Where appropriate, official national identification number;
- directors (*dirigeants*) (for the legal persons) and directors (*administrateurs*) or persons exercising similar positions (for the legal arrangements);³⁵

³⁵ Article 16(2) CSSF Regulation 12-02.

75. Verification measures consist in establishing the link with the reality in order to make sure that the information on the customer or the ultimate beneficial owner(s) provided to the professional corresponds with the facts. To be noted that the practical implementation of the verification requirements differ between customer and ultimate beneficial owner. The verification of the identity of a customer or a UBO occurs on the basis of documents or information obtained from a reliable source which is independent from the customer. For these purposes, documents issued or made available by an official (public) authority are to be regarded as being independent of the customer even if they are provided or made available by the customer. An ID card forms an example. The obligation to verify the identity of the UBO is to take reasonable measures as to be satisfied that the professional knows who the UBO is and that it understands the structure and ownership of the customer.³⁶ Taking into account the ML/TF risk associated with the business relationship, it remains up to each professional to determine the extent of information and to consider whether it is appropriate to make use of records of UBOs in the public domain, ask their customers for relevant data, require evidence of the UBO's identify based on documents or information obtained from a reliable source which is independent from the customer or obtain the information in some other way.
76. In situations representing a low risk, it may thus be reasonable for the professional to verify the ultimate beneficial owner's identity based on information provided by the customer. This could comprise information provided by the customer as to the UBO's identity, as to the structure chart and confirming that they are known to the customer. In any case, the customer should sign the specific declaration as provided for in Article 17 of CSSF Regulation 12-02.
77. Self-declarations provided by the beneficial owner(s) and reliance on internet data can in certain cases be useful, yet and in line with a risk-based approach, in situations not representing a low risk, further evidence should be collected. For example, certified copies of share registers, share transfer agreements, etc.

³⁶ Article 3(2) b) of the AML/CFT Law.

78. As the risk-based approach requires, professionals must take all necessary steps to guarantee that they registered appropriate information enabling them to demonstrate they know all their customers and their respective ultimate beneficial owners.
79. Professionals need to regularly update beneficial ownership information as ultimate beneficial owners can change over time.³⁷ The collection of new beneficial ownership information can for example be based on the periodic and risk-based customer due diligence review cycles³⁸, as well as on trigger events such as changes in legal structure, mergers and acquisitions, adverse media reports, etc. The need for accurate and up-to-date information on the ultimate beneficial owner is a crucial factor in tracing criminals who might otherwise hide their identity behind a corporate structure and must be available to competent AML/CFT authorities.
80. Beneficial ownership identification and verification of existing customers must not always be re-performed. Professionals may rely upon existing information previously collected to comply with ultimate beneficial ownership requirements, provided that the information is up to date and accurate, and there is no reason to question its reliability. In the same context, it is not always necessary to repeat ultimate beneficial ownership identification and verification when a customer opens multiple accounts. Customers should, however, confirm the accuracy of the existing ultimate beneficial ownership information.

III. FATF Indicators of Concealed Beneficial Ownership

81. On the basis of 106 case studies and discussions among and with competent authorities and the private sector, the FATF Egmont Report Group on concealment of beneficial ownership information identified a range of indicators that could possibly reveal efforts to conceal beneficial ownership. These indicators can assist the professionals in their judgment on ultimate beneficial ownership information. It should be noted that the list below is neither exhaustive nor exclusive, as further indicators may be identified over

³⁷ Article 3(5) of the AML/CFT Law.

³⁸ Articles 3-1 and 3-2 of the AML/CFT Law.

time. The presence of a sole indicator does not necessarily entail beneficial ownership is being concealed. Moreover, additional valuable indicators can be found in, for example, the CSSF Circular 17/650 concerning primary tax offences.³⁹

82. The main relevant indicators as mentioned in the FATF Publication on Concealment of Beneficial Ownership are set out below.⁴⁰

a) Indicators concerning the customer:

aa) The customer is reluctant to provide personal information or unable to explain:

- its business activities and corporate history;
- the identity of the ultimate beneficial owner(s);
- its source of wealth / funds;
- why it is conducting its activities in a certain way;
- who it is doing transactions with; and
- the nature of its business dealings with third parties, particularly when the latter ones are located in foreign jurisdictions.

ab) Customers or related customers that:

- insist on the use of an intermediary (either professional or informal) in all interactions without sufficient justification;
- are actively avoiding personal contacts without sufficient justification;
- are foreign nationals with no significant dealings in the country in which they are procuring professional or financial services;
- refuse to co-operate or provide information, data, and documents usually required to facilitate a transaction;
- are politically exposed persons, or have familial or professional associations with a person who is politically exposed;
- have previously been convicted for fraud, tax evasion, or serious crimes;

³⁹ Circular CSSF 17/650, 17 February 2017, accessible at: <https://www.cssf.lu/en/document/circular-cssf-17-650/>

⁴⁰ For the entire list, please consult: <https://www.fatf-gafi.org/publications/methodsandtrends/documents/concealment-beneficial-ownership.html>

- are under investigation or have known connections with criminals;
- have previously been prohibited from holding a directorship role in a company or operating a Trust and company service provider (TCSP);
- conduct financial activities and transactions inconsistent with their customer profile;
- are the signatories to customer accounts without sufficient explanation; and
- have declared income which is inconsistent with their assets, transactions, or lifestyle.

ac) Legal persons or legal arrangements that:

- have demonstrated a long period of inactivity following incorporation, followed by a sudden and unexplained increase in financial activities;
- have complex corporate structures that do not appear to legitimately require that level of complexity or which do not make commercial sense;
- describe themselves as a commercial business but cannot be found on the internet or social business network platforms;
- are registered under a name that appears to mimic the name of other companies, particularly high-profile multinational corporations;
- use an email address with an unusual domain name or a non-professional email address for professional purposes (
- are registered at an address that does not match the profile of the company;
- are registered at an address that cannot be located on internet mapping services
- are registered at an address that is also listed for numerous other companies or legal arrangements, indicating the use of a mailbox service;
- where the director(s) or controlling shareholder(s) cannot be located or contacted;
- where the director(s) or controlling shareholder(s) do not appear to have an active role in the customer company;
- where the director(s), controlling shareholder(s) and/or ultimate beneficial owner(s) are listed against the accounts of other legal persons or arrangements, indicating the use of professional nominee shareholders;
- have declared an unusually large number of beneficiaries and other controlling interests; and

- have representatives or board members that change frequently without an appropriate rationale.

ad) The examination of business records indicates:

- discrepancies between purchase and sales invoices;
- double invoicing between jurisdictions;
- fabricated corporate ownership records;
- false invoices created for services not carried out;
- falsified paper trails;
- inflated asset sales between entities controlled by the same ultimate beneficial owner;
- agreements for nominee directors and nominee shareholders; and
- family members with no role or involvement in the running of the business and which are listed as ultimate beneficial owners of legal persons or legal arrangements.

b) Indicators about the transaction:

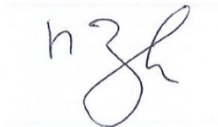
- The customer is both the ordering and beneficiary customer for multiple outgoing international funds transfers;
- The connections between the parties are questionable, or generate doubts that cannot be sufficiently explained by the customer;
- Finance is provided by a lender, whether a natural or a legal person, other than a known credit institution, with no logical explanation or commercial justification;
- Loans are received from private third parties without any supporting loan agreements, collateral, or regular interest repayments;
- The transaction:
 - is occurring between two or more parties that are connected without an apparent business or trade rationale
 - is a business transaction that involves family members of one or more of the parties without a legitimate business rationale
 - is a repeat transaction between parties over a contracted period of time

- is a large or repeat transaction, and the executing customer is a signatory to the account, but is not listed as having a controlling interest in the company or assets
- is executed from a business account but appears to fund personal purchases, including the purchase of assets or recreational activities that are inconsistent with the company's profile
- is executed from a business account and involves a large sum of cash, either as a deposit or withdrawal, which is anomalous, or inconsistent with the company's profile

COMMISSION de SURVEILLANCE du SECTEUR FINANCIER



Claude WAMPACH
Director



Marco ZWICK
Director



Jean-Pierre FABER
Director



Françoise KAUTHEN
Director



Claude MARX
Director General

ANNEXES:

- <http://www.fatf-gafi.org/media/fatf/documents/reports/FATF-Egmont-Concealment-beneficial-ownership.pdf>
- <http://www.fatf-gafi.org/media/fatf/documents/reports/G20-Beneficial-Ownership-Sept-2016.pdf>
- <http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf>
- <http://www.fatf-gafi.org/media/fatf/documents/Best-Practices-Beneficial-Ownership-Legal-Persons.pdf>



Concealment of Beneficial Ownership

July 2018

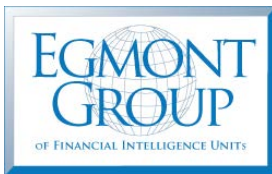




The Financial Action Task Force (FATF) is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. The FATF Recommendations are recognised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

For more information about the FATF, please visit www.fatf-gafi.org

This document and/or any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.



The goal of the Egmont Group of Financial Intelligence Units (Egmont Group) is to provide a forum for financial intelligence units (FIUs) around the world to improve cooperation in the fight against money laundering and the financing of terrorism and to foster the implementation of domestic programs in this field.

For more information about the Egmont Group, please visit the website: www.egmontgroup.org

Citing reference:

FATF – Egmont Group (2018), *Concealment of Beneficial Ownership*, FATF, Paris, France,
www.fatf-gafi.org/publications/methodandtrends/documents/concealment-beneficial-ownership.html

© 2018 FATF/OECD – Egmont Group of Financial Intelligence Units. 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)

Photocredits coverphoto ©Thinkstock

TABLE OF CONTENTS

ACRONYMS	3
EXECUTIVE SUMMARY	5
Specialist and professional intermediaries.....	6
Anti-money laundering obligations and supervision.....	8
Issues for consideration.....	9
INTRODUCTION	11
METHODOLOGY	13
Horizontal Study of Enforcement and Supervision.....	14
DEFINITION OF BENEFICIAL OWNER	16
STRUCTURE OF THE REPORT	18
SECTION 1 — MISUSE OF LEGAL PERSONS AND ARRANGEMENTS	20
Legal persons.....	20
Legal arrangements.....	23
SECTION 2 — TECHNIQUES USED TO OBSCURE BENEFICIAL OWNERSHIP	25
Generating complex ownership and control structures.....	26
Using individuals and financial instruments to obscure the relationship between the beneficial owner and the asset.....	35
Falsifying activities.....	42
SECTION 3 — VULNERABILITIES OF PROFESSIONAL INTERMEDIARIES	46
Continuum of complicity.....	48
OVERVIEW OF COMMONLY EXPLOITED INTERMEDIARIES	50
Legal Professionals.....	50
Accountants.....	52
Trust and Company Service Providers.....	54
Other Intermediaries.....	56
OVERVIEW OF VULNERABILITIES	58
Establishing legal persons and arrangements.....	58
Establishing and selling shelf companies.....	60
Directorship, trustee, virtual office, and mailbox services.....	61
Facilitating transactions through trust accounts or client accounts.....	63
Facilitating the purchase or sale of real property.....	64
Client advocacy and brokerage services.....	66

Providing services to clients and intermediaries domiciled internationally	68
Providing advice on tax compliance.....	70
Legal professional privilege and client confidentiality.....	71
Limited AML/CFT obligations or insufficient awareness and compliance	73
SECTION 4 — ENVIRONMENTAL VULNERABILITIES.....	76
Jurisdictional vulnerabilities	76
Vulnerable business practices	82
SECTION 5 — CONCLUSIONS AND ISSUES FOR CONSIDERATION	86
ANNEX A. REFERENCES.....	93
ANNEX B. HORIZONTAL STUDY: ENFORCEMENT AND SUPERVISION OF BENEFICIAL OWNERSHIP OBLIGATIONS	95
ANNEX C. CASE SUMMARIES.....	110
ANNEX D. SOURCES OF INFORMATION AND TECHNIQUES TO DISCOVER BENEFICIAL OWNERSHIP	172
Tools to identify potential efforts to obscure beneficial ownership.....	176
Techniques to identify potential efforts to obscure beneficial ownership	178
Additional resources.....	180
ANNEX E. INDICATORS OF CONCEALED BENEFICIAL OWNERSHIP	181
Indicators about the client or customer	181
Indicators of shell companies	184
Indicators about the transaction	185

ACRONYMS

ACRA	Singapore Accounting and Corporate Regulatory Authority
AEOI	Automatic Exchange of Information for Tax Purposes
AML/CFT	Anti-money laundering and counter-terrorist financing
APG	Asia Pacific Group
ATM	Automatic teller machine
BVI	British Virgin Islands
CDD	Customer due diligence
CFTC	United States Commodity Futures Trading Commission
CSP	Corporate service provider
DNFBPs	Designated non-financial businesses and professions
DOJ	United States Department of Justice
EOIR	Standards on exchange of information for tax purposes: the Exchange of Information on Request
EUR	Euro
FATCA	United States Foreign Account Tax Compliance Act
FATF	Financial Action Task Force
FATF TREIN	FATF Training and Research Institute
FinTech	Financial technology
FIU	Financial intelligence unit
GIFCS	Group of International Finance Centre Supervisors
IMF	International Monetary Fund
IP	Internet protocol
KYC	Know your customer
LLC	Limited liability companies
LPP	Legal professional privilege
LTD	Private company limited by shares
MLRO	Money Laundering Reporting Officer

ML/TF	Money laundering and terrorist financing
MSB	Money service business
OCCRP	Organised Crime and Corruption Reporting Project
OECD	Organisation for Economic Co-operation and Development
OFC	Offshore financial centres
PEP	Politically exposed person
RegTech	Regulatory technology
SRBs	Self-regulating bodies
STR	Suspicious transaction report
TBML	Trade-based money laundering
TCSP	Trust and company service provider
US	United States of America
USD	United States dollars
VPN	Virtual private network

EXECUTIVE SUMMARY

1. Criminals employ a range of techniques and mechanisms to obscure their ownership and control of illicitly obtained assets. Identifying the true beneficial owner(s) or individual(s) exercising control represents a significant challenge for prosecutors, law enforcement agencies, and intelligence practitioners across the globe. **Schemes designed to obscure beneficial ownership often employ a “hide-in-plain sight”**

strategy, leveraging global trade and commerce infrastructures to appear legitimate. However, visibility does not equate to transparency, and many of the tools that were designed to encourage business growth and development, such as limited liability corporations and nominee directorship services, can be used to facilitate money laundering, tax evasion, and corruption. The globalisation of trade and communications has only increased this threat, and countries now face the challenge of enforcing national laws in a borderless commercial environment.

2. This joint FATF Egmont Group report takes a global view assessing how legal persons, legal arrangements and professional intermediaries can help criminals conceal wealth and illicit assets. The purpose of the report is to help national authorities including FIUs, financial institutions and other professional service providers in understanding the nature of the risks that they face.

3. Analysis of 106 case studies demonstrates that **legal persons, principally shell companies, are a key feature in schemes designed to disguise beneficial ownership**, while **front companies and bearer shares** are less frequently exploited.

4. **Individuals and groups seeking to conceal the ownership of assets are most likely to exercise control over those assets via a combination of direct and indirect control**, rather than strictly one or the other.

In a majority of cases, the beneficial owner used a combination of layering and direct ownership chains, as well as professional intermediaries and third parties exercising control on their behalf. In a limited number of cases, the beneficial owner exercised *only* indirect control and rarely retained direct control through a complicated structure without involving an intermediary. This demonstrates that, in many cases, the beneficial owner will maintain some level of direct control in a scheme, but will rarely do so without also involving an intermediary or “straw man” (informal

Legal arrangements – refers to express trusts or other similar legal arrangements.

Legal persons – refers to any entities other than natural persons that can establish a permanent customer relationship with a financial institution or otherwise own property.

Shell company – incorporated company with no independent operations, significant assets, ongoing business activities, or employees.

Front company – fully functioning company with the characteristics of a legitimate business, serving to disguise and obscure illicit financial activity.

Shelf company – incorporated company with inactive shareholders, directors, and secretary and is left dormant for a longer period even if a customer relationship has already been established.

nominee shareholders and directors, such as spouses, children, extended family, and other personal or business associates).

5. **Nominee directors and shareholders, particularly informal nominees (or “straw men”), are a key vulnerability**, and were identified in a large majority of case studies assessed for this report. The role of the nominee, in many cases, is to protect or conceal the identity of the beneficial owner and controller of a company or asset. A nominee can help overcome jurisdictional controls on company ownership and circumvent directorship bans imposed by courts and government authorities. While the appointment of nominees is lawful in most countries, the ongoing merits of this practice are questionable in the context of the significant money laundering and terrorist financing vulnerabilities associated with their use.

Specialist and professional intermediaries

6. **The use of specialists and professional intermediaries is a key feature** of schemes designed to conceal beneficial ownership, particularly in cases where the proceeds of crime are significant. The majority of the case studies involved professional intermediaries. While it was not always explicitly stated in the case studies, approximately half of all intermediaries involved were assessed as having been complicit in their involvement. This demonstrates that complicity is not necessary to facilitate a scheme designed to obscure beneficial ownership, and that **professionals can be unwitting or negligent in their involvement**. This serves to highlight the importance of effective regulation of designated non-financial businesses and professions, and the need for increased awareness amongst professional service sectors. Nevertheless, law enforcement experience in some jurisdictions indicates that professional intermediaries are more likely to be complicit than unwittingly involved in money laundering cases.

- In the case study sample available for this report, **trust and company service providers (TCSPs)** represented the highest proportion of professional intermediaries involved in the establishment of legal persons, legal arrangements, and bank accounts. The TCSP sector was also significantly more likely to provide nominee, directorship, and other company management services to their clients, provide services to other professionals on behalf of third-party clients, and provide services to clients based internationally. However, despite their significant involvement in the establishment and management of these arrangements, TCSPs appear less likely to be the architect of schemes designed to obscure beneficial ownership. TCSPs that were assessed as having been complicit in their involvement were more likely to have been wilfully blind than fully complicit, or may have also provided legal, accounting, or other financial services. This suggests that the role of TCSPs is more likely to be transactional in nature, operating at the behest of a client or other intermediary, who are often based in another country. It also demonstrates that, **while TCSPs appear to be less likely to be the masterminds of schemes designed to obscure beneficial ownership, the services provided by TCSPs are vulnerable to exploitation by criminals and other professional intermediaries involved in these schemes**.

- **Accounting professionals** were the least represented sector in the cases analysed for this report; however, they were significantly more likely to be complicit in their involvement when compared to legal professionals and TCSPs. The accounting profession demonstrated the least direct involvement in the establishment of legal persons, legal arrangements, or banking relationships, which suggests that the key role of the accounting profession in the construction of schemes designed to disguise beneficial ownership is the provision of expert advice. Accounting professionals represented the highest proportion of scheme designers and promoters in the case studies, and were more likely to promote their own scheme to prospective clients than to simply facilitate a scheme designed by their client. They were also the only professional sector that was not identified as having provided services to another professional intermediary on behalf of a third-party client. **It is likely that the financial acumen of the accounting profession, and the ease with which accountants can identify suspicious financial activities, limit their vulnerability to being unwittingly exploited to facilitate the concealment of beneficial ownership.** It also suggests that criminals and complicit professionals may be unwilling to involve an accounting professional unless their complicity can be assured in advance.
 - In comparison to other professional intermediary sectors, **the role of legal professionals in the facilitation of schemes designed to disguise beneficial ownership, varies depending on the situation.**
 - Legal professionals were more involved in the establishment of legal persons, legal arrangements, and bank accounts when compared with accountants, but less so when compared to TCSPs. The same was also true for the provision of nominee and directorship services.
 - Lawyers were the most likely of the three professions to be involved in the acquisition of real estate as a means of laundering the proceeds of crime and obscuring beneficial ownership.
 - Legal trust accounts and client accounts were also more frequently used as a means of disguising beneficial ownership, although the accounting profession also exhibited a similar proportion of this concealment technique. Legal professional privilege was also identified as a barrier to the successful recovery of beneficial ownership information.
 - In the case studies analysed for this report, where legal professionals were involved, there were a number of cases where legal professionals appeared to be unwitting or negligent in their involvement. This suggests that, despite their reasonably high level of involvement in the establishment of legal persons and arrangements, **legal professionals are not sufficiently aware of their inherent money laundering and terrorism financing vulnerabilities.** It is likely that this is exacerbated by the low level of regulation imposed on legal professionals in many countries.
7. Analysis indicates that **the services of both lawyers and accountants are rarely required to facilitate the same money laundering scheme – the involvement of one is typically sufficient.** TCSPs were present in almost all cases

that involved intermediaries from multiple sectors, and few cases demonstrated the use of both a lawyer and an accountant. Of the cases that involved multiple intermediaries from the same sector, the TCSP sector represented the overwhelming majority of these instances. When multiple TCSPs were exploited in a single scheme, almost all of the cases involved TCSPs in multiple jurisdictions. This reflects the role of TCSPs in establishing and managing local companies on behalf of foreign clients. Conversely, in instances where multiple legal or accounting professionals were used, most cases involved the use of multiple lawyers/accountants in the same jurisdiction, and most of these intermediaries were unwittingly involved. This suggests that, in instances where multiple lawyers or accountants are utilised to facilitate a scheme, criminal clients may be attempting to avoid suspicion by limiting their engagements with any single professional.

8. A lack of awareness and education of money laundering (ML)/ terrorist financing (TF) risks among professionals inhibits the identification of ML/TF red flags. This increases their vulnerability to being exploited by clients seeking to misuse otherwise legitimate services for ML/TF purposes. The case studies for this report identified that only four intermediaries involved in these schemes identified and reported suspicious activity in line with the FATF Standards. All of these cases were from countries that regulate designated non-financial businesses and professions (DNFBPs) under an anti-money laundering/counter-terrorist financing (AML/CFT) legal framework.

Anti-money laundering obligations and supervision

9. Seventeen per cent of jurisdictions that participated in the FATF's Horizontal Study of supervision and enforcement of beneficial ownership obligations do not impose any AML/CFT obligations or AML/CFT supervision on any DNFBPs whatsoever, despite this being a requirement of the FATF Standards. In some cases, this is the result of resistance to regulation from the relevant sectors or professions; in other cases, it may represent an "unfinished" aspect of the AML/CFT system which has not yet been implemented. The lack of supervision in these countries is a major vulnerability, and **professionals operating in countries that have not implemented appropriate regulations for DNFBPs represent an unregulated "back-door" into the global financial system.**

10. A country with a weak AML/CFT regime will exacerbate the vulnerabilities of legal persons, legal arrangements, and professional intermediaries. Key requirements of the FATF Standards, such as Immediate Outcomes 4 and 5, and Recommendations 10, 11, 12, 22, 23, 24, 25 and 28, amongst others, all relate to the risk profile of legal persons, arrangements, and intermediaries in a given jurisdiction. However, other inter-jurisdictional variables, such as trade and finance routes, are also influential with respect to the vulnerabilities and challenges associated with beneficial ownership. These vulnerabilities differ across jurisdictions and therefore cannot be definitively assessed at a global level. Competent authorities, financial institutions and DNFBPs should be mindful of the jurisdictional vulnerabilities that affect their country/business when assessing risk.

11. Schemes designed to obscure beneficial ownership often rely on a "hide in-plain-sight" strategy. This significantly impairs the ability of financial institutions, professional intermediaries, and competent authorities to identify suspicious

activities designed to obscure beneficial ownership and facilitate crime. At the same time, the FATF Standards and, by extension, much of the global AML/CFT infrastructure, centre upon the identification and reporting of suspicious activities by financial institutions and DNFBPs. Many of the case studies analysed for this report identified that information held by financial institutions was invaluable to the investigation of crime, and those countries that require the reporting of other transactions (such as threshold and cross-border transactions) indicated that these threshold-based reports were instrumental to the identification of irregular financial activities.

12. As the global economy becomes increasingly interconnected, and the sovereignty of financial borders dissipates, it is important to ensure that authorities have access to the appropriate information required to effectively deliver their mandate, whether it be suspicious transaction reporting submitted by reporting entities or other types of information, such as threshold and cross-border reporting. Furthermore, the FATF standards provide scope for countries to use several mechanisms to enable timely access to beneficial ownership information, and some countries have recently implemented, or are currently implementing, registers of beneficial ownership information as a mechanism to enable them to do so. Systems combining one or more approaches to ensure availability and accuracy of basic and beneficial ownership information may be more effective than systems that rely on a single approach. Some jurisdictions consider the availability of beneficial ownership registers assist competent authorities access up-to-date and accurate information, including for verifying information obtained from other sources.

Issues for consideration

13. As a result of the analysis and consultations that underpin it, this report identifies a number of issues to help address the vulnerabilities associated with the concealment of beneficial ownership, including:

- Consideration of the role of nominees including measures that may limit their misuse.
- The need for regulation of professional intermediaries in line with the FATF Standards, and the importance of efforts to educate professionals on ML and TF vulnerabilities to enhance awareness and help mitigate the vulnerabilities associated with the concealment of beneficial ownership.
- Further work to identify possible solutions or measures to prevent the misuse of legal professional privilege (LPP) to conceal beneficial ownership information, including through the provision of enhanced training and guidance material for legal professionals.
- Ensuring financial intelligence units have access to the widest possible range of financial information.
- Increased sharing of relevant information and transaction records to support global efforts to improve the transparency of beneficial ownership.
- Further work to understand what can be done to improve the quality and timeliness of the cross-border sharing of information, including through mutual legal assistance.

- Ensuring, for countries that make use of registers of beneficial ownership, and for all countries' company registers, that there is sufficient resource and expertise associated with their maintenance. This is to ensure that the information recorded in the register is adequate, accurate, and up-to-date, and can be accessed in a timely manner.
 - The need for countries to consider and articulate the vulnerabilities and threats relating to domestic and foreign legal persons and arrangements, the domestic and foreign intermediaries involved in their establishment, and the means by which criminals may exploit them to facilitate ML and other criminality.
14. A broad theme underlying all of these issues is information, including possible ways to improve the reliability, access and mechanisms to share that information more effectively at domestic and international levels. In some instances, these issues aim to inform responses by individual governments in taking further action; other issues identify areas for further research and engagement.

INTRODUCTION

15. Over the past three decades, the dramatic convergence of international trade and global financial systems, as well as the rise of the internet and other forms of communication technologies, has opened new opportunities for criminals to misuse company and business structures to conceal anomalous financial flows and criminality. Far from operating in a shady, hidden criminal economy, criminals disguise their activities as legitimate corporate trade to hide illicit funds within the enormous volume of transactions that cross the globe every day. However, visibility does not equate to transparency, and criminals use a multitude of tools, including shell companies¹, trusts, other legal arrangements, nominees, and professional intermediaries, to conceal the true intent of their activities and beneficial ownership² associated with them.

16. The ownership and control of illicit assets, and the use of legal structures to conceal them, has been the subject of increased global attention in recent years. The leak of confidential information from two large international law firms responsible for the establishment of complex international corporate structures in 2015 and 2017³ has increased public awareness of the way in which legal structures can be used to conceal wealth and illicit assets.

17. The ability of countries to prevent the misuse of legal persons and legal arrangements, and the ways in which they are being misused, have been the subject of numerous discussion papers and research projects over the last decade or longer. Studies have been published by international bodies, including the Organisation for Economic Co-operation and Development (OECD), the World Bank, the United Nations Office on Drugs and Crime, and the Financial Action Task Force (FATF). Collectively, these reports provide a wealth of knowledge on the abuse of corporate structures

Legal arrangements – refers to express trusts or other similar legal arrangements.
Legal persons – refers to any entities other than natural persons that can establish a permanent customer relationship with a financial institution or otherwise own property.

See also Section 1.

to facilitate corruption and money laundering; however, the FATF and Egmont Group of Financial Intelligence Units (Egmont Group) identified the need for further analysis of the vulnerabilities associated with beneficial ownership, with a particular

¹ For the purpose of this paper, “shell companies” are considered to be companies that are incorporated but which have no independent operations, significant assets, ongoing business activities, or employees.

² ‘Beneficial ownership’ or ‘beneficial owner’ refers to the natural person(s) who ultimately owns or controls a customer 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. See also the section ‘Definition of Beneficial Owner’.

³ From Panama-based law firm Mossack Fonseca, in 2015, and Bermuda-based law firm, Appleby, in 2017.

focus on the involvement of professional intermediaries, to guide global responses. This report attempts to address that need.

18. The publication takes a macro-level, global view of inherent vulnerabilities and is designed to support further risk analysis by governments, financial institutions, and other professional service providers. In undertaking further risk analysis, countries and private sector professionals should consider how the geopolitical and economic environment, as well as their own risk mitigation strategies, will affect the vulnerabilities associated with legal structures and the intermediary sectors that facilitate their formation and management.

METHODOLOGY

19. This project was co-sponsored by the FATF and Egmont Group. The project drew upon the unique and complementary capabilities of the FATF and Egmont Group to try to better understand the vulnerabilities linked to the concealment of beneficial ownership and the misuse of professional service providers. Led by Australia, Germany and France, the project team included experts from: Argentina, Canada, India, Israel, Italy, the Netherlands, New Zealand, the Russian Federation, Singapore, Switzerland, the United Kingdom, the United States, the Asia Pacific Group (APG) members, Bangladesh and Nepal, the Secretariat of the Inter-Governmental Action Group Against Money Laundering in West Africa (GIABA), the Group of International Finance Centre Supervisors (GIFCS), the Middle East and North Africa FATF-style regional body (MENAFATF) member, Egypt, the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), the International Monetary Fund (IMF), the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes (OECD Global Forum), the World Bank, and the FATF Training and Research Institute (FATF TREIN).

20. In preparing this report, the project team analysed typologies studies, intelligence assessments, mutual evaluation reports, and academic reports published by a range of academics, international bodies, and governments. A detailed list of the public sources used is included in Annex A. In addition to these public reports, the project leads analysed intelligence reports produced by financial intelligence units (FIUs), criminal intelligence and law enforcement agencies, and other competent authorities to identify emerging trends and methods being exploited by criminals. In many cases, these reports are not available publicly, and only desensitised information has been used in this report.

21. An intelligence exchange workshop was conducted during the FATF Joint Experts Meeting, which was hosted by the Russian Federation in Moscow in April 2017, during which 13 delegations⁴ presented case studies and intelligence insights relating to the concealment of beneficial ownership. A session was also held with the private sector, including representatives from banks, law societies, and TCSPs, which helped the project team to better understand their practices and challenges with regard to issues of beneficial ownership.

22. As part of a process of targeted private sector consultation, the project team sought comments from 12 international organisations and associations representing a spectrum of the private sector with a particular interest in the topic. The organisations represented global financial institutions, DNFbps, data providers, FinTech and RegTech firms, and non-government organisations. The project team received comments from the Financial Transparency Coalition; the Institute of International Finance; the International Banking Federation; the International Federation of Accountants; the International RegTech Association; the International

⁴ These 13 were Indonesia, Italy, Israel, Kyrgyz Republic, the Netherlands, Poland, Russia, Spain, Sudan, Switzerland, Venezuela, Europol, and the European Commission.

Union of Notaries; the Society of Trust and Estate Practitioners; the Wolfsberg Group; and from the International Bar Association's Anti-Money Laundering and Sanctions Expert Working Group. These comments included additional information on vulnerabilities, additional risk indicators, and methods for identifying beneficial ownership.

23. The primary sources of information for this report were the case studies⁵ provided by FATF, the Egmont Group, and FSRB members. FATF TREIN undertook an analysis of the 106 case studies and typologies submitted by 34 jurisdictions. This is a relatively small sample of countries, and is weighted towards a few jurisdictions that provided a larger number of cases⁶. FATF TREIN's analysis was limited to the information known to the competent authorities and the information then communicated in the case summaries. In some cases, information relating to the money laundering scheme (the predicate offence or the location of the ultimate beneficial owner) was apparently not known by the competent authorities. In other cases, the information was not communicated in the case summary (for example, the type of legal person) or was anonymised (for example, the jurisdiction from which services were provided).

24. Despite these inherent limitations in the data, the case descriptions are substantially more detailed than those that can be found in recently published Mutual Evaluation Reports (MERs). Additionally, the cases, where the dates were identified, were generally recent, ranging from 2010 to 2017. The average sum of money laundered in each case, across all cases reviewed for this report, was in excess of USD 500 million.

25. This report has focused on the vulnerabilities and techniques of misuse associated with the concealment of beneficial ownership posed by legal persons, legal arrangements, and the professional intermediaries commonly involved in their establishment. It does not cover the threats posed by criminals and how these may differ among predicate offences, how different predicate offences may affect the methods used to obscure the beneficial owner, or the consequences associated with the residual risk. The report considers common techniques used by criminals to conceal beneficial ownership, and the environmental characteristics that contribute to the vulnerabilities posed by these legal structures and intermediaries. No effort has been made to provide a definitive list of high-risk jurisdictions based on these environmental risks, as numerous variables specific to particular jurisdictions make such a task untenable on a global level.

Horizontal Study of Enforcement and Supervision

26. In 2016-17, the FATF undertook a horizontal study on the enforcement and supervision of beneficial ownership obligations. The purpose of the study was to understand how beneficial ownership requirements were being supervised, in

⁵ The case studies provided by law enforcement agencies and FIUs are focused on the various techniques, trends and methods used by criminals to conceal beneficial ownership.

⁶ For example, the Netherlands submitted 19 cases for analysis, while Egypt submitted eight and Australia and the United States both submitted seven.

particular among key gatekeeper professions such as lawyers and TCSPs, as well as the role of registries in establishing and managing companies. The Horizontal Study was based on a survey of 64 jurisdictions, including 23 FATF members, who volunteered to provide information. The results of this analysis are attached at Annex B to this report and, where relevant, references to that study are provided throughout the publication.

DEFINITION OF BENEFICIAL OWNER

27. The FATF standards define “beneficial owner” as the “*natural person(s) who ultimately⁷ own(s) or control(s) a customer 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*”⁸ ⁹. This definition differs from the definitions of “beneficiary” and “beneficiaries”, which can include both natural and legal persons and arrangements, and often relate to:

- the recipients of charitable, humanitarian, or other types of assistance through the services of an NPO¹⁰, or
- the person(s) entitled to the benefit of a trust arrangement¹¹ or insurance policy¹².

28. The distinction between “beneficial owner” and “beneficiary” relies on the concept of “ultimate” control or benefit, which refers to the *natural person* who ultimately controls or benefits from an asset or transaction through direct or indirect means. Importantly, a “beneficial owner” must always be a natural person, as a legal person cannot exert “ultimate” control over an asset. This is due to the fact that legal persons are always controlled, directly or indirectly, by natural persons. Therefore, while a legal person or arrangement can be the beneficiary of an asset or transaction, determining the beneficial owner requires the discovery of the natural person(s) who ultimately control or benefit from the legal person or arrangement.

29. The concept of ultimate benefit and control is also central to distinguishing “beneficial” ownership from “legal” ownership. The legal owner of an asset is the natural or legal person or arrangement that holds the legal title of that asset; however, legal ownership is not always essential in order to exert control over, or benefit from, an asset, particularly when the asset is held in trust or owned by a legal person. It is therefore essential to determine the natural person who controls an asset, rather than the legal owner of that asset.

30. Determining ultimate control can be problematic, and is often the principal challenge of determining beneficial ownership. In the context of a company, control can be exerted by shareholders, directors, and senior management. While shareholders are generally considered to exert the greatest level of control over a

⁷ Reference to “ultimately owns or controls” and “ultimate effective control” indicates situations in which ownership/control is exercised through a chain of ownership or by means of control other than direct control.

⁸ This definition should also apply to beneficial owner of a beneficiary under a life or other investment-linked insurance policy.

⁹ FATF, 2012a: p. 113.

¹⁰ *Ibid*, p. 59.

¹¹ *Ibid*, p. 113.

¹² *Ibid*, p. 62.

company, due to their ability to dismiss directors and other senior staff and because they stand to benefit from the profits of the company, the role of directors and senior management cannot be overlooked. In the context of trusts, the trustee exerts control over an asset but is legally bound to act in the interests of the beneficiary, who generally cannot exercise any control over the trust. The settlor and protector of the trust may also continue to exert some level of control or influence over the trust, despite having relinquished legal ownership of the asset to the trustee for the benefit of the beneficiary. This can complicate any efforts to determine who should be considered the beneficial owner and can necessitate further efforts to determine the true nature of the trust relationship.

31. Control can also be exerted via third parties, including professional intermediaries, family members, associates, nominees, and other natural persons who have been recruited or coerced to act on behalf of the ultimate beneficial owner. The use of nominees and other third parties can complicate efforts to identify the ultimate beneficial owner of an asset or transaction, as the beneficial owner may not be recorded in formal company or trust records in many jurisdictions. While it is important for competent authorities to have the ability to understand the identity of the natural person controlling an asset, it is also important for competent authorities to understand who benefits from it.

32. Further guidance on the definition of “beneficial owner” is available in the *FATF Guidance on Transparency and Beneficial Ownership*¹³.

¹³ FATF, 2014: p. 8.

STRUCTURE OF THE REPORT

33. The report is divided into four sections, which are designed to analyse the separate aspects that contribute to the concealment of beneficial ownership. The sections are arranged as follows:

- **Section 1** briefly outlines the **main characteristics of various legal persons and arrangements**. By analysing the case studies provided in support of this report, as well as the experiences of law enforcement agencies and FIUs in various countries, this section of the report provides an overview of the general features and functions of legal persons and arrangements that make them vulnerable to misuse for the purposes of concealing beneficial ownership.
- **Section 2** provides an overview of the **methods and techniques** commonly used to conceal beneficial ownership. The purpose of this section is to analyse how beneficial ownership is disguised using a range of legal structures, intermediaries, and fraudulent activities. The following three key methods are assessed in this section: generating complex ownership and control structures, obscuring the relationship between the asset and the beneficial owner, and falsifying activities. These methods can involve a range of techniques, the assessment of which will form a foundation for the assessment of vulnerabilities associated with legal persons, arrangements, and intermediaries in later sections of the report.
- **Section 3** analyses key **professional intermediary sectors** involved in the establishment and management of legal persons and arrangements, namely the legal, accounting, and TCSP sectors, and is the focus of this report. This section provides an overview of the principal role of these intermediary sectors in the establishment of legal structures, the services they provide that are commonly exploited by criminals, and other features which make these professionals vulnerable to exploitation. The purpose of this assessment is to determine how professional intermediaries are being exploited, wittingly and unwittingly, to affect schemes and methods designed to obscure beneficial ownership in order to inform risk assessments and mitigation strategies.
- **Section 4** provides an overview of key **environmental vulnerabilities**, including jurisdictional vulnerabilities and vulnerable business practices, which contribute to the vulnerabilities associated with the legal persons, legal arrangements, and professional intermediaries assessed in the rest of the report. The section does not attempt to provide a definitive list of high-risk jurisdictions, as jurisdictional risks will differ from country to country. Rather, the purpose of this section is to support risk analysis activities performed by FIUs, financial services providers, and professional intermediaries.

34. In analysing the main characteristics leading to misuse of legal persons and legal arrangements, the inherent vulnerabilities associated with professional intermediaries, and the environmental vulnerabilities that may facilitate their

appearance, this report identifies a number of issues for consideration. A broad theme underlying these issues is information, including possible ways to improve the reliability, access and mechanisms to share that information more effectively at domestic and international levels. In some instances, these issues for consideration aim to inform responses by individual governments in taking further action; other issues identify areas for further research and engagement.

SECTION 1 — MISUSE OF LEGAL PERSONS AND ARRANGEMENTS

35. Legal persons and arrangements play an important role in global commerce and trade, and are the cornerstone of modern economies. For the most part, legal persons and arrangements serve legitimate, lawful, and meaningful purposes. However, the unique legal status of legal persons and arrangements also lend themselves to complex schemes designed to conceal the true beneficial owners and, in many respects, concealing the real reason for holding assets and conducting related transactions. Legal persons can lend legitimacy to unlawful activities, hide the involvement of key stakeholders and controlling parties, and generally frustrate criminal investigations domestically and internationally. Whilst acknowledging the legitimate role of legal persons and arrangements, this section will briefly introduce the characteristics of various types of legal persons and arrangements, and how they are exploited to facilitate crime and conceal beneficial ownership.

36. It is important to note that the information in this section is designed to assist financial institutions and professional intermediaries in analysing risk. It is not intended to suggest that any particular form of legal person or arrangement to be considered high-risk or low-risk by default. Private sector entities are encouraged to apply a risk-based approach to customers and transactions on a case-by-case basis.

Legal persons

37. Seen from a global perspective, there are numerous different kinds of legal persons that exist under a multitude of different company laws, making it difficult for law enforcement to trace assets held by legal persons across numerous countries. Legal persons, specifically companies, are prominent features of most schemes and structures designed to obscure beneficial ownership. Almost all of the cases analysed for this report involved at least one company. The separation of legal and natural personalities offered by companies is a key feature influencing this popularity.

38. Given the broad range of legal persons in existence across the globe, an analysis of the similarities and differences among forms of legal persons would have exceeded the scope of this project. Furthermore, most of the case studies did not provide specific insights into the types and legal peculiarities of the legal persons used in the money laundering schemes. As such, the report has focused on broader characteristics of legal persons, and has not endeavoured to assess all of the specific forms available. One of the factors that might contribute to a higher frequency of misuse of a particular type of legal person is the absence of accurate and up-to-date information on its ownership and management, which, as evidenced by the Horizontal Study¹⁴, remains a challenge in many jurisdictions.

39. A categorization of legal persons must differentiate between partnerships on the one hand and corporations or capital companies, in the sense of trading

¹⁴ See, in particular, Question 3 of the Horizontal Study at Annex B.

companies, on the other. In a general **partnership**, ownership and control are exercised by all partners specified in the partnership contract. In that regard, the ability to misuse a general partnership to disguise beneficial ownership is significantly reduced, as management is exercised immediately by the partners and there is no legal segregation between the natural persons and an independent legal person. The same can be said of general partners of a limited partnership; however, limited partners can benefit from a certain degree of anonymity by acting solely as an investing partner regardless of their actual role in the partnership. However, due to their limited liability, limited partners generally have only limited control over the partnership.

40. In contrast to partnerships, the capital participation of shareholders is the focus of **capital companies**, not their "personality". Unlike partnerships, capital companies are always a separate legal entity, and are often controlled and owned through shares, which can be transferred and sold regularly without affecting the existence of the capital company itself. The hybrid construction of limited liability companies (LLCs) (or private company limited by shares (LTD)) and foundations differ from capital companies and are outlined in further detail below.

41. The main feature of a company is the strict separation of the natural person investing in and owning the company by shares and the legal personality of the company itself. A company's legal personality allows it to conduct business and own assets under its own name, assuming all rights and being liable for all debts and obligations it enters into. This legal structure allows a natural person to take part in business without disclosure of their personal identity¹⁵. Even though shareholders own the company, usually they are not actively involved in management functions, but instead elect or appoint a board of directors to manage the company in a fiduciary capacity¹⁶.

42. Private companies, such as **limited liability companies** (LLC)¹⁷, are restricted in different ways (they may have a limited number of shareholders, require notarization for the transfer of shares, etc.) depending on the jurisdiction in which they are established. LLCs combine elements of partnerships and companies. While differing slightly from country to country, the primary concepts are the same. Unlike publicly traded companies, they do not offer their interests to the public, and are therefore generally subject to less stringent reporting and oversight regimes. Shares in a limited liability company cannot be publicly offered and traded, and

¹⁵ Securities laws may provide for transparency to a certain degree, such as through notification requirements for stock-listed companies if the shareholder exceeds a certain amounts of shares.

¹⁶ Van der Does de Willebois, E. et al. (2011: p. 162) claim that companies are the most misused corporate vehicle documented in the study. While the study focuses on corruption, it discusses in detail how corporate vehicles can be used to disguise of ownership and control.

¹⁷ The term "limited liability company" here is intended to encompass the various forms of this kind of company in several jurisdictions (e.g. LLC in US; Pvt Ltd. in UK, Ireland, India, Hong Kong; GmbH in Germany, Austria, Liechtenstein; BV in the Netherlands; SARL in France).

often some limitations apply to the transfer of shares. While members can manage a LLC directly, this function is usually performed by managers or directors. The governing rules on ownership and control rights are determined by a contract, which may not be publicly available. The contract gives the members a high degree of freedom in determining the division of ownership and control among the members,¹⁸ thus allowing latitude to exploit nominees and obscure true ownership and control arrangements in order to obscure beneficial ownership.

43. **Foundations** are separate legal entities with no owners or shareholders and are generally managed by a board of directors. Foundations are generally restricted to the provision of a service for public benefit, although several jurisdictions allow foundations to be established to fulfil private purposes (private foundations¹⁹). Safeguards usually exist to ensure that a foundation is sufficiently independent from its founder; however, foundations are vulnerable to exploitation for money laundering purposes, particularly when laws allow the founder to exert control over the foundation. Only a small number of the cases analysed for this report involved the use of a foundation.

44. As previously stated, this report has not drawn any specific conclusions on the vulnerabilities of specific forms of legal person, as cases provided did not contain sufficient information on the types of legal persons used in financial crimes to allow conclusions to be drawn. However, it can be stated that almost all of the cases analysed for this report involved the use of a company, which indicates that these vehicles are significantly attractive for misuse. Furthermore, only a small number of cases involved a foundation, and a very small number of the case studies involved a partnership to obscure beneficial ownership.

45. A range of characteristics have been identified which allow legal persons to be exploited by criminals to conceal beneficial ownership. Many of these – including the use of shell, shelf^{20 21}, and front companies²², the construction of complex chains

¹⁸ Van der Does de Willebois, E. et al., 2011: p. 164.

¹⁹ Private foundations pursue not-for-profit activities on behalf of their members or founders. The structure can be found in many countries including Germany, Bulgaria, Panama, the Netherlands, and Sweden. A private foundation is usually funded by an individual or small group of individuals. It has legal personality by virtue of a written act and through recognition of its status by the supervisory authority. The initial registration of a foundation established to fulfil private purposes is usually faster and less demanding than the process required for a public foundation. Accounting requirements are also more straightforward, and maintenance and administration costs also tend to be lower.

²⁰ For the purpose of this paper, a “shelf company” is considered to be an incorporated company that has inactive shareholders, directors, and secretary and is left dormant for a longer period even if a customer relationship has already been established.

²¹ As *shelf companies* can also be considered a type of *shell company*, particularly following their sale or transfer of ownership, it is possible that jurisdictions referred to former shelf companies as shell companies when providing case studies.

²² For the purpose of this paper, a “front company” is considered to be a fully functioning company with all the characteristics of a legitimate business, which ultimately serves to disguise and obscure the illicit financial activity being conducted. Front companies are often cash intensive businesses.

of ownership using multiple legal persons, the splitting of assets and company administration across different countries, and the use of formal and informal nominees – have been analysed in Sections 2 and 4 of this report.

Legal arrangements

46. One way to translate a fiduciary relationship into a legal agreement, especially in common law countries, is the settlement of a trust. Although there is no universal definition, from a functional point a view a trust can be said to separate the legal property, administration, and economic benefit of an asset²³.

47. **Trusts** can be used to achieve varying objectives, including:

- transferring the administration of an asset to a third party to organise an inheritance
- protecting assets for children, classes of family members or vulnerable adults
- managing in common an asset for a pool of corporations (like syndicated loans in corporate banking, where a lead lender originates and administrates the loan for the other secondary lenders, who are only signing the loan agreement)
- financing charity through an intermediary gathering funds
- investing money with the view to finance an important expense in the future (e.g. education fees or retirement).

48. While trusts are sometimes a source of misunderstanding between common law and civil law experts, they have spread across countries of both legal traditions. Although they have a long and established history under common law, they are a more ambiguous concept in civil law countries; however, it is worth noting that similar “trust-like” legal arrangements exist in some civil law countries, presenting the same structure or functions, like the “*fiducie*” in some civil law countries (although this latter type of legal arrangement cannot be used to facilitate a legacy)²⁴.

²³ The FATF Recommendations makes use of Article 2 of the Hague Convention on the Law Applicable to Trusts and on their Recognition (the Hague Trust Convention) when considering how to define a trust. Key characteristics of a trust according to the Hague Trust Convention include the separation of the assets from the trustee’s estate, the title of the assets stand in the name of the trustee or in the name of another person on behalf of the trustee, and the provision of power to the trustee to manage the assets in accordance the terms of the trust.

²⁴ Trusts developed in common law countries, but it is important to note that civil law countries which do not recognize trusts have often put in place different mechanisms to fulfil the same functions as trusts. For instance, from a European perspective, one can consider that the widely developed “life insurance” contract uses the same principles as a trust, where a settlor asks a trustee to administer funds on behalf of a third party (the beneficiary).

49. The Horizontal Study found that 60% of responding jurisdictions provided for the creation of trusts or other similar legal arrangements under their domestic laws²⁵. A further 21% of responses were from jurisdictions which are not the source of law for legal arrangements, but which give some recognition to foreign legal arrangements and permit foreign legal arrangements to be created or administered by gatekeepers or others within their jurisdiction (e.g. under the Hague Trust Convention). Finally, 19% of responses indicated they do not recognise (e.g. in courts or in their tax system) any legal arrangements, whether based on domestic or foreign law.

50. Apart from the intent to separate legal and beneficial ownership, it is not clear precisely why criminals exploit trusts in money laundering schemes. There may be a multiplicity of reasons which will vary on a case-by-case basis. Criminals may exploit the secrecy provisions inherent in certain legal arrangements to prevent competent authorities from exerting authority to unravel the true ownership structure. This is particularly likely when schemes involve a foreign trust. Indeed, the use of foreign trusts might convey risks of unlawful practices owing to criminals making the most of the differing treatment of these legal arrangements by tax authorities and of the potential lack of coordination between them. From the cases analysed for this report, criminals used foreign jurisdictions in broadly the same proportions when establishing legal persons and legal arrangements.

51. The complexity and expense of establishing legal arrangements may limit their use when compared to the prolific exploitation of legal persons by criminals. The benefits associated with the use of legal arrangements, principally the separation of legal and beneficial ownership, might not be sufficiently significant to merit the additional investment when compared to the cost, availability and characteristics of legal persons. The relative frequency of the use of legal arrangements in the cases analysed for this report (approximately one-quarter of all cases) may be due to the fact that many of the cases involved sophisticated predicate offences that yielded significant proceeds and thus warranted the additional investment.

²⁵ See, in particular, Question 2 of the Horizontal Study at Annex B.

SECTION 2 — TECHNIQUES USED TO OBSCURE BENEFICIAL OWNERSHIP

52. Criminals employ a range of techniques and mechanisms to obscure the beneficial ownership of assets and transactions. Many of the common mechanisms/techniques have been compiled by FATF in previous studies, including the 2014 *FATF Guidance on Transparency and Beneficial Ownership*. According to the FATF guidance report²⁶ beneficial ownership information is commonly obscured through the use of:

- shell companies²⁷, especially in cases where foreign ownership is spread across jurisdictions
- complex ownership and control structures
- bearer shares and bearer share warrants
- unrestricted use of legal persons as directors
- formal nominee shareholders and directors where the identity of the nominator is undisclosed
- informal nominee shareholders and directors, such as close associates and family
- trusts and other legal arrangements which enable a separation of legal ownership and beneficial ownership of assets
- intermediaries in forming legal persons, including professional intermediaries.

53. Additional techniques and mechanisms which were not explored in the FATF's previous guidance include the use of shelf companies²⁸ and front companies²⁹, misleading naming conventions, false loans and invoices, and declaring numerous beneficiaries. Overall, the key techniques used by criminals to obscure beneficial ownership can be categorised within three broad methods:

²⁶ FATF, 2014: p. 6.

²⁷ For the purpose of this paper, "shell companies" are considered to be companies that are incorporated but which have no independent operations, significant assets, ongoing business activities, or employees.

²⁸ For the purpose of this paper, a "shelf company" is considered to be an incorporated company that has inactive shareholders, directors, and secretary and is left dormant for a longer period even if a customer relationship has already been established.

²⁹ For the purpose of this paper, a "front company" is considered to be a fully functioning company with all characteristics of a legitimate business that is usually cash intensive.

- **generating complex ownership and control structures** through the use of legal persons and legal arrangements, particularly when established across multiple jurisdictions
 - **using individuals and financial instruments to obscure the relationship between the beneficial owner and the asset**, including bearer shares, nominees, and professional intermediaries, and
 - **falsifying activities** through the use of false loans, false invoices, and misleading naming conventions.
54. These methods and techniques are outlined in greater detail below in order to contextualise the role of legal persons, arrangements, and professional intermediaries in disguising beneficial ownership.

Generating complex ownership and control structures

55. A key method used to disguise beneficial ownership involves the use of legal persons and arrangements to distance the beneficial owner from an asset through complex chains of ownership. Adding numerous layers of ownership between an asset and the beneficial owner in different jurisdictions, and using different types of legal structures, can prevent detection and frustrate investigations.

56. More than half of the case studies submitted in support of this report made use of complicated ownership structures, whereby control was affected through a combination of direct and indirect control. These complex structures were achieved through the establishment of chains of ownership, which often involved a number of legal persons and arrangements across multiple countries, distancing the beneficial owner from the assets of the primary corporate vehicle. In only a small number of cases did the beneficial owner retain legal ownership through a complicated structure without using an intermediary. The Russian case study below (Case Study 88) demonstrates how complex ownership structures, involving numerous foreign companies and bank accounts, were used to disguise the beneficial ownership of embezzled public funds and other proceeds of crime.

57. There are few restrictions on the establishment of chains of ownership within and across jurisdictions.³⁰ Legal persons are allowed to own shares in companies established in any country, while many countries also allow legal persons to be registered as the directors of companies. Shell companies and front companies feature prominently in most complex structures identified by FIUs and other competent authorities, while trusts and other legal arrangements are less frequently identified.

58. Complex ownership and control structures are not, in and of themselves, unlawful. Often, these corporate structures serve legitimate purposes and facilitate a wide range of commercial activities, entrepreneurial ventures, and the management of personal finances. Advances in communications technology, ease of travel, and other effects of globalisation are increasing the accessibility of global finance and business centres to all population segments, beyond large corporations and high net

³⁰ Van der Does de Willebois, E. et al., 2011: p. 53.

worth individuals. Complex ownership structures can simplify business transactions for companies that regularly trade transnationally, provide services to international clients, or conduct parts of a company's operations (such as manufacturing or research and development) in another country. Often complex control structures are used by family businesses, by government-owned or operated public or commercial business ventures, and by publicly traded companies to structure their affairs. In these instances, a financial institution, legal/accounting professional, or other service provider will be in a position to readily ascertain the beneficial ownership of the structure. These structures are generally transparent to relevant authorities and present minimal vulnerabilities for disguising beneficial ownership.

59. Despite the legitimacy of many complex ownership and control structures, these structures can also be used to obscure beneficial ownership, avoid taxation obligations, conceal wealth, and launder the proceeds of crime. Complex structures are also used in fraudulent investment schemes, phoenix activity³¹, false invoicing, and other types of fraud. The majority of case studies that involved tax evasion, fraudulent investment schemes and fraud as predicate offences also utilised complex structures to conceal beneficial ownership.

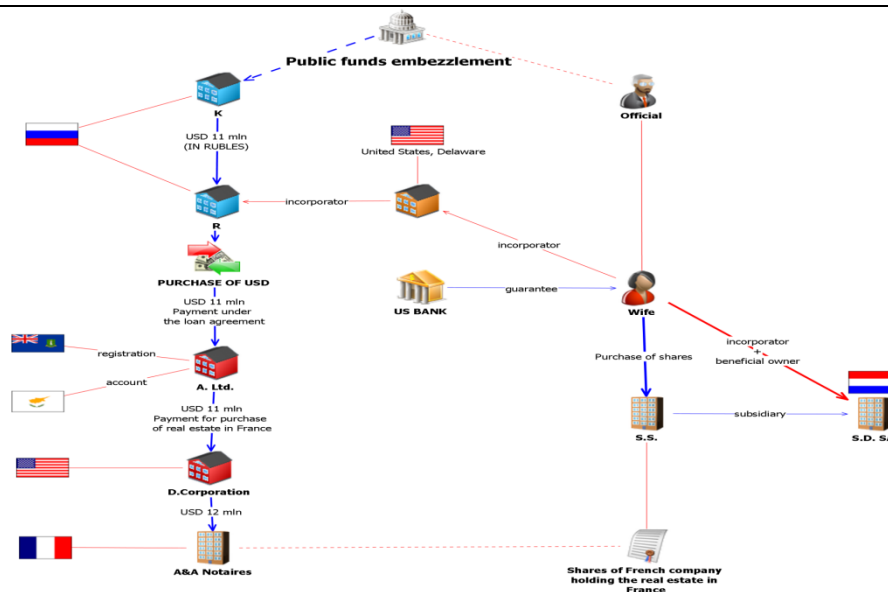
60. The use of numerous legal persons or arrangements within a single legal structure, as well as the use of numerous bank accounts and nominee directors, can significantly impair efforts by FIUs, other competent authorities, and financial institutions to identify and verify the beneficial owner. This is further frustrated when legal ownership structures span numerous jurisdictions. Despite concerted efforts by many countries to improve the sharing of financial intelligence and company information, mutual legal assistance and other forms of bilateral or multilateral information requests are often slow to action or complicated by various legal hurdles. Law enforcement agencies and FIUs report that, following lengthy information-sharing processes with international counterparts, the information received often demonstrates that the company of interest is owned by another legal person or arrangement in another country. The Horizontal Study demonstrated that there are considerable challenges in ensuring accurate and up-to-date information on legal persons in many jurisdictions³². As a result, the greater the number of companies and countries involved in a corporate structure, the greater the challenges associated with discovering the ultimate beneficial owner in a timely manner.

³¹ Illegal phoenix activity is the creation of a new company to continue the business of a company that has been deliberately liquidated to avoid paying its debts, including taxes, creditors and employee entitlements.

³² See, in particular, Question 3 of the Horizontal Study at Annex B.

Case Study 88 – Russia

Embezzled public funds worth RUB 300 million (Russian rubles) (USD 11 million) were transferred from the account of Company K to the account of Company R. Company R, a Delaware corporation, was owned and managed by the Russian wife of the suspect, a state official. The same day, Company R transferred USD 11 million as a loan to an account of Company A (BVI) held by a Cypriot bank. Company A then transferred more than USD 11 million to the Company D (US) to purchase real estate in France. Company D transferred more than USD 12 million to a French Notaries Bureau. Information from the FIU of Luxembourg showed that one of the US banks acted as a guarantor for the suspect's wife in a transaction to purchase of shares of a French company – and the holder of the real estate. The transaction was conducted via an S.S. company – a French subsidiary of a Luxembourg S.D. SA., incorporated and owned by the same individual. Analysis showed that these two chains were interrelated and the real estate was purchased with the proceeds of public funds embezzled for the benefit of the state official's wife.



Shell and Shelf Companies

61. The 2014 *FATF Guidance on Transparency and Beneficial Ownership* defined **shell companies** to be “companies that are incorporated but which have no significant operations or related assets”³³. The FATF’s 2013 report, *Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals*, used a similar definition³⁴ in its description of the use of shell companies as a technique to place or layer illicit funds. As outlined in the 2013 report, shell companies can serve

³³ FATF, 2014: p. 6.

³⁴ FATF, 2013: p. 55.

legitimate purposes, such as serving as a transaction vehicle for company mergers or protecting a corporate name from being used by another party.

62. Despite their legitimate uses, shell companies are the most common type of legal person used in schemes and structures designed to obscure beneficial ownership. Of the case studies analysed for this report, more than half specifically referred to the use of shell companies; however, it is likely that the actual figure is higher, as many countries are likely to have referred to legal persons in a general sense, rather than specifying the nature of the company involved. Shell companies can be used in complex structures involving the distribution of assets across multiple companies in multiple jurisdictions. When these structures are used for illicit purposes, money may flow through multiple layers of shell companies before finally being withdrawn in cash or transferred to its final destination internationally. Of the cases that included shell companies, the majority included a corporation located in a foreign jurisdiction.

63. Shell companies can be difficult to detect, as their incorporation is often no different from companies formed for other purposes; however, there are a number of characteristics and indicators that may indicate that a company is a shell, including the use of only a post-box address, a lack of personnel (or only a single person as a staff member), and a lack of payments in taxes and/or social benefit payments. Furthermore, many shell companies do not have a physical presence, and are geographically anchored through the use of TCSPs and nominee directors whose role in the management and direction of the shell company is limited. This is a particular problem with shell companies and presents a meaningful vulnerability that should be considered when doing business with companies that exhibit characteristics of being a shell company.

64. The use of shell companies in complex corporate structures designed to disguise beneficial ownership is a consistent and enduring technique used by criminal groups, corrupt individuals, and complicit professionals. The increased availability of shell companies to foreign nationals, which has been made possible by the growth of global communications and the convergence of international trade markets, has exacerbated this issue.

65. As with shell companies, **shelf companies** serve legitimate purposes. In theory, shelf companies allow investors, or people planning a new undertaking, the possibility of securing a company structure within hours to serve a time-sensitive need. Where shelf companies have already been in operation for a number of years, the new owner can use this history to help secure business relationships or lines of credit; some shelf companies may already have established customer relationships with financial institutions, facilitating access to the international financial system.

66. When the shelf company is sold, the inactive shareholders transfer their shares to the purchaser, and the directors submit their resignations. As part of the transfer, the purchaser may receive the company's credit history, if it is available. Occasionally, the company directors will continue to function as nominees, particularly when the shelf company is established and sold by a TCSP. In these cases, the only apparent change in the company is a change of ownership. However, the change of ownership will only be apparent if it is properly recorded in company registries. This is often "overlooked" in cases where shelf companies are used to disguise beneficial ownership. Law enforcement agencies and FIUs have reported

that the failure to properly record the change of ownership following the sale of a shelf company is a concern.

67. Despite the theoretical use of shelf companies in the concealment of beneficial ownership, only two of the case studies analysed for this report included specific references to the use of shelf companies. The prevalence of shelf companies in schemes designed to obscure beneficial ownership is, therefore, unknown. It is possible that the use of shelf companies to obscure beneficial ownership is higher than demonstrated in the case studies in this report, as some shelf companies are likely to have been referred to as “shell companies” in the case studies. It is also likely that the value of shelf companies resides predominantly in the pre-existence of nominee directors and shareholders. Though convenient, many TCSPs will offer nominee services to newly established shell companies, making shelf companies less necessary.

Case Study 19 – Ecuador

Public officials in Ecuador, along with relatives and individuals connected to law firms, created a series of shelf companies in several countries for the purpose of receiving bribe payments. The bribe payments were effected through individuals with links to companies that provide goods and services to a public institution in the oil sector. To send the payments, and to hide the real beneficiaries of the transfers, the suppliers created companies in Panama, Hong Kong, British Virgin Islands, Bahamas, Uruguay, and the US.

Case Study 26 – Egypt

The accused created six British Virgin Island shell companies and used the bank accounts of these shell companies to launder the proceeds of crime of a total amount of more than EGP 1 billion (Egyptian pounds). The predicate offence was “illegal earning”. The six shell companies all had a nominee shareholder.

Front company

68. A “front company” is a fully functioning company, with assets, income, expenses. It also exhibits other characteristics associated with the operation of a legitimate business. Any functioning company can be a front company, but the most common form of front company is one that operates in the customer service industry (such as a restaurant, night club, or salon) as these businesses commonly handle cash. Front companies can be exploited to launder the proceeds of crime through the integration of illegitimate funds with legitimate income, often by disguising the illegitimate funds as cash sales made during the course of business. When this is done, these funds can then be deposited into the company’s bank account and used by the beneficial owner (if the beneficial owner is also the business owner) or they may pay false expenses in order to transfer the money to the true beneficial owner. Unlike many money laundering operations, where criminals attempt to conceal their illicit wealth and may also attempt to avoid paying

tax on that wealth, criminals who use front companies will occasionally pay company tax on the illicit income to further legitimise the wealth. One case study from Australia (Case Study 2) demonstrates how a front company was used to disguise the proceeds of crime as employee salary payments through the use of a transport company and a third-party salary payment service provider.

69. While front companies have obvious applications to the concealment of illicit wealth more generally, they also conceal the beneficial ownership of that wealth at the placement stage of the laundering process. In the normal course of business, company income is essentially the transfer of money and value from one beneficial owner (the customer) to a second beneficial owner (the business owner). When a front company is used to launder illicit wealth, the “customer” is often the business owner or a close associate. However, company records will record the transfer as having originated from a customer interaction, thereby concealing the business owner or associate as the originating beneficial owner. Over a quarter of the case studies submitted in support of this report involved the use of front companies.

70. Front companies are not always cash-intensive businesses. With today’s digitised and transnational economy, front companies can take the form of anything that is expected to generate income from multiple sources. Front companies can also be established to commit fraud, where the company appears to offer a service or perform a function that it does not offer or perform in order to defraud investors and embezzle public funds, or to obscure the beneficial owner of an asset as part of a complex ownership structure, as demonstrated by one case from the US (Case Study 99 below).

71. Financial institutions have also identified instances where informal nominees are solicited by crime groups to establish front companies as a means of circumventing due diligence, money laundering controls or sanctions³⁵. This situation arises when a crime group, which is already operating a company, seeks to access the financial system by arranging for an employee to set up an otherwise legitimate operating company in another jurisdiction, where that employee may or may not be an owner of the new company, but does control it typically as an officer. In this situation, the due diligence performed on the new company would not typically identify the indirect connection to the original company, which is hidden, and the new company would act as a front company by engaging in transactions and accessing the financial system in a way that the hidden company could not.

72. While front companies were less prevalent than shell companies in the case studies, it does appear that the use of front companies is a popular technique for the concealment of beneficial ownership and illicit wealth³⁶. Although front companies are occasionally directly owned and operated by the beneficial owner, their steady stream of legitimate income serves to conceal the beneficiary of the income itself. For this reason, criminals will continue to exploit front companies to conceal beneficial ownership and integrate illicit wealth.

³⁵ See section 3 for further information.

³⁶ Over a quarter of the case studies submitted in support of this report involved the use of front companies.

Case Study 2 – Australia

An Australian drug syndicate used multiple money laundering methods to launder more than AUD 1 million worth of proceeds of crime. Trust accounts, a front company, high-value goods and real estate were used to launder the profits from cannabis sales. The syndicate also misused the services of two professional facilitators (an accountant and solicitor) to facilitate its criminal activity.

One of the four money laundering methods utilised by the syndicate involved the transfer of illicit wealth to syndicate members in the guise of legitimate wage earnings. The syndicate members employed a company that specialised in processing wages to pay them a wage from their new transport company. Members of the syndicate deposited the cash proceeds of the cannabis sales into the transport company's account. From this account the funds were transferred to the wage processing company. The wage processing company then paid these funds to the syndicate members, seemingly as legitimate wages. Syndicate members were paid an annual wage of around AUD 100 000.

Case Study 99 – United States

U.S. authorities identified front companies used to conceal the ownership of certain U.S. assets by Bank Melli, which was previously designated by US authorities for providing financial services to entities involved in Iran's nuclear and ballistic missile program. Bank Melli was also subject to a call for enhanced vigilance in UNSCR 1803. The Department of Justice (DOJ) obtained the forfeiture of substantial assets controlled by the Government of Iran. These assets included a 36-story office tower in Manhattan at 650 5th Avenue having an appraised value of more than USD 500 million, other properties, and several million dollars in cash. The ownership of the office tower was split between Bank Melli (40%) and the Alavi Foundation (60%), which provided services to the Iranian government, such as transferring funds from the office tower to Bank Melli.

Splitting company incorporation and asset administration over different countries

73. The ability of legal persons to establish and administer banking relationships in different countries is another vulnerability commonly exploited to obscure beneficial ownership. Keeping accounts abroad is an important and legitimate aspect of conducting business in an international market; however it is often difficult for banks to conduct robust customer due diligence on foreign companies. Moreover, the splitting of assets and company incorporation can impede investigation of the business objective of the company and its ownership and control structure, the purpose of transactions, and, most notably, the clarification of the company's beneficial owner.

74. A large number of cases involved the splitting of company incorporation and asset administration over different countries. In most cases, shell companies were

used to open bank accounts in foreign jurisdictions. In some instances, several accounts were opened in different countries for companies incorporated in foreign jurisdictions, enabling rapid movement of funds over numerous frontiers. This impedes law enforcement efforts to trace the assets.

Case Study 76 - Netherlands

International company A headquartered in The Netherlands paid corruption funds to a government employee via letter box companies. An international company was registered in an international jurisdiction, with a government employee listed as the beneficial owner but with nominee shareholders and directors. Payments were made via a Dutch bank account of a subsidiary of the international company to an account of the international company in Estonia and via an enterprise registered in Hong Kong, after which these funds were paid into bank accounts in a foreign jurisdiction and from there to a Luxembourg bank account of the international company. Bribes were also paid to charities that were directly associated with government employees. In order to account for the bribes, false invoices were entered in the accounting records.

Trusts and other legal arrangements

75. Trusts and other legal arrangements can be used to enhance anonymity by adding an additional layer of complexity through the separation of the legal and beneficial ownership of an asset. 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 affect 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, as was possibly the initial intention of the corrupt individual in the Cayman Islands case below (Case Study 14). Other vulnerable features include directed trust arrangements, general or special powers of appointment exercisable by the settlor, and loans repayable on demand to the trust (by the settlor or others). Trusts and other legal arrangements were identified in approximately one-quarter of the case studies analysed for this report. Most of the examples involved common law express trusts, with two making use of a civil law *fiducie*.

76. The enhanced anonymity offered by trusts and trust-like legal arrangements can provide significant benefits to a criminal operation, and can present challenges to financial transparency. The ability to separate legal ownership from beneficial ownership presents a range of challenges for authorities and service providers seeking to determine beneficial ownership; it can also pose a number of risks to the criminals who utilise them. Legal arrangements require the criminal to relinquish legal ownership and control of the asset to a trustee to manage the benefit (or title) of the asset. The introduction of a trustee may pose a vulnerability to the criminal

operation, for instance if the trustee is not complicit, or if control over the trustee is not guaranteed.

77. Whereas the situation of criminals setting up a complex structure involving multiple trusts seems relatively rare (Case Study 42, below, provides one rare circumstance), the combination of a trust interacting with at least one company appears more frequently in the case studies. Almost all of the cases that involved the use of a legal arrangement also involved a company or other legal person. This demonstrates that trusts and similar legal arrangement are rarely used in isolation to hold assets and obscure beneficial ownership, but generally form part of a wider scheme; it might also show that schemes that only involve a trust may be more difficult for authorities to identify. The interaction of the trust with other legal persons adds an additional layer of complexity and helps frustrate efforts to discover beneficial ownership. As further demonstrated by the outcomes of the Horizontal Study³⁷, information on legal arrangements is rarely available, or is subject to significant challenges with regard to its relevance and accuracy. Case Study 13 from the Cayman Islands (included below), is a good example of this method being used to generate complexity through transfers between a company and a trust.

78. In the cases analysed for this report, legal arrangements were rarely found to hold the actual proceeds of crime. Their role in most schemes was to build additional layers of complexity and further anonymise transactions. When chosen as part of a multi-level ownership structure, trusts appear to enter a company's shareholder register in place of the beneficial owner, thereby disguising the beneficial owner of the shares. Approximately half of the cases that involved a legal arrangement also involved shares, which was proportionally higher when compared to the entire sample population. One case study from Australia (Case Study 2) involved a crime syndicate that created bank accounts held in trust, as well as investment companies, as part of its money laundering scheme, and instructed an accountant to use cash from the proceeds of cannabis sales to purchase shares in the name of the trust accounts and investment companies. The purpose of the trust in this arrangement was to further distance the assets (the shares) from the beneficial owners.

79. Although not as common as the use of legal persons, the frequency of the use of trusts and other legal arrangements is not insignificant. It is possible that, despite the benefits associated with trusts and other legal arrangements, which offer significant opportunities to enhance anonymity by providing a partition between the legal and beneficial ownership of the property, the complexity and expenses associated with establishing and managing a legal arrangement may make them less attractive to criminals. It is also possible that the use of legal arrangements may increase the difficulty of investigating and identifying the beneficial owner, thereby explaining their relatively low prevalence in the case study sample.

³⁷ See, in particular, Questions 2 and 3 of the Horizontal Study.

Case Study 42 – Italy

The Nucleo Polizia of Milan conducted a preventive seizure of funds traceable to a single family, which were held in the Channel Islands, for a total value of EUR 1.3 billion. The assets were concealed through a complex network of trusts. Multiple trust accounts hid the beneficiaries of assets consisting of public debt securities and cash. The investigation established that between 1996 and 2006 the subjects placed their assets in Dutch and Luxembourg companies through complex corporate operations and by transferring them to different trusts in the Channel Islands. Subsequently, the funds were legally repatriated through a tax amnesty in December 2009. The investigation identified chartered accountants who had, over time, facilitated the concealment of funds through trusts with the aim of facilitating laundering and reinvestment.

Case Study 13 – Cayman Islands

Mr. A established a Cayman Islands revocable trust, with himself as settlor and a local TCSP acting as trustee. Mr. A also arranged for the incorporation of a Cayman Islands company known as 'Company B', with the local TCSP also acting as the registered office.

The TCSP became aware of allegations relating to Mr. A and his involvement in an oil and gas contract scam which also involved members of a foreign government. Over a two-year period, the TCSP reported that the trust and underlying company had received numerous transfers of funds and property from what was now deemed to be questionable sources, which in turn heightened its suspicions and prompted an STR. An analysis of the trust accounts revealed outgoing funds to individuals named in numerous media reports who allegedly took part in the kickback scandal. In response to a request, the foreign jurisdiction confirmed that Mr. A was being investigated for money laundering and corruption of government officials.

Using individuals and financial instruments to obscure the relationship between the beneficial owner and the asset

80. In addition to the generation of complex ownership and control structures, criminals often employ additional techniques to further obscure the relationship between them and their assets. As a methodology, obscuring the relationship between the beneficial owner and an asset differs from the generation of complex ownership and control structures in that, rather than aiming to create distance via legal complexity, it attempts to create a false or misleading picture of the true ownership and control structure. Techniques most often used to achieve this include the use of formal and informal nominees and professional intermediaries. Other techniques, such as the use of bearer shares and the declaration of numerous beneficiaries, have also been identified, but appear to be less common.

Bearer shares and bearer share warrants

81. Bearer shares are company shares that exist in certificate form and are legally owned by the person that has physical possession of the bearer share certificate at any given time. Ownership and control of bearer shares can be exchanged anonymously between parties by way of physical exchange alone, as no record of the exchange needs to be documented or reported.

82. Due to the inability to accurately ascertain and monitor the owner of a bearer share at any given time, determining beneficial ownership of legal persons controlled by bearer shares is nearly impossible. For this reason, bearer shares and bearer share warrants have historically been recognised as posing a significant money laundering risk, particularly in relation to the concealment of beneficial ownership. This risk is reflected in Recommendation 24 of the FATF Standards, which requires member countries to take measures to prevent the misuse of bearer shares and bearer share warrants.

83. In most jurisdictions, bearer shares have been reformed or eliminated altogether through the dematerialisation of the bearer share certificate into a computerised register or ledger of shares. Even in jurisdictions where bearer shares are still permitted by law, the financial sector has taken measures to limit their effectiveness, often by requiring them to be placed into trust prior to the commencement of a client relationship. Other jurisdictions have implemented measures that require an intermediary to facilitate the transfer of bearer shares to make the transfer lawful³⁸. As a result, the prevalence and use of bearer shares and bearer share warrants have markedly declined in recent years. Of the case studies submitted in support of this report, only four involved the use of bearer shares. However, this may also be due to the immense challenge of identifying the beneficial owner of bearer shares, the near impossibility of which may limit the number of cases involving their use.

Formal nominee shareholders and directors

84. A nominee shareholder is the registered owner of shares held for the benefit of another person. A nominee director is a director appointed to the board of a company to represent the interests of his/her appointer on that board. Legally, nominees are responsible for the operation of the company, and accept the legal

³⁸ Of the 50 jurisdictions assessed against the 2012 FATF Recommendations at April 2018, 45 jurisdictions either do not have bearer shares or bearer share warrants in circulation, or do not have them in existence. Five jurisdictions do not have restrictions on bearer shares but it is unclear whether there are bearer shares and/or bearer share warrants in circulation. Among the 45 jurisdictions, 17 prohibit bearer shares and/or bearer share warrants, 15 require existing bearer shares and/or share warrants to be converted into registered shares where they exist, five require them to be held with a regulated financial institution or professional intermediary, two require shareholders with a controlling interest to notify the company and the company to record their identity, one country has a range of the previously mentioned options and five do not have bearer shares and/or bearer share warrants.

obligations associated with company directorship or ownership in the country in which the company is incorporated. However, in some cases a nominee may hold the position of director or shareholder in name only on behalf of someone else. These arrangements may be controlled by a trust arrangement or civil contract between the nominee and actual director or shareholder.

85. The use of nominee shareholders and directors is a common phenomenon that occurs in most countries. In some countries there is also formal recognition in law of certain scenarios in which nominee arrangements are permitted (such as in relation to publicly traded companies). Nominees are utilised in a number of scenarios, including to shield the nominator from public disclosure requirements or to meet legal requirements of the country in which the company is incorporated (such as requirements for companies to have a director residing domestically). A range of service providers are known to offer **formal nominee services**, including legal and accounting professionals, TCSPs, and professional nominees (people who rent their identification information to companies for nominee purposes only, but provide no additional services to the company). The vulnerabilities associated with the provision of nominee services by lawyers, accountants and TCSPs are outlined in greater detail in Section 3 of this report. One New Zealand case study (Case Study 81 below) demonstrates how a TCSP provided nominee directorship services for over 1 000 companies registered in New Zealand on behalf of foreign clients. Authorities suspect that at least 73 of these companies facilitated crimes in foreign jurisdictions, including the smuggling of illegal goods, arms smuggling, tax fraud, investment fraud and money laundering.

86. While the use of nominees is lawful (or at least not unlawful) in most jurisdictions, nominees have been used to disguise ownership and control, or to circumvent laws designed to manage foreign business ownership and foreign trade. FIUs and law enforcement agencies also report the use of nominee services by known criminals and individuals who have been prohibited from serving as a director of a company due to previous malfeasance. As a result, the availability and use of formal nominee services are vulnerable to exploitation for the purposes of disguising beneficial ownership. Of the case studies analysed for this report, just under half of the cases involved formal nominees. The presence of nominee directors and shareholders in company records can also affect law enforcement investigations by delaying the identification of the beneficial owner, or by creating false links between companies that share nominees.

87. These vulnerabilities are reflected in Recommendation 24 of the FATF standards, which states that countries should take measures to prevent the misuse of nominee shares and nominee directors.

Case Study 81 – New Zealand

Companies registered in New Zealand by a Vanuatu-based TCSP operated by New Zealand citizens were suspected of acting as shell companies that facilitated crime in foreign jurisdictions. The TCSP acted as nominee shareholders and provided nominee directors who resided in jurisdictions such as Vanuatu, Panama and the Seychelles.

The TCSP also provided a New Zealand-based nominee director to satisfy the legal requirement to have a New Zealand resident director and address. In the case of Company A, the employee recruited to act as a director likely had no knowledge of the activities taking place, as they had no previous involvement in any of the TCSP activities.

By 2010, the TCSP had registered approximately 2 000 companies in New Zealand on behalf of clients in foreign jurisdictions. The address, in Auckland, was used as the registered office for most of the companies. Authorities suspect that at least 73 of these companies facilitated crimes in foreign jurisdictions, included the smuggling of illegal goods, arms smuggling, tax fraud, investment fraud and money laundering.

Informal Nominee Shareholders and Directors

88. Informal nominee shareholders and directors perform the same function as formal nominee service providers; however, their connection with the true director, shareholder, or beneficial owner is often of a personal, rather than of a professional, nature. Informal nominees identified by law enforcement commonly include spouses, children, extended family, business associates (who are being controlled by the actual owner or controller of the company), and other personal associates otherwise unrelated to the beneficial owner's business interests. Indeed, the relationship between an informal nominee and the actual owner or controller of a company or shares can vary significantly. Law enforcement agencies and FIUs have reported instances where foreign students and tourists have been convinced or coerced into establishing companies on behalf of third parties, sometimes in exchange for nominal payments or other personal benefits. These individuals are recorded as directors or controlling shareholders of these companies; however, they are rarely involved in the operation of the company post-formation. Of the case studies analysed for this report, just under half involved informal nominees.

89. Unlike formal nominee arrangements, informal nominee arrangements will rarely be governed by a contractual agreement. Furthermore, while formal nominees will always seek to insulate themselves from the activities of the legal person or arrangement, informal nominees are more likely to profess to be the beneficial owner of the legal person or arrangement in an effort to maintain the fiction created by the true beneficial owner. For this reason, informal nominees are often referred to as "straw" or "front" men. One Russian case study (Case Study 87 below) demonstrates how the ownership of companies used to facilitate fraud against a government contract was passed from the suspect (Mr. X.) to a number of different "straw men", including Mr. X's daughter. At least one of the informal

nominees received a salary in return; however, they did not perform the role of a professional nominee and were unaware of the activities of the company. The purpose of passing ownership of the companies to informal nominees was to further distance the companies from Mr. X, who was related to the man responsible for the project in the public department.

90. There are significant risks associated with acting as an informal nominee, as they are ultimately legally responsible for the activities of the company and will often lack the resources or expertise required to distance themselves from any legal obligations or repercussions. Furthermore, informal nominees are unable to utilise protections such as client confidentiality or legal professional privilege, which are available to some formal service providers. As a result, informal nominees are more susceptible to law enforcement investigations. That being said, informal nominees who have never previously come to law enforcement attention or whose association with the true beneficial owner or controller is indirect (e.g. not a relative or business associate) are often difficult to identify by financial institutions and some competent authorities.

91. A related phenomenon reported by some law enforcement agencies is the use of stolen identities to establish legal persons. In these instances, the victim of the identity theft is ostensibly an informal nominee for the legal person, albeit without their knowledge or consent. Law enforcement agencies have also identified situations where companies have been registered to informal nominees who have previously sold their identification details to a third party. These informal nominees are often incentivised to sell their identification details due to financial hardship. In these instances, the informal nominee also has no visibility of the company their details are recorded against; however, they may not necessarily be *victims* of identity fraud. One New Zealand case study (Case Study 80 below) demonstrates how bank accounts held in the names of students were used to receive laundered funds from foreign bank accounts to purchase properties. Another New Zealand case (Case Study 77) demonstrates how lower-income individuals can be manipulated into selling their identification information to professional money launderers, who then use them to establish companies and bank accounts.

92. While the cases analysed for this report demonstrated an approximately equal distribution between the use of formal and informal nominees, law enforcement and FIU experience indicates that criminals, particularly those with limited resources, will favour the use of informal nominees rather than formal nominee service providers. Often these informal nominees are family members, particularly spouses, who are frequently complicit with the beneficial owner's criminal activities. The reliance on familial nominees may stem from the ease with which the true beneficial owner can control and manage their activities.

Case Study 77 – New Zealand

A New Zealand shell company was set up by a New Zealand TCSP based in Vanuatu. The shell company was registered on behalf of an unknown overseas client and nominees were used to hide the identity of the beneficial owners. The actual business of the shell company was not apparent and was not indicated by the company name. The address listed on the companies' register was the same virtual office in Auckland as the TCSP. The nominee director resided in Seychelles, and the nominee shareholder was a nominee shareholding company owned by the TCSP. The nominee shareholding company was itself substantially a shell company and had been used as the nominee shareholder for hundreds of other shell companies registered by the TCSP.

News reports indicated that a power of attorney document transferred the directorship to a Russian national who had sold his passport details, with a bank account opened in Latvia. When journalists from the Organised Crime and Corruption Reporting Project (OCCRP) made contact with the Russian national, the man revealed he was unaware of the New Zealand company or its bank accounts. His identity, which he had sold, had been used without his knowledge. Furthermore, a former officer of the Russian tax police told journalists that hundreds of law firms specialise in establishing ready-made shell companies for their clients, who want to remain anonymous. Usually, these law firms rely on disadvantaged individuals who sell them passport details for approximately USD 100–300.

Trade transactions were conducted with several Ukrainian companies including a state-owned weapons trader. The contracts were then cancelled after the funds had been transferred and refunds were made to different third-party international companies. Transactions were also made with three other New Zealand shell companies registered by the same TCSP, using the same nominee director, nominee shareholder and virtual office address as the shell company. News reports indicated that all four shell companies had been involved in laundering USD 40 million for the Sinaloa drug cartel based in Mexico.

Case Study 80 – New Zealand

Shell companies based in Panama, Belize, and the UK with nominee shareholders and directors were used to open Latvian bank accounts to conduct hundreds of millions of dollars' worth of international payments. The majority of transactions were payments being made on behalf of Vietnamese entities for imported goods, or payments to Vietnamese expats living overseas on behalf of purportedly Vietnam-based senders. This distinct Vietnamese connection indicated the accounts might have been controlled or administered from within Vietnam. New Zealand bank accounts, which were held by students or by fruit wholesalers and exporters, were used to receive funds

transferred from bank accounts in Latvia, Cambodia and China. More than 15 New Zealand properties were purchased with the funds, all of which were facilitated through New Zealand law firms. Information suggested that the Latvian accounts were also being “topped up” by other shell company bank accounts based in international jurisdictions, indicating a co-ordinated layering process being undertaken.

Case Study 87 – Russia

A state customer concluded contracts on research work and the development of a special software with Contractor #1 and Contractor #2. Analysis of financial transactions showed that these contractors did not conduct any research activities themselves, but transferred budgetary funds to subcontractors with real scientific laboratories among them. The majority of funds from Contractor #1 was sent to its subcontractor, who channelled funds to a shadow financial scheme consisting of multiple layers of shell companies. The funds were finally withdrawn in cash. The majority of funds from Contractor #2 was sent to a real estate company that invested these funds into its business activity, acquired luxury cars and granted zero-interest rate loans to a number of individuals.

Analysis of ownership data, address registry information, an air tickets booking database, financial transactions and law enforcement data showed that Contractor #2 was previously owned by Mr. X, before the ownership was passed to straw men uninvolved with the scheme. The real estate company was formerly owned by Mr. X, before the ownership was transferred to his daughter. Contractor #1 was owned by straw men who had no idea about the company’s business activities and received instructions from Mr. X. These straw men received a “salary” from the company’s account. The director of the state customer’s department responsible for research activities was a brother of Mr. X. A daughter of the state customer department’s director acquired expensive real estate using cash that was deposited in advance in her account. The woman who had joint flights with Mr. X acquired expensive real estate using cash that was in advance deposited into her account in advance.

Declaring Numerous Beneficiaries

93. In some instances, the declaration of numerous beneficiaries on one account is used to confuse financial institutions and conceal the true nature of transactions undertaken through that account. FIUs and financial institutions have reported cases where large numbers of customers have been declared as beneficiaries on a single bank account in such a way that the bank has difficulty establishing which transaction was made on behalf of which beneficiary. In the instances where this has occurred, it is unclear whether the controller of the transactions was listed as a beneficiary. Regardless, the use of a single account to co-mingle transactions from a large number of beneficiaries poses a challenge when determining the ultimate

beneficial owner, and when attempting to follow the chain of suspicious transactions.

Case Study 38 – Israel

This scheme was used to hide funds from social engineering fraud and other criminal offenses. The cover story for the criminal offenses was international trade – funds from merchants in Europe and the US that were sending payments to suppliers in East Asia. The suspect, the owner of a registered MSB, operated a second, unregistered MSB. The suspect used several natural persons as his contact points in East Asia, who in turn contacted local TCSPs for the purpose of setting up international companies and opening bank accounts. Local straw-men were registered as the shareholders of the new international companies established for the scheme. In addition, shareholders were registered based on passports provided by the suspect's contact persons mentioned above. The registered addresses of the companies were in East Asia. Bank accounts were opened in the same East Asia countries where the offices were located.

Some of the funds were transferred to Israel to an account opened by the suspect. More than 60 beneficiaries were declared to the bank as beneficiaries, in such a way that the bank had difficulty in establishing which transaction was made on behalf of which beneficiary. The funds were sent from the companies set up by the suspect but the receiving bank did not know that these companies were actually under the suspects' control.

Use of Professional Intermediaries in Forming and Managing Legal Persons and Arrangements

94. The use of specialists and professional intermediaries, including lawyers, accountants, and TCSPs, is a key feature of the money laundering and broader organised crime environment. Professional service providers significantly enhance the capacity of criminals to engage in sophisticated money laundering schemes to conceal, accumulate and move volumes of illicit wealth. As a result, professional intermediaries have been assessed as posing a high money laundering risk in most countries.

95. The vulnerabilities posed by professional intermediaries are outlined in greater detail in Section 3 of this report.

Falsifying activities

96. Unlike the generation of complex ownership and control structures and the concealment of the relationship between the beneficial owner and an asset, which can serve both legitimate and illicit purposes, some techniques used to hide beneficial ownership are purely criminal. These techniques are designed to falsify activities to commit a crime via deception. The use of false loans and invoices to fraudulently disguise the beneficial ownership of a transaction is the most common

of these techniques, but others, such as the manipulation of company prospectuses and annual reports, have also been identified, though infrequently.

Use of False Loans and Invoices

97. A common means of disguising the beneficial owner of wealth and assets is through the use of false loans. This method, which is often referred to as a “loan-back” or “round-robin” scheme, principally involves money being sent to companies which are owned or controlled by, or on behalf of, the same individual, and returned in the guise of a loan. These schemes generally operate following two key steps:

- *Payment of business invoices:* the individual or business pays an invoice or series of invoices to a company (which is often located in another country) that is controlled/beneficially owned by them, or to an associate or professional intermediary operating on their behalf. The funds may be sent via numerous legal persons in the guise of legitimate business transactions, but will ultimately pool in the account of an international company that is operating in the interests of the beneficial owner of the company that paid the initial invoice. The purpose of this stage is to reduce the taxable income of the originating company or individual by increasing their (seemingly legitimate) business expenses.
- *Third-party loan:* once the funds have been pooled in the accounts of the international company, they are returned to the original company/individual, or a close family relation (commonly a spouse or child) or associate, in the form of a private loan. Occasionally these loans will be accompanied by false loan documents, but often the loan is recorded only in the description of the bank transfer. The purpose of this step is to return the wealth to the beneficial owner in a manner that is exempt from income taxation.

98. Loan-back schemes can involve the payment of interest, which may be used as a further means of channelling money into international bank accounts and reducing domestic tax obligations (as demonstrated in Case Study 7 from Australia). These schemes do not have to involve interest payments – there may be no actual obligation for the beneficial owner to repay the false loan. Regardless of the mechanics of the loan arrangement, the scheme serves the purpose of disguising the fact that the lender and borrower are beneficially owned by the same natural person.

99. Loan-back schemes are sometimes promoted and facilitated by professional service providers. In these instances, the international company used in the loan structure is controlled by the scheme promoter, who receives a portion of the laundered funds as payment for facilitating the scheme. This also serves the purpose of separating the beneficial ownership of the funds and decreasing the likelihood of detection. One case study from Australia (Case Study 6 below) demonstrates one such scheme operated by an Australian accountant via companies controlled by him or his associates in Hong Kong and the BVI.

Case Study 6 – Australia

Investigating authorities identified that suspect A operated an import business in Australia and was a participant in a tax evasion scheme operated by an accountant. Suspect A and his wife were directors and shareholders of an Australian company (company 1). Suspect A was also a director and shareholder of another Australian company (company 2). An associate of suspect A was the co-director of company 2. Authorities identified that the accountant controlled company 3, which was registered in Hong Kong and operated a bank account in Australia. This company was used to issue false invoices to companies 1 and 2. Over a five-and-a-half-year period company 3 issued false invoices to companies 1 and 2 for supposed “brokering services.” Suspect A paid the false invoices, which totalled more than AUD 2 million, by directing companies 1 and 2 to pay company 3. The funds paid to company 3, less the accountant's 10% fee, were returned to suspect A and individuals associated with him.

Manipulation of a company's prospectus, annual report etc.

100. While identity fraud is a common typology for natural persons to disguise their true identity, it is also possible to disguise the true activity and purpose of legal persons. One of the cases analysed for this report (Case Study 14) demonstrated how the manipulation of the financial status of a company through the inclusion of false and misleading information in the company prospectus and annual report allowed it to qualify for a listing on the stock exchange in the country of registration. While this measure was intended to improve the reputation and the economic activities of the company, it also led to a situation in which that company may have been subject to reduced customer due diligence obligations. Many AML/CFT regimes allow simplified due diligence measures for corporate entities that are listed on organised and regulated markets, since they are already subject to certain transparency requirements. Therefore, the ability for criminals to list a company on a stock exchange in a manipulative way can support future activities designed to obscure beneficial ownership, including the use of the company as a “front company”.

Case Study 14 – Cayman Islands

The managing director of an overseas company issued a prospectus which contained misleading and false information within the company's annual report. He overstated the company's group revenue by 275%. This information was provided to that country's securities commission as part of the company's proposal for listing on their stock exchange. The managing director established a revocable trust and underlying company in the Cayman Islands. He then opened an overseas bank account in the name of the Cayman Islands company for which he held the power of attorney, allowing him to trade in the account. This

structure was devised to hide the managing director's trading in the overseas company and to hide assets derived from his illegal activities. The Cayman Islands company held over USD 1 million in this bank account. The Financial Reporting Authority (FRA) made an onward disclosure to the FIU of the foreign national's home country. The foreign national has been charged in his home country with three counts of providing misleading and false information.

SECTION 3 — VULNERABILITIES OF PROFESSIONAL INTERMEDIARIES

101. Professional intermediaries, including lawyers, accountants, and TCSPs, play an important role in modern society. For the most part, these professionals operate with integrity and in accordance with national and international laws. However, the reputation of these professional intermediaries also makes them the target of criminals and corrupt actors, and may result in some professionals becoming involved in the concealment of beneficial ownership for criminal purposes, either through coercion or corruption, or through negligence or a failure to identify suspicious activities. This section provides an overview of the vulnerabilities of professional intermediaries, and how they are exploited to conceal beneficial ownership.

102. The use of specialists and professional intermediaries, including lawyers, accountants, and TCSPs, is a key feature of the money laundering and broader organised crime environment. Criminals use professionals to obtain specialist advice and skills in complex financial, business, company, and tax matters to disguise the true ownership or source of their assets. Operating through or behind a professional adviser provides a veneer of legitimacy to criminal activities and, where complex structures are established, creates distance between criminal entities and their illicit wealth. The majority of the case studies analysed for this report involved a professional intermediary.

103. Although there are unique elements to each jurisdiction's legal system, the broad description of the role of professional intermediaries can be divided into four general categories³⁹:

- systems in which legal persons can be established without the involvement of professional intermediaries
- systems in which professional intermediaries (other than notaries) are required
- notarial systems
- systems in which the company registrar tests the accuracy of filings or takes on the CDD obligations of the professional intermediary.⁴⁰

104. Criminals may employ the services of numerous professional intermediaries simultaneously, with each professional playing a separate but crucial role in the criminal enterprise. Of the case studies submitted in support of this report, more than one-third involved the use of more than one professional services sector, and a similar number of cases involved multiple intermediaries in the same sector. Of the cases that involved more than one professional intermediary, TCSPs represented the

³⁹ As assessed in the Horizontal Study at Annex B; see in particular Question 1.

⁴⁰ Hybrids of these systems are also possible.

large majority of cases, while legal professionals (including civil notaries) were also common; however, the representation of accounting professionals in cases involving numerous professional intermediaries was rare.

105. Of the cases that involved multiple intermediaries from the same sector, the TCSP sector represented the overwhelming majority of these instances. When multiple TCSPs were exploited in a single scheme, almost all of the cases involved TCSPs in multiple jurisdictions. This is reflective of the role of TCSPs in establishing and managing local companies on behalf of foreign clients. Conversely, in instances where multiple legal or accounting professionals were used, the majority of cases involved the use of multiple lawyers/accountants in the same jurisdiction. Additionally, approximately half of the cases involved unwitting or negligent intermediaries. This indicates that, in instances where multiple lawyers or accountants are utilised to facilitate a scheme, it is likely that the criminal clients are attempting to avoid suspicion by limiting their engagements with any single professional. However, the small number of cases available makes it difficult to make a definitive assessment.

106. The increasingly global nature of organised crime and the finance sector has driven demand for the advice and services of professional intermediaries who can operate across, or have professional connections within, numerous international jurisdictions. As a result, criminal groups have been known to be connected with multiple intermediaries across multiple countries. Analysis of the case studies identified that a majority of intermediaries were operating on behalf of international clients.

107. The FATF Standards require DNFBPs, including lawyers, notaries, accountants, and TCSPs, to perform CDD, maintain CDD and transaction records, and submit suspicious transaction reports. These obligations came into effect when the standards were revised in 2003; however, many countries have not yet implemented them in law⁴¹. Of those countries that have implemented obligations on DNFBPs, many have not implemented those obligations effectively via appropriate supervision and monitoring⁴². This was also confirmed by the findings of the Horizontal Study⁴³. As such, professional intermediaries are often subject to limited AML/CFT obligations.

⁴¹ Of the 50 jurisdictions that have been assessed against the 2012 FATF Recommendations at April 2018, 34 jurisdictions have major or moderate shortcomings in their measures for Recommendation 22 on DNFBPs' applying customer due diligence, and 30 have major or moderate shortcomings for Recommendation 23 on the other measures that DNFBPs need to take, including the reporting of suspicious transactions. 36 jurisdictions have major or moderate shortcomings in their mechanisms for regulating and supervising DNFBPs under Recommendation 28.

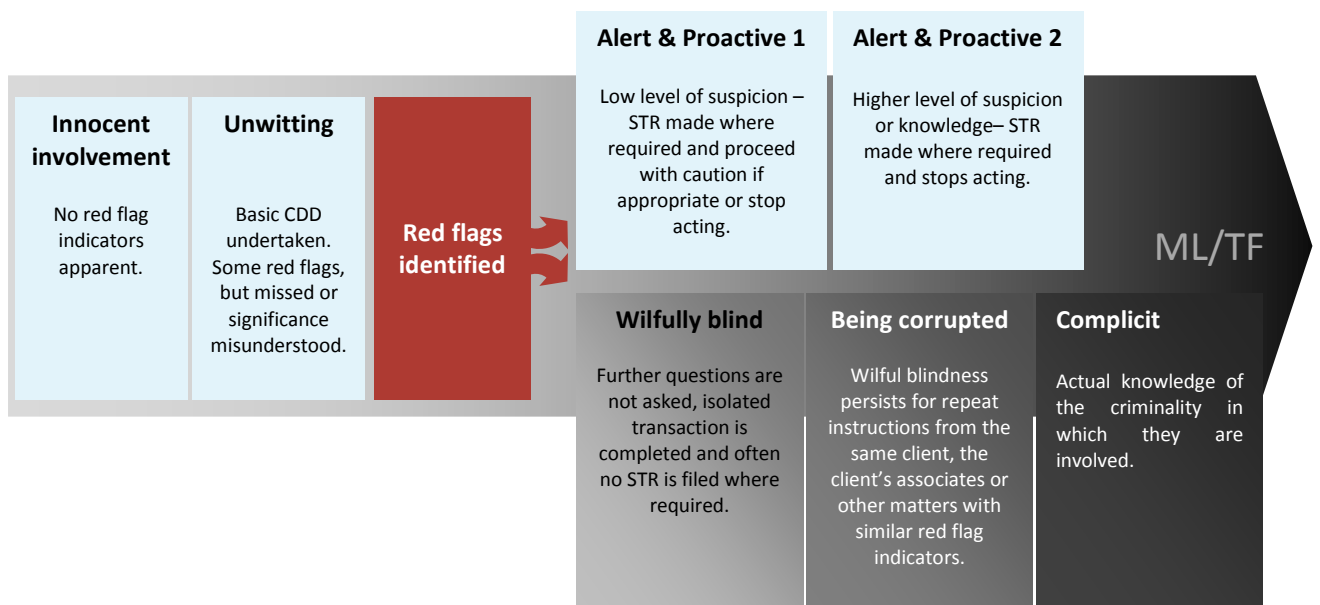
⁴² Of the 11 jurisdictions that have been assessed as having minor or no shortcomings in their mechanisms for regulating and supervising DNFBPs, 8 are not supervising, monitoring and regulating DNFBPs appropriately.

⁴³ See, in particular, Questions 4-6 of the Horizontal Study at Annex B.

Continuum of complicity

108. In its 2013 report, *Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals*, the FATF assessed that the involvement of legal professionals in money laundering could not be described simply as either “complicit” or “unwitting”, but tended to follow a continuum from “innocent involvement” to “complicit” (see Figure 1, below).⁴⁴

Figure 1. FATF Assessment of the Involvement of Legal Professional in ML/TF⁴⁵



109. This “continuum of complicity” can be equally applied to all professional intermediary sectors, and is not unique to the legal profession.

110. While it is widely acknowledged^{46 47 48} that professional intermediaries can act as enablers of money laundering and terrorism financing, little is understood about how these intermediaries are sourced or recruited, and the degree to which intermediaries are innocently, negligently or complicity involved. It is likely that this intelligence gap is exacerbated by various factors, including:

⁴⁴ FATF, 2013: p. 5.

⁴⁵ Of the 11 jurisdictions that have been assessed as having minor or no shortcomings in their mechanisms for regulating and supervising DNFBPs, 8 are not supervising, monitoring and regulating DNFBPs appropriately.

⁴⁶ Van der Does de Willebois, E. et al., 2011.

⁴⁷ ACIC, 2017.

⁴⁸ OECD, 2001.

- The limited AML/CFT obligations imposed on DNFBPs in many countries due to partial compliance or non-compliance with Recommendations 22 and 23, as well as the ineffective implementation of AML/CFT obligations in some countries.
- A reluctance by professional intermediaries to comply with their AML/CFT obligations due to perceived conflicts with their duty to their client, or their obligations to protect client confidentiality and legal professional privilege.
- The fact that professional intermediaries are often not the primary targets of law enforcement investigations, and details pertaining to their activities are not universally recorded on law enforcement indices.

111. This means that, despite the role of professional facilitators in enabling serious and organised crime, it is not possible to accurately quantify the degree to which they are involved, or their level of complicity, with any certainty. This report has analysed the case studies provided by 34 participating countries, and has attempted to draw conclusions on the complicity of professional intermediaries based on the information provided.

112. Approximately one-third of all cases were assessed as involving a complicit professional intermediary. Of the cases where intermediaries were assessed as being complicit, the majority were assessed as having designed the scheme themselves and promoted it to potential clients (predominantly as an effective tax minimisation method). In these instances, the professional intermediary was often the subject of the primary investigation.

113. Of the three professional sectors analysed, the accounting profession was most likely to be complicit in their involvement in schemes designed to conceal beneficial ownership. Moreover, both legal and accounting professionals were more likely to be the designer of the scheme, rather than simply a complicit intermediary in a scheme designed by another party or the client themselves. However, unlike accounting professionals, legal professionals were more likely to be unwittingly or wilfully blind in their involvement in the scheme. It is likely that the financial acumen of the accounting profession, and the ease with which accountants can identify suspicious activities indicative of money laundering or other financial criminality, may limit their unwitting involvement in these schemes. It may also be indicative of the nature of the case studies provided, which often involved the predicate offences of tax evasion and fraud, many of which were orchestrated by corrupt professionals.

114. The value and utility of an intermediary's professional services to a money laundering scheme is not strictly contingent on the complicity of the intermediary. An innocent, unwitting or negligent intermediary can be as valuable as a complicit intermediary if their services result in a desirable outcome for their criminal client. This is particularly true in the context of disguising beneficial ownership, as many of the services offered by professional intermediaries, such as the establishment of legal persons and arrangements, are commonplace and not necessarily indicative of corruption or criminality. Law enforcement agencies in some jurisdictions observed that more money laundering related investigations involved complicit professional intermediaries relative to unwitting intermediaries.

OVERVIEW OF COMMONLY EXPLOITED INTERMEDIARIES

115. This section provides an overview of the legal, accounting, and TCSP sectors. The purpose of this information is to contextualise the sectors commonly exploited by criminals to establish complex ownership structures and otherwise assist in the concealment of beneficial ownership information.

Legal Professionals

116. The legal sector is a large and multifaceted industry that provides a range of services to a broad spectrum of clients. Despite the presence of large domestic and multinational law firms in some countries, the legal sector is principally characterised by small business enterprises. Sole practitioners or partnerships with minimal additional non-partner staff represent the majority of the legal sector in most countries. This low level of market share concentration is in contrast to the banking sector, which is often dominated by a smaller number of large domestic and international banks.

117. While large and medium-sized law firms will offer a broad range of services, most law firms specialise in only one service segment, such as commercial law, personal legal services, or criminal law. Often, law firms that specialise in large-scale and international commercial law will employ a higher number of non-partner staff due to the complexity and resource intensive nature of large corporate issues. However, the choice to offer specialised services often does not preclude a law firm from providing services in other areas of law⁴⁹. As such, firms which specialise in personal and family law matters may also be involved in commercial law matters and the establishment of companies and businesses.

118. The legal sector has historically demonstrated a low level of industry globalisation, with a majority of law firms servicing local clientele. This reflects the small-business nature of the sector and the desire of clients to deal with a local law firm. However, greater access to information and communication technologies, as well as an increasing market for transnational legal services has prompted large law firms to expand into the global market to pursue growth opportunities. Many major law firms are actively pursuing strategies to merge or establish relationships with international law firms to increase their presence in key international markets.

119. The legal sector in most countries is required to maintain a membership with a professional body, such as a law society or bar association. These professional bodies impose strict rules and codes of conduct on their members, and often serve as self-regulating bodies in countries where legal professionals are subject to AML/CFT oversight. Rules imposed by professional bodies operate in addition to

⁴⁹ Some exceptions exist in countries where lawyers are subject to more than one model of licencing or industry oversight.

overarching legislative obligations, and can result in severe financial or professional sanctions if breached.

120. The notarial sector differs from the legal sector in many countries, particularly civil law countries. In some civil law countries, notaries do not represent parties to a contract and are not intermediaries in the same sense as legal professionals. Many notaries do not maintain long-term client relationships, and instead are obliged to be impartial and independent, advising the parties of a contract on equal terms. Unlike legal professionals in private practice, many notaries carry duties as public office holders. These obligations of fairness and the public office duties will influence the scope of what the notary must do to assess the risk of money laundering.

Role in the Establishment and Management of Legal Persons and Arrangements

121. Legal representation is commonly sought in most countries to facilitate the establishment of companies and other legal persons and arrangements. In cases where legal representation is not strictly required, their legal expertise will often be engaged as a precautionary measure to ensure the lawful establishment of a legal person or arrangement, particularly in instances where a foreign jurisdiction is involved.

122. Large law firms that operate across numerous jurisdictions play an important role in the establishment of legal persons in one country of operation on behalf of a client in another country of operation. Often, multinational law firms will seek to establish branches, merge with existing firms, or establish agent relationships with smaller firms in financial hubs and trade centres. As such, they offer opportunities to facilitate the development of transnational company structures in support of legitimate global business ventures. It is also possible for their expertise in setting up cross-border structures to be utilised to conceal the beneficial ownership of illicit assets.

123. In the absence of an international presence, law firms will utilise professional associations and global alliance networks to effectively operate across international borders. These networks of otherwise independent law firms enable clients to seamlessly access the services of affiliated law firms in international markets. While formal membership-based alliances often operate under an association code of conduct, this does not necessarily include a compulsory AML/CFT compliance program, and not every member firm will be subject to AML/CFT regulation (see footnote 40 and 41).

124. Of the case studies analysed for this report, one-third specifically referred to the involvement of legal professionals (including notaries)⁵⁰. It is likely that some of the case studies involving TCSPs actually involved lawyers or TCSPs with legal

⁵⁰ Of the cases that involved legal professionals, 25 cases referred to the involvement of lawyers, five referred to the involvement of notaries, and four referred to the involvement of both.

qualifications. The use of the term TCSP as a catch-all term for professionals involved in company establishment has been identified as a possible reporting issue throughout this project.

125. Where the involvement and activities of legal professionals could be assessed, the majority were found to have been working on behalf of a direct client. A small number were assessed as providing services to another professional intermediary on behalf of a third-party client.

Accountants

126. Like the legal sector, the accounting sector is a large industry that provides services and advice to a range of clients. The range of services offered by the accounting sector is more focused in comparison to the legal sector, with audit, tax, and advisory services representing the vast majority of business.

127. The accountancy sector has a moderate level of industry globalisation due to the presence of large multinational accounting firms. The level of globalisation is increasing through the acquisition of smaller firms by larger multinationals. However, despite the industry globalisation being more pronounced than the legal sector, and the larger market share held by large multinational accounting firms, the accounting sector, like the legal service sector, is characterised by small enterprises and sole proprietors.

128. The majority of accounting enterprises, including sole proprietors and enterprises employing fewer than 20 people, typically service individuals or small businesses, while the large multinational firms tend to service large companies and public sector authorities.

129. Much like the legal sector, accounting professionals who join an accredited accounting body are governed by a code of ethics. However, unlike the legal sector, accounting professionals in many countries are not required to maintain a membership to any independent oversight body⁵¹. As a result of this dynamic, and the significant number of sole proprietors in operation, it is difficult to monitor the accounting sector's awareness of AML/CFT risks and its adherence to AML/CFT obligations. Like the legal sector, FIUs and regulatory bodies where they perform a supervisory function face a number of challenges in accurately and effectively supervising the sector.

Role in the Establishment and Management of Legal Persons and Arrangements

130. The primary role of accounting professionals in the establishment of legal persons and arrangements is the provision of expert advice on business structures, asset management, and taxation obligations domestically and internationally. In many countries, accountants are the first professional consulted by small businesses

⁵¹ For example see the Mutual Evaluation reports of Andorra, Bahamas, Bhutan, Denmark, Ireland, Mexico and Slovenia, available from www.fatf-gafi.org.

and individuals when seeking general business advice and advice on regulatory and compliance matters. Where services are not within their competence, accountants advise on an appropriate source of further assistance, or procure the services of an appropriate professional on behalf of their client.

131. In most countries, accountants are authorised to establish companies on behalf of their clients; however, the majority of accounting firms only provide services to established businesses, or advise on proposed business structures, and will not become directly involved in the establishment of legal persons themselves. This is largely due to the small nature of most accounting firms, and the low level of globalisation that these firms exhibit. Those accounting firms that do offer company establishment services are also likely to maintain a significant financial management role in the company, including being a signatory on accounts held by that company. Analysis of the role of accounting professionals in the case studies identified that only one was involved in the establishment of legal persons or arrangements in their own country of operation, and three were involved in the establishment of legal persons in a foreign jurisdiction.

132. As with the legal sector, accounting firms that operate across multiple jurisdictions generally leverage their global presence to offer company establishment and management services. However, the number of accounting firms with a global footprint is low in comparison to the legal sector, and, as a result, smaller firms often rely on professional associations and alliance networks to service transnational clients. Alternatively, small firms will act as an intermediary between clients and service providers based in overseas jurisdictions, including accountants, lawyers, and TCSPs. The majority of accounting professionals identified in the case studies were assessed as having facilitated international activities on behalf of their client.

133. Due to the contractual nature of trusts and other legal arrangements, accountancy professionals are rarely relied upon to establish a trust. Accounting professionals will advise clients on trust arrangements and may assist clients by acting as a settlor, trustee, or protector of a trust arrangement. Unlike the legal sector, the accounting sector places few restrictions on accountants maintaining these positions in a legal arrangement. However, in the case studies provided in support of this project, only one accountant offered directorship/trustee services to their client.

134. The accounting profession was the least represented sector in the cases analysed for this report. It is likely that some case studies referred to accountants as a TCSP, or that only the TCSP was recorded in the case study despite the involvement of other intermediaries, which has been identified as a possible reporting issue throughout this project. In cases where an accounting professional was identified, almost half involved both accounting professionals and professionals from another intermediary sector (such as the legal and TCSP sectors); a small number involved multiple accounting professionals in one scheme.

135. All accounting professionals identified in the case studies were assessed as working on behalf of a direct client. This indicates that accounting professionals are

less likely to be approached by other intermediaries to fulfil a scheme designed to conceal beneficial ownership.

136. The expertise of accounting professionals means that most practitioners will be capable of identifying suspicious and high-risk activities conducted by their clients. As a result, accounting professionals are less susceptible to innocent and unwitting exploitation relative to legal professionals and TCSPs. Law enforcement agencies, FIUs, and other competent authorities have identified numerous instances in which accounting professionals have been complicit in criminality, or have orchestrated fraudulent investment or tax avoidance schemes. Analysis of the case studies identified that a significant majority of accounting professionals were complicit in their involvement, and over half were responsible for designing and promoting the scheme as a means of minimising their clients' taxation obligations.

Trust and Company Service Providers

137. In comparison to the legal and accounting sectors, the TCSP sector (excluding legal and accounting professionals who provide company formation and management services) is difficult to describe or quantify. The TCSP sector varies significantly across jurisdictions. In some countries, the TCSP sector is robust and well-established, exhibiting some of the characteristics of other highly regulated industry sectors, including government registration, professional body oversight, and AML/CFT regulation. In other countries, the role of TCSPs is less clearly defined, and government and industry oversight is less robust. Company formation and trust services are provided by a range of market participants from numerous sectors, including the finance, legal, and accounting sectors, as well as stand-alone service providers that specialise in these services, but that do not offer financial, legal, or accounting services.

138. The FATF standards defines "*trust and company services providers*" to include any service provider that carries out transactions for a client concerning the following activities:

- acting as a formation agent of legal persons
- acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons
- providing a registered office, business address or accommodation, correspondence, or administrative address for a company, a partnership or any other legal person or arrangement
- 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
- acting as (or arranging for another person to act as) a nominee shareholder for another person.

139. Much of the literature available on TCSPs encapsulates all service providers who provide the above services, regardless of whether they represent their core

business or an ancillary service only. For the purposes of this report, the terms “TCSP” and “TCSP sector” exclude professionals operating in the legal and accounting sectors. Input provided to this report by the Group of International Finance Centre Supervisors (GIFCS) demonstrates that, in countries with a highly active and well-established TCSP sector, the market is dominated by a large number of small businesses with no significantly large players dominating the sector. A relatively small proportion of TCSPs operating in these jurisdictions are accounting or legal firms or subsidiaries of an accounting or legal firm.

140. As a sector, TCSPs are particularly well established and defined in low-tax jurisdictions, such as those that are members of GIFCS, where they play a far more active role in company establishment and management. The majority of GIFCS members require their TCSPs and underlying shareholder controllers and key persons (director, partner, Money Laundering Reporting Officer (MLRO), and compliance officer) to be fit and proper. In determining this, authorities consider integrity, competence (including mandatory requirements for key persons occupying executive roles in the TCSP to hold a relevant professional qualification and undertake continuous personal development) and financial soundness. Other GIFCS members strongly encourage key persons occupying executive roles to hold relevant qualifications. The requirement to hold a professional qualification does not generally apply to a shareholder controller unless they are occupying a director, manager or compliance role in the TCSP, although they would be subject to all other aspects of the aforementioned fit and proper test. These requirements mirror some of the requirements imposed on other professional intermediary sectors, such as the legal and accounting sectors, and could serve as a valuable model for professionalising the TCSP sector in countries where the sector is less clearly defined.

Role in the Establishment and Management of Legal Persons and Arrangements

141. Due to the varying nature of the international TCSP sector, the degree of involvement of TCSPs in the establishment of legal persons and arrangements differs across jurisdictions. In most countries, the role of TCSPs is limited to the incorporation and registration of a company or other legal person and does not extend to the provision of strategic business or financial advice. TCSPs were identified in over one-third of the case studies analysed for this report, and represented the largest proportion of professional intermediaries involved in the cases. TCSPs were also more likely to be involved in cases involving multiple professional intermediaries. However, it is likely that this number includes other professionals (legal and accounting) which have been referred to broadly as TCSPs.

142. TCSPs provide a low-cost means of engaging in international business sectors, often providing services to international clients or other international professional service providers on behalf of foreign nationals. While legal and accounting professionals also offer these services, the lower fees associated with TCSPs make them a useful resource for small to medium-sized businesses. In comparison to other sectors, the TCSP sector appears to exhibit a very low level of market globalisation, with most TCSPs providing services only in the country in which they operate. The majority of TCSPs involved in the case studies were

assessed as providing services to customers based in an overseas jurisdiction, and were involved in establishing legal persons and/or arrangements locally.

143. In addition to establishing legal persons and arrangements, some TCSPs offer complete company packages, which include company incorporation and registration, as well as bank accounts in the country of incorporation. More than half of TCSPs were assessed as having opened bank accounts on behalf of their clients, most of whom resided overseas. In these instances, TCSPs perform an intermediary service between the client and a financial institution, and will be responsible for facilitating CDD activities. Most TCSPs also offer trustee, protector, directorship, and virtual/registered office services, particularly in jurisdictions that require companies to appoint a domestic resident as a director. Almost all of the TCSPs identified in the case studies provided directorship, trustee, nominee, or virtual office services to their client.

144. In recent years, TCSPs have taken advantage of the online environment to offer services to clients virtually, without the need for face-to-face engagement. While some of these TCSPs require clients to meet with an intermediary in their country of residence to complete CDD obligations, many others rely only on documentation provided virtually by the client. The provision of online and virtual services makes the effectiveness of AML/CFT activities more challenging, in particular the ability for TCSPs to accurately perform CDD to identify the ultimate beneficial owner of the legal person or arrangement.

145. TCSPs are also commonly involved in the establishment or administration of legal persons and arrangements on behalf of other professional service providers, particularly those operating in another jurisdiction or on behalf of foreign clients. One-third of the case studies specifically referred to TCSPs providing services to other professional intermediaries (lawyers and accountants) on behalf of third-party clients. Furthermore, analysis of the cases identified that approximately half of the TCSPs involved were unwitting in their involvement. This suggests that the role of TCSPs is more likely to be transactional in nature, operating at the behest of a client or other intermediary, and that TCSPs are less likely to be the masterminds of schemes designed to obscure beneficial ownership. TCSPs that were assessed as having been complicit in their involvement were more likely to have been wilfully blind than fully complicit, or may have been wrongly classified as a TCSP.

Other Intermediaries

146. Due to its focus on legal persons and arrangements, this report has predominantly analysed the services offered by lawyers, accountants, and TCSPs; however, other intermediaries are also known to be involved in activities designed to obscure beneficial ownership. Law enforcement and private sector representatives reported the existence of “full service” real estate firms, which provide a full range of intermediary functions, including creating shell and shelf companies, providing corporate officers, closing transactions with lawyers, and identifying properties (price range, risk profiles, etc.). These firms reportedly work with developers to enable fraud where strong early sales are essential to generating additional financing. Detailed analysis of this phenomenon was not possible in this

report; however, real estate professionals who provide any of the services covered in section XI of this report would face similar vulnerabilities as other professional intermediaries.

147. In addition to the professional intermediaries listed above, FIUs and law enforcement authorities have identified other intermediaries who are not professional service providers, and who do not perform services as described in recommendation 22 of the FATF Standards, but who are nonetheless involved in assisting clients with the establishment of complex legal structures. These individuals, who are sometimes referred to as “business finders”, are often responsible for finding other professional intermediaries capable of (and willing to) establish the legal persons and arrangements necessary to achieve their client’s desired legal structure. Due to their role as an intermediary between a client and a third-party professional, they are not actively involved in the formation of a legal person, and are therefore outside of the regulated population as described under Recommendation 22 of the FATF standards.

148. The role of these “business finders” is not well understood. Law enforcement experience of these business finders relates principally to individuals who cater specifically to criminal clients – in other words, professional money laundering facilitators whose role in the establishment of legal structures is specifically designed to facilitate criminality. Whether business finders (excluding the professional intermediaries referenced above) play a role in legitimate corporate activities is unknown; however, experience indicates that it is unlikely or questionable at best. Of the case studies analysed for this report, approximately 20% were assessed as having involved a professional money launderer who performed tasks similar to a professional intermediary (see Case Study 38 for one particular example).

149. This report has not sought to assess the vulnerabilities of these other intermediaries due to the lack of available information; however, it is assessed that these *non-professional* intermediaries pose a vulnerability to other professional intermediaries who may be engaged by them to perform services on behalf of a client. This vulnerability is heightened in national systems where such non-professional intermediaries have the ability to create legal persons and arrangements without the involvement of a professional intermediary.

OVERVIEW OF VULNERABILITIES

150. This section provides an overview of the vulnerabilities associated with the practices and services offered by professional intermediaries which are commonly exploited by criminals to conceal beneficial ownership. The vulnerabilities assessed in this section have been drawn from the case studies analysed for this report and from the experiences of FIUs, law enforcement agencies, and regulatory authorities. The key vulnerabilities that are assessed in this section are:

- establishing legal persons and arrangements
- establishing and selling shelf companies
- providing directorship, trustee, virtual office, and mailbox services
- facilitating transactions through trust accounts or client accounts
- facilitating the purchase or sale of real property
- client advocacy and brokerage services
- providing services to clients and intermediaries domiciled internationally
- providing advice on tax compliance and tax minimisation
- legal professional privilege and client confidentiality
- limited AML/CFT obligations or insufficient awareness and compliance.

151. The list of vulnerabilities assessed in this report is not intended to be exhaustive, and represents the more commonly exploited vulnerabilities exhibited by professional intermediaries.

Establishing legal persons and arrangements

152. It is common practice for professional intermediaries to advise clients on company formation, corporate structures, and asset management. The purpose of this advice will often centre on protecting wealth and assets from high-risk business activities, and minimising taxation obligations to the greatest extent lawfully possible. These services are particularly attractive to criminals, who are known to actively seek the advice of complicit and unwitting professionals to protect illicit assets and evade taxation obligations through the concealment of beneficial ownership.

153. Some countries require legal professionals (principally notaries) to incorporate and register companies. However, many jurisdictions do not have such a requirement, and companies can be established by engaging directly with the relevant public authority. In countries where legal representation is not necessary, professional intermediaries are often employed to:

- provide expert advice on the most appropriate company structure to meet the needs of the client

- explain and/or facilitate the process, which can be confusing for most small to medium business owners
- enhance respectability and perceptions of legitimacy and trustworthiness.

154. The case example (Case Study 100) below demonstrates how the services of a legal professional were exploited to enhance the apparent legitimacy of a corporate structure used to facilitate a loan-fraud pyramid scheme. In this case, the legal representative was likely to have been complicit.

155. As a result of their expertise and role in the establishment of companies and other legal persons, professional intermediaries are vulnerable to being involved, knowingly or unwittingly, in facilitating complex money laundering schemes. The majority of cases that involved companies and other legal persons were facilitated by a professional intermediary. Professional service providers who offer company establishment services in major global trade and finance hubs are vulnerable to exploitation from international clients or professionals seeking company establishment services in that country.

156. Professional service providers will often be involved in the establishment of trusts and other legal arrangements due to the legal nature of the contracts between settlor, trustee, and beneficiary. Of the cases that involved legal arrangements, almost all involved professional intermediaries. Noting the manner in which trusts can be established using legal persons as trustees in place of a natural person, it is possible for trust arrangements to be established in such a way that the professional service provider never engages directly with the ultimate beneficial owner of the assets held in trust. This, in conjunction with strict confidentiality laws that can be applied to trust arrangements⁵², makes professional service providers who offer trust establishment services vulnerable to exploitation for the purpose of disguising the beneficial ownership information of laundered proceeds of crime.

Case Study 100 – United States

In this case, an individual organised a loan-fraud pyramid scheme to falsely inflate the sales and revenues of his company. His company served as a front to generate loans. The scheme involved his wife and son. The defendants created numerous legal entities, including trusts, corporations, and LLCs to open bank accounts to manage the illicit funds and conceal the ownership and involvement in the scheme. The defendants used the help of a legal professional (attorney) to create a number of legal entities, and diverted loans for the company for private benefit, including gems and jewellery.

The attorney also set up trusts on behalf of the individual and their family, and helped to sell jewellery held in those trusts. The individual provided false documents purporting to show that the jewellery was a gift of deed into the trust. The trusts provided an air of legitimacy and a cover story to explain the

⁵² Van der Does de Willebois, E. et al., 2011: p. 168.

fraud, and as a result, USD 2.8 million from the sale of the jewellery was wired into the trust's brokerage account. Subsequently, USD 200 000 was later moved from the trust checking account into an account opened for a different trust. This transfer was facilitated using the address of the attorney, who was by this time deceased.

Establishing and selling shelf companies

157. Professional intermediaries, such as corporate law practices and TCSPs, will occasionally establish and hold shelf companies in anticipation of a future need. In these instances, the professional intermediary or its employees are recorded as nominee directors or shareholders of the company. While the ease and speed with which companies can be incorporated has, to a large degree, limited the need for legal and accounting professionals to establish and hold shelf companies for future use, TCSPs continue to sell shelf companies. This is particularly true for online TCSPs and TCSPs in major international finance and business hubs. The simplicity associated with purchasing an established shelf company suits virtual transactions and small- to medium-sized business clients with less complex corporate and financial structures. However, shelf companies can be used for any purpose, and can form part of large and complex business structures.

158. In addition to offering readymade legal persons, many TCSPs will establish bank accounts registered to the shelf company, which are retained by the shelf company following its sale. This practice can complicate CDD activities performed by the financial institutions. Approximately one-third of professional intermediaries identified in the case studies were assessed as opening bank accounts on behalf of their clients, most of whom were located in a foreign jurisdiction.

159. The case study below demonstrates how criminals specifically targeted shelf companies to facilitate their fraudulent scheme. It is likely that the corporate history of the shelf companies was desired by the criminal to lend legitimacy to the fraud, which may have been diminished if newly created companies had been used. The case also demonstrates the manner in which the shelf companies were sold by nominee directors along with pre-established bank accounts.

Case Study 104 - United States

The defendants engineered a conspiracy to sell fraudulent renewable energy credits through the use of shell and shelf companies in the US in order to fraudulently receive renewable energy tax credits from the US government for renewable fuels never produced, and to launder those illicit proceeds for their own benefit. Among their ill-gotten gains from these proceeds were real estate, boats, cars, watches, and gold. During the course of their investigation, law enforcement determined that the defendant directed a network of his professional contacts to purchase shelf companies throughout the US, to serve as purported purchasers of renewable fuel and purported sellers of feedstock. The use of shelf companies was discovered by interviewing the

nominees who had opened bank accounts on behalf of those companies and through search warrants executed on a number of the businesses.

Directorship, trustee, virtual office, and mailbox services

160. In addition to establishing legal persons on behalf of clients, many professional service providers, particularly TCSPs, offer directorship, virtual office and mailbox services. These services allow the legal person to maintain a physical footprint in a country, and can distance the legal person from other assets and activities controlled by the beneficial owner. As a result, these services are vulnerable to exploitation for the purpose of disguising the true controllers and beneficial owners of a legal person, its assets, and its transactions. Nominee directors and virtual offices are common features in many complex legal structures that FIUs and other competent authorities have identified as being involved in money laundering, tax evasion, investment fraud, and other criminality. Analysis of the case studies used for this report identified that approximately half of the professional intermediaries provided directorship services to their clients. TCSPs represented the large majority of intermediaries involved in the provision of these services, and were often assessed as providing services to other professional intermediaries on behalf of third-party clients.

161. Nominee directors can be formal or informal, and criminals have been known to recruit people with no criminal history to perform these roles, or who agree for their details to be recorded in these positions. Instances of identity theft for the purposes of filling nominee director roles have also been identified; however, these activities pose a risk to criminal groups, and professional service providers that offer these services are an attractive and low-risk alternative.

162. By providing directorship and virtual office services, professional intermediaries may unwittingly facilitate money laundering services and deal in the proceeds and instruments of crime. Even in instances where the professional service provider does not take an active role in the company, which is often the case, the nominee director is at risk of prosecution or other penalty as a result of crimes performed by the legal entity. A majority of professional intermediaries who provided directorship services in the case studies were assessed as being unwittingly involved.

163. Some countries require legal persons to maintain an active presence in the country where they are registered. This is generally achieved through a requirement for a resident of the country to be appointed as a director of the company, or for the company to maintain a physical presence in the country, or both. Professionals operating within these jurisdictions, that offer directorship and virtual office services will be more vulnerable to exploitation from overseas clients than those operating in countries without these requirements. A large majority of professional intermediaries who provided directorship services in the assessed cases were providing services to clients based overseas. One case study (Case Study 78), included below, demonstrates how a foreign client of a TCSP appointed a domestic-based national as a nominee director to meet the country's requirements to have a

resident as director. The nominee director had little knowledge of the activities of the companies.

164. In addition to offering directorship and nominee services, some professional service providers offer **trustee services** to domestic and international clients for trusts established under domestic law. In some countries, professional rules prohibit legal professionals from acting as a trustee. In these countries, the role of the legal profession would be limited to providing professional advice on the contract that underpins the trust arrangement.

165. In most countries trustees are not required to register the existence of, or beneficiary of, a trust arrangement, while in other countries they are expressly prohibited from doing so under law. Trustees are also required to act on behalf of the interests of the beneficiaries. This means that, when dealing with matters relating to the trust, they must consider the interests of the beneficiary over their own.

166. Professional service providers who offer trustee services are at risk of becoming the effective legal owner of criminal assets⁵³, and of dealing with the proceeds of crime. Only strict due diligence measures, for the settlor, the beneficiary, and the asset in trust, can assist professionals in avoiding this form of exploitation.

Case Study 78 – New Zealand

A New Zealand law firm was linked to clients who had been implicated, arrested or convicted of a myriad of offences including embezzlement, bribery, corruption, tax evasion, and money laundering. This law firm set up its business basis in New Zealand, and worked for overseas clients using its in-depth knowledge of New Zealand tax, trust and company law.

The companies and partnerships were set up by this New Zealand law firm, who routinely used its employees as nominee directors and shareholders, with the beneficial owners (who were sometimes offenders and their associates) not publicly named. Furthermore, often a chain of companies was established, with one company the shareholder of another, which was the shareholder of another, which added complexity to the structure, and further removed the beneficial owner from the assets. Sometimes a New Zealand (shell) company was used as a trustee of the trust.

The companies involved were usually all shell companies with nominee directors, shareholders, and addresses. The companies, partnerships and trusts comprised the complex structures established by this New Zealand law firm, which can be used to hide and protect wealth. Furthermore, sometimes entities were set up

⁵³ In a trust, the title of assets stands in the name of the trustee (or in the name of a person acting on behalf of the trustee), although they constitute a separate fund and are not part of the trustee's own estate (see Article 2 of the Hague Convention).

internationally by this New Zealand law firm's business associates in other countries, which were added to the structures, further increasing the complexity and decreasing the ability and efficiency of detecting crime and hidden wealth. If suspicions did arise and a person with such a structure was investigated, there was a convoluted audit trail that would have been arduous to trace. There were strong indications that criminals have had structures set up by this New Zealand law firm with evidence that some of these structures have been used by criminals to hide assets.

A NZ-based employee was also named as a director to satisfy the legal requirement to have a New Zealand resident director and address; however, the beneficial owner of the company was not identified in every instance.

Facilitating transactions through trust accounts or client accounts

167. Professional service providers, particularly law firms and larger accounting firms, often maintain and operate a trust account to facilitate financial transactions on behalf of clients, hold funds in escrow, or receive payment for services rendered. In most countries, these trust accounts are highly regulated to prevent misappropriation of client funds; however, this oversight often falls short of AML/CFT considerations, and professional trust accounts continue to pose a money laundering vulnerability globally.

168. It is not uncommon for some professionals to facilitate transactions, including cash transactions, on behalf of their client. Analysis of the case studies identified where this had occurred. This service is attractive to criminals seeking to obscure the beneficiary of cash transactions, as it places the burden of integrating the cash into the regulated finance sector on the legal professional (via the law firm's trust or client account). This has the dual effect of:

- leveraging the credibility and reputation of the legal profession to reduce any potential suspicion associated with the cash deposit
- distancing the client and any associates or third parties from the AML/CFT controls of the financial sector.

169. Furthermore, the involvement of an intermediary in a financial transaction between two parties can disrupt a chain of transactions and obscure the relationship between the two parties. As a result, it can be difficult to ascertain the beneficial owner of funds that are transferred through trust or client accounts, especially if the transaction involves a clustering or structuring of transactions, or the transaction occurs over a protracted period of time. This vulnerability is increased when a lawyer allows funds to be placed in the firm's trust or client account when no legal services are performed or expected to be performed. The cases below demonstrate how the trust accounts of law firms and accounting practices were used to achieve this aim.

Case Study 102 – United States

Individual 1, a U.S. citizen and resident of Belize, incorporated more than 5 000 shell companies in Belize and the West Indies to facilitate numerous securities and tax fraud schemes. Individual 2, a dual U.S. and Canadian citizen, was the secret owner of an international broker-dealer and investment management company based in Panama City, Panama, and Belize City, Belize. There were 3 interrelated schemes: 1) fraudulent stock promotion and price manipulation; 2) circumventing capital gains taxes under the Foreign Account Tax Compliance Act (FATCA); 3) laundering more than USD 250 million in profits through unidentifiable debit cards and attorney escrow accounts.

Individual 2 used the services of a US-based lawyer to launder the more than USD 250 million generated through his stock manipulation of a number of U.S. companies – directing the fraud proceeds to five law firm accounts and transmitting them back to members of the scheme and its co-conspirators. These concealment schemes also enabled Individual 2 to evade reporting requirements to tax authorities.

Case Study 3 – Australia

Managers at a university and directors of construction companies were complicit in a fraudulent invoice scheme. The managers approved inflated invoices for maintenance work to be carried out by the construction companies, as well as invoices for work that was never undertaken. The profits from the fraud were used to purchase racehorses and property. The managers at the university were repaid with kickbacks or direct shares in racehorses. Accounting firms, which were undertaking international transfers on behalf of the suspects, sent money to many countries, including New Zealand, Canada, Hong Kong and the US. A large proportion of the funds were sent to companies linked to the horse racing industry. The accounting firms also received international transfers from various overseas entities that were similar in value to the amounts the firms had sent overseas initially. The majority of these transfers originated from Hong Kong. The authorities suspected that the accounting firms were laundering the funds on behalf of the suspects as part of a professional money laundering syndicate.

Facilitating the purchase or sale of real property

170. Real estate property is a highly attractive medium for laundering the proceeds of crime. Unlike other high-value assets, the real estate market in most countries has demonstrated a strong resilience to economic fluctuations, and has generally appreciated in value in most high-density cities. Real estate generally represents a relatively safe medium for storing illicit wealth, and the sale of the asset offers a legitimate rationale for the receipt of large volumes of wealth. Furthermore, the purchase of real estate property offers a convenient and legitimate excuse for acquiring mortgage loans, including from private lenders, and for the receipt of

regular and ongoing payments in the guise of rental income. Both of these are common money laundering methods (refer to Section 2 for further analysis on the use of false loans to obscure beneficial ownership). Approximately one-third of the case studies analysed for this report involved the acquisition of real estate, and most of these cases involved the use of a professional intermediary to execute the purchase.

171. In some jurisdictions, legal professionals are required to facilitate real estate transactions. In countries where legal representation is not required by law, it is common practice for professional service providers to be employed to assist in the conveyancing of the property as a precaution due to the high value of the asset. As a result, professionals will often be responsible for identifying and reporting the vendor and/or purchaser of the land and property titles to relevant government authorities. This makes the professional intermediary vulnerable to exploitation by individuals seeking to disguise the beneficial owner of the real estate asset. Cases analysed for this report demonstrated the following methods used to conceal the beneficial owner of real estate assets:

- purchase of assets through intermediaries, such as companies, trusts, family members, associates, or other complicit third parties who have no criminal record (Case Study 2)
- use of a false name or fraudulent identification information (Case Study 101).

172. In some instances, the beneficial owner of the real estate asset will not be involved in its purchase at all, and will instead direct a third party to make the purchase. This method is difficult to detect, and requires the professional intermediary to be vigilant and aware of their ML/TF risks in order for them to detect the activity. One Australian case study (Case Study 2) demonstrates how an individual suspect to an investigation purchased a property in the name of a family member and used the proceeds of crime to pay down a mortgage loan. The solicitor involved provided conveyancing services in relation to the property, and was thereby responsible for registering the purchase with the relevant government authorities. Furthermore, the solicitor acted as an intermediary for loan repayments, which further distanced the beneficial owner from the asset and associated loan.

Case Study 2 - Australia
<p>An Australian drug syndicate used multiple money laundering methods to launder more than AUD1 million worth of proceeds of crime. One method involved a syndicate member purchasing a property worth more than AUD700 000 in a family member’s name. The property purchase was financed using a mortgage. Over a two-month period the syndicate member paid more than AUD320 000 in 16 cash deposits to their solicitor (who provided conveyancing services and acted on behalf of the syndicate member in the transaction) to pay off the mortgage on the property. These cash payments were the proceeds of crime.</p>

Client advocacy and brokerage services

173. In addition to providing business advice to clients and facilitating the formation of legal persons and arrangements, professionals will often offer client advocacy and brokerage services. This can include introducing clients to banks and other financial service providers, and opening accounts and seeking loans on their clients' behalf. As a result, the professional becomes an intermediary between the client and the regulated finance sector, and takes on the responsibility of providing banks with the requisite information to meet their CDD obligations. Analysis of the case studies used in this report identified that, in these particular examples, many professional intermediaries facilitated the establishment of banking relationships on behalf of their clients.

174. In countries where financial institutions are permitted to rely on third parties to perform CDD on the customer⁵⁴, professional intermediaries are vulnerable to exploitation for the purposes of disguising beneficial ownership and control. While the ultimate responsibility for conducting CDD should remain with a financial institution during a third-party reliance arrangement, criminals will still seek to use the reputation of professional intermediaries to convince the financial institution of the legitimacy of a false or misleading identity or ownership and control structure. One US case study (Case Study 101 below) demonstrates how a complicit professional used their role as a professional intermediary to frustrate and overcome the CDD activities of financial institutions to attain fraudulent loans.

175. Occasionally, professional service providers maintain some level of control over some or all of their clients' banking accounts. This allows them to manage the financial affairs of their clients in a timely manner, perform accurate bookkeeping, and facilitate transactions on their clients' behalf. To achieve this, professionals are listed as signatories to their clients' accounts, thereby allowing them to act in their clients' interests, but without their clients' direct involvement. This is standard practice for in-house accountants and lawyers (those who work solely for a company or public sector authority), but also occurs when professionals service a number of small to medium-sized businesses as an outsourced professional on an ongoing and regular basis. It is not common for professionals who offer only occasional services to a client to maintain control over the clients' accounts.

176. Managing a client's accounts places the professional at a heightened risk of facilitating money laundering or terrorism financing; however, the service presents a lower risk of obscuring beneficial ownership, provided the transaction is not conducted through an account opened in the name of the professional or their firm and appropriate CDD measures are conducted by the professional and subsequently by the financial institution.

177. In addition to introducing clients to financial institutions, professional service providers will, when necessary, introduce their client to other professional service providers, including other lawyers, accountants, TCSPs, real estate agents,

⁵⁴ See Recommendation 17 of the FATF Standards.

mortgage brokers and financial advisers. Occasionally, the professional will act on their client’s behalf and seek specialist advice or services for their client. This is especially true for those legal professionals who have professional relationships with professionals in other countries. This poses the same risks as those associated with being a client advocate or intermediary. Analysis of the case studies identified that a number of professional intermediaries performed services for another intermediary on behalf of a third-party client.

178. Professionals who receive facilitation requests from international professionals working on behalf of international clients are at a heightened risk of facilitating money laundering and obscuring beneficial ownership information due to the challenges associated with properly verifying the identity and motives of the client and beneficial owner. One Israeli case study (Case Study 39 below) demonstrates how law firms contacted foreign TCSPs to establish companies and bank accounts on behalf of local clients. In this case, the CDD activities of the foreign bank, and the TCSP, would have been inhibited by the numerous layers of professional intermediaries between the client and end service provider and increased the likelihood of incorrectly identifying the true beneficial owner.

179. Furthermore, an unwitting professional may not be in a position to judge the complicity of a corrupt international professional, and may naively trust the legitimacy of the request based on their own professional ethics and morality. This may place them at risk of unwittingly committing a domestic crime on behalf of an international criminal syndicate and may compromise their domestic reputation and professional standing.

Case Study 39 – Israel

This scheme was used to hide the proceeds of fraud conducted through foreign exchange and binary options trades. Local companies attracted foreign investors and presented themselves as legitimate foreign exchange and binary trading platforms. Private companies, Israeli representatives of foreign banks and law firms set up foreign companies abroad by contacting TCSPs located in international jurisdictions. The latter established shell companies in the international jurisdictions. The service provided by the foreign TCSPs also included opening bank accounts in favour of the shell companies in other countries. After the companies were established, the TCSPs were not involved in their management nor in any related activity. In some cases, the suspects used the companies as a vehicle to launder money and in other cases they sold the companies to third parties for a profit.

Case Study 101 – United States

The defendant operated a mortgage broker business and several other companies that owned and managed real estate. He used nominee accounts, shell corporations and other schemes to conceal his ownership. The scheme involved

the purchase of properties owned by entities that the defendant controlled through an employee. The purchases were financed through loans. In connection with the loan applications, the defendant and others submitted fraudulent information related to the financial position of the borrower/purchaser, fraudulent appraisals that overstated the value of the collateral, and other documents that contained other material misrepresentations. The subject would “sell” commercial property owned by an entity he controlled to another entity that he controlled at highly elevated prices. The purchases were financed through fraudulent loan applications and through the submission of fraudulent documents. Also, the defendant altered invoices directed to one of the entities by inflating the cost of the work listed on the original invoices to make it falsely appear as though improvements had been made to the properties serving as collateral for the loans.

Providing services to clients and intermediaries domiciled internationally

180. Professional service providers are vulnerable to exploitation from clients and intermediaries domiciled internationally. As most professionals specialise in establishing and managing legal persons and arrangements within their own country of operation, it is common for international clients and intermediaries to seek their services to facilitate activities in that country. Analysis of the case studies identified that the majority of professional intermediaries were providing services to clients based in another country. In some cases, the relationship between a professional service provider and an international client will be short-term and transactional in nature; however, some professionals, particularly TCSPs, will provide ongoing company and trust management services, particularly if domestic laws require resident directors or trustees. The majority of professional intermediaries who provided services to clients based overseas were also providing directorship, trustee, nominee, or virtual office services.

181. Due to the transnational nature of these customer relationships, professionals that service international clients are vulnerable to deception and fraud perpetrated by criminal clients, complicit foreign professionals, or unwitting intermediaries. This vulnerability is common to all service providers that interact with international clients, and professional intermediaries and financial institutions require sophisticated CDD capabilities to accurately identify beneficial ownership, particularly in the absence of face-to-face engagement with clients. Most professional intermediaries who provided services to clients based overseas were assessed as being unwittingly or negligently involved in the scheme. One Panamanian case study (Case Study 85 below) demonstrates how a smaller TCSP failed to conduct enhanced due diligence on their overseas client and relied on the due diligence performed by the financial institution that referred the customer to them. The trust, managed by the TCSP, was used to collect the proceeds of corruption and illicit enrichment.

182. Criminals will seek to use the services of professionals with domestic and international contacts and associates in order to facilitate international business activity, including the establishment of companies and bank accounts in other countries. Some professionals, particularly in countries that apply strict regulations

to DNFBP sectors, have developed international networks of trusted intermediaries on whom they rely for CDD activities. Although these measures are likely to mitigate some of the vulnerabilities associated with transnational client relationships, they rely on the trusted intermediary having the capabilities necessary to perform accurate CDD to discover the ultimate beneficial owner, and remaining honest throughout the transaction (i.e. not being complicit or wilfully negligent when dealing with suspicious clients). As the professional only has limited control or oversight of the activities of their trusted intermediaries, and retains the risk associated with their activities, the vulnerability to the professional remains.⁵⁵

183. One Guernsey case study (Case Study 36 below) demonstrates how a Guernsey TCSP was exploited by a foreign client to administer a company used to facilitate market manipulation. Over the five-year period of their involvement, the TCSP was unaware of the fraudulent nature of the business' operations, and had not raised any suspicious matters with Guernsey authorities.

Case Study 36 – Guernsey

During a two-year investigation (2014-2016), the US Commodity Futures Trading Commission (CFTC) launched an investigation into UK national Mr. X Doe for market manipulation. It came to the attention of Guernsey Financial Services Commission that a TCSP provider (TCSP B) administered a corporate structure for the benefit of Mr. X Doe. Over a five-year-period Mr. X Doe made approximately GBP 32 million (British pounds). The purported legitimate business was futures dealing. Prior to Guernsey TCSP B's involvement, it was administered by a Cayman Island Company. The Guernsey TCSP, which was licensed for AML/CFT, identified that Mr. X Doe was under investigation and co-operated with the Guernsey AML/CFT authorities.

Case Study 85 – Panama

The purported legitimate purpose of the scheme was the development and construction of real estate, based on small investors who injected capital. The funds provided by the settlor or third-party adherents were derived from illegal activities (corruption of public servants and illicit enrichment). The scheme involved a BVI company with nominee directors, ultimately controlled by a PEP, who was a client of a bank that had a relationship with the TCSP. The TCSP set up a real estate trust to receive money and assets that come from the business of the settlor and "investors." The assets received were invested in a real estate project, with the same assets given as a warranty to the bank that was financing 60% of the real estate project. The ultimate beneficial owner of the real estate project was the son of the PEP.

⁵⁵ See also Recommendation 22 (FATF, 2012a)

The trustee did not conduct extensive due diligence and relied on the due diligence performed by the bank that referred the client, since both the client and the trustee maintained a business relationship with the bank.

Providing advice on tax compliance

184. A key role of many professional service providers, particularly accounting and legal professionals, is to provide advice to individuals and businesses on how to maximise profits and minimise costs. This often includes advising clients on lawful means of minimising their taxable liabilities.

185. This service and professional expertise in this area is vulnerable to exploitation from individuals and legal persons seeking to disguise beneficial ownership to avoid taxation obligations - otherwise referred to as revenue and taxation fraud or tax evasion. However, due to their knowledge of tax law, the risk of innocently or unwittingly providing advice on, or facilitating of tax evasion schemes is reduced.

186. The experiences of law enforcement agencies, FIUs, and other competent authorities have identified a high level of involvement from professionals in tax evasion schemes. These schemes have often involved complex transnational company structures, fraudulent trade and false invoicing, and *phoenixing activities* to disguise beneficial ownership of assets and income. Many case studies involved tax evasion as a predicate offence, most of which involved professional intermediaries – principally legal or accounting professionals – the majority of whom were assessed as being complicit in their involvement. Criminals actively target complicit professionals to assist with tax evasion, and are willing to pay lucrative fees as motivation for their complicity.

187. Furthermore, almost all complicit intermediaries involved in tax evasion cases were also assessed as being the designer and/or promoter of the scheme. In situations where the professional intermediary has designed and promoted an illegal tax minimisation scheme to prospective clients, it is possible that the beneficial owner will not be aware of the illegality of the scheme. This poses a significant vulnerability to unwitting beneficial owners as well as the broader reputation of professional services sectors. While no cases specifically identified the involvement of unwitting beneficial owners, a number of cases focused on the corrupt activities of professional service providers themselves, rather than their clients (the beneficial owners). The Australian case study below demonstrates how a complicit accountant exploited their knowledge of tax laws in multiple jurisdictions to facilitate tax evasion on behalf of their clients.

Case Study 5 - Australia

This “round robin” scheme aimed to make funds movements appear as payments to other parties while, in reality, the funds ultimately returned to the original beneficiary. The suspects transferred funds from their companies’ accounts to the bank accounts of companies in New Zealand. The New Zealand companies

and bank accounts were controlled by a Vanuatu-based accountant, who was a signatory to the bank accounts. The payments were falsely described in the companies' records as "management and consultancy fees," with false invoices that matched amounts paid to the New Zealand bank accounts. No evidence was available to show that any consulting work had been carried out. The false expense payments were claimed as deductible expenses in the tax returns of companies X, Y and Z, thereby fraudulently reducing the companies' taxable income and taxes owed. The accountant then transferred the funds under the guise of international "loans" through a series of round-robin international transactions, through accounts held in the name of companies owned and operated by the accountant. The accountant transferred the funds into the personal bank accounts of the suspects in Australia. The funds were transferred via an overseas company controlled by the accountant, separate to the companies in New Zealand that received the funds originally. In order to disguise the funds being transferred back into Australia as loans, false documents were created purporting to be international loan agreements with a foreign lender, which are not assessed as income and have no tax liability.

Legal professional privilege and client confidentiality

188. Legal professionals are subject to a range of ethical obligations, which differ from country to country, but which generally adhere to a core set of professional rules. These include: independence from the State; acting with honesty, integrity and fairness; duty to act in the client's interest; and the maintenance of client confidentiality and legal professional privilege (LPP).⁵⁶ These ethical obligations are aimed at ensuring fair and equitable access to justice, and ensuring probity and integrity across the profession. Some law societies and regulatory bodies consider that these codes of conduct and professional rules prevent legal professionals from being knowingly involved in money laundering or terrorism financing; however, some of these obligations can be vulnerable to criminal exploitation. FIUs and other competent authorities have reported the use of LPP and client confidentiality to protect the disclosure of the identity of the beneficial owner of assets, which frustrates criminal investigations.

189. LPP generally does not extend to all communications between a lawyer and their client, and often stops short of commercial advice (although this can differ between countries). Communications that do not meet the relevant national definition of LPP (if available) are considered to be protected by legal confidentiality, which is not absolute and is limited in certain key areas.

190. LPP and client confidentiality play an important role in the legal system; however, the initial application of these protections often rests with the legal professional rather than an independent third party. Subsequently, there is no clear and consistent interpretation or application of these protections amongst legal professionals, despite case law and the release of guidance and interpretive notes by

⁵⁶ International Bar Association. (2011). IBA International Principles on Conduct for the Legal Profession.

regulatory bodies. Furthermore, LPP is considered to belong to the client, and can only be waived at the direction of the client or if the legal professional is being used to commit a criminal offence. It is an offence in many countries for a legal professional to breach LPP, often punishable by professional sanctions or a criminal charge. Due to varying interpretations, the protections afforded to LPP, and the significant personal and professional consequences for breaching LPP, legal professionals can take a conservative approach to the application of LPP.

191. LPP and client confidentiality can be exploited by complicit legal professionals who are seeking to delay an investigation. However, the general caution with which legal professionals deal with LPP means that any legal professional can unwittingly conceal criminality using it. The case study below involves a Dutch investigation into the activities of a TCSP and civil-law notary involved in establishing structures designed by an international law firm known to be involved in the establishment of structures designed to obscure beneficial ownership. Multiple legal professionals from numerous countries were involved in the establishment of these structures, and have asserted privilege in order to delay or frustrate the investigation. Dutch authorities were required to verify the rights of these legal professionals via mutual legal assistance requests, which can be a time-consuming process.

192. Law enforcement agencies and FIUs have reported that LPP is regularly exploited by complicit legal professionals to frustrate and hinder investigations. Due to the nature of LPP, claims of privilege need to be reviewed prior to being overturned, even if the grounds for LPP are questionable from the beginning. Regardless of the rules associated with LPP in most countries, the subjective nature of LPP will continue to pose a challenge. Other challenges associated with LPP and gathering evidence in relation to legal professionals have previously been reported by the FATF⁵⁷. These challenges may explain a lower proportion of case studies involving legal professionals submitted for this report, and the lack of evidence of complicity cited in those case studies.

193. During the consultation phase with key private sector stakeholders, some private sector representatives highlighted that LPP training offered to legal professionals can often be inadequate unless the legal professional specialises in litigation where LPP is frequently considered. It is likely that legal professionals involved in tax, private client, corporate, or estate planning matters may rarely be required to consider or employ LPP. It has been suggested that the low level of training, coupled with a lack of practical application by some lawyers, leads to the development of broad and conservative approaches to LPP. Enhanced training and guidance in this area may assist to reduce this vulnerability over time.

⁵⁷ Obtaining records held by DNFBPs, the uncertainty of the scope of privilege, difficult and time-consuming processes for seizing legal documents, and a lack of access to client account information can present challenges in the evidence-gathering process. Law enforcement agencies are required by law to have strong evidence from the outset to demonstrate that LPP/secretcy should be removed. Claims of LPP could impede and delay the investigation (FATF, 2013: pp. 30–33).

194. While client confidentiality is a common principle among accounting professionals, it generally does not prohibit the disclosure of information that is permitted to be, or required to be, disclosed under law. As a result, it is less vulnerable to exploitation. However, in some countries, accounting professionals afford their clients LPP, or a form of privilege that closely resembles LPP. Additionally, some accounting professionals also hold legal qualifications, and operate as solicitors in law firms to provide expert advice on taxation and company law. Accounting professionals working at the behest of lawyers may also be subject to LPP. Accounting professionals who are subject to LPP obligations face similar vulnerabilities as their counterparts in the legal sector.

Case Study 71 – Netherlands

A criminal investigation into a Dutch TCSP was instigated on account of the systematic failure to notify unusual transactions and money laundering. This was presumed to involve the facilitation of fake transactions on behalf of foreign clients to ensure, for example, the assets or property of those clients were scarcely taxed, or funds parked were transferred by means of fake transactions to another jurisdiction. This was carried out by means of complicated well-considered structures with companies and trusts in various countries for which instructions were given by a financial service provider and were also discussed in this way by the suspect with the Dutch civil-law notary. Dutch entities were part of these complicated structures. The same applied for the Dutch foundations registered at an international address. The structure sometimes consisted of eight different entities, in various countries. The suspect reportedly did not know in several cases the identity of the actual beneficiaries of the companies that he incorporated.

Limited AML/CFT obligations or insufficient awareness and compliance

195. Internationally, there has generally been an increase in the effective application of risk-based measures by financial institutions to prevent ML and TF⁵⁸. As a result, the risk of detection for those seeking to exploit financial institutions for ML and TF purposes has increased. In contrast, the implementation of AML/CFT obligations to DNFBPs has been slower, with many jurisdictions yet to fully implement Recommendations 22 and 23⁵⁹.

196. FIUs, law enforcement agencies, and other competent authorities report that the primary environmental vulnerability that continues to effect the concealment of beneficial ownership is the lack of regulatory obligations to collect, disclose, and make available information regarding beneficial ownership across the globe.

⁵⁸ See the outcomes of the latest round of Mutual Evaluation Reports conducted by the FATF available at www.fatf-gafi.org.

⁵⁹ *Ibid.*

197. One of the most significant findings of the FATF's Horizontal Study is that 17% of jurisdictions that responded do not impose any AML obligations or AML supervision on professional intermediaries whatsoever, despite this being a requirement of FATF Recommendations 22, 23 and 28. In some cases, this is partly the result of resistance to regulation from the relevant sectors or professions (e.g. these groups work to prevent the enactment of laws or regulations which would impose such obligations or to mount constitutional challenges to such laws once passed). In other cases, it may represent an "unfinished" aspect of the AML/CFT system which has not yet been implemented. See Section 4 for further analysis of jurisdictional vulnerabilities associated with the lack of AML/CFT obligations for DNFBPs.

198. Combatting ML and TF requires an awareness of established and emerging ML/TF risks and typologies. Professionals who are not subject to AML/CFT obligations are more vulnerable to ML/TF exploitation than their regulated counterparts in other countries due to the lower level of awareness and understanding of ML/TF threats.⁶⁰ Analysis of the case studies identified that less than 10% of intermediaries involved in these schemes identified and reported a suspicious matter to a supervisory body. All of these cases were from countries that regulate DNFBPs, suggesting that the effectiveness of supervision of DNFBPs in the countries where they are regulated needs improvement.

199. In many countries, the authority to submit a suspicious transaction report is limited to businesses and professional service providers who are expressly regulated under that country's AML/CFT legislation. In these instances, the inability for unregulated professionals to voluntarily report a suspicious matter to the FIU or self-regulating body (SRB)⁶¹ is an additional vulnerability, as it may limit how an unregulated professional can respond to a suspicious request.

200. The vulnerability posed by reduced AML/CFT obligations is greater for small professional firms and firms that do not operate in international markets. Larger multinational firms are more likely to be attuned to money laundering vulnerabilities and may have robust AML/CFT measures in place, particularly if they are subject to AML/CFT regulation in one or more of their countries of operation.

201. In countries where AML/CFT legislation has been applied to DNFBPs, FIUs and supervisory bodies have expressed concern regarding the standard of compliance exhibited by the sector, and the level of reporting, which sometimes appears low in comparison to the size and activities of the sector. One Dutch case

⁶⁰ ACC, 2015: p. 83.

⁶¹ A self-regulatory body is a body that represents a profession (e.g. lawyers, notaries, other independent legal professionals, or accountants), and which is made up of members from the profession. It also plays a role in regulating the persons that are qualified to enter and who practice in the profession, and performs certain supervisory or monitoring type functions. Such bodies should enforce rules to ensure that high ethical and moral standards are maintained by those practicing in the profession. See, in particular, Question 5 of the Horizontal Study at Annex B.

study (Case Study 71 above) provides an example of systematic non-compliance by a Dutch TCSP, which was exploited by foreign clients to facilitate tax evasion. Whether the level of compliance exhibited by legal professionals in some countries is indicative of an unwillingness to comply, or a limited understanding of their AML/CFT risks, has not been assessed. However, compliance and awareness of AML/CFT risks within some professions is considered by FIUs and other competent authorities to be a vulnerability⁶². Another Dutch case study (Case Study 66 below) demonstrate how a lack of awareness of ML and TF risks amongst professional service providers facilitated money laundering and other criminality. In both cases, professionals involved in managing companies and promoting investment schemes on behalf of their clients failed to identify indicators of criminality or conduct sufficient due diligence on their customers. These failures were not due to a lack of regulatory obligations, but rather insufficient awareness within the TCSPs of their risks and/or inadequate measures to detect high-risk activities. The effectiveness of supervision of DNFBPs and the extent to which DNFBPs are applying their obligations (where they exist) has been a consistent challenge for countries throughout the current round of FATF Mutual Evaluations⁶³.

Case Study 66 – Netherlands

The case involves funds derived from extortion. The suspect created legal constructs made up of parent companies registered in a low tax jurisdiction with few or no or scarcely any obligations to keep administrative and accounting records. The suspect used a coded bank account in Switzerland to further conceal the money laundering activity. TCSPs managed the companies.

According to the public prosecutor: *“the refinement also included the use of persons and trust companies who/which from the nature of their profession should have noticed what was going on and should have had alarm bells going off in their heads. However, no one saw reason to flag any concerns.”*

⁶² HM Treasury, 2015.

⁶³ See www.fatf-gafi.org.

SECTION 4 — ENVIRONMENTAL VULNERABILITIES

202. Aside from the main characteristics leading to the misuse of legal persons and legal arrangements, and the inherent vulnerabilities associated with the professional intermediaries involved in their establishment, a number of environmental vulnerabilities can affect the overall risks posed by these legal structures and the service providers that support their creation and operation. These environmental vulnerabilities include jurisdiction-specific vulnerabilities, such as AML/CFT regulations and trade and commercial trends, and vulnerable business practices, including online client interactions. These vulnerabilities are outlined in greater detail below.

Jurisdictional vulnerabilities

203. The availability of beneficial ownership information varies significantly between different countries. Despite a renewed focus on the importance of timely and accurate beneficial ownership information by key bodies such as the FATF, Egmont Group, and OECD Global Forum, as well as the G20 and UK Anti-Corruption Summit, many countries have not taken sufficient steps to enhance the transparency of beneficial ownership through the effective implementation of the FATF Standards. This is reflected in the aggregated results for the fourth-round of mutual evaluations completed to date, which demonstrate that most countries assessed at the time of the drafting of this report had demonstrated low or moderate levels of effectiveness and technical compliance against key recommendations relevant to beneficial ownership.⁶⁴ This increases the difficulties and costs associated with conducting due diligence, particularly for small businesses (such as the majority of professional intermediaries), and makes it harder for professionals and financial institutions to identify patterns and indicators of criminality.

204. In parallel, the FATF has undertaken a Horizontal Study of enforcement and supervision of beneficial ownership obligations of FATF and FSRB members. The Horizontal Study demonstrated that, even where professional intermediaries are subject to AML/CFT requirements, supervisory mechanisms remain weak due to capacity issues and the lack of a consistent approach for different types of professions. Enforcement actions are also rare⁶⁵. The results of the Horizontal Study are located at Annex B of this report.

205. Aside from considerations of the effectiveness of regulatory, enforcement, and supervisory measures in a given country, consideration should also be given to whether the country in which the legal person or arrangement is established, or the country in which the legal person or arrangement has an active bank accounts, is a common international trade or financial centre and/or a low-tax jurisdiction. These geographic vulnerabilities are outlined in greater detail below.

⁶⁴ FATF (2018).

⁶⁵ See, in particular, Questions 5 and 6 of the Horizontal Study.

Trade and Financial Centres

206. As this report has demonstrated, there are a number of reasons why criminals seek to exploit legal persons and arrangements to disguise beneficial ownership. One of the primary benefits offered by legal persons is the opportunity to disguise transactions as legitimate business and trade activities. In particular, legal persons can facilitate trade-based money laundering (TBML) typologies, including those that do not result in the actual movement of goods, or which purport to involve the provision and/or acquisition of services to or from other international businesses. The Israeli case study below (Case Study 40) demonstrates how companies in international jurisdictions (including one in a major South-East Asian trading hub) were used to facilitate TBML through false invoicing.

207. In order to leverage domestic and international trade and finance trends, criminals will often establish legal persons and bank accounts in cities that are considered to be major regional and global trade and financial centres. These trade and financial centres can be loosely defined as any city which:

- can be considered an epicentre of regional or international trade
- is known to accommodate regional headquarters of major international businesses, consultancy firms, and/or financial institutions
- is home to a cluster of national and internationally significant financial services providers, such as banks, investment managers, or stock exchanges.

208. Establishing legal persons in these trade and financial centres serves to:

- legitimise the legal person as a seemingly high-functioning and active business
- legitimise the transactions between two or more legal persons as lawful trade
- conceal the unlawful transactions made by, or to, the legal persons behind the vast number and value of genuine transactions occurring across the same trade and finance channel.

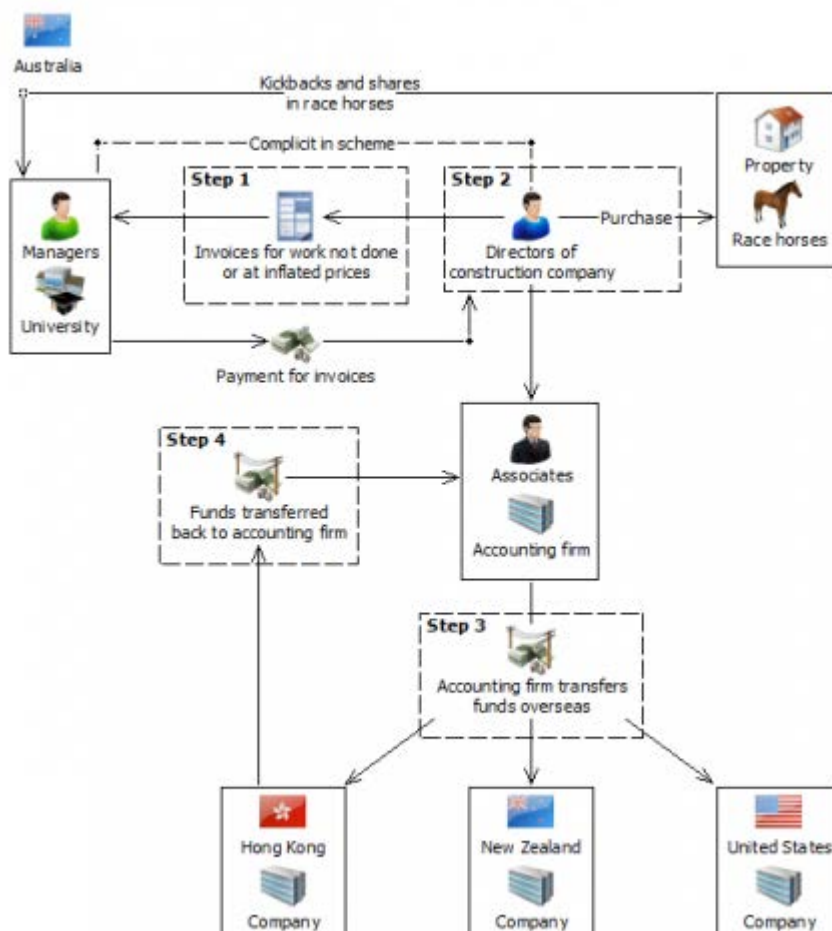
209. As a result of the value and popularity of legal persons incorporated in global and regional trade and financial centres to facilitate criminality and the concealment of beneficial ownership, these entities are likely to represent a greater vulnerability compared to legal persons established in other countries or cities. This jurisdictional vulnerability is unique for each country, and is based on the trade and finance corridors that most affect the economy and society of that country. In the Australian case below (Case Study 3), the accounting firm that facilitated the fraud on behalf of the two university managers utilised companies in Hong Kong, the US, and Canada to launder the proceeds under the guise of legitimate business transactions. These countries represent major trading and finance hubs in the Australian context.

210. Due to the unique nature of this jurisdictional vulnerability, this report has not sought to list highly-vulnerable cities or countries. FIUs, other competent authorities, and financial institutions are best placed to identify high-risk money laundering corridors specific to their economy, and should use this information to assess the vulnerability posed by legal persons operating or transacting along these corridors. Furthermore, countries and cities that are themselves major trade and

finance centres should be aware of their vulnerabilities as possible jurisdictions of choice for international criminals.

Case Study 3 – Australia

Managers at a university and directors of construction companies were complicit in a fraudulent invoice scheme. The managers approved inflated invoices for maintenance work to be carried out by the construction companies, as well as invoices for work that was never undertaken. The profits from the fraud were used to purchase racehorses and property. The managers at the university were repaid with kickbacks or direct shares in racehorses. Accounting firms, which were undertaking international transfers on behalf of the suspects, sent money to many countries including New Zealand, Canada, Hong Kong, and the USA. A large proportion of the funds were sent to companies linked to the horse racing industry. The accounting firms also received international transfers from various overseas entities that were similar in value to the amounts the firms had sent overseas initially. The majority of these transfers originated from Hong Kong. The authorities suspected that the accounting firms were laundering the funds on behalf of the suspects as part of a professional money laundering syndicate.



Case Study 40 – Israel

This case involved a fraudulent tax scheme designed to evade paying tax generated from international trade and a ML infrastructure that was used to hide the illegally gained funds. The suspects used a TCSP to register and operate two international shell companies (Company A and Company B) to create the false appearance that the revenues from their international trading did not belong to the local Israeli company which they controlled, to avoid tax. The two companies traded with each other exclusively and did not have any other source of income. Company A (foreign shell company) transferred significant funds to company C (local company) using the cover of a "consulted fee"/ "service commission". Only this commission, which was less than half of the real income, was reported to the tax authority in Israel. Thus, ultimately, the suspects paid taxes only on a small part of their income.

Low-Tax Jurisdictions

211. A number of jurisdictions across the globe have implemented favourable tax conditions, including very low or even nil corporate or income tax rates, or other tax incentives designed to appeal to foreign investors.⁶⁶ These are characteristics associated with many offshore financial centres (OFCs)⁶⁷. International research has demonstrated that the decision by a jurisdiction to offer favourable tax concessions, even marginal concessions, can stimulate investment and result in overall benefits to the jurisdiction (despite the obvious reduction in direct corporate taxes).⁶⁸ These low-tax jurisdictions attract foreign investment, not only because income earned locally is taxed at favourable rates, but also because it makes it possible to facilitate the avoidance of taxes that might otherwise have to be paid to other countries.⁶⁹

212. FIUs, law enforcement, and other competent authorities regularly identify criminals using legal persons and bank accounts established in low-tax jurisdictions. Many of the case studies included in this report demonstrated this trend, and over half of the cases analysed involved a transfer of funds via companies or accounts held in low-tax jurisdictions. Many case studies, however, were not specific when referring to international jurisdictions (many simply referred to "offshore jurisdictions" to refer to jurisdictions outside of the reporting country's national boundaries). This prevalence may also be a result of selection bias, whereby

⁶⁶ Dharmapala, D. & Hines, J., 2009: p. 1058.

⁶⁷ Defined as countries or jurisdictions with financial centres that contain financial institutions that deal primarily with non-residents, in foreign currency on a scale out of proportion to the size of the host economy, jurisdictions where non-resident owned or controlled institutions play a significant role within the centre and where the institutions in the centre may gain from tax benefits not available to those outside the centre. See the OECD Glossary on Statistics (www.stats.oecd.org).

⁶⁸ Dharmapala, D. & Hines, J., 2009: pp. 1058-1068.

⁶⁹ *Ibid*: p. 1060.

participating countries chose cases for submission based on the involvement of certain jurisdictions. Regardless, it is likely that criminals will continue to target low-tax jurisdictions due to the favourable return on investment made possible by tax concessions and the ease with which companies and bank accounts can be established in some of these jurisdictions by foreign nationals.

213. It is important to note that many OFCs are actively involved in global efforts to combat money laundering and tax evasion, including via the FATF, Egmont Group, and the OECD Global Forum. Many of the jurisdictions that are members of the OECD Global Forum are signatories to the two internationally agreed standards on the exchange of information for tax purposes: the *Exchange of Information on Request* (EOIR) and *Automatic Exchange of Information for Tax Purposes* (AEOI). Some OFCs commenced the automatic exchange of information in 2017, while others are expected to commence the exchange of information by September 2018.

214. Due to the degree to which OFCs are exploited by criminals to conceal wealth and beneficial ownership, legal persons established in these jurisdictions, particularly those indicative of being shell companies, can pose a vulnerability to other jurisdictions. Whilst OFCs are vulnerable, they should not be viewed as a collective, but on an individual basis.

Case Study 43 – Italy

This case related to an investigation into a transnational criminal organisation active in money-laundering and that perpetrated crimes in Italy. It was triggered by STRs concerning financial flows from a company in the British Virgin Islands channelled through a Swiss bank and sent to an Italian legal person to be used for a refurbishment of a real estate unit which had a value of EUR 9 million. The investigation resulted in the charging of a chartered account for money laundering. The search of the individual's office resulted in the seizure of documents pertaining to a high number of off-shore vehicles which were established on behalf of wealthy national clients. The subsequent investigations led to the discovery that around EUR 800 million had been moved between Italy and international accounts.

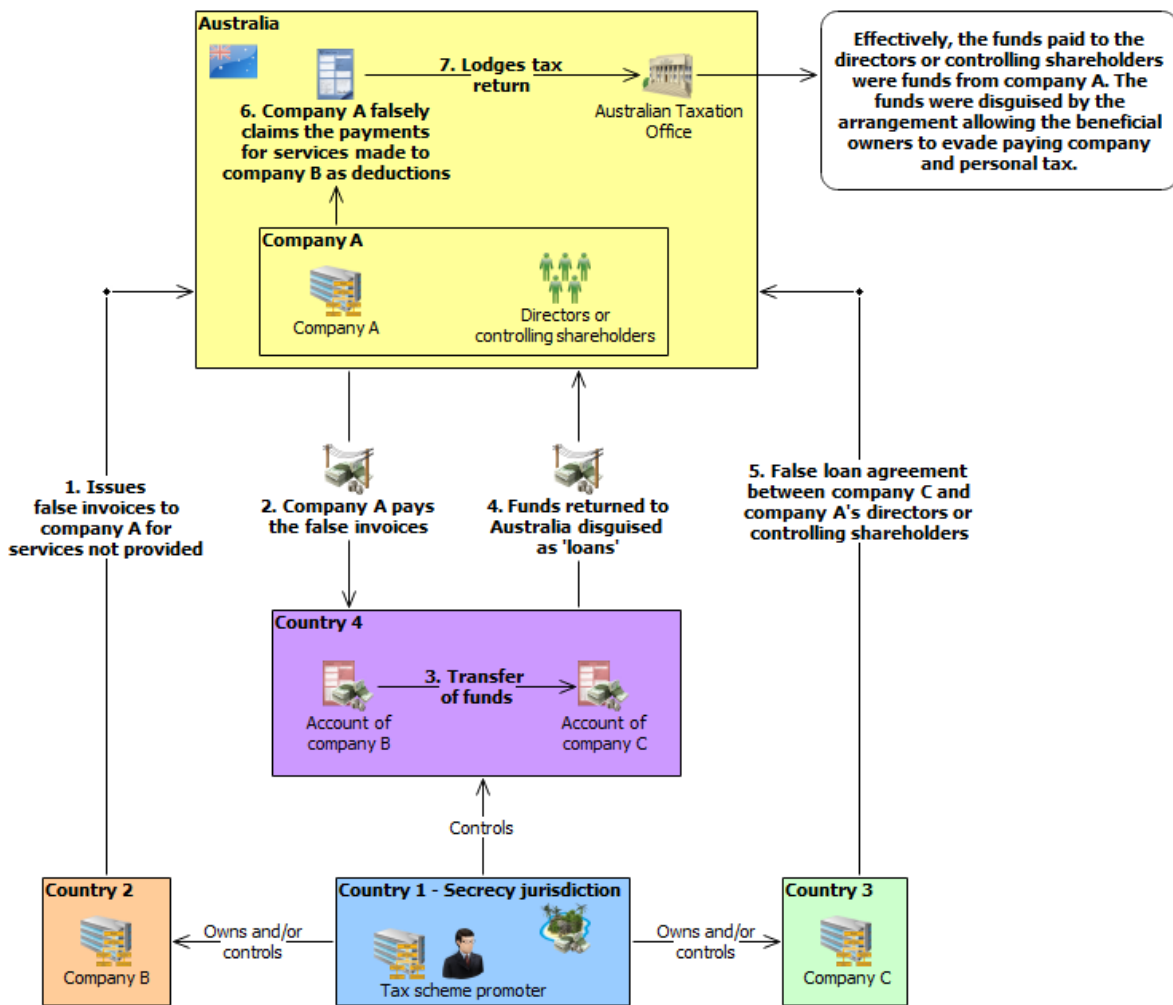
Case Study 68 – Netherlands

This case was an investigation into Dutch suspects for filing incorrect tax returns, money laundering and forgery. During the investigation, it was identified that funds had been transferred through a numbered account in Switzerland in the name of a financial service provider in Panama. Shortly thereafter, very similar amounts were debited from the account, under a false description, to the credit of the Dutch suspects.

A financial service provider facilitated this by providing the Dutch suspects with the opportunity to conceal these cash flows from third parties. The invoices for the services provided were paid to the financial service provider via the account in Switzerland.

Case Study 8 – Australia

Project Wickenby identified the use of false invoices and loans in illegal international arrangements. The scheme involved an Australian company (company A) which entered into an agreement with a tax scheme promoter based in a tax secrecy jurisdiction (country 1). The promoter benefited from the confidentiality and privacy offered in the tax secrecy jurisdiction. The tax scheme promoter owned and/or controlled two international companies (company B and C). Control may have involved the use of a trust or the use of third parties; for example, a relative or associate may act as the director of the international companies. Company B provided consultancy and/or management services and is incorporated in country 2. Company C provided a financial service (as a lender of money, for example) and was incorporated in country 3. Companies B and C held bank accounts in country 4. The promoter controls and operates these accounts.



Vulnerable business practices

215. In analysing the role of professional intermediaries in the concealment of beneficial ownership, this report has focused on a range of business practices that make these professional intermediaries more vulnerable to exploitation. These vulnerable business practices are most commonly performed by professional intermediaries, and contribute to the risks posed to, and by, those professions. Of these vulnerable business practices, the provision of online and virtual services is one exhibited by many businesses across a wide range of industry sectors, including the professional intermediary and finance and banking sectors. Due to its ubiquitous nature, it has been addressed separately as an environmental vulnerability below.

Online and Virtual Services

216. The ability to disguise beneficial ownership is exacerbated by the provision of online and virtual services to clients and banking customers. Many professional service providers and financial institutions have implemented business practices and client tools designed to simplify client interactions by reducing or removing the need for face-to-face interactions. These services leverage the pervasive nature of the online marketplace and meet the expectations of modern consumers, who largely expect that everything can be purchased, sold, or otherwise transacted online. Online services are therefore likely to become more prevalent over the course of the digital age.

217. The ability to establish companies, business banking relationships and move money virtually in the absence of direct face-to-face contact with a professional service provider or financial institution can increase the risk of these entities facilitating illicit activity; whether identity fraud or common money laundering typologies such as smurfing⁷⁰ and cuckoo smurfing⁷¹. Similarly, the ability to establish companies and move funds in this way can help facilitate the concealment of beneficial ownership information. Many financial institutions have implemented measures to verify the identity of clients in the absence of face-to-face engagement, and governments are establishing or exploring tools and resources to support these efforts, including document verification services and formal virtual identities. However, despite these measures, reliance on documentation provided by a customer in the absence of face-to-face engagement can enable the use of fraudulent documentation or help enable informal nominees to act as representatives without the knowledge of professionals or financial institutions. As a result, online and virtual services are vulnerable to exploitation by criminals, and financial institutions

⁷⁰ The term “Smurfing” is given to the practice of using multiple individuals or accounts to perform transactions so as to avoid suspicion or currency reporting requirements.

⁷¹ The term “cuckoo smurfing” originated in Europe because of similarities between this typology and the activities of the cuckoo bird. Cuckoo birds lay their eggs in the nests of other species of birds which then unwittingly take care of the eggs believing them to be their own. In a similar manner, the perpetrators of this money laundering typology seek to transfer wealth through the bank accounts of innocent third parties. (AUSTRAC Website: www.austrac.gov.au/typologies-2008-methodologies, cited 25 January 2018).

and professional service providers need to be conscious of individuals and intermediaries that may be manipulating these facilities.

218. In addition to the challenges of conducting CDD in a virtual environment, the use of internet banking services to facilitate transactions further exacerbates these issues by allowing unknown individuals to control bank accounts anonymously. FIUs and other competent authorities have reported that criminals will often coerce “straw men” to establish bank accounts for use by the criminal at a later time. Once accounts are established, and following the CDD activities conducted by the financial institution, these “straw men” will hand over the account details, including internet banking login details and passwords to the criminal. This effectively disguises the beneficial owner of the account and allows the controller to circumvent CDD obligations altogether.

219. The Israeli case study below demonstrates how the provision of online services allowed a suspect to establish companies and open bank accounts abroad using identification information provided by third-party straw men. It also demonstrates how the availability of foreign online banking platforms allows unknown third parties (in this case, the suspect) to circumvent the due diligence measures of financial institutions located abroad and actively control foreign accounts opened by unrelated individuals. The case study also shows that authentic identification documents, such as a lawful passport, can be easily used in foreign jurisdictions by third parties in the absence of face-to-face interaction, as document verification controls are only designed to verify the authenticity of the document, and not whether the document belongs to the person opening the account.

220. Some financial institutions and RegTech firms have implemented, or are developing, CDD measures that harness modern technologies to enhance customer identification in a virtual environment. These measures include:

- capturing metadata from client interactions, such as internet protocol (IP) addresses and geolocation data
- using in-built cameras from mobile phones, tablets, laptops, and automatic teller machines (ATMs) to capture the customer’s image (with the customer’s knowledge and consent) for verification against other identity documents, and
- utilising biometric identifiers, including facial recognition and fingerprint scanning technologies.

221. These developments have the potential to significantly reduce the vulnerabilities associated with the provision of online and virtual services. However, the expense and sophistication of these CDD systems is likely to limit their implementation in the short term, and the vast majority of professional service providers and smaller financial institutions will continue to be vulnerable to exploitation and the challenges associated with identifying beneficial ownership in a virtual environment.

Case Study 38 - Israel

This scheme was used to hide funds from social engineering fraud and other criminal offenses. The cover story for the criminal offences was international trade – funds from merchants in Europe and the US sending payments to suppliers in East Asia. The suspect, an owner of a registered MSB, operated a second, unregistered MSB. The suspect used several natural persons as his contact points in East Asia which in turn contacted local company service providers for the purpose of setting up international companies and opening bank accounts. Local straw men were registered as the shareholders of the new international companies established for the scheme. Shareholders were registered based on passports provided by the suspect's contact persons mentioned above. The registered addresses of the companies were in East Asia. Bank accounts were opened in the same East-Asian countries where the offices were located.

Immediately after opening the bank accounts, the suspect received the sole means to control them, i.e. an electronic token with the passwords for online activities. In order to establish creditability and credit history, some accounts were activated as low-volume activity accounts, while others were used for high-volume transactions. In case the bank had questions about the nature of the transactions, the questions were sent to the suspect by the straw men and were returned to the bank by them.

Use of Third-Party CDD and Identity Verification

222. There are a range of third-party service providers who specialise in providing support to identity verification and customer due diligence services to corporate clients, such as sanctions lists and other adverse information, and information on company ownership. These services can be an important part of a robust and effective CDD program, and can improve the ability of a financial institution or DNFBP to assess customer risk and verify a customer's identity (although it should be noted that responsibility for CDD measures remains with the financial institution or DNFBP in context of outsourcing or agency relationships, in accordance with FATF Recommendation 17).

223. Despite the value of these services, some major financial institutions have reported, via the Wolfsberg Group, that the information provided by third-party service providers can be out-of-date or incomplete. This has the potential to frustrate CDD activities, including the verification of beneficial ownership and related ML/TF risk assessments due to the provision of inaccurate information. These major financial institutions have only been able to identify the deficiencies in the information provided by third-party service providers due to their own CDD and financial intelligence capabilities. However, if smaller financial institutions who do not have well established CDD mechanisms rely on third-party service providers to support their CDD efforts, they may not be aware of the inaccuracy of the

information being provided, resulting in a vulnerability in cases when the information is inaccurate.

224. Due to the expense of establishing and maintaining a robust and effective in-house CDD and financial intelligence capabilities, most financial institutions and professional service providers will continue to rely heavily on the services provided by third parties. The reason why the information stored by third-party service providers is sometimes deficient is not understood, and may be symptomatic of the enormous challenges associated with collecting relevant and contemporary information on a global scale. While the advent of virtual identities may improve this situation in the future, there may be opportunities for this information resource to be improved.

Reliance on introduced business

225. Financial institutions and DNFBPs can also rely on other regulated financial institutions and DNFBPs to carry out the CDD process in certain circumstances, which are set out in Recommendation 17. In many cases, this will involve a financial institution relying on a lawyer or TCSP, which is providing company formation services and also seeking to open bank accounts on behalf of the newly created company. If the requirements for reliance set out in Recommendation 17 are not properly applied, then a financial institution's CDD can be compromised by a negligent or complicit DNFBP which it relies on, undermining their ability to accurately identify beneficial ownership or suspicious activities indicative of efforts to disguise ownership and control.

SECTION 5 — CONCLUSIONS AND ISSUES FOR CONSIDERATION

226. Schemes designed to obscure beneficial ownership often employ a “hide in plain-sight” strategy, leveraging global trade and commercial infrastructures to appear legitimate. However, visibility does not equate to transparency, and many of the tools that were designed to encourage business growth and development, such as limited liability corporations and nominee directorship services, are now also being exploited to facilitate money laundering. The globalisation of trade and communications has only increased this threat, and countries now face the challenge of enforcing national laws in a borderless commercial environment.

227. This report has analysed open-source research, public intelligence reports, classified intelligence holdings, and public and private sector experience and expertise to compile a comprehensive overview of the main characteristics and vulnerabilities that lead to the misuse of legal persons and arrangements, and the exploitation of professional intermediaries, to conceal beneficial ownership. Much of what this report has identified confirms key principles and concepts reported in the canon of literature available on the subject of beneficial ownership. This suggests that the vulnerabilities associated with the concealment of beneficial ownership are enduring, or increasing, despite ongoing efforts to combat money laundering and terrorism financing. These key findings are outlined in detail in the Executive Summary.

228. The FATF Recommendations require competent authorities to have access to adequate, accurate and timely information on the beneficial ownership and control of legal persons (Recommendation 24). In addition, countries must take measures to prevent the misuse of legal arrangements for money laundering and terrorist financing - in particular ensuring that there is adequate, accurate and timely information on express trusts (Recommendation 25). Implementation of the FATF recommendations on beneficial ownership has proven challenging for countries. As a result, the FATF developed the *FATF Guidance on Transparency and Beneficial Ownership* to assist countries in their implementation of Recommendations 24 and 25, as well as Recommendation 1 as it relates to understanding the ML/TF risks of legal persons and legal arrangements.

229. This section includes a series of issues for consideration that may, alongside the conclusions of the study, support the effective implementation of these two FATF Recommendations including by outlining areas of further potential work to reduce the barriers faced by law enforcement and increase the accuracy and/or availability of beneficial ownership information.

230. This report shows that limited liability companies (and similar companies in various jurisdictions) are more vulnerable to misuse for the concealment of beneficial ownership than other types of legal persons. This is due to the ease with which they can be established, and the manner in which they are often used to generate complex legal ownership structures. Moreover, the availability and use of nominee directors and shareholders (both formal and informal) appear to exacerbate the risks despite the FATF Standards requiring measures to prevent their misuse. Nominees have been identified as a central enabler of indirect ownership chains. Given the vulnerabilities associated with the use of nominees,

further study into the role that professional nominees play is merited to better understand the costs and benefits associated with allowing the practice, and to identify the best means to tackle their misuse. Any further study in this area may benefit from also having the expertise of other international organisations that have a wider view of global economics than the FATF, which is focused on combatting money laundering and terrorist financing.

Issue for Consideration 1

Given the vulnerabilities associated with use of nominees, individual countries and the FATF, working with the broader global community may wish to consider measures to limit their misuse.

231. The use of specialists and professional intermediaries is a key feature of schemes designed to conceal beneficial ownership. The majority of case studies analysed for this report involved professional intermediaries. While it was not always explicitly stated in the case studies, approximately half of all cases were assessed as involving a complicit professional intermediary (gatekeepers were determined to be complicit if, on the basis of the case summary provided, they appeared to have had a role in designing the scheme, knew of the scheme’s illegal nature, or were charged with a crime). This demonstrates that although complicity may be a factor, it is not strictly necessary when facilitating a scheme designed to obscure beneficial ownership, and that some professionals are unwitting or negligent in their involvement. This also serves to highlight the importance of effective regulation and education of DNFBPs, and the need for increased AML/CFT awareness amongst professional services sectors. The FATF’s *Horizontal Study of Supervision and Enforcement of Beneficial Ownership Obligations* identified that a number of countries do not impose any AML/CFT obligations or supervision on any DNFBPs, despite this being a requirement of the FATF Standards. Professional intermediaries operating outside of an AML/CFT regulatory regime represent a “back-door” through which illicit wealth can enter the regulated banking and finance sector. This places the AML/CFT programs of financial institutions at risk and detracts from the overall effectiveness of national and international AML/CFT regimes, and should be addressed as a matter of priority through the effective implementation of relevant FATF standards.

232. A key part of ensuring effective implementation is the need for ongoing dialogue between competent authorities and DNFBPs. Government authorities should work closely with private sector bodies to educate professionals of their vulnerabilities to ML/TF activity, and the underlying threats that may seek to exploit these vulnerabilities, and allow professionals to share emerging risks drawing on their experience. Gateways have been established in many countries to enable the sharing of information between law enforcement and regulated entities, and countries could consider how these avenues of information exchange could be used to enhance risk awareness amongst professional intermediary sectors.

Issue for Consideration 2

The regulation of professional intermediaries under AML/CFT law⁷², and efforts to educate professionals of their money laundering and terrorism financing threats and vulnerabilities⁷³, will help mitigate the vulnerabilities associated with the concealment of beneficial ownership.

233. The Horizontal Study identified a lack of consistency in the approach to supervision when different types of professional intermediaries are supervised by different bodies (self-regulating bodies), even if the intermediaries are performing essentially similar functions (such as company formation). While many jurisdictions have established various forums to facilitate co-operation and risk awareness among SRBs and other competent authorities, the results of the Horizontal Study suggests that this does not necessarily lead to a coherent approach in supervision.

234. TCSPs play an important role in facilitating the establishment and management of legal persons, particularly in circumstances where the beneficial owner resides in a foreign jurisdiction. From a regulatory standpoint, the TCSP sector is less clearly defined or understood in many countries when compared to the legal and accounting sectors. As a result, authorities in many countries face challenges in regulating and educating TCSPs on their ML/TF risks. Conversely, some countries, particularly low-tax jurisdictions, have well-established and regulated TCSP sectors, and have implemented a range of measures to enhance the AML/CFT regulation of TCSPs, including integrity, competence, and financial soundness tests. These measures are a good means of professionalising the TCSP sector, and countries with TCSP sectors that are not as well-defined should consider implementing similar measures domestically.

235. Law enforcement and FIUs have reported that LPP can be exploited by complicit legal professionals to frustrate and hinder investigations. This issue has also been reported in previous FATF reports, including the 2013 report on *Money Laundering and Terrorism Financing Vulnerabilities of Legal Professionals*⁷⁴, and the 2014 guidance on *Transparency and Beneficial Ownership*⁷⁵. Due to the nature of LPP, claims of privilege need to be reviewed prior to being overturned, even if the grounds for LPP are questionable from the beginning. Regardless of the rules associated with LPP in most countries, the subjective nature of LPP will continue to pose a challenge due to the potential for its inconsistent application, and the difficulties that it can cause competent authorities undertaking financial investigations. Private sector representatives have highlighted that LPP training offered to legal professionals can often be inadequate unless the legal professional specialises in litigation where it is frequently considered. It has been suggested that the low level of training, coupled with a lack of practical application by some legal

⁷² In accordance with Recommendations 22, 23, and 28 of the FATF Standards

⁷³ In accordance with Recommendation 34 of the FATF Standards

⁷⁴ FATF, 2013: p. 23.

⁷⁵ FATF, 2014: p. 38.

professionals leads to the development of broad and conservative approaches to LPP. Enhanced training and guidance in this area may assist to reduce this vulnerability over time; however, countries are encouraged to work with the legal profession to determine the best means of addressing this problem, and to provide greater clarity on the scope and parameters of LPP so as to limit the extent to which it is inadvertently misused resulting in the impediment of financial investigations. Further consideration of possible solutions is merited.

Issue for Consideration 3

Further work to identify possible solutions or measures to prevent the misuse of LPP to conceal beneficial ownership information, including through the provision of enhanced training and guidance material for legal professionals, could be considered.

236. When investigating cases involving a concealed beneficial owner, FIUs and other competent authorities confirmed that traditional financial institutions, namely banks, were the primary source of information required to identify and confirm beneficial ownership and control. The wealth of information held by the private sector is substantial, and crucial to the identification of money laundering and broader criminality. In comparison, the information held by many FIUs is limited to suspicious transaction reports, and many FIUs are not capable of independently analysing other sources of information such as cross-border financial flows, without requesting further information from financial institutions. Those FIUs that receive a broader set of reports, including cross-border wire transfer and threshold cash transaction reports, have reported the importance of those reports and their value in tracing money flows and identifying beneficial ownership information. Consideration should be given to possible measures to increase the breadth and depth of information available to FIUs.

Issue for Consideration 4

FIUs should have access to the widest possible range of financial information. Consideration of possible measures to increase the breadth and depth of information available to FIUs is merited.

237. Further to the need for FIUs to have greater independent access to account and transaction information, the direct sharing of information and intelligence, in real time, between competent authorities and private sector partners, cannot be understated. This includes the sharing of transaction records, as well as information collected through customer due diligence. The significant body of work conducted by the FATF, the Egmont Group, and other international bodies on information sharing already attests to the value of effective information sharing. Information sharing between public and private sectors is an essential means of enhancing the transparency of beneficial ownership. Additionally, the information that is exchanged through established mechanisms, such as the Automatic Exchange of Information (AEOI) and the Exchange of Information on Request (EOIR) for Tax

Purposes, has the potential to significantly enhance the law enforcement visibility of asset ownership in other jurisdictions. However, privacy protections may limit the extent to which this information can be used for law enforcement and financial intelligence purposes.

Issue for Consideration 5

Increased sharing of relevant information and transaction records would benefit global efforts to improve the transparency of beneficial ownership. Further consideration of possible ways to enhance this information sharing is merited.

238. As a result of the transnational nature of most schemes designed to disguise beneficial ownership, it is often not possible for FIUs and other competent authorities to have direct and independent access to the information necessary to discover and prove beneficial ownership. In addition to a range of information sharing mechanisms available to competent authorities, mutual legal assistance has been identified as a key tool in most major investigations that involve a transnational corporate structure or international financial flows. However, many law enforcement and intelligence practitioners have also reported that delays in mutual legal assistance requests are one of the issues that most significantly inhibits an investigation. While it is acknowledged that the ability of a country to respond to a mutual legal assistance request is dependent on the resources available in that country and the operational demands of its law enforcement agencies, it is evident that more can be done to improve the quality and timeliness of mutual legal assistance responses. FATF Recommendations 36-40 require countries to implement formal and informal mechanisms for sharing information on ML/TF and predicate offences. Further study to understand what can be done to improve international co-operation, including MLA, is merited.

Issue for Consideration 6

Further research should be undertaken to understand what can be done to improve the quality and timeliness of the cross-border sharing of information, including through mutual legal assistance.

239. In recent years, increased media attention given to the role of opaque ownership structures in tax evasion, money laundering, and corruption schemes⁷⁶ has prompted a range of responses from governments across the globe, including the consideration and development of centralised registers of beneficial ownership. Other registries, such as corporate registries (centralised or not) which hold information on beneficial ownership, are also being implemented or enhanced. These registries are among several mechanisms for countries to consider under the

⁷⁶ Principally as a result of the leak of confidential documents from two large law firms involved in the creation of complex international corporate structures: Panama-based law firm Mossack Fonseca (2015), and Bermuda-based law firm, Appleby (2017).

FATF standards to support the identification and verification of beneficial ownership. Multiple sources of information can be used simultaneously by competent authorities for intelligence and investigative activities, and the FATF Standards state that it is very likely that countries will need to utilise a combination of mechanisms to ensure law enforcement authorities have access to adequate, accurate and timely information on the beneficial owner of legal persons. It is also possible that, if correctly monitored and supervised, registers of beneficial ownership could support CDD efforts by financial institutions and professional intermediaries. However, in designing and implementing such repositories of beneficial ownership information, governments should be conscious of the need to ensure that beneficial ownership information is accurate, up-to-date and readily available to competent authorities and the private sector. A register of information, whether it contains beneficial ownership or any other type of company information, is only as valuable as the quality and accuracy of the information held. This report has outlined the myriad measures used by criminals to conceal beneficial ownership, including the use of formal and informal nominees, and it is expected that many of these techniques could be adapted to circumvent beneficial ownership registers or attempt to diminish their utility.

Issue for Consideration 7

Countries that make use of registers of beneficial ownership information should consider the resourcing and expertise requirements associated with their maintenance to ensure that the information recorded in the register is adequate, accurate, and up-to-date, and can be accessed in a timely manner. This is also true for the maintenance and supervision of company registries.

240. The ability to establish companies, open bank accounts, and move money virtually in the absence of direct face-to-face contact with a professional service provider or financial institution is a growing vulnerability. The Horizontal Study confirms that direct on-line incorporation of companies using various forms of digital identity is permitted by a number of jurisdictions⁷⁷. Many financial institutions have implemented measures to verify the identity of clients in the absence of face-to-face engagement, and governments are establishing or exploring tools and resources to support these efforts; however, the provision of services in the absence of face-to-face engagement is a vulnerability commonly exploited by criminals. Technological innovations, particularly in the fields of digital identification and information sharing, will likely be an important element in future solutions to this challenge. The private sector has identified some emerging measures that may be highly valuable in conducting CDD, and countries may wish to consider how these initiatives might be harnessed to improve the transparency of business transactions. The FATF and Egmont Group are both increasingly engaged with the private sector and these engagements may lead to the identification of additional measures to improve transparency in the future.

⁷⁷ See, in particular, Question 1 of the Horizontal Study at Annex B.

241. To meet the challenges posed by opaque beneficial ownership arrangements, governments, financial institutions, and professional intermediaries need to clearly understand the vulnerabilities, threats, and overall risks associated with legal persons and arrangements. It is therefore essential for governments to maintain a robust, contemporary, and publicly accessible assessment of ML and TF risks affecting their jurisdiction. The FATF Standards require countries to understand the risks that they face, including having mechanisms to assess the money laundering and terrorist financing risks associated with different types of legal person created in their country. These national risk assessments should not be limited to the risks identified within a jurisdiction's borders, but should also carefully analyse transnational threats and vulnerabilities. By maintaining an ongoing and publicly accessible risk assessment, governments will nurture and inform risk assessments conducted by financial institutions and professional service providers operating in their jurisdiction. This report, and others like it, may be useful in informing these assessments.

Issue for Consideration 8

The FATF Recommendations require jurisdictions to assess the money laundering and terrorist financing risks associated with different types of legal persons created in their country. It would be beneficial for these assessments to carefully consider and articulate the vulnerabilities and threats relating to domestic and foreign legal persons and arrangements, the domestic and foreign intermediaries involved in their establishment, and the means by which criminals may exploit them to facilitate money laundering and other criminality.

242. The concealment of beneficial ownership is a significant vulnerability for money laundering activity in every country around the world. For this reason, it will continue to pose a major challenge to the FATF and Egmont communities. Continued globalisation, the digitisation of commerce, trade, and financial and professional services, and increased access to opaque legal vehicles, are all enduring challenges that will affect the availability of information on the beneficial owner. There is no one solution or panacea for this problem; rather, the global endeavour to enhance transparency will require numerous iterative and interrelated solutions, and the continued will of governments, private organisations and the public to implement them.

ANNEX A. REFERENCES

ACC (2015), *Organised Crime in Australia*, ACC, Canberra.

ACIC (2017), *Organised Crime in Australia 2017*, ACIC, Canberra.

AUSTRAC (2011), *Money Laundering in Australia 2011*, AUSTRAC, Sydney.

Dharmapala, D. & Hines, J. (2009), "Which Countries Become Tax Havens?" in *Journal of Public Economics*, Volume 93, pp. 1058-1068.

FATF (2006), *Misuse of Corporate Vehicles, Including Trust and Company Service Providers*, FATF, Paris.

FATF (2007), *Money Laundering and Terrorist Financing through the Real Estate Sector*, FATF, Paris.

FATF (2008a), *Risk Based Approach Guidance for the Legal Sector*, FATF, Paris.

FATF (2008b), *Risk Based Approach Guidance for Accountants*, FATF, Paris.

FATF (2008c), *Risk Based Approach Guidance for Trust and Company Service Providers (TCSPs)*, FATF, Paris.

FATF (2008d), *Risk Based Approach Guidance for Real Estate Agents*, FATF, Paris.

FATF (2010), *Money Laundering Using Trust and Company Service Providers*, FATF, Paris.

FATF (2011), *Laundering the Proceeds of Corruption*, FATF, Paris.

FATF (2012a), *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation – the FATF Recommendations*, FATF, Paris.

FATF (2012b), *Specific Risk Factors in Laundering the Proceeds of Crime: Assistance to Reporting Institutions*, FATF, Paris.

FATF (2013), *Money Laundering and Terrorism Financing Vulnerabilities of Legal Professionals*, FATF, Paris.

FATF (2014), *FATF Guidance: Transparency and Beneficial Ownership*, FATF, Paris.

FATF (2018), *Consolidated Assessment Ratings*. FATF, Paris, www.fatf-gafi.org/publications/mutualevaluations/documents/assessment-ratings.html (updated: 6 April 2018) (accessed cited: 12 April 2018)

Hayton D.J., Kortmann, S.C.J.J.K, Verhagen, H.L.E. (1999), *Principles of European Trust Law*, Kluwer law international, The Hague, the Netherlands. 215 p.

HM Treasury (2015), *UK National Risk Assessment of Money Laundering and Terrorist Financing*, HM Treasury, London.

IBA (2011), *IBA International Principles on Conduct for the Legal Profession*.

ICIJ (2017), *The Panama Papers*, <https://panamapapers.icij.org/>, last accessed July 2018.

IMF (2014), *Offshore Financial Centres (OFCs): IMF Staff Assessments*, www.imf.org/external/np/ofca/ofca.aspx, last accessed July 2018.

Jersey Financial Crime Strategy Group (2015), *Money Laundering Typologies and Trends: Jersey*, Government of Jersey, Jersey.

Knobel, A. (2017), *Technology and Online Beneficial Ownership Registries: Easier to create companies and better at preventing financial crimes*, Tax Justice Network, <https://www.taxjustice.net/wp-content/uploads/2017/06/Technology-and-online-beneficial-ownership-registries-june-1-1.pdf>, last accessed July 2018.

OECD (2001), *Behind the Corporate Veil: Using Corporate Entities for Illicit Purposes*, OECD, Paris.

OECD (2012), *Automatic Exchange of Information: What it is, how it works, benefits, what remains to be done*, OECD, Paris.

OECD (2017a), *OECD Global Forum on transparency and Exchange of Information for Tax Purposes*, www.oecd.org/tax/transparency/exchange-of-information-on-request/peer-review/.

OECD (2017b), *Signatories of the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information and Intended First Information Exchange Date*, www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/MCAA-Signatories.pdf, last accessed July 2018.

Sharman, J. C. (2010), "Shopping for Anonymous Shell Companies: An Audit Study of Anonymity and Crime in the International Financial System", *Journal of Economic Perspectives*, Volume 24, Number 4, pp. 127-140.

US Department of State (2013), *Major Money Laundering Countries*, US Department of State, Washington D.C., <https://www.state.gov/j/inl/rls/nrcrpt/2013/vol2/204062.htm>, last accessed July 2018.

US Treasury (2015), *National Money Laundering Risk Assessment*, US Treasury, Washington D.C.

Van der Does de Willebois, E. et al. (2011), *The Puppet Masters: How the corrupt use legal structures to hide stolen assets and what to do about it*, The World Bank, Washington D.C., p. 240.

WEF (2012), *Organised Crime Enablers*, World Economic Forum, Geneva.

ANNEX B. HORIZONTAL STUDY: ENFORCEMENT AND SUPERVISION OF BENEFICIAL OWNERSHIP OBLIGATIONS

1. Two sets of questions were circulated to FATF delegations and delegations from the FATF-style regional bodies in seeking information on the creation and maintenance of legal persons and arrangements and the supervision and enforcement of maintenance and beneficial ownership requirements.

Question 1: What businesses or professions in your jurisdiction are engaged in the formation and/or maintenance of legal persons or legal arrangements?

2. This question was meant to elicit information on the composition, size and importance of the gatekeeper sectors in each jurisdiction, as well as the roles gatekeepers play in formation of legal persons and arrangements. The information provided demonstrates that, generally speaking, many of the same types of gatekeepers can be involved in the formation of both legal persons and legal arrangements (to the extent legal arrangements are available).

3. Despite the involvement of the same types of intermediaries, the processes for forming legal persons and arrangements are, in most cases, quite different. Accordingly, this paper will address them separately. The following information will address company formation, while formation of legal arrangements will be addressed under Question 2.

4. The information provided by members describes a range of processes for company formation and the role of gatekeepers in those processes. Although there are unique elements to each jurisdiction's system, the descriptions could be divided into four general categories:

- systems where gatekeepers are not necessarily required
- systems in which gatekeepers (other than notaries) are required
- notarial systems
- systems in which the Registrar tests the accuracy of filings or takes on the customer due diligence (CDD) obligations of a gatekeeper.

5. Hybrids of these systems are also possible. Each main type of system is described below.

Gatekeepers Optional

6. In almost half (29 of 64) of the responses received to this question, jurisdictions indicate that gatekeepers are available, but not required for company formation. This includes a variety of systems: some jurisdictions clearly indicated that any member of the public may form a company, but that it is often facilitated by gatekeepers. The UK indicates that, while anyone may register a company, in practice, approximately 75% of companies are formed by gatekeepers. In some jurisdictions, gatekeepers are optional in most circumstances, but required for others, as noted in the next category. Six jurisdictions indicated that the services of a

gatekeeper were available, but did not indicate whether such services were required or how frequently they are used in practice.

Gatekeepers Required

7. In sixteen jurisdictions, intervention by a gatekeeper (other than a notary or government employee) is required to form a legal person in most, if not all, cases. This category includes some jurisdictions with unique characteristics. For example, four jurisdictions only require intervention by a gatekeeper to form “offshore” companies or corporate vehicles (companies or trusts) that were perceived as posing higher risk. The entities in question were designed specifically for the purposes of international activities targeting non-resident customers, in the first place, and as such were probably deemed by the legislators as requiring strengthened measures, such as mandatory involvement of a professional intermediary. In some instances, there is no oversight to make sure that the companies that are restricted to certain activities upon creation (e.g. international holding companies) do not subsequently conduct other activities. However, the main incentive to register them in the correct manner would be preferential tax treatment. Two jurisdictions require involvement of a gatekeeper only to form limited liability companies.

8. The concept of risk-based approach to company formation mechanisms could be subject to closer consideration in future, but the following is one such example.

Box 1. Singapore’s Registered Filing Agents and Registered Qualified Individuals

Since 2015, Singapore has had measures in place to ensure that an individual who wishes to form a legal entity on behalf of another person in the course of business must be registered with Accounting and Corporate Regulatory Authority (ACRA) as a Registered Qualified Individual (RQI). Firms or companies that provide such services must register as Registered Filing Agents (RFA) and act through at least one RQI. In this way, members of the public acting on their own behalf (generally considered to be lower risk) retain free access to company registration while gatekeepers are required to register and made subject to anti-money laundering / countering the financing of terrorism (AML/CFT) obligations - regardless of any professional status or registration which they may already hold. Since creation of legal persons is performed online via ACRA’s electronic transaction system, this system only allows RQIs of RFAs and individuals to create legal persons and file documents. An individual must use his SingPass, which is a personal access code issued to Singaporeans and permanent residents permitting entry to online government services, to access ACRA’s electronic transaction system. Foreigners who do not hold a SingPass have to engage the services of RFAs to create and register legal persons with ACRA. This approach prevents the creation of legal persons by people unauthorised to do so.

The approach taken by Singapore in imposing this requirement to register is in addition to the usual approach of applying AML/CFT obligations to specific

classes of designated non-financial businesses and professions (DNFBPs) (e.g. lawyers, accountants, etc.). For instance, lawyers and accountants who perform FATF defined activities remain to be supervised by the respective regulators/specialised regulatory bodies. At the same time, a firm, whether it is a corporate service provider (CSP) firm, law firm or accountancy firm, will need to be registered with ACRA. RFAs need to provide information on its entity name, registered office address, nature of business and the personal details of the professional Registered Qualified Individuals (RQI) they wish to appoint to assist it. RQIs, in turn, need to provide his or her personal details qualifications. A CSP firm will not be permitted to be registered as a RFA if any of its beneficial owners, directors, partners or managers has been convicted of criminal offences or if they are undischarged bankrupts. An individual will not be permitted to be registered as a RQI, if he has been convicted of a criminal offence (especially those related to fraud and dishonesty) or if he is an undischarged bankrupt. In addition to that, ACRA will also check background information on the legal owners, beneficial owners, directors, partners and managers of RFAs, and RQIs looking at their previous conduct and compliance history.

Notarial Systems

9. Thirteen of the responding jurisdictions report use of a notarial system for company formation. Notarial systems generally entail an attestation of registry filings by a notary who is vested with public office and responsible directly to a government ministry. Such systems are found almost exclusively in civil law jurisdictions and entail a high degree of formality in the company formation process. Understandably, such an approach may not be appropriate for every jurisdiction; however, FATF members have assessed these systems as some of the most effective systems for implementation of beneficial ownership (BO) obligations.

Box 2. Spain's and Italy's notarial system

In their 4th Round mutual evaluations, Spain and Italy were both assessed as having systems that are substantially effective. In both jurisdictions, notaries are public officials, and are subject to AML/CFT obligations under each jurisdiction's AML/CFT legal framework. Duly executed notarial acts are presumed to be valid, self-authenticating, self-executing, and are considered probative. The involvement of a notary is required at the company formation stage, as well as subsequently to validate and ensure accuracy of information reflected in the business register and authenticate changes in ownership.

The effectiveness of Spain's notarial system is enhanced by the implementation of a Beneficial Ownership Database. The Beneficial Ownership Database became operational in March 2014, and was made available to competent authorities in April of the same year. It builds upon the information available in the Single Computerised Index by aggregating the information on beneficial ownership and on transfers of shares. For each company, the database offers two levels of information: (i) the beneficial ownership information obtained by the individual

notary in the conduct of the normal CDD requirements (i.e. the declaration of beneficial ownership which, if at least one risk indicator is met, includes a copy of the beneficial owner's ID document); and (ii) For private limited liability companies (*Sociedades de Responsabilidad Limitada*, which represent some 92% of all legal persons and 96% of new incorporations in Spain) the beneficial ownership information is obtained through aggregating the information on the successive transfers of shares. Since notaries are required to be involved in these transfers, this information is always verified and updated twice monthly.

Registry with Oversight Functions

10. Findings from other FATF research suggest that systems combining one or more approaches to ensuring availability and accuracy of basic and beneficial ownership information are often more effective than systems that rely on a single approach. In 21 jurisdictions, one of the systems referred to above is complemented by a Registry with some level of oversight function, including verification of completeness or accuracy of filings, conducting CDD in certain cases, or cross-checking information against other government databases. Two of these jurisdictions have notarial systems, including Spain, as discussed above. In six jurisdictions, gatekeepers (other than notaries) are required. Thirteen of the jurisdictions fall into the category where gatekeepers are optional.

Box 3. Guernsey's and Jersey's Registrars

Guernsey and Jersey are both jurisdictions in which intervention by a fully regulated and supervised gatekeeper in company formation is mandatory for most company formations (although optional for local residents). However, in both jurisdictions, the Registrar performs the CDD functions of gatekeepers when there is no gatekeeper involved in company formation or administration.

Box 4. UK's Companies House

In the UK, Companies House is part of the Government Agencies Intelligence Network. Although Companies House does not conduct CDD or verify information, it does conduct data analysis to identify suspicious activity and patterns of behaviour, which it then shares with relevant law enforcement agencies. Suspicious activity and patterns of behaviour are identified through a variety of mechanisms. These include:

1. following receipt of a complaint from a third party informing the Registrar that their details (either name, date of birth and/or home address) has been used without consent,
2. contact from Law enforcement/Government agencies regarding suspicions over a single company, and

3. other intelligence that suggests suspicious activity. This could include a single credit card or email address being used to incorporate many companies, which on the surface are unconnected.

Internal investigations utilising non-public data (such as email address, IP address where available and credit/debit card details) can result in the linking of a single suspicious company to tens or hundreds of companies. It should be noted, that there is no automatic feed for this information which leads the Registrar to take action.

Online registry systems

11. Some jurisdictions permit their residents to use different forms of digital identity to incorporate companies directly online, without any intermediaries. Modalities of those digital identities vary: they can be based on tokens, passwords, SMS, or biometric authentication. The basic idea is that an in-person identification takes place only once, either through a government authority or an authorised agent, such as a bank or a post office, on the basis of valid ID papers and/or biometrical data. Once the digital identity is created, it is centrally stored and can be used to access services provided by various public and private sector entities. This information in some cases may not be updated after the initial issuance and the person may be held responsible for keeping the details of access to their digital identity confidential and bears responsibility for how it is used, e.g. use of another person's identify can be a criminal offence in and of itself. On one hand this system has advantages such as simplifying formalities and providing more security (it is almost impossible to falsify a digital ID). However, on the other hand it raises concerns relating to the higher risks of identity theft and misuse by straw men, particularly where insufficient safeguards are in place.

Question 2: Describe the legal requirements for the formation of legal arrangements (whether under domestic or foreign law).

12. In February 2017, the FATF decided that the scope of this project should be expanded to include trusts. Accordingly, this question sought information specific to the formation of trusts and other similar arrangements, whether those trusts or arrangements were created under domestic law or under foreign law. 60% of responses were from jurisdictions whose domestic law provides for the creation of trusts or other similar legal arrangements. A further 21% of responses were from jurisdictions which are not the source-of-law for legal arrangements, but which give some recognition to foreign legal arrangements and permit foreign legal arrangements to be created or administered by gatekeepers or others within their jurisdiction (e.g. under the Hague Trust Convention). Finally, 19% of responses indicate they do not recognise (e.g. in courts or in their tax system) any legal arrangements, whether based on domestic or foreign law.

13. Among the 52 jurisdictions that allow for creation of trusts or similar legal arrangements under domestic or foreign law, almost 54% did not provide any information as to whether registration is required. In the same group, 46% did not provide information regarding implementation of beneficial ownership obligations. Although the information received may be sufficient to recognize some general

patters, a sample this small may not be sufficient to draw any conclusions as to best practices.

14. Among those 24 jurisdictions that provided information on registration of legal arrangements, 29% require registration of trusts. Another 29% do not require registration. The largest percentage, 42% require registration of trusts only when certain criteria are met. Those criteria include generation of taxable income or making taxable distributions, real property included as a trust asset, or when the trust is a foreign trust. It should be noted that trusts might be registered as some other type of business entity if the jurisdiction does not allow for the creation of trusts under its legislation.

15. Regarding implementation of beneficial ownership requirements, 27 jurisdictions provided information. Of those, 52% impose beneficial ownership obligations by applicable statute. Another 26% rely on a combination of common law and statutory requirements, while 22% rely solely on common law trustee obligations for availability of beneficiary information.

Box 5. Jersey's requirements for professional trustees

An interesting example of imposing beneficial ownership obligations by statute was provided in information from Jersey. In Jersey, any person who, by way of business (regardless of underlying profession), acts as or fulfils or arranges for another to act as or fulfil the function of trustee of an express trust conducts a regulated activity and is subject to AML obligations. Similar to the formation of legal persons in Singapore, this system uses an activity-based approach which avoids reference to any particular profession and the unintended imposition of AML obligations on members of those professions whose day to day activities are not at risk for abuse for illicit purposes.

Box 6. New Zealand' regime for foreign trusts

Another example was provided by New Zealand. Since February 2017 it has been implementing a new regime whereby foreign trusts (defined as a trust to which a settlor has never been resident in New Zealand) with a New Zealand resident trustee must register with Inland Revenue Department. Trustees are required to update any changed details within 30 days of becoming aware of the change. Furthermore, the regime **requires annual returns to be filed, updating details, attaching financial statements** and providing details of new settlors and beneficiaries who receive a distribution from the trust. Where a New Zealand resident trustee fails to comply with their obligations they may cease to receive the tax exemption for foreign sourced income and may be subject to prosecution. The reason for this new regime was responding to the publications by international bodies and media reports which identified foreign trusts as being misused in criminal schemes. In order to address the risks, authorities took measures to enhance oversight of those entities.

16. Almost 20% of jurisdictions responding indicated that trusts of any kind are not allowed in the jurisdiction. Of those 12 jurisdictions, five are identified by either an OECD Global Forum Peer Review Report or other open source information as having a legal framework in place that specifically allows for legal arrangements. This raises several further questions, including the need to clarify what is meant when jurisdictions say that trusts are “not allowed” and exploring the potential reasons why tax authorities and AML/CFT authorities from the same jurisdiction might have a different understanding of the answer to that question.

17. As noted, very little information was provided regarding specific legal requirements to form trusts. This issue could be reviewed in more depth to consider whether any conclusions may be drawn as to best practices. In the information that was provided, some of the approaches to trust formation may potentially help to address common challenges in implementing effective measures to prevent the misuse of legal arrangements. These approaches could be reviewed in more depth, as a basis for more detailed description and analysis in the final Horizontal Study. These include in particular registration of trusts when certain criteria are met; Jersey’s approach to imposing beneficial ownership obligations on trustees; and the need to clarify what is meant when jurisdictions say that trusts are “not allowed” and issues related thereto.

Question 3: What are the legal requirements for maintenance of legal persons and arrangements and how is compliance with those requirements monitored?

18. Maintenance of legal persons and arrangements, i.e. requirements for annual returns, accounts, reporting changes in control or ownership, etc., is important to ensuring that basic and beneficial ownership information remains accurate and up-to-date. Information on monitoring compliance was originally sought as part of first questionnaire (question 2(e)). However, little information specific to this issue was received. In February 2017, the FATF expanded the scope of this project to seek information on the legal requirements for maintenance of legal persons and arrangements, as well as the systems in place for monitoring compliance.

19. Unfortunately, a gap in the information on these issues still exists. In 53% of responses received, no information was provided regarding requirements for maintenance of legal persons. For maintenance of legal arrangements, no information was provided in 46% of responses. Likewise, the majority of responses received (64%) did not provide any information on monitoring compliance with maintenance requirements. Nevertheless, a third round of information gathering would delay this study excessively, so we have sought to reach conclusions based on the incomplete responses received. This does mean the conclusions on this issue are less well-evidenced than on other questions. In the paragraphs that follow, statistics reflect only the responses that provided relevant information. Also, some jurisdictions may impose more than one of the following measures; the categories are not mutually exclusive.

Legal Persons

20. The most common requirement of maintenance of legal persons is filing of annual returns (other than tax returns), certification or accounts. This requirement

applies in 53% of responses received (17 of 32). Notification of changes is the next most common at 37.5% (12 of 32). In 1% of responses (3 of 32), jurisdictions indicated that there are no requirements for maintenance of legal persons other than those imposed by any applicable AML/CDD obligations.

Legal Arrangements

21. In the case of legal arrangements, other than those to which common law obligations apply, there seem to be either no requirements or minimal requirements for maintenance. Only 9 of 23 responding jurisdictions impose any maintenance requirement for legal arrangements. Three of those require notification of changes in beneficial ownership or control. It is more often the case (in 14 of 23 jurisdictions) that there is no maintenance requirement at all. Based on these figures, availability of accurate and up-to-date information on legal arrangements depends almost entirely on the gatekeepers and non-professional trustees (or equivalent), with little or no role for public-sector registries. To the extent that gatekeepers are involved in the formation of legal arrangements, this finding underscores the importance of effective supervision to ensure compliance with CDD obligations.

Ongoing Monitoring of Compliance with Maintenance Requirements

22. Twenty-five jurisdictions provided information regarding mechanisms to monitor compliance with requirements to maintain legal persons or arrangements. Among these jurisdictions, the most common mechanism for ongoing monitoring of compliance with those requirements is oversight by the registry. Some registries have automated systems to monitor deadlines for filing annual returns or certifications. In other cases, registries cross-check their information with data held by other authorities (e.g. with tax authorities) to ensure veracity. Finally, some registries conduct sample testing or targeted audits to verify the accuracy of information on selected legal persons (or arrangements). Such mechanisms are reported by 40% of jurisdictions responding to this question (10 of 25). Only slightly fewer, 9 of 25, report monitoring by the AML supervisor or prudential regulator as an element of compliance inspections. However, 24% of jurisdictions responding to this question report they do not monitor for compliance at all.

Box 7. Belgium's beneficial ownership registry

To address these and other issues, Belgium is implementing a beneficial ownership registry, which is expected to be operational by 2018. When this registry is in place, there will be two types of automated controls: one will cross check "obligated entities" against the entities that actually provide beneficial ownership information; the other will cross check the beneficial ownership database against other government databases (primarily within the Ministry of Finance) to verify data quality. These cross checking systems will be monitored by a dedicated data miner and compliance will be enforced by a special unit of the Treasury.

23. According to information gathered for this Study, ten of the responding jurisdictions (15.6%) either have, or will have by the end of 2018, a beneficial ownership registry system.

24. Although the information is incomplete, the responses provided indicate serious weaknesses in measures designed to ensure that basic and beneficial ownership information remains accurate and up-to-date.

Question 4: Describe how agencies responsible for AML/CFT supervision of gatekeepers (whether government agency or SRB) assess compliance with beneficial ownership obligations.

25. There is insufficient information - either from the questionnaire responses or from mutual evaluation reports - to set out a general picture of how authorities or SRBs are assessing compliance with these specific obligations. It is possible, nevertheless, to describe certain common elements that might not, however, be present in every case. In most cases, the supervision combines both desk-based reviews and on-site inspections. Desk-based reviews involve analysis of annual independent audit reports and other mandatory reports, identifying risky intermediaries (i.e. on the basis of the size of the firms, involvement in cross-border activities, or specific business sectors), automated scrutiny of registers to detect missing beneficial ownership information and identify the gatekeeper responsible for the filing. On-site inspections involve reviewing internal policies, controls and procedures, gatekeeper's own risk assessments, spot checking CDD documents and supporting evidence, sample testing of reporting obligations. Some national supervisors, as well as SRBs, mandate independent auditors to perform on-site inspections on their behalf.

26. Delegations could consider whether this is an issue on which more information is needed (e.g. in the course of any further projects following the Horizontal Study, or as part of a risk-based approach (RBA) guidance for gatekeeper professions).

Question 5: How are the businesses or professions engaged in the formation and/or maintenance of legal persons or legal arrangements regulated and supervised?

27. Pursuant to Recommendation (R.)28, the categories of DNFBPs who act as gatekeepers should be subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements. In other words, they should be subject to effective supervision. This question was meant to elicit information on the types of supervisory regimes in place for gatekeepers and the roles played by those supervisors. The most startling finding is that 17% of jurisdictions that responded do not impose upon their gatekeepers any AML obligations or AML supervision whatsoever, despite this being a requirement of R.22, R.23 and R.28. In some cases, such as the US and Canada, this is the result of resistance to regulation from the relevant sectors or professions (e.g. to prevent the enactment of laws or regulations which would impose such obligations, or to mount constitutional

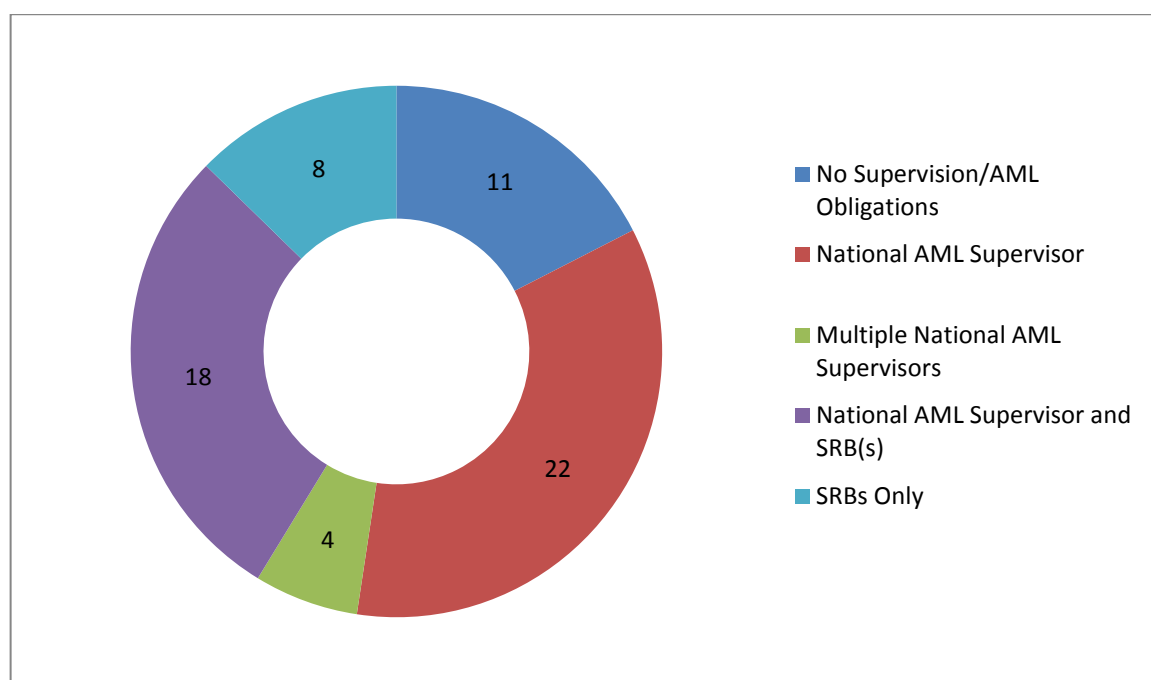
17% of jurisdictions that responded do not impose upon their gatekeepers any AML obligations or AML supervision whatsoever, despite this being a requirement of R.22, R.23 and R.28

challenges to such laws). In other cases, it may represent an “unfinished” aspect of the AML/CFT system which has not yet been implemented.

28. The information provided by members who do impose supervision describes a variety of arrangements for supervision of gatekeepers. Although there are variations in each category and unique elements to each jurisdiction’s system, the descriptions could be divided into the following four general categories:

- national AML supervisor
- multiple national AML supervisors
- a national supervisor for one or more gatekeeping sector and one or more Self-regulating bodies (SRBs) for others
- SRBs only for all gatekeepers.

Figure 1. Gatekeeper Supervision Models
Breakdown of responses by jurisdictions participating in the survey



National AML Supervisor

29. In 42% of the jurisdictions that responded (22 of 64), there is a single authority for supervision of AML/CFT obligations. These authorities are often a Central Bank or Monetary Authority, Financial intelligence unit (FIU), or Financial Services Commission. The majority of jurisdictions that report such a regime, (12 of 22) are considered by the IMF to be “offshore financial centres”.

30. Interestingly, 77% of jurisdictions using this supervisory model (17 of 22) reported cases of supervision or enforcement - the highest level of any other supervisory model. This fact, combined with the high number of offshore financial centres represented in this category is consistent with the findings of the Trust and

Company Service Provider Project conducted in connection with the book *The Puppet Masters*. This project entailed two audit studies involving the solicitation of offers for shell companies from a range of trusts and company service providers (TCSPs). The data were supplemented with in-depth interviews conducted with TCSPs. This approach was designed to test regulatory compliance in various jurisdictions. The project revealed that 94% of responses provided by gatekeepers in international financial centres, or tax havens, were compliant with the relevant AML/CFT framework, including collection of CDD information and refusal of suspicious business. Only 25.5% of gatekeepers in OECD countries provided compliant responses.

Multiple National Supervisors

31. In these jurisdictions, supervision of gatekeeper sectors is divided among government agencies such as FIUs, Central Banks, and Financial Services Authorities. The relatively small group (at 6% of respondents) makes it hard to conclude whether the fact that only two of the four jurisdictions report any enforcement action is a substantial concern. Nevertheless, the question of domestic co-operation where there are multiple government agencies tasked with AML supervision and presents an issue could be reviewed in more depth.

National supervisor and one or more SRBs

32. In 29% of participating jurisdictions (18 of 64), AML supervision of gatekeeper professions is divided between a government agency one or more self-regulating bodies (SRBs). In this supervisory model, 61% of jurisdictions (11 of 18) do not report any supervisory or enforcement action.

SRBs only for all gatekeepers

33. In this supervisory model, there is no national authority for AML oversight of gatekeepers – all the gatekeeper sectors are supervised by SRBs. Jurisdictions reporting this supervisory model comprise 13% of the sample. Five of the eight jurisdictions in this category (63%) do not report any supervision or enforcement action.

Supervision by SRBs

34. In the 26 jurisdictions where SRBs are tasked with supervision of AML/CFT obligations, lawyers are supervised only by SRBs in every jurisdiction but one. In 16 of those 26 jurisdictions (64%), no enforcement actions were reported. Seven jurisdictions reported active supervision of lawyers by an SRB.

35. For those jurisdictions, where gatekeepers are supervised by SRBs, no discernible patterns could be identified with regard to how this supervision is performed, due to a wide variety of approaches. It is even more difficult to draw conclusions which approach turns out to be more effective without a proper assessment. It is possible, however, to provide some general observations:

- There is a lack of consistent approach to supervision when different types of professional intermediaries are supervised by different bodies even if these intermediaries are performing essentially similar functions (e.g. company

formation). In other words, supervisory approach is often based on what type of profession intermediaries belong to, rather on what type of operations they perform in practice. Although many jurisdictions established various forums which facilitate co-operation and risk awareness among SRBs and competent authorities (especially FIUs), this does not seem to lead to coherent approach in supervision.

- Most of the SRBs especially those that cover lawyers and notaries are independent and do not seem to be subject to supervision/monitoring by a competent authority (as noted in the definition of “Supervisors” in the FATF Glossary), however in some cases competent authorities have a role, e.g. in appointing employees. There are two jurisdictions where SRBs are under direct supervision of competent authorities, and one jurisdiction where SRB is legally a governmental body. Another jurisdiction is in the process of creating of an umbrella organisation to oversee and facilitate activities of SRBs.

Box 8. Switzerland’s national oversight of SRBs

An example where SRBs are supervised by a single national AML/CFT supervisor was provided by Switzerland. The legislator has mandated responsibility to the SRBs for AML/CFT supervision and FINMA (national supervisor) is tasked with supervising implementation. SRBs are structures which must be recognised by FINMA. This requires that they issue regulations (approved by FINMA) specifying the due diligence obligations with which their affiliates must comply, that they oversee compliance with these rules and that they ensure that the persons and bodies they instruct to carry out controls are independent and professionally qualified. If an SRB fails to meet with these conditions, FINMA can issue a warning and then withdraw its recognition.

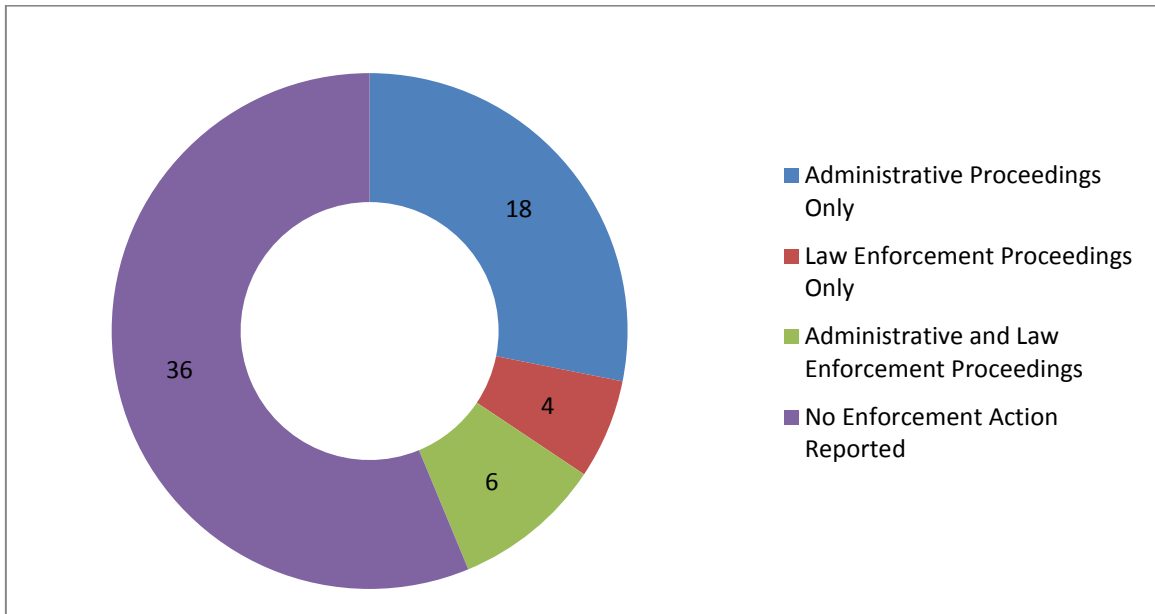
36. Resources available to SRBs for inspections are limited. There are different models to deal with that: eight SRBs indicated that they hire independent experts with appropriate professional background who work solely for the SRB, two SRB rely on the staff of the peer members to supervise each other, three SRBs outsource their inspection functions to established auditing companies, and there might be combinations of the above;

- Seven SRBs take proactive approach with regard to identifying breaches of compliance (i.e. during the on-site, and not after a complaint or a law enforcement investigation), however, that seems to be related to overall obligations, rather than those related to AML/CFT, or BO in particular.
- Application of RBA with regard to professional intermediaries is not widespread, and even in that case it is not always based on ML/TF risk factors. One jurisdiction indicated that all lawyers and notaries undergo an inspection on an annual basis, and auditors at least on a 6-years basis.

- Supervisory actions are very rare (as highlighted below), although most SRBs have the appropriate tools at their disposal (warnings, monetary penalties, disqualifications).

Question 6: Cases of supervisory and enforcement actions.

Figure 2. Enforcement Models
Breakdown of responses by jurisdictions participating in the survey



37. This question was meant to elicit information regarding the approach to oversight taken in each jurisdiction – whether beneficial ownership obligations are enforced by administrative supervisory action, or by law enforcement authorities. It was hoped that, upon review of this information, some conclusions might be drawn as to best practices, but the information provided is not sufficient for that purpose. Nonetheless, some emerging issues may be considered for further targeted information gathering.

38. No supervisory or enforcement actions were reported in 56% of responding jurisdictions. In three jurisdictions, this is attributed to newly enacted legislation that had not yet been implemented. Some jurisdictions specified that AML enforcement action had been taken, but none specific to beneficial ownership obligations. As noted previously, 17% of respondents do not impose upon their gatekeepers any AML obligations or AML supervision. As such, there could be no enforcement action to report. Other jurisdictions may have found it difficult to provide meaningful information in the questionnaire format.

39. Among the responses that did provide information on enforcement mechanisms, the most commonly reported is administrative enforcement taken by AML supervisors. Eighteen of the 28 jurisdictions reporting enforcement action (64%) rely on supervisors to enforce beneficial ownership requirements. In many cases, information provided includes sanitized case studies.

Box 9. BVI's list of sanctions imposed

In the case of the British Virgin Islands (BVI), a table was provided which listing examples of AML/CFT breaches related to beneficial ownership and the sanctions imposed – administrative penalties ranging from USD 440 000 to USD 5 000. The BVI also included a link to the supervisor's website, where a comprehensive listing of enforcement actions and sanctions applied could be accessed by any member of the public.

Box 10. Jersey's FSC and Registry

Another interesting sample of enforcement actions was provided by Jersey, where both the AML supervisor and the Registry perform complementary functions. The Jersey Financial Services Commission (JFSC) reports using enforcement tools such as formal remediation plans with regular monitoring and reporting by the TCSP; issuing directions to safeguard assets, prevent the take on of new business or transfer of existing business, appointing independent co-signatories to review and approve certain business activities and transactions. Jersey also reports using its supervisory powers to issue public statements and ban individuals from working in the financial services industry. The Companies Registry will not incorporate or register an entity if it does not have sufficient information. Applications are placed on hold until such time as information is provided. Failure to provide information is noted and this information is shared by the Companies Registry with the supervision and enforcement units of the JFSC.

40. In ten of the 28 jurisdictions that reported enforcement action, law enforcement proceedings may be used to enforce beneficial ownership requirements. In four of the ten jurisdictions, law enforcement proceedings are the only available remedy; in the other six jurisdictions, authorities may take administrative or law enforcement proceedings.

Box 11. Liechtenstein and Croatia

In Liechtenstein and Croatia, the AML supervisor initiates legal proceedings when weaknesses are identified during compliance inspections. In Liechtenstein, the AML supervisor identified weaknesses in establishing and corroborating the source of wealth of the beneficial owner and the source of funds held by the legal person or arrangement in question and brought the matter to the attention of the courts. In some instances, monetary fines were imposed by the court upon the responsible senior management member. In Croatia, the AML supervisor filed misdemeanour proceedings for violation of beneficial ownership, CDD, and risk assessment obligations.

Box 12. Latvia

Latvia reports that, in the period from 2013 to 2015, five criminal cases were initiated on grounds of non-provision of information and provision of false information regarding ownership of resources and the true beneficiary. Of these five cases, two have been submitted for prosecution and one case is under review by the court. No information was provided regarding the outcome of these cases.

Box 13. Spain and the US

Information provided by Spain and the US describes cases where police followed illicit financial flows to gatekeepers who were complicit in setting up networks of shell companies to launder proceeds of drug trafficking, political corruption, fraud, and tax evasion.

41. Although the sample is quite small, there seems to be a pattern in the way law enforcement proceedings are taken. Some jurisdictions have AML supervisors who initiate court proceedings to penalize weaknesses found during compliance inspections. Other jurisdictions, like Spain and the US, do not use criminal proceedings to enforce preventative measures like beneficial ownership obligations. Rather, legal proceedings are limited to cases of complicit actors actively engaged in money laundering.

42. Some of the approaches to enforcement of beneficial ownership obligations noted above are interesting and may potentially help to address common challenges in implementing effective measures to prevent the misuse of legal persons. These could be reviewed in more depth, as a basis for more detailed description and analysis in the final Horizontal Study. These include in particular the exercise of administrative supervisory powers and its impact on compliance; Jersey's approach of using both the AML Supervisor and Companies Registry to enforce beneficial ownership obligations; and the role of law enforcement in enforcing preventative measures. The lack of reported information on enforcement gives rise to questions that should also be considered for further information gathering.

ANNEX C. CASE SUMMARIES

Case Study 1 - Argentina	
<p>A complex corporate structure, with Company G 95% owned by Mr. A and 5% by Mr. B. Company G purchased a power generator from Company K, owned by Company R in the Cayman Islands. Company R was linked to Panamanian Foundation P, which had Mr. A and his spouse as beneficiaries. Company G leased the generator to Company E, receiving amounts cleared by Company L. The funds were drawn against Company K's bank account, and Company G made payments to K to settle a debt. The funds were credited to the accounts of Companies S, T and R. The simulation of commercial operations introduced funds of dubious origin to the financial system, hiding the true beneficiary.</p>	
Indicators	<ul style="list-style-type: none"> • Declared income which is inconsistent with their assets, transactions or lifestyle • Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre • Legal person or arrangement regularly sends money to low-tax jurisdictions or international trade or finance centres • Legal person or arrangement conducts transactions with international companies without sufficient corporate or trade justification • Financial activities and transactions inconsistent with the corporate profile • False invoices created for services not carried out • Falsified paper trail • Family members with no role or involvement in the running of the business are listed as beneficial owners of legal persons or arrangements • Complex corporate structures that do not appear to legitimately require that level of complexity or which do not make commercial sense • Finance is provided by a lender, including either a natural or a legal person, other than a known credit institution, with no logical explanation or commercial justification • Loans are received from private third parties without any supporting loan agreements, collateral or regular interest repayments • Transaction is occurring between two or more parties that are connected without an apparent business or trade rationale • Transaction involves complicated transaction routings without sufficient explanation or trade records • Funds are sent to, or received from, a foreign country when there is no apparent connection between the country and the client • Funds involved in the transaction are sent to, or received from, a low-tax jurisdiction or international trade or finance centre

Case Study 2 - Australia	
<p>An Australian drug syndicate used multiple money laundering methods to launder more than AUD1 million worth of proceeds of crime. Trust accounts, a “front” company, high-value goods and real estate were used to launder the profits from cannabis sales. The syndicate also misused the services of two “professional facilitators” (an accountant and solicitor) to facilitate its criminal activity. The syndicate made significant profits by purchasing bulk amounts of cannabis in one state and then selling the drugs in another state. As a cover for its illicit activities, the syndicate established what appeared to be a transport company. The syndicate purchased a truck and rented a warehouse in the name of the company and used these to traffic the cannabis interstate.</p>	
Indicators	<ul style="list-style-type: none"> • No real business activities undertaken • Exclusively facilitates transit transactions and does not appear to generate wealth or income • Transaction is executed from a business account and involves a large sum of cash, either as a deposit or a withdrawal, which is anomalous, or inconsistent with the company’s profile • Transaction involves a professional intermediary without due cause or apparent justification • Transaction involves the use of multiple large cash payments to pay down a loan or mortgage

Case Study 3 - Australia	
<p>Managers at a university and directors of construction companies were complicit in a fraudulent invoice scheme. The managers approved inflated invoices for maintenance work to be carried out by the construction companies, as well as invoices for work that was never undertaken.</p> <p>The fraud profits were used to purchase racehorses and property. The managers at the university were repaid with kickbacks or direct shares in racehorses. Accounting firms, which were undertaking international transfers on behalf of the suspects, sent money to many countries, including New Zealand, Canada, Hong Kong and the US. A large proportion of the funds were sent to companies linked to the horse racing industry.</p> <p>The accounting firms also received international transfers from various overseas entities that were similar in value to the amounts the firms had sent overseas initially. The majority of these transfers originated from Hong Kong. Authorities suspected that the accounting firms were laundering the funds on behalf of the suspects as part of a professional money laundering syndicate.</p>	
Indicators	<ul style="list-style-type: none"> • Financial activities and transactions inconsistent with their customer profile • Declared income which is inconsistent with their assets, transactions or lifestyle

	<ul style="list-style-type: none"> • Transaction appears cyclical • Transaction involves a professional intermediary without due cause or apparent justification
--	--

Case Study 4 - Australia

Suspect declared minimal income to the tax office while living a luxurious lifestyle, and was identified as having disguised income derived from securities trading. The criminal investigation revealed that the suspect created several international companies which, on paper, were owned by a stichting (a foundation in which the identity of the beneficial owner is not yet publicly available) in the Netherlands. The suspect sold securities below market value to the international companies to reduce Australian tax liability. The suspect later arranged for the shares to be sold via his international companies at market value. The proceeds of the sales were returned to the suspect in Australia disguised as loans from international companies. Over two years, the suspect arranged 15 international funds transfer to send funds from international companies under his control based in Switzerland to his Australia-based company.

Indicators	<ul style="list-style-type: none"> • Financial activities and transactions inconsistent with their customer profile • Declared income which is inconsistent with their assets, transactions or lifestyle • Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre • No real business activities undertaken • Exclusively facilitates transit transactions and does not appear to generate wealth or income • Loans are received from private third parties without any supporting loan agreements, collateral or regular interest repayments • Funds are unusual in the context of the client or customer’s profile • Funds involved in the transaction are sent to, or received from, a low-tax jurisdiction or international trade or finance centre
------------	--

Case Study 5 - Australia

The “Round Robin” scheme aimed to make funds movements appear as payments to other parties while, in reality, the funds ultimately returned to the original beneficiary. The suspects transferred funds from their companies’ accounts to the bank accounts of companies in New Zealand. The New Zealand companies and bank accounts were controlled by a Vanuatu-based accountant, who was a signatory to the bank accounts. The payments were falsely described in the companies’ records as “management and consultancy fees,” with false invoices that matched amounts paid to the New Zealand bank accounts. No evidence was available to show that any consulting work had been carried out. The false expense payments were claimed as deductible expenses in the tax returns of

companies X, Y and Z, thereby fraudulently reducing the companies' taxable income and taxes owed. The accountant then transferred the funds under the guise of international "loans" through a series of round robin international transactions, through accounts held in the name of companies owned and operated by the accountant. The accountant transferred the funds into the personal bank accounts of the suspects in Australia. The funds were transferred via an overseas company controlled by the accountant, separate to the companies in New Zealand that received the funds originally. In order to disguise the funds being transferred back into Australia as loans, false documents were created purporting to be international loan agreements with a foreign lender, which are not assessed as income and have no tax liability.

Indicators

- Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre
- False invoices created for services not carried out
- No real business activities undertaken
- Exclusively facilitates transit transactions and does not appear to generate wealth or income
- Legal Person pays no taxes, superannuation, retirement fund contributions or social benefits
- Loans are received from private third parties without any supporting loan agreements, collateral or regular interest repayments
- Transaction appears cyclical
- Transaction involves a professional intermediary without due cause or apparent justification
- Transaction involves complicated transaction routings without sufficient explanation or trade records
- Funds are sent to, or received from, a foreign country when there is no apparent connection between the country and the client
- Funds involved in the transaction are sent to, or received from, a low-tax jurisdiction or international trade or finance centre

Case Study 6 - Australia

Investigating authorities identified that suspect A operated an import business in Australia and was a participant in a tax evasion scheme operated by an accountant. Suspect A and his wife were directors and shareholders of an Australian company (company 1). Suspect A was also a director and shareholder of another Australian company (company 2). An associate of suspect A was the co-director of company 2. Authorities identified that the accountant controlled company 3, which was registered in Hong Kong and operated a bank account in Australia.

This company was used to issue false invoices to companies 1 and 2. Over a five-and-a-half-year period company 3 issued false invoices to companies 1 and 2 for supposed "brokering services." Suspect A paid the false invoices, which totalled more than AUD2 million, by directing companies 1 and 2 to pay company 3. The

funds paid to company 3, less the accountant's 10% fee, were returned to suspect A and individuals associated with him.

Indicators	<ul style="list-style-type: none"> • Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre • False invoices created for services not carried out • Falsified paper trail • Family members with no role or involvement in the running of the business are listed as beneficial owners of legal persons or arrangements • Simple banking relationships are established using professional intermediaries • No real business activities undertaken • Exclusively facilitates transit transactions and does not appear to generate wealth or income • Client is both the ordering and beneficiary customer for multiple international funds transfers • Loans are received from private third parties without any supporting loan agreements, collateral or regular interest repayments • Transaction appears cyclical • Transaction involves the two-way transfer of funds between a client and a professional intermediary for similar sums of money • Transaction involves two legal persons with similar or identical directors, shareholders, or beneficial owners • Transaction involves a professional intermediary without due cause or apparent justification • Transaction involves complicated transaction routings without sufficient explanation or trade records • Funds are sent to, or received from, a foreign country when there is no apparent connection between the country and the client • Funds involved in the transaction are sent to, or received from, a low-tax jurisdiction or international trade or finance centre
------------	---

Case Study 7 – Australia

Individuals A and B were family members who owned and controlled a group of Australia-based companies that undertook motor vehicle repairs and sold automotive products. Individuals A and B received advice from an accountant about the purported benefits of international superannuation funds, and as a result Individual A established a superannuation fund in Samoa with a Samoa-based company acting as fund trustee. Company 1, controlled by Individuals A and B, contributed AUD 200 000 to the fund, which was then returned back to Company 1 disguised as a loan. The superannuation contribution was claimed as a tax deduction. Individuals A and B also entered into a secondary loan agreement on behalf of company 1 with the Samoa-based private bank. This second loan arrangement remained in place for more than 10 years and was later transferred

to other companies in the group. Companies controlled by Individuals A and B made “interest payments” by way of international funds transfer, which were then returned back to the companies as further loans.

To further complicate the loan arrangement, another Australian organisation was introduced to the transaction activity. This organisation was unrelated to the main group of companies and was described as a charitable organisation. The organisation facilitated the transfer of funds between the bank’s New Zealand subsidiary and the Australian group of companies.

Indicators

- Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre
- Legal person or arrangement regularly sends money to low-tax jurisdictions or international trade or finance centres
- Legal person or arrangement conducts transactions with international companies without sufficient corporate or trade justification
- Focused on aggressive tax minimisation strategies
- Family members with no role or involvement in the running of the business are listed as beneficial owners of legal persons or arrangements
- Client is both the ordering and beneficiary customer for multiple international funds transfers
- Finance is provided by a lender, including either a natural or a legal person, other than a known credit institution, with no logical explanation or commercial justification
- Loans are received from private third parties without any supporting loan agreements, collateral or regular interest repayments
- Transaction is occurring between two or more parties that are connected without an apparent business or trade rationale
- Transaction appears cyclical
- Transaction involves complicated transaction routings without sufficient explanation or trade records
- Funds are sent to, or received from, a foreign country when there is no apparent connection between the country and the client
- Funds involved in the transaction are sent to, or received from, a low-tax jurisdiction or international trade or finance centre

Case Study 8 – Australia

Illegal international arrangements are an established way of evading tax, laundering funds and concealing beneficial ownership. Project Wickenby identified the use of false invoices and loans in illegal international arrangements. The scheme involved an Australian company (company A) which enters into an agreement with a tax scheme promoter based in a tax secrecy jurisdiction (country 1). The promoter benefits from the confidentiality and privacy offered in the tax secrecy jurisdiction. The tax scheme promoter owns and/or controls two international companies (company B and C). Control may involve the use of a trust

or the use of third parties; for example, a relative or associate may act as the director of the international companies. Company B provides consultancy and/or management services and is incorporated in country 2. Company C provides a financial service (as a lender of money, for example) and is incorporated in country. Companies B and C hold bank accounts in country 4. The promoter controls and operates these accounts.

Indicators

- Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre
- Legal person or arrangement regularly sends money to low-tax jurisdictions or international trade or finance centres
- Legal person or arrangement conducts transactions with international companies without sufficient corporate or trade justification
- False invoices created for services not carried out
- Falsified paper trail
- No real business activities undertaken
- Exclusively facilitates transit transactions and does not appear to generate wealth or income
- Finance is provided by a lender, including either a natural or a legal person, other than a known credit institution, with no logical explanation or commercial justification
- Loans are received from private third parties without any supporting loan agreements, collateral or regular interest repayments
- Transaction appears cyclical
- Transaction involves a professional intermediary without due cause or apparent justification
- Transaction involves complicated transaction routings without sufficient explanation or trade records
- Funds are sent to, or received from, a foreign country when there is no apparent connection between the country and the client
- Funds involved in the transaction are sent to, or received from, a low-tax jurisdiction or international trade or finance centre

Case Study 9 – Belgium

International transfer from the account of a foreign foundation to an account in Belgium of one of the ultimate beneficial owners of the foundation, followed by attempt to repatriate a significant amount. Limited tax adjustment declaration and remaining uncertainty about the origin of the assets gave rise to a suspicion of fiscal fraud, evasion of inheritance tax and attempted money laundering.

Indicators

- Client is reluctant or unable to explain their source of wealth/funds
- Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre
- Focused on aggressive tax minimisation strategies
- Correct documents not filed with the tax authority

	<ul style="list-style-type: none"> • Falsified paper trail • Funds involved in the transaction are sent to, or received from, a low-tax jurisdiction or international trade or finance centre
--	---

Case Study 10 - Belgium

Natural persons repatriated to Belgium funds originating from accounts in a foreign jurisdiction in the name of two Stiftung and an AG corporation with address in that jurisdiction and a Ltd. corporation with its address in another jurisdiction, as well as in the name of trustees of a trust in that jurisdiction. The repatriated funds were used for various payments and purchases. Inadequate justification of the source of funds led to a suspicion of serious fiscal fraud.

Indicators	<ul style="list-style-type: none"> • Client is reluctant or unable to explain their source of wealth/funds • Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre • Focused on aggressive tax minimisation strategies • Correct documents not filed with the tax authority • Funds involved in the transaction are sent to, or received from, a low-tax jurisdiction or international trade or finance centre
------------	--

Case Study 11 - Bolivia

Multiple money orders originated from the same geographic area in Spain, sent by individuals and corporations to straw men nominees (often related) in the same geographic area in Bolivia. The purpose of the transfers was declared as the construction and purchase of properties through a local company. Funds were also sent to USD accounts in two financial institutions held by a money exchange house. The MSB's bank accounts also received international money orders from two companies with the same UK address. The straw men nominees and the MSB's bank accounts transferred money to a separate group of individuals, which included a partner in the MSB business. These individuals deposited the funds in case into local currency bank accounts before sending the funds on as electronic transfers to individuals residing in the Brazil-Bolivia border area.

Indicators	<ul style="list-style-type: none"> • Registered at an address that is also listed against numerous other companies or legal arrangements • Legal person or arrangement conducts a large number of transactions with a small number of recipients • Bank balance of close to zero, despite frequent incoming and outgoing transactions • Family members with no role or involvement in the running of the business are listed as beneficial owners of legal persons or arrangements • No real business activities undertaken • Legal Person pays no taxes, superannuation, retirement fund contributions or
------------	--

	<p>social benefits</p> <ul style="list-style-type: none"> • The connections between the parties are questionable, or generate doubts that cannot be sufficiently explained by the client • Transaction is occurring between two or more parties that are connected without an apparent business or trade rationale • Transaction is executed from a business account and involves a large sum of cash, either as a deposit or withdrawal, which is anomalous, or inconsistent with the company’s profile • Funds are unusual in the context of the client or customer’s profile • Funds are sent to, or received from, a foreign country when there is no apparent connection between the country and the client
--	---

Case Study 12 - Canada

A publicly-listed company’s common stock was part of a fraud affecting the market price of their security that involved numerous stock promoters in Canada and elsewhere who manipulated the stock price by making misleading representations and/or omissions. It is alleged that the proceeds, of up to USD 20 million, were then laundered through offshore banks. The US SEC provided information that established the flow of shares from Serbian nominees, through intermediary international business companies. These shares were effectively in bearer form having been signed over by the seed shareholders at the time of issue. An opinion letter was written by a US based securities lawyer that allowed these shares to trade and a subsequent reverse merger was completed immediately after the free-trading shares were anonymised and immediately before a prolific series of paid promotions were carried out. Canadian investigators were unable to prove and confirm identities behind real owners of the international business companies, which held control of the free trading shares. Additional investigative challenges included the inability to access information from offshore jurisdictions with regards to pertinent documentation used to obscure beneficial ownership of intermediary international business companies. Canadian investigators encountered refusal from Serbian nominees to co-operate and provide witness statements on several occasions.

Indicators	<ul style="list-style-type: none"> • Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre • Nominee owners and directors • Transaction involves the transfer of bearer shares in an off-market sale
-------------------	--

Case Study 13 – Cayman Islands

Mr. A established a Cayman Islands revocable trust, with himself as settlor and a local TCSP acting as trustee. Mr. A also arranged for the incorporation of a Cayman Islands company known as ‘Company B’, with the local TCSP also acting as the

registered office.

The TCSP became aware of allegations relating to Mr. A and his involvement in an oil and gas contract scam which also involved members of a foreign government. Over a two-year period, the TCSP reported that the trust and underlying company had received numerous transfers of funds and property from what was now deemed to be questionable sources, which in turn heightened its suspicions and prompted an STR. An analysis of the trust accounts revealed outgoing funds to individuals named in numerous media reports who allegedly took part in the kickback scandal. In response a request, the foreign jurisdiction's confirmed that Mr. A was being investigated for money laundering and corruption of government officials.

Indicators	<ul style="list-style-type: none"> • Politically exposed persons, or have familial or professional associations with a person who is politically exposed • Under investigation or have known connections with criminals • Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre • Complex corporate structures that do not appear to legitimately require that level of complexity or which do not make commercial sense • Funds are unusual in the context of the client or customer's profile
------------	---

Case Study 14 – Cayman Islands

The managing director of an overseas company issued a prospectus which contained misleading and false information within the company's annual report. He overstated the company's group revenue by 275%. This information was provided to that country's securities commission as part of the company's proposal for listing on their stock exchange. The managing director established a revocable trust and underlying company in the Cayman Islands. He then opened an overseas bank account in the name of the Cayman Islands company for which he held the Power of Attorney, allowing him to trade in the account. This structure was devised to hide the managing director's trading in the overseas company and to hide assets derived from his illegal activities. The Cayman Islands company held over USD 1 million in this bank account. The Financial Reporting Authority (FRA) made an onward disclosure to the FIU of the foreign national's home country. The foreign national has been charged in his home country with three counts of providing misleading and false information.

Indicators	<ul style="list-style-type: none"> • Falsified paper trail • Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre • Bank accounts in multiple international jurisdictions without good reason • Repeat transaction, and the executing customer is a signatory to the account, but is not listed as having a controlling interest in the company or assets
------------	---

Case Study 15 – China

The suspect used the identity of his close relatives and company employees to establish eight shell companies while maintaining actual control over these companies. He fabricated false documents and sales contracts to fraudulently obtain financing from six banks. Additionally, the suspect defrauded 3 state-owned enterprises through financing and false trading by utilizing illegal financial institutions such as underground banks. The suspect transferred the money into his private accounts for personal use and the repayment of personal debt.

Indicators

- False invoices created for services not carried out
- Falsified paper trail
- Family members with no role or involvement in running the business are listed as beneficial owners of legal persons or arrangements
- Nominee owners and directors including informal nominees, such as children, spouses, relatives or associates who do not appear to be involved in the running of the corporate enterprise
- The connections between the parties are questionable, or generate doubts that cannot be sufficiently explained by the client
- Finance is provided by a lender, including either a natural or a legal person, other than a known credit institution, with no logical explanation or commercial justification
- Transaction is executed from a business account but appears to fund personal purchases, including the purchase of assets or recreational activities that are inconsistent with the company's profile
- Transaction involves two legal persons with similar or identical directors, shareholders, or beneficial owners

Case Study 16 – China

Suspect A used his influence as the manager of an enterprise to help Company X to win a tender bid and receive dividends in proportion to capital stock held. Company X was owned by Suspect A, B, and C. After Company X won the tender bid, Suspect B took over control of the company. Suspect A asked Suspect B to open an offshore account for him in Hong Kong, and transfer funds under the guise of a housing purchase. The offshore companies and accounts were opened in the name of Suspect B's wife and sisters, respectively. After depositing a portion of the funds, the accounts were transferred to Suspect A's control. Suspect A then fled and Suspect B asked the vice president of Company X to transfer funds to the Hong Kong accounts held in his family members' names. The money was then transferred back to China through underground banks and distributed to five new domestic bank accounts in the name of an employee of Company X.

Indicators

- Director or controlling shareholder(s) cannot be located or contacted
- Legal person or arrangement regularly sends money to low-tax jurisdictions

	<p>or international trade or finance centres or international trade or finance centres</p> <ul style="list-style-type: none"> • Multiple bank accounts without good reason • Family members with no role or involvement in running the business are listed as beneficial owners of legal persons or arrangements • Nominee owners and directors including informal nominees, such as children, spouses, relatives or associates who do not appear to be involved in the running of the corporate enterprise • Transaction is occurring between two or more parties that are connected without an apparent business or trade rationale • Transaction is a business transaction that involves family members of one or more of the parties without a legitimate business rationale • Transaction appears cyclical • Transaction involves two legal persons with similar or identical directors, shareholders, or beneficial owners • Funds involved in the transaction are sent to, or received from, a low-tax jurisdiction or international trade or finance centre or international trade or finance centre
--	--

Case Study 17 – China

A low-ranking official A, who worked for a local government department, took advantage of his position to obtain privileges and contracts for CC Company, and received bribery payments from the manager of CC Company in return. A also arranged for his cousin to work for CC Company and for his sister and wife to keep the company books. A positioned himself as a dormant shareholder, claiming money from the principal as profit sharing. A also installed his daughter as a shareholder of CC Company without equity.

Indicators	<ul style="list-style-type: none"> • Director or controlling shareholder(s) does not appear to have an activity role in the company • Family members with no role or involvement in running the business are listed as beneficial owners of legal persons or arrangements • The connections between the parties are questionable, or generate doubts that cannot be sufficiently explained by the client • Transaction is a business transaction that involves family members of one or more of the parties without a legitimate business rationale • Transaction involves the transfer of shares in an off-market sale
------------	--

Case Study 18 – Croatia

Croatian Company A received funds from Company B (incorporated in a financial centre), which were used to invest in real estate on Croatian coast. The founder of

Company A was another Croatian company, the founders of which were citizens of Country D. The funds of foreign Citizen K (citizen of Country D) were suspected to originate from bribery in Country D, and were sent to the account of Company B, which then transferred funds as loan to the account of Company A. The ownership structure of Company A involved another Croatian company and 4 other citizens of Country D, but based on intelligence there is reason to suspect that beneficial owner of Company A is Citizen K.

Indicators	<ul style="list-style-type: none"> • Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre • Complex corporate structures that do not appear to legitimately require that level of complexity or which do not make commercial sense • Finance is provided by a lender, including either a natural or a legal person, other than a known credit institution, with no logical explanation or commercial justification
------------	---

Case Study 19 – Ecuador

Public officials along with relatives and individuals connected to law firms created a series of companies in several countries for the purpose of receiving bribe payments. The bribe payments were effected through individuals with links to companies that provide goods and services to a public institution in the oil sector. To send the payments, and to hide the real beneficiaries of the transfers, the suppliers created companies in Panama, Hong Kong, British Virgin Islands, Bahamas, Uruguay, and the US.

Indicators	<ul style="list-style-type: none"> • Client is reluctant or unable to explain their source of wealth/funds • Politically exposed persons, or have familial or professional associations with a person who is politically exposed • Long period of inactivity following incorporation, followed by a sudden and unexplained increase in financial activities • Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre • Legal person or arrangement regularly sends money to low-tax jurisdictions or international trade or finance centres • Legal person or arrangement conducts transactions with international companies without sufficient corporate or trade justification • Relationships with foreign professional intermediaries in the absence of genuine business transactions in the professional's country of operation • There is a discrepancy between the supposed wealth of the settlor and the object of the settlement. • False invoices created for services not carried out • Employees of professional intermediary firms acting as nominee directors or shareholders • Complex corporate structures that do not appear to legitimately require that level of complexity or which do not make commercial sense
------------	---

	<ul style="list-style-type: none"> • Nominee owners and directors • Funds involved in the transaction are sent to, or received from, a low-tax jurisdiction or international trade or finance centre
--	--

Case Study 20 - Egypt

The scheme involved making investments in different fields through legal persons without clear economic purpose to launder funds obtained from the appropriation of public funds. It lasted 18 years and laundered EGP 300 million. It involved an Egyptian shareholding company and another company located abroad with unclear legal structure. The legal entity was managed by the primary suspect's sons, and the directors, shareholders and board of directors were nominees.

Indicators	<ul style="list-style-type: none"> • There is a discrepancy between the supposed wealth of the settlor and the object of the settlement. • Family members with no role or involvement in the running of the business are listed as beneficial owners of legal persons or arrangements • Complex corporate structures that do not appear to legitimately require that level of complexity or which do not make commercial sense • Nominee owners and directors
-------------------	---

Case Study 21 - Egypt

The scheme involved real estate investment, the management of securities and portfolios investment and real estate marketing. Over the course of 5 years, the suspects received EGP 50 million for the purposes of real estate investment but stole the funds. Money was transferred and cash deposits made across eight legal persons with nominee shareholders and boards of directors, and one sole proprietorship.

Indicators	<ul style="list-style-type: none"> • There is a discrepancy between the supposed wealth of the settlor and the object of the settlement. • Nominee owners and directors • Transaction is executed from a business account and involves a large sum of cash, either as a deposit or withdrawal, which is anomalous, or inconsistent with the company's profile
-------------------	--

Case Study 22 - Egypt

14 companies and 8 Egyptian persons working in the tourism sector laundered EGP 42 million over the course of 3 years. The suspect used his official position to embezzle funds and invested the proceeds to top-up the capital of his companies before transferring the money abroad. The suspect's family members acted as

front people.	
Indicators	<ul style="list-style-type: none"> • Client is reluctant or unable to explain their source of wealth/funds • Politically exposed persons, or have familial or professional associations with a person who is politically exposed • Family members with no role or involvement in the running of the business are listed as beneficial owners of legal persons or arrangements • Nominee owners and directors including informal nominees, such as children, spouses, relatives or associates who do not appear to be involved in the running of the corporate enterprise

Case Study 23 - Egypt

The scheme involved the reclamation of agriculture lands, trading, marketing and acting as agents for other brands, and trading in medical tools. It operated over the course of 15 years and involved four legal persons and 18 natural persons. EGP 17 million of funds originating from a foreign predicate offense were laundered by co-mingling in Egyptian joint-stock companies with the suspect's relatives used as front people. The shareholders and board members were nominees, and a lawyer was involved in the scheme.

Indicators	<ul style="list-style-type: none"> • Family members with no role or involvement in the running of the business are listed as beneficial owners of legal persons or arrangements • Nominee owners and directors • funds are sent to, or received from, a foreign country when there is no apparent connection between the country and the client.
------------	---

Case Study 24 - Egypt

A financial consultancy firm misappropriated investment funds. The funds were transferred using three companies to bank and securities accounts in overseas jurisdictions. Over the course of four years, the suspects laundered EGP 21 million, USD 4 million & EUR 68 thousand. The funds were collected by the firm for a declared purpose of investing them, yet they were actually misappropriated.

Indicators	<ul style="list-style-type: none"> • There is a discrepancy between the supposed wealth of the settlor and the object of the settlement. • funds are sent to, or received from, a foreign country when there is no apparent connection between the country and the client.
------------	--

Case Study 25 - Egypt	
<p>The scheme involved the misappropriation of a company's funds by one of its employees. The predicate offense took place in a foreign jurisdiction. The company operated in construction, real estate development and import-export activities in Egypt. The funds were laundered by co-mingling the proceeds of crime with the capital of 8 legal persons (partnerships and Egyptian joint-stock companies). The shareholders and some of the partners were nominees.</p>	
Indicators	<ul style="list-style-type: none"> • Nominee owners and directors • funds are sent to, or received from, a foreign country when there is no apparent connection between the country and the client.

Case Study 26 - Egypt	
<p>The accused created six British Virgin Island shell companies and used the bank accounts of these shell companies to launder the proceeds of crime of a total amount of more than EGP 1 billion. The predicate offence was "illegal earning". The six shell companies all had a nominee shareholder.</p>	
Indicators	<ul style="list-style-type: none"> • Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre • Funds involved in the transaction are sent to, or received from, a low-tax jurisdiction or international trade or finance centre • Nominee owners and directors.

Case Study 27 - Egypt	
<p>The scheme laundered the proceeds of illegal forex exchange through two exchange houses over the course of 10 years. The Chairmen and boards of directors of both legal persons were professional nominees. EGP 70 million originated from the predicted offence were laundered through establishing companies.</p>	
Indicators	<ul style="list-style-type: none"> • Nominee owners and directors including formal nominees

Case Study 28 - Europol	
<p>Complicit facilitators set up shell companies and bank accounts. Banks in two EU countries facilitated the formation of shell companies (in EU, Belize, BVI and Panama) and registered bank employees as fake directors. Those bank accounts were controlled via Internet banking by criminals. Independent agents acting as</p>	

company service providers registered and administered those companies. A variety of OCGs used this network, on some ad-hoc basis for specific periods of time.

Indicators	<ul style="list-style-type: none"> • Under investigation or have known connections with criminals • Registered at an address that is also listed against numerous other companies or legal arrangements • Director, controlling shareholder(s) and/or beneficial owner(s) are listed against the accounts of other legal persons or arrangements • Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre • Bank balance of close to zero, despite frequent incoming and outgoing transactions • Bank accounts in multiple international jurisdictions without good reason • Employees of professional intermediary firms acting as nominee directors or shareholders • Complex corporate structures that do not appear to legitimately require that level of complexity or which do not make commercial sense • Nominee owners and directors including informal nominees, such as children, spouses, relatives or associates who do not appear to be involved in the running of the corporate enterprise
------------	--

Case Study 29 – Europol

An organised crime group linked to the “Camorra” was involved in the transport of large amounts of drugs to Italy. Individuals from the crime group performed transactions on behalf of others, moving funds through company and foundation bank accounts. Those middlemen operated multiple bank accounts, exploiting products such as loans and stock market trading. Trade-based money laundering was also used to conceal the criminal funds by buying/selling companies, vehicles and jewellery.

Indicators	<ul style="list-style-type: none"> • Under investigation or have known connections with criminals • Multiple bank accounts without good reason • Bank accounts in multiple international jurisdictions without good reason • Complex corporate structures that do not appear to legitimately require that level of complexity or which do not make commercial sense
------------	---

Case Study 30 – Europol

A non-EU organised crime group used offshore shell companies, controlled by various professional straw men, offering substantial loans with high interest rates and deferred payment loans and mortgages for property investments. Companies investing in Spain belonged to the same crime group.

Indicators	<ul style="list-style-type: none"> • Director, controlling shareholder(s) and/or beneficial owner(s) are listed against the accounts of other legal persons or arrangements • Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre • Multiple bank accounts without good reason • Bank accounts in multiple international jurisdictions without good reason • Nominee owners and directors including formal nominees • Finance is provided by a lender, including either a natural or a legal person, other than a known credit institution, with no logical explanation or commercial justification • Loans are received from private third parties without any supporting loan agreements, collateral, or regular interest repayments
------------	--

Case Study 31 - Fiji

Mr. X used two shell companies to launder the money he had fraudulently obtained from his business partner Mr. Z. Mr. X set up a fake real estate company to facilitate the purchase and transferred the funds to another shell company and to his wife. The funds were then used to acquire property under their names.

Indicators	<ul style="list-style-type: none"> • Legal person or arrangement receives large sums of capital funding quickly following incorporation/formation, which is spent or transferred elsewhere in a short period of time without commercial justification • False invoices created for services not carried out • Nominee owners and directors including informal nominees, such as children, spouses, relatives or associates who do not appear to be involved in the running of the corporate enterprise • Transaction is a business transaction that involves family members of one or more of the parties without a legitimate business rationale
------------	---

Case Study 32 - Fiji

This case involved fraudulent activities conducted by Mr. X, an accountant at a Fijian resort. Mr. X altered the resort's cheques written to the resorts' creditors. A shell company was established to conceal the fraudulently converted funds. Some of the cheques that were fraudulently converted were altered and deposited into the bank account of the shell company. The remaining cheques were issued to other family members and associates of Mr. X. The laundered proceeds were used to purchase six motor vehicles, a private property and cash. The vehicles were registered under Mr. X's and others' names, whereas the property was registered under Mr. X's mother's name, and later transferred to one of his associates.

Indicators	<ul style="list-style-type: none"> • Financial activities and transactions inconsistent with the corporate profile • Multiple bank accounts without good reason • Nominee owners and directors including informal nominees, such as children,
------------	--

	<p>spouses, relatives or associates who do not appear to be involved in the running of the corporate enterprise</p> <ul style="list-style-type: none"> • Transaction is a business transaction that involves family members of one or more of the parties without a legitimate business rationale • Transaction is executed from a business account but appears to fund personal purchases, including the purchase of assets or recreational activities that are inconsistent with the company’s profile • Transaction is executed from a business account and involves a large sum of cash, either as a deposit or withdrawal, which is anomalous, or inconsistent with the company’s profile
--	---

Case Study 33 – Ghana

A charity (Charity A) undertaking humanitarian work for orphans, war victims and disasters began operation in Ghana in 2016, but had been working with other partners 15 years. Charity A received three remittances totalling over USD 1 million from Charity B. The economic purpose of the funds was not indicated. Enhanced due diligence by the financial institution identified that Charity B was a wing of an UN-designated terrorist group.

Indicators	<ul style="list-style-type: none"> • There is a discrepancy between the supposed wealth of the settlor and the object of the settlement. • Designated persons or groups
-------------------	---

Case Study 34 – Gibraltar

Company X listed as a subsidiary of company Y which received funds from an energy company deal. Company Z (managed by a licensed TCSP) owned company X. The scheme involved two regulated TCSPs acting as nominee shareholders. The directors had also been provided by the TCSP, but resigned less than four years after incorporation. The underlying client had also been a director. The company secretary (also a licensed TCSP) incorporated and administered the company, and provided the registered office. The supervisor obtained information being sought by the LEA using formal powers and disclosed this under a statutory gateway as being necessary for the prevention and detection of crime.

Indicators	<ul style="list-style-type: none"> • Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre • Resignation and replacement of directors or key shareholders shortly after incorporation • Nominee owners and directors including formal nominees
-------------------	--

Case Study 35 - Gibraltar	
<p>Two companies used to present what was suspected to be misleading picture of the firm's true financial position. The scheme used nominee shareholders (licensed TCSPs). Corporate director used for one director, company secretary for both, as well as provision of registered office facilities.</p>	
Indicators	<ul style="list-style-type: none"> • Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre • Falsified records or counterfeited documentation • Nominee owners and directors including formal nominees

Case Study 36 - Guernsey	
<p>During a two-year investigation (2014-2016), the US Commodity Futures Trading Commission (CFTC) launched an investigation into UK national Mr. X Doe for market manipulation. It came to the attention of Guernsey Financial Services Commission that a TCSP provider (TCSP B) administered a corporate structure for the benefit of Mr. X Doe. Over a five-year period Mr. X Doe made approximately GBP 32 million. The purported legitimate business was futures dealing. Prior to Guernsey TCSP B's involvement, it was administered by a Cayman Island Company. The Guernsey TCSP, which was licensed for AML/CFT, identified that Mr. X Doe was under investigation and co-operated with the Guernsey AML/CFT authorities.</p>	
Indicators	<ul style="list-style-type: none"> • Under investigation or have known connections with criminals • Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre

Case Study 37 - Guernsey	
<p>Persons A and B were married residents of Guernsey, and purported to be TCSPs but were unregistered. Person A was the subject of an investigation by the IRS, while the TCSP's Client C was under investigation by the FBI. It was identified that Client C was operating a "boiler room" fraud. Investigations suggested that Person A was providing nominee directors for the shell companies used by Client C in execution of his fraud. The FBI identified that significant funds of Client C had moved through an account that Person A's company, Company D, held in Hong Kong. Company D was incorporated in Niue with Person A the sole registered Director and Person B the Secretary. Persons A and B were connected to organised crime groups via the "business facilities" they provided, including acting as nominee directors.</p>	
Indicators	<ul style="list-style-type: none"> • Under investigation or have known connections with criminals • Prohibited from holding a directorship role in a company or operating a TCSP

	<ul style="list-style-type: none"> • Director, controlling shareholder(s) and/or beneficial owner(s) are listed against the accounts of other legal persons or arrangements • Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre • Falsified paper trail • Nominee owners and directors including formal nominees • Funds involved in the transaction are sent to, or received from, a low-tax jurisdiction or international trade or finance centre
--	---

Case Study 38 – Israel

This scheme was used to hide funds from social engineering fraud and other criminal offenses. The cover story for the criminal offenses was international trade – funds from merchants in Europe and the US that were sending payments to suppliers in East Asia. The suspect, the owner of a registered MSB, operated a second, unregistered MSB. The suspect used several natural persons as his contact points in East Asia, who in turn contacted local TCSPs for the purpose of setting up international companies and opening bank accounts. Local straw-men were registered as the shareholders of the new international companies established for the scheme. In addition, shareholders were registered based on passports provided by the suspect's contact persons mentioned above. The registered addresses of the companies were in East Asia. Bank accounts were opened in the same East Asia countries where the offices were located.

Some of the funds were transferred to Israel to an account opened by the suspect. More than 60 beneficiaries were declared to the bank as beneficiaries, in such a way that the bank had difficulty in establishing which transaction was made on behalf of which beneficiary. The funds were sent from the companies set up by the suspect but the receiving bank did not know that these companies were actually under the suspects' control.

Indicators	<ul style="list-style-type: none"> • Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre • Legal person or arrangement conducts a small number of high-value transactions with a small number of recipients • Legal person or arrangement receives large sums of capital funding quickly following incorporation/formation, which is spent or transferred elsewhere in a short period of time without commercial justification • Simple banking relationships are established using professional intermediaries • Nominee owners and directors including informal nominees, such as children, spouses, relatives or associates who do not appear to be involved in the running of the corporate enterprise • Only a post-box address • Legal person does not have a physical presence
------------	---

Case Study 39 - Israel	
<p>This scheme was used to hide the proceeds of fraud conducted through foreign exchange and binary options trades. Local companies attracted foreign investors and presented themselves as legitimate foreign exchange and binary trading platforms. Private companies, Israeli representatives of foreign banks and law firms set up foreign companies abroad by contacting TCSPs located in international jurisdictions. The latter established shell companies in the international jurisdictions. The service provided by the foreign TCSPs also included opening bank accounts in favour of the shell companies in other countries. After the companies were established, the TCSPs were not involved in their management nor in any related activity. In some cases, the suspects used the companies as a vehicle to launder money and in other cases they sold the companies to third parties for a profit.</p>	
Indicators	<ul style="list-style-type: none"> • Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre • Multiple bank accounts without good reason • Bank accounts in multiple international jurisdictions without good reason • Simple banking relationships are established using professional intermediaries • Nominee owners and directors including informal nominees, such as children, spouses, relatives or associates who do not appear to be involved in the running of the corporate enterprise

Case Study 40 - Israel	
<p>This case involved a fraudulent tax scheme designed to evade paying tax generated from international trade and a ML infrastructure that was used to hide the illegally gained funds. The suspects used a TCSP to register and operate two international shell companies (Company A and Company B) to create the false appearance that the revenues from their international trading did not belong to the local Israeli company which they controlled, to avoid tax. The two companies traded with each other exclusively and did not have any other source of income. Company A (foreign shell company) transferred significant funds to company C (local company) using the cover of a "consulted fee"/ "service commission". Only this commission, which was less than half of the real income, was reported to the tax authority in Israel. Thus, ultimately, the suspects paid taxes only on a small part of their income.</p>	
Indicators	<ul style="list-style-type: none"> • Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre • Bank balance of close to zero, despite frequent incoming and outgoing transactions • Bank accounts in multiple international jurisdictions without good reason • Correct documents not filed with the tax authority • False invoices created for services not carried out

	<ul style="list-style-type: none"> • Nominee owners and directors including informal nominees, such as children, spouses, relatives or associates who do not appear to be involved in the running of the corporate enterprise • Corporation has no personnel • Transaction is a repeat transaction between parties over a contracted period of time • Transaction involves two legal persons with similar or identical directors, shareholders, or beneficial owners
--	--

Case Study 41 - Israel

The scheme involved underground banking - the suspects provided money services such as check clearing, currency exchange, international transfers and loans. These activities of the "bank" and its customers were unregistered and concealed.

The investigation showed that the "customers" of the "underground bank" provided illegally gained cash, then, depending on the type of service, the transfers were registered and declared as diamond export/import or the selling and buying of diamonds locally. The funds were laundered by the underground bank's "managers" through the guise of diamond trade using false declarations and fictitious export/import diamond documentation. The "customers" of the "underground bank" used the diamond dealers' accounts to transfer money without reporting it to the authorities. The total sums laundered amount to hundreds of millions of USD.

Indicators	<ul style="list-style-type: none"> • Discrepancy between purchase and sales invoices • Falsified paper trail
------------	--

Case Study 42 - Italy

The *Nucleo Polizia* of Milan conducted a preventive seizure of funds traceable to a single family, which were held in the Channel Islands, for a total value of EUR 1.3 billion. The assets were concealed through a complex network of trusts. Multiple trust accounts were hiding the beneficiaries of assets consisting in public debt securities and cash.

The investigation established that between 1996 and 2006 the subjects placed their assets in Dutch and Luxembourgian companies through complex corporate operations and by transferring them to different trusts in the Channel Islands. Subsequently, the funds were legally repatriated through a tax amnesty in December 2009. The investigation identified chartered accountants who had over time facilitated the concealing of funds through trusts with the aim of facilitating laundering and reinvestment.

Indicators	<ul style="list-style-type: none"> • Legal person or arrangement incorporated/formed in a low-tax jurisdiction
------------	---

	<p>or international trade or financial centre</p> <ul style="list-style-type: none"> • Complex corporate structures that do not appear to legitimately require that level of complexity or which do not make commercial sense
--	--

Case Study 43 - Italy

This case related to an investigation into a transnational criminal organisation active in money-laundering and that perpetrated crimes in Italy. It was triggered by STRs concerning financial flows from a company in the British Virgin Islands channelled through a Swiss bank and sent to an Italian legal person to be used for a refurbishment of a real estate unit which had a value of EUR 9 million. The investigation resulted in the charging of a chartered account for money laundering. The search of the individual's office resulted in the seizure of documents pertaining to a high number of off-shore vehicles which were established on behalf of wealthy national clients. The subsequent investigations led to the discovery that around EUR 800 million had been moved between Italy and international accounts.

Indicators	<ul style="list-style-type: none"> • Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre
-------------------	--

Case Study 44 - Italy

The Nucleo Polizia Tributaria of Milan conducted a money laundering inspection at a professional office providing "chartered accountants services", aimed at verifying compliance with money laundering regulations. The investigation was conducted mainly through a series of databases/registries and enabled to establish how a joint stock company active in the real estate sector, owned by two companies based in Cyprus and Austria, had made a considerable investment in Milan (approx. EUR 8 million). Two years after the buyer had not proceeded to complete the works as planned. A money laundering inspection was carried out against the professional office and it was found to be the custodian of the books of accounts as well as the domicile of the joint stock company previously targeted. A senior partner was found to be borrowing considerable funds via credit institutions from a company based in a high-risk jurisdiction.

Indicators	<ul style="list-style-type: none"> • Legal person or arrangement incorporated/formed in a jurisdiction that is considered to pose a high money laundering or terrorism financing risk • Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre • Multiple bank accounts without good reason • Bank accounts in multiple international jurisdictions without good reason
-------------------	---

Case Study 45 – Italy

An anti-money laundering inspection for compliance into a TCSP led to the investigation. The case involved the acquisition of a well-known Italian transport company. It involved a trustee mandated in the name of a foreign company with no specified ownership. Documents obtained showed that several files on trustee registrations indicated offenses committed by the legal representative. The TCSP served to screen the transfer of funds to Italy that were illegally generated and concealed abroad. The investigation into beneficial ownership of the foreign company helped to link investigated persons to considerable financial assets that were fraudulently transferred abroad and used to purchase the transport company.

Indicators	<ul style="list-style-type: none"> • Client is reluctant or unable to explain the identity of the beneficial owner • Multiple bank accounts without good reason • Complex corporate structures that do not appear to legitimately require that level of complexity or which do not make commercial sense
------------	---

Case Study 46 – Italy

A trust structure was setup for the son of Mr. X, a client of a UK law firm. The trust structure was set up to hold funds illegally diverted from an Italian company run by Mr. X. The scheme consisted of a BVI company owned by an Irish company. The BVI company, in turn, owned 100% of a Luxembourg company. The Luxembourg company would receive money from the Italian company from fictitious sales. The director of the Irish company was a partner of the same UK law firm. The director of the BVI company was another partner of the same UK Law Firm. A close associate of Mr. X had a power of attorney in the BVI company. The shares of the Irish company were held in trust for Mr. X's son (beneficial owner of the trust) by a TCSP in Jersey connected to the same UK law firm.

Using such scheme there was no apparent link between the funds diverted from the Italian company and the beneficial owner of such funds. The only link was the trust.

Indicators	<ul style="list-style-type: none"> • Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre • Employees of professional intermediary firms acting as nominee directors or shareholders • Complex corporate structures that do not appear to legitimately require that level of complexity or which do not make commercial sense. • Nominee owners and directors
------------	---

Case Study 47 – Italy

Mr. D and Mr. S were involved in the top management of two Italian hospital corporations: the SR Foundation and the SM Foundation. These foundations were carrying out commercial operations outside their normal course of business to facilitate the illegal transfer of money from the Foundations to Mr. D and Mr. S to pay bribes to Mr. F, a PEP. The illegal commercial operations were carried out through various foreign corporate vehicles, which were managed by a Swiss trust fiduciary. The suspects were charged with conspiracy, money laundering, corruption and embezzlement.

Indicators

- Politically exposed persons, or have familial or professional associations with a person who is politically exposed
- Relationships with foreign professional intermediaries in the absence of genuine business transactions in the professional’s country of operation
- Financial activities and transactions inconsistent with the corporate profile
- False invoices created for services not carried out
- Complex corporate structures that do not appear to legitimately require that level of complexity or which do not make commercial sense or which do not make commercial sense
- No real business activities undertaken
- Exclusively facilitates transit transactions and does not appear to generate wealth or income
- The connections between the parties are questionable, or generate doubts that cannot be sufficiently explained by the client
- Transaction is occurring between two or more parties that are connected without an apparent business or trade rationale
- Transaction is a repeat transaction between parties over a contracted period of time
- Transaction is executed from a business account but appears to fund personal purchases, including the purchase of assets or recreational activities that are inconsistent with the company’s profile
- Transaction involves complicated transaction routings without sufficient explanation or trade records
- Funds involved in the transaction are sent to, or received from, a low-tax jurisdiction or international trade or finance centre or international trade or finance centre

Case Study 48 – Italy

A designated person was found to be in possession of assets and economic resources located in Italy. Bank records indicated the individual owned 100% of a Cyprus-based company and the tax register verified the date, place of birth and current tax residency in Italy. The Italian Official Register revealed the listed

individual owned 50% of a limited liability company based in Rome (whose corporate purpose is the purchase and construction of buildings and building complexes owned by the same company) through the aforementioned Cypriot company. The tax register revealed a 2012 tax return of the designated individual showing income from real estate, which exactly matched that of the Cypriot company, and a tax return for the Rome-based company showing a turnover of EUR 502 731 and taxable income totalling EUR 3 405. The designated individual owned shares or stakes in several companies based in Russia and Cyprus, including two banks and the mentioned Cypriot company. The designated individual, the Cypriot company and the Roman company were also found to own several properties located in various Italian provinces. As such, the designated individual was the holder of assets and economic resources in his own name or otherwise available through corporate vehicles that had been under freezing orders since 2014.

Indicators

- Foreign nationals with no significant dealings in the country in which they are procuring professional or financial services
- Politically exposed persons, or have familial or professional associations with a person who is politically exposed
- Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or finance centre
- Focused on aggressive tax minimisation strategies
- Designated persons or groups
- Complex corporate structures that do not appear to legitimately require that level of complexity or which do not make commercial sense or which do not make commercial sense
- The connections between the parties are questionable, or generate doubts that cannot be sufficiently explained by the client

Case Study 49 – Jersey

The main fraudulent activity centred on a software business based in the suspect’s home country. The business sold its intellectual property rights to an Irish company which in turn transferred them to a BVI company. The business then entered into license and distribution agreements with the BVI company, which enabled it to sell and distribute the software and accordingly it continued its business activities as before. The resulting license and distribution fees paid to the BVI company resulted in a significant reduction in its taxable income. All 3 entities were owned and controlled by same person (“X”). It is alleged that X operated a scheme whereby the company made fraudulent claims and omissions by claiming deductions resulting from “sham” license and distribution arrangements. X established a trust structure with underlying companies using a Jersey based financial service provider. It is alleged these entities were involved in the scheme as conduits for funds transfers or for holding assets derived from the scheme.

Indicators

- Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre

	<ul style="list-style-type: none"> • Complex corporate structures that do not appear to legitimately require that level of complexity or which do not make commercial sense. • Transaction involves licensing contracts between corporations owned by the same individual
--	---

Case Study 50 – Latvia

Foreign national Mrs V opened an account in a Latvian bank B, and received USD 3 827 000 and EUR 208 000 shortly thereafter from foreign Company M. Company M had received the funds from foreign Companies R and W. Public information revealed that Companies M and W had the same shareholder – an offshore legal entity, whereas the beneficiaries of Companies M and W presented at the bank were two other individuals, which raised concerns of a scheme to obscure beneficial ownership. Mrs V transferred USD 2 980 000 USD to Individuals E, O and A to accounts at foreign Bank F, stating the purpose of transaction as a gift to grandchildren.

At the same time Mrs V transferred USD 840 000 to her own account at foreign Bank F. All beneficiaries had the same address, which suggested that Mrs V was residing in a country different from that on bank CDD records. The sum of USD 220 000 was further received in Mrs V’s account from Individual L, and further transfers of USD 300 000 were initiated to Individuals A and E. Bank B made an EDD request, and according to documents received on behalf of Mrs V electronically, Mrs V had sold two paintings to Individual B for USD 220 000 using Individual L as an intermediary, but the signatures on the agreement appeared digitally embedded. Individual A presented himself at Bank B claiming to be a grandchild of Mrs V, who he claimed to be deceased but could not provide a death certificate.

The FIU confirmed with Mrs V’s country of residence that she was deceased and that transactions since the date of death had been performed by third parties. The FIU issued an order to freeze USD 350 000 in Mrs V’s accounts.

Indicators	<ul style="list-style-type: none"> • Client is reluctant or unable to explain why they are conducting their activities in a certain manner • Foreign nationals with no significant dealings in the country in which they are procuring professional or financial services • Transactions which appear strange given an individual’s age • Director, controlling shareholder(s) and/or beneficial owner(s) are listed against the accounts of other legal persons or arrangements • Falsified paper trail • The connections between the parties are questionable, or generate doubts that cannot be sufficiently explained by the client
-------------------	---

Case Study 51 - Mexico	
<p>A network of 42 shell companies with different lines of business was dismantled, with companies located in Mexico and others abroad. The network was created to offer money laundering services to criminal organizations through a group of independent agents who contact customers to offer the said services, charging a fee from between 1 and 5% the amount of the funds operated.</p>	
Indicators	<ul style="list-style-type: none"> • Previous conviction for fraud, tax evasion, or serious crimes • Director, controlling shareholder(s) and/or beneficial owner(s) are listed against the accounts of other legal persons or arrangements • Financial activities and transactions inconsistent with the corporate profile • Fabricated corporate ownership records • False invoices created for services not carried out • Falsified paper trail • Complex corporate structures that do not appear to legitimately require that level of complexity or which do not make commercial sense • Nominee owners and directors including informal nominees, such as children, spouses, relatives or associates who do not appear to be involved in the running of the corporate enterprise • The connections between the parties are questionable, or generate doubts that cannot be sufficiently explained by the client • Transaction is occurring between two or more parties that are connected without an apparent business or trade rationale • Funds involved in the transaction are sent to, or received from, a low-tax jurisdiction or international trade or finance centre

Case Study 52 - Mexico	
<p>Four shell companies requested from the Mexican Tax Administration Service (SAT) the refund of the Value Added Tax, from non-existent operations carried out in 2008 and 2009. In total, 26 companies participated in the simulation of transactions, and 48 individuals were part of the scheme as partners, administrators, and legal representatives. Part of the illegally obtained resources were sent to bank accounts in the U.S., and later used to make transfers to accounts in Las Vegas, Nevada. These accounts were held by Casinos and by individuals who carried out gambling activities.</p>	
Indicators	<ul style="list-style-type: none"> • Financial activities and transactions inconsistent with the corporate profile • Bank accounts in multiple international jurisdictions without good reason • False invoices created for services not carried out • Falsified paper trail • No real business activities undertaken • Exclusively facilitates transit transactions and does not appear to generate

	<p>wealth or income</p> <ul style="list-style-type: none"> • The connections between the parties are questionable, or generate doubts that cannot be sufficiently explained by the client • Transaction is occurring between two or more parties that are connected without an apparent business or trade rationale • Funds are sent to, or received from, a foreign country when there is no apparent connection between the country and the client
--	---

Case Study 53 – Namibia

Namibian national A (as sole owner) registered two close corporations using false national identity documents. Subsequently, A opened bank accounts at two local banks for each of these corporations. The bank accounts at one bank were active, while those at the other bank remained dormant resulting in their closure. A authorised foreigners B and C to manage the said accounts. B and C used online banking channels to make huge inward and outward transfers on the two corporate accounts. Funds had been transferred from foreign jurisdiction SA to Namibia and then immediately re-routed to other foreign jurisdictions, including back to SA from where the funds had emanated. The transfers started with relatively small amounts quickly grew larger. The funds were generally withdrawn in less than 48 hours after deposit.

Indicators	<ul style="list-style-type: none"> • Signatory to company accounts without sufficient explanation • Declared income which is inconsistent with their assets, transactions or lifestyle • Registered at an address that does not match the profile of the company • Legal person or arrangement conducts a large number of transactions with a small number of recipients • Legal person or arrangement conducts transactions with international companies without sufficient corporate or trade justification • Bank balance of close to zero, despite frequent incoming and outgoing transactions • Financial activities and transactions inconsistent with the corporate profile • Multiple bank accounts without good reason • Falsified records or counterfeited documentation • Fabricated corporate ownership records • Falsified paper trail • No real business activities undertaken • Exclusively facilitates transit transactions and does not appear to generate wealth or income • Transaction is a repeat transaction between parties over contracted period of time • Transaction appears cyclical • Transaction involves complicated transaction routings without sufficient explanation or trade records
------------	--

Case Study 54 – Namibia

The case involved two Namibians and three Chinese subjects. The subjects registered two Proprietary Limited companies as well as a Namibian close corporation. Subsequently they opened nine bank accounts at five local banks, with one Chinese and two Namibians directors/shareholders as signatories on the accounts. The entities and individuals received significant deposits and transfers derived from Namibian accounts and transferred to a foreign jurisdiction.

Indicators	<ul style="list-style-type: none"> • Legal person or arrangement conducts a small number of high-value transactions with a small number of recipients • Legal person or arrangement receives large sums of capital funding quickly following incorporation/formation, which is spent or transferred elsewhere in a short period of time without commercial justification • Financial activities and transactions inconsistent with the corporate profile • Multiple bank accounts without good reason • Correct documents not filed with the tax authority • Legal Person pays no taxes, superannuation, retirement fund contributions or social benefits • Transaction is occurring between two or more parties that are connected without an apparent business or trade rationale • Funds are sent to, or received from, a foreign country when there is no apparent connection between the country and the client
------------	--

Case Study 55 – Namibia

Mr. X declared that he is involved in taxi business. Analysis confirmed that X made regular large cash deposits into two accounts, followed immediately by large cheque withdrawals to other businesses and accounts of his close corporations and relative. The corporate entity's activities, as registered with the registrar of close corporations, include retail, mining, construction and fishing. Withdrawals from this account were exclusively electronic transfers. The account also received monthly funds from various individuals, as well as large-value of electronic transfers from a company in South Africa in the account of a Namibian Registered Trust. Analysis established that X owns several high value properties in Namibia and South Africa, which were purchased in cash. Some of these properties were registered under legal entities. Mr. X was found guilty of drug dealing.

Indicators	<ul style="list-style-type: none"> • Transactions which appear strange given an individual's age • Previous conviction for fraud, tax evasion, or serious crimes • Signatory to company accounts without sufficient explanation • Financial activities and transactions inconsistent with their customer profile • Legal person or arrangement conducts a large number of transactions with a small number of recipients
------------	---

	<ul style="list-style-type: none"> • Legal person or arrangement conducts transactions with international companies without sufficient corporate or trade justification • Bank balance of close to zero, despite frequent incoming and outgoing transactions • Multiple bank accounts without good reason • Transaction is a business transaction that involves family members of one or more of the parties without a legitimate business rationale • Transaction is executed from a business account but appears to fund personal purchases, including the purchase of assets or recreational activities that are inconsistent with the company’s profile • Transaction is executed from a business account and involves a large sum of cash, either as a deposit or withdrawal, which is anomalous, or inconsistent with the company’s profile • Funds are sent to, or received from, a foreign country when there is no apparent connection between the country and the client
--	---

Case Study 56 – Namibia

An STR was filed on Y on suspicion that he might be involved in illegal diamond dealing and using a business bank account to co-mingle proceeds of crime with legitimate income. Analysis revealed that Y is the sole member close corporation with its principle business “manufacturing, recycling and cleaning”. Substantial sums were deposited into the business account, with most deposits from electronic funds transfers originating from several individuals in America and in Asia. Y withdrew the funds in cash. Analysis revealed that Y presented himself as an authorized diamond dealer in Namibia to foreign buyers online.

Indicators	<ul style="list-style-type: none"> • Long period of inactivity following incorporation, followed by a sudden and unexplained increase in financial activities • Bank balance of close to zero, despite frequent incoming and outgoing transactions • Financial activities and transactions inconsistent with the corporate profile • Transaction is executed from a business account and involves a large sum of cash, either as a deposit or withdrawal, which is anomalous, or inconsistent with the company’s profile • Funds are unusual in the context of the client or customer’s profile
------------	--

Case Study 57 – Namibia

This case involves subjects and entities using the electronic banking system to channel proceeds of crime to foreign jurisdictions. Funds deposited into close corporations and subject’s personal account and then structurally withdrawn in the foreign jurisdiction under the pretext that it is business related funds.

Subject 1, a Chinese national, opened a personal bank account and registered a

close corporation (Entity 1) that also opened accounts with three different financial institutions. Subject 1 further “assisted” a Namibian woman 1 to open personal accounts at the same three financial institutions. He also “assisted” her to register four close corporations in her name (Entities 2-5) and opened accounts with one of the financial institutions. Subject 1 assisted other Namibian women 2 and 3 to open bank accounts with two of the financial institutions. Subject 1 controlled the ATM cards of Entities 1-5 and accounts in name of Namibian women 1 and 2, to the extent that he was transacting on them. Namibian woman 3 did not pick up her ATM cards and when requested by the bank to explain why she opened accounts, she disappeared and could not be traced.

The funds deposited or transferred into the accounts of Namibian women 1-3 and entities 2-5 were from Subject 1, whilst the funds into Subject 1’s accounts were from Chinese owned entities.

Indicators

- Client is reluctant to provide personal information.
- Client is reluctant or unable to explain their business activities and corporate history
- Actively avoiding personal contact without sufficient justification
- Refuse to co-operate or provide information, data, and documents usually required to facilitate a transaction
- Transactions which appear strange given an individual’s age
- Registered at an address that does not match the profile of the company
- Director or controlling shareholder(s) does not appear to have an active role in the company
- Director, controlling shareholder(s) and/or beneficial owner(s) are listed against the accounts of other legal persons or arrangements
- Bank balance of close to zero, despite frequent incoming and outgoing transactions
- Multiple bank accounts without good reason
- Disinterested in the structure of a company they are establishing
- No real business activities undertaken
- Exclusively facilitates transit transactions and does not appear to generate wealth or income
- The connections between the parties are questionable, or generate doubts that cannot be sufficiently explained by the client
- Transaction is executed from a business account and involves a large sum of cash, either as a deposit or withdrawal, which is anomalous, or inconsistent with the company’s profile

Case Study 58 - Netherlands

Mr. B, a Dutch taxpayer, had put money in a Jersey trust and had not declared this to the tax authorities. Mr. B did not state in his income tax returns that he was involved in a trust and intentionally answered a tax questionnaire incorrectly or incompletely concerning his involvement in the trust. The court found that Mr. B

intentionally provided incorrect information to a public servant of the Netherlands Tax and Customs Administration, resulting in too little tax being levied.	
Indicators	<ul style="list-style-type: none"> • Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre • Focused on aggressive tax minimisation strategies • Correct documents not filed with the tax authority • Falsified records or counterfeited documentation

Case Study 59 - Netherlands

The Suspect, a doctor, received payments from the pharmaceutical industry with which he did business. The amount of this payment varied per contract. These payments, which can be considered income, were not paid into one of the suspect's Dutch bank accounts, but into Luxembourg numbered accounts in the name of a foundation. The suspect never declared the balances of these Luxembourg bank accounts in his income tax returns.

Indicators	<ul style="list-style-type: none"> • Multiple bank accounts without good reason • Bank accounts in multiple international jurisdictions without good reason • Focused on aggressive tax minimisation strategies • Correct documents not filed with the tax authority • Transaction involves a numbered account • Funds are sent to, or received from, a foreign country when there is no apparent connection between the country and the client • Funds involved in the transaction are sent to, or received from, a low-tax jurisdiction or international trade or finance centre
------------	---

Case Study 60 - Netherlands

This tax evasion scheme consisted of sending false invoices from a company incorporated by the suspect in the BVI to the Dutch company, to create the illusion that services have been provided to the Dutch company. The Dutch company pays this invoice to the company in the BVI which results in a reduction in the turnover and profit because more costs have been incurred. From the BVI the amounts received were paid into the private bank accounts of the suspect and co-suspect in Cyprus who were able to access those accounts in the Netherlands by means of a debit/credit card. Funds were used by the suspect to finance real estate.

Indicators	<ul style="list-style-type: none"> • Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre • False invoices created for services not carried out. • No real business activities undertaken • Client is both the ordering and beneficiary customer for multiple
------------	---

	<p>international funds transfers</p> <ul style="list-style-type: none"> • Transaction is executed from a business account and involves a large sum of cash, either as a deposit or withdrawal, which is anomalous, or inconsistent with the company's profile • Funds are sent to, or received from, a foreign country when there is no apparent connection between the country and the client • Funds involved in the transaction are sent to, or received from, a low-tax jurisdiction or international trade or finance centre
--	--

Case Study 61 - Netherlands

The FIU received a notification from a financial institution in respect of an international transfer to a foreign company in Italy. The beneficial owner of this company appeared to be the ex-wife of the client. This client regularly transferred money from his private account but also from his business account to the account of his ex-wife and her businesses. By means of the "loan agreements" the money was deposited again into the bank account of the client. On the basis of this information the notification was declared suspicious and forwarded to the investigation teams.

Indicators	<ul style="list-style-type: none"> • Legal person or arrangement conducts transactions with international companies without sufficient corporate or trade justification • Family members with no role or involvement in the running of the business are listed as beneficial owners of legal persons or arrangements • Finance is provided by a lender, including either a natural or a legal person, other than a known credit institution, with no logical explanation or commercial justification • Transaction is a business transaction that involves family members of one or more of the parties without a legitimate business rationale
------------	---

Case Study 62 - Netherlands

A civil-law notary filed an STR that indicates a house purchase was financed with a loan from an Andorran company. The Netherlands FIU subsequently requested further information on this company from Andorra. The UBO of this company appeared to be the same person as the purchaser of the house. On the basis of this information, the notification was declared suspicious and forwarded to the investigation teams.

Indicators	<ul style="list-style-type: none"> • Finance is provided by a lender, including either a natural or a legal person, other than a known credit institution, with no logical explanation or commercial justification
------------	---

Case Study 63 – Netherlands	
<p>A Dutch target company received loans from a Swiss TCSP with a bank account in Montenegro, under the description of “repayment loan”. This Swiss TCSP is also the sole shareholder of the Dutch target company. The received money was subsequently re-loaned again via a subsidiary of the Swiss TCSP in Moldavia to the UBO in The Netherlands. The Dutch target company was also used by other clients of the Swiss TCSP. The Dutch target company received loans from the Swiss TCSP and subsequently re-loaned these funds to operational companies in Italy and England, which were managed by the UBOs. The account in Montenegro of the Swiss TCSP was topped up by a Swiss bank account in the name of the UBO of the Dutch target company. The FIU suspects that this manner of re-loaning one’s own money via this Swiss TCSP is also used by other persons.</p>	
Indicators	<ul style="list-style-type: none"> • Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre • Legal person or arrangement conducts transactions with international companies without sufficient corporate or trade justification • Client is both the ordering and beneficiary customer for multiple international funds transfers • Finance is provided by a lender, including either a natural or a legal person, other than a known credit institution, with no logical explanation or commercial justification

Case Study 64 – Netherlands	
<p>This case concerns a criminal investigation into money laundering and the purchase and financing of premises and apartment rights in the Netherlands by two Liechtenstein trusts. The ultimate beneficial owners and the source of funds for the purchase and financing of the real estate are shielded by the use of these trusts and by a number of facilitators. The purchase involves a total of almost EUR 2 million in purchase (costs) and financing of the real estate which is presumably derived from drug trafficking. The two trusts have their registered office in Liechtenstein and the persons who represent the trusts are family members of the suspects.</p>	
Indicators	<ul style="list-style-type: none"> • Under investigation or have known connections with criminals • Registered at an address that is also listed against numerous other companies or legal arrangements • Financial activities and transactions inconsistent with the corporate profile • Correct documents not filed with the tax authority • Family members with no role or involvement in the running of the business are listed as beneficial owners of legal persons or arrangements • Client is both the ordering and beneficiary customer for multiple international funds transfers

	<ul style="list-style-type: none"> • Transaction is a business transaction that involves family members of one or more of the parties without a legitimate business rationale • Transaction involves two legal persons with similar or identical directors, shareholders, or beneficial owners • Transaction involves a professional intermediary without due cause or apparent justification
--	--

Case Study 65 – Netherlands

A Dutch investment fund invested money deposited by investors in foreign life insurance policies. The investors participated in a trust that had become owner of the life insurance policies. After the death of the insured (third parties), the insurance would pay out to the fund that in turn would pay out to the investors. The risk that the original holder of the life insurance policy would live longer than the agreed maturity (the longevity risk) was re-insured. The re-insurers took over the policy from the trust fund and the investors received from the re-insurer an amount that was equivalent to the death benefit value of the policy. All deposits, EUR 175 million, went through the foreign accounts of the trust companies. It appears that only a limited part was invested in the promised second-hand life insurance policies. A large part was immediately channelled to the bank accounts of the suspect and the trustee.

Indicators	<ul style="list-style-type: none"> • Unusually large number of beneficiaries and other controlling interests • Bank accounts in multiple international jurisdictions without good reason • Funds are unusual in the context of the client or customer's profile
------------	--

Case Study 66 – Netherlands

The case involves funds derived from extortion. The suspect created legal constructs made up of parent companies registered in a low tax jurisdiction with few or no or scarcely any obligations to keep administrative and accounting records. The suspect used coded bank account in Switzerland to further conceal the money laundering activity. TCSPs managed the companies.

Indicators	<ul style="list-style-type: none"> • Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre • Bank accounts in multiple international jurisdictions without good reason • Transaction involves a numbered account
------------	--

Case Study 67 – Netherlands

A medium-sized Dutch company sent double invoices - one invoice from the Dutch company to which payments were made in the Dutch account and are also properly declared to the Netherlands Tax and Customs Administration. The

second email/false invoice was to be paid into a numbered account in Switzerland that is in the name of a fictitious company. When Dutch and Swiss relations improved, the Swiss bank advised the client to incorporate a Panamanian company and deposit the funds into numbered accounts in Cyprus in the name of two Panamanian S.A.s over which the directors of the Dutch company exercise control.

Indicators	<ul style="list-style-type: none"> • Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre • Multiple bank accounts without good reason • Bank accounts in multiple international jurisdictions without good reason • Falsified records or counterfeited documentation • Double invoicing between jurisdictions • False invoices created for services not carried out. • Transaction involves a numbered account
------------	--

Case Study 68 - Netherlands

This case was an investigation into Dutch suspects for filing incorrect tax returns, money laundering and forgery. During the investigation, it was identified that funds had been transferred through a numbered account in Switzerland in the name of a financial service provider in Panama. Shortly thereafter, very similar amounts were debited from the account, under a false description, to the credit of the Dutch suspects.

A financial service provider facilitated this by providing the Dutch suspects with the opportunity to conceal these cash flows from third parties. The invoices for the services provided were paid to the financial service provider via the account in Switzerland.

Indicators	<ul style="list-style-type: none"> • Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre • Transaction involves the two-way transfer of funds between a client and a professional intermediary for similar sums of money • Transaction involves a numbered account • Funds are sent to, or received from, a foreign country when there is no apparent connection between the country and the client • Funds involved in the transaction are sent to, or received from, a low-tax jurisdiction or international trade or finance centre
------------	--

Case Study 69 - Netherlands

A Panamanian Private Foundation was founded by a Panamanian company which is affiliated to Mossack Fonseca. The Foundation Council is another corporation, and the beneficiary is Mr. E, the director and sales advisor of a Netherlands TCSP.

The registered agent is X Legal Services. The Panamanian Private Foundation has opened a bank account in Cyprus. This is a very large criminal investigation, which also includes an investigation into the persons who made use of the structure offered by the TCSP.

Indicators	<ul style="list-style-type: none"> • Director, controlling shareholder(s) and/or beneficial owner(s) are listed against the accounts of other legal persons or arrangements • Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre • Focused on aggressive tax minimisation strategies • Complex corporate structures that do not appear to legitimately require that level of complexity or which do not make commercial sense • Nominee owners and directors including formal nominees
------------	---

Case Study 70 - Netherlands

Mr. and Mrs. X acted as directors of a Dutch holding company and a Dutch operating company, as well as the founders of a Unit Foundation and the beneficial owners in an Offshore Investment Holding Company. It appears that agreements for the provision of directorship and/or nominee shareholder services have been drawn up. The invoices of the Offshore Investment Holding Company list several services performed for the corporation including the opening of a bank account. No amount is charged for management services. An employee of the Dutch TCSP has signing powers for the Offshore Investment Holding Company's bank account. Mr. and Mrs. X determine whether funds are paid from the underlying companies to the Offshore Investment Holding Company and on to the Unit Foundation. As a result, it can be argued that the employee in Cyprus only carried out the wishes of Mr. and Mrs. X and that they are the de facto managers of the Offshore Investment Holding Company.

Indicators	<ul style="list-style-type: none"> • Requests the formation of complex company structure without sufficient business rationale • Agreements for nominee directors and shareholders • Employees of professional intermediary firms acting as nominee directors or shareholders • Complex corporate structures that do not appear to legitimately require that level of complexity or which do not make commercial sense • Nominee owners and directors including formal nominees • No real business activities undertaken • Transaction involves a professional intermediary without due cause or apparent justification
------------	--

Case Study 71 - Netherlands	
<p>A criminal investigation into a Dutch TCSP was instigated on account of the systematic failure to notify unusual transactions and money laundering. This was presumed to involve the facilitation of fake transactions on behalf of foreign clients to ensure, for example, the assets or property of those clients were scarcely taxed, or funds parked were transferred by means of fake transactions to another jurisdiction. This was carried out by means of complicated well-considered structures with companies and trusts in various countries for which instructions were given by a financial service provider and were also discussed in this way by the suspect with the Dutch civil-law notary. Dutch entities were part of these complicated structures. The same applied for the Dutch foundations registered at an international address. The structure sometimes consisted of eight different entities, in various countries. The suspect reportedly did not know in several cases the identity of the actual beneficiaries of the companies that he incorporated.</p>	
Indicators	<ul style="list-style-type: none"> • Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre • Relationships with foreign professional intermediaries in the absence of genuine business transactions in the professional’s country of operation • Focused on aggressive tax minimisation strategies • Requests the formation of complex company structure without sufficient business rationale • Complex corporate structures that do not appear to legitimately require that level of complexity or which do not make commercial sense • Transaction involves a professional intermediary without due cause or apparent justification

Case Study 72 - Netherlands	
<p>The owner of a TCSP posed as a “Business Lawyer” but was not registered as a lawyer. The clients reportedly paid remuneration for the trust services, which were (partially) paid into the suspect’s account in three different international jurisdictions. A TCSP in an international jurisdiction was also reportedly used. The suspect evaded tax on these amounts for a number of years. The suspect also committed immigration fraud by putting clients on the payroll of one of his companies to draw up false employment contracts and/or salary slips. Ownership of the shares of the Dutch companies was often veiled by means of foundations and foreign company structures via a low tax jurisdiction. Dutch companies appear to have been mainly used as a means of channelling money. In addition, the suspect reportedly laundered money in the purchase of real estate intended for himself, his family or for clients of the TCSP.</p>	
Indicators	<ul style="list-style-type: none"> • Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre

	<ul style="list-style-type: none"> • Legal person or arrangement regularly sends money to low-tax jurisdictions or international trade or finance centres • Frequent payments to foreign professional intermediaries. • Multiple bank accounts without good reason • Bank accounts in multiple international jurisdictions without good reason • Focused on aggressive tax minimisation strategies • Interested in foreign company formation, particularly in jurisdictions known to offer low-tax or secrecy incentives, without sufficient commercial explanation • Correct documents not filed with the tax authority • False invoices created for services not carried out • Falsified paper trail
--	---

Case Study 73 - Netherlands

A Dutch company has business transactions with two Ukrainian companies. On account of the strict rules in Ukraine, international legal constructs are created to continue doing business. The Dutch company delivers goods to the Ukrainian companies. However, the cash flow goes through a Panamanian entity with a bank account in Latvia. It subsequently appears that there is a discrepancy between the purchase and sales invoices and that this “surplus” remaining in the Latvian bank account.

Indicators	<ul style="list-style-type: none"> • Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre • Discrepancy between purchase and sales invoices • Transaction involves complicated routings without sufficient explanation or trade records
------------	--

Case Study 74 - Netherlands

A company registered in the BVI with an account in Switzerland transfers money via a Dutch bank account to a company registered in Cyprus with a Latvian bank account. The UBOs of both companies are Russian. STRs are submitted because of the use of (false) invoices which were not based on any fair consideration. This regularly occurs in what is referred to as the VAT carousel fraud.

Indicators	<ul style="list-style-type: none"> • Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre • False invoices created for services not carried out
------------	---

Case Study 75 – Netherlands	
<p>This South American investigation focused on persons whose tax profile did not correspond to the amounts paid into their accounts in foreign countries or their spending. Corruption funds were allegedly paid to the suspects via the Dutch company, which company was managed by a Legal Consultancy Agency registered in a low tax jurisdiction. The Dutch company was also reportedly registered in an international jurisdiction. The funds paid ended up in Luxembourg accounts in the name of the suspects which were later converted to numbered accounts.</p>	
Indicators	<ul style="list-style-type: none"> • Politically exposed persons, or have familial or professional associations with a person who is politically exposed • Financial activities and transactions inconsistent with their customer profile • Bank accounts in multiple international jurisdictions without good reason • Transaction involves a numbered account

Case Study 76 – Netherlands	
<p>International company A with its headquartered in The Netherlands paid corruption funds to a government employee via letter box companies. An international company was registered in an international jurisdiction, with a government employee registered as the beneficial owner but with nominee shareholders and directors. Payments were made via a Dutch bank account of a subsidiary of the international company to an account of the foreign company in Estonia and via an enterprise registered in Hong Kong, after which these funds were paid into bank accounts in an international jurisdiction and from there to a Luxembourg bank account of the international company. Bribes were also paid to charities that were directly associated with government employees. In order to account for the bribes, false invoices were entered in the accounting records.</p>	
Indicators	<ul style="list-style-type: none"> • Politically exposed persons, or have familial or professional associations with a person who is politically exposed • Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre • Bank accounts in multiple international jurisdictions without good reason • False invoices created for services not carried out • Nominee owners and directors including formal nominees • Transaction involves complicated routings without sufficient explanation or trade records

Case Study 77 – New Zealand

A New Zealand shell company was set up by a New Zealand TCSP based in Vanuatu. The shell company was registered on behalf of an unknown overseas client and nominees were used to hide the identity of the beneficial owners. The actual business of the shell company was not apparent and was not indicated by the company name. The address listed on the companies' register was the same virtual office in Auckland as the TCSP. The nominee director resided in Seychelles, and the nominee shareholder was a nominee shareholding company owned by the TCSP. The nominee shareholding company was itself substantially a shell company and had been used as the nominee shareholder for hundreds of other shell companies registered by the TCSP.

News reports indicated that a power of attorney document transferred the directorship to a Russian national who had sold his passport details, with a bank account opened in Latvia. When journalists from the Organised Crime and Corruption Reporting Project (OCCRP) made contact with the Russian national, the man revealed he was unaware of the New Zealand company or its bank accounts. His identity, which he had sold, had been used without his knowledge. Furthermore, a former officer of the Russian tax police told journalists that hundreds of law firms specialise in establishing ready-made shell companies for their clients, who want to remain anonymous. Usually, these law firms rely on disadvantaged individuals who sell them passport details for approximately USD100-300.

Trade transactions were conducted with several Ukrainian companies including a state-owned weapons trader. The contracts were then cancelled after the funds had been transferred and refunds were made to different third-party international companies. Transactions were also made with three other New Zealand shell companies registered by the same TCSP, using the same nominee director, nominee shareholder and virtual office address as the shell company. News reports indicated that all four shell companies had been involved in laundering USD40 million for the Sinaloa drug cartel based in Mexico.

Indicators

- Foreign nationals with no significant dealings in the country in which they are procuring professional or financial services
- Registered under a name that does not indicate the activity of the company
- Registered at an address that does not match the profile of the company
- Registered at an address that is also listed against numerous other companies or legal arrangements
- Legal person or arrangement conducts transactions with international companies without sufficient corporate or trade justification
- There is a discrepancy between the supposed wealth of the settlor and the object of the settlement.
- Discrepancy between purchase and sales invoices
- Fabricated corporate ownership records
- False invoices created for services not carried out
- Falsified paper trail

	<ul style="list-style-type: none"> • Agreements for nominee directors and shareholders • Employees of professional intermediary firms acting as nominee directors or shareholders • Complex corporate structures that do not appear to legitimately require that level of complexity or which do not make commercial sense • Nominee owners and directors including formal nominees • Address of mass registration • No real business activities undertaken • Exclusively facilitates transit transactions and does not appear to generate wealth or income • Corporation has no personnel • Legal person does not have a physical presence • Transaction is occurring between two or more parties that are connected without an apparent business or trade rationale • Transaction involves two legal persons with similar or identical directors, shareholders, or beneficial owners • Transaction involves complicated transaction routings without sufficient explanation or trade records • Funds are sent to, or received from, a foreign country when there is no apparent connection between the country and the client • Funds involved in the transaction are sent to, or received from, a low-tax jurisdiction or international trade or finance centre
--	--

Case Study 78 – New Zealand

A New Zealand law firm was linked to clients who had been implicated, arrested or convicted of a myriad of offences including embezzlement, bribery, corruption, tax evasion, and money laundering. This law firm sets up its business basis in New Zealand, and worked for overseas clients using its in-depth knowledge of New Zealand tax, trust and company law.

The companies and partnerships were set up by this New Zealand law firm, who routinely used its employees as nominee directors and shareholders, with the beneficial owners (who were sometimes offenders and their associates) not publicly named. Furthermore, often a chain of companies was established, with one company is the shareholder of another, which was the shareholder of another, which added complexity to the structure, and further removed the beneficial owner from the assets. Sometimes a New Zealand (shell) company was used as a trustee of the trust.

The companies involved were usually all shell companies with nominee directors, shareholders, and addresses. The companies, partnerships and trusts comprised the complex structures established by this New Zealand law firm, which can be used to hide and protect wealth. Furthermore, sometimes entities were set up internationally by this New Zealand law firm’s business associates in other countries, which were added to the structures, further increasing the complexity and decreasing the ability and efficiency of detecting crime and hidden wealth. If

suspicious did arise and a person with such a structure was investigated, there was a convoluted audit trail that could be arduous to trace. There were strong indications that criminals have structures set up by this New Zealand law firm with evidence that some of these structures have been used by criminals to hide assets.

A NZ-based employee was also named as a director to satisfy the legal requirement to have a New Zealand resident director and address; however, the beneficial owner of the company was not identified in every instance.

Indicators

- Previous conviction for fraud, tax evasion, or serious crimes
- Under investigation or have known connections with criminals
- Registered at an address that is also listed against numerous other companies or legal arrangements
- Director or controlling shareholder(s) does not appear to have an activity role in the company
- Director, controlling shareholder(s) and/or beneficial owner(s) are listed against the accounts of other legal persons or arrangements
- Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre
- Complex corporate structures that do not appear to legitimately require that level of complexity or which do not make commercial sense
- Nominee owners and directors including formal nominees
- Address of mass registration
- No real business activities undertaken
- Exclusively facilitates transit transactions and does not appear to generate wealth or income
- Legal person has no personnel
- Legal person does not have a physical presence

Case Study 79 – New Zealand

Assets believed to be acquired using proceeds of crime allegedly linked with the settlor of these trusts. Some of these structures were set up via a NZ TCSP. None of assets are held directly by the trustees of the trusts – but via various US domestic and foreign entities. It appears all activities were US based with orders against US entities indirectly owned via overseas companies. The scheme involved two trusts, four companies, with nominee directors and shareholders employed by a law firm. This complex structure prevented law enforcement from obtaining beneficial ownership information by establishing a complex web of shell companies and trusts.

Indicators	<ul style="list-style-type: none"> • Director, controlling shareholder(s) and/or beneficial owner(s) are listed against the accounts of other legal persons or arrangements • Legal person or arrangement conducts transactions with international companies without sufficient corporate or trade justification • Agreements for nominee directors and shareholders • Employees of professional intermediary firms acting as nominee directors or shareholders • Nominee owners and directors including formal nominees • Address of mass registration
------------	---

Case Study 80 – New Zealand

Shell companies based in Panama, Belize, and the UK with nominee shareholders and directors have been used to open Latvian bank accounts to conduct hundreds of millions of dollars’ worth of international payments. The majority of transactions are payments being made on behalf of Vietnam entities for imported goods, or payments to Vietnamese expats living overseas on behalf of purportedly Vietnam-based senders. This distinct Vietnamese connection indicates the accounts may be controlled or administered from within Vietnam. New Zealand bank accounts were used to receive funds transferred from bank accounts in Latvia, Cambodia and China. The New Zealand accounts are either accounts held by students or by fruit wholesalers and exporters. More than 15 NZ properties have been purchased with funds from the Latvian bank accounts. These property transactions have been undertaken through NZ law firms. Information suggests that the Latvian accounts are also being “topped up” by other shell company bank accounts based in international jurisdictions, indicating a co-ordinated layering process being undertaken.

Indicators	<ul style="list-style-type: none"> • Declared income which is inconsistent with their assets, transactions or lifestyle • Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre • Financial activities and transactions inconsistent with the corporate profile • Complex corporate structures that do not appear to legitimately require that level of complexity or which do not make commercial sense • Transaction involves complicated transaction routings without sufficient explanation or trade records • Funds are unusual in the context of the client or customer’s profile • Funds involved in the transaction are sent to, or received from, a low-tax jurisdiction or international trade or finance centre
------------	--

Case Study 81 – New Zealand

Companies registered in New Zealand by a Vanuatu-based TCSP operated by New Zealand citizens were suspected of acting as shell companies that facilitate crime in foreign jurisdictions. The TCSP acted as nominee shareholders and provided nominee directors who resided in jurisdictions such as Vanuatu, Panama and the Seychelles – in the case of Company A, the employee recruited to act as a director likely had no knowledge of the activities taking place, as they had no previous involvement in any of the TCSP activities. Crimes include smuggling of illegal goods, arms smuggling, tax fraud, investment fraud and money laundering. Company A was one company set up by the TCSP, which leased the plane that was caught smuggling arms. 73 companies registered in New Zealand by the TCSP were suspected of acting as shell companies which facilitated crime in foreign jurisdictions. Crimes included the smuggling of illegal goods, arms smuggling, tax fraud, investment fraud and money laundering.

Indicators

- Director, controlling shareholder(s) and/or beneficial owner(s) are listed against the accounts of other legal persons or arrangements
- Falsified paper trail
- Agreements for nominee directors and shareholders
- Employees of professional intermediary firms acting as nominee directors or shareholders
- Complex corporate structures that do not appear to legitimately require that level of complexity or which do not make commercial sense
- Nominee owners and directors including formal nominees
- Address of mass registration

Case Study 82 – Norway

Seven Norwegian citizens, in different combinations, were the owners of four small Norwegian IT-companies. They were approached by a major Norwegian company (listed on the stock exchange) that wanted to buy shares of all the companies. The price offered was much higher than the share capital in the companies (their input value for taxation). In response to this, the owners established new companies in offshore jurisdictions and sold their shares to those companies with a minimum of profit. The newly established companies then immediately resold the shares to the actual buyer in Norway. The sales profits were realized abroad with no tax.

Indicators

- Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre
- Legal person or arrangement conducts a small number of high-value transactions with a small number of recipients
- Legal person or arrangement receives large sums of capital funding quickly following incorporation/formation, which is spent or transferred elsewhere

	<p>in a short period of time without commercial justification</p> <ul style="list-style-type: none"> • Focused on aggressive tax minimisation strategies • Transaction appears cyclical • Transaction involves two legal persons with similar or identical directors, shareholders, or beneficial owners • Transaction involves the transfer of shares in an off-market sale • Funds are sent to, or received from, a foreign country when there is no apparent connection between the country and the client • Funds involved in the transaction are sent to, or received from, a low-tax jurisdiction or international trade or finance centre.
--	---

Case Study 83 - Norway

The CEO of a large Norwegian company transferred significant sums of money to several companies, claiming that this represented payment for services (consultancy fees etc.). Investigation proved that no services were delivered and that the CEO was the beneficial owner of the companies.

Indicators	<ul style="list-style-type: none"> • False invoices created for services not carried out • Transaction involves two legal persons with similar or identical directors, shareholders, or beneficial owners
-------------------	---

Case Study 84 - Norway

The suspect was the head of a shipping company, and committed breach of trust by buying ships and equipment intended for the company through a structure of companies that was ultimately under his control. The suspect then sold the assets to the company at an inflated price. He simultaneously committed fraud against the banks that were financing the ships, by alleging the ships were bought at marked price. Although beneficial ownership was determined, legal challenges remain in confiscating assets frozen in foreign bank accounts that were not party to the criminal case.

Indicators	<ul style="list-style-type: none"> • Inflated asset sales between entities controlled by the same beneficial owner • Complex corporate structures that do not appear to legitimately require that level of complexity or which do not make commercial sense • Transaction involves two legal persons with similar or identical directors, shareholders, or beneficial owners
-------------------	---

Case Study 85 – Panama

The purported legitimate purpose of the scheme was the development and construction of real estate, based on small investors who injected capital. The funds provided by the settlor or third-party adherents were derived from illegal activities (corruption of public servants and illicit enrichment). The scheme involved a BVI company with nominee directors, ultimately controlled by a PEP who was a client of a bank that had a relationship with the TCSP. The TCSP set up a real estate trust to receive money and assets that come from the business of the settlor and “investors.” The assets received were invested in a real estate project, with the same assets given as a warranty to the bank that was financing 60% of the real state project. The ultimate beneficial owner of the real estate project was the son of the PEP.

The trustee did not conduct extensive due diligence and relied on the due diligence performed by the bank that referred the client, since both the client and the trustee maintained a business relationship with the bank.

Indicators

- Client is reluctant or unable to explain their source of wealth/funds
- Client is reluctant or unable to explain the nature of their business dealings with third parties
- Politically exposed persons, or have familial or professional associations with a person who is politically exposed
- Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre
- There is a discrepancy between the supposed wealth of the settlor and the object of the settlement.
- Falsified paper trail
- Nominee owners and directors including formal nominees
- An asset is purchased with cash and then used as collateral for a loan within a short period of time

Case Study 86 – Peru

This case concerns a Peruvian PEP, his wife, his mother-in-law and other individuals close to him following the purchase of properties. Two mortgages were paid in advance using funds from a Costa Rican company that had been established only six months before instructions were given for the wire transfers. The loan was paid in just four months by the offshore company, despite the financial loss incurred. The Peruvian authorities established the origin of the funds to be corrupt activities performed by the PEP during his administration. The purchase of a luxury property by the mother-in-law of the PEP, who did not have the economic capacity to make this purchase, led to the opening of a case at the FIU and the issuance of SARs by reporting entities.

Indicators	<ul style="list-style-type: none"> • Politically exposed persons, or have familial or professional associations with a person who is politically exposed • Financial activities and transactions inconsistent with their customer profile, • Director, controlling shareholder(s) and/or beneficial owner(s) are listed against the accounts of other legal persons or arrangements • Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre • Legal person or arrangement receives large sums of capital funding quickly following incorporation/formation, which is spent or transferred elsewhere in a short period of time without commercial justification • Family members with no role or involvement in the running of the business are listed as beneficial owners of legal persons or arrangements • A loan or mortgage is paid off ahead of schedule, incurring a loss
------------	--

Case Study 87 – Russia

A state customer concluded contracts on research work and the development of a special software with Contractor #1 and Contractor # 2. Analysis of financial transactions showed that these contractors did not conduct any research activities themselves, but transferred budgetary funds to subcontractors with real scientific laboratories among them. The majority of funds from Contractor #1 was sent to its subcontractor, who channelled funds to a shadow financial scheme consisting of multiple layers of shell companies. The funds were finally withdrawn in cash. The majority of funds from Contractor # 2 was sent to a real estate company that invested these funds into its business activity, acquired luxury cars and granted zero-interest rate loans to a number of individuals.

Analysis of ownership data, address registry information, an air tickets booking database, financial transactions and law enforcement data showed that Contractor #2 was previously owned by Mr. X, before the ownership was passed to straw men uninvolved with the scheme. The real estate company was formerly owned by Mr. X, before the ownership was transferred to his daughter. Contractor #1 was owned by straw men who had no idea about the company’s business activities and received instructions from Mr. X. These straw men received a “salary” from the company’s account. The director of the state customer’s department responsible for research activities was a brother of Mr. X. A daughter of the state customer department’s director acquired expensive real estate using cash that was deposited in advance in her account. The woman who had joint flights with Mr. X acquired expensive real estate using cash that was in advance deposited into her account in advance.

Indicators	<ul style="list-style-type: none"> • Politically exposed persons, or have familial or professional associations with a person who is politically exposed • False invoices created for services not carried out • Family members with no role or involvement in the running of the business are listed as beneficial owners of legal persons or arrangements • Nominee owners and directors including informal nominees, such as children,
------------	---

	<p>spouses, relatives or associates who do not appear to be involved in the running of the corporate enterprise</p> <ul style="list-style-type: none"> • Loans are received from private third parties without any supporting loan agreements, collateral, or regular interest repayments • Transaction is executed from a business account and involves a large sum of cash, either as a deposit or withdrawal, which is anomalous, or inconsistent with the company's profile • Transaction involves the use of multiple large cash payments to pay down a loan or mortgage
--	--

Case Study 88 – Russia

Embezzled public funds worth RUB 300 million (11 million USD) were transferred from the account of Company K to the account of Company R. Company R, a Delaware corporation, was owned and managed by the Russian wife of the suspect, a state official. The same day, Company R transferred USD 11 million as a loan to an account of Company A (BVI) held by a Cypriot bank. Company A then transferred more than USD 11 million to the Company D (US) to purchase real estate in France. Company D transferred more than USD 12 million to a French Notaries Bureau. Information from the FIU of Luxembourg showed that one of the US banks acted as a guarantor for the suspect's wife in a transaction to purchase of shares of a French company – and the holder of the real estate. The transaction was conducted via an S.S. company – a French subsidiary of a Luxembourg S.D. SA., incorporated and owned by the same individual. Analysis showed that these two chains were interrelated and the real estate was purchased with the proceeds of public funds embezzled for the benefit of the state official's wife.

Indicators	<ul style="list-style-type: none"> • Politically exposed persons, or have familial or professional associations with a person who is politically exposed • Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre • Family members with no role or involvement in the running of the business are listed as beneficial owners of legal persons or arrangements • Complex corporate structures that do not appear to legitimately require that level of complexity or which do not make commercial sense • The connections between the parties are questionable, or generate doubts that cannot be sufficiently explained by the client • Finance is provided by a lender, including either a natural or a legal person, other than a known credit institution, with no logical explanation or commercial justification • Transaction is occurring between two or more parties that are connected without an apparent business or trade rationale • Transaction is executed from a business account and involves a large sum of cash, either as a deposit or withdrawal, which is anomalous, or inconsistent with the company's profile
------------	--

	<ul style="list-style-type: none"> Funds are sent to, or received from, a foreign country when there is no apparent connection between the country and the client
--	--

Case Study 89 – Serbia

Four transfers from the account of agricultural cooperative “U.B.” were made to the account of legal person “P.I.P.H”, totalling approximately EUR 200 000. Funds in foreign currency totalling EUR 178 630 were purchased from this money immediately after it was deposited, and after that transferred to the account of Delaware Company M. The account of Company M was held with a bank in Cyprus. The stated purpose of the transactions was payment on basis of trade in goods. Furthermore, there was a transfer from the same account of “P.I.P.H” to the account of Delaware Company S, in the amount EUR 75 175. Company S’s account was with a bank in a foreign country. The stated basis for the transfer was payment for trade in goods. Investigation established that this was the case of black market trade. The funds accumulated from trade in goods were transferred to accounts of six legal persons from Serbia (it is suspected that these are front companies). The funds were afterwards transferred to accounts of legal persons abroad and then further to accounts of numerous Chinese citizens assumed to be the real beneficial owners of the goods sold in Serbia.

Indicators	<ul style="list-style-type: none"> Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre Corporation maintains a bank balance of close to zero, despite frequent incoming and outgoing transactions The connections between the parties are questionable, or generate doubts that cannot be sufficiently explained by the client Transaction involves the transfer of shares in an off-market sale Funds are sent to, or received from, a foreign country when there is no apparent connection between the country and the client
-------------------	---

Case Study 90 – Serbia

Members of an organized crime group devised a scheme involving Serbian banks, with the intention to legalize drug trafficking proceeds through purchasing a company's shares. One of the features of the scheme was the structuring of transactions to avoid reporting transactions to the FIU. The organized crime group found 42 individuals, who agreed to pay deposits into their own accounts, in the amounts below the threshold of EUR 15 000, declaring them their savings. Subsequently, these persons stated that they agreed to have their money used to acquire a company providing services in hospitality industry. At the same time, the organized crime group took over profitable private companies in Serbia, with large capital turnover through accounts, which were performing well and whose owners were ready to sell them.

Indicators	<ul style="list-style-type: none"> • Under investigation or have known connections with criminals • Falsified records or counterfeited documentation • Finance is provided by a lender, including either a natural or a legal person, other than a known credit institution, with no logical explanation or commercial justification • Transaction involves the purchase of high-value goods in cash
------------	--

Case Study 91 – Slovenia

EUR 4 million was transferred from a Slovenian company to a Liechtenstein TCSP's account at a Liechtenstein's bank under the guise of "construction consulting." MLA was used to identify the beneficial owner of TCSP, and the FIU identified that another Liechtenstein TCSP with the same trustee had opened a bank account in a Slovenian bank, though the trustee declared himself to be the beneficial owner. A bank statement allowed authorities to identify the beneficial owner as named by the trustee when opening the account. A deal was made with three suspects and authorities retrieved the embezzled assets and levied a penalty of more than EUR 1 million.

Indicators	<ul style="list-style-type: none"> • Director, controlling shareholder(s) and/or beneficial owner(s) are listed against the accounts of other legal persons or arrangements • Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre • The connections between the parties are questionable, or generate doubts that cannot be sufficiently explained by the client
------------	--

Case Study 92 – Switzerland

A lawyer, who had already been convicted of document falsification and misappropriation, hid stolen bearer shares in accounts opened in the name of offshore companies. The bearer shares had been sold and registered shares of the same company had been bought with the proceeds and transferred to other accounts in different jurisdictions. With effective domestic and international cooperation, the suspect was arrested and extradited to Switzerland and is now in prison. Assets in the amount of more than CHE 50 million (Swiss Francs) could also be blocked in all five countries.

Indicators	<ul style="list-style-type: none"> • Under investigation or have known connections with criminals • Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre • Multiple bank accounts without good reason • Nominee owners and directors including informal nominees, such as children, spouses, relatives or associates who do not appear to be involved in the running of the corporate enterprise • Transaction appears cyclical
------------	--

	<ul style="list-style-type: none"> • Transaction involves the transfer of bearer shares in an off-market sale • Funds are sent to, or received from, a foreign country when there is no apparent connection between the country and the client
--	--

Case Study 93 – Switzerland

An operational coal mining company paid out EUR 800 million to their owner, a Dutch NV over a period of four years. The financial intermediary came across information that there was an ongoing prosecution of the Dutch NV and its owner in a third country and filed a STR for misappropriation of funds. The documentation held by the Swiss financial intermediary showed that this Dutch NV was owned by Mr. A, a citizen of another European country. Over a time period of 10 years CHF 3.5 billion was transferred through a large and complicated structure of 32 companies in different countries including the British Virgin Islands and the Netherlands. The Swiss financial intermediary’s documentation identified the beneficial owner of almost all of the companies as Mr. A.

Indicators	<ul style="list-style-type: none"> • Foreign nationals with no significant dealings in the country in which they are procuring professional or financial services • Under investigation or have known connections with criminals • Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or finance centre • Legal person or arrangement regularly sends money to low-tax jurisdictions or international trade or finance centres or international trade or finance centres • Legal person or arrangement conducts transactions with international companies without sufficient corporate or trade justification • Complex corporate structures that do not appear to legitimately require that level of complexity or which do not make commercial sense or which do not make commercial sense • The connections between the parties are questionable, or generate doubts that cannot be sufficiently explained by the client • Transaction involves two legal persons with similar or identical directors, shareholders, or beneficial owners • Transaction involves complicated transaction routings without sufficient explanation or trade records • Funds involved in the transaction are sent to, or received from, a low-tax jurisdiction or international trade or finance centre or international trade or finance centre
------------	--

Case Study 94 – Switzerland

A Swiss financial intermediary filed a SAR after a deposit of USD 2 million was made into the account of Company A by Company B who is a wholly owned

subsidiary of C Holding. The beneficial owner of company A, Mr. X, justified the incoming funds as being the result of services provided by Company A under a contract between companies A and B. The nature of these services was purported to be the provision business contacts, acquiring potential clients, and negotiation of terms and conditions.

Shortly after the deposit, two transfers of USD 1 million were made to two other companies of which Mr. X and Mr. Y –both high-ranking executives of the Dutch company C Holding - were the beneficial owners. The annual report of the Dutch company did not include any information about compensation to Mr. X and Mr. Y. The financial intermediary therefore suspected money laundering and dishonest business management to the disadvantage of the shareholders of company C Holding.

Indicators	<ul style="list-style-type: none"> • The connections between the parties are questionable, or generate doubts that cannot be sufficiently explained by the client • Transaction involves two legal persons with similar or identical directors, shareholders, or beneficial owners • Transaction involves complicated transaction routings without sufficient explanation or trade records
------------	---

Case Study 95 – Trinidad and Tobago

The case concerns a US citizen who created a complex scheme to avoid payment of taxes on income earned from a business operated in Trinidad and Tobago. The scheme included the involvement of gatekeepers, multiple individuals and legal structures and use of money remitters. The suspect, “Blackjack”, earned millions of dollars over the period 2009-2011 from a Trinidad and Tobago Private Members’ Club (similar to a casino). Blackjack took action to conceal his income and assets from the IRS by using unreported bank accounts in Trinidad and Tobago to deposit personal income; using US bank accounts in the names of his New Jersey business entities to receive income from the casino; using those business entities to pay for personal expenses; transferring income from the casino directly to vendors in the US for personal expenses; and directing the casino employees to send cash through wire transfers to individuals in New Jersey who then collected the cash on his behalf.

Indicators	<ul style="list-style-type: none"> • Financial activities and transactions inconsistent with the corporate profile • Focused on aggressive tax minimisation strategies • Correct documents not filed with the tax authority • The connections between the parties are questionable, or generate doubts that cannot be sufficiently explained by the client • Transaction is executed from a business account but appears to fund personal purchases, including the purchase of assets or recreational activities that are inconsistent with the company’s profile • Funds are sent to, or received from, a jurisdiction that is considered to pose a high money laundering or terrorism financing risk
------------	--

Case Study 96 – Turkey	
<p>The fuel obtained from fuel smuggling was sold through the petrol stations under the control of organised crime. Person A, who is the beneficial owner and the leader of the organisation, disguised his ownership by transferring control of the petrol stations to close associates and by carrying out transactions using cash and straw men.</p>	
Indicators	<ul style="list-style-type: none"> • Client is reluctant or unable to explain the identity of the beneficial owner • Director or controlling shareholder(s) cannot be located or contacted • Bank balance of close to zero, despite frequent incoming and outgoing transactions • Falsified paper trail • Nominee owners and directors including informal nominees, such as children, spouses, relatives or associates who do not appear to be involved in the running of the corporate enterprise

Case Study 97 – Turkey	
<p>A group of persons create and operate websites to provide illegal betting over the internet. In order to hide their identity, these persons use natural persons and shell companies to open bank accounts, and withdraw or transfer the deposited funds. The natural persons are aged around 30, are not registered as taxpayers and do not have social security records, live in different cities, and are generally unemployed, housewives or minimum wage workers. The straw men are paid a certain amount of money for the use of their accounts. The intermediary accounts are changed constantly. The sums collected in the bank accounts of those persons are withdrawn in cash from the banks or from ATMs, transferred to the bank accounts of persons/companies established for this purpose, or transmitted to an offshore corporation.</p>	
Indicators	<ul style="list-style-type: none"> • Financial activities and transactions inconsistent with their customer profile • Correct documents not filed with the tax authority • Nominee owners and directors including informal nominees, such as children, spouses, relatives or associates who do not appear to be involved in the running of the corporate enterprise • Transaction is executed from a business account and involves a large sum of cash, either as a deposit or withdrawal, which is anomalous, or inconsistent with the company’s profile

Case Study 98 – Ukraine

The money laundering scheme of former high-ranking officials of Ukraine was conducted via Ukrainian banking institutions and foreign banks. A number of non-resident companies (mostly registered in Panama, Cyprus, BVI, UK and Belize) linked by constituent-officials and business relations invested a considerable amount of funds in Ukraine (bought internal government bonds, transferred significant amounts of funds to deposit accounts in Ukraine and made contributions to the authorised capital of Ukrainian enterprises). According to the analysis of information on IP-addresses used to access business accounts, all the investments were managed from one management centre.

Indicators	<ul style="list-style-type: none"> • Politically exposed persons, or have familial or professional associations with a person who is politically exposed • Director, controlling shareholder(s) and/or beneficial owner(s) are listed against the accounts of other legal persons or arrangements • Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre • Multiple bank accounts without good reason • Bank accounts in multiple international jurisdictions without good reason • Complex corporate structures that do not appear to legitimately require that level of complexity or which do not make commercial sense • The connections between the parties are questionable, or generate doubts that cannot be sufficiently explained by the client • Funds are sent to, or received from, a foreign country when there is no apparent connection between the country and the client
------------	--

Case Study 99 – United States

US authorities identified front companies used to conceal the ownership of certain US assets by Bank Melli, which was previously designated by the US authorities for providing financial services to entities involved in Iran's nuclear and ballistic missile program. Bank Melli was also subject to a call for enhanced vigilance in UNSCR 1803. The Department of Justice (DOJ) obtained the forfeiture of substantial assets controlled by the Government of Iran. These assets included a 36-story office tower in Manhattan at 650 5th Avenue having an appraised value of more than USD 500 million, other properties, and several million dollars in cash. The ownership the office tower was split between Bank Melli (40%) and the Alavi Foundation (60%), which provided services to the Iranian government, such as transferring funds from the office tower to Bank Melli.

Indicators	<ul style="list-style-type: none"> • Legal person or arrangement incorporated/formed in a jurisdiction that is considered to pose a high money laundering or terrorism financing risk • Correct documents not filed with the tax authority
------------	--

	<ul style="list-style-type: none"> • Designated persons or groups • Funds are sent to, or received from, a jurisdiction that is considered to pose a high money laundering or terrorism financing risk
--	--

Case Study 100 - United States

An individual organised a loan-fraud pyramid scheme to falsely inflate the sales and revenues of his company. His company served as a front. The scheme involved his wife and son. The defendants created numerous legal entities, including trusts, corporations/LLCs to open bank accounts to manage the illicit funds and conceal the ownership and involvement in the scheme. The defendants used the help of a legal professional (attorney) to create a number of legal entities, and diverted loans for the company for private benefit, including gems and jewellery. The attorney involved helped to sell the jewellery (which was an asset of the trust). The address of the attorney (then deceased) was used to move money from two different accounts.

The investigation obtained legitimate financial records from third parties via subpoena as corporate records held by the organisation were found to be fabricated. The assets held by the defendant were identified by interviewing third parties to determine the true ownership. Additional information was obtained via the interview of tax return preparer. Standard financial investigative techniques were used to identified several trusts/trustees and legal persons.

Indicators	<ul style="list-style-type: none"> • Multiple bank accounts without good reason • Correct documents not filed with the tax authority • Discrepancy between purchase and sales invoices • Fabricated corporate ownership records • Family members with no role or involvement in the running of the business are listed as beneficial owners of legal persons or arrangements • Complex corporate structures that do not appear to legitimately require that level of complexity or which do not make commercial sense • Nominee owners and directors including informal nominees, such as children, spouses, relatives or associates who do not appear to be involved in the running of the corporate enterprise • Transaction is executed from a business account but appears to fund personal purchases, including the purchase of assets or recreational activities that are inconsistent with the company's profile • Transaction involves a professional intermediary without due cause or apparent justification
-------------------	---

Case Study 101 - United States

The defendant operated a mortgage broker business and several other companies that owned and managed real estate. He used nominee accounts, shell

Case Study 101 – United States

corporations and other schemes to conceal his ownership. The scheme involved the purchase of properties owned by entities that the defendant controlled through an employee. The purchases were financed through loans. In connection with the loan applications, the defendant and others submitted fraudulent information related to the financial position of the borrower or purchaser, fraudulent appraisals that overstated the value of the collateral, and other documents that contained other material misrepresentations. The subject would “sell” commercial property owned by an entity he controlled to another entity that he controlled at highly elevated prices. The purchases were financed through fraudulent loan applications and through the submission of fraudulent documents. Also, the defendant altered invoices directed to one of the entities by inflating the cost of the work listed on the original invoices to make it falsely appear as though improvements had been made to the properties serving as collateral for the loans.

Indicators	<ul style="list-style-type: none"> • Falsified records or counterfeited documentation • Inflated asset sales between entities controlled by the same beneficial owner • Nominee owners and directors including informal nominees, such as children, spouses, relatives or associates who do not appear to be involved in the running of the corporate enterprise • No real business activities undertaken
------------	---

Case Study 102 – United States

Individual 1, a US Citizen and resident of Belize, incorporated more than 5 000 shell companies in Belize and the West Indies to facilitate numerous securities and tax fraud schemes. Individual 2, a dual US and Canadian citizen, was the secret owner of an international broker-dealer and investment management company based in Panama City, Panama, and Belize City, Belize. There were 3 inter-related schemes: 1) fraudulent stock promotion and price manipulation; 2) circumventing capital gains taxes under the Foreign Account Tax Compliance Act (FATCA); 3) laundering more than USD 250 million in profits through unidentifiable debit cards and attorney escrow accounts.

Individual 2 used the services of a US-based lawyer to launder the more than USD 250 million generated through his stock manipulation of a number of US companies – directing the fraud proceeds to five law firm accounts and transmitting them back to members of the scheme and its co-conspirators. These concealment schemes also enabled Individual 2 to evade reporting requirements to tax authorities.

Indicators	<ul style="list-style-type: none"> • Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre • Correct documents not filed with the tax authority • Complex corporate structures that do not appear to legitimately require that level of complexity or which do not make commercial sense
------------	--

	<ul style="list-style-type: none"> • Nominee owners and directors • Transaction involves a professional intermediary without due cause or apparent justification • Transaction involves the transfer of shares in an off-market sale
--	---

Case Study 103 – United States

A Honduran PEP allegedly solicited and accepted USD 2.08 million in bribes from a Honduran technology company, in exchange for prioritising and expediting payments under a USD 19 million contract with the government agency to organise and digitise state records.

The technology company allegedly sent wire transfers through another company to the PEP totalling approximately USD 2.08 million through an affiliate company located in Panama, which was owned by nominees. The bribe proceeds were then allegedly laundered into the United States and used to acquire real estate in the New Orleans area. Certain properties were titled in the name of companies controlled by the PEP’s brother in an effort to conceal the illicit source of the funds as well as the beneficial ownership. One company used to hold title was a used-car dealership, and the other was a shell company which at one point counted the PEP among its members. Most of the real properties allegedly acquired with bribe proceeds were titled in the names of the companies.

Indicators	<ul style="list-style-type: none"> • Politically exposed persons, or have familial or professional associations with a person who is politically exposed • Legal person or arrangement incorporated/formed in a low-tax jurisdiction or international trade or financial centre • Legal person or arrangement regularly sends money to low-tax jurisdictions or international trade or finance centres • Nominee owners and directors • Transfer of real property from a natural to a legal person in an off-market sale
------------	---

Case Study 104 – United States

The defendants engineered a conspiracy to sell fraudulent renewable energy credits through the use of shell and shelf companies in the United States in order to receive renewable energy tax credits from the US government for renewable fuels never produced, and to launder those illicit proceeds for their own benefit. Among their ill-gotten gains from these proceeds were various assets including real estate, boats, cars, watches, and gold.

During the course of their investigation, law enforcement determined that the defendant directed a network of his professional contacts to purchase shelf companies throughout the United States, to serve as purported purchasers of renewable fuel and purported sellers of feedstock. The use of shelf companies was

discovered by interviewing the nominees who had opened bank accounts on behalf of those companies and through search warrants executed on a number of the businesses.

Indicators	<ul style="list-style-type: none"> • Long period of inactivity following incorporation, followed by a sudden and unexplained increase in financial activities • Multiple bank accounts without good reason • Falsified paper trail • Complex corporate structures that do not appear to legitimately require that level of complexity or which do not make commercial sense • Nominee owners and directors
------------	---

Case Study 105 - United States

The US Department of the Treasury's Office of Foreign Assets Control (OFAC) designated a foreign PEP under the Foreign Narcotics Kingpin Designation Act for playing a significant role in international narcotics trafficking, with a straw man also designated for providing material assistance, financial support, or goods or services in support of and acting on behalf of the PEP. In addition, OFAC designated shell companies tied to the straw man that were used to hold real estate.

Indicators	<ul style="list-style-type: none"> • Politically exposed persons, or have familial or professional associations with a person who is politically exposed • Designated persons or groups • No real business activities undertaken
------------	---

Case Study 106 - Vatican

In this case, Company A incorporated in the Caribbean was entitled to issue bearer shares. Company A was managed by a branch of an international bank registered in the same country whose headquarters is registered in Europe. A South American politically exposed person was appointed as authorised signatory for an account held by company A at the headquarters of the bank. The same PEP was under investigation for racketeering, corruption, and ML. This individual appears to be the beneficial owner of company A. The company attempted a wire transfer of EUR 1 000 0000 from the bank headquarters to a charitable entity in a branch of another European bank. The charitable entity refused the transaction and reported the case to the domestic authorities. Shortly after the attempted transfer, Company A was dissolved.

Indicators	<ul style="list-style-type: none"> • Politically exposed persons, or have familial or professional associations with a person who is politically exposed • Under investigation or have known connections with criminals • Legal person or arrangement incorporated/formed in a low-tax jurisdiction
------------	--

	<p>or international trade or financial centre</p> <ul style="list-style-type: none">• The connections between the parties are questionable, or generate doubts that cannot be sufficiently explained by the client
--	--

ANNEX D. SOURCES OF INFORMATION AND TECHNIQUES TO DISCOVER BENEFICIAL OWNERSHIP

OVERVIEW

1. During the development of this report, a range of techniques to discover beneficial ownership was identified. However, due to the nature of the analysed case studies, which generally involved active law enforcement investigations, the identified techniques centred primarily on traditional law enforcement capabilities and tools. As such, the tools and techniques available to financial institutions, professional intermediaries, and intelligence agencies to reliably identify and verify beneficial ownership prior to forming a suspicion and commencing a formal investigation are more difficult to ascertain and describe.
2. This is somewhat unsurprising. As this report has demonstrated, the concealment of beneficial ownership information is the cornerstone of many money laundering and terrorism financing schemes, and proving beneficial ownership presents one of the greatest challenges for financial institutions and competent authorities. However, some simple tools are available to financial institutions and competent authorities to assist in the identification of high-risk or suspicious customers and activities. These are outlined in this Annex.

SOURCE OF INFORMATION TO ASSIST IN THE IDENTIFICATION OF BENEFICIAL OWNERSHIP

3. In its 2014 guidance paper on *Transparency and Beneficial Ownership*⁷⁸, the FATF outlined some mechanisms and sources for obtaining beneficial ownership information of legal persons, including: company registries, financial institutions, DNFBPs, the legal person itself, and other national authorities, such as tax authorities or stock exchange commissions. These mechanisms are outlined in greater detail in that guidance report; however, the focus of the guidance report is on the implementation of policy initiatives to improve transparency of beneficial ownership, rather than on investigative techniques, and may therefore be of limited value to financial institutions and competent authorities.
4. Analysis of the case studies provided in support of this report identified the following common sources of information used to identify beneficial ownership:

Banks and financial institutions
5. Banks were the most common source of information used by competent authorities to identify beneficial ownership, and were involved in over half of the investigations analysed. Financial institutions represent a key source of information

⁷⁸ FATF, 2014: p.18

for FIUs and competent authorities; however, there is limited ability for financial institutions to leverage the information held by other financial institutions. Information held by banks also relies on the quality of the information provided by a client. This is particularly relevant for the sharing of suspicions and risk profiles between banks, or within multi-national banks. Further work is being conducted globally to improve private-private and public-private information sharing to alleviate this issue.

Professional intermediaries

6. In approximately one-third of cases, information was provided by DNFBPs. Information held by professional intermediaries can be extensive; however, in countries where DNFBPs are not obliged to conduct CDD, the information held by professionals may not be reliable. Furthermore, the presence of LPP and client confidentiality can inhibit efforts to obtain information from intermediaries.

Companies and company registries

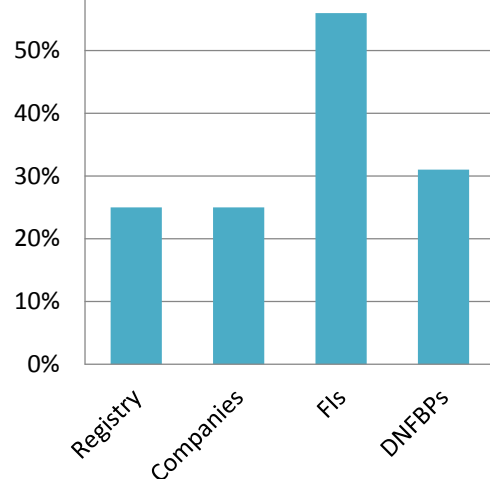
7. Beneficial ownership information held by companies and in company registries were used in only one-quarter of cases. In many cases, these registries were general property or corporate registries, rather than beneficial ownership registries. However, many of the cases included in the sample predate the work being done globally in this area.

Traditional law enforcement techniques

8. In one-quarter of cases, beneficial ownership was not known, the source of beneficial ownership information was not disclosed, or beneficial ownership was not discovered using information held under Recommendations 24 and 25. Often, in these cases, beneficial ownership was determined through surveillance.

9. Analysis of the case studies demonstrated that competent authorities and law enforcement can more easily obtain accurate beneficial ownership from financial institutions than from DNFBPs. Banks featured in 90% of cases, and were a source of beneficial ownership in over half the case studies. While 76% of cases included some type of DNFBP, in only one third did DNFBPs act as a source of beneficial ownership information for authorities – perhaps due to issues of complicity, legal professional privilege, or simply a lack of implementation of beneficial ownership record-keeping requirements in these sectors.

Figure 3. Sources of beneficial ownership information



10. Other sources of beneficial ownership include:

Registers of Beneficial Ownership

11. In recent years, and particularly after the *Anti-Corruption Summit* held in London in 2016, many countries have implemented, or commenced work to implement, registers of beneficial ownership. In countries where they have been implemented, registers of beneficial ownership will contain useful information relevant to determining true beneficial ownership and control. However, care should be taken to analyse the veracity of the information held on registers of beneficial ownership, as it is often self-reported and rarely vetted by a central administering body.

Shareholder register

12. In some instances, particularly in jurisdictions that require companies to actively collect such information up front, shareholder registers will contain sufficient information to identify controlling interests in a company. However, many criminals will seek to limit their exposure by concealing their share ownership. In these instances, the shareholder register may indicate other controlling persons (natural or legal) who may be acting on behalf of the beneficial owner, or may be controlled by the beneficial owner.

Commercial databases

13. A large number of commercial databases are available to law enforcement in developing their investigations and to financial institutions in identifying risk. Use of these databases provides a quick means of obtaining a wide variety of useful information and leads. A lack of information on commercial databases can be an indicator of the use of a shell or a shelf corporation. This information, along with other investigative techniques can be an effective tool to unravel the legal arrangement of an entity.

Professional nominees

14. As discussed in this report, some countries require all legal persons incorporated under domestic laws to maintain a physical presence in that country. In some instances, these countries also require a domestic national to serve as a director or controlling shareholder of the company. Many professional intermediaries, particularly TCSPs, offer nominee directorship and company management services to foreign clients to assist in meeting these legal requirements. These professional nominees will often maintain records of their customer, and while these records may not prove true beneficial ownership and control, they will assist in tracing and unravelling the broader control structure of the company.

MECHANISMS AVAILABLE TO COMPETENT AUTHORITIES

15. While there is a range of information sources available to assist in the identification of beneficial ownership, the reliability of some of these sources is often questionable. In order to fully unravel complicated ownership structures and prove ownership and control (and thereby prove criminality where relevant) law

enforcement and competent authorities require access to a broader range of intelligence and evidence collection capabilities. The key capabilities relevant to the identification and verification of beneficial ownership are outlined below.

Mutual legal assistance

16. Mutual legal assistance is the cornerstone of most major investigations that involve a transnational corporate structure or international financial flows. However, many law enforcement and intelligence practitioners have reported that delays in mutual legal assistance requests are one of the key inhibitors in an investigation. Therefore, while the information available via mutual legal assistance is often invaluable, it is not necessarily a quick or easy solution to unravelling opaque transnational ownership structures.

Intelligence disclosures and sharing

17. In addition to mutual legal assistance, which is often used to exchange information for evidentiary purposes, FIUs and competent authorities will regularly exchange information with international partners for intelligence purposes only. These intelligence exchanges can be spontaneous or subsequent to a request, and can greatly assist FIUs to understand the ownership and control of complex international structures, or the financial activities of those structures.

Taxation databases

18. Taxation databases are a useful means of identifying indicators of criminality and schemes designed to obscure beneficial ownership. By comparing previous tax assessments to bank statements, financial transactions, assets, and the lifestyle of an individual, it is possible to identify anomalous financial activities. Further investigation often uncovers dubious control structures or corporate dealings designed to conceal beneficial ownership.

Asset disclosure databases

19. Many countries require public officials to disclose their assets on publicly accessible databases. These databases can be a useful tool to gauge the wealth and asset holdings of public officials, and can assist in identifying anomalous financial activities. Furthermore, the absence of an asset that is clearly controlled by the official, their family, or their corporate interests from the registry may be an indication of efforts to conceal their ownership of the asset.

Subpoenas for information

20. Subpoenas are often coercive in nature, and are generally used to compel the recipient to provide the required information. However, they can also offer a range of protections and indemnities to the recipient. For this reason, subpoenas are often used in situations where a competent authority and financial institution are working collaboratively on an investigation, despite the fact that the financial institution is a willing party to the investigation.

Covert surveillance

21. Most law enforcement and intelligence agencies have access to covert surveillance capabilities, including telecommunication interception and physical surveillance. These techniques can be used to identify connections between associates and identify control over assets or companies.

Informants and witnesses

22. Some intelligence and law enforcement agencies have the capability to coerce witnesses to give information or documents relating to an investigation. Often, these capabilities can only be utilised in certain limited circumstances, and the information gathered from these witnesses can often be used for intelligence purposes only (not evidence). However, these capabilities can be highly valuable in dissecting and understanding complicated corporate structures designed to conceal beneficial ownership and frustrate investigations.

Search Warrants

23. Search warrants are a standard law enforcement capability; however, they are an overt and intrusive capability that immediately announces law enforcement's interests and investigation into a person or company. For this reason, search warrants are often used towards the end of an investigation, rather than at the commencement. While search warrants are valuable evidence gathering tools, and can assist in proving beneficial ownership in court, they may have limited value in identifying beneficial ownership in the early stages of an investigation.

Multi-agency task forces

24. It is rare that any single agency has all of the information and capabilities required to unravel, understand, and prosecute complicated money laundering schemes designed to obscure beneficial ownership. Often, law enforcement agencies, intelligence agencies, taxation authorities, securities regulators, and other competent authorities are all required to successfully discover, understand and disrupt complex transnational schemes. Multi-agency task forces are a useful mechanism to co-ordinate investigative efforts, share information, and reduce duplication. The presence of a standing taskforce within a country allows for the quick deployment of resources and capabilities in response to emerging threats and opportunities.

Tools to identify potential efforts to obscure beneficial ownership

25. In addition to the sources of information described above, law enforcement and private sector have identified a number of novel approaches to collecting information relevant to the identification of risk indicators. In most cases, these tools are not suitable to discovering true beneficial ownership and control; however, they may reveal anomalous activities and indices that could assist in recognising high-risk individuals and companies. These tools are outlined below:

IP addresses

26. Many financial institutions and law enforcement agencies have begun to collect and analyse the Internet Protocol (IP) address of customers involved in a transaction. As the majority of financial transactions are now conducted online, the collection of IP address information can provide valuable insights into who is ordering a transaction, and where that transaction is being ordered from. It is likely that careful analysis of IP address information could identify situations where control is being exerted by an unknown third party, where control shifts from one person to another, where control of a domestic account is being exerted by a foreign influence, or where a person may be seeking to conceal their IP through the use of a virtual private network (VPN).

27. Furthermore, analysis of IP addresses collected by a financial institution may identify commonalities and control nexuses, where a single IP address is responsible for transaction requests for multiple accounts, customers, and beneficial owners. Instances of repeat IP addresses across numerous accounts may be indicative of a professional nominee, professional intermediary, or professional money launderer, and these accounts may deserve close monitoring.

Online maps and street-level images

28. Online maps and street-level images (such as those developed by Google and other search engines) are readily available online for a significant proportion of countries across the globe. These capabilities can serve a range of useful purposes, including the verification and analysis of addresses provided by customers and clients. In the past, service providers and financial institutions were often limited in their ability to critically analyse the address of an individual or company, particularly when engaging with customers and companies based in a foreign country. Today, a simple search of a company address has significant analytical potential.

29. By analysing the location of an address provided by a customer or company, as well as the physical appearance of that address from the street (where images are available), it is often possible to identify anomalies indicative of a shell company or an attempt to conceal the customer's true identity. Anomalies may include:

- the location is inconsistent with the financial profile of the customer
- the location is inconsistent with business profile of the company
- the physical appearance of the address is inconsistent with the size and nature of the company
- the address is a post box.

30. Addresses that appear anomalous may warrant enhanced due diligence and closer monitoring.

Media reporting

31. A number of cases analysed for this report involved financial institutions and professional intermediaries that identified suspicious transactions as a result of media reporting. Media reporting is a useful means of identifying potential

corruption, high-value government contracts, and high-profile corporate activities. While media reporting is not an indication of suspicious activities, it may assist in the identification of anomalous or high-risk activities.

32. Some media reporting is more specific and incriminating. In recent years, global consortiums of journalists, such as the International Consortium of Investigative Journalists, have undertaken widespread investigations into corruption, tax evasion, and money laundering. In two key instances⁷⁹, the investigations released leaked documents relating to the establishment of complex corporate structures and companies in low-tax jurisdictions by law firms on behalf of high-wealth individuals. While these leaked documents are not evidence of criminality or wrong-doing, they may be indicative of risk, and may warrant close consideration from a risk analysis perspective.

33. It is important to consider the source of the media reporting when assessing the validity and reliability of the information. Not all media sources are reliable, and care should be taken to validate or verify any intelligence derived from open sources.

Techniques to identify potential efforts to obscure beneficial ownership

34. There is a broad range of analytical techniques available to identify activities and trends indicative of the concealment of beneficial ownership, and of money laundering more broadly. This report will not attempt to list all such techniques; however, some key techniques identified by FIUs, competent authorities, and private sector representatives have been included below:

Identifying the beneficial owners of legal arrangements

35. Identifying the beneficial ownership of legal arrangements can pose significant challenges due to the number of actors that can exercise control or benefit from the arrangement. When considering the beneficial ownership of a trust, asking the following key questions may assist financial institutions and professional intermediaries to better understand key features of the arrangement:

- Who is the real settlor and what is the real source of funds?
- Who are the real beneficiaries i.e. for whose benefit are the trust assets managed?
- What is the trust's governance system and who are the real "natural persons exercising effective control"?

36. Seeking copies or extracts of tax or legal advice on the formation of the trust or an explanation from current advisers as to the purpose behind the formation of the trust will assist in answering some of these questions. Where such advice is not available, it may be possible to draw inferences from background information, although this can be less reliable.

⁷⁹ The 2015 leak of confidential documents from Panama-based law firm Mossack Fonseca, and the 2017 leak from Bermuda-based law firm, Appleby.

In the absence of the ability to identify BO, identify senior management personnel

37. As explained previously, beneficial ownership must involve some level of ultimate control, whether direct or indirect control. While the beneficial owner of a company may not be visible, the management structure is generally easier to ascertain. By analysing the directors and senior management of a company, it may be possible to discern whether one of them is the ultimate beneficial owner. Conversely, analysis of the activities and financial dealings of the management personnel may identify a third party exerting control from outside of the company.

In the absence of the ability to identify BO, identify individuals with control over transaction accounts/power of attorney

38. As with identifying the director and senior management of a company, identifying individuals who exert control over financial transaction accounts, or who have power of attorney over the company, may assist in identifying the beneficial owner. Although more difficult to discern, individuals with control over transaction accounts, and those with power of attorney, often have the power to exert control over a company or its finances. While many of these individuals will be employed in legitimate finance and legal areas of larger companies, those with no apparent connection to the company, or who are seemingly employed in unrelated areas of the company, could potentially be the beneficial owner of the company.

Search existing records for the same addresses or telephone numbers

39. As identified in this report, numerous professional intermediaries, particularly TCSPs, provide directorship and company management services to their clients. A key indicator of this activity is the use of a mailbox service for multiple clients. As a result, large numbers of shell companies, particularly those with foreign beneficial owners, will be registered to the same address and telephone number. By identifying commonly used addresses and numbers, it is possible to identify companies that utilise a directorship or company management service. It may also indicate the use of professional nominees, and the fact that the company is a shell company.

40. Companies that are established and managed by TCSPs will often share the same bulk address. Additionally, these TCSPs will often establish banking relationships for their clients at the same financial institutions. Analysis of customer databases by these financial institutions is likely to identify commonly used addresses and telephone numbers indicative of bulk company incorporation and management. These customers may warrant enhanced due diligence to ensure that beneficial ownership and control details are recorded correctly.

Meet high-risk clients face-to-face

41. One of the findings of this report has been that the increased use of internet communications and the decrease in face-to-face client interactions have exacerbated challenges associated with identifying and proving beneficial ownership and control. This is largely due to the ease with which individuals can conceal their identity in the absence of face-to-face interactions. While governments and FinTech companies are investing significant resources to improve identification

processes in the digital age, including the provision of document verification systems and digital identities, the lack of face-to-face interactions will continue to pose a vulnerability to CDD and KYC processes.

42. One solution is to increase face-to-face interactions with high-risk clients or customers, including through the use of publicly available video-conference facilities. By meeting with the client directly, the financial institution can verify their identity against photographic identification documentation and better understand the level of control they exert over the company or assets involved. It is likely that even a brief discussion with a client about their activities and business dealings will allow the financial institution to identify indicators of the use of nominee directors and indirect control by a third party.

Analysis of cross-border wire transfers

43. The regular and proactive analysis of cross-border wire transfers is often instrumental in identifying true ownership and control structures. Those FIUs that receive cross-border wire transfer reports have reported the importance of those reports and their value in tracing money flows and identifying likely beneficial ownership. Financial institutions have direct and unfettered access to cross-border wire transfer information, and are therefore ideally placed to identify anomalous money flows on a global scale. Indicators of suspicious activities indicative of an attempt to conceal beneficial ownership are outlined in Annex E to this report.

Additional resources

44. For more examples of, and ideas on, the use of technology to verify beneficial ownership, see the Tax Justice Network's *Technology and Online Beneficial Ownership Registries: Easier to create companies and better at preventing financial crimes* report⁸⁰ and the FATF 2014 guidance on *Transparency and Beneficial Ownership*.⁸¹

⁸⁰ Knobel, A., 2017.

⁸¹ FATF, 2014.

ANNEX E. INDICATORS OF CONCEALED BENEFICIAL OWNERSHIP

During the development of the report on the vulnerabilities associated with the concealment of beneficial ownership, 106 case studies were submitted by the FATF and Egmont Group members. Through the analysis of these case studies, as well as discussions with financial intelligence units (FIUs), competent authorities, and the private sector, a range of indicators of the concealment of beneficial ownership was identified. These risk indicators are summarised below. It is important to note that this list is not exhaustive, and other indicators may be identified.

Indicators about the client or customer

1. The client is reluctant to provide personal information.
2. The client is reluctant or unable to explain:
 - their business activities and corporate history
 - the identity of the beneficial owner
 - their source of wealth/funds
 - why they are conducting their activities in a certain manner
 - who they are transacting with
 - the nature of their business dealings with third parties (particularly third parties located in foreign jurisdictions).
3. Individuals or connected persons:
 - insist on the use of an intermediary (either professional or informal) in all interactions without sufficient justification
 - are actively avoiding personal contact without sufficient justification
 - are foreign nationals with no significant dealings in the country in which they are procuring professional or financial services
 - refuse to co-operate or provide information, data, and documents usually required to facilitate a transaction
 - are politically exposed persons, or have familial or professional associations with a person who is politically exposed
 - are conducting transactions which appear strange given an individual's age (this is particularly relevant for underage customers)
 - have previously been convicted for fraud, tax evasion, or serious crimes
 - are under investigation or have known connections with criminals
 - have previously been prohibited from holding a directorship role in a company or operating a Trust and company service provider (TCSP)
 - are the signatory to company accounts without sufficient explanation

- conduct financial activities and transactions inconsistent with their customer profile
 - have declared income which is inconsistent with their assets, transactions, or lifestyle.
4. Legal persons or legal arrangements:
- have demonstrated a long period of inactivity following incorporation, followed by a sudden and unexplained increase in financial activities
 - describe themselves as a commercial business but cannot be found on the internet or social business network platforms (such as LinkedIn, XING, etc.)
 - are registered under a name that does not indicate the activity of the company
 - are registered under a name that indicates that the company performs activities or services that it does not provide
 - are registered under a name that appears to mimic the name of other companies, particularly high-profile multinational corporations
 - use an email address with an unusual domain (such as Hotmail, Gmail, Yahoo, etc.)
 - are registered at an address that does not match the profile of the company
 - are registered at an address that cannot be located on internet mapping services (such as Google Maps)
 - are registered at an address that is also listed against numerous other companies or legal arrangements, indicating the use of a mailbox service
 - where the director or controlling shareholder(s) cannot be located or contacted
 - where the director or controlling shareholder(s) do not appear to have an active role in the company
 - where the director, controlling shareholder(s) and/or beneficial owner(s) are listed against the accounts of other legal persons or arrangements, indicating the use of professional nominees
 - have declared an unusually large number of beneficiaries and other controlling interests
 - have authorised numerous signatories without sufficient explanation or business justification
 - are incorporated/formed in a jurisdiction that is considered to pose a high money laundering or terrorism financing risk
 - are incorporated/formed in a low-tax jurisdiction or international trade or finance centre
 - regularly send money to low-tax jurisdictions or international trade or finance centre

- conduct a large number of transactions with a small number of recipients
 - conduct a small number of high-value transactions with a small number of recipients
 - regularly conduct transactions with international companies without sufficient corporate or trade justification
 - maintain relationships with foreign professional intermediaries in the absence of genuine business transactions in the professional's country of operation
 - receive large sums of capital funding quickly following incorporation/formation, which is spent or transferred elsewhere in a short period of time without commercial justification
 - maintain a bank balance of close to zero, despite frequent incoming and outgoing transactions
 - conduct financial activities and transactions inconsistent with the corporate profile
 - are incorporated/formed in a jurisdiction that does not require companies to report beneficial owners to a central registry
 - operate using accounts opened in countries other than the country in which the company is registered
 - involve multiple shareholders who each hold an ownership interest just below the threshold required to trigger enhanced due diligence measures.
5. There is a discrepancy between the supposed wealth of the settlor and the object of the settlement.
6. Individuals, legal persons and/or legal arrangements:
- make frequent payments to foreign professional intermediaries
 - are using multiple bank accounts without good reason
 - are using bank accounts in multiple international jurisdictions without good reason
 - appear focused on aggressive tax minimisation strategies
 - are interested in foreign company formation, particularly in jurisdictions known to offer low-tax or secrecy incentives, without sufficient commercial explanation
 - demonstrate limited business acumen despite substantial interests in legal persons
 - ask for short-cuts or excessively quick transactions, even when it poses an unnecessary business risk or expense
 - appear uninterested in the structure of a company they are establishing
 - require introduction to financial institutions to help secure banking facilities

- request the formation of complex company structures without sufficient business rationale
 - have not filed correct documents with the tax authority
 - provide falsified records or counterfeit documentation
 - are designated persons or groups
 - appear to engage multiple professionals in the same country to facilitate the same (or closely related) aspects of a transaction without a clear reason for doing so.
7. Examination of business records indicate:
- a discrepancy between purchase and sales invoices
 - double invoicing between jurisdictions
 - fabricated corporate ownership records
 - false invoices created for services not carried out
 - falsified paper trail
 - inflated asset sales between entities controlled by the same beneficial owner
 - agreements for nominee directors and shareholders
 - family members with no role or involvement in the running of the business are listed as beneficial owners of legal persons or arrangements
 - employees of professional intermediary firms acting as nominee directors and shareholders
 - the resignation and replacement of directors or key shareholders shortly after incorporation
 - the location of the business changes frequently without an apparent business justification
 - officials or board members change frequently without an appropriate rationale.
8. Complex corporate structures that do not appear to legitimately require that level of complexity or which do not make commercial sense.
9. Simple banking relationships are established using professional intermediaries.

Indicators of shell companies

10. Nominee owners and directors:
- formal nominees (formal nominees may be “mass” nominees who are nominated agents for a large number of shell companies)
 - informal nominees, such as children, spouses, relatives or associates who do not appear to be involved in the running of the corporate enterprise.

11. Address of mass registration (usually the address of a TCSP that manages a number of shell companies on behalf of its customers)
12. Only a post-box address (often used in the absence of professional TCSP services and in conjunction with informal nominees)
13. No real business activities undertaken
14. Exclusively facilitates transit transactions and does not appear to generate wealth or income (transactions appear to flow through the company in a short period of time with little other perceived purpose)
15. No personnel (or only a single person as a staff member)
16. Pays no taxes, superannuation, retirement fund contributions or social benefits
17. Does not have a physical presence.

Indicators about the transaction

18. The customer is both the ordering and beneficiary customer for multiple outgoing international funds transfers
19. The connections between the parties are questionable, or generate doubts that cannot be sufficiently explained by the client
20. Finance is provided by a lender, whether a natural or a legal person, other than a known credit institution, with no logical explanation or commercial justification
21. Loans are received from private third parties without any supporting loan agreements, collateral, or regular interest repayments
22. The transaction:
 - is occurring between two or more parties that are connected without an apparent business or trade rationale
 - is a business transaction that involves family members of one or more of the parties without a legitimate business rationale
 - is a repeat transaction between parties over a contracted period of time
 - is a large or repeat transaction, and the executing customer is a signatory to the account, but is not listed as having a controlling interest in the company or assets
 - is executed from a business account but appears to fund personal purchases, including the purchase of assets or recreational activities that are inconsistent with the company's profile
 - is executed from a business account and involves a large sum of cash, either as a deposit or withdrawal, which is anomalous, or inconsistent with the company's profile

- appears cyclical (outgoing and incoming transactions are similar in size and are sent to, and received from, the same accounts, indicating that outgoing funds are being returned with little loss) (aka “round-robin” transactions)
 - involves the two-way transfer of funds between a client and a professional intermediary for similar sums of money
 - involves two legal persons with similar or identical directors, shareholders, or beneficial owners
 - involves a professional intermediary without due cause or apparent justification
 - involves complicated transaction routings without sufficient explanation or trade records
 - involves the transfer of real property from a natural to a legal person in an off-market sale
 - involves the use of multiple large cash payments to pay down a loan or mortgage
 - involves a numbered account
 - involves licensing contracts between corporations owned by the same individual
 - involves the purchase of high-value goods in cash
 - involves the transfer of (bearer) shares in an off-market sale
 - a loan or mortgage is paid off ahead of schedule, incurring a loss
 - includes contractual agreements with terms that do not make business sense for the parties involved
 - includes contractual agreements with unusual clauses allowing for parties to be shielded from liability but make the majority of profits at the beginning of the deal
 - is transacted via a digital wallet.
23. The funds involved in the transaction:
- are unusual in the context of the client or customer’s profile
 - are anomalous in comparison to previous transactions
 - are sent to, or received from, a foreign country when there is no apparent connection between the country and the client, and/or
 - are sent to, or received from, a low-tax jurisdiction or international trade or finance centre
 - are sent to, or received from, a jurisdiction that is considered to pose a high money laundering or terrorism financing risk.
24. An asset is purchased with cash and then used as collateral for a loan within a short period of time.

25. Unexplained use of powers of attorney or other delegation processes (for example, the use of representative offices).
26. Unexplained use of express trusts, and/or incongruous or unexplained relationships between beneficiaries (or persons who are objects of a power) and the settlor.
27. Unexplained or incongruous classes of beneficiaries in a trust.



FATF



www.fatf-gafi.org
egmontgroup.org

July 2018

Concealment of Beneficial Ownership

Legal persons, legal arrangements and professional intermediaries play important roles in facilitating business growth and development. But, they can also be misused, providing criminals with structures that help them conceal the proceeds of crime.

This joint FATF-Egmont Group study looks at the mechanisms and techniques that can be used to obscure the ownership and control of illicitly obtained assets, drawing on over 100 case studies, the experiences of law enforcement experts, the outcomes of FATF Mutual Evaluation Reports, and the insights provided by academic reports and other studies.

The report aims to raise awareness with national authorities, financial institutions and other professional service providers about the risks involved.

FATF



FATF Report to the G20

Beneficial Ownership

September 2016





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

Executive Summary

The G20 Finance Ministers and Central Bank Governors called on the Financial Action Task Force (FATF) and the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) to make initial proposals on ways to improve the implementation of the international standards on transparency, including on the availability of beneficial ownership information, and its international exchange.¹

The FATF will work on the following proposals on reinforcing implementation of the existing international standards relating to transparency and beneficial ownership:

- Ensure the emphasis on beneficial ownership in the FATF peer review follow-up processes is effective to apply peer pressure to countries to accelerate their implementation of the FATF Standards in this area.
- Deliver clear and consistent recommendations to countries on how to improve implementation of the beneficial ownership requirements during assessment processes.
- Enhance cooperation between the FATF and the Global Forum to further ensure the coherence and mutual reinforcement of work to improve transparency in relation to beneficial ownership, including through identifying examples of effective implementation.

In addition, the FATF proposes the G20 to lead by example by:

- Issuing a public commitment by G20 members to meet the FATF Standards on beneficial ownership.

These initial proposals were developed by the FATF, building on the extensive work it has already done on beneficial ownership, and reflect discussions with the Global Forum. Another report focusing on the Global Forum's ongoing work on the same topic will be submitted to the G20 separately.

The FATF is an inter-governmental body comprised of 37 members which sets internationally-recognised standards (the FATF Recommendations) to combat money laundering, and the financing of terrorism and proliferation. The FATF leads a global network of 198 jurisdictions which have all committed to implementing the FATF Standards and undergoing peer reviews to evaluate their level of technical compliance and the effectiveness of their implementation. Beneficial ownership is a core aspect of the FATF Standards, and an important focus of its peer review and related follow-up processes.

¹ Statement from the Communiqué of the G20 Finance Ministers and Central Bank Governors meeting held in Washington D.C. on 13 April 2016 meeting, which was reiterated in the Communiqué of their meeting held in Chengdu, China on 24 July 2016.

I. Introduction

In April 2016, the G20 Finance Ministers and Central Bank Governors asked the FATF and the Global Forum to make initial proposals by their next meeting on ways to improve implementation of the international standards on transparency, including on the availability of beneficial ownership information and its international exchange. In response to this request, the FATF is submitting this report to update the G20 on the FATF's ongoing work on transparency of and timely access to beneficial ownership information, and to set out initial proposals for further work which will be discussed at the next FATF Plenary meeting to be held in Paris, France on 19 to 21 October.

II. International standards on transparency of beneficial ownership

▶ *FATF issued the first international standards on beneficial ownership in 2003*

The FATF has a long history of taking action to facilitate transparency and timely access to beneficial ownership information on legal persons and legal arrangements. In 2003, the FATF became the first international body to set international standards on beneficial ownership which focused on legal requirements for financial institutions and other gatekeepers to collect and verify information on the ownership of legal persons and arrangements, and on measures to ensure that reliable information on their beneficial ownership is available to investigators. Over 190 jurisdictions subsequently committed to implementing those standards and underwent peer reviews (mutual evaluations) for their compliance with them.

The FATF's third round of evaluations focused primarily on assessing countries' implementation of the technical requirements on transparency. The results showed some weaknesses, including lack of clarity about how the transparency requirements could be applied in practice, insufficient measures to prevent the misuse of bearer shares and nominees, and accurate and adequate beneficial ownership information not being available in a timely manner. Countries found to have serious deficiencies in their AML/CFT frameworks were subjected to a rigorous follow-up process. This pressure generated positive change and now many countries have put in place solid legal frameworks requiring their financial institutions and other professions and businesses to collect beneficial ownership information about their customers.

As well, the FATF continued to study the issue of beneficial ownership in the context of money laundering and terrorist financing risks, methods and trends, and has issued several reports aimed at raising global awareness of these issues.

▶ *FATF strengthens its standards on beneficial ownership in 2012*

In 2012, the FATF strengthened its standards on beneficial ownership, to give more clarity about how countries should ensure information is available, and to deal with vulnerabilities such as bearer shares and nominees. The revised standards also clearly distinguish between basic ownership information (about the immediate legal owners of a company or trust), and beneficial ownership information (about the persons who ultimately own or control it). They also clarify that having accurate and up-to-date basic information about a legal person or legal arrangement is a fundamental prerequisite for identifying the ultimate beneficial owners, and require countries to provide international cooperation in relation to ownership information. In total, 198 jurisdictions

subsequently committed to implementing the FATF's strengthened standards on beneficial ownership, and undergoing peer reviews to assess their compliance.

To facilitate these efforts, the FATF followed up by issuing *Guidance on Transparency and Beneficial Ownership* in 2014 to further clarify what the FATF Standards require. This guidance paper gives a step-by-step guide on how to access publicly available information on corporate vehicles, and establish procedures to facilitate information requests from foreign counterparts. The FATF continues to issue sector-specific guidance papers aimed at helping financial institutions and other gatekeepers to implement the FATF Standards, including the beneficial ownership requirements. The FATF's ongoing work to facilitate information sharing more generally will also improve transparency and timely access to beneficial ownership information. A full list of relevant FATF publications on beneficial ownership is [annexed](#) for reference.

III. Implementation of the existing standards on beneficial ownership: lessons learned

The FATF is now assessing countries' implementation of the revised 2012 standards, and applying a follow-up process to make sure any problems are addressed. Crucially, FATF assessments review whether the international standards are being applied effectively, not just whether countries' laws include the relevant provisions. This places the FATF at the forefront of international peer review bodies, and enables us to identify any gaps or problems with the international standards or with how they are implemented.

▶ *Results of the FATF evaluations conducted to date*

As reported to the G20 in July 2016, the FATF has identified some significant implementation challenges on beneficial ownership based on recent peer reviews. Nine FATF members have been assessed since the FATF Standards were strengthened in 2012. Only two of those nine countries were found to have a substantial level of effectiveness in preventing the misuse of legal persons and arrangements. Major improvements are required in the other seven countries assessed. Some specific problems have been identified, including:

- Insufficient accuracy and accessibility of basic information relating to company registration;
- Less rigorous implementation of customer due diligence (CDD) measures by key gatekeepers such as company formation agents, lawyers, and trust-and-company-service providers;
- Lack of sanction on companies which fail to update information held by national company registries, or to keep information about their shareholders or members up-to-date; and
- Obstacles to information sharing such as data protection and privacy laws which impede competent authorities from getting timely access to adequate, accurate and up-to-date basic and beneficial ownership information.

The large-scale misuse of legal persons and arrangements which was exposed in April 2016 focused attention on the need to strengthen controls against the misuse of corporate structures. Our analysis to date does not point to specific gaps or inadequacies in the international standards. Rather, it is

becoming clear that some countries (including G20 members) have not yet fully or effectively implemented the FATF Standards on preventing the misuse of legal persons and arrangements. It is therefore imperative for countries to fully and effectively implement the FATF Standards in order to close the gaps in their national systems with regard to legal persons and arrangements.

▶ *Synergies with the work of the Global Forum*

The Global Forum's core mandate is focused on improving transparency and exchange of information for tax purposes through its peer review process. To date its peer reviews have been in relation to the *Exchange of Information on Request Standard* and have incorporated a focus on legal ownership rather than beneficial ownership information. In that context, it has also identified a number of areas for improvement in relation to the access to, and availability of, legal ownership information for tax compliance purposes. The Global Forum recently commenced a new round of reviews based on new Terms of Reference which now require that all jurisdictions have access to information regarding the beneficial ownership of entities and legal arrangements (as defined by the FATF) operating in their jurisdiction to allow for its international exchange for tax compliance purposes. The Global Forum has also recently adopted the *Automatic Exchange of Information Standard*, which also incorporates the FATF's definition of beneficial ownership information, and requires financial institutions to identify and report beneficial ownership information to their tax authorities for onward exchange in relation to certain financial accounts. The Secretariats of the FATF and the Global Forum have had some preliminary discussions concerning the synergies between their respective assessment processes.

IV. Initial proposals to reinforce the implementation of international standards

The existing FATF Standards provide a robust framework for ensuring that adequate and accurate beneficial ownership information is available to the competent authorities in a timely manner. However, the results of the peer review process show that many countries still struggle to implement the existing requirements effectively. For that reason, the FATF will work on the following proposals on reinforcing implementation of the existing international standards relating to transparency and beneficial ownership.

Ensure the emphasis on beneficial ownership in the FATF peer review follow-up processes is effective to apply peer pressure to countries to accelerate their implementation of the FATF Standards in this area.

The FATF process for assessing country compliance has proven to be an effective driver for countries to improve their implementation of AML/CFT measures, including those related to beneficial ownership. The related follow-up processes are particularly rigorous and give the FATF a broad range of tools for applying pressure to countries to make the necessary changes to their systems. As a result since the last round of evaluations, many countries have put in place sound legal frameworks requiring financial institutions and other gatekeepers to collect beneficial ownership information on customers who are legal persons or legal arrangements. The FATF will ensure the emphasis on beneficial ownership in the peer review follow-up processes is effective to apply peer pressure to countries to accelerate their implementation of the FATF Standards in this area.

Deliver clear and consistent recommendations to countries on how to improve implementation during assessment processes.

The FATF and its global network of assessment bodies assess compliance with beneficial ownership requirements as they apply in the context of implementing AML/CFT measures. The Global Forum is also an assessment body which assesses compliance with beneficial ownership requirements as they apply in the context of transparency and exchange of information for tax purposes.

Although the scope of FATF and Global Forum assessments differ, it is important to ensure that countries receive clear and consistent recommendations on how to improve their implementation of the international standards on beneficial ownership for AML/CFT purposes (in the case of FATF) and for tax purposes (in the case of the Global Forum). This minimises confusion on the part of assessed countries about what steps they need to take to improve implementation, and facilitates consistent peer pressure and technical assistance which could increase the traction of both bodies' recommendations to countries overall.

The FATF Secretariat and Global Forum Secretariat will map where the respective standards and assessment processes coincide, consider ways to promote clear and consistent recommendations to countries.

Enhance the cooperation between the FATF and the Global Forum to further ensure the coherence and mutual reinforcement of work to improve transparency in relation to beneficial ownership, including through identifying examples of effective implementation.

Some practical challenges recur in the context of different legal and administrative systems, for example: how to ensure the accuracy of ownership information held in a company registry, or how to enable ownership information to be exchanged between fiscal and law enforcement authorities, in both directions.

The FATF Secretariat has taken stock of recent research on the misuse of corporate structures to identify the most important methods and vulnerabilities, looking at the risks posed by different types of legal persons and arrangements, and the challenges related to identifying their beneficial owners. The FATF Secretariat is also conducting a horizontal review of fourth round mutual evaluations to identify specific obstacles to effective implementation, and best practices in overcoming those obstacles. This analysis will enable us to identify priority issues where further work may be needed. Proposals for further work on specific problems will be considered by the FATF Plenary in October 2016, including identifying ways to sustain cooperation between the FATF and Global Forum in the long term and potential options for joint work to be conducted by the FATF and Global Forum members.

In the meantime, the FATF Secretariat will continue its technical discussions with the Global Forum on issues relating to the exchange of beneficial ownership information for tax purposes with a view to ensuring a common understanding of the FATF Standards on beneficial ownership information and how they apply in the broader context of AML/CFT.

V. Next Steps

The next step will be for the FATF Plenary to consider these initial proposals at its next meeting which will be held in Paris, France on 19 to 21 October. The Global Forum will be invited to attend that meeting and participate in those discussions.

In the meantime, the FATF will continue to intensively monitor the steps taken by countries to fill gaps in their national systems and improve their effectiveness. Many countries have already put in place adequate legal frameworks to collect and maintain beneficial ownership information as part of CDD processes. However, improving effective implementation of these measures remains key, particularly in relation to the requirements to ensure that adequate, accurate and up-to-date basic and beneficial ownership information is available to the authorities in a timely manner. The operational challenges of preventing the abuse of corporate vehicles can only be addressed by individual countries. For this reason, the FATF makes the following proposal to the G20:

Issuing a public commitment by G20 members to meet the FATF Standards on beneficial ownership.

The G20 members would lead by example by meeting the FATF Standards on legal and beneficial ownership and ensuring they are properly enforced, including:

- (a) Fully and effectively implement the FATF Standards on transparency and beneficial ownership (Recommendations 24 and 25) without further delay.
- (b) Effectively monitoring key gatekeepers (including company formation agents, lawyers, and trust-and-company-service providers) for compliance with their CDD obligations, and enforcing those requirements – including identifying and shutting down those who facilitate misuse of corporate structures.
- (c) Taking action at the national and global level to address barriers to information-sharing (e.g. reviewing data protection and privacy laws).
- (d) Taking action to facilitate the timely sharing of basic and beneficial ownership information at the domestic and international level, including ensuring that such information is accurate and up-to-date.

Annex – Relevant FATF publications on transparency and beneficial ownership

FATF Standards:

- [FATF Recommendations](#) (2012). See in particular:
 - FATF Recommendation 24 on transparency of legal persons;
 - FATF Recommendation 25 of transparency of legal arrangements;
 - FATF Recommendation 10 on customer due diligence; and
 - Immediate Outcome 5 on effective implementation of measures to prevent legal persons and arrangements from being misuse for money laundering or terrorist financing, and ensuring that information on their beneficial ownership is available to competent authorities without impediment

FATF Methodology for assessing compliance with the FATF Standards:

- [FATF Methodology for assessing technical compliance with the FATF Recommendations and the effectiveness of AML/CFT systems](#) (2013)

FATF studies on beneficial ownership, and money laundering/terrorist financing risks:

- [Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals](#) (2013)
- [Money Laundering Using Trust and Company Service Providers](#) (2010, FATF and the Caribbean Financial Action Task Force)
- [The Misuse of Corporate Vehicles, including Trust and Company Service Providers](#) (2006)

FATF guidance to assist countries, financial institutions and other businesses and professions implement the FATF Standards, including those on beneficial ownership:

- [Guidance on Transparency and Beneficial Ownership](#) (2014)
- [Guidance for a risk-based approach for money or value transfer services](#) (2016)
- [Guidance for a risk-based approach: effective supervision and enforcement by AML/CFT supervisors of the financial sector and law enforcement](#) (2015)
- [FATF Guidance: National money laundering and terrorist financing risk assessment](#) (2013)
- [Guidance on the Risk-Based Approach for Trust and Company Service Providers](#) (2008)
- [Risk Based Approach Guidance for Legal Professionals](#) (2008)
- [Guidance on the Risk-Based Approach for Accountants](#) (2008)

FATF



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' cooperation 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

⁵⁵ Interpretive Note to Recommendation 24, par. 9.

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

⁵⁷ Interpretive Note to Recommendation 24, par. 10.

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

- a) Are companies aware of their obligations to give assistance to the authorities? Have the authorities provided guidance to companies explaining their obligations, and is this guidance publicly available?
- b) Where countries have implemented a mechanism that allows companies to cooperate with the competent authorities through another person in the country, is that person readily identifiable to the competent authorities? Is the person required to respond in a timely fashion to authorized requests for beneficial ownership information from competent authorities? Is the person aware of its obligations to maintain and produce adequate, accurate and current beneficial ownership information to the authorities?
- c) Is there a competent authority with responsibility for enforcing these requirements? Are there effective, appropriate and dissuasive sanctions for failing to comply with these requirements? Are third parties who are responsible for cooperating with the authorities subject to liability and sanctions for failure to comply with these obligations?

VI. ENHANCING TRANSPARENCY OF LEGAL ARRANGEMENTS (RECOMMENDATION 25)

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

SCOPE OF RECOMMENDATION 25

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

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

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

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

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

⁵⁹ Glossary to the *FATF Recommendations*.

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

UNDERSTANDING THE RISK ASSOCIATED WITH LEGAL ARRANGEMENTS

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

REQUIREMENTS FOR TRUST LAW COUNTRIES

59. Trust law 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

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

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.

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

COMMON REQUIREMENTS FOR ALL COUNTRIES

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

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

- a) Require that trustees disclose their status to financial institutions and DNFBPs when forming a business relationship or carrying out an occasional transaction above the threshold.⁶⁶ The trustee needs to actively make such disclosure (and not only upon the request of a competent authority). Trustees should not be prevented from doing this even if, for example, the terms of the trust deed require them to conceal their status. The only source of information on the trustee often available comes from the business relationship of a financial institution/DNFBP and the trustee.
- b) Require professional trustees to maintain the information they hold for at least five years after their involvement with the trust ceases. Countries are also encouraged to

⁶⁵ Interpretive Note to Recommendation 25, par. 8.

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

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

OTHER POSSIBLE MEASURES

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

- a) registries (for example, a central registry of trusts or trust assets), or asset registries for land, property, vehicles, shares or other assets
- b) other competent authorities that hold information on trusts and trustees (for example, tax authorities which collect information on assets and income relating to trusts), and
- c) other agents and service providers to the trust, including investment advisors or managers, lawyers, or trust and company service providers.⁶⁸

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

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

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

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

⁶⁸ Interpretive Note to Recommendation 25, par. 3.

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

- b) ***Other competent authorities:*** In many countries, tax authorities are the most extensive source of information on the ownership and control of trusts, though they will only hold information if the trust generates tax liabilities in the jurisdiction. Typically, if a trust receives income above a specific threshold, the trustee must file a tax return with the tax authorities on behalf of the trust. Such a tax return may include information regarding the trust's trustee, the settlor, and each beneficiary with taxable income from the trust in that taxation period. However, not all countries require information on beneficiaries to be included. Countries should review the information collected by other authorities and consider approaches to ensure that competent authorities have timely access to information already being collected on trusts for other purposes. Some countries have agreements for the automatic exchange of tax information which may provide for greater exchange of information on trusts between different jurisdictions. In particular, through this system, banks will report certain beneficial ownership information for tax purposes on an annual basis to a domestic tax authority on a trust that holds an account with the bank and where the beneficiary is resident of a foreign jurisdiction. The domestic tax authority will automatically pass on that information to the foreign jurisdiction's tax authority. Whether the foreign jurisdiction's tax authority can pass on this information to other competent authorities must be examined in light of the confidentiality and data safeguards included in the legal instrument providing for automatic exchange of tax information.
- c) ***Other agents and service providers to the trust:*** Recommendation 22 requires all lawyers, notaries, other independent legal professionals and accountants to be subject to record keeping requirements when they are creating, operating or managing a legal arrangement. Recommendation 22 also requires all TCSPs to be subject to record keeping requirements when they are acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another form of legal arrangement. Countries could also consider a centralised registry of professional trustees (or any other equivalent mechanisms) to ensure that the regulator identifies all trustees established in a given jurisdictions. This could facilitate timely access by the competent authorities to beneficial ownership information held by the trustee in the country.

OTHER REQUIREMENTS AND A COMBINED APPROACH

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

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

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

Box 8. Example features – trusts and other legal arrangements

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

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

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

⁷⁰ Interpretive Note to Recommendation 25, par. 11.

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

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

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

- a) establishing business 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.

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

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

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

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

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

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

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

the transactions being conducted are consistent with the institution's knowledge of the customer and its business and risk profiles, including, where necessary, the customer's source of funds.⁷⁶ To ensure that financial institutions and DNFBPs understand the ML/TF risks in relation to corporate vehicles, countries should take steps to identify and assess the risks and make information available to them.⁷⁷ Financial institutions and DNFBPs should be required to record the CDD procedures performed and maintain these records for at least 5 years, in line with Recommendation 11.⁷⁸ When accepting business through a third party introducer, a financial institutions or DNFBP should always be sure to immediately obtain information on the beneficial ownership of the client. Copies of the underlying documentation that confirm the client and BO information should be available to the financial institution or DNFBP upon first request as envisaged by R17.

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

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

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

75. It is also essential to have effective monitoring and supervision of financial institutions and 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

76. In relation to wire transfers, the circumstances covered by the Interpretive Note to Recommendation 16 include wire transfers above USD/EUR 1 000.⁸³ This means that financial institutions should undertake CDD when carrying out cross-border wire transfers above USD/EUR 1 000, including the requirement to identify and take reasonable measures to verify the identity of the beneficial owner of the originator or beneficiary, as outlined above. In addition, Recommendation 16 also requires financial institutions to take further measures such as collecting certain originator information and ensuring that this information accompanies a wire transfer.⁸⁴

TRUST AND COMPANY SERVICE PROVIDERS (TCSPS)

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

78. The lack of AML/CFT regulation of legal professionals and TCSPs limits a country's ability to ensure the transparency of corporate vehicles under Recommendations 24 and 25. Another common challenge is that, even where legal professionals and TCSPs are subject to AML/CFT requirements, deficiencies often exist in how the CDD obligations with respect to beneficial ownership are being implemented. Supervision for compliance with these requirements is often ineffective. For these reasons, beneficial ownership information of legal arrangements may not be available. To address these issues, countries should ensure that all legal professionals and TCSPs are required to conduct CDD pursuant to Recommendation 22.⁸⁵

ISSUES RELATING TO THE LEGAL PROFESSION

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

⁸³ Interpretive Note to Recommendation 16, par. 5.

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

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

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

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

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

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

⁸⁷ FATF (2013b).

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

⁸⁹ FATF (2013b), p. 31.

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

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

VIII. ACCESS TO INFORMATION BY COMPETENT AUTHORITIES

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

- a) the basic and beneficial information on legal persons held by relevant parties,⁹² and
- b) the information held by trustees and other parties, including information held by financial institutions and DNFBPs on: (a) the beneficial ownership of the trust; (b) the residence of the trustee; and (c) any assets held or managed by the financial institution or DNFBP, in relation to any trustees with which they have a business relationship, or for which they undertake an occasional transaction.⁹³

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

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

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

⁹² Interpretive Note to Recommendations 24, par. 12.

⁹³ Interpretive Note to Recommendation 25, par. 4.

IX. INTERNATIONAL COOPERATION

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

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

- a) facilitating access by foreign competent authorities to basic information held by company registries (for example, by making this information available online, or if it is not available on-line, by having an efficient mechanism through which foreign authorities can request information)
- b) facilitating access by foreign competent authorities to any information held by registries or other domestic authorities on legal arrangements
- c) exchanging information on shareholders (including when it is held by the company or stock exchange) to enable foreign authorities to quickly move along a chain of legal ownership, and domestically available information on the trusts or other legal arrangements, and
- d) using their competent authorities' powers to obtain beneficial ownership information on behalf of foreign counterparts (for example, at the request of foreign authorities, not only when conducting their own investigations).

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

⁹⁴ As set out in Recommendations 37-40.

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

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

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

X. CONCLUSION

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

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

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

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 one or more 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 cooperate with authorities, including requiring either a natural person and/or DNFBP in the country who is authorised to cooperate with authorities on behalf of the company, and/or other comparable measures. Require companies and other to retain records for at least 5 years. 		
Implement measures to overcome specific obstacles to the transparency of companies		
Bearer shares & bearer share warrants – either: <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"> • Registries such as a trust registry, or asset registries for land or other assets. • Other competent authorities such as tax authorities • Other agents of, and service providers to the trust such as investment advisors, managers, lawyers or TSCPs <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.

FATF



BEST PRACTICES ON
BENEFICIAL OWNERSHIP
FOR LEGAL PERSONS

OCTOBER 2019



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 www.fatf-gafi.org

This document and/or any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

Citing reference:

FATF (2019), *Best Practices on Beneficial Ownership for Legal Persons*, FATF, Paris,
www.fatf-gafi.org/publications/documents/beneficial-ownership-legal-persons.html

© 2019 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)

Photocredits coverphoto ©Getty Images

Table of Contents

ACRONYMS	3
Executive Summary	5
Section I - Introduction and key concepts.....	7
Background and context	7
Scope of the paper.....	9
Section II - Objectives	10
FATF requirements.....	10
Relationship between R.24 and IO.5	12
Section III – Common challenges.....	13
Common challenges faced by countries	13
Challenges for specific approach.....	15
Registry Approach.....	15
Company Approach.....	17
Existing Information Approach.....	18
Section IV – The Suggested Effective System	21
Multi-pronged approach	21
Roles and responsibilities of each key stakeholders	22
Suggested roles and responsibilities of each key stakeholder.....	23
Section V – Suggested key features of an effective system.....	26
Risk assessment (relevant to core issue 5.2).....	27
Adequacy, accuracy and timeliness of information in beneficial ownership.....	31
Obliged parties to verify or/and monitor the accuracy of the information (relevant to core issue 5.3 and 5.4).....	31
Supplementary information platform in addition to company registry (relevant to core issue 5.3 and 5.4).....	37
Ongoing reporting at company level / to the reporting entities or company registry (relevant to core issue 5.3 and 5.4).....	40
Verification through different means (relevant to core issue 5.3 and 5.4).....	44
Enhanced measures for companies with foreign ownership/directorship (relevant to core issue 5.3 and 5.4).....	52
Highly effective law enforcement authorities with adequate resources (relevant to core issue 5.4)	55
Using technology to facilitate checking and validation (relevant to core issue 5.3 and 5.4)	56
Access by competent authorities (<i>relevant to core issue 5.4</i>).....	59
Forbidding or immobilising bearer shares and nominee arrangements (<i>relevant to core issue 5.3</i>) .	62
Effective, proportionate and dissuasive sanctions (<i>relevant to core issue 5.6</i>)	65
Section VI – Getting information on beneficial ownership of overseas entities.....	70
Section VII - Conclusion	72

ANNEX 1: Detailed Arrangement of Mechanisms under R.24.....	73
Registry Approach	73
Collection and verification of information on beneficial ownership.....	73
Modalities of storage and access to that information	73
Supervision and enforcement of the relevant obligations	74
Company Approach	74
Collection and verification of information on beneficial ownership.....	74
Modalities of storage and access to that information	75
Supervision and enforcement of the relevant obligations	75
Existing Information Approach – FIs/TCSPs and other DNFBPs.....	75
Collection and verification of information on beneficial ownership.....	75
Modalities of storage and access to that information	76
Supervision and enforcement of the relevant obligations	76
Existing Information Approach – Competent authorities	77
Collection and verification of information on beneficial ownership.....	77
Modalities of storage and access to that information	78
Supervision and enforcement of the relevant obligations	78
Existing Information Approach – Companies listed on a stock exchange.....	78
Collection and verification of information on beneficial ownership.....	78
Modalities of storage and access to that information	78
Supervision and enforcement of the relevant obligations	78

ACRONYMS

AML/CFT	Anti-money laundering/Countering the financing of terrorism
CDD	Customer due diligence
DNFBP	Designated non-financial businesses and professions
FATF	Financial Action Task Force
FIU	Financial intelligence unit
FI	Financial Institution
INR.	Interpretive Note to Recommendation
LEA	Law Enforcement Authorities
ML	Money laundering
NRA	National Risk Assessment
R.	Recommendation
RBA	Risk-based approach
SRB	Self-regulatory body
STR	Suspicious transaction report
TCSP	Trust and company service providers
TF	Terrorist financing

Executive Summary

1. The results of FATF Mutual Evaluations indicate that jurisdictions find it challenging to achieve a satisfactory level of transparency regarding the beneficial ownership of legal persons. This best practice paper aims to provide suggested solutions, supported by cases and examples of best practices from delegations, in response to challenges faced by delegations in implementing FATF Recommendation 24.
2. As stated in Interpretative Note to R.24, countries should use one or more of mechanisms (the Registry Approach, the Company Approach and the Existing Information Approach) to ensure that information on the beneficial ownership of a company is obtained by that company and available at a specified location in their country; or can be otherwise determined in a timely manner by a competent authority¹.
3. Countries' experience shown in the FATF mutual evaluations echoes that jurisdictions using a single approach is less effective in making sure that competent authority can obtain accurate and up-to-date BO information to in a timely manner. Instead, a **multi-pronged approach** using several sources of information is often more effective in preventing the misuse of legal persons for criminal purposes and implementing measures that make the beneficial ownership of legal persons sufficiently transparent. The variety and availability of sources increases transparency and access to information, and helps mitigate accuracy problems with particular sources.
4. Under a multi-pronged approach, competent authorities can gain access to information on beneficial ownership through different sources. They can also ensure the accuracy of information by cross-checking. It is also easier for key stakeholders (including companies, directors, shareholders, obliged parties such as FIs and DNFBPs) to identify incorrect beneficial ownership information in their database by looking up different registers or requesting information from different sources. This will then trigger the obliged party to seek clarifications from the companies, and if necessary, report suspicious activities to competent authorities. Therefore, such approach encourages key stakeholders to fulfil their obligations through peer interaction and supervision.
5. This paper then identifies the following suggested key features of an effective system (Section 5): a) Risk assessment; b) Adequacy, accuracy and timeliness of information in beneficial ownership; b(i) Obligated parties to verify or/and monitor the accuracy of the information; b(ii) Supplementary information platform in addition to company registry; b(iii) Ongoing reporting at company level / to the reporting entities or company registry; b(iv) Verification through different means; b(v) Enhanced measures for companies with foreign ownership/directorship; b(vi) Highly effective law enforcement authorities with adequate resources; b(vii) Using technology to facilitate checking and validation; c) Access by competent authorities; d) Forbidding or immobilising bearer shares and nominee arrangements; e) Effective, proportionate and dissuasive sanctions.

¹ Interpretative Note to R.24, para. 7 and 8, FATF (2013a).

6. The case examples covered in the best practice paper should be considered in the context of their national system. For jurisdictions that have undergone mutual evaluations, their case examples have been checked against their respective mutual evaluation reports and take into account the latest development in the jurisdiction as far as practicable. It should also be noted that some cases are provided by countries which have not yet undergone mutual evaluation to date, but they are included based on their relevance. Readers are advised to bear this in mind when drawing reference to these examples.

7. This best practice paper also puts forward suggestions on ensuring authorities can access getting information on beneficial ownership of overseas entities (Section 6).

Section I - Introduction and key concepts

This paper should be read in conjunction with the following, which are available on the FATF website: www.fatf-gafi.org.

- a) The FATF Recommendations, especially Recommendations 1, 2, 10, 11, 20, 22, 23, 24, 26, 27, 28, 30, 31, 34, 35, 37, 40 and their Interpretive Notes (INR), and the FATF Glossary
- b) FATF Guidance on Transparency and Beneficial Ownership (October 2014)
- c) The Joint FATF and Egmont Group Report on Concealment of Beneficial Ownership (July 2018)
- d) The FATF Horizontal Study: Enforcement and Supervision of Beneficial Ownership Obligations

Background and context

8. In 2003, the FATF became the first international body to set international standards on beneficial ownership. In 2012, the FATF strengthened its standards on beneficial ownership, to give more clarity about how countries should ensure information is available, and to deal with vulnerabilities such as bearer shares and nominees. The revised standards also clearly distinguish between basic ownership information (about the immediate legal owners of a company or trust), and beneficial ownership information (about the natural person(s) who ultimately own or control it). They also clarify that having accurate and up-to-date basic information about a legal person or legal arrangement is a fundamental prerequisite for identifying the ultimate beneficial owners, and require countries to provide international co-operation in relation to ownership information.

9. The FATF further published the [Guidance on Transparency and Beneficial Ownership](#) in 2014 to explain what the FATF Standards require. This guidance paper gives a step-by-step guide on how to access publicly available information on legal persons and legal arrangements, and establish procedures to facilitate information requests from foreign counterparts.

10. However, effective implementation of these measures is still challenging. At the time of publication, 25 FATF members have been assessed since the FATF Standards were strengthened in 2012.² For R.24, only 11 out of 25 were rated as largely compliant, 12 were rated as partially compliant and 2 were rated as non-compliant. For IO.5, only 4 out of 25 countries attained a substantial level of effectiveness in preventing the misuse of legal persons and arrangements, 17 attained a moderate level of effectiveness and 4 attained a low level of effectiveness.

² Consolidated assessment ratings, FATF www.fatf-gafi.org/media/fatf/documents/4th-Round-Ratings.pdf

11. In 2016-17, the FATF undertook a horizontal study on the enforcement and supervision of beneficial ownership obligations. The FATF and Egmont Group also jointly published the Report on Concealment of Beneficial Ownership in July 2018. The results of the analysis pointed to that the root of the problem lies in the weak implementation of the existing standard, rather than in the gaps of the standard itself.

12. There is a need for more practical advice and examples for jurisdictions on the effective measures to ensure that legal persons are prevented from being used for criminal purposes, and information on their beneficial ownership is available to competent authorities without impediments.

13. Based on the reviews conducted in the fourth round of FATF mutual evaluation so far, the FATF has identified some specific obstacles in the following areas to effective implementation (detailed in Section II), including:

- a) risk assessment;
- b) adequacy, accuracy and timeliness of information on beneficial ownership;
- c) access by competent authorities;
- d) bearer shares and nominee shareholder arrangements;
- e) fines and sanctions; and
- f) international co-operation.

14. From countries' experience, there is no single solution to tackle these obstacles that are intertwined with each other. The fourth round of FATF mutual evaluations reveals that systems combining one or more approaches under R.24³ are often more effective than systems that rely on a single approach.

15. To ensure that the system is effective, it requires concerted efforts from different stakeholders to implement measures that prevent legal persons from being misused, and make available accurate information on the beneficial ownership of legal persons so that competent authorities can access the information in a timely manner.

16. This best practice paper aims to provide suggested solutions, supported by cases and examples of best practices that are correspondent to each challenge. This paper draws on countries' experience concluded from adopted MERs, information provided by the delegations, as well as work carried out by other stakeholders in the field. The paper will also provide cases and examples to other inter-governmental organisation in developing their areas of expertise.

17. Taking into account the flexibility allowed by the FATF Recommendations, this best practice paper suggests different ways jurisdictions can use to ensure

³ The approaches include:

- (a) Registry Approach – requiring company registries to obtain and hold up-to-date information on the companies' beneficial ownership
- (b) Company Approach – requiring companies to obtain and hold up-to-date information on the companies' beneficial ownership or requiring companies to take reasonable measures to obtain and hold up-to-date information on the companies' beneficial ownership
- (c) Existing Information Approach – using existing information

compliance and provides advice on how to implement chosen approaches in the most effective way.

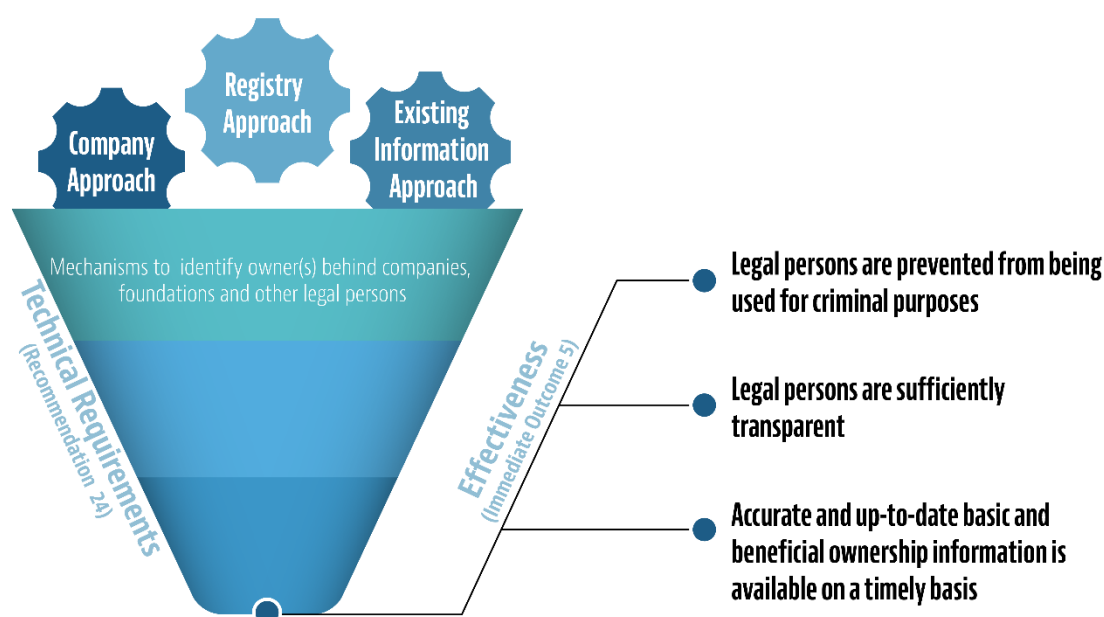
Scope of the paper

18. In order to keep the scope of this project achievable, this paper will focus on beneficial ownership of legal persons (not of legal arrangements such as trusts).

19. The implementation of R.24 and IO.5 also hinges on the effectiveness of other FATF Recommendations (paragraph 44 refers). Although the discussion of the paper will touch on other FATF Recommendations, this paper will only cover examples of best practices that are directly related to approaches associated with transparency of beneficial ownership under R.24 and measures on preventing misuse of legal persons by criminals under IO.5.

Section II - Objectives

FATF Requirements to identify the beneficial owner(s) behind legal persons, such as companies and foundations



FATF requirements

20. Under R.24, countries should take measures to prevent the misuse of legal persons for ML/TF. 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 ML/TF. Countries should consider measures to facilitate access to beneficial ownership and control information by financial institutions (FIs) and designated non-financial businesses and professions (DNFBPs) undertaking the requirements as set out in R.10 and 22.

21. In relation to beneficial ownership information, countries should ensure that either information on the beneficial ownership of a company is obtained by that company and available at a specified location in their country; or can be otherwise

determined in a timely manner by a competent authority⁴. In order to meet such requirement, countries should use one or more of the following mechanisms⁵ –

- a) requiring company registries to obtain and hold up-to-date information on the companies' beneficial ownership (the Registry Approach);
- b) requiring companies to obtain and hold up-to-date information on the companies' beneficial ownership or companies to take reasonable measures to obtain and hold up-to-date information on the companies' beneficial ownership (the Company Approach);
- c) using existing information (the Existing Information Approach), including:
 - i. information obtained by FIs and/or DNFBPs, in accordance with R.10 and 22;
 - ii. information held by other competent authorities on the legal and BO of companies;
 - iii. information held by the company as required; and
 - iv. available information on companies listed on a stock exchange, where disclosure requirements ensure adequate transparency of beneficial ownership.

22. Regardless of which of the above mechanisms is used, R.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. Under the existing R.24, countries have three options for facilitating such co-operation which may be used alone or in combination⁶:

- a) Require companies to authorise 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 DNFBP 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 co-operation.

23. The FATF Guidance on Transparency and Beneficial Ownership⁷ states that the FATF Recommendations recognise these different mechanisms 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.

⁴ R.24 applies broadly to "legal persons" meaning any entities, other than natural persons, that can establish a permanent customer relationship with a FI or otherwise own property. This can include companies, bodies corporate, foundations, anstalt, partnerships, or associations and other relevantly similar entities that have legal personality. 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.

⁵ Interpretative Note to R.24, para. 7 and 8, FATF (2013a).

⁶ Interpretative Note to R.24, para. 9, FATF (2013a).

⁷ Guidance on Transparency and Beneficial Ownership, para. 38, FATF (2014).

Whichever mechanism(s) is used, the fundamental requirement relating to beneficial ownership information remains the same. Countries should ensure that either:

- a) information on the beneficial ownership of a company is obtained by that company and available at a specified location in their country; or
- b) there are mechanisms in place so that the beneficial ownership of a company can be determined in a timely manner by a competent authority⁸.

24. Countries may choose the mechanisms they rely on to achieve the objective of preventing the misuse of legal persons for ML/TF⁹. 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/TF¹⁰.

25. R. 24 states that countries should use one or more of the mechanisms (the Registry Approach, the Company Approach and the Existing Information Approach). As stated in the Interpretive Note to R.24, it is also very likely that countries will need to utilise a combination of mechanisms to achieve the objective¹¹.

Relationship between R.24 and IO.5

26. Compliance with R.24 is intrinsically linked with the effectiveness of the measures assessed in IO.5 to prevent the misuse of legal persons for ML/TF¹². R.24 requires 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 R.24 is fundamental to implement an effective system.

27. IO.5 states clearly that an effective system should put in place measures to:

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

28. Persons who breach these measures are subject to effective, proportionate and dissuasive sanctions. This results in legal persons being unattractive for criminals to misuse for ML and TF. Prohibitive measures should be imposed to deter criminals from using legal persons to obscure beneficial ownership of illicit assets.

29. Other measures to ensure transparency of beneficial ownership is also essential to AML/CFT regimes so that competent authorities can trace and identify the right target to conduct investigation and prosecution effectively, as well as to provide the high quality of financial intelligence.

⁸ Interpretive Note to R.24 at para. 7 and Immediate Outcome 5 of the FATF Methodology, FATF (2013a).

⁹ Interpretive Note to R.24, para. 1, FATF (2013a).

¹⁰ Guidance on Transparency and Beneficial Ownership, para. 41, FATF (2014)

¹¹ Interpretive Note to R.24, para. 1, FATF (2013a).

¹² Guidance on Transparency and Beneficial Ownership, para. 22, FATF (2014)

Section III – Common challenges



Based on the results from the fourth round of FATF mutual evaluations.

Common challenges faced by countries

30. Based on the reviews conducted in the fourth round of FATF mutual evaluation, the FATF has identified the following common challenges faced by countries in implementing measures on beneficial ownership, including:

- a) **Risk assessment** – Inadequate risk assessment concerning the possible misuse of legal persons for ML/TF, e.g.
 - i. Not all types of legal persons were covered in the risk assessment.
 - ii. Relevant risk assessment was not consistent with the results of national risk assessments.
 - iii. Only domestic threats and vulnerabilities associated with legal persons incorporated were considered.

- iv. Registries, companies, FIs, DNFBPs and competent authorities might not possess a good understanding and knowledge of risks involved in legal persons.
- b) **Adequacy, accuracy and timeliness of information on beneficial ownership** – Inadequate measures to ensure that information on beneficial ownership was accurate and up-to-date e.g.
- i. Information was not accurate – they are not adequately and actively verified, tested or monitored. There was no obliged party¹³ to verify, test or monitor the information or the obliged party might not have rigorous implementation of customer due diligence (CDD) measures.
 - ii. Relevant parties were not required to keep records for a period of time (for at least five years).
 - iii. Legal persons did not update their beneficial ownership information or inform the company registry when there was a change of beneficial ownership.
 - iv. There was a lack of co-ordination among different sources of information and there was no cross-checking to ensure the accuracy of the information.
 - v. Information on beneficial ownership was difficult to identify when complex structure was involved.
 - vi. Information on beneficial ownership was not always available when foreign ownership was involved.
- c) **Access by competent authorities** – Inadequate mechanism to ensure that competent authorities had timely access to beneficial ownership information on legal persons e.g.
- i. There were obstacles to information sharing such as data protection and privacy laws which impeded competent authorities from getting timely access to adequate, accurate and up-to-date basic and beneficial ownership information.
 - ii. There was no information sharing among competent authorities.
 - iii. The competent authorities did not have established procedures to seek information from obliged parties.
 - iv. There was no registration/licensing mechanism of obliged parties so that the competent authorities had difficulties in identifying the source of information.
 - v. Competent authorities did not have sufficient resources to carry out investigations or law enforcement actions.

¹³ Obligated party refers to a gatekeeper that is subject to AML/CFT obligations to conduct customer due diligence, including verifying information on the beneficial ownership of the legal person

- d) **Bearer share and nominee shareholder arrangements** – Insufficient risk mitigating measures in place to address the ML/TF risk posed by bearer share and nominee shareholder arrangements e.g.
- i. When bearer shares and share warrants were allowed in the countries, the ownership of bearer shares and share warrants was not sufficiently transparent and readily accessible by competent authorities.
 - ii. The use of nominee shareholder obscured the ultimate control and ownership of the companies.
- e) **Fines and sanctions** – Lack of effective, proportionate and dissuasive sanctions on companies which failed to provide accurate and up to date information on beneficial ownership (e.g. companies providing false information to company registries, or not keeping information about their shareholders or members up-to-date), and reporting entities which failed to apply specific CDD measures required for legal persons.
- f) **International co-operation** – Inadequate mechanism for monitoring the quality of assistance received from other countries e.g.
- i. It took long time to obtain information on beneficial ownership as it might involve legal complexities and multiple agents to release the information.
 - ii. Other countries concerned did not keep the information on beneficial ownership.
 - iii. Language barrier posed a challenge in understanding the information.

Challenges for specific approach

31. Under R.24, countries are allowed to choose to implement one or more of the mechanisms to ensure the transparency of beneficial ownership¹⁴. This section provides analysis on the implementation of each mechanism and covers issues that could impact the reliability of the information. The detailed arrangement of each mechanism under R.24 is at Appendix 1.

32. The issues mentioned in this section may intersect with the common challenges faced by countries mentioned in Section II. Nevertheless, this section aims to provide an overall review (including challenges) from the perspective of each mechanism.

Registry Approach

33. Countries may implement R.24 by requiring company registries to obtain and hold up to date information on beneficial ownership.

34. Pursuant to R.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

¹⁴ Interpretive Note to R.24, para. 8, FATF (2013a).

directors¹⁵. The basic information held by registries should be made publicly available¹⁶ to facilitate timely access by FIs, DNFBPs and other competent authorities.

35. A well-resourced and proactive company registry holding beneficial ownership information can be an effective mechanism because it provides a useful basis for competent authorities to access to such information. Other information agents and the public can also gain access to the information on beneficial ownership for cross-checking and verification.

36. The role of company registries varies greatly from country to country, as does the level and quality of information obtained on companies. The following are the implementation challenges identified from countries' experience:

- a) The objectives of company registry may not be broad enough to cover the role of collecting, verifying/monitoring and maintaining information on beneficial ownership, leading to that:
 - i. the company registry plays a passive role, acting as repositories of information or documents, rather than undertaking verifying and monitoring or other measures to ensure that the information they receive is accurate.
 - ii. the company registry may not be obliged to conduct AML/CFT activities and its relevant performance may not be supervised.
 - iii. there may also be lack of sanction powers/insufficient sanctions for missing/incorrect/false information.
 - iv. the provision of information on beneficial ownership to the company registry may not necessarily be made a condition for incorporation.
 - v. the company registry does not keep information of ultimate beneficial ownership, but only the immediate legal ownership of the company.
- b) There may be a lack of mechanisms for ensuring that the information provided to the company registry is accurate and up to date.
- c) There may be a lack of interface with other sources of information agents and/or other authorities and this may hamper the effectiveness of cross-checking.
- d) Company registry may not have sufficient human and capital resources to enable it to undertake the additional functions of collecting, verifying/monitoring and maintaining information on beneficial ownership.

37. Most of the challenges in implementing the Registry Approach originate from the institutional level – whether the registry is established to collect accurate and updated information on beneficial information, whether it is empowered to do so and to perform its roles with sufficient resources.

38. Countries that make use of registers of beneficial ownership information should consider the resources and expertise that will be required in order to maintain these, and to ensure that the information recorded in the register is adequate,

¹⁵ Interpretive Note to R.24, para. 5, FATF (2013a).

¹⁶ Interpretive Note to R.24, para. 12, FATF (2013a).

accurate, and up-to-date, and can be accessed in a timely manner¹⁷. This is also true for the maintenance and supervision of company registries.

39. If the objective of the company registry is not well defined and the power and responsibilities of the company registry are not clear enough, the company registry will not be able to collect the right information in order to meet the objective. Without sufficient resources, the effectiveness of the company registry will also be compromised.

Company Approach

40. Another element that can help implement R.24 is the Company Approach. Countries should require companies themselves to obtain and hold up-to-date information¹⁸ on beneficial ownership by maintaining a list of shareholders or members, and keeping it up-to-date. Companies should also keep updated the list of their representatives, including their roles, functions and authority¹⁹.

41. Below are some problems which have been encountered in countries seeking to follow/rely on this approach for countries taking this approach:

- a) Shareholder registers contain information on legal ownership, but not necessarily on beneficial ownership.
- b) There is a lack of regulatory framework or mechanism to require and ensure that the beneficial ownership information collected by companies is accurate and up-to-date. For example,
 - i. companies may not have sufficient powers to require updated information from their shareholders, including the power to request information on beneficial ownership at any time. Shareholders may not be required to notify the company within a set time period when there are changes in ownership or control.
 - ii. shareholders may not be required to disclose the names of person(s) on whose behalf shares are held.
 - iii. companies may not have sufficient powers to impose sanctions for shareholders failing to respond or provide false information.
 - iv. law enforcement entities may find it difficult to enforce the requirements if these have to be implemented by non-resident subjects (e.g. directors), in particular when they cease to carry out their functions.
- c) It is difficult for companies to verify or/and monitor the information received from their shareholders, as well as to up-to-date the information.
- d) It is difficult for competent authorities to obtain information on beneficial ownership without alerting the company of a potential investigation.

42. As an alternative, countries may also require companies to take reasonable measures to obtain and hold up-to-date information on their beneficial ownership. From countries' experiences, it is not easy to establish a clear and practical framework

¹⁷ The Joint FATF and Egmont Group Report on Concealment of Beneficial Ownership (July 2018)

¹⁸ Interpretive Note to R.24, para. 4, FATF (2013a).

¹⁹ Interpretive Note to R.24, para. 3, FATF (2013a).

to set out the scope of reasonable measures. The difficulties lie in that 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 complexity induced by the ownership structure of the company or the nature of the controlling shareholders. It is difficult for companies to perform their obligations if 'reasonable measures' are not well-defined and well-articulated to companies according to the risk levels involved for each type of legal persons.

43. If countries choose to implement this mechanism, countries should identify and assess the ML/TF risks associated with legal persons to enable it to implement a risk-based approach as required by R.1 and 24. Based on the countries' understanding of ML/TF risks through a comprehensive risk assessment, countries should then establish 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.

44. In addition to the fundamental challenge on understanding ML/TF risks of different legal persons, another challenge is that the companies are usually not obliged/empowered/motivated to seek to apply restrictions against shareholders for failure to provide BO information.

45. In this case, countries should put in place a legal framework which requires and enables company to obtain updated and accurate beneficial ownership information through enforceable means e.g. seek information through appropriate courts or authorities, imposing restriction in relation to shareholder voting rights, or the sale of shares. The provision of false information by shareholders should also be subject to dissuasive administrative or criminal sanctions. Countries should also make sure that companies and shareholders are aware of their obligations. The authorities can provide guidance to companies or shareholders explaining their obligations, and make this guidance publicly available.

46. Last but not least, the legal framework should also govern that companies should 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. Where lists of shareholders and beneficial owners are held with a third party provider on the company's behalf, the company should remain liable for the obligations.

Existing Information Approach

47. Countries may also implement R.24 by using existing information collected on the beneficial ownership of corporate entities to identify beneficial owner. Possible sources of information include company registries and other types of registries (such as, land, motor vehicle and moveable property registries); FIs and DNFBPs; other authorities (such as supervisors or tax authorities; information held by stock exchanges, and commercial databases)²⁰.

48. Below are the specific challenges for countries taking this approach via different channels:

²⁰ Interpretive Note to R.24, para. 8, FATF (2013a).

FIs/DNFBBs

- a) Information may be only available where the relevant entity or structure has established or maintained business relationship with a FI or DNFBP.
- b) FIs and DNFBPs may not adequately implement CDD obligations as required under R.10, including measures to identify and verify/monitor the identity of the beneficial owner, and also apply specific measures required for legal persons.
- c) FIs and DNFBPs may not be adequately supervised or be provided with sufficient guidance on how to properly conduct CDD.
- d) FIs and DNFBPs may not have good understanding and knowledge to assist competent authorities in determining the BO of a complicated legal structure.

Competent authorities

- a) Competent authorities may not be aware of the relationship between the legal person and FIs/DNFBPs.
- b) Competent authorities may not be able to identify and contact easily the FI/DNFBP if the FI/DNFBP is not subject to registration or licencing requirements.
- c) Competent authorities may not have sufficient procedures in getting information from FIs and DNFBPs which may lead to undue delays in receiving information.
- d) In relation to tax information, other competent authorities (particularly law enforcement authorities (LEAs)) may not be aware of the information collected and maintained by tax authorities. In addition, 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.

Companies listed on a stock exchange

- a) The information is only available if the company is listed on a stock exchange.
- b) There may not be specific obligation for stock exchange to collect, verify/monitor and keep the information up-to-date for the purpose of AML/CFT.

49. The root causes of the challenges mentioned in paragraph 40 are the lack of established mechanism in obtaining existing information by competent authorities and the lack of mechanism on information sharing among competent authorities.

50. Competent authorities (particularly law LEAs) may not know where beneficial ownership information is held if there is no registration/licensing system for FIs and DNFBPs, which may affect their timely access to such information.

51. The lack of mechanism for information sharing among competent authorities is another obstacle to obtain and verify/monitor beneficial ownership information. In fact, the Existing Information Approach can be effectively used in investigations if there are mechanisms in place to facilitate authorities' access to information held by other authorities (such as tax authorities, supervisory authorities, or land titles offices).

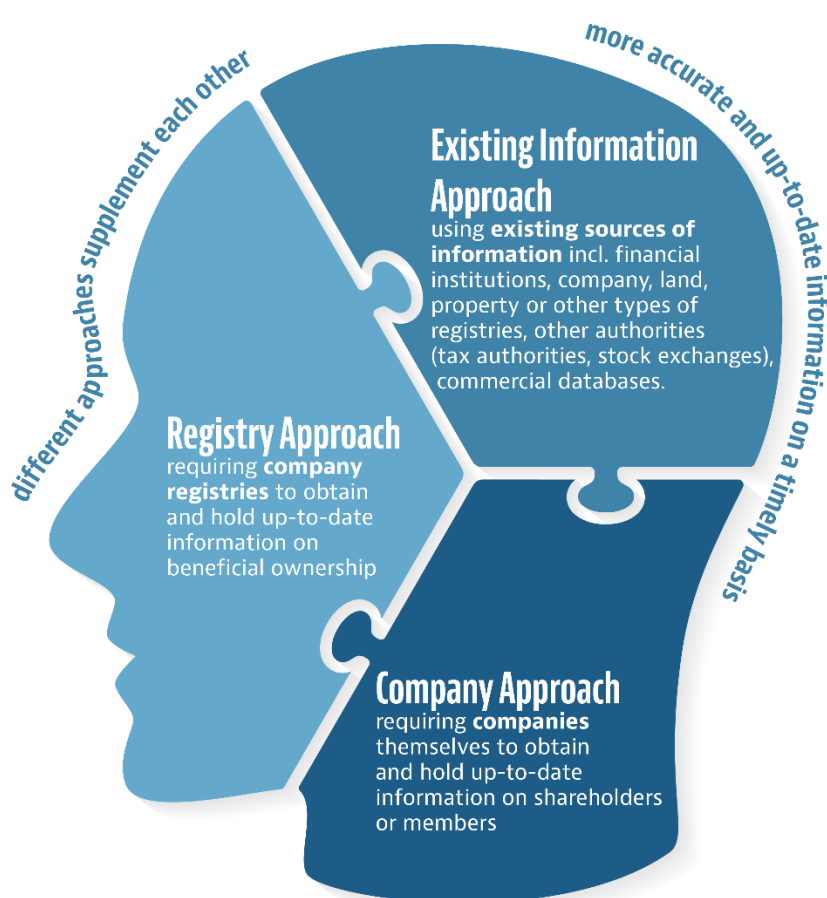
52. The effectiveness of the Existing Information Approach also hinges on the implementation of other FATF Recommendations including:

- a) R.2, 37 and 40: Country should rapidly provide international cooperation in relation to basic and beneficial ownership information.
- b) R.10 and 22: FIs and DNFBPs to adequately implement CDD obligations, including measures to identify and verify the identity of the beneficial owner. Failure to adequately implement CDD under R.10 can lead to poor collection of BO information.
- c) R.11: FIs and DNFBPs to record the CDD procedures performed and maintain these records for at least five years.
- d) R.20 and 23: FIs and DNFBPs to report suspicious transactions;
- e) R.26, 27 and 28: FIs and DNFBPs to be adequately supervised and supervisors should have adequate powers to supervise or monitor.
- f) R.30: competent authorities to be able to access the CDD information held by FIs and DNFBPs in a timely manner
- g) R.31: competent authorities to be aware of the existence of the legal person's accounts held by a FI.
- h) R.34: FIs and DNFBPs to be provided with sufficient guidance on how to properly conduct CDD.
- i) R.35: Countries should ensure that there is a range of proportionate and dissuasive sanctions, whether criminal, civil or administrative, available to deal with natural or legal persons that fail to comply with the AML/CFT requirements.

53. Therefore, it is important to take a holistic view in implementing the Existing Information Approach. It is important to define the roles and responsibilities of each stakeholder, empower them and equip them with the necessary resources and support to carry out their functions.

Section IV – The Suggested Effective System

Multi-pronged approach to identify the beneficial owner(s) behind legal persons, such as companies and foundations



Multi-pronged approach

54. As stated in Section II (paragraph 14 above refers), countries should use one or more of mechanisms (the Registry Approach, the Company Approach and the Existing Information Approach) to ensure that information on the beneficial ownership of a company is obtained by that company and available at a specified

location in their country; or can be otherwise determined in a timely manner by a competent authority²¹.

55. Countries' experience shown in the FATF mutual evaluations echoes that jurisdictions using a single approach is less effective in making sure that competent authority can obtain accurate and up-to-date BO information to in a timely manner. Instead, a multi-pronged approach using several sources of information is often more effective in preventing the misuse of legal persons for criminal purposes and implementing measures that make the beneficial ownership of legal persons sufficiently transparent. The variety and availability of sources increases transparency and access to information, and helps mitigate accuracy problems with particular sources.

56. As illustrated in Section III, information on beneficial ownership of legal persons can be found in a number of different places, including company registries, the company itself, FIs, DNFbps, and other national authorities, such as tax authorities²² or stock exchange commissions. Implementing different approaches under R.24 can therefore complement each other to verify or/and monitor the information on beneficial ownership and make sure that the information is accurate.

57. For example, an openly and publicly accessible central registry does not necessarily mean that the information is accurate and up-to-date. It is important for an obliged party (e.g. notary, company registrar) to verify or/and monitor the information on beneficial ownership held under different approaches. The availability of other information agents (e.g. companies, FIs, DNFbps) facilitates obliged party to cross-check, verify and/or monitor the information.

58. Under a multi-pronged approach, competent authorities can gain access to information on beneficial ownership through different sources. They can also ensure the accuracy of information by cross-checking.

59. It is also easier for key stakeholders (including companies, directors, shareholders, obliged parties such as FIs and DNFbps) to identify incorrect beneficial ownership information in their database by looking up different registers or requesting information from different sources. This will then trigger the obliged party to seek clarifications from the companies, and if necessary, report suspicious activities to competent authorities. Therefore, such approach encourages key stakeholders to fulfil their obligations through peer interaction and supervision.

Roles and responsibilities of each key stakeholders

60. To effectively implement the multi-pronged approach, it is important to ensure that the responsibilities of various parties are clear and they have played their roles in defending the system of preventing misuse. The system is more effective if every key stakeholder can carry out "defence" in their roles duly. The roles of defence

²¹ Interpretative Note to R.24, para. 7 and 8, FATF (2013a).

²² For example, the Global Forum on Transparency and EOI (the GF)'s project on beneficial ownership, developed based on the FATF standard, encourages jurisdictions to develop complementary frameworks and enforcement programmes for tax transparency purposes. In March 2019, the GF's Beneficial Ownership Toolkit was launched, which contains policy considerations that jurisdictions can use to implement legal and supervisory frameworks to identify and collect beneficial ownership information.

may include, as appropriate, verification and monitoring of information, carrying out CDD, identifying suspicious patterns and trends on beneficial ownership, reporting suspicious cases and taking enforcement action.

61. Each key stakeholder should know their obligations, understand the risks involved in the form of legal persons, carry out their duties actively and continuously on a timely manner with sufficient resources. The effectiveness of supervision and law enforcement, as applicable, are also important to make sure that the relevant parties have performed their duties.

62. Section 4.3 specifies the basic roles and responsibilities of each key stakeholders and Section 5 supplements on the additional steps or defence that the stakeholders can take to help competent authorities to obtain accurate and up-to-date BO information to in a timely manner.

Suggested roles and responsibilities of each key stakeholder

63. The key stakeholders involved in the system include the company itself, company registry, obliged parties involved in company registration and verification of information (such as lawyers, notary, and accountants), FIs, DNFBPs, supervisors and self-regulated bodies (SRBs). The respective roles and obligations of each key stakeholder are suggested as follows:

a) Company and legal persons

- i. Provide basic and BO information, via obliged parties (e.g. lawyers, notaries, accountant, FIs) as required, for the company registry upon registration.
- ii. Provide basic and BO information, via obliged parties (e.g. lawyers, notaries, accountant, FIs) as required, both annually and when changes occur without delay to ensure that the information is up-to-date.
- iii. Provide copies of documentation for verification of identity as requested.
- iv. Keep shareholder registers, such as shareholder lists and information on beneficial ownership (including the disclosure of the names of person(s) on whose behalf shares are held), and make it available to competent authorities or obliged entities upon request in a timely manner.
- v. Keep updated the list of their representatives, including their roles, functions and authority.
- vi. Obtain updated information from their shareholders.
- vii. 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.
- viii. Understand and/or hold information on their ownership structure, including chain of ownership.

b) Shareholders

- i. Provide accurate information on beneficial ownership and updates on changes to beneficial ownership without delay.

c) Company registry

- i. Keep basic information and make it publicly available.
- ii. Keep information on beneficial ownership and provide access to competent authorities, including full search capability. The company registry may make the information publicly available, or available to FIs and DNFBPs. The company registry authority may also collect information on the board of directors, senior management and the natural person authorised to act on behalf of the company. In addition, directors are required to be natural persons.
- iii. Verify or/and monitor the identity of the beneficial owners.
- iv. Apply sanctions when obligations are breached. Companies that fail to provide BO information are subject to dissuasive administrative sanctions, such as restrictions on incorporation. The company's representative could also be held personally liable.
- v. Report trend/pattern of activities to competent authorities as necessary.

d) Obligated parties (e.g. company registry authority, lawyers, notaries or accountant, other FIs and DNFBPs, as required by the country²³)

- i. Understand the ownership and control structure of the customer, and understand the ML/TF risks in relation to legal persons.
- ii. Adequately carry out CDD measures at the incorporation stage and conduct ongoing CDD to make sure that the information on beneficial ownership is accurate and up-to-date.
- iii. Identify indicators of misuse or unusual activity in the database and keep in view the trend/pattern of suspicious structure of beneficial ownership and report to relevant authorities as necessary e.g. using red flags, sample testing, cross-checking with other data, and public data.

e) FIs and DNFBPs

- i. Adequately carry out CDD measures at the incorporation stage and conduct ongoing CDD on the business relationship, and scrutinise transactions throughout the course of that relationship to ensure that 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.
- ii. Record the CDD procedures performed and maintain these records for at least five years.
- iii. Report suspicious transaction activities.

f) Supervisors and SRBs

- i. Conduct supervision and monitoring of all AML obliged persons including FIs and DNFBPs and to ensure that they are complying with CDD requirements.

²³ An obliged party could be a company registry, FI or DNFBPs. In this case, the obliged party needs to fulfil their duties in their own role and the role of being an obliged party.

- ii. Conduct outreach to obliged parties or as applicable, companies, to foster a greater understanding of the ML/TF risks, in particular of companies being created for the sole or main purpose of laundering funds.
- iii. Produce guidance on additional steps which could or should be applied as part of (enhanced) due diligence on legal persons.
- iv. Apply concrete and dissuasive sanctions (e.g. including monetary penalties) in the case of non-compliance.

g) Competent authorities

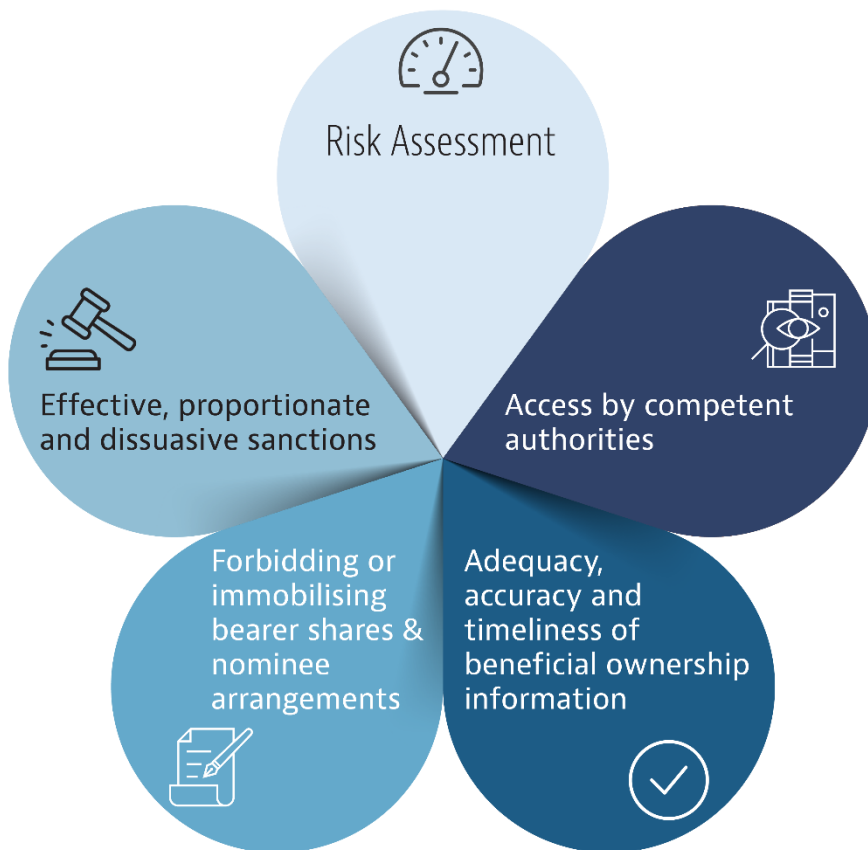
- i. Know what basic and beneficial ownership information is available in the country, and which relevant parties are holding it.
- ii. Establish process and procedures in obtaining information on beneficial information.
- iii. Assess the risks of legal persons being misused for ML/TF purposes in order to improve the understanding of risks.
- iv. Ensure that there is adequate sharing of information on ML/TF risks, trends and typologies between competent authorities and foster communication with the reporting entities. This would ensure that reporting entities, in particular, are more sensitive to and more familiar with typologies.
- v. Provide guidance to companies or shareholders, FIs and DNFBPs explaining their obligations, and provide awareness raising activities as necessary (e.g. through the provision of information to companies upon registration).
- vi. Carry out enforcement to ensure that effective, proportionate and dissuasive sanctions are applied in the case of breaches.

h) National authorities

- i. Ensure co-operation between government entities holding information on beneficial ownership and set out the mechanism(s) in legislation or regulations to make sure that competent authority can access to information on beneficial ownership in a timely manner.
- ii. Identify and assess the ML/TF risks associated with legal persons, to enable it to implement a risk-based approach.
- iii. Establish a legal or enforceable framework setting forth the appropriate approach (Registry Approach, Company Approach and Existing Information Approach) to ensure transparency of beneficial ownership.
- iv. Introduce measures to prevent legal persons from being misused by criminals e.g. prohibiting bearer shares and bearer share warrants, converting them into registered shares or share warrants, or immobilising them by requiring them to be held with a regulated FI or professional intermediary, or requiring shareholders with a controlling interest to notify the company, and the company to record their identity.

Section V – Suggested key features of an effective system

Key features of an effective system to identify the beneficial owner(s) behind legal persons, such as companies and foundations



64. Along with the multi-pronged principle, the FATF has identified the following suggested solutions to facilitate countries to tackle the challenges that they are facing. These suggested solutions are identified from the practical experience of countries as shown in the fourth round of FATF mutual evaluations and information provided by countries in the earlier Horizontal Study.

Risk assessment (relevant to core issue 5.2)

65. Countries should conduct a comprehensive risk assessment of legal persons so as to develop a more thorough understanding of vulnerabilities and potential of abuse of legal persons for ML/TF. This may also help countries to develop specific measures for legal persons that are easily being misused for ML/TF.

66. In some countries, there is a designated agent commissioned to analyse the ML/TF risks posed by all types of legal persons. Such agent considers relevant legal and regulatory contextual issues particular to the country and multi-agency information sources to identify trends and patterns, including:

- a) review of relevant court cases;
- b) suspicious transaction reports filed by obliged parties e.g. notaries, lawyers, company registry, other FIs and DNFBPs;
- c) practical experience of competent authorities;
- d) identified patterns/trends in ML/TF and relevant changes e.g. “preferences” amongst the various types of organised crime groups for certain forms of company.

67. The agent then conducts assessment regarding the risks of legal persons, and share information on ML/TF risks, trends and typologies with competent authorities and obliged parties. The sharing of current trends and typologies enables obliged parties to consider the risks at the incorporation stage, and they can pay attention to potential red flags at the incorporation stage.

68. For countries which are an important regional and international financial centre, more efforts should be put to identify, assess and understand the vulnerabilities of corporate structures for ML/TF particularly in relation to international threats.

Belgium

In 2018, an agent was hired at the Treasury (FPS Finance) to conduct a horizontal risk analysis on legal persons which could be established under the Belgian law. The analysis involved a study of the legal framework as well as meetings with competent authorities to identify trends and patterns. The purpose of the analysis was to enhance the understanding and knowledge of competent authorities on the vulnerabilities and potential abuses associated with each legal person, and also to identify the loopholes and necessary legal reforms or additional measures.

The analysis concluded that the most vulnerable structure is the private limited liability company (SPRL/BVBA). This is the most common form of legal persons. While most of them are properly registered, some of them pose ML/TF risks. Fraudsters are aware of certain loopholes which allow them to circumvent controls and misuse the structure to conduct unlawful activities. This may lead to inaccuracy of the Registry. Another risk is that legal persons that are registered are not necessarily active.

This affects the accuracy of statistics and also allows the trading of dormant companies to avoid the administrative process of creating or dissolving a company.

Belgian authorities are aware of the threats and vulnerabilities and have taken measures to address them. The Belgian Company Code has been recasted to reduce the number of types of legal persons and harmonise the rules applicable to profit and non-profit legal persons. Targeted actions have also been launched. For instance, a task force has been established by competent authorities to efficiently dissolve inactive entities.

Indonesia*

Sectoral Risk Assessment of Legal Person

The Indonesia National Risk Assessment (NRA) 2015 indicated that financial criminals perceived it safer to disguise illicit funds through legal person(s). Corrupt government officials and drug dealers can easily hide their illicit gain behind the complex structure and network of corporate transactions. In many cases, this was made possible by the lack of governance in beneficial ownership. Criminals can appoint nominees to appear as the owners of their assets while leaving no trails anywhere in the corporate legal documents.

In 2017, the Commission Eradiation Commission (KPK) together with PPATK (Indonesia's Financial Intelligence Unit (FIU)) and Financial Service Authority (FSA/OJK) conduct the Sectoral Risk Assessment (SRA) of Legal Persons. This money laundering SRA of Legal Persons is separate with the terrorist financing SRA of Legal Persons. The SRA of Legal Persons identified all types of legal person in Indonesia, which are limited liability companies, foundation, cooperative, firm, partnership, and association.

The money laundering SRA of Legal Persons identified six dimensions of risks, including (1) type of legal person; (2) type of business; (3) delivery channel; (4) reporting party; (5) international transaction (inflow); and (6) international transaction (outflow). The terrorist financing SRA of Legal Person identified four dimensions of risks, including (1) type of legal person; (2) type of business; (3) delivery channel; and (4) reporting party.

The result of SRA of legal persons shed light on the risks faced by different legal persons as follows:

- Indonesia's "Perseroan Terbatas ("PT" i.e. limited liability companies) are exposed to a higher ML risk, while "Yayasan" (i.e. foundations) are exposed to higher risk for TF.

- Companies that operate trading business are prone to ML more than other types of business, while social foundations and religious institutions remain the most vulnerable to TF.
- From delivery channels perspective, fund transfers are the most frequently used for in both ML and TF scheme.
- Despite of the stringent regulations, banking remains the reporting party with the highest ML risk.
- Indonesia specifically covered international transactions in the assessment and noted that some jurisdictions with perceived low ML risk appear to have been used by Indonesian-based corporations to keep their money.

**yet to undergo mutual evaluation as of September 2019*

The United Kingdom

A thematic review of relevant legal entities (RLEs) on the PSC Register

Following engagement with NGO community and Companies House facilitating data analysis by NGOs, the risk of accidental or deliberate misuse of the Relevant Legal Entity (RLE) exemption for the PSC register was raised. Companies House has undertaken to check each RLE registered, prioritising on a risk-based approach by focussing on those registered in financial centres or countries with weaker transparency laws.

Circular ownership of companies is prohibited by Companies Act 2006. The UK's experience is that circular registrations are a result of a misunderstanding of the person with significant control (PSC) requirements, not deliberate. For a company to deliberately register a circular loop would essentially disclose that they had breached s.136 of the Companies Act and committing a false filing offence.

UK National Crime Agency (NCA) Intelligence Report - "The use of corporate entities to enable international money laundering networks"

The NCA report examined the case of an overseas international money launderer utilising UK corporate entities to launder the proceeds of crime. In this example, the controller routed illicit funds to an overseas based company from 11 UK corporate entities (Ltd company, Limited Liability Partnerships (LLPs), Scottish Limited Partnerships (SLPs)), all of which banked exclusively outside of the UK. The ownership of these companies highlighted that they were often nominee partners or directors who had been linked to suspicious offshore structures.

The key insights from this report included: the use of several different "vanilla" structures for illicit purposes; the use of "nominee partners" can present a vulnerability; entities were often banked overseas where CDD requirements or enforcement of regulations might be lower; and criminals

take advantage of the perceived respectability of the UK business community in order to provide a façade of legitimacy. This intelligence report contributed to more fundamental reviews of the vulnerabilities posed by LLPs and SLPs in respect of high-end money laundering. After the report, the UK introduced several measures to improve transparency of these entities and is expected to have mitigated some of the vulnerabilities identified. For example, criminals can no longer hide beneficial ownership through one of the partners being a corporate body registered in an overseas jurisdiction.

Strategic intelligence assessment: ‘The use of corporate vehicles to hide beneficial ownership’

This report identified the use of multiple corporate vehicles, and complex structures using multiple jurisdictions consisting of a series of corporate entities to obfuscate beneficial ownership. There are delays in identifying the relevant jurisdiction(s), requesting, and accessing the required information, assuming it exists. Organised crime groups and individuals will be aware of this and will seek to complicate the structures as much as possible. Furthermore, law enforcement have to rely on legal requirements of that country e.g., details required when incorporating a company, which vary considerably depending on the country. This is most apparent in a country where secrecy is one of the main attractions for using that jurisdiction. Furthermore, the report found that the use of SLPs created further complications as they do not need to register for tax or provide financial reports if the business is conducted abroad. SLPs can register companies abroad in foreign offshore centres, which limits Her Majesty’s Revenue and Customs (HMRC)’s ability to perform background checks as the beneficial ownership is disguised in these companies. This analysis has been used to inform the UK’s risk-based approach and to understand the vulnerabilities in the UK.

Switzerland

A dedicated inter-agency group for the assessment of AML/CFT risks

Switzerland has established a national AML/CFT co-operation and co-ordination framework led by the Interdepartmental Co-ordinating Group on Combating Money Laundering and the Financing of Terrorism (GCBF). All competent authorities regularly take part in this group. The Group is responsible for the ongoing identification of risks to which the country is exposed. Under the leadership of MROS (FIU), there is a specific working group dedicated to risk analysis. The GCBF, represented by high-level officials, proposes measures to address the identified risks. The results of the works of the GCBF are submitted each year to the Swiss Federal Council for information or for adoption of further measures.

In June 2018, GCBF published an in-depth analysis on the AML/CFT risk of legal persons and arrangements. This report, adopted in November

2017, compiles extensive quantitative and qualitative data from multiple sources of information from competent authorities, academia and the private sector. It identifies the main threats and vulnerabilities affecting Switzerland with regard to legal persons and arrangements and addresses the residual risks by proposing measures, including at the legislative level. The report is publicly available which ensures a wide dissemination and awareness raising.

Adequacy, accuracy and timeliness of information in beneficial ownership

Obligated parties to verify or/and monitor the accuracy of the information (relevant to core issue 5.3 and 5.4)

69. The country may appoint a fully regulated and effectively supervised gatekeeper i.e. an obliged party which is subject to AML/CFT obligations, to ensure the accuracy of the information. Such an obliged party should be fully aware of their obligations, understand thoroughly the risks associated with all types of legal persons, and verify or/and monitor the accuracy of information on beneficial ownership. The role of this obliged party in authenticating and verifying/monitoring the acts relating to the information on beneficial ownership throughout the whole lifecycle of legal persons reinforces the reliability of information in particular when its activities are constantly supervised and in sanctioned in case of identified non-compliance.

70. In some countries, the company registrar is the obliged party who shall perform CDD functions. The registrar checks information submitted by companies against other sources (such as national identity registers or tax administrative registers) to verify or/and monitor the information on beneficial owner. The registrar also identifies anomalies or inconsistencies and make reports to the competent authorities.

71. In some countries, the involvement of a notary, a lawyer or an accountant, who is an obliged party subject to AML/CFT obligations, is required at the company incorporation stage, as well as subsequent stages to validate and ensure accuracy of information reflected in the business register and authenticate changes in ownership. Such obliged party is under the supervision of a designated supervisor that is responsible for verifying compliance with these CDD obligations. Some countries implemented additional mitigation measures by verifying or/and monitoring the identity of the obliged party. The company registry will check against the relevant register to confirm that the obliged party is a qualified professional and that his/her licence has not been suspended or revoked.

72. In some countries, it is mandatory to open a bank account with an obliged FI (e.g. banks) before completing company registration. This entails a separate CDD process by FIs where beneficial owners of the company are identified. Such a requirement can help with verification of BO at the time the legal person is created. If there were a requirement to maintain this (or another) bank account throughout the life of the legal entity, then it could also contribute to maintaining up-to-date information, by leveraging the FI's ability to periodically refresh customer files or identify when changes occur.

Denmark

When establishing a company in Denmark, obliged parties subject to AML/CFT obligations (lawyers or auditors) are often involved at the incorporation stage as the business register requires confirmation from a lawyer, auditor or bank that the required capital has been paid in full. Hence, obliged entities that must perform CDD are very often involved at the incorporation stage.

Danish natural and legal persons that are creating or managing legal persons by making registrations in the Central Business Register (CVR) are required to use a special form of ID (NemID), issued by a government agency. NemID is a common secure login to the Internet that is used for a variety of purposes, such as online banking, finding out information from the public authorities, or engaging with businesses. This electronic login leaves an electronic footprint and gives the DBA digital information about the person making a registration which can be used in various control situations.

Further, when making a registration in the Central Business Register, everyone must sign an electronic declaration stating that the information put in the business register is correct.

Guernsey*

Validating beneficial ownership information and providing information to TCSPs on their “gatekeeper role” in the formation and administration of legal persons

Only licensed trust and company service providers (TCSPs) who are subject to full AML/CFT and prudential supervision in Guernsey by the Guernsey Financial Services Commission (GFSC) can incorporate legal persons in Guernsey. TCSPs have been subject to requirements to identify and verify the beneficial owners of all structures for whom they act under Guernsey’s Proceeds of Crime legislation. In 2017, Guernsey introduced additional legislation requiring all Guernsey legal persons to disclose the identity of their beneficial owners to a central register of beneficial ownership. Transitional provisions in this law required accurate and up to date beneficial ownership information to be provided to the Register on existing legal persons before the end of February 2018.

In the second half of 2018, the GFSC undertook a thematic review to assess the effectiveness of the 2017 legislation for ensuring the accuracy of information on the Register about the beneficial ownership of Guernsey legal persons, which are administered by TCSPs. The review consisted of an extensive survey of all licensed TCSPs who were required

to provide detailed information on the proportion of beneficial owners who fell within each of the FATF's "3 tier ownership test" for the legal persons for whom they act. The results were examined and together with input from the Registrar and Guernsey's Financial Intelligence Unit. Twenty TCSPs were selected for focused on-site inspections to review the beneficial ownership records of up to twenty legal persons per firm. The GFSC also compared information on the beneficial ownership register with that on TCSPs' files to check the accuracy of beneficial ownership information submitted to the Register.

The GFSC issued a public report on its findings from the review in 2019 to help inform TCSPs of their obligations under both the Proceeds of Crime law and the 2017 law. The report included case studies on different types of beneficial ownership structures observed by the GFSC during the inspections to highlight examples of good practice and areas for improvement.

**yet to undergo mutual evaluation as of September 2019*

Hong Kong, China

Information provided to the Companies Registry (CR) are subject to checking and verification by the CR. Financial institutions are also subject to statutory CDD and record-keeping requirements when any company opens a bank account. The CR also conducts regular site inspections to check if significant controllers registers (SCRs) are properly kept or not by companies. The CR will check the accuracy of information contained in the SCR against other available sources on a risk based approach.

Italy

Notaries in Italy perform a public function. The information that they provide is deemed self-sufficient, and its content is verified through the automated checks. At the time of incorporation, the information is entered on the basis of a public deed prepared by a notary and processed online through the use of a digital signature. The public deed itself is available to external parties “as is.” Basic checks are conducted by the IT system upon registration. They include an automated calculation of shares (to ensure that they don’t exceed 100%) and of the capital (to ensure it does not exceed the proposed total) as well as an automated validation of information such as the tax ID number entered, digital signature –and therefore the identify– of the applicant, and of the payment of the mandatory fees and taxes. Additional automated checks are also performed with respect to new information entered into the system (for example to ensure that shares are only transferred by persons who are already in the system). Any anomaly highlighted by these automated checks is analysed by the Business Register staff before the publication is authorised.

Israel

In addition to the mandatory involvement of an Israeli lawyer for both the online and paper registration process to verify the signatures of shareholders and directors, the vast majority of applications made in paper form are submitted to the registry by lawyers who are subject to CDD obligations, including an obligation to obtain and retain beneficial ownership information. The Israel Companies Authority (ICA) confirmed that the vast majority of all registered company applications are submitted by Israeli lawyers. These lawyers are subject to CDD obligations on beneficial ownership. The MoJ is in charge of verifying compliance with these CDD obligations.

The ICA has implemented additional mitigation measures in relation to potential abuse by use of online applications. Such applications must be submitted by a lawyer subject to AML/CFT obligations, who is identified by an electronic certificate. The identity details of that lawyer are checked against the Bar Association's register to confirm he/she is a qualified lawyer and that his/her licence has not been suspended or revoked. There is one exception, which is rarely used, when the application is submitted by a shareholder who is the sole shareholder and a director of a company. Such applications require the identification of that shareholder on the on-line system by an electronic certificate (which is issued only after a face-to-face meeting with the shareholder/director concerned). In addition, the ICA requires the applicant (i.e. the lawyer or shareholder) to upload a copy of the by-laws, signed in the presence of a lawyer required to verify the signature of the shareholder on the articles of association – hence, sole shareholders making online applications are also subject to identification measures.

Japan*

On 30 November 2018, the amendment of the Ordinance for the Enforcement of the Notary Act came into force. Under the amended ordinance, to incorporate stock companies (the most commonly used form of legal entity), general incorporated associations and general incorporated foundations (hereinafter called 'stock companies etc.'), the founders (clients) are required to report to notaries the information regarding the identity of the person who ultimately owns or controls the legal person they establish when notaries certify articles of association. In Japan, the articles of association must be certified by notaries to incorporate these legal entities. The clients also need to report to notaries whether the person who ultimately owns or controls the legal person is a member of organised crime groups or international terrorists. The notary database is kept in a centralised and systemic way. Competent authority can access the information in the database through notaries.

Notaries are required to check the accuracy of the reported information regarding the identity of the person who ultimately owns or controls the legal person by examining the submitted articles of association and other documents. Notaries also make use of their database on organised crime groups and international terrorists and when the person who ultimately owns or controls the legal person falls into these categories, the notaries refuse to certify the articles of association. The information regarding the identity of the person who ultimately owns or controls the legal person acquired by notaries is stored in their database to which competent authorities can refer upon their request.

**yet to undergo mutual evaluation as of September 2019*

Jersey*

Fully regulated and supervised obliged persons are required to form and maintain legal persons, along with vetting by registry

The incorporation of most legal persons in Jersey is conducted by regulated trust and company service providers (TCSPs).²⁴ TCSPs are subject to full supervision in Jersey, including fit and proper requirements and regulation of both AML/CFT and prudential/conduct. TCSPs are required under the Money Laundering (Jersey) Order 2008 to find out, and to verify, the identity of the beneficial owners of structures that they administer, and to keep information and records up to date. TCSPs are also required to update the central register of beneficial ownership and control within 21 days of knowledge of a change of beneficial ownership.

²⁴

Local trading companies may incorporate without the use of a TCSP, but are subject to additional identity verification and due diligence by the Jersey Financial Services Commission.

In 2018, with a focus on the accuracy of the Register, the Jersey Financial Services Commission (JFSC) carried out a series of themed examinations to a cross section of TCSPs who provide administration services to Jersey registered entities. The accuracy of client information held by TCSPs continues to be a focus of the JFSC. Customer data is reviewed against data held on the register of beneficial ownership during on-site examinations.

The Companies Registry itself conducts a three stage, sequential vetting process, which involves 3 separate individuals when vetting a) on incorporation; and b) on change of beneficial ownership or control. The vetting process on incorporation must be signed off by either a Head of Unit or a Director of the JFSC within which the Companies Registry sits.

Each beneficial owner and controller and the activities of each entity is vetted against sanctions lists and court regulatory decisions made anywhere in the world, using various sources including a consolidated sanctions and Office of Foreign Assets Control (OFAC) lists, World-Check, internal Customer Relationship Management systems check, internal intelligence/enforcement database check, open source internet searches and regulatory databases maintained by the JFSC.

Any negative information found during the vetting process will be escalated to Head of Unit or Director level and will either result in shared internal intelligence and/or filing of a Suspicious Activity Report. An active feedback loop is exercised to ensure that deficiencies are taken into account by the Supervision division of the JFSC, and, where relevant, the Enforcement division.

**yet to undergo mutual evaluation as of September 2019*

Spain

Notaries are required in all cases, to identify and record the beneficial owner of a newly incorporated entity on the basis of a declaration made by the company's representative. Customer due diligence undertaken by obliged entities makes a significant contribution to Spain's systems for providing authorities access to beneficial ownership information and to ensuring the quality of that information. The notary profession is particularly relevant in virtue of the legal requirements for their involvement to validate most acts involving legal persons. Notaries are very aware of their significant gatekeeper role, as well as of the importance of the information they hold, and have actively worked with the authorities to develop systems to open up their wealth of information for the authorities.

Supplementary information platform in addition to company registry (relevant to core issue 5.3 and 5.4)

73. In addition to company registries, some countries have another database holding information on beneficial ownership. Competent authorities or obliged parties can access these repositories, and cross-check the information against that held by obliged parties and authorities such as company registry, notary profession, tax or stock market authorities.

74. In some countries, their notary profession, being the obliged party, keeps a centralised database on beneficial ownership of legal persons. This includes information obtained and recorded by notaries when incorporating entities or conducting certain other acts or transactions by persons and entities, and information on the transfer. This creates another repository of corporate information which is used to validate the information on the company registry.

75. Some countries may also have their tax authorities maintain beneficial ownership information for certain legal persons. The tax authorities may hold basic and beneficial ownership information on legal persons who have an income, have ownership and/or make transaction of real estate or hire employees. Some even require that all legal persons making disclosures to the tax authorities are required to have a bank account and are subject to banks' CDD requirements.

76. In some countries, professional associations have made free access to certain private databases available to their members. This facilitates the professionals to cross-check information with existing customers or exchange with other obliged parties while complying with data protection measures.

China

In March 2014, China launched the National Enterprise Credit Information Publicity System (NECIPS), which includes information of all enterprises registered with the State Administration of Market Regulation (SAMR). The NECIPS is an authoritative, nationally unified information system established by the competent authority to disclose statutory information. Written inspection, on-site inspection and network monitoring are conducted to randomly check the publicity information. Enterprises that violate the information disclosure requirements are listed on the "grey list" and "black list" for creditworthy sanctions, and may also be subject to fine or even licence revocation. The system strengthens the transparency of business operations, promotes the company's integrity and self-discipline, and strongly supports the supervision. Since 2017, the average number of visits has reached 19.4 million times per day, and the average number of inquiries has reached 3.2 million times per day.

The available information of the NECIPS includes the company's basic information, shareholders and funding information, mortgage registration, administrative licensing and sanctions, as well as some business information. This does not include beneficial ownership information, but may nevertheless contribute to efforts to identify the beneficial owner.

Indonesia*

Since 2018, all legal persons are required to disclose their beneficial owner and to provide beneficial ownership electronically through AHU Online. AHU Online is an application that consist of basic information and beneficial information of legal person that maintain by Ministry of Law and Human Right (companies registry). To ensure that the reporting parties can access the beneficial ownership information in timely manner, Presidential Regulation Number 13 year 2018 regulates specific requirement that oblige the companies registry to provide direct access for reporting parties.

Moreover, competent authorities, especially government agencies (e.g. Ministry of Energy and Mineral Resources, Ministry of Agriculture, Ministry Agrarian Affairs and Spatial Planning), are empowered to consider whether to provide business license to legal person which has not yet disclosed or designated its beneficial owner. Competent authorities will decide based on the assessment of the authorised institution, (a) audits of the legal person by the competent authorities; (b) information from a government institution or private entity that manages data and/or information of the beneficial owner, and/or report from certain professions that keep information of the beneficial owner; and/or (c) other relevant information.

**yet to undergo mutual evaluation as of September 2019*

Israel***Information held by Tax Authorities***

The Israel Tax Authority (ITA) holds basic and beneficial ownership information on all legal persons which have an income, which own real estate, which buy/sell real estate, which have any employees in Israel, which have any assets in Israel or which undertake any financial transactions. All legal persons making disclosures to the ITA are required to have a bank account and are subject to banks' CDD requirements, including those on beneficial ownership.

Italy

The Guardia di Finanza (GdF) has been successful in a number of instances in identifying the beneficial owners of companies misused by criminals, especially mafia-type organised crime groups, through a combination of measures, including consultation of the information collected by reporting entities (mainly notaries and banks) and of various databases.

- on the basis of the data contained in Suspicious Transaction Reports (STRs) – Instructions issued by the FIU establish that the transmission of STRs shall always be complemented with indication of the beneficial owner. The incapability to identify the beneficial owner represents, in itself, a reason for filing a STR;
- from notaries – whereby the legal person under investigation has been part of public acts (e.g. purchase of properties). Information acquired from the Business Register, Anagrafe Tributaria, records held at notaries, and Notarial Archives;
- from accountants. Consultation of the Anagrafe Tributaria allows to identify the custodian of the accounting records or the intermediary who transmitted the compulsory returns for income tax and VAT purposes; and consultation of records (registers) held by professionals;
- from banks, other financial intermediaries and trust companies, identified through queries of the Archivio dei Rapporti Finanziari. After identifying the intermediary, the AUI (Archivio Unico Informatico) shall be consulted.

The same sources may also be utilised in criminal investigations on the basis of an ad-hoc decree (Article 248 Code of Criminal Procedure) issued by the relevant Judicial Authority.

Spain

In Spain, there are currently three databases that hold information on beneficial ownership of companies, each one of them set up with information collected by different obliged entities (Notaries, Registrars and credit institutions). All of them are accessible on-line to LEAs by means of web portals or web services. Such network of overlapping mechanisms together secure the availability of beneficial ownership information of all commercial entities operating in Spain. The mechanisms are as follows:

1. The Single Notarial Computerised Index: beneficial ownership information obtained by notaries through their CDD is held in the notary profession's Single Computerised Index. This database records separately the information obtained through customer declarations at the time of notarised transactions and the verified, aggregated information compiled by notaries.
2. The Business Registry also collects information on beneficial ownership as reported by the authorised representative of the company. On 21 March 2018 a Ministerial Order was issued, requiring all companies (except for publicly listed companies) to annually submit a form, identifying their beneficial owners, to the Business Registry when fulfilling the obligation to file annual accounts. Failure to file the annual accounts (including this form, as accounts deposited

without it shall be rejected for being incomplete) causes the Registry sheet of the company to be locked and has other legal consequences, such as a possible monetary fine, the exclusion of the company from any public tender and, in cases where the company reaches an insolvency state, there is the legal presumption that such state has been reached by negligence or fraud. Even though the period for depositing accounts is not closed yet, on 1st April 2019 more than 1 154 000 companies have already filed their 2018 annual accounts and more than 1.5 million beneficial owners have already been reported.

3. The third database is the Financial Ownership File held by Sepblac (the Spanish FIU and AML/CFT supervisor). Credit institutions will submit a monthly report about the bank and securities accounts opened/held by them to Sepblac. One of the fields required for credit institutions to fill in (except for publicly listed companies) is the identification of the beneficial owners of the account holders. Therefore, information that comes from the CDD carried out by banks to legal persons whenever opening or holding a bank or securities account is also accessible to LEAs for the purposes of preventing, detecting or investigating ML/TF cases.

Ongoing reporting at company level / to the reporting entities or company registry (relevant to core issue 5.3 and 5.4)

77. To ensure that the information on beneficial ownership is updated in a timely manner, a country may require legal persons to undergo ongoing reporting. If there is change to the beneficial ownership, legal persons are obliged to file changes that are verified by the obliged party.

78. In some countries, the company registry imposes an annual updating requirement on companies to make sure that the information of the company's beneficial ownership is up-to-date. Some registries may implement automated systems to monitor deadlines for filing annual returns or certifications. In addition, legal persons are required to file updates within a designed period if there is any change in beneficial ownership. Otherwise, the change may not have legal effects. Some registries require companies to provide an annual report confirming the basic information previously provided to the registry by the end of the calendar year and making such annual reports publicly available so that the public can see the contents of a report and when it was last submitted.

79. A point to note is that such updates on beneficial ownership to the company register are to be verified by an obliged party. In some countries, involvement of a notary is further required to validate changes in basic information. Information submitted to the company registry must be accompanied by a notarial document. Notaries also maintain the same information, as well as information related to changes in shareholders in a separate database that is updated within a specified timeframe.

80. For registers of shareholders, if these are held by the company itself or a depository institution, the company director is responsible for ensuring their accuracy, and for updating them immediately when changes take place. A Registry system that is held at the company level allows keeping a complete and full record of beneficial ownership information. The register can show the changes of beneficial owner. This allows competent authorities to obtain or retrieve beneficial ownership information from the company.

a) Ongoing reporting at company level

Switzerland

Companies in Switzerland must keep a record of their shareholders (SAs) or members (SARLs and SCs) and their beneficial owners (Art. 686, 697j, 697l, 747, 790, 837 CO), including for bearer shares. Shareholders must inform the company within a month of any acquisition of the shares (697i CO). All shareholders, of both registered and bearer shares, or of units where the holding reaches or exceeds the threshold of 25% of the capital or of the votes, must inform the company of the name of the natural person who is the beneficial owner of the shares or units. The information must be kept up to date. They must also notify the company of any changes (Art. 697i, Art. 697j and 790a CO). In addition, the company must be notified of any changes to the information identifying the shareholders or beneficial owner (first name, surname, address) (Art. 697i, 697j para. 2 and 790a para. 2 CO).

b) Ongoing reporting to the reporting entities or company registry

Austria

Based on Art. 3 of the Beneficial Owners Register Act (BORA), legal entities are required to conduct and review their due diligence requirements pursuant to Art. 3 para. 1 BORA at least once a year, and verify whether the beneficial owners listed in the Register are still up-to-date. Moreover, changes related to beneficial ownership have to be reported within four weeks of obtaining knowledge of these changes.

Legal entities will be required to not only perform their due diligence obligation at least once a year, but also to confirm the reported beneficial ownership data within four weeks after the due date of the annual review. All reporting requirements will be enforced by automated coercive penalties.

Belgium

In Belgium, there is a duty for legal entities and arrangements (LE/LA) to update the ultimate beneficial ownership information within a month of the change. Such update should be registered directly in the online UBO Register platform. LE/LA also have the duty to confirm on an annual basis that the information registered is up-to-date, accurate and adequate.

Accountants or notaries can also file the UBO information directly in the UBO Register and do the annual confirmation for their clients. They can also choose to send an extract of the register to the legal representative and ask them to confirm the information by directly clicking on a link embedded in the email.

Denmark

In Denmark, corporate and legal entities covered by the BO rules are obliged to register its beneficial owners in the Central Business Register (CVR). If the entity is informed that there might have been a change of the beneficial ownership, the entity is obliged to investigate it and update the registration in the BO registry as soon as possible and no later than within two weeks.

Corporate and legal entities must keep information on the company's beneficial owners, including attempts to identify the beneficial owners, for five years after the ownership ended or identification was attempted. This information shall be provided if for example the Danish Business Authority (DBA), the State Prosecutor for Serious Economic and International Crime (SØIK) or the Danish Tax Agency (SKTST) considers the information necessary to fulfil its supervisory and control tasks. If the company ceases to exist, the last registered management must ensure that information and documentation regarding the investigation into the beneficial owner(s) can be produced five years after the ownership ended or identification was obtained.

In 2020, corporate and legal entities will be required to screen the BO information registered in the CVR at least once a year and, if necessary, update the BO information. The relevant information shall be presented on the meeting where the annual report is approved by the board of directors.

France*

In France, pursuant to Article R. 561-55 of the Monetary and Financial Code, any corporate or legal entity that has change(s) in its beneficial ownership chain needs to file an up-to-date BO document with the "greffier de

commerce” (commercial court’s clerk) within 30 days following the change. Corporate and legal entities must keep updated and accurate BO information.

Failure to submit information within appropriate time or to provide accurate information is subject to 6 months of imprisonment and a fine of € 7 500, according to Article L. 561- 49 of the Monetary and Financial Code. Natural persons may also face a disqualification from practice of business activities or a partial privation from national and civil rights. The legal persons convicted may face a sanction payment equal to five times the sanction applicable for natural persons (37 500 euros) and supplementary penalties as described by Article 131.39 of Penal Code.

**yet to undergo mutual evaluation as of September 2019*

Jersey*

Legal Persons required to update the central register within 21 days of any change in beneficial ownership

Under the Control of Borrowing (Jersey) Order 1958 (COBO) every Jersey entity is required to obtain the consent of the Jersey Financial Services Commission (JFSC) on incorporation. The JFSC uses this regime to impose conditions on all Jersey companies which facilitate the collection of beneficial ownership and control information.

All TCSPs must provide information where an individual acquires beneficial ownership of 25% or more (the threshold being flexed on a Risk Based Approach) or becomes a controller (the Jersey Registry adopts the FATF “3 tier test”). TCSPs must notify the Companies Jersey Registry within 21 days of knowledge of a change.

In respect of legal persons formed not by TCSPs but by local residents, under COBO, there has always been a requirement to obtain the permission of the Commission before a change of beneficial ownership and to therefore update the central register upon change of beneficial ownership.

**yet to undergo mutual evaluation as of September 2019*

Italy

Changes to the ownership and control structure of the legal person must be recorded in the Register within different timeframes, namely within 30 days of the notarial act that validates them, in the case of limited liability companies (società a responsabilità limitata; SRL), and once a year for the joint stock companies (società per azioni) (i.e. at the time of filing the annual accounts). Transfers of shares must be filed with the Business

Register by a notary or be performed by a bank or stockbroker in the case of SRL, the information may be filed by notaries or chartered accountants. The checks are performed with respect to the information filed by notaries.

Verification through different means (relevant to core issue 5.3 and 5.4)

81. The effective mechanism also involves active and adequate verification of information to ensure that the information on beneficial ownership is accurate. Verification of information can be conducted through the following means.

Cross-checking

82. Countries may adopt cross-checking measures to verify or/and monitor the information on beneficial ownership, taking advantage of the availability of different information agents. For example, FIs and DNFBPs, as well as tax authorities, can cross-check the basic and beneficial ownership information provided to them by companies with the information available at the registry held by the company or by the registry. Obligated parties such as FIs and DNFBPs can also continuously monitor changes in the registries, including designations of violating companies (through automated computerised interfaces) and inquire with their customers with regard to any potential discrepancies.

83. Given the interrelatedness of the information available and the procedures implemented by government authorities, some countries implement automated cross-checking controls among databases held by different government authorities. For example, a common portal is developed so that the system of company registry can cross-check the beneficial ownership database against other government databases (e.g. law enforcement databases, tax administration database, land register, and other open sources) to verify or/and monitor the accuracy of information on beneficial ownership.

84. Some countries have developed a blacklist, where all individuals and organisations listed in the United Nations are included, in addition to any local individual or organisation which is subject to domestic listing. Those who are listed will not be able to register or own or transfer ownership of any kind. Obligated party can cross-check the identity of shareholder/director against the blacklist at the company incorporation and subsequent stages.

Red flags

85. Some countries identify indicators that suggest suspicious activities e.g. a single credit card or email address being used to incorporate many companies, which on the surface are unconnected. The company registry will then report to law enforcement/competent authorities regarding suspicious activities.

86. In some countries, the obliged party determines a set of indicators and then reviews and assesses the legal persons' financial statements to properly identify the nature and size of the business. For example, the obliged party may establish indicators on sector's income specifically cash income, and the level of assets. This is then compared to the industry average. Subsequent abnormal and/or significant results are deemed suspicious and are therefore subject to further assessment.

87. In some countries, the company registry system is capable of detecting any variations in the information submitted by companies (i.e. increase in shares, transfers of ownership) and to also compare the relevant indicators against the industry average. In case of abnormal variations, an alert is triggered and is subsequently sent to the concerned department for further investigation. Where the primary finding does not justify the business purpose of the behaviour that generated the alert, an in-depth investigation is conducted to determine whether such behaviour is associated with ML/TF risks.

Sample testing with public and non-public data

88. Some registries conduct ongoing sample testing or targeted audits to verify or/and monitor the accuracy of information on selected legal persons. In some countries, company registries conduct sample testing for specific industries/companies of specific business nature/ risk features by using the annual reports provided by companies to conduct periodic verification. They may check the annual report submitted against the information in its database.

Co-ordination among authorities

89. In some countries, relevant obliged parties and authorities (e.g. company registry and tax authorities) have worked closely together on cases of fraud and market manipulation. The authorities may jointly conduct detailed analysis of transactions and trading patterns, leveraging of certain parameters e.g. IP addresses and use of telephone system information. This helps identify connections between beneficial owners and facilitate further investigations.

External parties engaged in verification of register information

90. Some countries introduce a reporting feature on the public register to encourage external parties to voluntarily notify it of suspected errors. Some organisations e.g. NGOs may then undertake data analysis and report on potential inaccuracies and issues of concern. Some countries also require FIs and DNFBPs to report inaccuracies when they conduct CDD process.

Austria

The BO Registry Authority is responsible for ensuring the correctness and completeness of the data as well as for the prevention of money laundering and terrorist financing. To fulfil these obligations, the BO Registry Authority is authorised to carry out analyses, or may at all times request information and documents from legal entities and their beneficial owners and perform off-site analyses of the correctness of beneficial ownership on the bases of the documentation received and other available sources.

Where an obliged entity determines during the application of its due diligence obligations towards customers that a different beneficial owner has been entered as beneficial owner than was determined, and is convinced that the entry is incorrect or incomplete, then the obliged entity may electronically report this case to the BO Registry Authority by setting

a remark – a “red flag” – for the respective legal entity. The same applies to all competent authorities.

By setting a remark the legal entity will automatically be notified about the remark (without identifying the obliged entity that set the remark) and informed that the reported beneficial owners could not be verified and that the legal entity therefore has to examine its report. The remark is only removed if the legal entity then files a new report. However, the remark will still be visible in the historical data.

Consequently, a remark will be visible in all excerpts from the BO Register. In addition the BO Registry Authority is monitoring the list of all remarks set in the register and may request documentation on beneficial ownership if a remark is not resolved by a correct report.

Belgium

In Belgium, a centralised beneficial ownership register (UBO Register) has been implemented for both legal entities and arrangements (LE/LA). It is developed, managed and controlled by the Treasury administration of the Federal Public Service Finance and is separate from the Commerce registry managed by the Federal Public Service Economy.

The UBO register is an online and fully digitalised platform through which all LE/LA can submit and update their UBO information and that can directly be accessed by competent authorities, obliged entities and members of the general public. An additional condition of demonstrating a legitimate interest is applicable to access the UBO information of certain LA.

For data-privacy protection reasons, the access to the platform is only authorised to persons (both nationals and non-nationals) that have a Belgian electronic identity card. The access is also extended to eIDAS (i.e. Regulation (EU) N°910/2014 on electronic identification and trust services for electronic transactions in the internal market) compliant jurisdictions.

Considering the limited resources available and extent of the task, the Treasury cannot conduct systematic *ex ante* controls of the information registered by LE/LA. However, in order to ensure a high level of data quality, several control mechanisms have been embedded in the platform. They are intended to avoid mistakes during the registration process and facilitate the implementation of (targeted) controls of the data. These include:

- To avoid spelling mistakes or typos during the registration phase, a direct link has been made between the UBO register and both the commerce registry (for LE/LA) and the national identification registry (for natural persons);

- The connection with the commerce and national register enables the prefilling of all the information pertaining to the LE/LA and the natural person available in those registries. This prefilling must however be confirmed by the legal representative of the LE/LA, the purpose being to avoid extracting inaccurate, inadequate or outdated information. If the information is not correct, the LE/LA will have to modify it directly at the commerce or national registry. It has been observed that during the registration of their UBO, LE/LA realise that the information is not up to date in the Commerce registry and make the necessary changes in said registry; this mechanism thus also enhances the quality of the information available in the commerce registry;
- This mechanism also enables the Treasury to implement the “only-once” regulatory framework by allowing public authorities to request the communication of an information/document if it has already been provided to another public authority; the resulting process is therefore less costly and more efficient for LE/LA and public authorities;
- Several business rules have also been set to avoid the registration of certain situations (e.g. ownership of more than 100% of the shares/voting rights, registration of a deceased person or a Belgian national that is not registered in the national register of natural persons, start of control before the incorporation of the company).

China

Under the current AML laws and regulations of China, all regulated institutions are required to establish and formulate proper CDD processes. The CDD process is embedded into various operational workflows of the organisation in order to improve the process effectiveness. The verification of corporate customers can be conducted through the National Enterprise Credit Information Publicity System established by the State Administration of Industry and Commerce, to verify the licenses, certification documents and the operation status of licenses in accordance with the law. The regulated institutions will not establish relationships or engage in business before CDD is completed. FIs should obtain information and materials related to legal person while conducting CDD to identify BO, which is very helpful for verifying the materials required in the CDD process.

The regulated institutions would commonly make use of either the official public channels to enquire and verify customer information, as well as maintain on-going understanding of the customers’ background. The official public channels including Administration of Industrial and Commercial Registration Information System, National Enterprise Credit Information Publicity System, Unified Social Credit Code Inquiry of National

Organization System, Commercial Entity Registration Information Platform, Commercial Entity Credit Information Publicity Platform, Tax Registration Inquiry System and so on. The "grey lists" and "black lists" on the National Enterprises Credit Information Publicity System (NECIPS) are not only the sanction lists, but also the red flags. Once FIs find legal persons listed in these lists, they will conduct enhanced CDD measures and require more materials in identifying BO, which will in turn ensure the accuracy of BO information in FIs.

Denmark

Cross-checking

Denmark operates with an official online company registry called the Central Business Register (CVR). The CVR contains and publishes free of charge information on legal entities registered according to both company law and tax law. To secure data quality, several automatic control mechanisms have been incorporated in the Business Register. They are intended to avoid mistakes during the registration process and facilitate the implementation of targeted control. The CVR automatically checks information that is filed (which must be done electronically), and will cross-check this information with various governmental registers, the CPR number - Civil registration number / CVR number - Unique identification number for legal entities and other details such as address (Danish Address Register - DAR) and dates. Furthermore, business rules are set up in the system to avoid impossible situations ex. registration of a deceased person, and as the Business Register entails information about legal entities, certain information about the entity is prefilled in order to ease the registration and to avoid mistakes. These automated checks are then followed by more detailed manual checks in suspicious cases. The system is also designed to use large datasets and with machine learning to better identify potential risks.

Sample testing/checking

To ensure that BO information in the CVR is accurate and current, the Danish Business Authority (DBA) starts to select and manually control 500 companies and their registration of BOs in 2019.

The control is divided into two approaches: In the registration phase, and after the information is registered. In the registration phase, the BO information is in specific suspicious cases checked and verified by the DBA before the incorporation of the company is completed. If the BO information is not adequate when checked, the company will not be incorporated. If the BO information is checked in the following phase, the DBA has the legal basis to dissolve the company compulsorily. The possibility to enforce the winding up relates to both missing and inadequate

BO information and can also be used if the corporate or other legal entity does not hold BO information or the information held is inadequate.

External parties engaged in verification of register information

In 2020, entities within the CDD framework will be obliged to report to the DBA any discrepant BO information available in the CVR and the BO information available to them. In case of reported discrepancies, the relevant authority must take actions to resolve the discrepancies. It is possible for the DBA to make a note in the CVR about the reported discrepancy.

France*

In France, the verification of information is two-fold: firstly, the clerk verifies that the company has submitted all the necessary information. Secondly, the clerk verifies the declared information by mainly cross-checking against information held by the Trade Register.

As of April 2019, (Art. 561 46-3), the information contained in this register can be disclosed to : the legal entity itself, one of the 18 competent authorities, one of the entities subject to AML/CFT obligations or any person justifying a legitimate interest and authorised by the judge responsible for the surveillance of the BO register.

**yet to undergo mutual evaluation as of September 2019*

Hong Kong, China

The Companies Registry (CR) has introduced a complaint form for reporting breaches of the Companies Ordinance (CO). Companies or members of public can use the form to report any breaches of the CO (including failure to keep a Significant Controllers Register) to the CR for investigation.

The introduction of the complaint form greatly facilitates the public members to report any breaches of the Companies Ordinance to the CR in a timely manner. Among the 2 310 complaints received by CR between 2017 and 2019 (up to July), 40% of them were reported via the complaint forms.

Ireland

Data interfaces have been established between the Companies Registration Office (CRO) and Revenue, as the two key data repositories of corporate information in Ireland. Such interfaces allow the authorities to conduct ongoing red-flag monitoring and some verification of the information held. For example, Ireland has assessed that higher ML/TF and tax evasion risks attach to entities which, although incorporated through CRO, fail to engage with Revenue. The interface between CRO and the Revenue combats risks associated with 'non-engaged' entities and enquiry letters are generated.

The Netherlands*

The automated information system TRACK of the Scrutiny, Integrity and Screening Agency (part of the Ministry of Justice and Security) continuously monitors the integrity of legal persons, including its directors and affiliated persons or legal persons. The system was introduced in January 2011.

The Scrutiny, Integrity and Screening Agency performs risks analysis by automatically scanning several closed and public sources on a daily basis, to look for any relevant financial or criminal records of directors, and the (legal) persons in their immediate surroundings. Data includes the Company Registry, Citizens Registry of the municipalities and the Central Insolvency Registry, as well as other public sources. In addition, data is obtained from the tax authorities, the Judicial Information Service, and the National Police Services Agency. If the computer system reveals a heightened risk, either immediately upon registration or later on, during the life span of the legal person, this dedicated Agency will carry out a more in-depth analysis. If the analysis confirms that there is indeed a heightened risk, a risk alert will be sent to a group of recipients, including law enforcement and supervisory authorities such as the Public Prosecution Service, the Police, the Tax Intelligence and Investigation Service, the Dutch Central Bank, the Netherlands Authority for the Financial Markets and the Tax and Customs Administration. In 2018, 264 of such risk alerts were made, and another 50 in the first quarter of 2019. A risk analysis can also be performed upon request from these authorities. In 2018, 17 risk alerts were made following a request.

The Scrutiny, Integrity and Screening Agency also provides 'network maps' for inter alia law enforcement and supervisory agencies. A network map plots the relevant relationships between a (legal) person of interest, and other persons or legal persons, including bankrupted or disincorporated legal persons. In 2018, the agency provided 947 network maps, and 217 in the first quarter of 2019.

**yet to undergo mutual evaluation as of September 2019*

The United Kingdom

Civil society using PSC information

In November 2016, Global Witness worked in collaboration with DataKind UK, OpenCorporates, Spend Network and OCCRP to bring together a team of 30 volunteer data scientists to analyse the information provided in the first batch of data from the person with significant control (PSC) register. The team worked on the first three months' worth of data available (around 1.3 million companies out of 3.5 million). In a weekend, the team were able to provide a number of insights which illustrate the value and potential use of public PSC information:

- The team were able to build a map of complex corporate structures. As an example, they partially mapped the ownership structures of Reckitt Benckiser, the healthcare company. The PSC data enabled them to develop an understanding of complex ownership structures and while they did not identify any wrongdoing, it shows how the information can be used to increase transparency.
- The team were able to identify 9 800 companies that listed their beneficial owner as a foreign company. This is allowed if the foreign company was listed on one of the stock exchanges deemed equivalent to the UK system (e.g. the US, EU and Japanese exchanges).

Global Witness informed Companies House that there were over 4 000 companies who appeared to have filed details of a relevant legal entity (RLE) who may not be registrable; as they were based in jurisdictions such as Costa Rica, Panama and the Isle of Man. Companies House have taken action by writing to these companies. Upon receipt of the information, approximately 70% of the companies had already corrected their PSC information on the Companies House register. While Companies House would have identified many of these errors, by having publicly accessible information, it has accelerated the identification of these issues.

Sweden

Flagging suspected incorrect information in the beneficial ownership register

The Swedish system for information on beneficial ownership is based on a combination of the Company Approach and the Registry Approach. A report to the registry is made by a representative of the legal person and signed electronically.

The register of beneficial ownership is publicly accessible. In case the quality of an entry in the register is insufficient, relevant FIs, DNFBPs or state authorities are obliged to report this to the registry authority. The registry authority will then evaluate if the registered information is incorrect based on the report. If so, an official notice will be given to the

legal person either to submit a correction or to submit additional information that supports the registered information as correct. If that is not done, another official notice will be sent with an administrative fee. This has proven to be an effective measure during the relatively short period of time the Swedish register has been in effect. Most legal persons who receive the first official notice file a correction within the required timeframe.

Apart from keeping the registered information in the register correct through official notices, the registry authority may flag up registered information connected to the legal person with a warning triangle and an explicatory text that the registry authority has reason to presume that the information is incorrect. This flag is shown to anyone looking at the legal person in the registry and remains until a report with correct information has been registered. The flag functions as a warning for FIs, DNFBPs or any other party dealing with the legal person. This is an indication in a CDD situation that caution is needed and that clarifications should be requested before initiating or continuing a business relationship.

Enhanced measures for companies with foreign ownership/directorship (relevant to core issue 5.3 and 5.4)

91. It is understood that foreign ownership/directorship is a main concern on tracing beneficial ownership of legal persons.

92. In some countries, foreign individuals/legal persons who wish to carry out business or acquire ownership of local companies must obtain another licence from a designated competent authority. As part of the application process, the individual/legal person is required to provide a comprehensive set of information, including on the financial standing of the foreign individual/legal person, the ownership and control structure of the foreign legal person, and copies of founding documents and agreements regulating the powers to bind the legal person. Certified documents by obliged party have to be provided. The obliged party is required to undertake enhanced CDD and undertake a comprehensive screening and verification of each applicant's financial background, ownership and control structure, previous commercial activity, etc.

In some countries, where a shareholder/director is not a local citizen, the registry authority requires the applicant to provide a certified copy of the passport for individuals and a certified certificate of incorporation for legal persons. Some countries rely on the certification by an obliged party, or by an official local representative in the foreign country where the passport or certificate was issued to conduct verification to this group of foreign shareholders/ directors.

Austria

As part of the risk based approach of the BO Registry Authority, legal entities, which report beneficial owners with foreign citizenship or place of residence, or ultimate legal entities with a registered address in a foreign

country will receive a certain number of risk points based on the ISO Code of the foreign country. Thus those legal entities will be more likely be in the risk category high or very high, resulting in a greater chance that the BO Registry Authority will request documentation on beneficial ownership and will carry out an off-site analyses of beneficial ownership.

Belgium

The electronic identification system (“eID”) in Belgium implemented since 2002 greatly facilitates the identification process of foreign citizens that had a prior contact with an administrative authority in Belgium.

If a foreign citizen has been in contact with an authority in Belgium for any reason, e.g. for VAT or other fiscal purpose, traffic offence, employment, they will be assigned a unique eID number that will be registered in the national register for natural persons. This eID will be used to identify them in the UBO register and verified by an authority.

In the medium term, the EU eIDAS (electronic IDentification, Authentication and trust Services) Regulation aims to ensure that people and businesses can use their own national eID schemes to access public services in other EU countries where eID is available. For non-EU citizens that do not have any (compatible) EU eID, several solutions are being investigated besides the request for substantiating documents upon registration (e.g. simplified remote authentication method).

Denmark

Under the beneficial ownership legislation, corporate and other legal entities are obliged to register BO information in the Central Business Register. This applies whether it is a foreign or national beneficial owner. If a beneficial owner is a foreign citizen, further registration information is necessary e.g. copy of passport, national identification number etc.

Hong Kong, China

Under Part 16 of the Companies Ordinance (CO), a non-Hong Kong company that has established a place of business in HKC is required to register under the CO. Corporate documents of the non-Hong Kong company such as constitution, certificate of incorporation and latest accounts have to be delivered together with the application of registration. Such corporate documents have to be certified in accordance with s.775 of the CO. For example, they should be certified by a notary public, lawyer, professional accountant, professional company secretary, etc.

Jersey

Foreign owned are subject to enhanced requirements reflecting their higher risk

All Jersey companies that are foreign owned are subject to enhanced requirements reflecting their higher risk.

The beneficial owners and controllers of companies, which will be owned by local residents, are subject to identity checks by the Companies Registry on incorporation and when new beneficial owners and controllers become connected with the company.

In addition to those checks, all companies incorporated at the behest of a foreign owner must engage the administration services of a locally regulated TCSP which is subject to AML/CFT regulation. The TCSP will hold the certified copy and conduct risk-based due diligence.

The Taxation (Companies – Economic Substance) (Jersey) Law 2019 strengthens the requirement for Jersey companies to demonstrate real economic substance in the Island and the overall level of responsibility that Jersey-resident directors shall take in relation to foreign-owned companies that they direct and administer.

The Netherlands*

There is a general obligation for all foreign incorporated companies with an office in the Netherlands, or who provide employment in the Netherlands, to register basic company information in the company register of the Dutch Chamber of Commerce.

FIs and DNFBPs are obliged to perform enhanced CDD if the country of residence of the customer is declared a high-risk country by the European Commission.

**yet to undergo mutual evaluation as of September 2019*

Switzerland

Enhanced measures for the identification of beneficial owners of non-operational legal entities (domiciliary companies)

The risk of the abuse of legal persons is taken into account in preventive due diligence measures applicable by the financial intermediaries. The complexity of the structures involved in the business relationship, particularly the use of domiciliary companies, whether Swiss or foreign, is one of the criteria of higher risk according to Art. 13(2)(h) of the FINMA

Anti-Money Laundering Ordinance (OBA-FINMA). Art. 2a OBA-FINMA defines domiciliary companies as entities such as legal entities, trusts or foundations, that do not have any operational activity. They do not carry out any commercial or manufacturing activity or any other activity as a commercial enterprise. Financial intermediaries adopt a very prudent approach with such types of entities and do not enter into business relations when a natural person cannot be identified as the actual beneficial owner of the company. A written declaration will be required from the domiciliary concerning its beneficial owners. (Art. 4 para. 2 of the Federal Act on Combating Money Laundering Act and Terrorist Financing). The threshold of 25% of the capital or voting rights in the legal entity does not apply to such type of entities. This means that all beneficial owners must be identified, regardless of the amount of their participation in the company.

Highly effective law enforcement authorities with adequate resources (relevant to core issue 5.4)

93. In some countries, the AML supervisors/law enforcement authorities (LEAs) prioritise ML/TF and financial investigations, and routinely and proactively pursues ML/TF investigations. Investigative tools and information-sharing gateways are robust, and resources are applied flexibly both within and across enforcement agencies to respond to investigative needs.

94. Where prosecution is not possible, LEAs actively use a wide array of other alternative measures to disrupt offenders, including pursuing the predicate offence, seeking civil recovery, taking action for tax offences, or obtaining serious crime prevention orders to restrict behaviour. The efforts are supported by adequate human and capital resources.

The Netherlands*

Dutch law enforcement agencies work closely and share information with each other, as well as with other agencies such as the Tax and Customs Administration. The national police and the Tax Intelligence and Investigation Service (in Dutch: Fiscale Inlichtingen en Opsporingsdienst or FIOD), which both work under the authority of the Public Prosecution Service investigate suspected ML/TF criminal activity and carry out extensive law enforcement measures. These authorities also work together in the Dutch Financial Expertise Centre (FEC), which is a partnership among authorities that carry out supervisory, prosecution or investigation activities in the financial sector. Partners of the FEC are: Dutch Central Bank DNB, AFM Netherlands Authority for the Financial Markets, FIU-Netherlands, Tax and Customs Administration, Tax Intelligence and Investigation Service (FIOD), National Police and the Public Prosecution Service. The Ministry of Finance and the Ministry of Justice and Security act as observers. The FEC also plays an important role in providing and

disseminating information. The various criminal law enforcement agencies, FIU-Netherlands and the Public Prosecution Service also work together in the Anti Money Laundering Centre.

**yet to undergo mutual evaluation as of September 2019*

The United Kingdom

The UK competent authorities manage to use Companies House records to identify those individuals acting as company officers, and undertake further enquiries to test the credibility of their appointments and of the company, through the examination of company records, tax returns, and both corporate and individual financial activity. Sometimes, these enquiries showed that the company officers were simply acting as the agent of the defendant, and knew nothing about the operation of each company. These companies were used as a device to hide the beneficial ownership of the assets.

Using technology to facilitate checking and validation (relevant to core issue 5.3 and 5.4)

95. In some countries, basic checks are conducted by the IT system in the company registry upon registration. They include an automated calculation of shares and of the capital as well as an automated validation of information such as the tax identification number entered, digital signature—and therefore the identify—of the applicant, and of the payment of the mandatory fees and taxes.

96. Some systems will perform automated checks when there is new information entered into the system (for example to ensure that shares are only transferred by persons who are already in the system). Any anomaly highlighted by these automated checks is analysed by the register staff before the publication is authorised.

97. In some countries, data mining technology is used to cross-check the information available and report suspicious activities to the various authorities. False information can be easily detected and the system can help highlight any inconsistency. Some countries even appoint a dedicated data miner to monitor cross-checking systems among different databases in order to ensure compliance of requirements on beneficial ownership.

98. For countries that adopted a national standardised electronic identification system, such electronic ID (for all directors and authorised signatories) is one of the required information to register companies in the company registry. Competent authorities can also make use of trustworthy electronic identification system to gather information.

Austria

The BO Register integrates existing information from other registers, such as the Central Register of Residents related to information on the beneficial owner or the other national registers containing information about legal entities concerning the reporting of ultimate beneficial ownership of legal entities.

Through an automated alignment with other registers, it is ensured that beneficial owners and legal entities can only be reported if their data is also contained in other public registers. If, for example, a person with a main residence address in Austria is entered as a beneficial owner, there is a real time check with the Central Residence Register in the background if the entered person has a valid main residence in Austria.

Another key factor is the reporting form for reporting beneficial ownership itself. The reporting form provides a digital guidance throughout the reporting process and makes reporting for both legal entities and their legal professionals as easy as possible. The reporting form itself is dynamic and tailor made to the specific legal form for which the report is made. Incorrect reports can be prevented largely by built-in conditions and error indications.

Denmark

Information on any natural person registered in the Central Business Register (CVR) is updated automatically for all Danish persons from the Danish CPR-register. The DBA's IT-system (CVR) also automatically checks the business address in the Danish Address Register (DAR) to make sure that the address exists. When a new business is registered or changes are made to a governing body, the DBA's IT-system (CVR) will automatically notify the affected person(s) to make sure that the changes are correct.

The digital self-registration systems have been designed with several built-in minimum requirements that must be met for completion of the registration. These include that certain types of document must be enclosed with the individual type of registration case, as well as requirements for the information that must be disclosed to the DBA. The IT-system (CVR) is under an ongoing development and most recent developments is using machine learning to check enclosed documents signatures and read if certain documents entail demanded text and conclusions. The DBA can perform checks to verify the registrations. In these cases, DBA can ask for documentation for the registrations. If the company cannot provide this, or the incorrect registrations are not rectified, DBA can enforce a forced winding up.

With the modernisation of IT systems for company registrations, the DBA has enhanced its enforcement activities to prevent misuse and to check

registrations, including 1) activities that take place automatically in connection with a registration in the DBA's systems, and 2) the manual follow-up activities that the DBA conducts up to three years after the registration.

Italy

The MOLECOLA platform* used by the Guardia di Finanza (GdF, the financial police), facilitates the identification of the real beneficial owner of legal persons incorporated in Italy by processing the information maintained in various sources (Business Register, law enforcement databases, tax administration database, land register, lists of designated persons under the United Nations Security Council Resolutions (UNSCRs), and other open sources). As established in the cases provided, this has enabled the GdF to successfully identify the ultimate beneficial owner in a number of instances, including in cases involving complex, transnational corporate structures. The MOLECOLA platform has proven useful notably by considerably reducing the length of time needed to conduct cross-checks.

**MOLECOLA: This tool is used in financial investigations with software integrated within GdF and National Anti-mafia Directorate (Direzione Nazionale Antimafia). MOLECOLA imports electronically bulk information from different databases (e.g., the various law enforcement databases, tax administration database, land register, company register and information from other open sources). The information is analysed according to the operational activities investigated, allowing to elaborate standardised reports suitable for investigations and also operational analysis reports detecting links between people and financial operations, and the disproportion between incomes and expenses of the persons that are under investigation.*

The Netherlands*

The company register of the Dutch Chamber of Commerce performs automatic checks of specific information upon registration. For example, information on the identity of natural persons is checked against the citizens register (in Dutch: BRP or Basis register personen) automatically, amongst which the name, date of birth and the Dutch Citizen Service Number (Burgerservicenummer or BSN).

**yet to undergo mutual evaluation as of September 2019*

Access by competent authorities (*relevant to core issue 5.4*)

99. Competent authorities (including LEAs) may have direct access to the beneficial ownership information held by company registry, database held by other competent authorities and information held in FIs and DNFBS (e.g. notaries' database). According to the 2018 FATF-Egmont report, FIUs should have access to the widest possible range of financial information. Consideration of possible measures to increase the breadth and depth of information available to FIUs is merited.

100. In some countries, competent authorities have direct access to the beneficial ownership information through the company registries and the centralised database kept by notary profession, which ensures the timeliness of the access to information on beneficial ownership. The private sector discloses information to the competent authorities in due time and within the time limits set by the requesting authority. Whenever necessary, the information is collected directly from and/or verified directly with the companies. Competent authorities (especially LEAs) can also compel the provision of beneficial ownership information through available investigative measures such as production or disclosure orders. Production orders can be obtained relatively quickly through an electronic filing and granting system. Moreover, access has been authorised by the data protection agency so that there is no impediment to competent authorities in obtaining information on beneficial ownership.

Belgium

In Belgium, the Ultimate Beneficial Owner register (UBO register) is accessible by competent authorities. The Security officer or Data Privacy Officer of each competent authority will be granted the right to manage the access to the platform for the employees of said competent authorities. This Security or Data Protection Officer is tasked to authorise any agent of the competent authority to consult the UBO register in accordance with the law. Such a system enables the Treasury to:

- Enable competent authorities to have access to the past and present UBO information instantly;
- Offer flexibility to competent authorities in the internal organisation of the accesses. They will be able to tailor the access to their needs and specificities. Subsequently, certain entities limit the access to the UBO register to certain categories of agents or employees (e.g. head of departments, specially designated investigators...);
- Assign clear responsibilities. The responsibility to consult the UBO register in accordance with the AML/CFT and UBO regulation lays on the competent authority and its agents;

This system also enables the Treasury to keep track of the logs of each user, for data privacy concerns and in order to enable an audit to be conducted on the use of the information.

Germany*

In Germany, access to the Transparency Register is possible through a central platform. The access is available depending on the type of the applicant. There are three possible types of applicants.

- Competent authorities are granted access for fulfilling their legal requirements. They have, as far as it is necessary in fulfilling their statutory tasks, full access to the database of the Transparency Register.
- Obligated entities are granted access to the register if they inspect the entries in the Transparency Register while acting in the exercise of their professional activities to fulfil due diligences. Obligated entities are for example credit institutions, financial companies, auditors, chartered accountants or tax advisors.
- Any natural or legal person, domestic or foreign, that can demonstrate a legitimate interest can access the information available. The decision is made on a case-by-case basis.

**yet to undergo mutual evaluation as of September 2019*

France*

According to article L. 561-46 of the CMF, 18 of competent authorities shall have access to the beneficial ownership register among which :

- Judicial authorities;
- The national Financial Intelligence Unit (FIU);
- The custom administration officials;
- The public finances officials in charge of control and recovery in fiscal matters.

The French FIU has a direct access to the electronic beneficial ownership register. When orientating the information or when further investigating, FIU officials are able to check instantly all the information transmitted by the company to the “greffier de commerce” (commercial court’s clerk) when registering as mentioned above.

The aforementioned provisions differ from those of Section 3 of the Monetary and Financial Code on customer due diligences which provide that obliged entities shall identify the beneficial owner before entering in a business relationship or before performing a transaction. After applying those due diligences on beneficial ownership, if they suspect or know that the operation which is about to be performed is linked with ML or FT, they must transmit the information to the FIU.

Therefore, the French FIU has two different sources of information on beneficial ownership at its disposal and is able to cross-check it.

**yet to undergo mutual evaluation as of September 2019*

Hong Kong, China

On demand by a law enforcement officer for the purpose of performance of functions relating to the prevention, detection or investigation of money laundering or terrorist financing, a company must at any reasonable time make its Significant Controllers Register (SCR) available for inspection by the officer at the place at which the SCR is kept and permit the officer to make copies (s.653X of the Companies Ordinance (CO)). If the company fails to comply with the requirements of s.653X, the law enforcement officer can apply to the Court for a court order to direct the company to permit the inspection or making copies of the SCR (ss.653Y and 653Z of the CO).

Jersey

Jersey's FIU, the Joint Financial Crimes Unit of the States of Jersey Police (JFCU), has direct access to the register of beneficial ownership and control through a dedicated portal in the JFCU's headquarters. Searches can be made for entities based on entity registration number, name and/or country of incorporation. Searches can also be made for natural persons based on first name, surname, alias, date of birth and/or nationality.

The JFCU also acts as the designated contact point for exchanging beneficial owner and controller information with foreign law enforcement agencies. Since 1 July 2017, an agreement between Jersey and the United Kingdom has been in place to enhance the speed of information exchange between the jurisdictions (the 'Exchange of Notes'). The Exchange of Notes agreement provides for the exchange of adequate, accurate and current beneficial ownership information between Jersey and the UK within 24 hours on a normal request, or within 1 hour, where the request is urgent (due to TF concerns, for example).

Switzerland

In Switzerland, legal entities (public companies, private limited liability companies and cooperative companies) must be represented by individuals (directors or managers) domiciled in Switzerland. The presence of a representative of the company in Switzerland facilitates the cooperation with the competent authorities and timely access by authorities to beneficial ownership information, especially in case the information spans several jurisdictions.

The United Kingdom

UK authorities are able to access basic and BO information on legal persons and arrangements via one of three sources: from financial institutions and DNFBPs, from registers, or from the legal entity itself. The variety of sources increases transparency and access to information, and helps mitigate accuracy problems with particular sources.

There are several channels available for LEAs to obtain information on legal entities from FIs and DNFBPs. At the intelligence-gathering stage, LEAs can request information through Joint Money Laundering Intelligence Task Force (JMLIT) provided the request is justified, proportionate and necessary.

LEAs can also compel the provision of BO information through available investigative measures such as production or disclosure orders. These orders require judicial authorisation, which can be obtained in a matter of hours for urgent cases. Production orders can be obtained relatively quickly through an electronic filing and granting system. Once issued, the orders typically receive a response within seven days, although immediate disclosure can also be sought. Both production and disclosure orders require suspicion of an indictable offence so are used at the investigative stage once sufficient evidence has been collected to meet this threshold. The Serious Fraud Office (SFO) has access to additional investigative powers to compel the provision of information believed to be relevant to an investigation or inquiry within a timeframe set by the SFO (typically no longer than 14 days).

Forbidding or immobilising bearer shares and nominee arrangements (relevant to core issue 5.3)

101. The Interpretive Note to R.24 requires countries to take measures to prevent the misuse of bearer shares and bearer share warrants, as well as the misuse of nominee shares and nominee directors. Measures include prohibiting, dematerialising, immobilising and disclosing them. According to the 2018 FATF-Egmont report, given the vulnerabilities associated with use of nominees, individual countries and the FATF, working with the broader global community may wish to consider measures to limit their misuse.

102. In some countries, shares may be issued in bearer form in limited circumstances, and must be dematerialised. They must be deposited with a central depository and the exercise of the rights that they confer may only be performed through a reporting entity. The central deposit opens an account for each intermediary to record the movements of the financial instruments deposited into that account. In some countries, the holder of bearer shares is obliged to declare purchase or transfer of shares within a specified timeframe, and done through an obliged entity.

103. In some countries, shareholders may be represented by third parties, but the latter may only intervene on their behalf on the basis of a duly signed power of

attorney, which ensures the transparency of the operation. Companies must maintain a copy of the power of lawyer when the non-shareholder third party exercises the rights carried by the shares in the company's general assembly. The same applies to notaries (and, where relevant, accountants), in the case of a transfer of the shares performed by the third party on behalf of the shareholder, and the normal CDD requirements apply.

104. In most of the cases, although bearer shares and bearer shares warrants are not explicitly prohibited, there is no real incentive because of the lack of legal protection offered. The same applies to the nominee arrangement.

Denmark

Corporate and legal entities are required to identify those individuals exercising their rights through a nominee scheme and hold information about this. A person may not exercise the rights conferred to an owner of capital unless he/she is registered in the registry of owners or has notified and documented the acquisition.

In 2015, Denmark abolished the possibility to issue bearer shares and established an obligation for holders of bearer shares below 5% to register those shares with the Danish Business Authority.

France*

Since April 2016, bearer shares are necessarily nominatives: from subscription, the bearer designates a beneficiary by its name (this latter being himself most of the time) without any possibility of further modification. This beneficiary can ask for the reimbursement of the share if he is in its possession.

**yet to undergo mutual evaluation as of September 2019*

Hong Kong, China

Since March 2014, Hong Kong, China (HKC) has prohibited the issue of bearer share warrants.

Section 6, Division 2, Schedule 5A of the Companies Ordinance (CO) states that a share held by a nominee for another person is regarded as being held by "that other person". If the nominee holds more than 25% of the issued shares of the company, "that other person" should be identified by the company and be entered into the Significant Controllers Register. Moreover, anyone who by way of business acts or arranges for another person to act as a shareholder or a director of a company for another person would be considered to be providing trust or company service under Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO) and is required to obtain a license from the CR to do so. Since March 2018,

licensees are subject to statutory customer due diligence and record-keeping requirements under AMLO.

HKC applies director duties to “shadow directors”. Under the interpretation of the Companies Ordinance (Cap. 622 of the Laws of Hong Kong), “director” includes any person occupying the position of director (by whatever name called). Under section 3 of the CO, the “responsible person” in the context of a contravention of the Ordinance, or of a requirement, direction, condition or order, includes an officer or shadow director who authorises or permits, or participates in, the contravention or failure.

The Netherlands*

The Netherlands prohibits companies from issuing bearer shares, and requires holders of bearer shares to change them to regular registered shares at the issuing company, or to deposit and register their shares at a central institution (Euroclear) or an intermediary such as a bank or investment firm. Companies are obliged to alter their articles of association, insofar necessary, to allow bearer shares to be changed to registered shares. Any bearer shares not deposited or registered before 1 January 2020 are deemed to be registered shares.

After this date, holders of (former) bearer shares that have not presented them to the company, nor deposited them at the central institution or an intermediary, cannot exercise their rights under those shares, such as voting rights and rights to dividend. All (former) bearer shares have to be presented at the issuing company or deposited at the central institution or intermediary before 31 December 2020. After the deadline, the issuing company will become the owner of these unregistered (former) bearer shares. Holders of (former) bearer shares then have a final chance to receive their registered shares by presenting their former bearer shares to the issuing company before 1 January 2026.

**yet to undergo mutual evaluation as of September 2019*

Switzerland

In Switzerland, there are mechanisms for identifying the holders of bearer shares, along with obligations on purchasers of such shares to declare their identity to the company either themselves or through a financial intermediary, and on the company to keep a list of the holders of these shares. Furthermore, the conversion of these shares into registered shares is facilitated: according to Art. 704a of the Code of Obligations, the shareholders’ meeting may decide by a majority of the votes, to convert bearer shares in-to registered shares. The decision to convert must be taken by a simple majority, since it is prohibited to set a higher quorum in the Articles of Association.

Effective, proportionate and dissuasive sanctions (*relevant to core issue 5.6*)

105. Effective, proportionate and dissuasive sanctions may range from administrative sanctions and prosecution action against corporate entities that fail to comply with information filings. These include rejection of registration or business relationships, de-registration and abortion of business relationships, fines and penalties or criminal sanctions, measures taken by the courts to dissolve legal entities involved in ML schemes, or seize their assets.

106. In some countries, company registry, notaries and others obliged parties do not proceed with the requested activity in the absence of all the requested information. Entities that fail to provide information on beneficial ownership is not possible to register as a company or establish a business relationship with FIs or DNFBPs. Companies that fail to complete the required annual filings of information are ultimately liable to be struck off the company register. A change in legal status will not take effect if it is not recorded with and verified by the company registry/obliged entity. This significantly limits the ability of companies to obtain credit, change the company name or purpose, and register mergers. In some cases, the company registry can also deny the controlling shareholder and any director who has not paid a fine from registering new companies.

107. In some countries, disclosure of false information to notaries constitutes a criminal offence. In some cases, the courts are even empowered to dissolve legal entities involved in ML schemes, and or seize their assets. This forms a strong deterrent to the misuse of legal persons.

Austria

Under the Beneficial Owners Register Act (BORA), it will be penalised to violate the reporting obligation either by an incorrect or incomplete report or by a failure to submit a report with up to € 200 000 for intentional acts or up to € 100 000 for gross negligence (Art. 15 para. 1 BORA). This includes in particular the following cases: Inaccurate report of beneficial owners, unclear information leading to inability to identify beneficial owner, annual reporting obligation has not been fulfilled, report was not made within the statutory time periods; cases in which the legal entities are exempt from the reporting obligation, but have not reported another natural person as the beneficial owner through control (the additional beneficial owners are beneficial owners through a Treuhander or other control relationships) have not been reported to the BO Register; cases of not reporting changes of beneficial owners within four weeks of obtaining knowledge of the changes.

In case of a persistent failure to report, coercive penalties will be imposed twice according to Art. 16 BORA.

In addition, it will be sanctioned with up to € 75 000 for intentional acts or up to € 25 000 for gross negligence, if the legal entity has breached its obligation to retain copies of the documents and information required for their due diligence obligations based on the BORA.

Cases, where the correct information about beneficial owners has been reported, but in the course of the voluntary submission of a Compliance-Package false or falsified documents are transmitted to the BO Register, will be punished with up to € 75 000.

Cases, in which beneficial owners have been disclosed but individual details of beneficial owners are incorrect or missing or in which no copies of an official photo ID are submitted with the report, will be punished with up to € 25 000.

Cases, where the legal entity seemed to intend to provide a correct report but in which individual documents with the submission of the voluntary submission of a Compliance-Package were not transmitted or cases, where other obligations in relation to the submission of a Compliance-Package, that are not already covered by an individual sanction, will be punished with up to € 10 000.

Compliance with the obligation to report is ensured on an ongoing basis through the implementation of automated coercive penalties. If a report is not filed within the deadline – either within the initial reporting period or within 28 days of newly established legal entities – then the competent tax office will automatically send a reminder letter with the threat of a coercive penalty of € 1 000 to the legal entity. If the legal entity fails to report within the deadline given in the reminder, the penalty will be set and a higher penalty of € 4 000 is threatened. If the legal entity still fails to report within the given deadline, the coercive penalty of € 4 000 will be set and the case will be forwarded to the responsible fiscal penal authority.

With this automated system, the BO Registry Authority was able to achieve an overall reporting rate of more than 93% as of July 2019.

Belgium

In Belgium, penalty (€ 4K-40K) and administrative fines (€ 250-50K) are available in case of non-compliance by legal entities and arrangements (LE/LA) with their obligation to hold information on their ultimate beneficial ownership (UBO) and register it.

The Treasury has identified additional mechanisms that could be implemented in the medium/long term. These include:

- Procedures for “automatic” administrative fines;
- Consider declarations as non-valid if no substantiating documents are provided;
- Loss/suspension of the rights associated with shares or suspension of the payment of dividends;
- Duty for UBOs to notify their status to LE/LA;
- Duty to notify when an intermediate LE/LA or a legal person refuses to provide UBO information
- Publication of a black list of non-compliant LE/LA;
- System of flags based on, among others, notifications received.

Denmark

The Danish Business Authority (DBA) can demand the documentation that prove the validity of the information registered within 3 years after a registration has taken place. If the documentation or the circumstances under which the registration has taken place is not sufficient, the DBA can file a report to the police or impose a daily/weekly fine to the company until the registration is complete.

Registering BO information is a pre-requisite to get a CVR-number for most types of legal persons. It is also possible to enforce a winding up of the existing entities if there is no or inadequate beneficial ownership information registered / inadequate recordkeeping. If a company does not register the BO information or provide it to the authorities, the company and their management have committed a criminal offence. If the company has an auditor (which most have), the auditor is legally obliged (according to the Danish audit regulation) to check if the management has fulfilled its obligations in the company law. If not, the auditor must make a note in the annual report about the offence of the company law. This way non-compliance of BO-registration will be visible in the annual report to the company stakeholders.

Compulsory dissolution is also possible if a corporate or other legal entity has not registered BO information or the registered information or recordkeeping is inadequate. It is possible to strike off Partnerships (I/S) and Limited Partnerships (K/S) (that are required to register accordingly to the Certain Commercial Undertakings Act) from the CVR register due to inadequate beneficial ownership information or recordkeeping or if no beneficial owners are registered.

By November 2018, the DBA had compulsorily dissolved around 7500 companies that had failed to register their BO information in due course. As of January 2019, approximately 96 % of all entities covered by the BO legislation had registered BO information. And 99.80 % of the entities covered by the company laws under the DBAs area of responsibility had registered BO information.

France*

France introduced dissuasive sanctions in the event of failure to declare a beneficial ownership document containing inaccurate or incomplete information (article L. 561-49 of the Code monétaire et financier (CMF)). In order to reinforce the effectiveness of the system, injunctions and penalties can also be imposed:

- - Art. L. 561-48 of the CMF allows the president of the court, spontaneously or at the request of the public prosecutor or any interested person, to order a company to proceed to the deposit of documents on beneficial owner, if necessary under penalty payments. The president may also appoint someone else to perform these formalities;
- -Art. L. 561-49 of the CMF punishes with imprisonment of 6 months and a fine of 7,500 euros the fact of not filing the document relating to the beneficial or filing a document containing inaccurate or incomplete information. Additional penalties prohibiting management and partial deprivation of civil and civic rights may also be imposed. The maximum amount of the financial penalty is multiplied by five in the case where the author of the breach is a legal person.

**yet to undergo mutual evaluation as of September 2019*

Hong Kong, China

Hong Kong, China (HKC) has various provisions in the Companies Ordinance (Cap. 622 of the Laws of Hong Kong) for sanctions against companies that fail to comply with information filings, below are some examples:

Section 662 of the Companies Ordinance provides that if a company fails to deliver to the Registrar of Companies for registration an annual return within the specified time, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 (i.e. HK\$ 50 000) and, in the case of a continuing offence, to a further fine of \$ 1000 for each day during which the offence continues.

HKC will strike companies off the Companies Register if they fail to file annual returns for consecutive years, as this is a cause to believe that the companies are not in operation or carrying on business.

Section 653H of the Companies Ordinance provides that if a company fails to keep a register of its significant controllers, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 (i.e. HK\$ 25 000) and, in the case of a continuing offence, to a further fine of HK\$ 700 for each day during which the offence continues.

Under section 895 of the Companies Ordinance, a person commits an offence if, in any return, report, financial statements, certificate or other document, required by or for the purposes of any provision of the Companies Ordinance, the person knowingly or recklessly makes a statement that is misleading, false or deceptive in any material particular. The person is liable on conviction to a fine and imprisonment.

Spain

Corporate criminal liability was introduced in Spain. With the ease of access to basic and beneficial ownership information, the strong preventive measures imposed on FIs and DNFBPs, (including notaries and company registrars, which are obliged entities under the AML/CFT law), and the measures taken by the courts to dissolve legal entities involved in ML schemes, and or seize their assets should, over time, act as strong deterrents to the misuse of Spanish legal persons.

Section VI – Getting information on beneficial ownership of overseas entities

108. For entities registered abroad, the information sources on beneficial ownership mainly used by competent authorities are the public companies/business register available in the country and information collected by FIs/DNFBPs of the country in question, information disclosed following requests made to foreign authorities, and information from foreign tax authorities. The exchange of information with a foreign counterpart is a critical component of measures pursuant to an international ML/TF investigation.

109. According to the 2018 FATF-Egmont report, increased sharing of relevant information and transaction records would benefit global efforts to improve the transparency of beneficial ownership. Further consideration of possible ways to enhance this information sharing is merited.

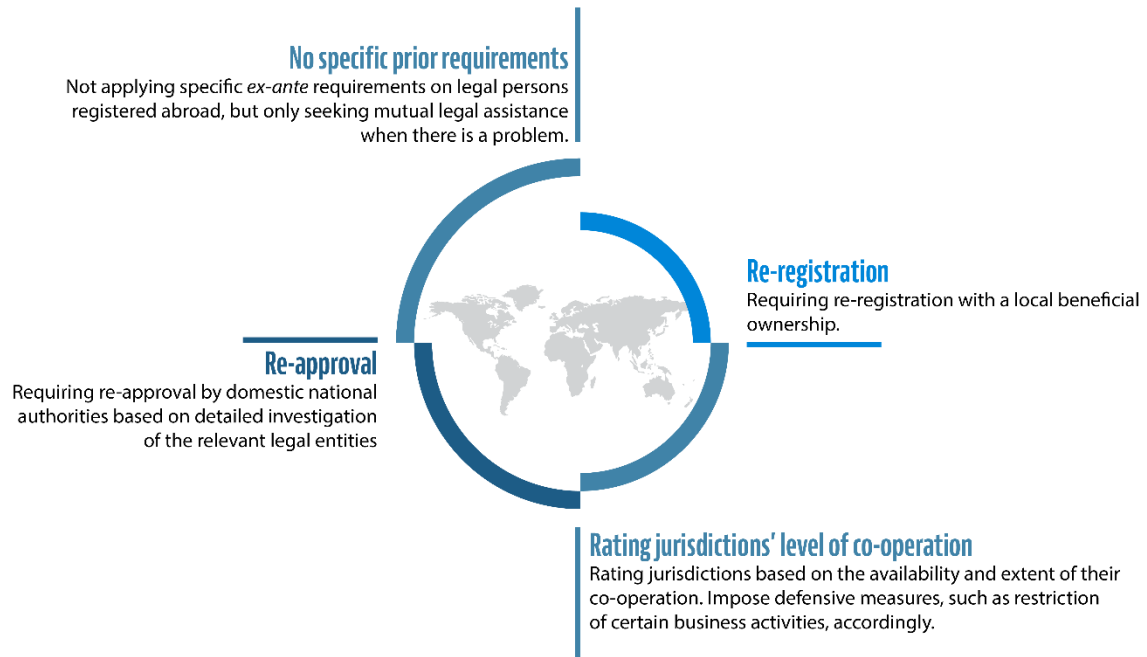
110. There is a good practice that basic information relating to legal persons is available online and in several languages, which can enable foreign authorities to continue their investigations without necessarily having to wait for a reply from the authorities. Nevertheless, it is also understood that countries have encountered difficulties in getting information on beneficial ownership that is not publicly available.

111. The effectiveness of getting beneficial ownership information of foreign legal persons is generally more reliant on foreign countries' active co-operation, with varying degrees of timeliness and success. Despite FATF general requirement on international co-operation and the specific requirements to provide co-operation on identifying the beneficial ownership of corporate vehicles under R.24, some countries do not effectively facilitate requests from their foreign counterparts by providing information held by domestic authorities and companies.

112. Imposing restriction on activities of foreign legal persons may affect a country's direct foreign investment. Balancing the need of obtaining information on beneficial ownership of foreign legal persons and ensuring legitimate business operation of foreign legal persons, countries can consider adopting the following approaches with an aim to achieving the objectives of R.24 and IO.5 based on the risk level of legal persons registered abroad identified from the risk assessment.

- a) No specific prior requirements - Not applying specific ex-ante requirements on legal persons registered abroad, but only seeking mutual legal assistance when there is a problem.
- b) Rating jurisdictions' level of co-operation - Rating jurisdictions based on the availability and extent of their co-operation. Impose defensive measures such as restriction of certain business activities accordingly.
- c) Requiring re-registration with a local beneficial ownership.
- d) Requiring re-approval by domestic national authorities based on detailed investigation of the relevant legal entities.

Information on beneficial ownership of overseas entities



Section VII - Conclusion

113. Many countries have made progressive efforts in putting in place a more robust legal framework in preventing legal persons from being misused since 2012. With the flexibility provided by the FATF in implementing R.24 and achieving IO.5, it is also seen that countries are exploring different measures to ensure the transparency of beneficial ownership. With the sharing of best practices among countries, it is expected that countries will continue to improve their system particularly in relation to the requirements to ensure that adequate, accurate and up-to-date basic and beneficial ownership information is available to the authorities in a timely manner.

114. Under a multi-pronged approach, it is vital that there is effective monitoring of key gatekeepers (including company formation agents, lawyers, and trust-and-company-service providers) for compliance with their CDD obligations, and enforcing those requirements – including identifying and shutting down those who facilitate misuse of corporate structures.

115. More importantly, it is also expected that countries will take action to facilitate the timely sharing of basic and beneficial ownership information at the domestic and international level to address barriers to information-sharing (e.g. reviewing data protection and privacy laws). The FATF will continue to intensively monitor the steps taken by countries to meet the FATF Standards on legal and beneficial ownership and ensuring they are properly enforced.

ANNEX 1: Detailed Arrangement of Mechanisms under R.24

1. Under R.24, countries should use one or more of mechanisms (the Registry Approach, the Company Approach and the Existing Information Approach) to ensure that information on the beneficial ownership of a company is obtained by that company and available at a specified location in their country; or can be otherwise determined in a timely manner by a competent authority²⁵.
2. Countries' experience shown in the FATF mutual evaluations points out that more than one approach may be needed in order to ensure a complete and effective system. Based on countries' experience and good practices, this Annex aims to set out the arrangements of the mechanisms (Registry Approach, Company Approach and Existing Information Approach) which vary in different aspects, including collection and verification of information on beneficial ownership, modalities of storage and access to information on beneficial ownership, and supervision and enforcement of the relevant obligations.

Registry Approach

Collection and verification of information on beneficial ownership

3. All companies created in a country are registered in the company registry. The registry records and maintains basic information of a company, including company name, proof of incorporation, legal form and status, address of the registered office, basic regulating powers and list of directors. Registries are also required to hold information on beneficial ownership or a separate register of beneficial owners might be set up. This register may include beneficial owner data as well as company information. Excerpts from the register may be used for CDD considering the risk-based approach.
4. The basic information held by registries are made publicly available and the availability of information on beneficial ownership varies with the practice of each countries. Information in the company register is generally recorded digitally and is preferably searchable. The search function supports searches by multiple fields.
5. In some countries, the registry is entrusted with oversight function, including verification of completeness or accuracy of filings, conducting CDD in certain cases, or cross-checking their information with data held by other authorities (e.g. with tax authorities). Some registries conduct sample testing or targeted audits to verify or/and monitor the accuracy of information on selected legal persons. Some countries rely on notarial systems or other gatekeepers to verify or/and monitor the information for company registration. Registry in some countries do not verify or/and monitor the information by itself, but rely on surveillance by civil society on reporting.

Modalities of storage and access to that information

6. Company registries generally keep the information on beneficial ownership in public domain and impose annual updating requirement for registered companies. When the company initiates a change, it should notify and submit supplementary

²⁵ Interpretative Note to R.24, para. 7 and 8, FATF (2013a).

information and relevant proof to the company registry, via obliged party if required, within a specified period.

7. Some company registries will verify or/and monitor information changes. In some countries, the company registry only accepts notary-certified information/updates. Some registries accept self-declared information. Nevertheless, the reliability of self-declared information is in doubt.

8. Competent authorities generally have access to the company registry online, including full search capability on both basic information and information on beneficial ownership. Basic information of the company is publicly available. The trend of openly accessible information on beneficial ownership is on the rise among countries.

Supervision and enforcement of the relevant obligations

9. If a company fails to provide information or has provided false information on beneficial ownership, it is subject to proportionate and dissuasive administrative sanctions e.g. rejection of registration, de-registration. Owners and senior management that effectively control the company are also held personally liable and are subject to administrative and criminal sanctions.

10. The company registry authority regularly applies such sanctions by reviewing annual return, conducting sample testing, conducting investigations arising from report of suspicious activities, validating the information by cross-checking information by other authorities. Company registry may de-register/struck-off the company if the information is not accurate and up to date. It may also apply fines when the company fails to provide the requested information. In some cases, the company registry can refuse registration application from the same person/legal entity which breached the obligations before.

Company Approach

Collection and verification of information on beneficial ownership

11. Companies are required to maintain basic information, including 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 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).

12. Companies also hold information on beneficial ownership, and to achieve this they are generally provided with the authority to request information from shareholders on the beneficial ownership of shares.

13. In general, the company needs to rely on shareholders to provide them with information. It is rare for company to involve an independent third party to verify or/and monitor the information. Some companies may not have the legal knowledge and experience to identify and verify their beneficial owners. This could be in particular true, when knowledge of foreign jurisdictions and legal persons is necessary to determine their beneficial owners. Even if it is rare for company to involve an independent third party to verify or/and monitor the information, an

effective company approach could therefore allow the involvement of independent third parties (e.g. tax advisors, lawyers).

Modalities of storage and access to that information

14. Companies, or a third person under the company's responsibility, are required to keep shareholder registers, such as shareholder lists which are made available to competent authorities.

15. Under this approach, companies are generally provided powers to require updated information from their shareholders (including the power to request information on beneficial ownership at any time). Shareholders are required to disclose the names of person(s) on whose behalf shares are held. When there are any changes in ownership or control, shareholders are required to notify the company within a specified time period.

16. The information on beneficial ownership is maintained within the country at a location notified to the company registry. Lists of shareholders and beneficial owners may be held, and provided, in electronic form.

17. Companies are required to provide lists of shareholders and beneficial owners to competent authorities upon request in a timely manner. Companies are generally not required to disclose its information on beneficial ownership to public. Where information on beneficial ownership cannot be identified, companies may be required to publish this fact on their website.

Supervision and enforcement of the relevant obligations

18. Companies can seek to apply restrictions against shareholders for failure to provide information on beneficial ownership through appropriate courts or authorities, such as in relation to shareholder voting rights, or the sale of shares.

19. Failure by a company to provide the information to authorities is subject to sanctions, which may include administrative penalties or restrictions on incorporation. 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.

Existing Information Approach – FIs/TCSPs and other DNFBPs

Collection and verification of information on beneficial ownership

20. Under R.10 and 22, FIs and DNFBPs are required to identify and take reasonable measures to verify the identity of the beneficial owner such that the FI/DNFBP is satisfied that it knows who the beneficial owner is. FIs and/or DNFBPs should obtain sufficient information from their clients so that they can identify and verify the identity of clients, and understand the nature of its business, and its ownership and control structure, including name, legal form, proof of existence, company arrangement and persons exercising control from the company. If there is a discrepancy between the records of FIs and DNFBPs with those on the central registry, the FIs and DNFBPs have an obligation to report such discrepancy to a responsible entity to carry out further investigation and make clarifications.

21. FIs and DNFBPs also collect information on beneficial ownership when they carry out CDD and ongoing monitoring, maintenance of records, training and reporting.

22. FIs and DNFBPs generally need to rely on information provided by the client (for example, certificate of incorporation, certificate of good standing, partnership agreement, deed of trust, memorandum and articles of association of a company, proof on address of the registered office) and existing information available in the public domain to verify the information. In some case, FIs and DNFBPs may hire risk management service providers that collect data on corporate entities when carrying out CDD.

23. The effectiveness of verification also hinges on the availability of a reliable independent source and whether they are authorised to authenticate the identity of the natural persons directly.

Modalities of storage and access to that information

24. FIs and DNFBPs generally store information on beneficial ownership, e.g. clients' files, in their private domains. In some countries, TCSPs (e.g. notary) maintain a central computerised platform that is accessible on public domain. How the information on beneficial ownership is stored and updated are subject to the requirement of financial supervisors and SRBs. FIs and DNFBPs are required to conduct ongoing CDD on the business relationship, and scrutinise transactions throughout the course of that relationship to ensure that the information on beneficial ownership is kept up-to-date.

25. Actions may include undertaking reviews of existing records, request information from their clients, cross-check information from reliable sources or hire services from a commercial database, particularly for higher-risk categories of customers.

26. FI and DNFBPs are required to provide information on BO to competent authorities upon request in a timely manner. In some countries, notary profession who is the obliged party has maintained and made publicly available a register on beneficial ownership of legal persons. In some countries, professional organisations maintain an internal register which is accessible by the profession themselves. In general, the public is not granted access to information held by FIs, TCSPs and other DNFBPs.

Supervision and enforcement of the relevant obligations

27. FIs and DNFBPs should adequately implement CDD obligations, including measures to identify and verify the identity of the beneficial owner, as is required by R.10 and 22. FIs and DNFBPs should be adequately supervised by supervisors, competent authorities or SRB in accordance with R. 26 and 28.

28. FIs and DNFBPs are provided with sufficient guidance on how to properly conduct CDD in accordance with R.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.

29. To ensure compliance, supervisors, competent authorities and SRBs will perform monitoring (e.g. inspections) and impose a range of disciplinary and financial sanctions e.g. penalties, disciplinary proceedings, suspension or ban of professional practice on FIs and DNFBPs.

Existing Information Approach – Competent authorities

Collection and verification of information on beneficial ownership

30. Competent authorities (particularly LEA) generally rely on information held by registries, companies, FIs and DNFBPs, and other asset registries such as for land, property, vehicles, shares or other assets. Therefore, the collection of information on beneficial ownership hinges on whether the concerned entities (registries, companies, FIs and DNFBPs, and other asset registries) hold accurate and up-to-date information and whether competent authority can have timely access to the basic and information on beneficial ownership of legal persons.

31. Competent authorities should be aware of the availability of information, and are able to identify the FIs, DNFBPs or entities concerned for access to information, for example, through a national register of bank accounts or a central register of transactions of shares, or a register of TCSPs.

32. The effectiveness of obtaining information on beneficial ownership hinges on whether competent authorities have adequate powers, mechanisms and expertise to access to information on beneficial ownership in a timely manner.

33. Competent authorities generally verify the information by conducting further desk-based reviews and on-site inspections. An authority responsible for the Beneficial Owner Register or the beneficial owner data held in the business register might also contribute to an effective system. Competent authorities should generally verify the information i.e. by conducting risk based reviews and having the power to request information on beneficial ownership from companies, legal and beneficial owners.

34. Desk-based reviews involve analysis of existing information available on different domains, e.g. annual independent audit reports and other mandatory reports, identifying risky intermediaries (i.e. on the basis of the size of the firms, involvement in cross-border activities, or specific business sectors), automated scrutiny of registers to detect missing beneficial ownership information and identify the gatekeeper responsible for the filing.

35. On-site inspections involve reviewing internal policies, controls and procedures, gatekeeper's own risk assessments, spot-checking CDD documents and supporting evidence, sample testing of reporting obligations.

36. Taxation database is also a useful means of identifying indicators of criminality and schemes designed to obscure beneficial ownership and verifying information on beneficial ownership. Further investigation often uncovers dubious control structures or corporate dealings designed to conceal beneficial ownership.

Modalities of storage and access to that information

37. Competent authorities, including regulators, tax authorities, intelligence authorities store and update information in accordance with their functions and obligations – e.g. some tax authorities will keep an account of names of company owners and directors, some stock registries will hold information on meaningful shareholders or persons directly or indirectly controlling meaningful voting rights in public companies.

38. Competent authorities (such as supervisory authorities, tax authorities, or land titles offices) generally share information on beneficial ownership upon requests by other competent authorities. In some countries, certain electronic databases are made readily accessible among competent authorities. There should be sufficient mechanisms in place for information sharing between competent authorities so that competent authorities can gain access to information held by other authorities for verification and investigation in a timely manner.

Supervision and enforcement of the relevant obligations

39. Competent authorities are subject to national governance, for example, audit checking, monitoring and surveillance on their compliance.

Existing Information Approach – Companies listed on a stock exchange*Collection and verification of information on beneficial ownership*

40. The information on beneficial ownership is usually collected when the company goes on initial public offering. The availability of information on beneficial ownership hinges on the disclosure requirement (either by stock exchange rules or through law or enforceable means).

41. The information of stock exchange is generally verified by the responsible FIs and/or DNFBPs that provided services to the company. The FI and/or DNFBP is held accountable for the verification of accuracy in performing their functions.

Modalities of storage and access to that information

42. The information on beneficial ownership may be stored at the stock exchange at the time of initial public offering. The information is generally accessible on the website of the stock exchange. Whether and how frequent it will be updated depends on the policy and rules of the stock exchange.

43. Public, FIs, DNFBPs, competent authorities can gain access to the information as long as the website of the stock exchange is public and contain information on beneficial ownership.

Supervision and enforcement of the relevant obligations

44. In general, there is no particular obligation for stock exchange to collect, verify and keep the information up-to-date for the purpose of AML/CFT.



BEST PRACTICES ON BENEFICIAL OWNERSHIP FOR LEGAL PERSONS

Transparency of beneficial ownership is essential to prevent the misuse of companies, associations or other entities for money laundering or terrorist financing. The Financial Action Task Force (FATF) is the global standard-setter for measures to fight money laundering and terrorist financing. Since 2003, the FATF Recommendations require countries to ensure that authorities can obtain up-to-date and accurate information about the person(s) behind companies, foundations and other legal persons.

This best practices paper, with examples from across the global network of FATF and FATF-Style Regional Bodies' members, will help countries effectively implement the FATF's requirements. The report highlights that jurisdictions using a multi-pronged approach with several sources of information are often more effective in preventing the misuse of legal persons for criminal purposes. The report identifies the most common challenges that countries face in ensuring that the beneficial owner(s) of legal persons is identified, and suggests key features of an effective system.