

GLOBAL FORUM ON  
**TRANSPARENCY AND EXCHANGE OF  
INFORMATION FOR TAX PURPOSES**

# Building Effective Beneficial Ownership Frameworks

A joint Global Forum and IDB Toolkit

**Second Edition**



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## Abbreviations and acronyms

**AEOI** Automatic Exchange of Information

**AML/CFT** Anti-Money Laundering and Countering the Financing of Terrorism

**BO** Beneficial Ownership

**CARF** Crypto-Asset Reporting Framework

**CDD** Customer Due Diligence

**CRS-AEOI** Automatic Exchange of Financial Account Information

**DNFBP** Designated Non-Financial Businesses and Professionals

**EOI** Exchange of Information

**EOIR** Exchange of Information on Request

**FATF** Financial Action Task Force

**FI** Financial Institution

**Global Forum** Global Forum on Transparency and Exchange of Information for Tax Purposes

**IDB** Inter-American Development Bank

**OECD** Organisation for Economic Co-operation and Development

**ToR** Terms of Reference

## Preface



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Tax transparency has been at the forefront of governments policies over the last years. Its importance has only been increasing and the data leaks highlighted the importance of having robust tools to ensure transparency. This crucial task is nevertheless far from being finalised. While much has been achieved in the fight against tax evasion with the implementation of the international standards on transparency and exchange of information for tax purposes, legal persons and arrangements are still being used to hide the beneficial owners of assets. The availability of beneficial ownership information on legal persons and arrangements is therefore a key instrument in the fight against tax evasion, money laundering, corruption and other financial crimes.

International standards require minimum levels of transparency concerning the beneficial owners of legal persons and arrangements for tax, as well as for anti-money laundering purposes. Hiding criminal activities and proceeds of crime in jurisdictions where these standards are fully implemented is much more difficult. Beneficial ownership information is required as part of the transparency and exchange of information standards. Thus, all jurisdictions need to have effective beneficial ownership rules in place.

Since 2019, the Global Forum Secretariat and the Inter-American Development Bank (IDB) have collaborated in publishing toolkits to foster understanding of beneficial ownership as contained in the international transparency standards. In 2019, "*A Beneficial Ownership Implementation Toolkit*"<sup>1</sup> was published to support jurisdictions' effort in ensuring transparency of this critical information. Building on the lessons learned from the peer review processes, the toolkit "*Building Effective Beneficial Ownership Frameworks*"<sup>2</sup> was published in 2021 presenting possible approaches for implementing an effective system to

ensure the availability of beneficial ownership information and highlighting the benefits of a multi-pronged approach. Using these tools, the Global Forum Secretariat and the IDB have continuously raised awareness on the critical role of ensuring transparency of beneficial ownership information, built capacities through training events and provided technical assistance to implementing jurisdictions.

Subsequently, the standard of beneficial ownership has been strengthened further and jurisdictions' experience and implementation have matured. In this context, the Global Forum Secretariat and the IDB undertook this update of the 2021 toolkit to include the latest changes made by the Financial Action Task Force (FATF) to Recommendations relevant for ensuring the transparency of beneficial ownership information as well as the results of the peer reviews reports approved after 2021. This new edition aims to allow users of the toolkit to better understand the international transparency standards on beneficial ownership based on additional practical guidance and on empirical evidence collected throughout the second round of peer reviews carried out by the Global Forum. Through the peer review and technical assistance processes, a global picture on beneficial ownership has emerged and this updated toolkit has been developed to present the various policy approaches implemented by jurisdictions to ensure the availability of beneficial ownership information in line with the standards. Jurisdictions that aim to put in place or amend their beneficial ownership frameworks should therefore benefit from this revised toolkit. We hope that all jurisdictions aspiring to have an effective beneficial ownership framework will make good use of this guidance to continuously improve their systems.

Each jurisdiction will have to carry out its own internal assessment of the best approaches for implementing and improving their systems, taking into account the legal, policy, and structural frameworks already in place. This toolkit will continue to be updated over time, so as to capture further developments in relevant standards and best practices on beneficial ownership.

1. IDB and OECD (2019), *A Beneficial Ownership Implementation Toolkit*, available at [www.oecd.org/tax/transparency/beneficial-ownership-toolkit.pdf](http://www.oecd.org/tax/transparency/beneficial-ownership-toolkit.pdf).
2. IDB and OECD (2021) *Building Effective Beneficial Ownership Frameworks*, available at: [www.oecd.org/tax/transparency/documents/effective-beneficial-ownership-frameworks-toolkit\\_en.pdf](http://www.oecd.org/tax/transparency/documents/effective-beneficial-ownership-frameworks-toolkit_en.pdf).

**This toolkit was prepared by the Secretariat of the Global Forum on Transparency and Exchange of Information for Tax Purposes, in collaboration with the Inter-American Development Bank (IDB).**

The availability of beneficial ownership information on legal persons and arrangements is a key requirement of tax transparency and a key instrument in the fight against tax evasion and other financial crimes. The purpose of this toolkit is to present the various approaches to ensure the availability of beneficial ownership information in line with the exchange of information standards and to present some lessons learned from the peer reviews carried out by the Global Forum. This toolkit should provide jurisdictions with relevant inputs to carry out their own internal assessment of the most suited methods for implementation, taking into account their unique legal, policy, and operational frameworks.

The toolkit is not an end in itself. The IDB and the Global Forum Secretariat are available to complement the guidance contained in the toolkit by delivering tailored assistance to jurisdictions that need help in enhancing their beneficial ownership frameworks.

For more information on the Global Forum Secretariat's support capabilities, please contact us at: [gftaxcooperation@oecd.org](mailto:gftaxcooperation@oecd.org).

The Transparency Fund of the IDB provides technical assistance to the IDB's member countries to enhance fiscal and financial transparency and strengthen their AML/CFT systems, including beneficial ownership reforms. For more information on the IDB's resources and activities, please contact the Transparency Fund Technical Secretariat at: [aaf-sectec@iadb.org](mailto:aaf-sectec@iadb.org).



# Introduction

The availability of beneficial ownership information on legal persons and arrangements (legal entities) is a key requirement of tax transparency and a key instrument in the fight against tax evasion and other financial and serious crimes, such as corruption, money laundering, and terrorist financing. The term beneficial ownership as defined by the Financial Action Task Force (FATF) refers to the natural person(s) behind an entity, whether a legal person or arrangement, who exercise(s) control over it. Transparency of beneficial owners is required under the international standards of transparency and exchange of information for tax purposes (EOI standards).

- the Standard on Transparency and Exchange of Information on Request (the EOIR Standard)
- the Standards on Automatic Exchange of Information (the AEOI standards), i.e. the Standard on Automatic Exchange of Financial Account Information under the Common Reporting Standard (CRS-AEOI) and the Crypto-Asset Reporting Framework (CARF).

From a tax perspective, knowing the identity of the natural persons behind entities not only helps a jurisdiction preserve the integrity of its own tax system, but also gives treaty partners means to better achieve their own tax goals.

Jurisdictions should implement this element of the international transparency standards in a manner consistent with their national legislative and institutional systems. The methods may differ from one jurisdiction to another. The Global Forum does not prescribe any particular mechanisms for implementing the standards as there is no one-size-fits-all approach to achieving compliance. However, jurisdictions should act to implement a robust framework for ensuring effective availability of beneficial ownership information, including by taking into account the latest global developments such as the requirement to implement a multi-pronged approach to ensure that adequate, accurate and up-to-date beneficial ownership information is maintained for legal persons.

The toolkit briefly presents some lessons learned from the peer reviews carried out by the Global Forum on compliance with the EOIR standard, as well as the trends identified in the implementation of beneficial ownership requirements.

This toolkit then focuses on various approaches to ensure the availability of beneficial ownership information in line with the tax transparency standards and offers practical suggestions to be taken into account when considering various policy options. It lists points that jurisdictions should examine when adapting their legislation and regulations to comply with the beneficial ownership standard. This should provide jurisdictions with relevant inputs to carry out their own internal assessment of the most suited methods for implementation, taking into account their unique legal, policy, and operational frameworks.

The toolkit is divided into three parts:

- Part 1 explores the concept of beneficial ownership, its importance and the criteria used to identify beneficial owners. It also explains the importance of the matter for transparency in the financial and non-financial sectors and describes the interaction of beneficial ownership and the international standards on anti-money laundering and combating the financing of terrorism. Finally, it presents the interaction with the requirements under the EOI standards.
- Part 2 provides a snapshot of the outcomes of the EOIR peer review process and presents trends in the implementation of beneficial ownership requirements.
- Part 3 focuses on different approaches to implement a framework for the availability of beneficial ownership information. These are based on (i) the framework for anti-money laundering and countering the financing of terrorism (AML/CFT), (ii) on information kept by the entities themselves (i.e. legal persons and arrangements), (iii) on a central register of beneficial owners, and/or (iii) on information kept by the tax authorities.

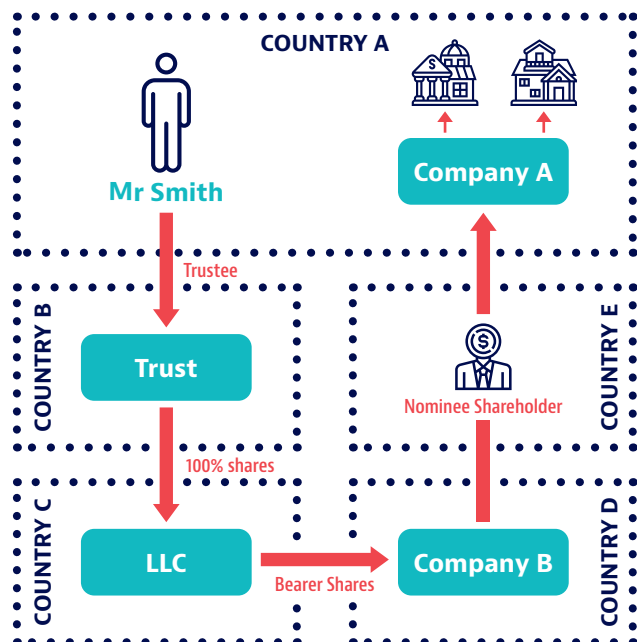
# 1. Beneficial ownership standard

## CONCEPT AND IMPORTANCE OF BENEFICIAL OWNERSHIP

The issue of transparency of beneficial ownership has gained relevance over the last years: it plays a central role in tax transparency, the integrity of the financial sector and law enforcement efforts. Tax evasion, corruption and money-laundering are facilitated through the misuse of legal entities (companies, foundation, partnerships, trusts, etc.). By using complex chains of ownership of legal persons and arrangements across many jurisdictions the identity of the “true owners” of assets, including financial ones, the true purpose of the assets and/or the origin of the funds or assets can be hidden. Anonymity can be enhanced by using other mechanisms, such as bearer shares or nominee shareholders or directors, or entities, such as trusts, shell companies or inactive companies and other similar structures. Ultimately, the identity of the “true owner(s)”, that is the beneficial owner(s), is concealed from tax authorities and other law enforcement agencies.

This problem can be illustrated with an example in which an individual, Mr Smith, wants to evade taxation in his country A. To do this, he creates a complex ownership structure that spans across various jurisdictions, and uses different types of legal persons (two companies and a limited liability company (LLC)), a legal arrangement (trust), including nominee and bearer share arrangements, to conceal his identity from the tax authorities, as depicted in Figure 1.

FIGURE 1. Economic activity through a complex system of legal entities



Source: IDB and OECD (2019), *A Beneficial Ownership Implementation Toolkit*, op. cit.



Therefore, ensuring the availability of and access to the identity of the beneficial owners of legal entities as well as financial accounts and other assets is fundamental to prevent the misuse of legal entities, the concealment of funds/assets and anonymity, and to combat illicit financial flows, including tax evasion, money laundering, corruption, and terrorism financing.

Indeed, the relevance of beneficial ownership information extends far beyond tax enforcement, playing an important role in various regulatory and enforcement areas. Understanding the beneficial ownership of legal entities is fundamental in various sectors, from finance to natural resources, due to the importance of knowing who ultimately owns and controls a legal entity (see also Box 1).

- **Money laundering and terrorist financing.** The Financial Action Task Force (FATF) Recommendations emphasise the necessity for accurate and timely access to beneficial ownership information to track illicit financial flows and disrupt the financing channels of criminal activities. This information is essential in the enforcement of anti-money laundering and countering the financing of terrorism (AML/CFT) regulations.
- **Corporate transparency and integrity.** The information on beneficial owners is also used by development organisations to ensure that they work with reputable partners and clients. For example, the Inter-American Investment Corporation (IDB Invest), the International Finance Corporation (IFC) and the Asian Development Bank (ADB) carry out integrity due diligence processes to identify the ultimate beneficial owners of its clients before engaging in operations with them.
- **Anti-corruption.** Disclosing beneficial ownership information can help corruption investigations to uncover the person who actually benefits from the ownership of an asset, since they are usually hidden behind multiple layers of complex ownership structures. Initiatives such as the United Nations Convention Against Corruption and the Partnering Against Corruption Initiative promote the transparency of beneficial ownership in this area.
- **Transparency of extractive industries.** The Extractive Industries Transparency Initiative (EITI)

enhances accountability in the management of resources like oil, gas, and minerals by requiring participating countries to maintain a public register detailing the beneficial owners of companies engaged in the extractive sector. This includes their identity, ownership interest, and control mechanisms, promoting transparency along the value chain.

- **Banking regulations.** The Basel Committee on Banking Supervision mandates that banking supervisors ensure transactions between banks and related parties are conducted impartially. Understanding beneficial ownership helps identify undisclosed related parties and monitor compliance with statutory limits on exposures and mandatory write-offs.
- **Transparency in securities markets.** Securities service providers and their regulators also rely on beneficial ownership information to comply with anti-money laundering protocols and to prevent fraud and market abuse, such as insider trading.
- **Public procurement.** In the public sector, knowing the beneficial owners of companies contracted to deliver public goods and services ensures fair and efficient public spending. It aids in detecting conflicts of interest, collusion, or corruption in public procurement, ensuring that companies compete based on the merits of their bids rather than undisclosed personal relationships with officials. Several international initiatives support the transparency of beneficial ownership for public procurement, including the FATF Recommendations.

Thus, access to and understanding of beneficial ownership information is integral across multiple spheres for maintaining standards and ensuring equitable operations.

### ONE INTERNATIONAL DEFINITION ON BENEFICIAL OWNERSHIP



Beneficial ownership is a core component of several international initiatives on transparency (see Box 1) and they rely on the internationally and predominantly accepted definition of beneficial ownership as set up by the FATF.

## Beneficial ownership standard

### Box 1. Some international initiatives on transparency of beneficial ownership

#### Global Forum on Transparency and Exchange of Information for Tax Purposes

The Global Forum has a mandate to ensure effective implementation of international tax transparency standards amongst its members and other relevant jurisdictions. It has adopted standards for tax transparency – the EOIR and AEOI standards, and members undergo peer reviews to assess their compliance. In 2015, the Global Forum, following a call from the G20, took steps to enhance its EOIR standard by including the availability of beneficial ownership information as required by the FATF 2012 Recommendations, as a requirement in its revised 2016 Terms of Reference (ToR).

The AEOI standards also include the concept of beneficial ownership, similar to the definition in the FATF Recommendations, as a cornerstone in the reporting of financial accounts and crypto-assets transactions. Thus, reporting financial institutions and crypto-asset service providers must identify in certain circumstances the beneficial owners of certain financial accounts and crypto-asset transactions and their country of tax residence, and when appropriate, report this information to partner tax authorities (see also Box 9 and Box 10).

#### Financial Action Task Force

The FATF is an inter-governmental body responsible for setting international standards and promoting effective implementation of legal, regulatory, and operational measures to combat money laundering, terrorist financing, and other related threats to the integrity of the international financial system. FATF Recommendations also require beneficial ownership information to be available to public authorities during public procurement. The 2012 FATF Recommendations, including the concept of beneficial owners, are applied by over 200 countries, through a global network of FATF-style regional bodies affiliated to the FATF. The FATF and its regional bodies conduct mutual evaluations to examine the effective implementation and compliance with the Recommendations. Some of the FATF Recommendations relate to transparency and the availability of beneficial ownership information on legal persons and arrangements.

Since 2022 the FATF has strengthened requirements,

recommendations and guidance on beneficial ownership, to improve transparency and to ensure that accurate and up-to-date beneficial ownership information of legal persons and arrangements is available to authorities.

#### Corporate Transparency and Integrity

Tax integrity is a key requirement of development banks before engaging in operations with clients from the private sector (i.e. non-sovereign operations). For example, the IDB Invest's Integrity Framework requires conducting and regularly updating appropriate due diligence on its potential and existing clients to manage the integrity and reputational risks of their operations, which includes the identification and screening of ultimate beneficial owners and the integrity risks presented by cross-border corporate structures. Also, the IFC, a member of the World Bank Group, conducts integrity due diligence on its business clients and partners to identify and assess integrity risks in potential and existing relationships, and includes an ownership structure review for the identification of beneficial owners of clients. Another example is the ADB, which has a risk-based approach to assess the integrity risks of their clients, including tax evasion, and as part of this exercise the ADB seeks to identify the ultimate beneficial owners of its clients and to satisfy itself regarding the transparency of the client's shareholding structure.

#### Extractive Industries Transparency Initiative

Anti-corruption groups are also promoting greater transparency of beneficial ownership information. For example, the Extractive Industries Transparency Initiative (EITI) has developed a global standard to require countries and companies to disclose information on the governance of oil, gas, and mining revenues. Regarding beneficial ownership, EITI expects implementing countries to maintain a publicly available register of the beneficial owners of the corporate entities that bid for, operate, or invest in extractive assets, including the identities of their beneficial owners, the level of ownership, and details of how ownership or control is exercised. EITI's definition is not identical to the definition of FATF Recommendations but it is similar in nature, although it allows some flexibility for each jurisdiction. EITI's limited focus on a particular industry, although instructive, is not sufficiently broad as a basis for the exchange of information.

### United Nations Convention against Corruption

A lack of information on the true owners of financial accounts plays a key role in facilitating corruption and blocking investigations and asset recovery efforts. The United Nations Convention against Corruption (UNCAC) calls on States Parties to promote transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities. In addition, the UNCAC calls on State Parties to institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, to collect and record beneficial ownership information on corporate entities for anti-money laundering purposes.

### Partnering Against Corruption Initiative

The availability of beneficial ownership information is not only a concern in the public sector, but also a demand from the private sector. The World Economic Forum Partnering Against Corruption Initiative (PACI), launched in 2004, is a private sector-led platform in the global anti-corruption arena, with around 80 signatories from different sectors across the world. PACI is a network partner of the Business 20 (B20) Taskforce on Integrity and Compliance, which is the official G20 dialogue forum with the global business community. The PACI, along with other partners from the civil society, has set up a Beneficial Ownership Transparency Advisory Group, a multi-stakeholder advisory group to promote the implementation of short-term pilots to verify beneficial ownership information.

Source: IDB and OECD (2019), *A Beneficial Ownership Implementation Toolkit*, *op. cit.*; United Nations Convention against Corruption ([www.unodc.org/unodc/corruption/tools\\_and\\_publications/UN-convention-against-corruption.html](http://www.unodc.org/unodc/corruption/tools_and_publications/UN-convention-against-corruption.html)), IDB's Integrity Framework ([www.idbinvest.org/en/about-us](http://www.idbinvest.org/en/about-us)), IFC's Integrity Due Diligence Process ([www.ifc.org/content/dam/ifc/doc/2023/202103-ifc-integrity-due-diligence-process.pdf](http://www.ifc.org/content/dam/ifc/doc/2023/202103-ifc-integrity-due-diligence-process.pdf)), ADB's Anti-corruption Policy ([www.adb.org/sites/default/files/institutional-document/213111/anticorruption-policy-r-paper.pdf](http://www.adb.org/sites/default/files/institutional-document/213111/anticorruption-policy-r-paper.pdf)), Extractive Industries Transparency Initiative (<https://eiti.org/>), United Nations Convention Against Corruption ([www.unodc.org/unodc/en/treaties/CAC/index.html](http://www.unodc.org/unodc/en/treaties/CAC/index.html)), Partnering Against Corruption Initiative (available at [www3.weforum.org/docs/WEF\\_PACI\\_Community\\_Overview\\_pager.pdf](http://www3.weforum.org/docs/WEF_PACI_Community_Overview_pager.pdf)).

Under the international standards on transparency, beneficial owners are always natural persons who ultimately own or control a legal person or a legal arrangement.

The Global Forum, which monitors and supports the implementation of the international standards on transparency and exchange of information for tax purposes, has included in these standards the concept of beneficial ownership as defined by the FATF, thus responding to a G20's call for greater synergy on beneficial ownership transparency.

The FATF is the international standard setting body on AML/CFT. The FATF has adopted 40 Recommendations<sup>3</sup> in 2012 which set out a comprehensive and consistent framework of measures which countries should implement in order to combat money laundering and terrorist financing, as well as the financing of proliferation of weapons of mass destruction. The FATF Recommendations set an international standard which comprises the Recommendations themselves and their Interpretive Notes, together with the applicable definitions in the Glossary. Six Recommendations are directly related to beneficial ownership (see below the section on FATF Recommendations related to beneficial ownership).<sup>4</sup>

The definition and process for identification of the beneficial owners under the EOI standards draw on the relevant 2012 FATF Recommendations. Closer cooperation between the FATF and the Global Forum led to greater synergy in the work on beneficial ownership and ensures consistency of its implementation.

In 2022 and 2023, the FATF revised the Recommendations that pertain to beneficial ownership (Recommendations 24 and 25), in response to the challenges that the international community has faced in achieving beneficial ownership transparency of legal persons and legal arrangements. These developments also converge with the outcomes and findings of the second round of EOIR peer reviews of the Global Forum launched in 2016 (see Table 4 and Table 5).

3. FATF (2012-2023), *International standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*, FATF, Paris, France. Available at [www.fatf-gafi.org/en/publications/Fatfrecommendations/Fatf-recommendations.html](http://www.fatf-gafi.org/en/publications/Fatfrecommendations/Fatf-recommendations.html).

4. They are preventive or prescriptive measures to be applied by AML/CFT obliged persons (Recommendations 10, 11, 17 and 22) and general measures for jurisdictions to ensure transparency and beneficial ownership of legal persons and arrangements (Recommendations 24 and 25).



## Beneficial ownership standard

### Beneficial ownership definition

The concept of beneficial ownership is defined in the FATF Glossary (see Box 2). The key elements of the definition can be summarised as follows:

- A beneficial owner is always a natural person who controls a legal person or a legal arrangement.
- There can be one or more beneficial owners.
- The concept of control refers to the ability to take relevant decisions within the legal person or legal arrangement and to impose those decisions.
- When one or more layers of legal persons or legal arrangements are interposed between the beneficial owner and the entity for which the beneficial owner must be ascertained, one should always look through these layers by applying the correct methodology to identify the beneficial owner of those interposed legal persons or legal arrangements in order to identify the

natural person who is the beneficial owner of the entity.

Figure 2 demonstrates how the use of a legal person can obscure the identity of a beneficial owner. The example on the left side shows that the individual is the sole shareholder of the joint stock company and controls it directly and thus, that individual is the beneficial owner of the company. However, there may be more layers involved in the ownership structure. The example on the right side shows an additional layer – the limited liability company (LLC) – between the legal person (the joint stock company) and its beneficial owner. The LLC, as the shareholder of the joint stock company, is its direct legal owner, while the beneficial owner indirectly controls the joint stock company through the LLC.<sup>5</sup>

A beneficial owner can exercise ownership or control over a company in numerous ways, both direct and indirect, as illustrated in Figure 3.

5. IDB and OECD (2019), *A Beneficial Ownership Implementation Toolkit*, *op. cit.*

#### Box 2. FATF definition of beneficial owner

The FATF Glossary defines beneficial owner as follows:

In the context of legal persons, beneficial owner refers to the natural person(s) who ultimately<sup>(i)</sup> owns or controls a customer<sup>(ii)</sup> and/or the natural person on whose behalf a transaction is being conducted. It also includes those natural persons who exercise ultimate effective control over a legal person. Only a natural person can be an ultimate beneficial owner, and more than one natural person can be the ultimate beneficial owner of a given legal person<sup>(iii)</sup>.

Notes to the definition:

(i) 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.

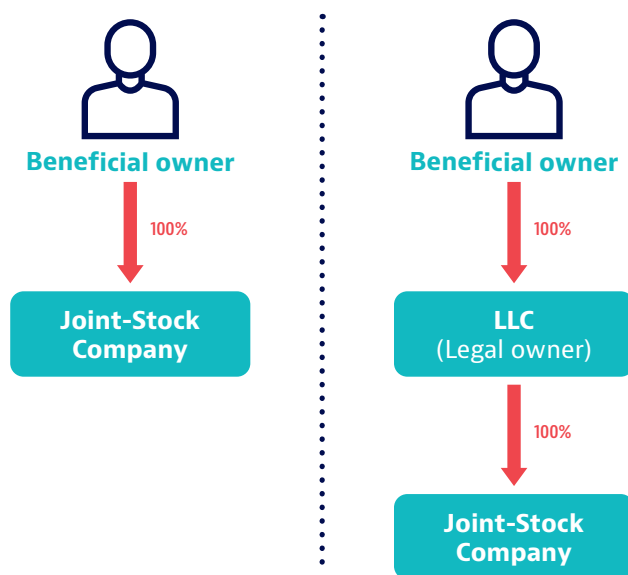
(ii) This definition should also apply to beneficial owner of a beneficiary under a life or other investment-linked insurance policy

(iii) The ultimate beneficial owner is always one or more natural persons. As set out in Recommendation 10, in the context of CDD it may not be possible to verify the identity of such persons through reasonable measures, and, to the extent that there is doubt about whether a person with a controlling ownership interest in a legal person is the ultimate beneficial owner, or where no natural person exerts control through ownership interests, the identity should be determined of the natural persons (if any) exercising control of the legal person through other means. Where no natural person is identified in that role, the natural person who holds the position of senior managing official should be identified and recorded as holding this position. This provision of Recommendation 10 does not amend or supersede the definition of who the beneficial owner is, but only sets out how CDD should be conducted in situations where the beneficial owner cannot be identified.

(iv) Reference to “ultimate effective control” over trusts or similar legal arrangements includes situations in which ownership/control is exercised through a chain of ownership/control

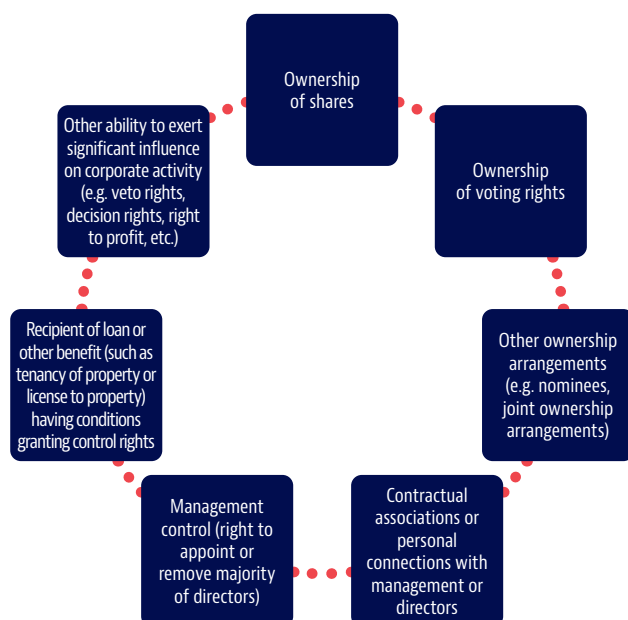
Source: Glossary in FATF (2012-2023), *International standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*, *op. cit.*

**FIGURE 2. Difference between a beneficial owner and a legal owner**



Source: IDB and OECD (2019), *A Beneficial Ownership Implementation Toolkit*, op. cit.

**FIGURE 3. Examples of direct and indirect ownership and control**



Source: IDB and OECD (2019), *A Beneficial Ownership Implementation Toolkit*, op. cit.

Factors that make it difficult to identify a beneficial owner are the use of nominees, bearer shares and bearer shares warrants. The use of nominees, whereby an entity allows its name to appear as a shareholder or owner in the name of someone else

(i.e. the nominator, whose identity remains concealed), can be used to mask the real beneficial owner. If a legal person issues bearer shares, the shareholder or owner of that legal person is any person who holds the paper shares at any given time. Bearer shares allow the transfer of ownership by simply handing the paper shares to another person. If the beneficial owner controls an entity through bearer shares, it is very difficult to determine his or her identity because the authorities would have to discover who holds the paper shares at any given time (and the paper shares can be held anywhere: in a safe deposit box, a bank, etc.). Similarly, bearer share warrants accord entitlement to ownership to the person who possesses the physical bearer share warrant certificate, without traceability.<sup>6</sup>

From a tax perspective, knowing the identity of the natural persons behind a legal person or legal arrangement not only helps a jurisdiction preserve the integrity of its own tax system, but also gives treaty partners a means of better achieving their own tax goals. Box 3 illustrates the relevance of beneficial ownership information for tax authorities.

### FATF Recommendations related to beneficial ownership

The FATF standard is made of 40 Recommendations and their respective Interpretive Notes, together with the applicable definitions in the Glossary. These are followed by the methodology for assessing technical compliance with the Recommendations and the effectiveness of AML/CFT systems.

The six FATF Recommendations that are directly related to the concept of beneficial ownership can be classified in two groups:

- Preventive measures to be applied by AML/CFT obliged persons, i.e. financial institutions (FIs), designated non-financial businesses and professionals (DNFBPs)<sup>7</sup> and Virtual Assets Service Providers (VASPs)<sup>8</sup>, when performing customer due diligence (CDD):

6. IDB and OECD (2019), *A Beneficial Ownership Implementation Toolkit*, op. cit.

7. The Glossary of the FATF Recommendations provides a non-exhaustive list of DNFBPs: a) casinos; b) real estate agents; c) dealers in precious metals; d) dealers in precious stones; e) lawyers, notaries, other independent legal professionals and accountants; f) trust and company service providers

8. The FATF defines Virtual Assets Service Providers as any entity conducting specified virtual asset activities and emphasises measures to prevent their misuse for money laundering or terrorist financing, similar to those for financial institutions. The guidance establishes that VASPs should apply CDD measures to identify beneficial owners. Also, jurisdictions should sanction unlicensed VASP activities. VASPs must manage risks associated with anonymity-enhancing technologies, ensuring that they do not obscure ownership. See more at: FATF (2021), *Updated Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers*, FATF, Paris, [www.fatf-gafi.org/en/publications/Fatfrecommendations/Guidance-rba-virtual-assets-2021.html](http://www.fatf-gafi.org/en/publications/Fatfrecommendations/Guidance-rba-virtual-assets-2021.html), FATF (2023), *Targeted Update on Implementation of the FATF Standards on Virtual Assets/VASPs*, FATF, Paris, France, [www.fatf-gafi.org/content/fatf-gafi/en/publications/Fatfrecommendations/targeted-update-virtual-assets-vasps-2023.html](http://www.fatf-gafi.org/content/fatf-gafi/en/publications/Fatfrecommendations/targeted-update-virtual-assets-vasps-2023.html)

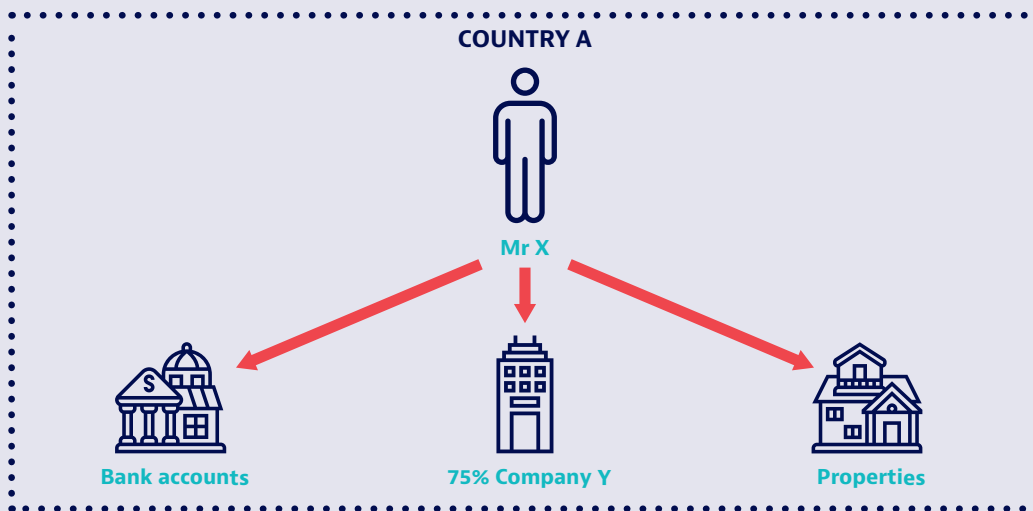
## Beneficial ownership standard

### Box 3. Examples on the relevance of beneficial ownership information for tax authorities

#### Example 1

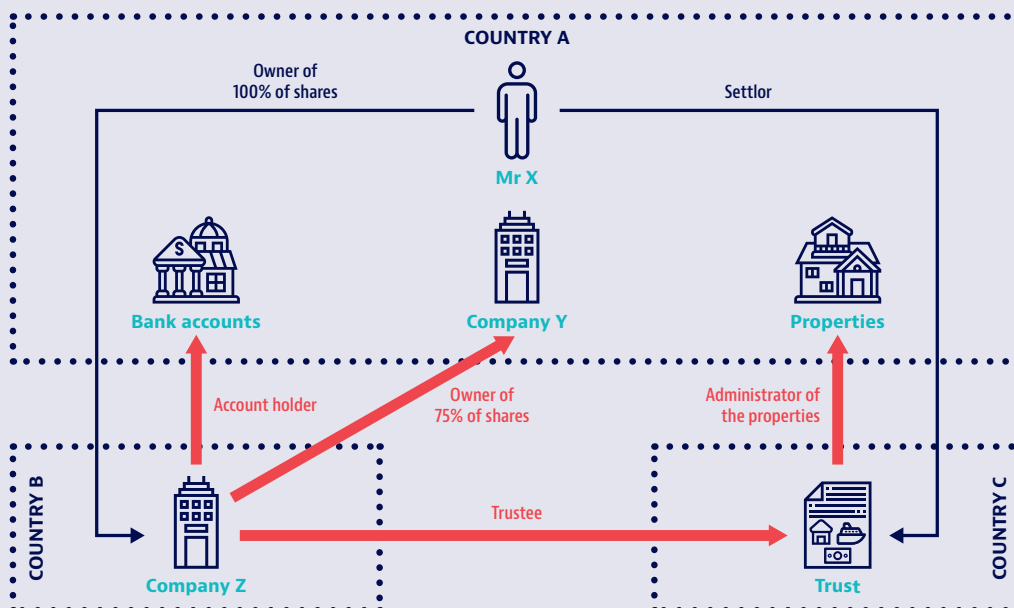
An individual, Mr X, wants to evade taxation in his Country A.

If Mr X owns several properties in Country A, and holds bank accounts and investments there, all in his own name, it would be very easy for the tax authority of Country A to detect that he is not paying taxes:



In this case, legal ownership information gives the tax authorities of Country A knowledge of how Mr X is linked to assets in Country A that may not have been declared, and the related taxes on income and wealth that have not been paid. The tax authority would be aware of all his assets that have not been declared (for example, through systematic crosschecks with the banks that have Mr X as a customer, with the business register that holds ownership information on Company Y, and with the agency responsible for the registration of real estate) and that the related taxes on income and wealth have not been paid.

However, if Mr X wants to obscure his income or property ownership, he can easily create legal entities across various jurisdictions to make it much more difficult to identify his ownership:





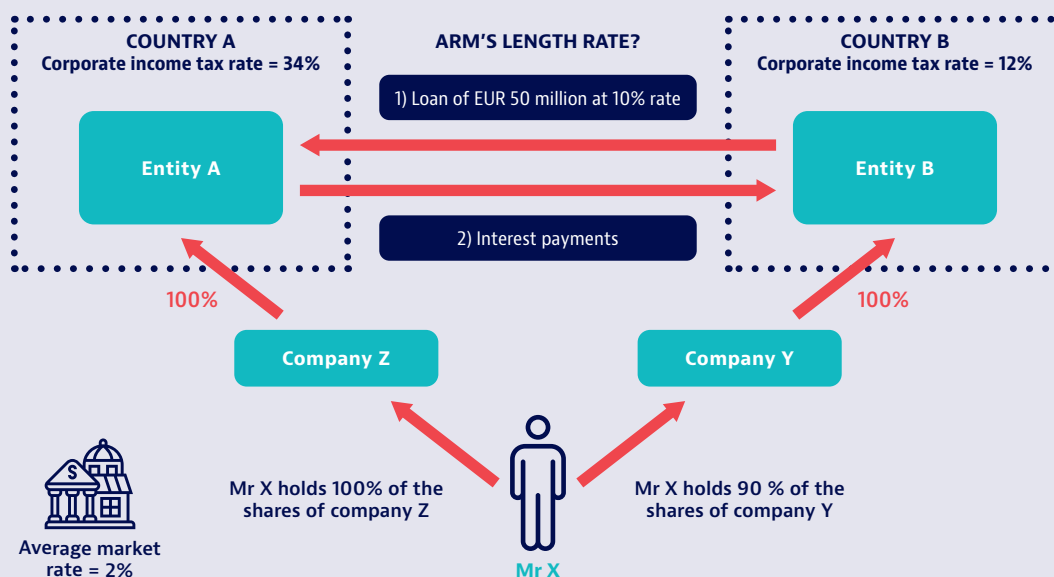
In this scenario, the immovable properties are administered by a Trust created in Country C, by the settlor Mr X. The trustee of the Trust is Company Z, a fully owned company of Mr X, incorporated in Country B. Company Z owns 75% of the shares of Company Y. The account holder of the bank accounts in Country A is Company Z. The longer the chain of entities and the more jurisdictions the entities span, the harder it is to identify the “real owner”, that is the beneficial owner (Mr X), given the need to determine who controls each of the layers. The tax risk is therefore that the tax authority is not able to link the assets and incomes to Mr X who will therefore evade his tax liabilities.

Having beneficial ownership information available in each country, through one or more sources of information, thus makes it possible for tax authorities to understand the full picture of ownership across jurisdictions and determine the tax liabilities of taxpayers. If countries lack information on a beneficial owner, the tax authorities must attempt to identify every layer in the chain of legal vehicles and understand the control structure in each layer until they reach the beneficial owner – a much more difficult, time consuming, and sometimes impossible task in a cross-border context.

### Example 2

Entity A, located in Country A (which has a corporate income tax rate of 34%) has contracted a loan of EUR 50 million to Entity B, located in Country B (which has a corporate income tax rate of 12%). Entity A is paying interests to Entity B at a 10% rate. Given that the average market rate for interest payments is at 2%, tax authorities are wondering whether the interests paid are not inflated and whether the loan does not constitute an artificial increase of expenses.

Legal ownership information gives the tax authority knowledge that Entity A is 100% owned by Company Z, and Entity B is 100% owned by Company Y.



Looking through the ownership chain, beneficial ownership information provides knowledge that Mr X is the beneficial owner of both Companies Z and Y as he holds 100% of the shares of Company Z and 90% of the shares of Company Y.

Having beneficial ownership information available in each country thus makes it possible for tax authorities to understand the full picture of ownership and that Entities A and B are related entities. Thus, interest payments in this case should comply with an arm's length rate and the tax authorities of Country A might determine the correct tax liabilities of Entity A.

Source: Global Forum Secretariat.

## Beneficial ownership standard

- Recommendation 10 on CDD
- Recommendation 11 on record-keeping
- Recommendation 17 on reliance on third parties
- Recommendation 22 on DNFBPs' CDD
- General measures for jurisdictions to ensure transparency and beneficial ownership of legal entities:
  - Recommendation 24 on transparency and beneficial ownership of legal persons
  - Recommendation 25 on transparency and beneficial ownership of legal arrangements

The FATF Recommendations were revised to strengthen beneficial ownership requirements and to address the challenges faced by countries in implementing them. Accordingly, in addition to the update of the beneficial ownership definition of the Glossary, Recommendation 24 and its Interpretive Note were updated in March 2022, and Recommendation 25 and its Interpretive Note were updated in February 2023. Further, the FATF has issued revised guidance on both Recommendation 24<sup>9</sup> and Recommendation 25<sup>10</sup> to assist countries in the implementation of the requirements.

### Preventive measures

Preventive measures refer to the measures to be taken by FIs and DNFBPs, which are subject to AML/CFT rules, with respect to their clients to prevent money laundering and terrorist financing and to promote the transparency of beneficial ownership information.

Recommendations 10 and 11 specifically refer to CDD and record-keeping requirements by FIs. Recommendation 17 refers to the reliance on CDD carried out by third parties. Recommendation 22 extends the CDD and record-keeping requirements set out in Recommendations 10, 11 and 17 to DNFBPs. These measures should result in the collection of beneficial ownership information by AML/CFT obliged persons.

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9. FATF (2023), *Guidance on Beneficial Ownership of Legal Persons*, FATF, Paris. Available at [www.fatf-gafi.org/en/publications/Fatfrecommendations/Guidance-Beneficial-Ownership-Legal-Persons.html](http://www.fatf-gafi.org/en/publications/Fatfrecommendations/Guidance-Beneficial-Ownership-Legal-Persons.html).

10. FATF (2024), *Guidance on Beneficial Ownership and Transparency of Legal Arrangements*, FATF, Paris. Available at [www.fatf-gafi.org/content/fatf-gafi/en/publications/Fatfrecommendations/Guidance-Beneficial-Ownership-Transparency-Legal-Arrangements.html](http://www.fatf-gafi.org/content/fatf-gafi/en/publications/Fatfrecommendations/Guidance-Beneficial-Ownership-Transparency-Legal-Arrangements.html).

## Recommendations 10 and 22 – Customer Due Diligence

CDD measures are undertaken by FIs and DNFBPs on costumers and should result in the gathering of beneficial ownership information. Recommendations 10 for FIs and Recommendation 22 for DNFBPs require them to perform CDD measures to identify and verify the identity of customers that are legal persons or legal arrangements, including their beneficial owners. This should be done (i) when establishing a business relationship with a client, (ii) when carrying out occasional transactions above a designated threshold (USD/EUR 15 000) or when such occasional transactions are wire transfers, (iii) when there is suspicion of money laundering or terrorist financing, or (iv) when the AML/CFT obliged person has doubts about the veracity or adequacy of previously obtained customer identification data.

The CDD measures to be taken are as follows:

- a. Identifying the customer and verifying that customer's identity using reliable, independent source documents, data or information.
- b. Identifying the beneficial owner(s), and taking reasonable measures to verify the identity of the beneficial owner(s). For legal persons and arrangements, this should include understanding the ownership and control structure of the customer.
- c. Understanding and obtaining information on the purpose and nature of the business relationship.
- d. Verifying that any person purporting to act on behalf of the customer is so authorised, and identifying and verifying the identity of that person.
- e. In the case of life insurance policies, taking the name of the beneficiary when it is a named natural or legal person or legal arrangement; and for class of beneficiaries, obtaining sufficient information concerning the beneficiary to satisfy the FI that it will be able to establish the identity of the beneficiary at the time of the payout.
- f. Conducting ongoing CDD on the business relationship throughout the course of the relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer.

### Recommendation 11 – Record-keeping

CDD information, including beneficial ownership information, should be adequately maintained by AML/CFT obliged persons and be accessible to authorities. Recommendation 11 establishes that FIs and DNFBPs should be required to maintain all CDD records for at least five years from the date of the occasional transaction or the termination of the business relationship. This information should be available to domestic authorities upon request. Records collected as a result of CDD should include (non-exhaustive list): copies of official identification documents (such as passports, identity cards, and driving licences), business correspondence, underlying documentation resulting from inquiries and analysis to determine the nature of the transaction, etc.

### Recommendation 17 – Reliance on third parties

Recommendation 17 establishes that FIs and DNFBPs can rely on the CDD measures of Recommendation 10 performed by a third party or business introducers only under the following specific conditions and circumstances:

- FIs and DNFBPs relying on a third party must immediately obtain information from the third party on due diligence measures concerning the identification of the client and the beneficial owner(s), as well as understanding the purpose and nature of the business relationship.<sup>11</sup>
- FIs and DNFBPs must be able to obtain from the third party on request and without delay, a copy of the identification data and other documents related to the CDD requirements.
- FIs and DNFBPs must be reasonably assured that the third party is regulated, supervised and monitored in relation to its compliance with CDD, and has taken measures to comply with CDD and record-keeping requirements in accordance with Recommendations 10 and 11.
- When determining in which countries the third party that meets the conditions can be based, a country allowing for third-party reliance should take into consideration the level of risk in those countries.

Even if relying on a third party, the FIs and DNFBPs should be ultimately responsible for the CDD measures

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11. Elements a) to c) of the CDD measures listed in Recommendation 10.

applied to their customers, including in relation to beneficial ownership information.

### General measures

FATF Recommendations 24 and 25 refer to the general measures that jurisdictions should put in place to ensure that authorities have timely access to adequate, accurate and up-to-date beneficial ownership information of legal entities. These Recommendations were amended in 2022 and 2023 respectively to strengthen the AML/CFT requirements to ensure greater transparency of beneficial ownership information (see Table 4 and Table 5).

### Recommendation 24 – Transparency and beneficial ownership of legal persons

Legal persons may include companies, foundations, waqfs and partnerships. In the case of partnerships, they may fall within the scope of legal persons under the definition of this term contained in the Glossary of FATF Recommendations,<sup>12</sup> if they can establish a relationship with a FI or own property.

#### A multi-pronged approach

Recommendation 24 establishes that jurisdictions should take measures to ensure the availability of adequate, accurate and up-to-date information on the beneficial ownership and control of legal persons created in that jurisdiction, as well as those that present AML/CFT risks and have sufficient link with their jurisdiction.<sup>13</sup>

To that end, it explicitly mandates that countries should follow a multi-pronged approach, i.e. a combination of different mechanisms to ensure that the beneficial owners of legal persons can be determined in a timely manner. This multi-pronged approach requires as a minimum:

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12. The Glossary of FATF Recommendations defines the term legal persons as follows: "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. This can include companies, bodies corporate, foundations, anstalt, partnerships, or associations and other relevantly similar entities" (FATF, 2012-2023).

13. The requirement on legal persons not created in the jurisdiction was included following the 2022 FATF revision. The Interpretive Note to Recommendation 24, notes that jurisdictions can determine what is considered a sufficient link based on risk. A sufficient link can include but is not limited to, when a company has a permanent establishment/branch/agency, has significant business activity, or has significant and ongoing business relations with an AML/CFT obliged person in the jurisdiction.



## Beneficial ownership standard

- **An entity approach:** legal persons obtaining and holding adequate, accurate and up-to-date information on their own beneficial owners, making the information available to competent authorities in a timely manner, and cooperating with AML/CFT obliged persons to provide beneficial ownership information.

- **A register approach:** adequate, accurate and up-to-date beneficial ownership information of legal persons held by a public authority(ies) or body(ies) (e.g. a tax authority, a financial intelligence unit, a company registry, or a beneficial ownership registry) or a private body entrusted with this task by the public authority.

Recommendation 24 and its Interpretive Note do not necessarily require the implementation of a central register; a jurisdiction can meet the FATF requirement through several registers (e.g. for provinces or districts, for sectors, or for specific types of legal person).

- Jurisdictions may even decide to use an alternative mechanism instead of the register approach, if it also provides authorities with efficient access to adequate, accurate and up-to-date beneficial ownership information.<sup>14</sup>

- **Additional supplementary measures** to ensure that the beneficial owners of a legal person can be determined such as information held by regulators or stock exchanges or obtained by FIs and/or DNFbps under their CDD requirements.

### Attributes of beneficial ownership information

The Interpretive Note to Recommendation 24 provides that countries should ensure that beneficial ownership information be adequate, accurate and up to date, and introduces the following definitions:

- **Adequate** means information that is sufficient to identify the natural person(s) who are the beneficial owner(s), such as full name, nationality, date and place of birth, identification number, and the means through which they exercise beneficial ownership or control.

- **Accurate** means information that has been verified to confirm its accuracy using reliable and independently sourced information.

- **Up-to-date** means information which is as current and up to date as possible, and is updated within a reasonable period (e.g. within one month) following any change.

14. Some possible alternative approaches can be built on (i) a bank account register that identifies legal persons holding bank accounts, payment accounts and other financial services (e.g. custodial or investment accounts), (ii) a public authority holding information on the FIs/DNFbps with which a legal person has a continuous business relationship (iii) a system with credit bureau information which collects and maintains updated information of legal persons having borrowing relationships with FIs. For more guidance on the alternative approach, please refer to the FATF (2023), *Guidance on Beneficial Ownership of Legal Persons*, op. cit

### Bearer shares and bearer share warrants

Recommendation 24 prescribes **the abolition** of the possibility of issuing new bearer shares and bearer share warrants (see definition in Box 4).

FIGURE 4. Summary of the FATF multi-pronged approach requirements



For existing bearer shares and bearer share warrants, it requires jurisdictions to apply one or more of the following transitional mechanisms within a reasonable timeframe:

- **conversion** into a registered form, or
- **immobilisation** with a regulated financial institution or professional intermediary, with timely access to the information by the competent authorities, and
- during the period before conversion or immobilisation is completed, requiring holders of bearer instruments to notify the company, and requiring the company **to record their identity** before any rights associated therewith can be exercised.

### Nominee arrangements

Recommendation 24 provides for more prescriptive rules for nominee directors or nominee shareholders to

#### Box 4. FATF definition of bearer shares and bearer share warrants

The FATF Glossary defines bearer shares and bearer share warrants as follows:

**Bearer shares** refer to negotiable instruments that accord ownership in a legal person to the person who possesses the physical bearer share certificate, and any other similar instruments without traceability. It does not refer to dematerialised and/or registered forms of share certificate whose owner can be identified.

**Bearer share warrants** refer to negotiable instruments that accord entitlement to ownership in a legal person who possesses the physical bearer share warrant certificate, and any other similar warrants or instruments without traceability. It does not refer to dematerialised and/or registered form of warrants or other instruments whose owner can be identified. It also does not refer to any other instrument that only confers a right to subscribe for ownership in a legal person at specified conditions, but not ownership or entitlement.

Source: Glossary in FATF (2012-2023), *International standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*, op. cit.

prevent them from being used to conceal the beneficial owners of legal persons (see definitions in Box 5). Countries should take measures to prevent and mitigate the risk of the misuse of such nominee arrangements by applying one or more of the following mechanisms:

- requiring nominee shareholders and directors to **disclose their nominee status and 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 for the information to be obtained, held or recorded by the public authority or body or the alternative mechanism referred to under the multi-pronged approach. Nominee status should be included in public information

#### Box 5. FATF definition of nominees

The FATF Glossary defines nominator and nominee as follows:

**Nominator** is an individual (or group of individuals) or legal person that issues instructions (directly or indirectly) to a nominee to act on their behalf in the capacity of a director or a shareholder, also sometimes referred to as a “shadow director” or “silent partner.”

**Nominee** is an individual or legal person instructed by another individual or legal person (“the nominator”) to act on their behalf in a certain capacity regarding a legal person.

**A Nominee Director** (also known as a “resident director”) is an individual or legal entity that routinely exercises the functions of the director in the company on behalf of and subject to the direct or indirect instructions of the nominator. A nominee director is never the beneficial owner of a legal person.

**A Nominee Shareholder** exercises the associated voting rights according to the instructions of the nominator and/or receives dividends on behalf of the nominator. A nominee shareholder is never the beneficial owner of a legal person based on the shares it holds as a nominee.

Source: Glossary in FATF (2012-2023), *International standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*, op. cit.

## Beneficial ownership standard

- requiring nominee shareholders and directors **to be licensed**, for their nominee status and the identity of their nominator to be obtained, held or recorded by the public authority or body or alternative mechanism referred to under the multi-pronged approach and for them to maintain information identifying their nominator and the natural person on whose behalf the nominee is ultimately acting, and make this information available to the competent authorities upon request
- enforcing a prohibition of the use of nominee shareholders or nominee directors.

### Access to information by law enforcement authorities

Countries should take measures to facilitate access of law enforcement authorities to adequate, accurate and up-to-date beneficial ownership and control information held by FIs and DNFBPs undertaking the requirements of Recommendations 10 and 22, and to information provided to the company registry, maintained by the entities themselves, and to any other available source of beneficial ownership information as mandated by the multi-pronged approach of Recommendation 24. Beneficial ownership information on legal persons should also be available to authorities in the course of public procurement.

### Record-keeping requirements

The Interpretive Note to Recommendation 24 indicates that beneficial ownership information and all related records should be kept for at least five years after the legal person ceases to exist or five years after the date on which the company ceases to be a customer of the professional intermediary or the FI. There should be a clearly stated responsibility to comply with the requirements of the Interpretive Note to Recommendation 24, as well as liability and effective, proportionate and dissuasive sanctions, as appropriate for any legal or natural person that fails to properly comply with the requirements.

### Recommendation 25 – Transparency and beneficial ownership of legal arrangements

Legal arrangement covers express trusts and other similar legal arrangements such as *fiducie*, *treuhand*, *fideicomiso* and *waqfs*.

All jurisdictions must assess the AML/CFT risks associated with the different types of trusts and similar legal arrangements, as far as they are governed under their law, administered or with a trustee resident in their territory or have sufficient links with the country. Sufficient links may include significant and ongoing business relations with FIs or DNFBPs, significant real estate/other local investment or tax residence in the jurisdiction.

### No mandatory multi-pronged approach

Recommendation 25 establishes that jurisdictions should require trustees of any express trust and persons holding an equivalent position in a similar legal arrangement, that are residents in their country or that administer any express trusts or similar legal arrangements in their country, to obtain and hold adequate, accurate, and up-to-date beneficial ownership information.

While a multi-pronged approach is not required, the Interpretive Note to Recommendation 25 recommends jurisdictions to consider using other sources of information such as (i) one or more registers held by one or more public authorities or bodies, (ii) other competent authority that hold or obtain information on legal arrangements (e.g. tax authority), (iii) other agents or service providers, including DNFBPs or FIs.

### Attributes of beneficial ownership information

The same requirement of adequate, accurate and up-to-date beneficial ownership information applies for legal arrangements as for legal persons.

### Access to information

Authorities should have the power to obtain beneficial ownership information of trusts or legal arrangements in an efficient and timely manner. Jurisdictions should consider measures to facilitate access to such beneficial ownership and control information by FIs and DNFBPs undertaking the requirements set out in Recommendations 10 and 22.

### Record-keeping requirements

Trustees (or equivalent) should maintain the beneficial ownership information for at least five years after their involvement with the trust or legal arrangement ceases.

**Liability and Sanctions**

Authorities should ensure that there are clear responsibilities to comply with the requirements of the Interpretive Note to Recommendation 25, and that trustees are either legally liable for any failure to perform the duties relevant to meeting the obligations, or that there are effective, proportionate and dissuasive sanctions, whether criminal, civil or administrative, for failing to comply.

**Methodology for the identification of the beneficial owner of legal entities**

Legal persons and legal arrangements have different ownership and controls structures and thus, the methodology for the identification of their beneficial owners is also different.

In the case of legal entities, ownership and control are exercised by shareholders or members, such as in a company. However, legal arrangements have much more complex structures because they usually do not have owners but parties with different roles, rights, and obligations (see Figure 5).

Legal arrangements can take the form of express trusts (in which the settlor’s creation of a trust is deliberate and is neither implicit nor the result of the application of a law) and similar structures, such as the *fideicomiso* (a trust in some civil law countries), *fiducie* (a French trust), *treuhand* (a German trust), or *waqf* (a form of trust under Islamic law).

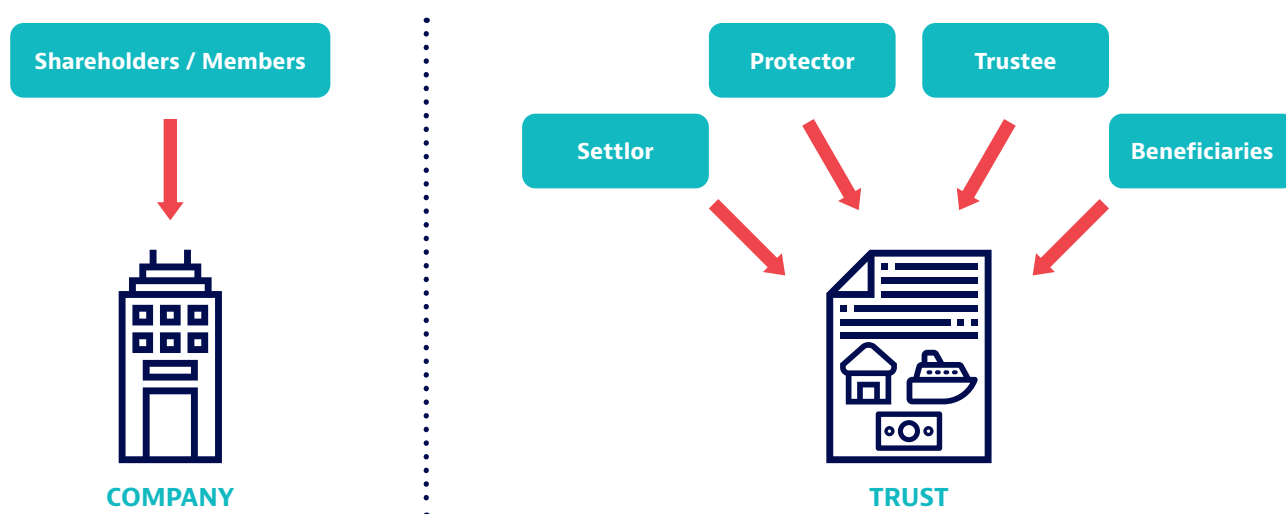
A trust is a structure in which a person (the settlor) transfers assets to another person (the trustee) who manages the entrusted assets following the settlor’s instructions, but for the benefit of the beneficiaries (either persons named by the settlor to receive income or the entrusted assets at some point, or a defined class of unnamed persons).

The distinction between legal persons and legal arrangements has practical implications for the availability of beneficial ownership information because, in most countries, legal persons must be registered in order to have legal existence, and their owners are therefore more easily identifiable. Trusts, however, do not always have to be registered, except with the tax authorities when they have taxable income.

In distinguishing between legal persons and legal arrangements, in practice it can sometimes be difficult to determine the proper classification as depending on a jurisdiction’s unique laws, some legal persons might have very similar structures to legal arrangements (e.g. a trust). For example, some private foundations look a lot like a trust: the settlor/founder is the person who transfers assets to the trust/foundation; the trustee/foundation council manages the assets of the trust/foundation on behalf of the beneficiaries. In some trusts, such as discretionary trusts, there may be a “protector” (generally named by the settlor) who oversees the trustee’s actions.<sup>15</sup> In many countries, *waqfs* are more similar to a legal arrangement.

15. IDB and OECD (2019), *A Beneficial Ownership Implementation Toolkit*, op. cit.

FIGURE 5. **Difference in the control structure between a legal person and a trust**



Source: IDB and OECD (2019), *A Beneficial Ownership Implementation Toolkit*, op. cit.



## Beneficial ownership standard

### Legal persons

The Interpretive Note to FATF Recommendation 10 determines a three-tier approach to identify the beneficial owners in legal persons. This approach is known as the cascading approach or process (see Box 6). It has also been included in the definition of beneficial owner in the Glossary of the FATF Recommendations (see Box 2).

Figure 6 illustrates the cascading approach which can be summarised as follows:

- In the cascading approach, if no beneficial owner is identified by using the first step or, in case of doubt that the natural person(s) identified in the first step constitute all beneficial owner(s), the second step should be applied.
- Where there is a doubt that the natural person(s) identified in the first step is the beneficial owner, then both the natural person(s) identified in Step 1 and in Step 2 (if any) should be identified as beneficial owner(s).
- If no beneficial owner(s) is identified when applying Steps 1 and 2, then, exceptionally and as a backstop, the natural person who holds the position of senior managing official should be identified as the beneficial owner.

Jurisdictions may also prefer to require a simultaneous approach rather than a cascading one for the identification of beneficial owners. In a simultaneous approach, Steps 1 and 2 of the cascade are conducted at the same time so that any natural persons exerting control through ownership interest or through other means are identified. Step 3 remains the exceptional backstop rule.

The Interpretive Notes to Recommendations 10 and 24 establish that

- (i) a controlling ownership interest depends on the structure of the legal persons and
- (ii) a controlling ownership interest in a company may be identified based on a specific threshold.

This guidance is essential to identify the beneficial owner(s) of legal persons.<sup>16</sup>

16. See Box 8 on the identification of the beneficial owners of partnerships.

### Box 6. Cascading process to identify the beneficial owners of legal persons

AML/CFT obliged persons should identify the beneficial owners of the customer who is a legal person, and verify their identity, through the following information:

- (i) 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) exercising control of the legal person or arrangement through ownership) who ultimately have a controlling ownership interest in a legal person; and
- (ii) to the extent that there is doubt under (i) as to whether the person(s) with the controlling ownership interest are the beneficial owner(s) or where no natural person exerts control through ownership interests, the identity of the natural persons (if any) exercising control of the legal person or arrangement through other means.
- (iii) Where no natural person is identified under (i) or (ii) above, AML/CFT obliged persons should identify and take reasonable measures to verify the identity of the relevant natural person who holds the position of senior managing official.

The cascading approach also applies for the identification of beneficial owners for the maintenance of beneficial ownership information by the legal persons themselves (entity approach), and to the beneficial ownership information reporting to a register held by public authority (register approach) or maintained in the context of an alternative mechanism.

Note: Beneficial ownership information for legal persons is the information referred to in the interpretive note to Recommendation 10, paragraph 5(b)(i). Controlling shareholders as referred to in, paragraph 5(b)(i) of the interpretive note to Recommendation 10 may be based on a threshold, e.g. any persons owning more than a certain percentage of the company (determined based on the jurisdiction's assessment of risk, with a maximum of 25%).

Source: Interpretive Note to Recommendation 10 (para. 5.b.i), Interpretive Note to Recommendation 24 (para. 1 and footnote 49) and the Glossary in FATF (2012-2023), *International standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*, *op. cit.*

- First, the category of legal persons usually covers different kind of entities such as companies, partnerships or foundations which have different structures. The rights, powers or functions of the shareholders, partners or members in these legal persons may be different and therefore should be considered in the determination of the relevance of control through ownership interest (Step 1).
- Second, with respect to companies, the Interpretive Note to Recommendation 10 suggests that the threshold for determining control through ownership interest may be set based on a percentage of ownership by any natural person. The Interpretive Note to Recommendation 24 further clarifies that this threshold should be set by each jurisdiction according to their assessment of risk, but it must not exceed 25%.<sup>17</sup> The experience from the Global Forum peer reviews shows that jurisdictions usually use a maximum 25% threshold, but it can be lower, depending on jurisdictions' own contexts and risks faced. This means that using a 25% threshold or below would be appropriate for the identification of the beneficial owners of a company under Step 1 of the cascading approach. A higher threshold would not be appropriate. Many jurisdictions are using lower thresholds such as 20%, 10% or 5%. Some jurisdictions do not even use any threshold, meaning that any level of ownership interest is deemed to signify control.

Guidance should also be provided on the concept of “control through other means”. The guidance should

clarify that control through other means includes, for example, control exercised through personal connection, financing, historical or contractual association, or situations where an individual enjoys, uses or benefits from the entity's assets or have the right to appoint or revoke the management of a legal entity.

The identification of the beneficial owners of a legal person should at a minimum follow the principles of the cascading approach.<sup>18</sup> It should be applied by AML/CFT obliged persons (FIs and DNFBPs) as part of the AML/CFT rules. This approach should also be followed when a jurisdiction requires legal persons to maintain beneficial ownership information or to report that information to a register.

Some exceptions may apply, for example where the customer or the owner of the controlling interest is a company listed on a stock exchange and subject to comprehensive and stringent disclosure requirements (either by stock exchange rules or through law or enforceable means) which impose suitable requirements to ensure adequate transparency of beneficial ownership, or is a majority-owned subsidiary of such a company. In those cases, it is not necessary to identify and verify the identity of any shareholder or beneficial owner of such companies as the information is expected to be already publicly available pursuant to the aforementioned requirements.<sup>19</sup>

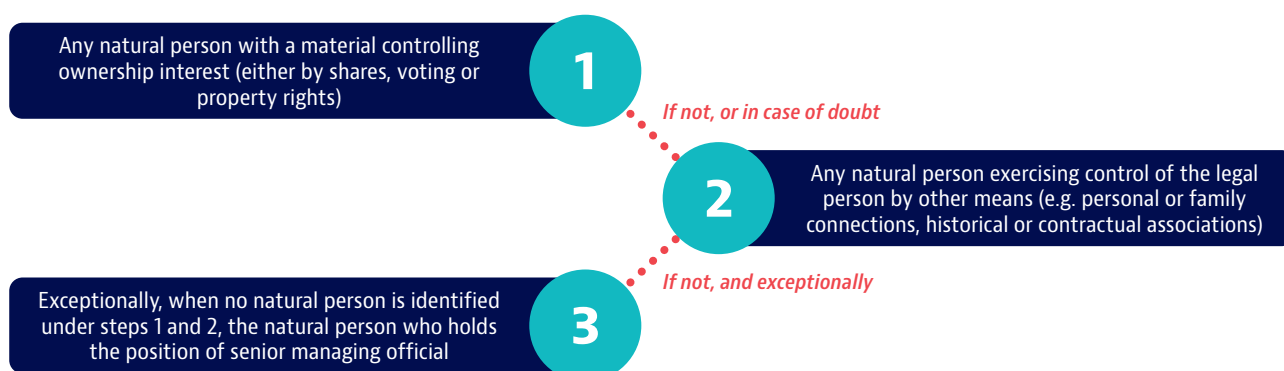
Box 7 illustrates examples on the identification of beneficial owners of legal persons.

17. Footnote 37 to Interpretive Note to Recommendation 10 and footnote 49 to Interpretive Note to Recommendation 24 in FATF (2012-2023), *International standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*, *op. cit.*

18. Several jurisdictions merged Steps 1 and 2 of the cascading approach. This simultaneous approach allows identifying more natural persons in some cases by considering both ownership control and control by other means.

19. FATF (2023), *Guidance on Beneficial Ownership for Legal Persons*, *op. cit.*

FIGURE 6. **Three-step test to determine the beneficial owners of legal persons**



## Beneficial ownership standard

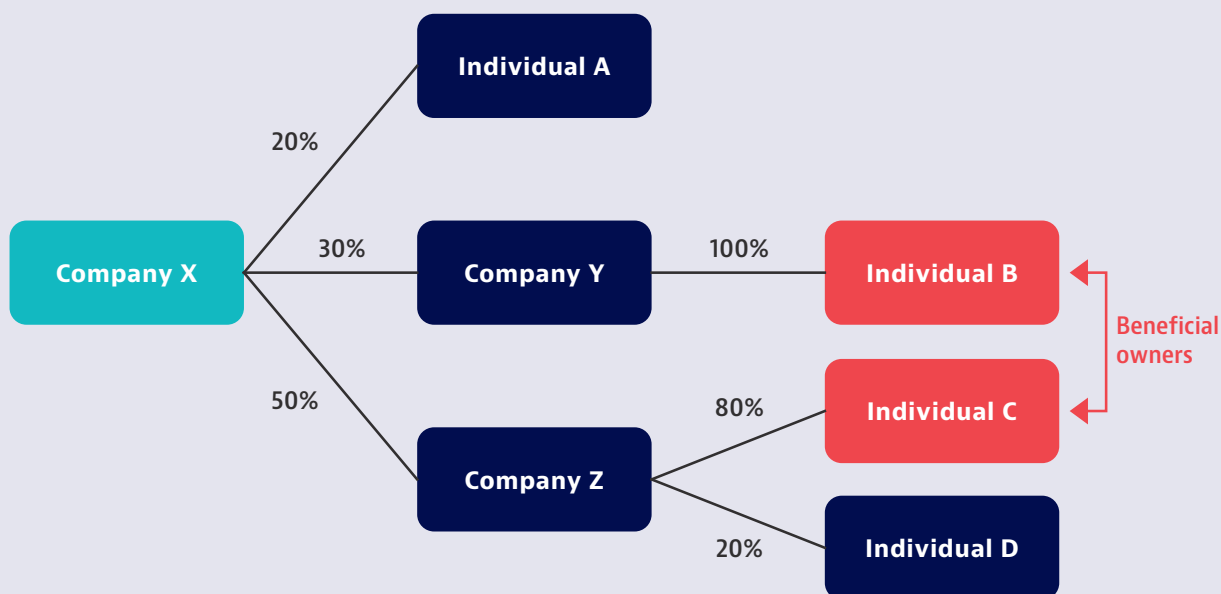
### Box 7. Identifying the beneficial owners of legal persons

#### Example 1

Company X has three shareholders: Individual A, with 20% of the shares, Company Y, with 30% of the shares, and Company Z, with 50% of the shares.

In turn, Company Y is owned at 100% by Individual B, and Company Z is owned by Individuals C and D, which hold 80% and 20%, respectively. Pursuant to the domestic laws, the controlling ownership interest criterion used for being a beneficial owner is having at least a 25% ownership interest in the company (Step 1 of the cascade approach).

Individual A owns less than 25% of Company X, so this individual should not be identified as a beneficial owner. Company Y and Company Z cannot be beneficial owners of Company X, because they are not natural persons, so there is the need to identify the natural persons behind them. Individual B is a beneficial owner, because that natural person has an ownership interest in Company X higher than 25% ( $100 * 30\% = 30\%$ ). In addition, Individual C is also a beneficial owner, because that individual owns 40% of Company X ( $80 * 50\% = 40\%$ ). By contrast, Individual D cannot be a beneficial owner, as this natural person has an ownership interest of 10% ( $20 * 50\% = 10\%$ ), below the 25% threshold.



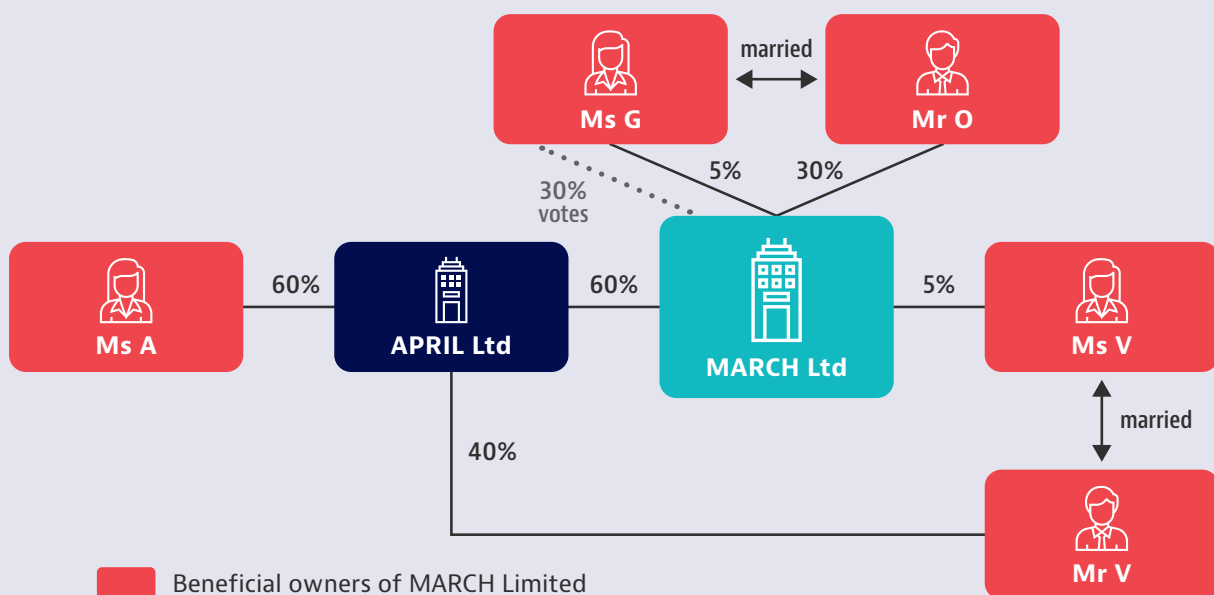
#### Example 2

MARCH Limited is a company incorporated in the XYZ country, which has four shareholders. Mr O owns 30% of the shares, while APRIL Limited, a company incorporated in XYZ, owns 60% of the shares. Ms G and Ms V each own 5% of the shares of MARCH Limited. Ms G also controls 30% of the voting rights of MARCH Limited and is married to Mr O. Ms A owns 60% of the shares of APRIL Limited. Mr V holds the remaining 40% of the shares of APRIL Limited.

According to XYZ domestic legislation, the controlling ownership interest criterion used for being a beneficial owner is having at least a 25% ownership interest in the company (Step 1 of the cascade approach).

- Mr O is a beneficial owner of MARCH Limited because he owns 30% of its shares directly.
- Ms G, his wife, owns only 5% of the shares of MARCH Limited but she meets the controlling ownership interest as she holds 30% of the voting rights. She is therefore a beneficial owner of MARCH Limited. In any case, the two spouses directly control together 35% of the shares. Ms G is, therefore, a beneficial owner based both on voting rights and on shared ownership through the marital relationship.
- Ms A owns 60% of APRIL Limited, which in turn owns 60% of MARCH Limited. As a result, Ms A indirectly owns 36% of MARCH Limited through her ownership of APRIL Limited.
- Mr V owns 40% of APRIL Limited, which owns 60% of MARCH Limited. Therefore, he indirectly owns 24% of MARCH Limited, which is just below the 25% threshold for identification as beneficial owner. Ms V directly owns 5% of the shares of MARCH Limited, which appears to be below the threshold for identification as beneficial owner. However, as Mr and Ms V are married, they jointly control 29% of MARCH Limited directly and indirectly, as a result of the marital status and are there considered beneficial owners as well.

Thus, Mr O, Ms G, Ms A, Mr V and Ms V should all be identified as beneficial owners based on Step 1 of the cascading approach as implemented in XYZ.



### Example 3

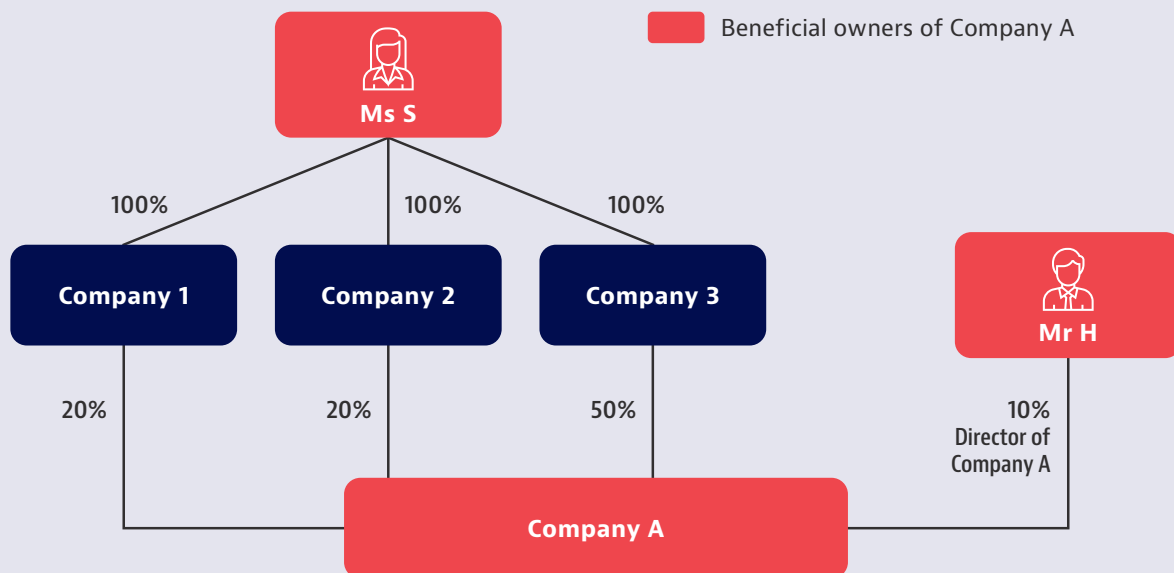
Company A has four shareholders: Company 1 and Company 2 hold 40% of the shares, Company 3 holds 50% of the shares and Mr H holds 10% of the shares. Pursuant to domestic laws, the controlling ownership interest criterion used for being a beneficial owner is having at least a 25% ownership interest in the company (Step 1 of the cascade approach). A shareholder named Ms S has an indirect 90% ownership interest over Company A through the three commercial companies (Company 1, Company 2 and Company 3), of which she is the only owner (she owns 100% of the shares of the Companies 1, 2 and 3).



## Beneficial ownership standard

The other shareholder, Mr H, owns 10% of the shares directly, so following strictly Step 1 of the cascade approach, he would not seem to be a beneficial owner of Company A. However, Mr H is Company A's director, responsible for management and control decisions (he has absolute decision or veto rights over the running of the business). This should create a doubt on the fact that Ms S is the sole beneficial owner of Company A. Therefore, following Step 2 of the cascade approach, Mr H is considered a beneficial owner, as he exercises control by other means through management control.

In this case, both Ms S and Mr H are the beneficial owners of Company A: Ms S through ownership interests and Mr H through control by other means.



### Example 4

Global Inc. has several shareholders: Company X with 45% of the shares, Company B with 25%, and three individual shareholders (E, F, and G) each owning 10%.

Company X is jointly owned by two entities: Company Z with a 60% stake and Company S with a 40% stake. Within Company Z, Individual H owns 95% and Individual I owns 5%. Company S is wholly owned by Individual J.

Company B is owned by two individuals: Individual K with a 75% stake and Individual L with 25%.

Individuals E, F, and G each hold 10% of the shares of Global Inc. However, while Individual E has 10% of the shares of Global Inc, he holds 30% of the voting rights.

An agreement between Individuals G, J, and K has been disclosed whereby they agree to act in concert to influence the decision of Global Inc.

Finally, Individual H has disclosed a nominee agreement where Individual Z is the nominator since the beginning.

According to the prevailing legal framework, a beneficial owner is defined as a natural person who, alone or together, ultimately owns or controls more than 25% of a company's shares directly or indirectly.

Following the Step 1 of the cascading approach:

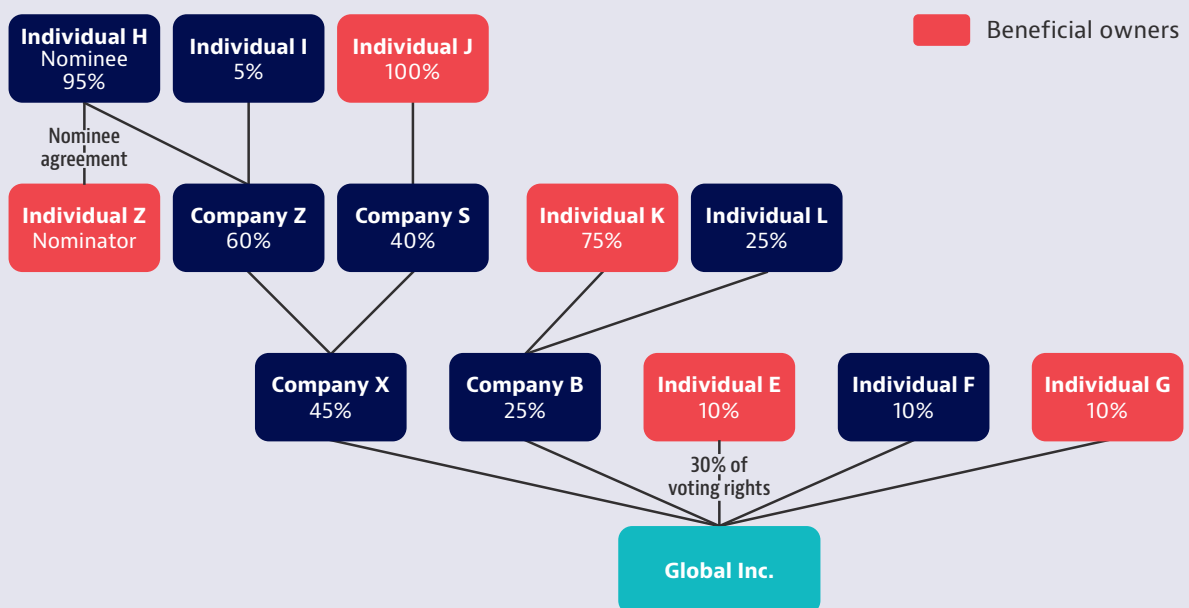
- Individual H, through their 70% ownership of Company Z, indirectly owns 57% of Company X ( $60 * 95\% = 57\%$ ), and 25.65% of Global Inc. ( $45 * 57\% = 25.65\%$ ), which exceeds the 25% threshold, and thus makes him/her a beneficial owner. However, Individual H is a nominee of Individual Z, therefore, the latter should be identified as the beneficial owner.
- Individual J, being the sole owner of Company S, indirectly owns 18% of Global Inc. ( $45 * 40\% = 18\%$ ), which is below the threshold.
- Individual K, with a direct 75% stake in Company B, indirectly owns 18.75% of Global Inc. ( $25 * 75\% = 18.75\%$ ), which is also below the threshold.
- However, Individuals G, J, and K are acting in concert and together they own 46.75% of Global Inc. ( $10\% + 18\% + 18.75 = 46.75\%$ ), which exceeds the 25% threshold, making them beneficial owners.

However, there is a doubt that Individuals G, J, K and Z identified as the beneficial owners under Step 1 of the cascading approach are the only beneficial owners of Global Inc. Indeed, Individual E has 10% of the shares of Global Inc. but holds 30% of the voting rights. In many jurisdictions, the control ownership interest threshold includes voting rights. However, it is not the case in the considered jurisdiction. As the voting rights are not considered in the controlling ownership interest threshold, Individual E has not been identified as beneficial owner. Nevertheless, he exercises at least a control through voting rights and should be identified as a beneficial owner under Step 2.

In this scenario, several beneficial owners should be identified following the cascading approach:

- Under Step 1, Individual Z alone and Individuals G, J and K together exercise a control of Global Inc. through ownership.
- The elements of the case cast doubt on the fact that the individuals identified in Step 1 are the only beneficial owners. Therefore, Step 2 of the cascading approach should be triggered to identify the natural persons exercising a control through other means, i.e. Individual E.

The beneficial owners of Global Inc. are therefore Individuals E, G, J, K and Z.



Source: Global Forum Secretariat.

## Beneficial ownership standard

### Legal arrangements

The concept of beneficial owner for legal arrangements is defined in the Glossary (see Box 2), in the Interpretive Note to Recommendation 10 and in the Interpretive Note to Recommendation 24.<sup>20</sup> The definition rests on the methodology to be followed to identify the beneficial owners of trusts and similar legal arrangements. Contrary to legal persons, the beneficial owners of an express trust and similar legal arrangements must be identified regardless of their controlling ownership interest (see Box 8).

The reason for identifying all natural persons involved in a trust or other similar arrangements as beneficial owners is that legal arrangements are generally private or contractual affairs, so in most instances they are not required to be registered in order to be legally valid and, therefore, are more susceptible to public invisibility and opacity.

The identification of the beneficial owners of a trust or other similar legal arrangements should be applied by AML/CFT obliged persons as part of the AML/CFT rules as well as by the administrators of the legal arrangements.

When a party of a trust is not a natural person but a legal person or a legal arrangement, the beneficial owners of that legal person or arrangement (but not the legal person or arrangement itself) should be identified as beneficial owners of the trust. This means that non-natural persons who are parties to a trust should be looked through to identify the beneficial owners.<sup>21</sup>

Box 11 provides for examples of beneficial ownership identification when legal arrangements and legal persons are involved.

### **BENEFICIAL OWNERSHIP AND THE STANDARD ON TRANSPARENCY AND EXCHANGE OF INFORMATION ON REQUEST FOR TAX PURPOSES**

The Global Forum is the key international body governing the implementation of the international standards on transparency and EOI for tax purposes.

20. FATF (2012-2023), *International standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*, *op. cit.*

21. IDB and OECD (2019), *A Beneficial Ownership Implementation Toolkit*, *op. cit.*; FATF (2012-2023), *International standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*, *op. cit.*

### Box 8. Procedure to identify the beneficial owners of trusts and similar legal arrangements

AML/CFT obliged persons and administrators of legal arrangements (i.e. trustees and persons holding an equivalent position in a similar legal arrangement) should identify the beneficial owners of the legal arrangement and verify their identity.

- For an express trust, the beneficial owners are the settlor(s), trustee(s), protector(s) (if any), each beneficiary, or, where applicable, the class(es) of beneficiaries and objects of a power (i.e. a person that can be a potential beneficiary of a trust) and any other natural person exercising ultimate effective control over the trust.
- For a similar legal arrangement, the beneficial owners are the natural persons holding equivalent positions.

Where the parties to the trusts or other similar legal arrangements are legal persons or arrangements, AML/CFT obliged persons and administrators of legal arrangements shall obtain and hold adequate, accurate, and up-to-date basic and beneficial ownership information of those interposed legal persons or arrangements (look-through approach).

Note: To be an “object of a power” a person must meet the following two (cumulative) elements: (i) the person must have been identified by the trustee as a member of a class of possible beneficiaries; and (ii) the trustee must have a clear and realistic belief that the person is a possible beneficiary and may benefit from trust property in the future.

Source: Interpretive Note to Recommendation 10 (para. 5.b.ii), Interpretive Note to Recommendation 25 (para. 1) and Glossary in FATF (2012-2023), *International standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*, *op. cit.*; FATF (2024), *Guidance on Beneficial Ownership and Transparency of Legal Arrangements*, *op. cit.*

It ensures global tax co-operation through the implementation of two internationally agreed standards: the EOIR and AEOI standards. Through a robust peer review process, the Global Forum monitors that its members fully implement these standards, to which they have committed, as well as it ensures a level playing field, even among jurisdictions (where relevant) that have not joined the Global Forum.

### Box 9. The standard on Automatic Exchange of Financial Account Information and beneficial ownership

The CRS-AEOI standard<sup>22</sup> provides for the automatic exchange of a predefined set of financial account information between tax authorities. It requires the annual transmission of information on financial accounts held by individuals and entities, as well as on controlling persons of certain categories of entities, to their residence country.

The term “controlling person” has the same meaning as beneficial owner under FATF Recommendation 10 and its Interpretative Note. Therefore, FIs are required to identify the controlling persons/beneficial owners of the account holder in accordance with the FATF Recommendations. The Commentary relating to Section VIII-D-6 of the Common Reporting Standard provides that:

- The term “controlling person” must be interpreted in a manner consistent with FATF Recommendation 10 and its Interpretive Note.
- For an entity that is a legal person, the term “controlling person” means the natural person(s) who exercises control over the entity. To identify the controlling person of a legal entity the cascading approach must be followed by FIs (see Box 6 and Box 7).
- In the case of a trust, the term “controlling person” means the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary(ies) or class(es) of beneficiaries, and any other natural person(s) exercising ultimate effective control over the trust. These natural persons must always be treated as controlling persons of a trust, regardless of whether or not any of them exercises control over the trust (see Box 8).
- In the case of a legal arrangement other than a trust, the term “controlling persons” means natural persons in equivalent or similar positions as those for a trust, taking into account the different forms and structures of these legal arrangements.

Source: Global Forum Secretariat.

These standards allow jurisdictions to obtain information relevant for tax purposes from their counterparts in another jurisdiction. The scope of

22. OECD (2017), *Standard for Automatic Exchange of Financial Account Information in Tax Matters*, Second Edition, OECD Publishing, Paris, available at <https://doi.org/10.1787/9789264267992-en>.

### Box 10. The Crypto-Asset Reporting Framework and beneficial ownership

The CARF<sup>23</sup> aims to address the emergence of crypto-assets transactions, which can be made without the intervention of traditional financial intermediaries and, thus, may escape reporting under the CRS-AEOI standard.

The CARF provides for the automatic exchange of a predefined set of information on relevant crypto-asset transactions between tax authorities. It requires the annual transmission of information on certain crypto-assets held by individuals and entities, as well as on controlling persons of certain categories of entities, to their residence country.

The term “controlling person” has the same meaning as beneficial owner under the FATF Recommendations. Therefore, Crypto Asset Service Providers (i.e. any individual or entity that conducts business by facilitating exchange transactions involving crypto-assets for or on behalf of customers) are required to identify the controlling persons/beneficial owners of the relevant crypto-asset in accordance with the FATF Recommendations. The Commentary relating to Section IV-D-10 of the CARF is aligned with the Commentary relating to Section VIII-D-6 of the Common Reporting Standard (see Box 9). Therefore, reporting crypto-asset service providers must follow the methodology of identification of the beneficial owners of legal persons and legal arrangements to identify the controlling persons of certain entities that are holding crypto-assets.

Source: Global Forum Secretariat.

information that can be exchanged under each standard is wide, and it includes beneficial ownership information. Beneficial ownership requirements under the Global Forum standards are closely connected to the FATF Recommendations. While this toolkit focuses on the EOIR standard, the relevant aspects of the CRS-AEOI standard and the Crypto-Asset Reporting Framework (CARF) are described in Box 9 and Box 10.

23. OECD (2022), *Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard*, OECD, Paris, [www.oecd.org/tax/exchange-of-tax-information/crypto-asset-reporting-framework-and-amendments-to-the-common-reporting-standard.pdf](http://www.oecd.org/tax/exchange-of-tax-information/crypto-asset-reporting-framework-and-amendments-to-the-common-reporting-standard.pdf).



## Beneficial ownership standard

### Box 11. Identifying beneficial owners when legal persons and legal arrangements are combined

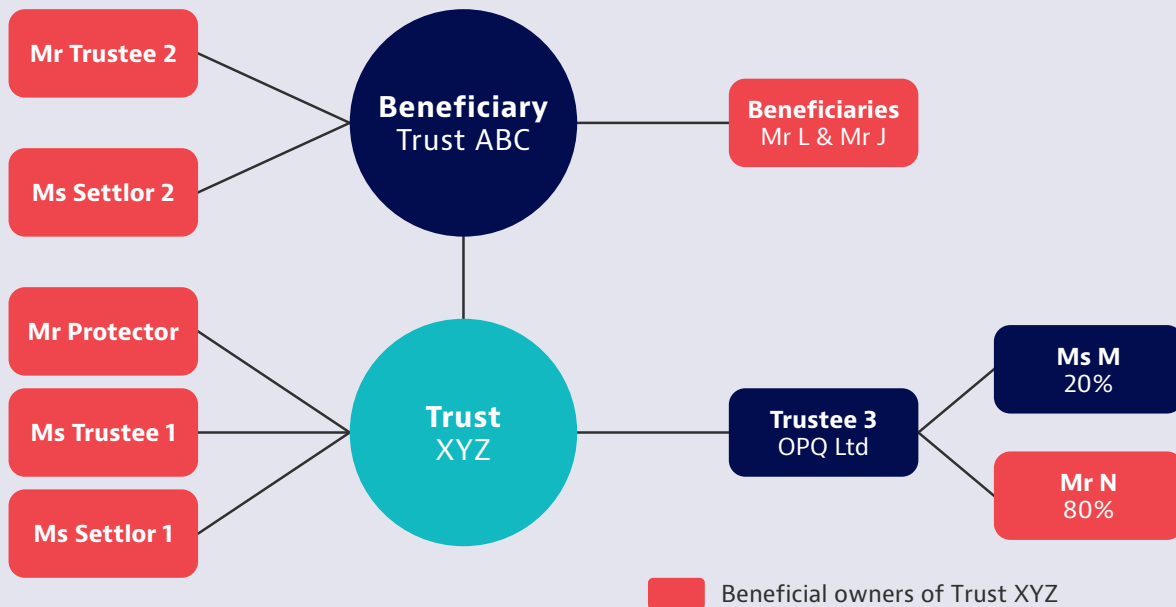
#### Example 1

Trust XYZ was constituted under a jurisdiction that requires that all parties of a legal arrangement as well as any other natural person exercising effective control over the trust are identified, as per the beneficial ownership standard, and establishes a 25% controlling ownership interest threshold for identifying the beneficial owners of a company in Step 1 of the cascading approach.

The trustees are required under the laws of the jurisdiction to fill beneficial ownership information with the central register

In principle, all the parties of the trust who are natural persons are immediately identified as beneficial owners of Trust XYZ: Ms Settlor 1, Ms Trustee 1 and Mr Protector. The beneficiary Trust ABC and the trustee OPQ Ltd. cannot be beneficial owners of Trust XYZ, because they are a legal arrangement and a legal person (a company), respectively. Then, it is necessary to look through these entities by applying the right methodology to identify the beneficial owners of Trust XYZ:

- The natural persons who are parties of the beneficiary Trust ABC are the beneficial owners of Trust XYZ: Ms Settlor 2, Mr Trustee 2, Mr L and Mr J.
- Mr N, who owns 80% of the corporate trustee OPQ Ltd., would be the beneficial owner of Trust XYZ (following the 25% threshold criteria).



#### Example 2

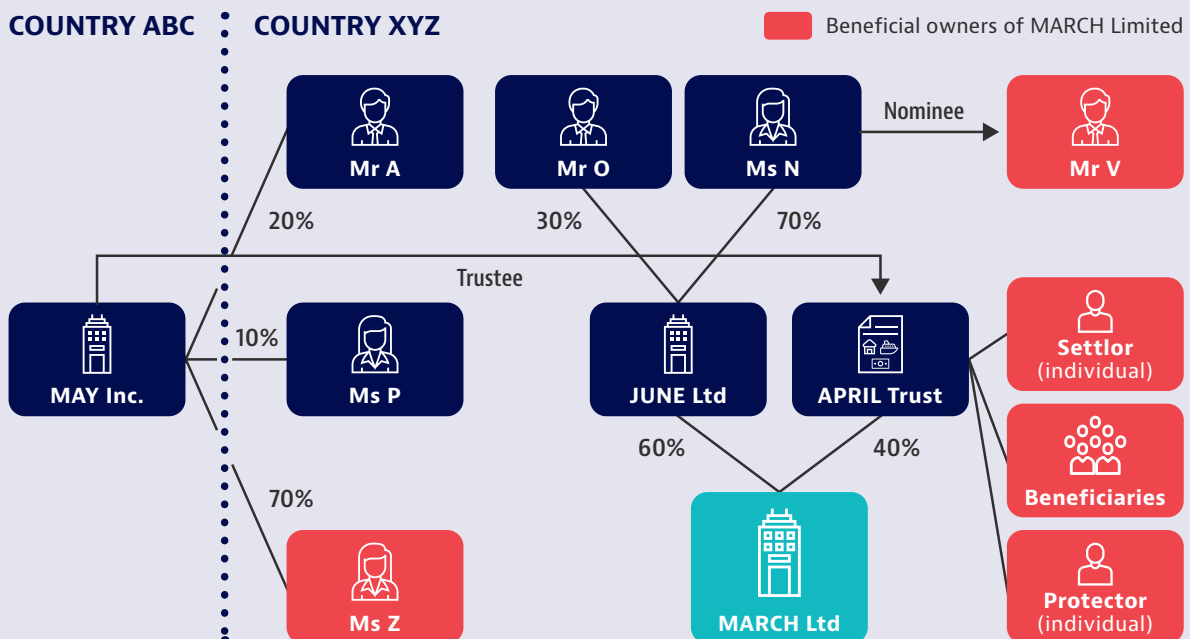
MARCH Limited is a company incorporated in country XYZ. Its shareholders are APRIL Trust and JUNE Limited, which respectively hold 40% and 60% of the shares and voting rights of MARCH Limited. MAY Inc., a company incorporated in country ABC is the trustee of APRIL Trust. Its shareholders are Ms Z (70% of the shares), Mr A (20% of the shares) and Ms P (10% of the shares). The shareholders of JUNE Limited are Mrs N and Mr O, who own 70% and 30% of the shares respectively. Mrs N is a nominee of Mr V.

Companies in XYZ are required to identify and maintain information on their beneficial owners in accordance with the international standard. Additionally, XYZ has defined a controlling ownership interest threshold of 25% for the first step of the cascading approach.

Although APRIL Trust owns more than 25% of MARCH Limited, it cannot qualify as a beneficial owner as it is not a natural person. The beneficial owners of all the parties to the trust (trustee, settlor, protector and beneficiaries) and any other natural persons exercising a control over the trust must be identified.

- The shareholders of MAY Inc., the corporate trustee, are Mrs Z (70% of the shares), Mr A (20% of the shares) and Mrs P (10% of the shares). As a result, Ms Z must be considered as the beneficial owner of MARCH Limited, as she is beneficial owner of the corporate trustee (with a controlling ownership interest of 70% of the shares).
- As the settlor, the protector and the beneficiaries are natural persons, they should be identified as beneficial owners of MARCH Limited too. If any of them would have been a legal person or a legal arrangement, then the beneficial owner(s) of those entities would have been identified as beneficial owner(s) of MARCH Limited using the appropriate methodology.

In addition, Ms N owns 70% of JUNE Limited. As JUNE Limited owns 60% of MARCH Limited, Ms N indirectly owns 42% of MARCH Limited. In these circumstances, the indirect controlling ownership interest of MARCH Limited would qualify her as the beneficial owner. However, she is actually a nominee of Mr V. In case the nominee relationship and the identity of the nominator (Mr V) are disclosed to JUNE Limited, then Mr V could be identified as a beneficial owner through indirect ownership interest (Step 1). In any case, Mr V exercises significant control or influence over JUNE Limited and MARCH Limited through Ms N, and therefore Mr V should be identified as a beneficial owner through a nominee arrangement (Step 2 of the cascade approach). It is important to note that neither nominees nor business chains should prevent the ultimate beneficiary from being identified.



To conclude, the settlors, protectors and beneficiaries of the APRIL Trust, as well as any other person exercising effective control of the trust based on the nature of ownership control, Ms Z and Mr V should be identified as beneficial owners of MARCH Limited.

## Beneficial ownership standard

### Example 3

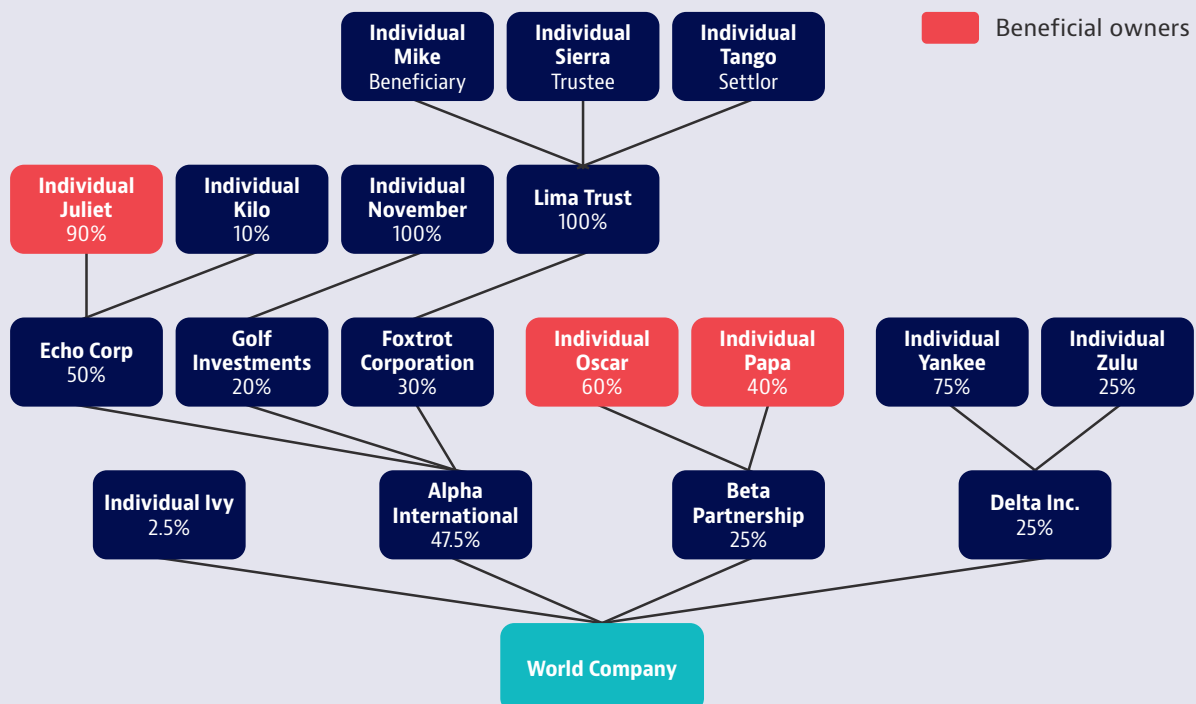
World Company has four shareholders: Alpha International owns 47.5% of the shares, Beta Partnership owns 25%, Delta Inc owns 25%, and Individual Ivy holds 2.5%.

Alpha International is owned by three entities: Echo Corp. with 50% of the shares, Foxtrot Corporation with 30% of the shares, and Golf Investments with 20% of the shares. Echo Corp is itself owned by Individual Juliet (90%) and Individual Kilo (10%). Foxtrot Corporation is owned by Lima Trust, which has Individual Mike as the only beneficiary, Individual Sierra as trustee and Individual Tango as settlor. Golf Investments is wholly owned by Individual November.

Beta Partnership is a partnership between Individual Oscar and Individual Papa, with ownership of 60% and 40% respectively. Delta Inc., is owned by Individual Yankee, who has a 75% stake, and Individual Zulu who holds the remaining 25%.

According to the domestic legislation, the controlling ownership interest criterion used for being a beneficial owner is having at least a 20% ownership interest in the company. Also, in this jurisdiction partnerships do not have legal personality and therefore are considered legal arrangements.

- Individual Juliet, owning the majority of Echo Corp. holds ownership in Alpha International, and indirectly over World Company in 21.38% so she should be identified as a beneficial owner.
- Individuals Oscar and Papa are also beneficial owners as they are partners of Beta Partnership, a legal arrangement holding 25% of World Company, which must be looked through to identify natural persons that exercise control in a similar position as in a trust.
- Individual Mike as the sole beneficiary of Lima Trust, and Individual Sierra and Individual Tango as the trustee and settlor, respectively, are not beneficial owners of World Company. The indirect ownership in World Company, through Foxtrot Corporation, is 14.25% so its ownership is below the threshold.
- Individual November, Individual Ivy, Individual Kilo, Individual Yankee, and Individual Zulu are not beneficial owners as they do not have a controlling ownership interest, directly or indirectly, of 20% or more, and they do not exercise control by other means.



**Example 4**

Trust DEF was constituted under a jurisdiction that requires that all parties of a legal arrangement as well as any other natural person exercising effective control over the trust are identified, as per the beneficial ownership standard, and establishes a 25% controlling ownership interest threshold for identifying beneficial owners of legal persons in Step 1 of the cascading approach.

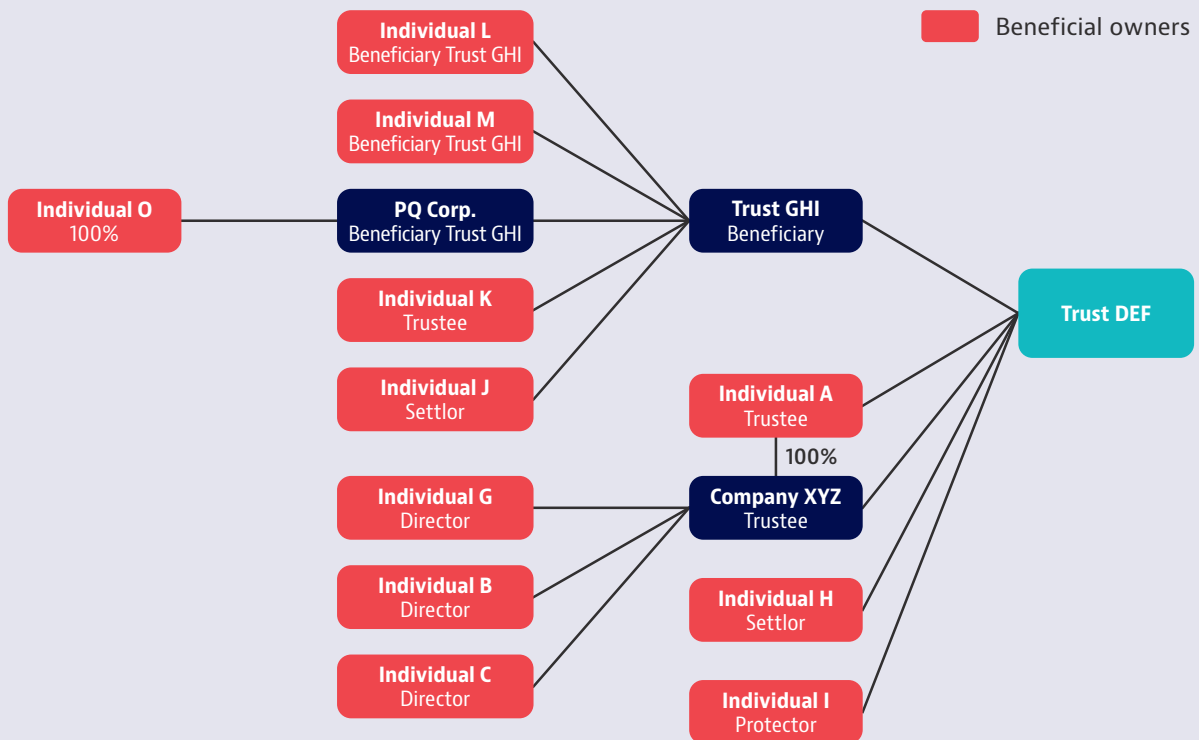
The trust deed of Trust DEF stipulates that there are two trustees, Company XYZ and Individual A. Company XYZ is a corporate entity with a board of three directors: Individual C, Individual B, and Individual G who have a direct and significant influence on Company XYZ's decisions, including without consulting the only shareholder, which goes beyond the usual role of directors. Individual A also holds a 100% stake in Company XYZ. The trust has Individual H as settlor and Individual I as protector, and a beneficiary trust known as Trust GHI, which in turn has Individual K as trustee and Individual J as settlor.

Within Trust GHI, there are three beneficiaries: Individual L, Individual M, and PQ Corporation. PQ Corporation is managed by Individual O, who owns a 100% stake.

In principle, all the parties of Trust DEF who are natural persons are immediately identified as its beneficial owners. Therefore, Individual A as the trustee, Individual H as the settlor, and Individual I as protector are beneficial owners of Trust DEF.

Company XYZ cannot be identified as beneficial owner because it is a legal person. Looking through Company XYZ, Individual A should be considered as a beneficial owner of Trust DEF as it owns 100% of the shares of Company XYZ (Step 1 of the cascading approach). However, the role of Individuals G, B and C as directors of the Company XYZ; who have exercised control and significant influence on decisions of the Company XYZ, creates a doubt on who the actual beneficial owners are. Based on Step 2 of the cascading approach, they exercise a control by other means and should also be considered beneficial owners of Trust DEF.

Trust GHI is the beneficiary of Trust DEF. As a legal arrangement, it cannot be a beneficial owner. It should be looked through to identify its beneficial owners. Individuals L (beneficiary), M (beneficiary), K (trustee) and J (settlor) are beneficial owners of Trust DEF. Individual O, as holder of 100% of shares in PQ Corporation (beneficiary of Trust GHI) has to be identified as beneficial owner of Trust DEF.



Source: Global Forum Secretariat.



## Beneficial ownership standard

### Standard on Transparency and Exchange of Information on Request

#### Relevance of the FATF Recommendations

The EOIR standard requires a competent authority to provide to its counterpart in another jurisdiction, upon request, any **information foreseeably relevant** for the administration or enforcement of its domestic tax laws, or for carrying out the provisions of a relevant tax agreement. The information exchanged on request includes, amongst others, legal and beneficial ownership information and bank information, as defined in the 2016 Terms of Reference (ToR).<sup>24</sup>

The 2016 ToR incorporate the transparency of beneficial ownership information in respect of relevant legal entities (Element A.1), as well as in respect of bank accounts (Element A.3).

The 2016 ToR adopts the FATF's definition of beneficial owner and builds on FATF Recommendations that are relevant for tax purposes, i.e. Recommendations 10, 11, 17, 22, 24 and 25. Although the FATF and the Global Forum have different standards, each directed to its own particular mission, there are synergies between both standards that enable jurisdictions to leverage the systems, policies and information sources they have in

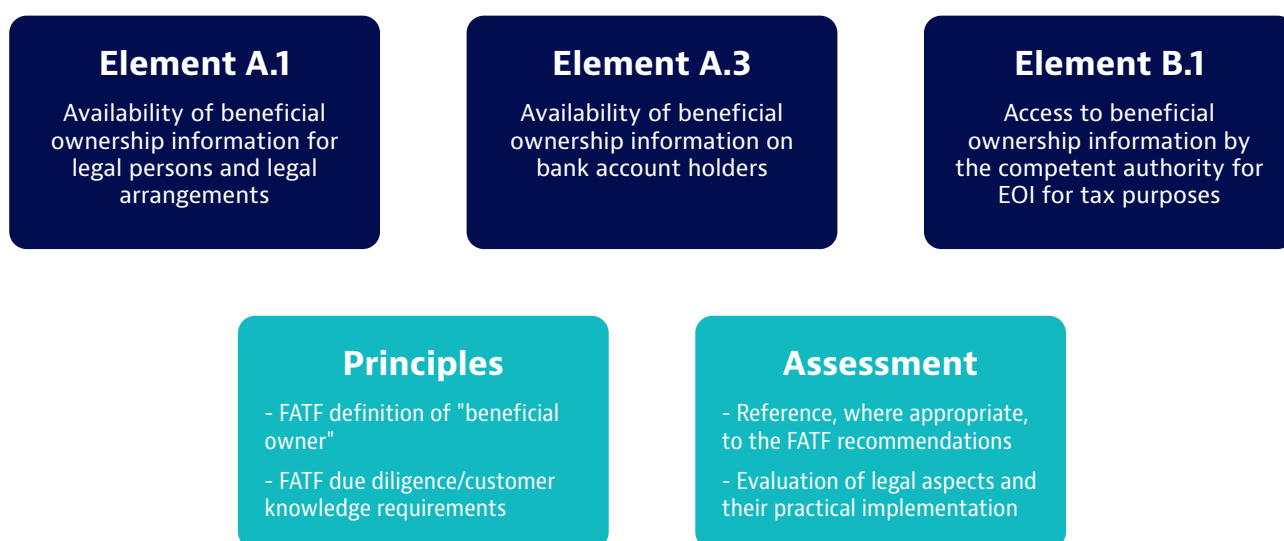
place to satisfy the requirements of both standards and their related criteria.

The Global Forum reviews beneficial ownership requirements under the prism of its own mandate, focusing on transparency and EOI for tax purposes as a tool to tackling tax evasion. The 2016 ToR states that "it is recognised that the purposes for which the FATF standards have been developed (combating money-laundering and terrorist financing) are different from the purpose of the standard on EOIR (ensuring effective exchange of information for tax purposes). Hence, in applying and interpreting the FATF materials regarding 'beneficial owner', care should be taken that such application and interpretation do not go beyond what is appropriate for the purposes of ensuring effective exchange of information for tax purposes".

Therefore, while the FATF and the Global Forum rely on the same beneficial ownership standard, their reviews may have different outcomes due to their specific purposes. For instance, the risk-based approach which is relevant for FATF Recommendations 10 and 22 is not suitable for tax purposes. Under the risk-based approach, the frequency of updating of beneficial ownership information may depend on the level of risk of the client. For tax purposes an outcome-based approach is used as up-to-date beneficial ownership information is always needed for all relevant entities and bank accounts, regardless of their risk level. In addition, deficiencies identified in AML/CFT reviews may not be relevant for tax purposes. For example, the FATF considers in its reviews every type of legal vehicle because any can be

24. OECD (2023), *Handbook for Peer Reviews on Transparency and Exchange of Information on Request: Second Round, Global Forum on Transparency and Exchange of Information for Tax Purposes*, op. cit.

FIGURE 7. 2016 Terms of Reference on beneficial ownership



Source: Global Forum Secretariat.

used for the purposes of money laundering or terrorism financing, whereas the Global Forum may not focus on entities that do not pose a danger of tax evasion, such as public-interest foundations that meet certain criteria.<sup>25</sup>

### **2016 Terms of Reference and beneficial ownership information**

The 2016 ToR are divided in three main core elements:

- A.** Availability of information, including availability of beneficial ownership information on legal persons and arrangements (Element A.1) and bank accounts (Element A.3);
- B.** Access to information, including beneficial ownership information (Element B.1), by the competent authority for EOI for tax purposes; and
- C.** Exchange of information, including beneficial ownership, with foreign competent authorities for EOI for tax purposes.

Relevant FATF Recommendations relating to beneficial ownership are considered in the EOIR peer review process. The FATF Recommendations and guidance<sup>26</sup> on transparency and beneficial ownership are thus secondary authoritative sources of the EOIR standard (see Figure 7).

### **Concept of availability under the EOIR standard**

The availability of beneficial ownership information implies that adequate, accurate and up-to-date information on the identity of the beneficial owners of all relevant entities (i.e. legal persons and arrangements), and for bank accounts is held by an information holder in the jurisdiction, i.e. a person having possession of or control<sup>27</sup> over records or information. In addition, availability is ensured only where there are clear record-keeping obligations, and effective supervision and enforcement measures in the jurisdiction.

25. IDB and OECD (2019), *A Beneficial Ownership Implementation Toolkit*, *op. cit.*

26. FATF (2012-2023), *International standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*, *op. cit.*; FATF (2023), *Guidance on Beneficial Ownership of Legal Persons*, *op. cit.*; and FATF (2024), *Guidance on Beneficial Ownership and Transparency of Legal Arrangements*, *op. cit.*

27. In the context of availability of information, a person might be said to have possession of records or information if he/she has physical control over it. Control is broader and includes situations where a person has the legal right or authority, or the ability to obtain documents or information in the possession of another person (2016 EOIR ToR, Element B.1, Footnote 18).

The Global Forum's peer review process includes a combined approach, assessing both the legal framework and the effective implementation in practice for each element (see Box 12).

The EOIR standard focuses on the availability of beneficial ownership information through an outcome-based approach, instead of a risk-based approach. The outcome-based approach is flexible: it requires the availability of the information but does not prescribe the means to ensure its availability.

Under the EOIR standard, jurisdictions can take the approach that fits the best to its legal and organisational circumstances provided that the availability of beneficial ownership is ensured. For instance, a jurisdiction could use:

#### Box 12. Availability of beneficial ownership information under the Standard on Transparency and Exchange of Information on Request

The concept of availability of information refers to:

- Maintenance of adequate, accurate and up-to-date information on the legal and beneficial owners of legal persons and arrangements, and bank accounts.
- Documentary and conservation obligations: retention of information for at least 5 years following the year to which the information relates, including in cases where the legal persons or arrangements cease to exist, the bank account is closed, or the function of the trustee (or equivalent) terminates.
- At least one reliable source of information: obligations for one or more persons or authorities under the territorial jurisdiction of the country to be in possession or control of the information. Jurisdictions are free to decide on their system, but at least one reliable source of information that provides complete coverage of the relevant legal entities and bank accounts is required in all circumstances.
- Supervision and enforcement measures: obligations should be effectively monitored by a public authority and non-compliance should be punished in a dissuasive manner.

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- a single approach relying on a unique source of information and the related legal framework. This approach is usually based on the AML/CFT framework, or
- a multi-pronged approach to beneficial ownership requirements, comprising different sources of information, like existing information held by AML/CFT obliged persons, by the entities themselves, and/or a central beneficial ownership register held by a public authority (e.g. commercial register, tax administration), and supported by different legal frameworks (e.g. AML/CFT, tax and/or company laws).

The EOIR standard is principle based and only prescribes a goal to ensure, i.e. the availability of beneficial ownership information to competent authorities for tax purposes, and does not prescribe a multi-pronged approach and systems to achieve that goal. Under the EOIR standard the beneficial ownership legal framework must cover all relevant legal persons and arrangements,

be effectively implemented, and enforced in practice through supervisory activities.

While the FATF mandatory multi-pronged approach is not a requirement under the EOIR standard, it comforts the main finding of the EOIR peer reviews according to which such an approach combining multiple sources generally ensures better availability of beneficial ownership information (see Part 2 of this Toolkit). Therefore, jurisdictions are encouraged to consider a multi-pronged approach to ensure availability of beneficial ownership information on all relevant legal entities and are provided with technical assistance to that aim if they wish so to implement in addition to the AML/CFT approach, the entity and register approach. The Global Forum Secretariat has developed a dedicated technical assistance programme and developed guidance and model legislations to that end.<sup>28</sup>

28. The model legislations developed by the Global Forum Secretariat are available to public authorities and bodies upon request. See [www.oecd.org/tax/transparency/documents/documents-available-to-tax-authorities-upon-request.htm](http://www.oecd.org/tax/transparency/documents/documents-available-to-tax-authorities-upon-request.htm).

Table 1. **Aspects required under Element A.1 of the EOIR standard**

Aspect	Description
<b>A.1.1 - Companies</b>	Information should be available in order to identify the legal owners and beneficial owners of companies and any corporate bodies, as well as persons in the ownership chain. Where a legal owner acts on behalf of any other person as a nominee or under a similar arrangement, that other person should also be identified.
<b>A.1.2 – Bearer shares</b>	Where jurisdictions permit the issuance of bearer shares, there should be appropriate mechanisms in place that allow the owners of such shares to be identified.
<b>A.1.3 - Partnerships</b>	Information should be available that identifies the partners and the beneficial owners of any partnership that: <ul style="list-style-type: none"> <li>● has income, deductions or credits for tax purposes in the jurisdiction,</li> <li>● carries out business in the jurisdiction, or</li> <li>● is a limited partnership formed under the laws of that jurisdiction.</li> </ul>
<b>A.1.4 - Trusts</b>	Identity and beneficial ownership information should be available in respect of express trusts: <ul style="list-style-type: none"> <li>● governed by the laws of the jurisdiction,</li> <li>● administered in the jurisdiction, or</li> <li>● in respect of which a trustee is resident in that jurisdiction.</li> </ul>
<b>A.1.5 - Foundations</b>	Where jurisdictions allow for the establishment of foundations, information should be available to identify the founders, members of the foundation, council and beneficiaries (where applicable), as well as any beneficial owners of the foundation or persons with the authority to represent the foundation.

Appropriate coverage combined with compliance, monitoring, and enforcement processes are critical to ensuring that laws and regulations on beneficial ownership are observed. In addition, the Global Forum reviews seek input from peers to verify if jurisdictions under review have been able to provide beneficial ownership information when requested, where the foreseeable relevance of the request is demonstrated.

### Element A.1: Availability of legal and beneficial ownership information for legal entities

Element A.1 requires that ownership and identity information, including information on legal and beneficial owners, must be available for all relevant entities to the tax authorities. This information should be available on legal persons (companies, partnerships and foundations formed under a jurisdiction's laws), and legal arrangements (trusts and similar arrangements governed by the laws of the jurisdiction).

Beneficial ownership information should also be available with respect to foreign entities that have a sufficient nexus with the jurisdictions:

- foreign companies<sup>29</sup> being a resident for tax purposes (for example by reason of having its place of effective management or administration there), or having its headquarters located there;
- foreign partnerships having income, deductions or credits for tax purposes in the jurisdiction or carrying out business in the jurisdiction;
- foreign legal arrangements, including trusts, being administered in the jurisdiction or having one trustee / administrator residing in that jurisdiction.

Element A.1 breaks down into five aspects detailed in Table 1.

The definition and methodology for the identification of the beneficial owners should follow the FATF Recommendations and jurisdictions should have clear rules in place that stipulate the method for identifying the beneficial owners for both legal persons and legal arrangements. Box 13 elaborates on the

29. Where a foreign company has sufficient nexus to another jurisdiction that other jurisdiction will also have the responsibility of ensuring the legal information is available. Beneficial ownership information is also required to the extent the company has a relationship with an AML/CFT obligated service provider that is relevant for the purposes of EOIR (2016 EOIR ToR, Element A.1, p. 19).

methods that can be applied by jurisdictions to identify the beneficial owners of legal persons and Box 14 includes some examples of EOIR peer reviews' findings in relation to the application of the "control by other means" concept.

#### Box 13. Approaches for the identification of the beneficial owners of legal persons

In the Global Forum EOIR peer reviews, two methods of identification of beneficial owners of legal persons have been accepted as meeting the standard: the cascading approach as described in the FATF Recommendations (see Box 6) and the simultaneous approach.

- In the **cascading approach**, the individuals who have a controlling ownership interest in a legal person should be identified first. To the extent that there is doubt as to whether the individual(s) with the controlling ownership interest is the beneficial owner(s) or where no natural person exerts control through ownership interests, then individuals (if any) exercising control through other means should be identified. Finally, if there is still no individual identified, then the individual who holds the position of senior managing official should be identified
- In the **simultaneous approach**, the persons controlling the legal person through means other than ownership should always be identified together with the persons controlling the legal person through ownership interests. This approach can capture more individuals than the cascading approach. The designation of the senior managing official as beneficial owner remains the default position when no individual meets the criteria of control through ownership interests or other means.

Under both the cascading and the simultaneous approach:

- A look-through approach must apply to identify beneficial owners in case of indirect control.
- Joint control is relevant where natural persons act together to exert control over a legal person.
- All the steps of the methodology should be followed, and the exceptional nature of the identification of a senior managing official should be underlined in the legal framework to avoid that entities identify such persons by default.

Source: Global Forum Peer Reviews.

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### Box 14. Control through means other than ownership – some examples from Global Forum peer reviews

In the cascading approach, the natural persons who exert control over a legal person through means other than ownership must be identified when it is not possible to identify natural persons who exert control through ownership (usually because none meets a prescribed ownership threshold), or if there is doubt that those natural persons are in fact all the beneficial owners.

The natural persons who control the company through means other than ownership, such as through personal or financial influence, must be identified in all cases in the simultaneous approach.

In any case, the methodology for identifying the beneficial owners should always include the identification of all natural persons who effectively exercise control through means other than ownership. The following include some situations that have led to recommendations in Global Forum peer reviews (non-exhaustive list):

- **Absence of a requirement.** When the definition/procedures applied by companies and/or AML/CFT obliged persons do not explicitly require the identification of all natural persons who could effectively exercise control through means other than ownership, in-box recommendations were issued in these cases. For example, in some jurisdictions, the definition of beneficial owner limits beneficial ownership to the ultimate beneficial owner of shares and other securities in a legal person, excluding individuals having ultimate control through other means than ownership.
- **Absence of clear guidance.** In-box recommendations were issued where there were no guidelines for legal persons and arrangements for identification of beneficial owners who exert control through means other than ownership. In other cases, the

lack of sufficient written guidance regarding the concept of “control through other means” led to an in-text recommendation.

- **Limited scope.** In some cases, “control” was defined narrowly, and it was limited to decision making for the legal entity and control over appointments and removal of most of the decision-making bodies and/or executive bodies of the legal entity. The definition of control did not envisage other means of control, for examples, through personal connection, financing, historical or contractual association. These situations have led to an in-box recommendation.
- **Limitation to control through legally enforceable instruments.** In other cases, the legal framework did not allow identification of an individual as beneficial owner when this control was not legally enforceable. This situation would not capture control through family ties for instance. Similarly, in other jurisdictions the term “control by other means” was mainly related to legal criteria for formal relationships such as company subsidiaries and, therefore, did not cover all the relevant situations. These situations led to the issuance of in-box recommendations.

No recommendations have been issued where the aspect of control through means other than ownership was explained in the legal framework or in guidance. For example, in Serbia the AML/CFT guidelines define “indirect control” as situations whereby a natural person can exercise a dominant influence on decisions made by the managing bodies of the company in relation to financing and business operations, while not being “visible” in the ownership structure. The definition of “dominant influence” was broad enough to not constrain other examples of indirect control including control through other means, such as control exerted through a family connection or contractual relationship.

Note: An “in-box” recommendation is issued when a material deficiency has been identified in the jurisdiction’s legal and regulatory framework or practice, that prevents the implementation of a core element of the EOIR standard. An “in-text” recommendation refers to a deficiency that is not material and does not prevent the implementation of the EOIR standard.

Source: Global Forum Peer Reviews and OECD (2023), *Global Forum on Transparency and Exchange of Information for Tax Purposes: Serbia 2023 (Second Round): Peer Review Report on the Exchange of Information on Request, Global Forum on Transparency and Exchange of Information for Tax Purposes*, OECD Publishing, Paris, <https://doi.org/10.1787/ccb5184d-en>.



The methodology to be applied to identify the beneficial owners of certain legal entities, such as partnerships or foundations, may vary depending on their specific form and structure. For instance, in some cases, a partnership or a foundation may be treated as a legal arrangement instead of a legal person (see example 3 in Box 11). In some other cases, where a partnership is considered as a legal person, the controlling ownership interest criteria and the use of a specific threshold, which is the first step of the cascading approach may not be the relevant criterion for the identification of beneficial owners (see Box 16).

The availability of beneficial ownership information is usually the first step of CDD requirements of

AML/CFT obliged persons but, as jurisdictions progressively adopt a multi-pronged approach with various sources of beneficial ownership information, the requirements under the different laws (e.g. company law, tax law, AML/CFT law) for the different obliged persons (e.g. companies, partnerships, AML/CFT obliged persons) can differ. This can result in the coexistence of different beneficial ownership requirements in the same jurisdiction, and peer reviews assess how they interact in practice to determine whether they meet the standard (see Box 15). Box 17 provides a practical example of how the co-existence of different obligations can affect the beneficial ownership information recorded by information holders.

### Box 15. Coexistence of different beneficial ownership requirements in a jurisdiction

It is common that different beneficial ownership requirements (approaches) coexist in a jurisdiction. Ideally, they should all meet the standard (in particular the definition and the identification method) but, in some cases, some of the approaches adopted meet the standard and, in others, none of the approaches adopted individually fully meets the standard. In these circumstances, the Global Forum peer reviews consider how the different approaches interact to determine whether or not they align with the standard.

It is frequently encountered in peer reviews that **the definitions and/or methodologies to identify the beneficial owners across laws are different**, and/or do not define “beneficial owner” in the exact same manner as in the FATF Recommendations and the 2016 ToR. However, this situation does not prevent the jurisdiction from meeting the standard if, considering the different definitions/methodologies together, the beneficial ownership information is available in line with the standard in all cases.

For example, where the AML/CFT law is not fully in line with the beneficial ownership standard (e.g. an ownership interest threshold is used for the identification of the beneficial owner of a trust), obligations under other laws may cover or mitigate the identified gap (e.g. the company law mandates the trustee to identify as beneficial owners all the natural persons who are a party to the trust without using a controlling ownership interest threshold, to look through interposed entities to identify their beneficial owners, to keep beneficial ownership information up to date and

report it to the register).

On the other hand, when the AML/CFT law is considered to be up to the standard but the other laws present shortcomings, it is checked whether the AML/CFT law covers all relevant entities in all cases. Where this is not the case, for instance because not all relevant entities are required to continuously engage an AML/CFT obliged person, the gaps identified in the other laws had an impact on the outcome of the peer review.

Specific cases have been encountered where jurisdictions have multiple non-corresponding methods for identification of beneficial owner(s) for a single type of legal entity, for example, a simultaneous approach in the tax law and a cascading approach in the AML/CFT law, different controlling ownership thresholds across different laws, absence of a default senior management step, etc. This could lead to challenges and confusion for those responsible for identifying the respective beneficial owners, and recommendations have been issued in peer reviews to provide clear guidance in these cases or to monitor that the different obligations lead to the identification of beneficial owners in line with the standard.

Therefore, jurisdictions should consider harmonising the different obligations relating to beneficial ownership information (including the definition and method of identification) to ensure a consistent implementation by all information holders (e.g. AML/CFT obliged persons, entities, public authorities).

Source: Global Forum Peer Reviews.

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### Box 16. Identifying the beneficial owner of partnerships: legal persons or legal arrangements?

The 2016 ToR requires that information in respect of each beneficial owner of a relevant partnership be available. In addition, as noted under the explanation of FATF Recommendation 24, partnerships can fall within the scope of legal persons if they comply with the definition of this term contained in the Glossary of FATF Recommendations. According to the Glossary, "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" and "This can include companies, bodies corporate, foundations, anstalt, partnerships, or associations and other relevantly similar entities".

- In some jurisdictions, particularly civil law jurisdictions, partnerships have legal personality, so they apply the beneficial ownership identification process established for legal persons to partnerships. Therefore, the cascading approach is applied to partnerships as it is applied to companies.
- In other jurisdictions, partnerships are treated as legal arrangements and therefore all the beneficial owners of the parties to the partnership, in principle all the partners, and any other natural person exercising control over the partnership should be identified.

As explained in the FATF Recommendations, the particular features of an entity (whether a legal person or arrangement) should be considered when applying the appropriate methodology aimed at identifying the beneficial owners.

Global Forum peer reviews have discussed whether the treatment of partnerships for the identification of their beneficial owners should be different depending on whether they are legal persons or legal arrangements, and considered that, in both cases, the difference in form and structure of the existing type of partnerships should be taken into account.

Partnerships<sup>30</sup> (limited and general) usually present some differences in their structure and level of control when compared to companies. For example, the control or liability of the general partners may not depend on their contribution to the partnership or on a particular threshold. This is a fundamental difference with companies, where shareholders are usually liable up to the amount of their investment contribution. As a consequence, where such a partnership is considered as a legal person, the mere application of the ownership interest criterion provided in Step 1 of the cascading approach would not be appropriate for the identification of its beneficial owners. Indeed, if the cascading approach is used by the jurisdiction, general partners would not necessarily be identified as beneficial owners under Step 1 (control through ownership interest), but all general partners would be identified as beneficial owners under Step 2 (control through means other than ownership). However, to ascertain whether limited partners are beneficial owners there would be need to follow Steps 1 and 2 to verify if their capital contribution gives them ownership interest and/or if they exert control through other means in the partnership. Beneficial owners behind corporate general and limited partners should also be identified. In addition, depending on the particular circumstances of the partnership, there could be also other natural persons exercising effective control. Such persons should also be considered and identified as beneficial owners.

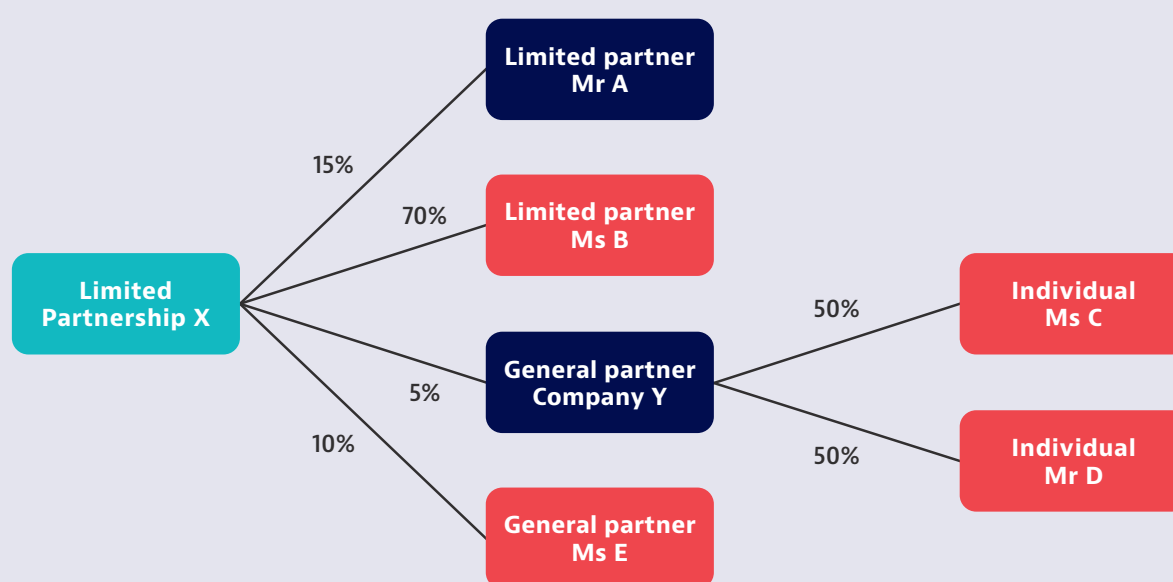
Therefore, in principle, Steps 1 and 2 of the cascading approach would apply as the identification of beneficial owners through ownership interest should raise doubt as to whether the natural persons identified in Step 1 are the only beneficial owners of the partnership. Ultimately, all natural persons exercising control over the partnership by any means should be identified as beneficial owners. Jurisdictions should enact detailed guidance to instruct AML/CFT obliged persons on the identification of beneficial owners of partnerships.

30. A partnership arises when two or more persons come together and agree to carry out business and to share the profits and losses of such business mutually. The partners collectively form the partnership, which can have legal personality or not.

**Example on beneficial owners of a partnership**

Limited partnerships (LP) are considered as legal persons in the jurisdiction. LP X has two limited partners, Mr A and Ms B, who own 15% and 70% of LP X respectively, based on their investment or capital contribution. The liability of the limited partners is limited to the extent of their contribution, and they do not have management control over LP X. Company Y and Ms E are the general partners of LP X, and they contributed 5% and 10% of the total investment, respectively. The general partners have unlimited liability over LP X and exercise complete control over its managements, irrespective of their contribution. Ms C and Mr D are the owners of Company Y, and each owns 50% of its shares.

Assuming that the methodology for the identification of beneficial owners is in line with the standard and that a 25% threshold for ownership interest has been established in step 1 of the cascading approach, the beneficial owners of LP X would be as follows:



■ Beneficial owners of Limited Partnership X

In relation to the limited partners, Ms B would be identified as a beneficial owner because she has an ownership interest greater than 25%, even if she has no management control over the LP X. Following the same ownership criteria and the fact that he has no management control over the LP X, Mr A is not a beneficial owner.

Considering that there are two general partners exercising control through means other than ownership, this should lead to a doubt as to whether the natural person identified in step 1 of the cascading approach (i.e. Ms B) is the only genuine beneficial owner of the LP X. Therefore, step 2 of the cascade should apply and any other natural person exercising a control over the LP X should be also identified as beneficial owner. The level of management control of the general partners is irrespective of their ownership participation. Therefore, even if Ms E contributed only 10% of the total investment of LP X, she should be identified as a beneficial owner. There is a need to also look through the general partner Company Y to identify the beneficial owners, and Ms C and Mr D would be identified as beneficial owners of LP X, because they surpass the 25% ownership threshold in Company Y and exercise complete control through it over LP X.

In conclusion, the beneficial owners of LP X are Ms B, Ms E, Ms C and Mr D.

Source: Global Forum Secretariat.

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### Box 17. Multiple beneficial ownership thresholds in a legal framework: An example of possible mismatches in the identification of the beneficial owner(s)

Jurisdiction A has recently amended both its company and AML/CFT legal framework to align them with the FATF Recommendations and EOIR standard. The Mutual Evaluation Report from the FATF has highlighted the frequent misuse of certain legal entities in Jurisdiction A, including companies holding primarily financial assets or conducting financial activities. Therefore, for such entities, the AML/CFT authorities decided that in the first step of the cascading approach the threshold for controlling ownership interest will be at least 10%; instead of 25% applied by other companies. The company law already provides for a controlling ownership interest threshold of at least 25%.

Jurisdiction A applies a multi-pronged approach to ensure the availability of beneficial ownership information. Beneficial ownership information must be kept in an ad-hoc register by the entities themselves. In addition, a beneficial ownership register is maintained by the Registrar of Companies. All entities are obliged to have a relationship with an AML/CFT obliged person who has the obligation to provide to the Registrar of Companies the beneficial ownership information obtained as part of the CDD procedures.

Company X manages financial assets and has opened a bank account with Bank Y. The CDD procedure resulted in the identification of three natural persons as beneficial owners. Two of the beneficial owners owned 40% of the company, while the third beneficial owner owned 15% of the company. Another shareholder was not identified as beneficial owner as it owned the remaining 5% of the shares and does not exercise control through other means. Based on this information, Bank Y communicates to the Registrar that Company X has three beneficial

owners. However, under the register held by Company X, only the names of the two shareholders who own 40% of the capital feature as beneficial owners, given the different threshold applicable under company law.

The competent authority of Jurisdiction A receives an EOI request from Jurisdiction B for accounting records and beneficial ownership information of Company X, which is under investigation in Jurisdiction B. Jurisdiction B wants to know in particular whether Mr Smith is actually a beneficial owner of the company, as he has not declared a participation as well as the dividends paid by Company X in his tax return. On the ground that the request covers both accounting records and beneficial ownership information, the competent authority requests both pieces of information directly from Company X, which confirms that Mr Smith is not a beneficial owner of the company as Mr Smith is the shareholder who owns only 15% of Company X. However, if the information was collected from the Registrar of Companies Mr Smith would have been reported as a beneficial owner.

This example highlights that, while all the stakeholders involved in the identification of beneficial owners acted in line with the existing legal framework, Jurisdiction A has contradicting information as regards the beneficial owners of Company X. In the scenario described above, the Jurisdiction A would be unable to confirm the identity of Mr Smith as beneficial owner of Company X.

Other issues may also arise in such a situation. For instance, the cross-checking of the beneficial ownership information held by the entities and by the Registrar may be less effective.

Source: Global Forum Secretariat.

### Entities that cease to exist and inactive entities

The 2016 ToR establish that identity, ownership, accounting and banking information should be available for at least five years even in cases where the relevant legal entity ceases to exist (due to striking off, liquidation or otherwise). In these situations, effective enforcement provisions should also be in place to ensure availability of information, including adequate supervision, as well as sufficiently strong enforcement powers.

The issue of inactive entities corresponds to a particular situation where the relevant legal person or arrangement has not ceased to exist and is still registered with the authority (e.g. commercial register, tax administration), but either has no business activity (i.e. they have ceased their activity, either temporarily or permanently) or is considered inactive under the conditions set out in the domestic law of a jurisdiction (e.g. is not complying with its obligations to file legal and beneficial ownership information, accounting information, tax returns, etc.).

Inactive entities do not fit with the category of entities that have ceased to exist, as the inactive entities still legally exist in government records. They pose a risk to transparency when they retain legal personality, hold assets, and/or can carry out business with foreign entities with a valid registration number. Therefore, (up to date) beneficial ownership information may not be available in all cases for these entities which do not comply with their filing obligations and which may not comply with their record-keeping obligations. This risk is enhanced by insufficient monitoring and supervision programmes to enforce obligations relating to maintaining/reporting beneficial ownership information on inactive entities, particularly when they form a significant proportion of the registered entities.

Jurisdictions should therefore take actions to reduce the risk that beneficial ownership information would not be available or updated with respect to such inactive companies, by:

- establishing clear criteria for causing an entity to be officially deemed as inactive, e.g. not filing (tax, ownership, accounting) returns for more than one year,
- ensuring that information remains available by designating a person responsible for maintaining the relevant information and records when a legal entity is considered inactive,
- eliminating/reducing the number of inactive entities in official registers by introducing rules, including maximum period of inactivity, for the striking off and dissolution of entities that fall into the inactive category.

In any case, during the period of inactivity or apparent business inactivity of entities, authorities should closely supervise and enforce their beneficial ownership reporting and record-keeping obligations.

### Element A.3: Availability of legal and beneficial ownership information on bank accounts

Availability of ownership information on bank account holders is also required. Specifically, Element A.3 of the 2016 ToR requires the identification of the account holder (natural person, legal person or legal arrangement), the identification of the beneficial owner(s) of the account, as well as the maintenance of all related financial and transactional information (see Table 2). Such information must be kept for at least five years, including in case of cessation of the bank

Beneficial ownership information must be kept up to date by taking into account all facts and circumstances that may lead to a change of the status of the natural person identified as such. Up-to-date information is also obtained by conducting CDD measures at a certain time frequency. Such frequency depends on the risk category of the client and must be explicitly time-bound, including for low-risk clients (e.g. at least every three years for low-risk clients, at least every two years for medium-risk clients, and at least every year for high-risk clients). The definition and identification of the beneficial owner(s) by banks must be in line with the FATF Recommendations.

Jurisdictions must be able to demonstrate that they have a robust supervision mechanism in place to ensure compliance of banks with their obligation to identify beneficial owners of their clients. In particular, where they have access to the register of beneficial owners held by a public authority and fed by the entities themselves, banks should not rely solely on this source of information. They should perform their due diligence for identifying the beneficial owners of bank accounts and use reliable and independent sources of information for verifying the identity of such beneficial owners.

Table 2. **Aspects required under Element A.3 of the EOIR standard**

Aspect	Description
<b>A.3.1 – Banking information of account holders</b>	Banking information should include all records pertaining to the accounts as well as to related financial and transactional information, including information regarding the legal and beneficial owners of the accounts.



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### Element B.1: Access to beneficial ownership information

The available information must be accessible, so competent authorities for EOI for tax purposes are able to obtain it. Therefore, they should be able to obtain information relating to legal ownership and beneficial ownership, and accounting and banking information.

This requires powers to obtain the information from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information).

Element B.1 breaks down into five aspects, as detailed in Table 3.

### A greater convergence between the FATF recommendations and the EOIR standard

With the incorporation in 2016 of the requirement for availability and access to beneficial ownership information in the EOIR standard, the Global Forum has laid down parameters for an effective beneficial ownership framework through its peer review process without being prescriptive. The amendments to Recommendations 24 and 25 generally converge with the approach followed in the Global Forum peer reviews. In some areas, these Recommendations are more prescriptive and go beyond the requirements of the EOIR standard, contributing to further reinforcement of the beneficial ownership frameworks.

Table 4 and Table 5 provide a synoptic view of the convergence between the EOIR standard and its peer review and the updates to the FATF Recommendations 24 and 25 and their Interpretive Notes.

Table 3. **Aspects required under Element B.1 of the EOIR standard**

Aspect	Description
<b>B.1.1 – Ownership and banking information</b>	Competent authorities should have the power to obtain and provide information held by banks, financial institutions and any person acting in an agency or fiduciary capacity (including nominees and trustees), as well as information regarding the legal and beneficial owners of companies, partnerships, trusts, foundations and other relevant entities.
<b>B.1.2 – Accounting records</b>	Competent authorities should have the power to obtain and provide accounting records for all relevant legal persons and legal arrangements.
<b>B.1.3 – No domestic tax interest</b>	Competent authorities should use all relevant information-gathering measures to obtain the information requested, notwithstanding that the requested jurisdiction may not need the information for its own tax purposes.
<b>B.1.4 – Effective enforcement provisions</b>	Jurisdictions should have in place effective enforcement provisions to compel the production of information.
<b>B.1.5 – Secrecy provisions</b>	Jurisdictions should not decline a request on the basis of its secrecy provisions (e.g. bank secrecy, corporate secrecy) to respond to a request for information made pursuant to an exchange of information mechanism.

Table 4. Comparison between the EOIR standard and its peer review and the updates to the FATF Recommendation 24 and its Interpretive Note

	2016 EOIR standard and its peer reviews	2022 updates in Recommendation 24 and its Interpretive Note
<p><b>Definition and identification methods of the beneficial owners</b></p>	<p>The EOIR standard relies on the general FATF definition of beneficial owner.</p> <p>The peer reviews include checks on the following aspects of the definition and method of identification of the beneficial owner.</p> <ul style="list-style-type: none"> <li>● the beneficial owners are always natural persons,</li> <li>● the determination of control through ownership covers direct and indirect control as well as individual and joint control,</li> <li>● the determination of beneficial owners under the “control through other means”,</li> <li>● the identification of the natural person holding the position of senior manager, in case no beneficial owner is identified, whatever the approach followed (AML/CFT approach, entity approach, registry approach, tax administration approach).</li> </ul> <p>The peer reviews also consider whether the method of identification of the beneficial owners takes into consideration the form and structure of the legal person (e.g. application of the cascading approach to partnerships).</p>	<p>The revised definition of beneficial owner in the FATF Glossary clarifies that only a natural person can be an ultimate beneficial owner, and more than one natural person can be the ultimate beneficial owner of a given legal person.</p> <p>It also includes a reference to the “cascading” approach provided by Recommendation 10 (CDD of FIs).</p>
<p><b>Coverage</b></p>	<p>The EOIR standard requires the availability of the legal and beneficial ownership information for <b>all relevant legal persons and arrangements</b>, which includes (i) a company, foundation, Anstalt and any similar structure, (ii) a partnership or other body of persons, (iii) a trust or similar arrangement, (iv) a collective investment fund or scheme, (v) any person holding assets in a fiduciary capacity and (vi) any other entity or arrangement deemed relevant in the case of the specific jurisdiction assessed.</p> <p>This includes <b>foreign companies having a sufficient nexus with the jurisdiction, including being resident there for tax purposes</b> or, where the concept of residence for tax purposes is not relevant in the jurisdiction, one possible alternative nexus is that the company has its headquarters there.</p>	<p>In addition to <b>companies and other legal persons</b> created in a country (including foundations, Anstalt, limited liability partnerships), Recommendation 24 now covers the <b>companies that present AML/CFT risks with sufficient links with the country</b> (if not created in the country), determined on the basis of the risk.</p> <p>Examples of sufficient link include having a permanent establishment, branch or agency, having a non-occasional relationship with AML/CFT obliged service providers, having significant real estate, employing staff or being tax resident in the country.</p>

## Beneficial ownership standard

	2016 EOIR standard and its peer reviews	2022 updates in Recommendation 24 and its Interpretive Note
<p><b>Adequate, accurate and up-to-date information</b></p>	<p>The EOIR standard requires that adequate, accurate and up-to-date beneficial ownership information be available to the competent authorities for exchange of information for tax purposes in a timely manner.</p> <p>While these notions are not defined in the 2016 ToR of the EOIR standard, the peer reviews include checks on:</p> <ul style="list-style-type: none"> <li>● the <b>adequacy</b> of the information, i.e. the level of details collected on the beneficial owners (name, address, link to the entity, etc.)</li> <li>● the <b>accuracy</b> of the information, i.e. that this identity and beneficial ownership status be checked using reliable and independent source, and the <b>updating</b> of the information, i.e. that it is updated in case of change and on a periodic basis.</li> </ul>	<p>Addition of definitions for:</p> <ul style="list-style-type: none"> <li>● <b>“adequate information”</b>: information that is sufficient to identify the natural person(s) who are the beneficial owner(s), and the means and mechanisms through which they exercise beneficial ownership or control.</li> <li>● <b>“accurate information”</b>: information which has been verified to confirm its accuracy by verifying the identity and status of the beneficial owner using reliable, independently sourced/obtained documents, data or information.</li> <li>● <b>“up-to-date information”</b>: information which is as current and up to date as possible, and is updated within a reasonable period (e.g. within one month) following any change.</li> </ul>
<p><b>Multi-pronged approach</b></p>	<p>The EOIR standard requires the availability of legal and beneficial ownership information to competent authorities for exchange of information for tax purposes. <b>There is no requirement for a jurisdiction to have multiple sources of beneficial ownership information.</b> Therefore, the availability of beneficial ownership information can be achieved with one approach or a combination of approaches.</p> <p>The peer reviews assess whether the approach(es) implemented by the assessed jurisdiction ensure the availability of the beneficial ownership information for all relevant legal persons.</p> <p>While one approach may be sufficient, the experience of the peer reviews has shown that <b>where a multi-pronged approach is followed the assessment of the legal framework and its implementation in practice is more positive.</b></p>	<p>Requirement of multiple sources of beneficial ownership information, including (as mandatory approach):</p> <ul style="list-style-type: none"> <li>● <b>a company approach</b>, i.e. the maintenance / retention of beneficial ownership information by companies on their own beneficial ownership, <b>and</b></li> <li>● <b>a registry approach</b>, i.e. the retention by one or more public authority(ies) or body(ies) of beneficial ownership information of legal persons,</li> <li>● or an alternative mechanism, i.e. the possibility for countries to use an alternative mechanism instead of a registry approach provided that it also provides authorities with efficient access to beneficial ownership information, <b>and</b> any additional supplementary measures that are necessary to ensure the beneficial ownership can be determined; including for example information held by regulators or stock exchanges; or obtained by FIs and/or DNFBPs in accordance with Recommendations 10 and 22 (i.e. <b>AML/CFT approach</b>).</li> </ul>

	2016 EOIR standard and its peer reviews	2022 updates in Recommendation 24 and its Interpretive Note
<p><b>Bearer shares and share warrants</b></p>	<p>Where the issuance of bearer shares is permitted, the EOIR standard prescribes that <b>appropriate mechanisms</b> be in place that <b>allow the owners of bearer shares to be identified</b> (identification mechanisms).</p> <p>There is <b>no specific requirement to prohibit the issuance of new bearer shares</b>. However, the abolition of bearer shares was the way for most of the jurisdictions to address the recommendations in this area, with the elaboration of certain rules regarding transition period and juridical effects of such an abolition (e.g. on ownership rights).</p> <p>There is <b>no specific requirement to inform the company</b> about the identity of the bearer share holder (as far as the company knows the identity of the custodian holding the information).</p>	<p>The revision of Recommendation 24 and its Interpretive Note includes:</p> <ul style="list-style-type: none"> <li>● <b>prohibition on issuance of new bearer shares</b> and bearer share warrants,</li> <li>● an <b>identification mechanism</b> for any existing bearer shares and bearer share warrants applying one or more of the following mechanisms in a reasonable timeframe: <ul style="list-style-type: none"> <li>• <b>conversion</b> into registered form,</li> <li>• <b>immobilisation</b> by requiring them to be held with a regulated FI or professional intermediary.</li> </ul> </li> <li>● <b>and obligation for the bearer shares holders to inform the company</b> about their identity and for the company to record this information before any rights associated therewith can be exercised.</li> </ul> <p>Requirement to <b>take measures to prevent and mitigate the risk</b> of the misuse of bearer shares and bearer share warrants, as well as of other similar instruments without traceability.</p>
<p><b>Nominee arrangements</b></p>	<p>Legal and beneficial ownership information must be available, including information on the person on whose behalf a legal owner acts as a nominee or under a similar arrangement (nominator).</p> <p>While the EOIR standard <b>does not prescribe any approach</b> to meet this requirement, the peer review reports have included recommendations in situations where the status of the nominee was not disclosed to the company resulting in the identity of the nominator not being available, as such situations were considered not in line with the EOIR standard.</p> <p>The availability of identity information regarding directors, including <b>nominee directors</b>, is not required by the EOIR standard.</p>	<p>The revision of Recommendation 24 and its Interpretive Note have introduced the <b>definitions</b> of a <b>nominator</b>, a <b>nominee shareholder</b> and a <b>nominee director</b>.</p> <p>They also include options which can be combined to prevent and mitigate the risk nominee arrangements may pose:</p> <ul style="list-style-type: none"> <li>● requiring nominees to <b>disclose their status</b> and their <b>nominator</b> to the company and any relevant registry so that the <b>nominee status is recorded in the register</b> as a <b>public information</b>,</li> <li>● requiring nominees to be <b>licensed</b>, to disclose their <b>status</b> and their <b>nominator</b> to the authority collecting beneficial ownership information, to <b>maintain</b> information on their nominator and its beneficial owner(s), <b>prohibiting</b> the use of nominee directors or nominee shareholders.</li> </ul>

## Beneficial ownership standard

	2016 EOIR standard and its peer reviews	2022 updates in Recommendation 24 and its Interpretive Note
<b>Access to beneficial ownership information</b>	<p>The EOIR standard requires that competent authorities for exchange of information for tax purposes have the <b>power to obtain and provide information regarding the legal and beneficial owners</b> of companies, partnerships, trusts, foundations, and other relevant entities including, to the extent that it is held by the jurisdiction's authorities or is within the possession or control of persons within the jurisdiction's territorial jurisdiction, and legal ownership information on all such persons in an ownership chain.</p> <p>In addition, the jurisdictions must provide information to their EOIR partners in an <b>effective manner</b>.</p>	<p>Competent authorities (including law enforcement authorities) must have <b>timely access</b> to information held or obtained by a public authority and / or FIs and DNFBPs.</p>
<b>Requirements on international cooperation</b>	<p>The EOIR standard provides that a jurisdiction should request and provide information under its network of agreements in an effective manner. It should have appropriate organisational processes and resources in place to ensure quality of requests and quality and timeliness of responses.</p> <p>Exchange of information assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions.</p>	<p>The Interpretive Note to Recommendation 24 indicates that:</p> <ul style="list-style-type: none"> <li>● Countries should not place unduly restrictive conditions on the exchange of information or assistance.</li> <li>● Information must be kept in a readily accessible manner to facilitate international cooperation.</li> <li>● Countries should designate and make public the agency(ies) responsible for responding to all international requests for beneficial ownership information.</li> </ul>

Source: OECD (2023), *Handbook for Peer Reviews on Transparency and Exchange of Information on Request: Second Round*, *op. cit.*; FATF (2012-2023), *International standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*, *op. cit.*



Table 5. Comparison between the EOIR standard and its peer review and the updates to the FATF Recommendation 25 and its Interpretive Note

	2016 EOIR standard and its peer reviews	2023 updates to Recommendation 25 and its Interpretive Note
<b>Definition of beneficial owners</b>	<p>Under the EOIR standard, beneficial ownership information includes information on the identity of the settlor, trustee(s), protector (if any), all of the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust.</p> <p>For other legal arrangements, the natural persons holding similar position should be considered as beneficial owners.</p> <p>Although there is no explicit requirement for a <b>“look-through” approach</b> when legal entities are interposed in the positions held in the trust or similar legal arrangement, EOIR peer reviews assess whether the assessed jurisdictions require to look through these entities to always identify their beneficial owners, who in all cases must be natural persons.</p>	<p>The revision of Recommendation 25 expands the definition of beneficial owners for trusts, by including the settlor(s), trustee(s), protector(s) if any and each beneficiary, class of beneficiaries or objects of power, as well as any other natural person exercising ultimate effective control over the trust.</p> <p>For a similar legal arrangement, this should include persons holding equivalent positions.</p> <p>The new definition also makes clear that a <b>“look-through” approach</b> is required if the settlor, trustee, protector, beneficiary or object of powers are legal persons or arrangements.</p>
<b>Adequate, accurate and up-to-date information</b>	<p>The EOIR standard requires that adequate, accurate and up-to-date beneficial information be available to the competent authorities in a timely manner (see Table 1).</p>	<p>Recommendation 25 is also now aligned with Recommendation 24 on the definition of adequate, accurate and up-to-date information (see Table 1).</p>
<b>Coverage</b>	<p>The EOIR standard requires the availability of identity and beneficial ownership information for <b>all relevant entities and arrangements</b>, including trusts and similar arrangements.</p> <p>The peer reviews have, for instance, assessed the availability of identity and beneficial ownership information of express trusts, fiducies, fideicomisos and <i>waqfs</i>.</p> <p>Jurisdictions are also required to take all reasonable measures to ensure that beneficial ownership information is available to their competent authorities in respect of express trusts:</p> <ul style="list-style-type: none"> <li>(i) governed by the laws of that jurisdiction</li> <li>(ii) administered in that jurisdiction</li> <li>(iii) or in respect of which a trustee is resident in that jurisdiction.</li> </ul> <p>It is however not expected that a trust law jurisdiction enforces such requirements globally on every trust governed by their law.</p>	<p>The amendments to Recommendation 25 and its Interpretative Note clarify that they cover express trust and other similar legal arrangements.</p> <p>The “nexus” for triggering the obligation of the trustee to obtain and hold beneficial ownership information on the trust now applies in the <b>countries where the trustee is resident or where the trustee administers the trust</b> while it applied previously only in the countries with trusts governed under their laws.</p> <p>The obligations of the countries with trusts or similar legal arrangements governed under their laws is now limited to identifying and making publicly available the different type, forms and basic features of those arrangements and the process for the setting up of those legal arrangements and for the obtaining of basic and beneficial ownership information.</p>

## Beneficial ownership standard

	2016 EOIR standard and its peer reviews	2023 updates to Recommendation 25 and its Interpretive Note
<b>Multi-pronged approach</b>	<p>The EOIR standard only requires that the availability of beneficial ownership information on trusts and other legal arrangement be available, <b>without any requirement of multiple sources of beneficial ownership information.</b></p> <p>The experience of the peer reviews shows that the use of a mutli-pronged approach to ensure the availability of beneficial ownership information on trusts and other legal arrangements usually leads to better outcomes.</p>	<p>Contrary to the revised Recommendation 24, <b>Recommendation 25 does not prescribe any multi-pronged approach</b> but indicates that <b>countries should consider using other sources of information</b>, such as registries of public authorities, other competent authorities and AML/CFT obliged persons.</p>
<b>Risk assessment</b>	<p>The information must be available for all express trusts and other legal arrangements, regardless on the risk.</p>	<p>All countries must now assess the AML/CFT risks associated with the different types of trusts and similar legal arrangements, as far as they are governed under their law, administered or with a trustee resident in their territory or have sufficient links with the country. Sufficient links may include significant and ongoing business relations with FIs or DNFBPs, significant real estate/other local investment or tax residence in the country.</p>
<b>Requirements on international cooperation</b>	<p>The EOIR standard provides that a jurisdiction should request and provide information under its network of agreements in an effective manner. It should have appropriate organisational processes and resources in place to ensure quality of requests and quality and timeliness of responses.</p> <p>Exchange of information assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions.</p>	<p>The Interpretive Note to Recommendation 25 indicates that:</p> <ul style="list-style-type: none"> <li>● Countries should not place unduly restrictive conditions on exchange of information or assistance.</li> <li>● Countries should consider keeping information held in a readily accessible manner to facilitate rapid, constructive and effective international cooperation.</li> <li>● Countries should designate and make public, where possible, the agency(ies) responsible for responding to all international requests for beneficial ownership information.</li> </ul>

Source: OECD (2023), *Handbook for Peer Reviews on Transparency and Exchange of Information on Request: Second Round, op. cit.*; FATF (2012-2023), *International standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, op. cit.*

## 2. Lessons learned from Global Forum peer reviews

As of May 2024, 132 out of 171 member jurisdictions had already been reviewed by the Global Forum under the second round of evaluations following the 2016 ToR which requires availability of beneficial ownership information on all relevant legal entities (Elements A.1) and on bank accounts (Element A.3).

### OVERALL PERFORMANCE IN TRANSPARENCY OF BENEFICIAL OWNERSHIP INFORMATION

The outcomes of the Global Forum peer reviews show that the legal frameworks and the level of practical implementation of transparency of beneficial ownership on bank accounts (Element A3) is in the vast majority satisfactory. In contrast, the availability of beneficial ownership information on all relevant legal entities (Elements A.1) has more legal or practical deficiencies and appears relatively less mature. This analysis is based on a snapshot of the situation of jurisdictions at the time of their review, as they may have enhanced their beneficial ownership frameworks post-evaluation.

#### Legal and regulatory framework

To ensure availability of beneficial ownership information on legal entities or bank accounts, the legal and regulatory framework implemented by a jurisdiction should:

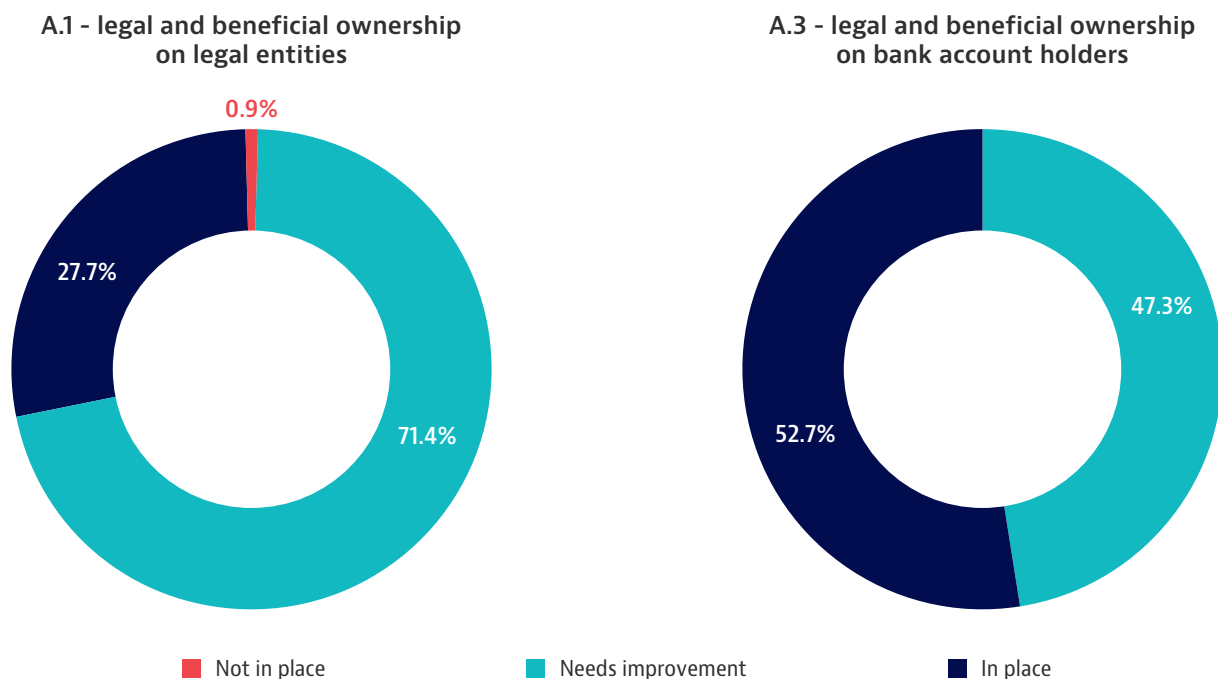
- adopt a definition of beneficial ownership and a methodology for the identification of the beneficial owners in line with the FATF Recommendations and the EOIR standard
- cover all relevant entities
- establish updating and record-keeping obligations
- provide for sanctions in case of failure.

The outcomes of the reviews as depicted in Figure 8 show that 52.7% of the reviewed jurisdictions (59 jurisdictions) have a sound legislation to ensure the availability of beneficial owners of bank accounts (Element A.3) while 72.32% of the reviewed jurisdictions (81 jurisdictions) had deficiencies at the time of their review in their legislation for ensuring the availability of legal and/or beneficial ownership on legal entities (Element A.1).

Both Elements A.1 and A.3 contain other aspects connected to ownership in addition to beneficial ownership (i.e. legal ownership of legal persons and

## Lessons learned from Global Forum peer reviews

FIGURE 8. Determinations of the Legal and regulatory framework – Elements A.1 and A.3



Source: Global Forum Peer Reviews.

arrangements, identity of account holders, transactions). Although gaps identified on those additional aspects may also influence the determinations issued, deficiencies on identity and legal ownership usually affect the availability of beneficial ownership information.

### PRACTICAL IMPLEMENTATION OF THE BENEFICIAL OWNERSHIP STANDARD

The assessments of the practical implementation of the beneficial ownership requirements also show significant contrast between Element A1 and A3 (see Figure 9).

Only 52.68% of the reviewed jurisdictions (59 jurisdictions) received a satisfactory rating (i.e. at least “Largely compliant”) regarding the availability of legal and beneficial ownership on all relevant entities (Element A.1). The gaps identified were related to most of the key elements for the transparency of beneficial ownership, including the impact of deficiencies identified in the availability of legal ownership information on the availability of beneficial ownership information. In addition to the legal deficiencies, gaps have been identified in many instances with respect to the effective supervision of the beneficial ownership requirements. It reflects that beneficial ownership requirements with

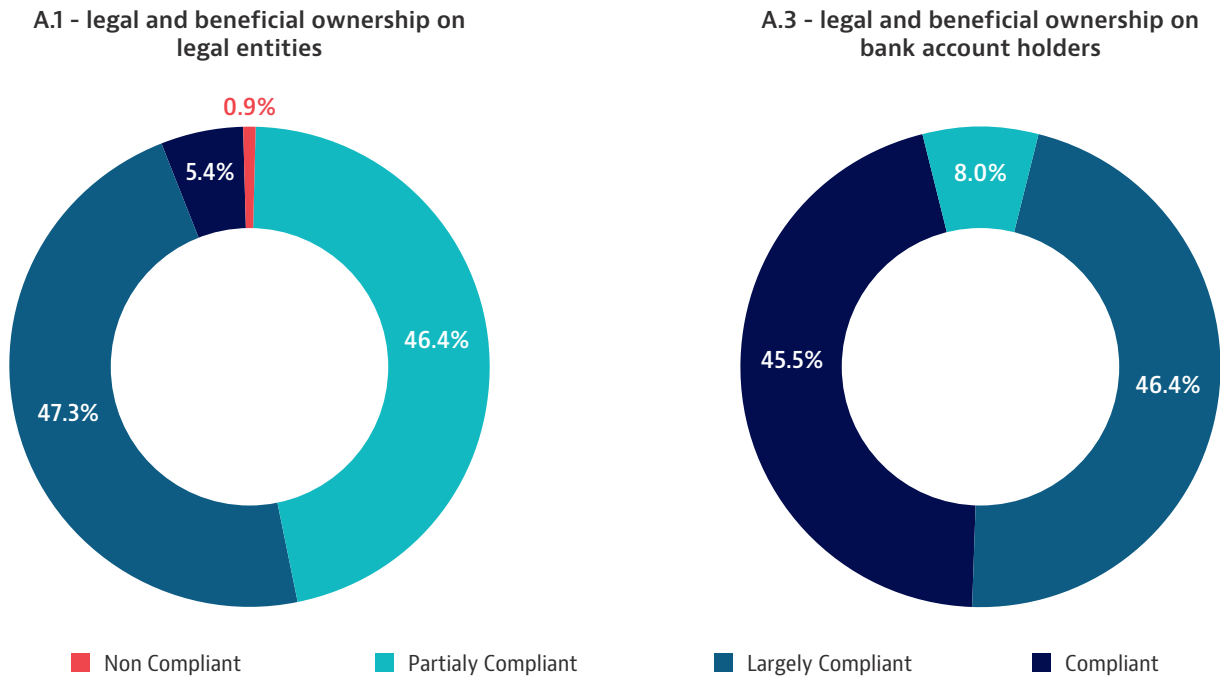
respect to all relevant legal persons and arrangements is still relatively new and challenging for many jurisdictions and those jurisdictions are progressively implementing their approaches taking into account their specific circumstances.

On the other hand, the level of practical implementation of transparency of beneficial ownership on bank accounts (Element A3) is in the vast majority satisfactory with 91.96% of the reviewed jurisdictions (103 jurisdictions) being rated at least “Largely compliant”. This is because (i) the AML/CFT legislation usually ensures the availability of identity and ownership information of bank accounts, (ii) banks are in general well aware of their AML/CFT obligations and dedicate adequate resources (e.g. compliance officers, procedures, trainings, audits), and (iii) banks are usually well supervised by a public authority (e.g. central bank) which has suitable expertise, resources and enforcement powers and effectively applies them.

### TRENDS BY BENEFICIAL OWNERSHIP IMPLEMENTATION APPROACH

Generally, jurisdictions have in place AML/CFT frameworks to meet the requirements of Element A.3, and some rely only on that approach to meet the requirements of

FIGURE 9. Practical implementation of legal framework – Elements A.1 and A.3



Source: Global Forum Peer Reviews.

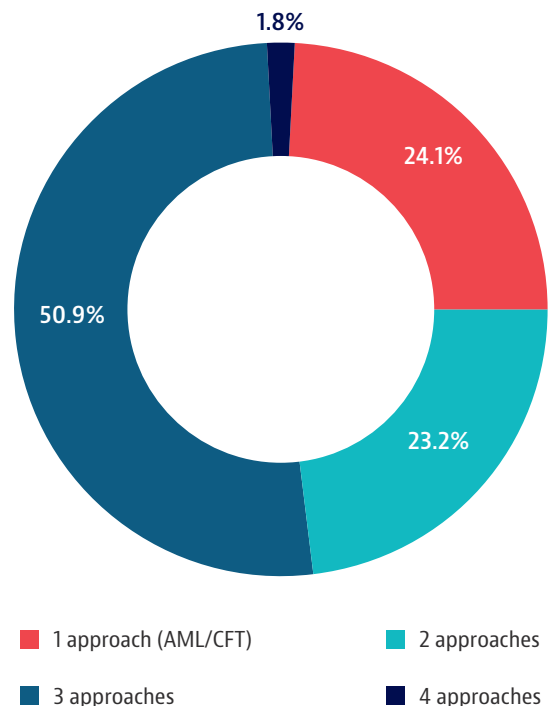
Element A.1, while others combine that approach with one or more approaches.

It is important to highlight again that the gaps identified in relation to Element A.1, while mostly reflect deficiencies in relation to the transparency of beneficial ownership, can also reflect the impact of deficiencies in relation to the availability of legal ownership information.

Out of the 112 jurisdictions fully reviewed, the majority (75.9% equivalent to 85 jurisdictions) used two or more approaches for the availability of beneficial ownership information. On the contrary, 24.11% (27 jurisdictions) used only one approach (AML/CFT) for the availability of beneficial ownership information (see Figure 10).

Figure 11 and Figure 12 summarise and compare the performance of jurisdictions predominantly using one approach versus those using a multi-pronged approach. Empirical data from Global Forum peer reviews indicates that a multi-pronged approach can lead to a more complete coverage of all legal persons and arrangements, as deficiencies or gaps identified in one approach can be compensated by another one. However, deficiencies in the definition or in the methodology for identification of beneficial owners, on updating and record-keeping requirements,

FIGURE 10. Percentage of jurisdictions using one or more approaches for the availability of beneficial ownership information





## Lessons learned from Global Forum peer reviews

and/or poor supervision and enforcement mechanisms can have an impact on the overall availability of accurate,

adequate and up to date beneficial ownership information and thus, in the determinations and ratings received.

FIGURE 11. **Element A.1 – Number of approaches used and determination of the legal framework**

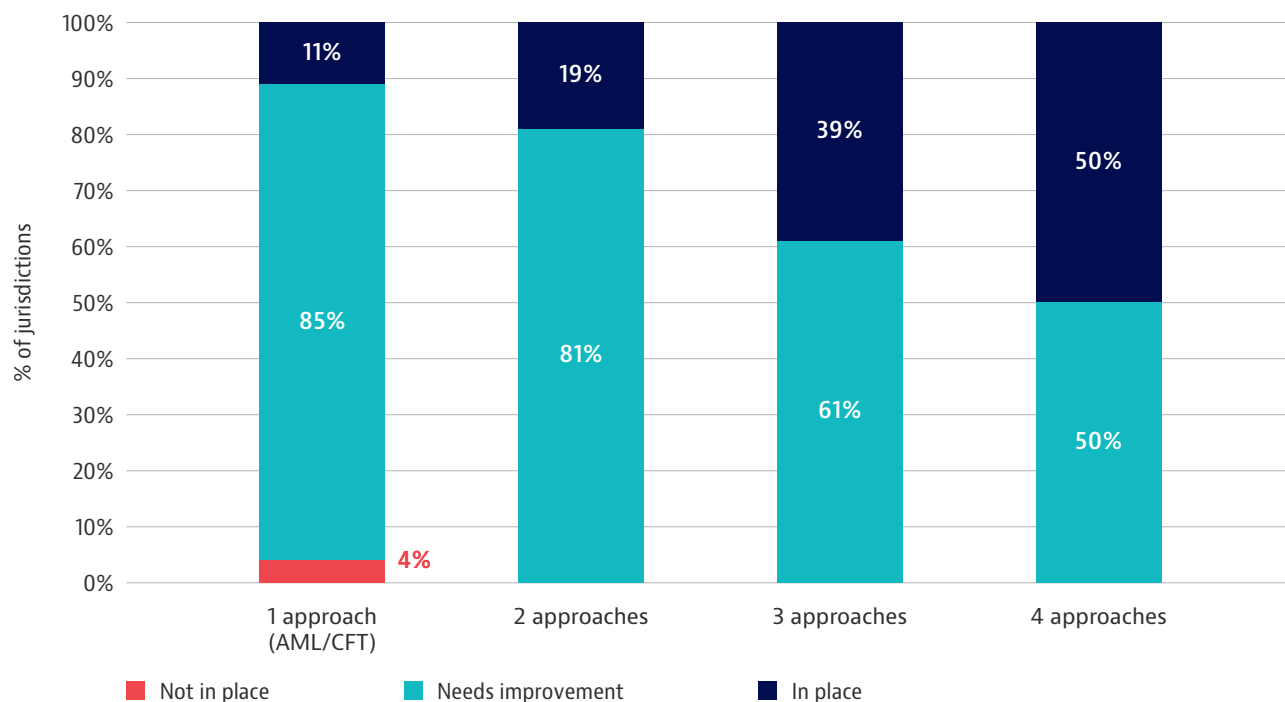
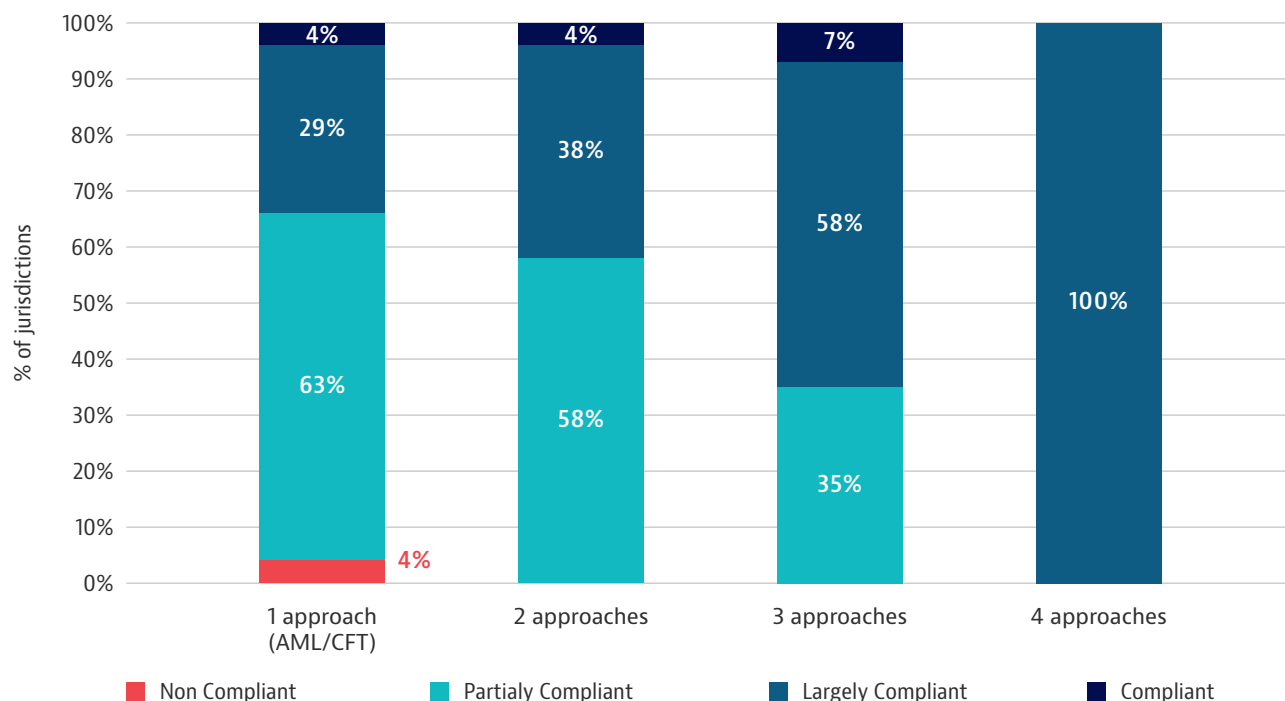


FIGURE 12. **Element A.1 – Number of approaches used and rating of the practical implementation**



Source: Global Forum Peer Reviews.

Box 18 illustrates the example of one jurisdiction that uses a multi-pronged strategy with three approaches for the availability of beneficial ownership information and that was rated as Compliant in Element A.1.

### CONCLUSIONS AND LESSONS LEARNED FROM GLOBAL FORUM PEER REVIEWS

The empirical data gathered in the peer review process shows a trend for a multi-pronged approach to ensure availability of beneficial ownership information on all relevant entities, and the availability of the beneficial ownership information of bank accounts essentially relies on the AML/CFT framework.

- The use of various legal frameworks and thus more sources of information generally leads to a more solid beneficial ownership system. In particular, the use of the AML/CFT framework combined with one or more approaches usually has led to better results.
- Even though the combination of legislations and sources has demonstrated positive results, the number of reviewed jurisdictions using such a multi-pronged approach is still limited.
- The use of a multi-pronged approach does not automatically lead to efficient beneficial ownership systems. The legal framework, regardless of the approaches used or category of information holder concerned, needs to be in line with the beneficial ownership standard and combined with strong monitoring and supervision to be fully effective.
- The use of central beneficial ownership registers is a growing trend and has the benefit of centralising the information with one authority. The main advantages of a sound central register approach (which can take the form of the tax authority approach) are as follows:
  - Combined synergies with the AML/CFT and entity approaches that strengthen the beneficial ownership framework.
  - Real-time access to comprehensive beneficial ownership is ensured for law enforcement authorities and can be provided, subject to conditions and criteria decided by the jurisdictions, to other persons (e.g. AML/CFT obliged persons, any person with legitimate interest or even general public).
  - Improvement of the quality of the information and the supervision of the beneficial ownership obligations, in particular where (i) the persons having access to the register must report discrepancies, (ii) law enforcement authorities supervise compliance of AML/CFT obliged

#### Box 18. Beneficial ownership implementation using a multi-pronged approach

##### *France – Compliant with Element A.1*

In France, the availability of beneficial ownership information for legal persons and arrangements is ensured by measures established in the AML/CFT law, commercial law and central register requirements.

The commercial law requires all commercial enterprises to open a bank account, and all banks are bound to AML/CFT legislation which requires them to identify the beneficial owners of their clients, in line with the EOIR Standard. DNFBBs are also subject to AML/CFT regulations. In addition, all commercial entities registered or with premises in France are required to obtain and hold accurate and current information on their beneficial owners. Further, entities must provide this information to the Commercial and Companies Register at registration and then update it periodically. The information kept by the Register is centralised at the national level by the National Institute of Industrial Property (INPI).

Although the concept of trusts does not exist in the French legal system, administrators of foreign trusts are required to register it with the authority and file information on the identity of the administrator, the settlors, and the beneficiaries. This information is held in a central register of trusts.

The supervision of the obligations under the AML/CFT framework is carried out by various bodies (supervisory authorities for financial markets, for banks and for DNFBBs and the Ministry of the Economy and Finance). In relation to the central beneficial owner register, the clerk of the commercial court verifies that the beneficial ownership information provided is complete and in line with the regulatory provisions. Failure to file beneficial ownership information with the register, or the filing of inaccurate or incomplete information, is punishable with six month's imprisonment and a monetary fine.

Note: This analysis is a snapshot of the situation at the time of the review and may no longer accurately reflect the state of the law applicable in France at the time of publication of this toolkit.

Source: OECD (2018), *Global Forum on Transparency and Exchange of Information for Tax Purposes: France 2018 (Second Round): Peer Review Report on the Exchange of Information on Request*, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264291058-en>.

persons and entities with their beneficial ownership obligations, and (iii) the authority responsible for the register carries out at least a formal control of declaration and the identification of non-filers.

# 3. Implementation options to ensure the availability of beneficial ownership information

This toolkit presents four main policy options or approaches for ensuring availability of beneficial ownership information under the EOIR standard:

- AML/CFT approach: beneficial ownership information is maintained by FIs and DNFBPs pursuant to CDD obligations under the AML/CFT framework;
- Entity approach: beneficial ownership information is kept by the entities themselves;
- Central register approach: a register of beneficial owners is held by a public authority; or
- Tax administration approach: beneficial ownership information is kept by the tax administration.

Each approach is discussed in this chapter, including the main parameters and challenges for their effectiveness. Each of the approaches presented includes case studies – based on Global Forum peer reviews – of jurisdictions that have used or that have relied predominantly on that approach for the implementation of their beneficial ownership frameworks. Those jurisdictions may have also used other complementary approaches to fully meet the requirements of the EOIR standard, as the examples show.

The EOIR standard is not prescriptive and only requires that jurisdictions have in place a system that effectively ensures the availability of complete, accurate and up-to-date beneficial ownership information for all relevant legal entities. This requirement may be met by using one of the above-mentioned options or a combination of two or more of them (a multi-pronged approach).

## KEY ASPECTS TO CONSIDER FOR THE IMPLEMENTATION OF A BENEFICIAL OWNERSHIP FRAMEWORK

Jurisdictions are free to choose the approach that best fits their own context and specific operating legal environments. They can choose one policy approach, or a mix of approaches. To decide where to place the beneficial ownership requirements in the legal framework, jurisdictions should first undertake a gap analysis (see Annex 1 for a beneficial ownership gap analysis tool), which may include:

## Implementation options to ensure the availability of beneficial ownership information

- a review of the current legislation and existing legal provisions ensuring availability of and access to beneficial ownership information;
- an identification of beneficial ownership information source(s) (i.e. information holder(s)) and the policy frameworks that enable the tax authority and other law enforcement authorities to access them; and
- an identification of gaps (if any) that hinder complete availability of beneficial ownership information for all entities and/or alignment with the EOIR standard, including the definition, identification, verification, updating of information on beneficial owners and the related supervision mechanisms.

Based on this gap analysis, a jurisdiction can take an informed decision on how to mitigate these gaps and where to best place beneficial ownership requirements within its system. Some jurisdictions, depending on their own context and particular circumstances, may find appropriate to consider an incremental or tiered approach for implementing their beneficial ownership framework, for instance, by establishing first the obligation for entities to maintain the information themselves and then, when the operational conditions or other requirements are met, setting up a central register that will hold the beneficial ownership information.

Whatever approach the jurisdiction decides to take, the policy framework must always consider some key aspects in terms of implementation, as detailed in Table 6.

The experience derived from Global Forum peer reviews shows that using a combination of complementary approaches, i.e. a multi-pronged approach, allows for greater transparency and for completeness in beneficial ownership coverage (see Box 19) and can serve to detect inconsistencies and inaccuracies in any one of the information sources.

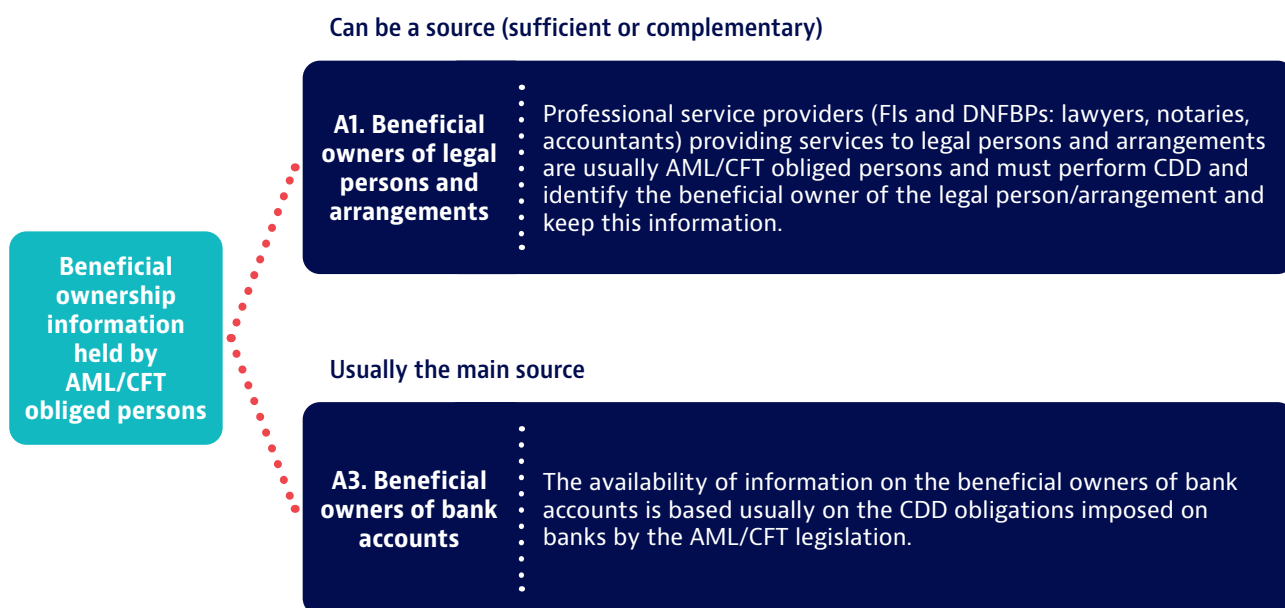
### BENEFICIAL OWNERSHIP INFORMATION MAINTAINED BY AML/CFT OBLIGED PERSONS

#### General presentation of the AML/CFT approach

The AML/CFT approach refers to jurisdictions relying on information already collected by persons subject to AML/CFT legislation (i.e. FIs and DNFBPs) and its related CDD obligations. Jurisdictions usually have an existing AML/CFT framework in place which may be complemented by other approaches to ensure the availability of comprehensive beneficial ownership information for all relevant legal entities in line with the EOIR standard (see Figure 13).

The AML/CFT framework is usually the main source of beneficial ownership information under Element A.3

FIGURE 13. Beneficial ownership information held by AML/CFT obliged persons



## Implementation options to ensure the availability of beneficial ownership information

Table 6. **Key aspects to consider for the implementation of a beneficial ownership framework**

Aspect	Description
<b>Legal aspects</b>	A definition and a methodology for identifying beneficial owners, in line with the FATF Recommendations and the EOIR standard.
	Ensure complete coverage of all relevant legal persons and legal arrangements within the jurisdiction.
	Determine clear obligations for information collection and reporting, including what information (e.g. name, date of birth, address, nationality, tax identification number, nature of control, date of acquisition and cessation of the beneficial ownership status if relevant) is to be collected (see Box 20) and kept and in which format.
	Ensure beneficial ownership information is adequate, accurate and up-to-date. Thus, the information must be: <ul style="list-style-type: none"> <li>● sufficient to identify the beneficial owner(s),</li> <li>● verified, and</li> <li>● updated regularly and at least each time the person in charge of maintaining the information becomes aware of a change of beneficial owner or suspects a change has occurred. As a backstop, the reporting entity (either the AML/CFT obliged person, the legal person or the legal arrangement) periodically confirms and/or validates that the beneficial ownership information held by it is accurate and up-to-date.</li> </ul>
	Define retention requirements. This means that beneficial ownership information and underlying documentation (e.g. documentation of the steps undertaken and documents relied upon to identify beneficial owners, and to verify and keep up to date beneficial ownership information, etc.) must be kept for a minimum of five years thereafter, as appropriate depending on the nature of the information holder. This should encompass the following circumstances depending on the approach(es) followed by the jurisdiction: <ul style="list-style-type: none"> <li>● the end of the business relationship or the completion of the occasional transaction;</li> <li>● the change of beneficial owner(s);</li> <li>● the termination of the function of manager of the legal arrangement; or</li> <li>● the cessation of the legal person or legal arrangement.</li> </ul>
	Ensure access to beneficial ownership information by relevant authorities, in particular competent authorities for EOIR purposes.
<b>Operational aspects</b>	Define clear supervision mechanisms and responsibilities, and ensure adequate enforcement, monitoring and effective sanctions for non-compliance.
	Define access requirements for beneficial ownership information.
	Ensure awareness and educate obliged persons on their beneficial ownership obligations (AML/CFT obliged persons, legal entities and/or public authorities depending on the approach implemented by the jurisdiction) through training, binding guidelines, forms, guidance, etc.
	Ideally, maintain the register in a secure IT platform, to facilitate the reporting of information by obliged entities, to lower transactional costs, to ensure the integrity of the information, and to facilitate the checking of consistency with other data sources.



### Box 19. Interaction of the different approaches for beneficial ownership

#### The AML/CFT framework as a starting point

Jurisdictions usually have an AML/CFT framework in place and use it as a starting point for implementing a beneficial ownership system. In some instances, the AML/CFT framework may be sufficient to ensure transparency of beneficial owners for all relevant legal entities and an effective access to beneficial ownership information by relevant authorities. In other cases, jurisdictions should either strengthen the scope and requirements of the AML/CFT framework and/or complement it with other approaches (tax, commercial and/or central register frameworks) to meet the requirements of the EOIR standard.

In any case, the availability of beneficial ownership of bank accounts (Element A.3 of the 2016 ToR) relies on the compliance of banks with their CDD obligations under the AML/CFT framework. It implies that banks are effectively subject to CDD obligations in line with the FATF Recommendations. They must identify and maintain information on the account holders and their beneficial owners.

If a jurisdiction decides to use only the AML/CFT framework to fully meet the EOIR standard, it should ensure that it covers all relevant legal persons and arrangements as required by Element A.1, for example, by imposing CDD and beneficial ownership obligations not only on banks and other FIs, but also on DNFBNs, in particular legal professions, accountants, tax advisors, and trust and company service providers, and by requiring all relevant legal persons and arrangements to have a continuous business relationship with an AML/CFT obliged person (e.g. by requiring to maintain a bank account in the jurisdiction). In addition, it is important that the beneficial ownership information is up to date and that the legal framework specifies a timeframe for updating the beneficial ownership information when a change occurs (e.g. within 15 days after the change), as well as a frequency for validating that the information is adequate, accurate and up to date. The effectiveness of the monitoring and supervision of these AML/CFT obliged persons on their CDD obligations is then critical to ensure the availability of beneficial ownership information in all cases. Regarding foreign legal entities, beneficial ownership information should also be available to the extent that they have a relationship with an AML/CFT obliged service

provider that is relevant for the purposes of EOIR.

However, the AML/CFT framework does not always ensure by itself availability of beneficial ownership information in all circumstances as required by the EOIR standard. Even where the AML/CFT framework is aligned with FATF Recommendations, this framework may not fully meet the requirements of the EOIR standard. For instance, a legal requirement for all entities (i.e. legal persons and arrangements) to establish a continuous business relationship with an AML/CFT obliged person is not always required; the professions covered by CDD obligations may not be broad enough; or the supervision of the CDD obligation of one or more professions may not be effective enough. Another common issue is the updating of the information: it is usually subject to the risk level of the client in the AML/CFT framework whereas the EOIR standard requires it to be up to date independently of any risk level. Finally, relying on the AML/CFT framework may hinder access to beneficial ownership information where the tax authority is not able to identify the relevant information holder.

#### Complementing the AML/CFT approach

Most of the jurisdictions complement the AML/CFT approach with other approaches in order to comply with the EOIR standard. For instance, one solution is to establish an obligation for all entities to identify and maintain beneficial ownership information (entity approach). An extension of this approach is to require entities to report this information to a central register held by a public authority and/or the tax authority (central register approach/tax administration approach). This can help to further strengthen the AML/CFT framework, improve monitoring and enforcement of beneficial ownership obligations and facilitate access to beneficial ownership information by authorities.

The different approaches should not be seen in a vacuum and can sometimes overlap. The multi-pronged approach helps to improve the quality of the information on beneficial owners and allows to compensate any deficiency identified in one (or more) approaches by complementing it with another one to ensure that beneficial ownership information on all relevant legal entities is available and accessible in all circumstances as required by the EOIR standard.

Source: Global Forum Secretariat.



## Implementation options to ensure the availability of beneficial ownership information

### Box 20. Information to be collected on the beneficial owners

Beneficial ownership obligations should include the requirement to collect enough details on the beneficial owners, as necessary to identify and verify their identity, and to enable cross checks of the information from other beneficial ownership information holders (e.g. entities, public authorities, AML/CFT obliged persons). This aspect is assessed in Global Forum peer reviews and good practices on the minimum elements to collect on a beneficial owner include (non-exhaustive list):

- first name(s), including middle name(s), and last name(s)
- date and place of birth
- Identification number (e.g. identity card number, passport number)
- tax identification number
- residence address
- business address
- profession or occupation
- telephone number, mobile phone number
- email
- nature of control (e.g. control through ownership, through voting rights, or through other means such as family relationships), and details of the nature of control (e.g. percentage of shareholding, percentage of voting rights, type of contracts or relationships other than ownership through which control is exercised, position held in the legal arrangement)
- date of acquisition and/or cessation of the beneficial ownership status.

Source: Global Forum Secretariat.

of the EOIR standard (i.e. availability of beneficial ownership information on bank account from banks). The AML/CFT framework may also be wide enough in its scope to be a sufficient source of beneficial ownership information under Element A.1 (i.e. availability of beneficial ownership information for all relevant legal entities). For instance, in addition to FIs, DNFs

such as attorneys, tax advisors, notaries, accountants, auditors, administrators and trustees, providing services to legal persons and arrangements, may be subject to CDD obligations.

An exclusive reliance on the AML/CFT framework with AML/CFT obliged persons as the unique source of beneficial ownership information can fully meet the requirements of the EOIR standard. The general conditions required for the availability of beneficial ownership information under the AML/CFT framework relate to the coverage and scope of all relevant legal entities, to the determination of the CDD and record-keeping obligations<sup>31</sup>, and to the access to beneficial ownership information by law enforcement authorities, including the tax administration.

However, the AML/CFT approach may not ensure full compliance with the EOIR standard where:

- there is no obligation for all relevant legal entities to have a continuous business relationship with an AML/CFT obliged person subject to CDD obligations, and
- an effective supervision of compliance with CDD obligations is not in place.

In these cases, beneficial ownership information may not be available in all cases.

An example of an effective AML/CFT approach in a jurisdiction could be where all relevant legal entities have the obligation to maintain an account with a bank in said jurisdiction. All banks in that jurisdiction should be subject to CDD obligations in line with the FATF Recommendations and be subject to effective supervision.

Table 7 summarises the main parameters and challenges to consider for the effectiveness of this approach.

### Key parameters and challenges of an effective AML/CFT approach

This section explains in detail the key parameters that jurisdictions should consider for the implementation of an effective AML/CFT approach to fully meet the requirements of the EOIR standard, and the related challenges.

31. FATF Recommendations 10 and 11, 17, and 22.

## Implementation options to ensure the availability of beneficial ownership information

Table 7. **Main parameters and challenges for effectiveness of the AML/CFT framework approach**

	Main parameters	Potential challenges
<b>Coverage and scope</b>	<ul style="list-style-type: none"> <li>● All relevant domestic legal persons and arrangements must have the obligation to have a continuous relationship with an AML/CFT obliged person subject to CDD obligations. This requirement should also apply to inactive entities.</li> <li>● Regarding foreign legal entities, beneficial ownership information must be available to the extent that they have a relationship with an AML/CFT obliged person.</li> </ul>	<ul style="list-style-type: none"> <li>● No obligation for all domestic legal persons and arrangements to have a continuous relationship with an AML/CFT obliged persons such as a DNFBP or a FI (e.g. bank account, accountant) subject to CDD obligations. This approach may be challenging with respect to inactive entities or where the relationship with the AML/CFT obliged person is not continuous and transactions are only occasional (e.g. notary).</li> </ul>
<b>Determination of obligations</b>	<ul style="list-style-type: none"> <li>● The definition of beneficial ownership and the methodology for identification of beneficial owners must be in line with the FATF Recommendations and the EOIR standard.</li> <li>● CDD obligations are clearly stated in the AML/CFT legislation to identify and verify the identity of the beneficial owners, to update the information in case of change or doubt and, as a backstop, regularly with a specified frequency, and retain CDD documentation for at least five years, including in case of cessation of the client and/or cessation of activity of the AML/CFT obliged person.</li> </ul>	<ul style="list-style-type: none"> <li>● The definition of beneficial ownership or the methodology for the identification of the beneficial owners is not fully aligned with the FATF Glossary and Recommendations and the EOIR standard.</li> <li>● Beneficial ownership information is not verified nor regularly updated because there are no clear rules established in this regard (e.g. different approaches depending on the risk without minimum requirements for low risk clients, or different approaches and frequencies across AML/CFT obliged persons).</li> <li>● The application of simplified CDD is not in accordance with the FATF Recommendations and the EOIR standard.</li> <li>● Record-keeping obligations are not ensured in case an AML/CFT obliged person ceases its activity.</li> </ul>
<b>Monitoring and supervision</b>	<ul style="list-style-type: none"> <li>● Existence of a supervisor with adequate mandate, experience, resources and enforcement powers.</li> <li>● Strong supervision of AML/CFT obliged persons (FIs and DNFBPs) with respect to CDD obligations, comprehensive compliance strategy and effective enforcement measures and sanctions.</li> <li>● Strong supervision of the obligation to engage in a continuous relationship with an AML/CFT obliged person with sanctions applied in case of failure.</li> </ul>	<ul style="list-style-type: none"> <li>● Difficulty in monitoring and supervision due to a lack of resources. Unequal supervision depending on the supervisory authority and/or the sector supervised.</li> <li>● Inadequate level of coverage of the supervision measures.</li> <li>● Insufficient depth of the supervision.</li> <li>● Lack of or deficiencies in the compliance strategy.</li> <li>● Lack of or deficiencies in the supervision of the obligation to engage in a continuous relationship with an AML/CFT obliged person.</li> <li>● Lack of sanctions applied in case of non-compliance.</li> </ul>
<b>Access to information by tax/competent authorities</b>	<ul style="list-style-type: none"> <li>● Access to CDD and beneficial ownership information by law enforcement authorities, including tax authorities, without restrictions.</li> <li>● Annual reporting obligation to a public authority of the identity of the holder of the beneficial ownership information.</li> </ul>	<ul style="list-style-type: none"> <li>● Broad professional privilege and secrecy without adequate exceptions may cause conflict with the supervision of AML/CFT obliged persons by supervisory authorities and the access to beneficial ownership information by law enforcement authorities, including tax authorities.</li> <li>● Difficulty to identify the information holder of the beneficial ownership information which may delay or prevent access to this information by law enforcement authorities, including tax authorities.</li> </ul>

## Implementation options to ensure the availability of beneficial ownership information

### Coverage and scope

To ensure complete availability of beneficial ownership information, relevant legal entities within the jurisdiction<sup>32</sup> must have the obligation to always engage in a continuous relationship with an AML/CFT obliged person established in the jurisdiction. For instance, any legal entities may be required to always maintain an account with a bank established in the jurisdiction, for example when the corporate tax can only be paid via a local bank account (see Box 21). To establish such an obligation, attention should be paid to the specific circumstances of the jurisdiction, as the effectiveness of this approach may be affected in jurisdictions confronted to high levels of informality and low rate of bank penetration. Attention should also be paid to relevant legal persons and arrangements which might not be considered as taxpayers or have no taxes due.

With respect to inactive entities, while they should remain subject to the above-mentioned obligations, it may be difficult to establish the continuity of the business relationship with the AML/CFT obliged person.

In several instances, legal entities may have an occasional relationship rather than a continuous one with particular AML/CFT obliged persons (e.g. notary, lawyer). Through an occasional relationship, beneficial owners are identified at the time of an occasional operation, but this information will not be up to date. Further, in some jurisdictions the obligation for legal persons or arrangements to engage certain AML/CFT obliged persons depends on certain criteria such as the legal form, the size, or the turnover, and thus it does not ensure the availability of the information in all cases. Persons subject to CDD obligations with which a continuous relationship could be established may be, for example, banks, accountants, auditors, representative agents, trustees, and administrators of legal arrangements.

In addition, there are two other important aspects to consider when determining the AML/CFT obliged persons with which the continuous relationship will be required:

- the ability of these persons to undertake effective CDD obligations, in particular on complex structures.

For example, an accountant working independently may not have the same knowledge and capacity to identify the beneficial owners of their clients as a more experienced accounting firm or a bank with a dedicated department; and

- the level of monitoring and supervision exercised on the different categories of AML/CFT obliged persons specifically on their CDD obligations (see below on foreign trusts and other legal arrangements).

### Foreign trusts and other legal arrangements

A particular aspect to be considered by jurisdictions that undertake the AML/CFT approach is the coverage of foreign trusts and other legal arrangements.

In some civil law jurisdictions, structures similar to trusts (e.g. *fideicomisos*) are regulated by law, but in other civil law jurisdictions, trusts and other legal arrangements are not contemplated by the law. However, if nothing prevents residents to act as trustees, protectors, or administrators of legal arrangements created under foreign laws (foreign legal arrangements), jurisdictions should ensure that beneficial ownership information is available for any foreign legal arrangements managed by a resident. This obligation should be clearly established in the legislation. This can be achieved by including any person acting as trustee, protector, or administrator of a legal arrangement (whether or not in a professional capacity)<sup>33</sup> as an AML/CFT obliged person subject to CDD obligations. In that scenario, they should also be required to disclose their status to the AML/CFT obliged persons with which they are operating on behalf of the legal arrangement.

In addition, it may be more difficult to implement an obligation to engage an AML/CFT obliged person for certain foreign legal arrangements, for example, in the case of trusts administered by non-professional trustees. In those situations, resident non-professional trustees of foreign legal arrangements should be subject to registration and their CDD obligations should clearly include the identification of the beneficial owners of the trust. This would ensure that the beneficial owners of these arrangements are effectively identified.

32. Beneficial ownership information of foreign legal entities should be available to the extent that they have a relationship with an AML/CFT obliged person that is relevant for the purposes of EOIR (2016 EOIR TOR, Element A.1, p. 19, footnote 9).

33. According to the Glossary of the FATF Recommendations, trustees may be professional (e.g. depending on the jurisdiction, a lawyer or trust company) if they are paid to act as a trustee in the course of their business or non-professional (e.g. a person acting without reward on behalf of family) (FATF, 2012-2023).

## Implementation options to ensure the availability of beneficial ownership information

### Box 21. AML/CFT approach: examples of coverage of relevant entities

To ensure that through the AML/CFT framework beneficial ownership information will be available for all relevant entities in accordance with the standard, some jurisdictions have established a clear obligation in the legal framework for all or some legal entities to maintain a bank account in the jurisdiction (non-exhaustive examples):

- India's tax law requires to include in tax returns of relevant entities and arrangements the number of their bank accounts opened in the jurisdiction. This requirement ensures that beneficial ownership information will be available in all cases with a bank with which a continuous relationship is established: (i) banks are required to identify beneficial owners of account holders, (ii) all companies and partnerships established or doing business in the jurisdiction are required to file their tax returns annually, and (iii) the completion of relevant tax return forms in the jurisdiction is mandatory.

- In France, a combination of several requirements to have a bank account opened in the jurisdiction was satisfactory to ensure that an entity or arrangement will engage a bank in the jurisdiction required to identify their beneficial owners. These requirements related to the deposit of funds when creating an entity, the payment of any taxes in the jurisdiction and any payment above EUR 1 000.

On the other hand, without a clear legal requirement for all relevant entities to have a bank account in the jurisdiction, the coverage is not considered sufficient even though the percentage of entities effectively having a bank account within the jurisdiction is significant. For instance, the coverage was not deemed sufficient in cases where, for example, at least 95% of entities registered for tax purposes have a bank account in the jurisdiction and the likelihood of not engaging any AML/CFT obliged person was considered low.

Note: This analysis is a snapshot of the situation at the time of the review and may no longer accurately reflect the state of the law applicable in the jurisdictions at the time of publication of this toolkit.

Source: Global Forum Peer Reviews and OECD (2017), *Global Forum on Transparency and Exchange of Information for Tax Purposes: India, 2017 (Second Round): Peer Review Report on the Exchange of Information on Request*, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264283756-en>; OECD (2018), *Global Forum on Transparency and Exchange of Information for Tax Purposes: France 2018 (Second Round): Peer Review Report on the Exchange of Information on Request*, op. cit.

### Determination of obligations

CDD obligations must be adequately and clearly stated in the AML/CFT legislation for AML/CFT obliged persons to adequately capture and maintain beneficial ownership information from their customers, as required under the FATF Recommendations 10, 11, 17 and 22.

### Definition and methodology for the identification of beneficial owners

A jurisdiction should ensure that a beneficial ownership definition for legal persons and arrangements and a methodology for the identification of the beneficial owners is introduced in the AML/CFT legislation in line with the FATF Recommendations and the EOIR standard as described in Part 1. The methodology should follow the cascade procedure or simultaneous approach (i.e. Steps 1 and 2 of the cascading approach are conducted simultaneously) for legal persons, and for

trusts or other legal arrangements, the beneficial owners of all parties as well as any other person exercising ultimate effective control over the legal arrangement must be identified.

### Customer due diligence obligations

The AML/CFT framework must provide clear and binding CDD obligations that require AML/CFT obliged persons to:

- Identify the beneficial owners of their customers following a methodology aligned with the FATF Recommendations and the EOIR standard.
- Take reasonable measures to verify the identity and accuracy of the beneficial ownership information of its customers using reliable and independent sources (e.g. the AML/CTF obliged person should not rely on the self-declaration of the customer or on the information available in the beneficial owner register).

## Implementation options to ensure the availability of beneficial ownership information

- Document the nature of the control exercised (e.g. ownership interest control, control by voting rights, control by other means or senior manager).
- Update regularly the information on the beneficial owners of its customers. Important aspects to consider are:
  - Beneficial ownership information must always be verified and updated as soon as the AML/CFT obliged person has a doubt on the accuracy of the current information or has knowledge of any events that may affect it (e.g. change of shareholders).
  - Beneficial ownership information must be regularly verified and updated even in the absence of indication of change or doubt on the accuracy of the information (see Box 22). This principle

### Box 22. AML/CFT approach: examples on the updating of beneficial ownership information

When the AML/CFT framework is the only or the primary source of beneficial ownership information, jurisdictions have received in-box recommendations to the legal framework where there is no specified frequency for the updating of beneficial ownership information for all risk categories. The following cases are some examples:

- Where there is no requirement to update the beneficial ownership information after the initial CDD measures.
- Where the AML/CFT framework requires beneficial ownership information to be up to date, but it does not specify a timeframe for the updating of the information.
- When the requirement is to update the information only on certain types of customers (e.g. high-risk) or only in case of triggering events (e.g. indication of a change of beneficial owner or doubt on the accuracy of the information on the beneficial owner).

Jurisdictions have not received in-box recommendations in relation to their legal framework where the AML/CFT system requires obliged persons to update the beneficial ownership information depending on risk, and with a specified frequency (e.g. every year for high-risk clients, every two years for medium-risk clients, and

every three years for low-risk clients).

In cases where the AM/CFT framework is the only source of beneficial ownership information, and there is no specified threshold frequency for updating the information, but the supervisory authority imposes strong practices on AML/CFT obliged persons, this has been considered to be a mitigating factor and no recommendations have been issued. This is the case, for example, where the supervisory authorities check that in practice, AML/CFT obliged persons update the beneficial ownership information at least every year for high-risk clients and at least every three years for the other categories of clients. Examples of jurisdictions that have these practices are Greenland, Faroe Islands and Romania.

In other cases, where the AML/CFT framework lacks a specified frequency for the updating of beneficial ownership information, but such framework is not the only or the primary source of beneficial ownership information and the issue is compensated by clear updating requirements in other approaches (e.g. entity approach and/or central register/tax administration approach), then jurisdictions have received only an in-text recommendation to clarify the AML/CFT updating rules (for example, Paraguay).

Note: An "in-box" recommendation is issued when a material deficiency has been identified in the jurisdiction's legal and regulatory framework or practice, that prevents the implementation of a core element of the EOIR standard. An "in-text" recommendation refers to a deficiency that is not material and does not prevent the implementation of the EOIR standard.

Source: Global Forum Peer Reviews and OECD (2023), *Global Forum on Transparency and Exchange of Information for Tax Purposes: Greenland 2023 (Second Round): Peer Review Report on the Exchange of Information on Request*, Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD Publishing, Paris, <https://doi.org/10.1787/e1842f2b-en>, OECD (2023), *Global Forum on Transparency and Exchange of Information for Tax Purposes: Faroe Islands 2023 (Second Round): Peer Review Report on the Exchange of Information on Request*, Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD Publishing, Paris, <https://doi.org/10.1787/306bc415-en>, OECD (2023), *Global Forum on Transparency and Exchange of Information for Tax Purposes: Paraguay 2023 (Second Round, Phase 1): Peer Review Report on the Exchange of Information on Request*, Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD Publishing, Paris, <https://doi.org/10.1787/07edaf33-en>.

## Implementation options to ensure the availability of beneficial ownership information

applies even for low-risk clients. This means that a minimum frequency playing as a risk-based threshold should be set in a binding instrument (e.g. law, regulations). For instance, using the criteria of the level of risk of the customer, beneficial ownership information on low-risk profile costumers could be updated, for example, every two or three years, and medium to high-risk profile costumers every six months to one year. A set minimum frequency for the review of beneficial owner information in a binding instrument should contribute to ensuring that beneficial ownership information maintained by AML/CFT obliged persons is up to date.

- In situations where simplified CDD is allowed in the legal framework, it must not prevent

the identification of the beneficial owner (see Box 23). Simplified CDD may be allowed when the AML/CFT risk is lower and if the simplified measures are commensurate with the lower risk factors. Simplified CDD measures can include, for instance, postponing the verification of the beneficial owner identity until after the establishment of a business relationship or reducing the frequency of beneficial ownership verification and updating.<sup>34</sup> While jurisdictions may allow for the use of simplified CDD measures, they should always ensure that (i) beneficial owners are always identified, (ii) their identity is verified, and (iii) beneficial ownership information is kept up to date.

34. See FATF Interpretive Note to Recommendation 10.

### Box 23. AML/CFT approach: examples on simplified customer due diligence

Simplified CDD measures may affect the availability of beneficial ownership information when there are no alternative sources of this information. For example, in-box recommendations have been made in the following cases (non-exhaustive examples):

- Simplified CDD is allowed to be undertaken on low-risk clients with FIs not required to verify the beneficial ownership information provided by the client in all cases.
- Exceptions are allowed to identify and verify the identity of beneficial owners for account holders coming from a wide set of jurisdictions.
- Simplified CDD is allowed for low-risk customers, but there is no guidance on the content of such CDD and their impact in the identification of beneficial owners.

Simplified CDD eases the requirements for the verification of information, for the updating

of identification data and allows the reduction of documentary requirements, and therefore beneficial owners of all account holders may not be correctly verified or updated in some instances. In-text recommendations have been made when the simplified measures do not exempt the AML/CFT obliged person from identifying the beneficial owners but contain other exemptions, which may impact the adequacy and accuracy of information gathered. For example, when simplified CDD allows to postpone the verification of the beneficial owner identification until an act, operation and/or transaction is carried out above a certain monetary threshold.

Jurisdictions have not received recommendations where the legal framework is clear in that beneficial owners must be identified in all cases, regardless of the risk of the client. For example, in Portugal, simplified CDD is allowed for low-risk clients, and includes flexibility in the verification process, but customer identification (and of beneficial owners) remains mandatory.

Note: An "in-box" recommendation is issued when a material deficiency has been identified in the jurisdiction's legal and regulatory framework or practice, that prevents the implementation of a core element of the EOIR standard. An "in-text" recommendation refers to a deficiency that is not material and does not prevent the implementation of the EOIR standard.

Source: Global Forum Peer Reviews and OECD (2022), *Global Forum on Transparency and Exchange of Information for Tax Purposes: Portugal 2022 (Second Round): Peer Review Report on the Exchange of Information on Request*, Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD Publishing, Paris, <https://doi.org/10.1787/a47c34f6-en>.



## Implementation options to ensure the availability of beneficial ownership information

- Retain all documents obtained or created in the context of CDD requirements, including beneficial ownership information<sup>35</sup>, for a minimum of five years following the date of the transaction or the termination of the business relationship. This obligation must be ensured even if the AML/CFT obliged person ceases its activity (e.g. dissolution, liquidation, death). Therefore, the legal framework should clearly indicate on which person(s) the obligation to keep these documents should fall in case of cessation of an AML/CFT obliged person.
- Rely on CDD measures of third parties or business introducers only if the conditions of Recommendation 17 are complied with.
- Control and monitoring measures, such as desk-based/off-site supervision (e.g. review of questionnaires, internal policies, organisational framework or audit reports) and onsite inspections (e.g. interviews, sample checking, etc.) to verify compliance. These measures should cover the correct application of the CDD obligations, in particular the identification, verification and updating of beneficial ownership, record keeping and reliance on third parties, including in case of low risk. They should be applied on both the FIs and the DNFBPs sector.
- An appropriate level of control should be exercised: while the risk-based approach is usually followed, low risk AML/CFT obliged persons should also be subject to regular checks. In practice, it appears that jurisdictions may struggle to supervise adequately all categories of AML/CFT obliged persons. For instance, some jurisdictions may have a considerable number of DNFBPs and the supervisory authority does not manage to reach an adequate level of supervision. The effectiveness of the supervision of certain sectors may be not at the same level depending on the resources and policy of the respective supervisory authorities. As a result, while the supervision of banks was usually found effective in most of the cases in Global Forum peer reviews, the supervision of legal and accounting professions was not considered sufficiently effective in many instances.

### Monitoring and supervision

#### Designation of a suitable supervisor

A supervisor with adequate mandate, experience, resources and enforcement powers should be designated to ensure compliance with CDD obligations by AML/CFT obliged persons.

To that end, at least one supervisor (e.g. financial intelligence unit, central bank, or an equivalent), with appropriate human and material resources, should be responsible for the supervision and monitoring of FIs and DNFBPs. It is usual that specific authorities are responsible for the supervision of a specific sector (e.g. central bank for banks, bar association for lawyers, etc.), i.e. supervision is spread across several authorities.

#### Effective monitoring and supervision strategy

Supervisory authorities should define a clear strategy to ensure compliance with the CDD obligations (see Box 24). Such a strategy could be based on:

- Preventive measures to ensure awareness and to educate AML/CFT obliged persons on their CDD obligations, including with respect to beneficial ownership (e.g. binding and detailed guidelines, trainings).
- An obligation for all legal persons and arrangements to engage in a continuous business relationship with an AML/CFT obliged person. This obligation should also be appropriately monitored and supervised. Taking into account the large scale of entities subject to the obligation, an annual reporting mechanism should be considered to effectively monitor compliance. A public authority should have the responsibility of supervising this obligation and sanctions should be applied in case of non-compliance. The supervision of this obligation may be challenging for inactive entities.
- Effective enforcement measures, including administrative, financial, and criminal sanctions, proportional to the offence, must apply in the event of failure to comply.

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35. The documentation of the steps undertaken and documents relied upon to meet the obligation to identify beneficial owners must be maintained, and this information must be verified and kept up to date.

## Implementation options to ensure the availability of beneficial ownership information

### Box 24. AML/CFT approach: examples of supervision measures

A jurisdiction ensuring the availability of beneficial ownership information under its AML/CFT framework should ensure compliance from the AML/CFT obliged persons. The authority that exercises supervisory powers should establish a strategy that includes measures to guarantee appropriate levels of supervision, compliance, sanctions for non-compliance and enforcement of those sanctions. The following cases are examples of measures that jurisdictions have adopted to ensure availability of beneficial ownership information in practice:

- One or more authorities supervise compliance with the CDD obligations. For example, the central bank supervises FIs, a financial authority oversees fiduciary services or capital markets, and another authority supervises DNFBPs such as accountants, notaries, and lawyers. In Italy, for instance, the Bank of Italy supervises banks, the *Guardia di Finanza* supervises DNFBPs, the Securities and Exchange Commission supervises investment firms, and the Institute for Insurance Supervision supervises insurance companies. In Greenland, the Danish Bar and Law Society supervises lawyers, auditors are supervised by the Danish Business Authority (DBA) and accountants by the Danish Civil Agency.
- The supervisory authority implements preventive programmes that include training to AML/CFT obliged persons and professional organisations, awareness-raising activities, formal guidance (manuals, frequently asked questions, bilateral resolution of questions). Regular meetings are usually a good practice. For example, in Greenland, the DBA has issued extensive guidance for obliged persons on the identification of beneficial owners. In Cameroon, working groups were organised with the relevant supervisory authorities and representatives of the AML/CFT obliged persons to disseminate and explain the AML/CFT obligations in relation to beneficial ownership information.
- The supervisory authorities have sufficient powers to exercise their supervision, including the right to access and inspect any relevant documents.
- The supervisory authorities have mechanisms to ensure that the AML/CFT obliged persons have policies and procedures in place to ensure compliance with their CDD obligations, including having a compliance officer at least for large institutions. They could use annual questionnaires to be filled by AML/CFT obliged persons to inform their risk assessments, which should use several sources of information to prioritise its compliance activities. The supervisory authorities could also require internal and/or external auditing of the effectiveness and appropriateness of the established policies and procedures and have access to the audit reports.
- The supervisory authorities carry out desk and onsite inspections to check the compliance with the CDD obligations to ensure that beneficial ownership information is maintained as required and is adequate, accurate and up to date. Usually, these inspections are based on risks identified by the supervisory authority, but a random selection could also be added to the risk-based approach to ensure that also low risk AML/CFT obliged persons are effectively subject to compliance activities. The inspections usually include the checking of samples, including documentary evidence. After the inspection, some supervisory authorities create action plans with the AML/CFT obliged entities to follow up and remedy any deficiencies (e.g. in France).
- The AML/CFT frameworks may determine sanctions for non-compliance that differ according to the violation to the legal framework. Usually, the sanctions include financial penalties graduated according to the subject, the amount and the frequency of occurrence. In some jurisdictions, sanctions may also apply to the individuals (AML/CFT obliged individuals, management of the AML/CFT obliged person) and includes, depending on the severity of the deficiencies, sanctions such as penalties, limitations in the exercise of certain activities, and even the possibility of imprisonment. For example, in Belgium, sanctions for non-compliance with AML/CFT regulations include (among others) the withdrawal or suspension from authorisation and/or the temporary ban of any person discharging managerial responsibilities.

Source: Global Forum Peer Reviews, and OECD (2017), *Global Forum on Transparency and Exchange of Information for Tax Purposes: Italy 2017 (Second Round): Peer Review Report on the Exchange of Information on Request*, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264283800-en>, OECD (2023), *Global Forum on Transparency and Exchange of Information for Tax Purposes: Greenland 2023 (Second Round): Peer Review Report on the Exchange of Information on Request*, op. cit., OECD (2024), *Global Forum on Transparency and Exchange of Information for Tax Purposes: Cameroon 2024 (Second Round): Peer Review Report on the Exchange of Information on Request*, Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD Publishing, Paris, <https://doi.org/10.1787/495bcba9-en>, OECD (2018), *Global Forum on Transparency and Exchange of Information for Tax Purposes: France 2018 (Second Round): Peer Review Report on the Exchange of Information on Request*, op. cit., OECD (2018), *Global Forum on Transparency and Exchange of Information for Tax Purposes: Belgium 2018 (Second Round): Peer Review Report on the Exchange of Information on Request*, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264290839-en>.

## Implementation options to ensure the availability of beneficial ownership information

### Access to beneficial ownership information

In addition to financial intelligence unit authorities with competence over AML/CFT matters, the tax authority / competent authority for EOI for tax purposes must have timely access to beneficial ownership information collected by AML/CFT obliged persons (Element B.1 of the 2016 ToR).

Access to beneficial ownership information by authorities can be hindered in the following circumstances (see Box 25):

- The AML/CFT framework may contain confidentiality requirements that prevent AML/CFT obliged persons or the financial intelligence unit to disclose the information under that law for a purpose other than AML/CFT purposes. Therefore, specific exceptions to such confidentiality requirements in the AML/CFT framework should be introduced to ensure effective access to beneficial ownership information by other law enforcement authorities, including the tax authority.
- Professional privilege and secrecy may cause conflict with the access to beneficial ownership information by law enforcement authorities. This occurs when professional secrecy is broadly defined in the law, and there are not adequate exceptions to prevent AML/CFT obliged persons (e.g. lawyers, tax advisors, banks) from claiming secrecy because of client-attorney privilege or banking secrecy when requested information for the identification of the beneficial owner by authorities. This broadly defined secrecy can also be an impediment to the effective supervision of AML/CFT obliged persons by their supervisory authorities.

Therefore, specific exceptions to professional privilege and secrecy should be introduced to ensure effective access to beneficial ownership information by law enforcement authorities, including the tax authority.

- In the context of the AML/CFT approach, the identification of the information holder, i.e. the AML/CFT obliged person who holds beneficial ownership information related to a specific entity may not be always straightforward. To facilitate the identification of the information holder as well as ensuring an adequate level of monitoring of the

obligation to engage in a continuous relationship with an AML/CFT person, some jurisdictions have established the obligation for legal entities to report annually to a public authority (e.g. tax administration, commercial register) information on the AML/CFT obliged person with which they have a continuous business relationship (e.g. declaration of the bank and bank account, the accountant, the representative agent or the administrator).

### Box 25. AML/CFT approach: the issue of restrictions to access to beneficial ownership information

The followings are some examples identified in the peer reviews of the Global Forum where the tax authority did not have access to beneficial ownership information maintained by AML/CFT obliged persons:

- The scope of the privileged communications between an attorney and its client is not specifically limited to confidential communications produced in the context of obtaining legal advice or for legal proceedings. Professional secrecy extends to communications with third parties and/or covers professions other than lawyers, such as accountants and tax advisors. Therefore, information on beneficial owner may not be accessed by the tax authority due to the scope of the legal privilege / professional secrecy.
- The tax authority is barred from accessing beneficial ownership information held by AML/CFT obliged persons, such as banks, unless it pertains to criminal tax investigations and is obtained via a court order. This limitation impacts the capacity to collect beneficial ownership information to reply to EOI requests and to offer reciprocal assistance in civil tax investigations.
- The tax authority faces challenges in accessing beneficial ownership information due to conflicting interpretations of legal provisions by government bodies, i.e. the financial intelligence unit stance was that beneficial ownership information can only be shared with the tax authority in the context of domestic criminal investigations, even though the tax authority has broad legal powers to request such information.

## Implementation options to ensure the availability of beneficial ownership information

### Case study on the AML/CFT approach

Box 26 shows a case study of one country relying on the AML/CFT framework for the availability of beneficial ownership information at the time of its assessment by the Global Forum, and which received a Compliant rating for both Elements A.1 and A.3.

### BENEFICIAL OWNERSHIP INFORMATION KEPT BY THE ENTITIES THEMSELVES

#### General presentation of the entity approach

The entity approach relies on the entities themselves (legal persons and arrangements such as companies, partnerships, foundations, trusts) to:

- Identify their beneficial owners;

- Maintain accurate and up-to-date information on their beneficial owners.

Jurisdictions usually establish this requirement in their company law or other similar framework that covers relevant legal persons and arrangements within their territory. Some jurisdictions have introduced this obligation in the AML/CFT framework (e.g. to ensure consistency in the definition of beneficial ownership and methodology for the identification of the beneficial owners).

The entity approach is relevant in order to meet Element A.1 of the 2016 ToR. In addition, this approach is prescribed by FATF following the updates to Recommendation 24. In FATF Recommendation 25, the entity approach is not fully transposed to an obligation on legal arrangements themselves and it rather

#### Box 26. Beneficial ownership implementation relying on the AML/CFT approach

##### Italy – Compliant with Element A.1

In Italy, the main requirements ensuring availability of beneficial ownership information are contained in the AML/CFT law.

The definitions and the methodology provided in the AML/CFT law for identifying beneficial owners of legal persons and legal arrangements are aligned with the EOIR standard. In addition, all relevant entities are required to engage a notary in order to obtain a legal status, and any subsequent change in their ownership has to be done with the engagement of an AML/CFT obliged person (a notary, an accountant, or a financial intermediary).

Although Italian legislation does not foresee the possibility to set up a trust domestically, it recognises trusts formed under foreign laws. In addition, nothing prevents an Italian from being a settlor, trustee or beneficiary of a foreign trust. In Italy, acting as a trustee on an AML/CFT professional basis will trigger CDD obligations, which include identification of any individual exercising ultimate effective control over the trust.

Note: This analysis is a snapshot of the situation at the time of the review and may no longer accurately reflect the state of the law applicable in Italy at the time of publication of this toolkit.

Source: OECD (2017), *Global Forum on Transparency and Exchange of Information for Tax Purposes: Italy 2017 (Second Round): Peer Review Report on the Exchange of Information on Request*, op.cit.

Information collected under CDD measures has to be kept for a period of at least 10 years after the termination of the business relationship. In addition, under Italian law, professional secrecy cannot be invoked when ownership, identity, accounting or banking information is requested by revenue authorities for tax purposes.

Supervision of AML/CFT obligations is adequate to ensure availability of beneficial ownership information in practice. The responsible supervisory authorities take adequate supervisory measures including risk-based off-site and on-site inspections and rigorously apply a variety of enforcement measures in cases of failure to identify and keep beneficial ownership information.

While the AML/CFT law in Italy allows for the complete availability of beneficial ownership information, these already existing obligations were accompanied in 2017 by the obligation of entities themselves to keep beneficial ownership information and to submit this information to the Business Register as required by the 4th EU AML Directive.

## Implementation options to ensure the availability of beneficial ownership information

prescribes that beneficial ownership information be obtained and held by the trustee of the trust (or by the person holding an equivalent position in a similar legal arrangement).

Implementing the entity approach as a unique source of beneficial ownership is not common. In practice, a jurisdiction rarely relies exclusively on this approach and, when it does, the effectiveness is not necessarily ensured. Usually, the entity approach complements the AML/CFT approach, in particular by addressing existing gaps vis-à-vis the EOIR standard.

Table 8 summarises the main parameters and challenges to consider for the effectiveness of the entity approach.

### Key parameters and challenges of an effective entity approach

This section explains in detail the key parameters that jurisdictions should consider for the implementation of an effective entity approach to fully meet the requirements of the EOIR standard, and the related challenges.

#### Coverage and scope

Generally, jurisdictions require all types of entities created within their jurisdiction to keep identity and ownership information. This obligation is usually stated in company law and/or other specific legislation that regulates the creation and the obligations of legal persons and arrangements (e.g. companies law, partnerships law, foundations law, trusts law). For instance, limited liability companies are usually required to keep a register of their members, joint stock companies to maintain a shareholders' register, foundations to maintain information on their founders, directors, board members and beneficiaries, and trusts are required to keep information on all parties to the trust (i.e. settlor, protector, trustee, beneficiaries or class of beneficiaries). In some countries, the entity approach is established through the AML/CFT framework to ensure that the definition and identification of beneficial owners are consistent for AML/CFT obliged persons and entities.

Under the entity approach, jurisdictions can expand

on the existing requirements in their relevant laws and introduce the obligation for all relevant entities<sup>36</sup> to maintain a register of their beneficial owners. This can be achieved by completing existing laws governing each type of entities or introducing a new law covering all relevant entities.

The entity approach can ensure on its own the availability of beneficial ownership information as required in Element A.1 of the 2016 ToR only if the obligation to maintain this information applies to all relevant legal persons and arrangements.

### Foreign trusts and other legal arrangements

Regarding trusts and other legal arrangements, jurisdictions should require the trustee or equivalent, whether or not acting in a professional capacity, to identify and maintain information on the beneficial owners of all the parties of the trust and of any other person exercising ultimate effective control over the trust. This obligation should be accompanied by the obligation for trustees or equivalent to register themselves with a public authority to help authorities identify the holder of beneficial ownership information on legal arrangements, including foreign ones, and effectively supervise their obligation to maintain this information.

### Determination of obligations

The beneficial ownership obligations for entities must be clearly stated in the legislation.

### Definition and methodology for the identification of beneficial owners

A beneficial ownership definition for legal persons and arrangements along with a methodology for the identification of the beneficial owners should be introduced in the relevant legislation in line with the FATF Recommendations and the EOIR standard as described in Part 1. The relevant legislation could also rely on the definition and methodology provided in the AML/CFT legislation where this definition and methodology is in line with these standards.

36. This obligation should extend to all entities incorporated in and registered with the authorities in the jurisdiction and as such, relevant foreign entities should also be covered by this requirement.



## Implementation options to ensure the availability of beneficial ownership information

Table 8. **Main parameters and challenges for effectiveness of the entity approach**

	Main parameters	Challenges
Coverage and scope	<ul style="list-style-type: none"> <li>● All relevant legal persons and arrangements must have the obligation to identify their beneficial owners, update it periodically and keep this information in a register. This obligation should cover all relevant entities, including inactive entities.</li> </ul>	<ul style="list-style-type: none"> <li>● The scope of the legal framework may not cover all legal persons and arrangements. For example, this can occur in jurisdictions that allow the operation of trustees of foreign trusts, introduce this obligation only for some categories of entities, or have a large number of unsupervised inactive entities.</li> </ul>
Determination of obligations	<ul style="list-style-type: none"> <li>● The definition of beneficial ownership and the methodology for identification of beneficial owners must be in line with the FATF Recommendations and the EOIR standard.</li> <li>● Obligation for legal persons and arrangements to identify their beneficial owners following a definition and methodology aligned with the FATF Recommendations and the EOIR standard, and to verify the information.</li> <li>● Obligation for the legal entities to update immediately this information in case of change and, in any case, to actively check at least once a year that the beneficial ownership information maintained by them is adequate, accurate and up to date.</li> <li>● Obligation for beneficial owners, persons in the chain of ownership and relevant parties to contribute to the verification process of the entities, by providing information and supporting documentation. They should also be required to inform the entity of any changes in their ownership or control.</li> <li>● Obligation for the entities to report failure by beneficial owners, persons in the chain of ownership and relevant parties to provide requested information and documents to identify, verify and update the identity of their beneficial owners.</li> <li>● Obligation for trustees and administrators of legal arrangements to register with a public authority to ensure proper supervision of their beneficial ownership obligations.</li> <li>● Obligation for all legal entities (e.g. their administrators, liquidators, trustees, etc.) to maintain a register of their beneficial owners, with clear record-keeping requirements during the lifetime of the entity, and for at least five years after the cessation of the entity.</li> <li>● Liability of trustees and other administrators of legal arrangements in case of failure to comply with their obligations and/or with the obligation of the legal arrangement.</li> </ul>	<ul style="list-style-type: none"> <li>● The definition of beneficial ownership or the methodology for the identification of the beneficial owners is not fully aligned with the FATF Recommendations and the EOIR standard.</li> <li>● Beneficial ownership can be a new requirement for most legal entities, so they may not have the experience and knowledge for accurate identification in line with the FATF Recommendations and the EOIR standard, particularly in cases with complex chains of ownership.</li> <li>● Absence or lack of training, binding guidance and details on the modalities and procedure for determining beneficial owners (e.g. cascade, definitions for partnerships, trusts).</li> <li>● Deficiencies in the obligation to identify, verify, update and keep records of beneficial ownership information.</li> <li>● Lack of provisions to facilitate compliance with beneficial ownership requirements in particular in case of complex structures (i.e. absence of or insufficient obligations for persons in the chain of ownership and relevant parties to contribute to the identification, verification and update of beneficial ownership information).</li> <li>● Absence of registration of administrators of legal arrangements which may lead to a lack of supervision.</li> </ul>



## Implementation options to ensure the availability of beneficial ownership information

	Main parameters	Challenges
<b>Monitoring and supervision</b>	<ul style="list-style-type: none"> <li>● Designation of at least one supervisory authority with mandate and enforcement powers to supervise entities' beneficial ownership obligations effectively and regularly (including for inactive entities), with sanctions applied in case of failure for the entities, the beneficial owners, and the parties/persons in the chain of ownership.</li> <li>● Implementation of preventive and awareness-raising guidance and measures to educate legal persons and arrangements on their beneficial ownership obligations.</li> </ul>	<ul style="list-style-type: none"> <li>● The authority(ies) in charge of supervision of the beneficial ownership obligations do(es) not have adequate powers, knowledge, experience and/or resources to regularly supervise and enforce compliance with beneficial ownership obligations by: <ul style="list-style-type: none"> <li>● legal entities, including administrators of legal arrangements (including with respect to their registration obligation) and inactive entities</li> <li>● beneficial owners</li> <li>● persons in the chain of ownership and relevant parties.</li> </ul> </li> <li>● Legal entities are not adequately aware of, trained or guided on their beneficial ownership obligations, and are maintaining inaccurate beneficial ownership information.</li> </ul>
<b>Access to information by tax / competent authorities</b>	<ul style="list-style-type: none"> <li>● Law enforcement authorities, including the tax authority, should have access to beneficial ownership information maintained by legal entities and arrangements, without restrictions.</li> </ul>	<ul style="list-style-type: none"> <li>● Access to the entities' register of beneficial owners by the law enforcement authorities, in particular the tax authority, is not clearly defined and stated in the legislation.</li> <li>● Broad professional privilege and secrecy without adequate exceptions may prevent access to beneficial ownership information by law enforcement authorities and supervisory authorities and hinder effective supervision of entities' obligations.</li> <li>● Difficulty to identify the information holder of the beneficial ownership information which may delay or prevent access to this information by law enforcement authorities (e.g. where the administrator of a legal arrangement is not registered with a public authority, or a legal entity has ceased to exist).</li> </ul>

### Requirements for legal entities and arrangements

In addition, clear and binding procedures should be introduced to require relevant legal persons and arrangements to:

- Identify their beneficial owners following a methodology aligned with the FATF Recommendations

and the EOIR standard.

- Verify the identity and the status of the beneficial owners using reliable and independently sourced information.
- Document the nature of the control exercised (e.g. ownership interest control, control by voting rights, control by other means or senior manager).

## Implementation options to ensure the availability of beneficial ownership information

- Update the beneficial owner register immediately and every time there is a change (see Box 27). Changes in beneficial ownership may not be immediately known to the entity, for example where the ownership structure is complex and/or involves entities in foreign jurisdictions or where the beneficial ownership is premised on control through other means rather than ownership. Therefore, jurisdictions should introduce an obligation on entities to actively check at least once a year that the beneficial ownership information they maintain is adequate, accurate and up to date. To that end, they would need to perform due diligence. For instance, the entities could send every year a questionnaire to their shareholders, participants, or parties as well as to the beneficial owners they have on file to check if there is any change of circumstances that would require further actions to ascertain who the beneficial owners are. This would complement other mechanisms aimed at ensuring that the entities are made aware of changes, such as the obligations put on beneficial owners and/or persons in the ownership chain (see also below). This aspect is important because, contrary to legal ownership, beneficial ownership does not trigger any right (e.g. right to receive dividends, voting rights) and, as such, beneficial owners may not have an incentive to disclose their beneficial ownership status.
- Maintain a register of their beneficial owners, including supporting documents, throughout the life of the entity, and for at least five years after the end of the year in which the legal person or arrangement ceases to exist. The supporting documents should include information on the nature of the beneficial ownership status, i.e. whether the person is a beneficial owner by ownership or by control by other means. In addition, an entry in the beneficial ownership register should also be kept at least for the whole period during which the natural person is considered a beneficial owner and for at least five years after ceasing this status.

### Box 27. Entity approach: updating beneficial ownership information

To assist legal entities in updating beneficial ownership information, some jurisdictions have introduced obligations on beneficial owners and/or the persons in the ownership chain. While these measures alone are not sufficient to ensure that the information is updated, they complement other mechanisms. Some examples implemented by jurisdictions include:

- A requirement on beneficial owners to inform the company about their beneficial owner status.
- A requirement for the entities to carry out a periodic confirmation / validation of their beneficial owners, the result of which has to be reported to the authorities, for example, through an annual filing requirement.
- Introduction of legal rights for entities to question beneficial owners, persons in the chain of ownership and other relevant parties.
- Actions that may be taken by the entity against the beneficial owner or persons in the chain of ownership for non-compliance with self-declaration/reporting requirements, including:
  - prohibition from voting and/or withholding of payment of profits, dividends or distributions from liquidations
  - possible reduction in the value of the shares with the effect of extinguishing the company's quota if the shareholder / beneficial owner fails to inform the company of a change within a specified timeframe.
- Actions that may be taken by the supervisory authority against the beneficial owner for non-compliance with self-declaration/reporting requirements, e.g. penalty on the beneficial owner for the failure to provide information or for providing inaccurate information, exclusion from public procurement and impossibility to receive a public subvention.

No or insufficient mechanism(s) (like the lack of sanctions, for example) to ensure that changes in the beneficial ownership information are brought to the attention of entities has resulted in in-box recommendations in Global Forum peer reviews.

Note: An "in-box" recommendation is issued when a material deficiency has been identified in the jurisdiction's legal and regulatory framework or practice, that prevents the implementation of a core element of the EOIR standard. An "in-text" recommendation refers to a deficiency that is not material and does not prevent the implementation of the standard.

Source: Global Forum Peer Reviews.

## Implementation options to ensure the availability of beneficial ownership information

- Designate the person(s) responsible for maintaining and updating the beneficial owner register (e.g. directors of the entity, trustee of the trust) and the person(s) required to maintain the information after the entity ceases to exist (e.g. directors of the entity, trustee of the trust, liquidator) or a method to identify such a person (e.g. identification of the person at the last general assembly of shareholders or designation by the court in case of liquidation).
- Provide information on their beneficial owners immediately and upon request, to law enforcement authorities such as the tax administration, the financial intelligence unit and the anti-corruption agencies.
- In addition, beneficial owners, persons in the chain of ownership and/or other relevant parties have a key role to play in case of complex structures. Therefore, they should contribute to:
  - the identification and verification process carried out by the entity by providing supporting documentation and required information. The identification analysis should always be done by the legal person/arrangement itself. The persons in the chain of ownership and/or other relevant parties only intervene to inform the entity of the existence of beneficial owners and to facilitate compliance by the entity. Hence, the beneficial owners themselves should disclose their status to the entity when they are aware of it. In any case, the entity needs to identify its own beneficial owners using the appropriate methodology. It should not consider the beneficial owners reported by its owners or parties as being necessarily its own beneficial owners.
  - the timely identification of a change in beneficial ownership information by the entity. To that end, these persons should also be required to inform the entity of any changes in their ownership or control.
- Inform the authorities if the potential beneficial owners, the persons in the chain of ownership and other relevant parties fail to comply with the obligation to contribute to the identification of the beneficial owners.

Finally, trustees and other administrators of legal arrangements should be required to register themselves

with a public authority to ensure their effective supervision with respect to their obligation to maintain beneficial ownership information. If the jurisdiction does not require the disclosure or reporting of the trustee/administrator status under any authority, the identity of residents acting as trustees will not be known by authorities and thus supervision will be difficult.

### **Monitoring and supervision**

#### **Designation of a suitable supervisor**

Entities' compliance with their obligation to identify their beneficial owners, maintain this information up to date, including through an active monitoring of any change of circumstances, and keep this information in a register of beneficial owners along with supporting documentation must be effectively monitored. To that end, at least one supervisory authority with adequate mandate to regularly supervise beneficial ownership obligations should be designated. The supervisory authority(ies) must have adequate powers, resources and experience to enforce them. To that end they should have relevant expertise, including to verify the accuracy of the information. The authority(ies), which could be for instance the financial intelligence unit or the tax authority, would compel entities, and all beneficial owners and persons in the chain of ownership to comply with their beneficial ownership obligations.

#### **Effective monitoring and supervision strategy**

Supervisory authorities should define a clear strategy to ensure compliance with the beneficial ownership obligations. The objective is to verify that the beneficial ownership information maintained by the entities in their register is adequate, accurate and up to date and that they comply with their record-keeping obligation. Such a strategy should include:

- preventive and awareness-raising measures to inform entities and educate and train their administrators on their beneficial ownership obligations. Identifying their beneficial owners can be a new requirement for most legal persons and arrangements, so they may not have the experience and knowledge for accurate identification in line with the FATF Recommendations and the EOIR standard, in particular in complex cases (as opposed to AML/CFT obliged persons). These

## Implementation options to ensure the availability of beneficial ownership information

measures can include binding guidelines and forms, training and informative sessions, among others. In particular, authorities should provide detailed guidance and procedures to identify beneficial owners in complex chains of ownership, where beneficial ownership is based on control through other means rather than ownership, and in situations where entities issue bearer shares or nominee arrangements. It is also relevant to educate legal and accounting professionals as well as business associations on these obligations as they can be an effective communication channel.

- controlling measures that ensure adequate coverage in supervision, such as desk-based/off-site controls (e.g. annual certification of the beneficial ownership information by a certified accountant/auditor, policies in place providing for an active monitoring of any change of circumstances), and onsite inspections (e.g. verification of the entry in the register and the supporting documentation).
- enforcement measures, including administrative, financial, and criminal sanctions, proportional to the offence, in the event of failure to comply. Sanctions should be applied not only to the entity and its administrators, but also to owners and/or relevant parties, and any other person in the chain of ownership, including beneficial owners, if they fail to comply with their obligation to provide information and supporting documentation for beneficial ownership identification.
- as enforcement measures such as penalties may be difficult to enforce where those persons or parties are not within the territorial jurisdiction of the country, it is recommended to also consider specific sanctions that will affect their rights in the entity (e.g. suspension of the right to vote and receive dividends).

Finally, inactive companies should be subject to supervision and enforcement measures taking into account the specific risks they pose.

### **Access to beneficial ownership information**

Regardless of who is designated as supervisory authority for the enforcement of beneficial ownership obligations under the entity approach, the tax authority / competent authority for EOI for tax purposes as well as other law

enforcement authorities should have access to the beneficial ownership information maintained by the entities.

As indicated in the AML/CFT approach, professional secrecy should not be invoked to prevent law enforcement authorities to obtain the required beneficial ownership information. For instance, a trustee should be required to provide this information notwithstanding any professional secrecy.

### **Case study on the entity approach**

Box 28 shows examples of jurisdictions using the entity approach for the availability of beneficial ownership information.

### **BENEFICIAL OWNERSHIP INFORMATION KEPT IN A CENTRAL REGISTER**

#### **General presentation of the central register approach**

This approach refers to jurisdictions establishing a centralised system for maintaining beneficial ownership information. Under this approach, legal entities identify their beneficial owners and file this information upon creation, periodically and every time there is a change, within a central beneficial ownership register, supervised by a designated authority.

The use of the central register approach allows for the availability of beneficial ownership information under Element A.1 of the 2016 ToR. It is envisioned in FATF Recommendations 24 and 25. In particular, the updates to Recommendation 24 and its Interpretive Note prescribes the establishment by jurisdictions of a central register approach together with an entity approach to ensure the availability of beneficial ownership information. In addition, the Interpretive Note to Recommendation 25 encourages countries to set up other sources of information on trusts, trustees, and trust assets (in addition to trustees and AML/CFT obliged persons), such as, among others, a central register of trusts or trust assets. The central register approach also facilitates access to beneficial ownership information by law enforcement authorities, including the tax authority.

The central register approach is usually built on the entity approach, as the reporting persons are in general

## Implementation options to ensure the availability of beneficial ownership information

### Box 28. Beneficial ownership implementation relying on the entity approach

#### **Singapore – Largely Compliant with Element A.1**

Singapore's law contains two main pillars for the availability of beneficial ownership information as defined under the EOIR standard:

- Under the Companies Act, all domestic companies and foreign companies registered with the registrar are required to identify and collect information on their beneficial owners ("controllers") and maintain a register of controllers.
- Beneficial ownership is also required to be available based on AML/CFT obligations of FIs and professionals such as company service providers (CSPs), lawyers and accountants, if engaged by the company.

Companies in Singapore are not obliged to engage an AML/CFT obliged person, so AML/CFT rules do not ensure complete coverage of beneficial ownership information. However, the requirement for all companies to maintain a register of controllers effectively complements the AML/CFT law and ensures that beneficial ownership information in Singapore is available in line with the standard.

The definition for controllers in Singapore is in line with the standard. Companies are required to register their controllers in the register they maintain and must take reasonable steps to identify them. In addition, a person (including a foreign person) who knows or ought reasonably to know that the person is a registrable controller in relation to a company must notify the company and provide such other information as required.

The company and the controller(s) have the obligation to keep the register up to date and accurate, and it should be maintained either at the registered office of the company or at the registered office of its CSP.

Given that the obligation to maintain a register of controllers was recent at the time of the review, it was not possible to ascertain then whether the application of the rules would lead to appropriate identification of the beneficial owner in all cases. The report noted that the rules rely heavily on the compliance of the controller or person who knows the controller to report the beneficial

owner and to keep it updated. This may be of concern in complex cases involving a chain of legal persons or arrangements (despite the obligation to do so) in case of practical issues on oversight.

In relation to trusts, the Trust Regulations establish that all trustees of express trusts governed under Singapore law, administered in Singapore or in respect of which a trustee is resident in Singapore – regardless of whether or not they act on a professional basis – are required to identify and maintain information on the beneficial owners of the trust, as required by the standard.

#### **Greenland – Largely Compliant with Element A.1**

Greenland employs a comprehensive multi-pronged approach to ensure the availability of legal and beneficial ownership information. Entities are obliged to identify and maintain beneficial ownership information, being a crucial source of information to ensure availability of beneficial ownership information in Greenland. This information is populated in the central business register, managed by the Danish Business Authority, that houses beneficial ownership data for nearly all relevant entities. In addition to the central business register, Greenland's AML/CFT framework serves as another source of beneficial ownership information. The framework mandates AML/CFT obliged persons to identify and retain information on the beneficial owners of their clients during CDD processes. Furthermore, the AML Act strengthens the regulatory framework by introducing a discrepancy reporting requirement, acting as a safeguard against inaccuracies in the central business register. This legislation also serves as the primary source of information on beneficial owners of foreign trusts and companies with ties to Greenland.

As mentioned before, entities themselves serve as sources of beneficial ownership information. They are responsible for populating the central register and maintaining beneficial ownership data, and provide underlying documentation as needed.

Greenlandic companies are required to identify their beneficial owners and register information on these persons. This is supported by an obligation on persons with direct or indirect ownership or control to provide

## Implementation options to ensure the availability of beneficial ownership information

information to the company. As soon as a company becomes aware that a person has become a beneficial owner, it must provide the required identity information to the register within a few days of becoming aware of the change. As a backup measure, entities must annually check whether there have been any changes in the beneficial owners, this is only a backup action to prompt identification of changes in beneficial ownership that the company might not otherwise be aware of.

All legal entities must maintain records of the information obtained on the beneficial owners for five years after cessation of beneficial ownership status as well as records of all attempts to identify beneficial owners for five years after the attempt has been made.

In the case of trusts, Greenlandic law does not allow for their creation, and therefore the legal concept of a trust or similar legal arrangements does not exist under its domestic legislation. In the case of foreign trusts with sufficient nexus with Greenland, the AML/CFT framework is the primary source of beneficial ownership information and AML/CFT obliged persons that engage with foreign trusts must identify and maintain information on the board of directors, beneficiaries, founder, trustee, and patron, if any.

The Danish Business Authority is the supervisory authority regarding beneficial ownership obligations for entities and the register itself, and for AML/CFT obliged persons, the Danish Financial Supervisory Authority is the authority responsible for supervising any obligations to maintain beneficial ownership information.

Note: This analysis is a snapshot of the situation at the time of the review and may no longer accurately reflect the state of the law applicable in Singapore and Greenland at the time of publication of this toolkit.

Source: OECD (2018), *Global Forum on Transparency and Exchange of Information for Tax Purposes: Singapore 2018 (Second Round): Peer Review Report on the Exchange of Information on Request*, OECD Publishing, Paris. <https://doi.org/10.1787/9789264306165-en>, and OECD (2023), *Global Forum on Transparency and Exchange of Information for Tax Purposes: Greenland 2023 (Second Round): Peer Review Report on the Exchange of Information on Request*, op. cit.

the entities which need to identify, verify, update and maintain information on their beneficial owners, and keep documentary evidence and underlying documentation.<sup>37</sup> It is therefore in the vast majority of the cases an extension of the entity approach which ensures better supervision of the obligations to maintain beneficial ownership information and ensure its access by authorities. In practice, the central register approach complements the AML/CFT approach and strengthens the entity approach, in particular by addressing existing gaps vis-à-vis the beneficial ownership standard.

Table 9 summarises the main parameters and challenges to consider for the effectiveness of the central beneficial ownership register approach.

### Key parameters and challenges of an effective central register approach

This section explains in detail the key parameters that jurisdictions should consider for the implementation of an effective central register approach to fully meet the requirements of the EOIR standard, and the related challenges.

#### Coverage and scope

The central register approach is based on the entity approach. Therefore, all relevant legal entities (including inactive entities) must be required to identify their beneficial owners as described in the entity approach<sup>38</sup> and to provide that information to a central register supervised by a designated authority.

To ensure coverage of all relevant legal entities, a jurisdiction can amend existing legislations to require every type of entities within the jurisdiction to provide information to the central register (e.g. AML/CFT law, company/partnership/trust/foundation law, tax law) or can issue a new and *ad hoc* beneficial ownership law that covers all relevant legal entities. In general, the implementation of a central beneficial ownership register with a sufficiently broad coverage can be easier through a dedicated beneficial ownership law.

37. In some jurisdictions, the central register of beneficial owners is fed by AML/CFT obliged persons rather than by the entities themselves.

38. As in the entity approach, this obligation should extend to all entities incorporated in and registered with the authorities in the jurisdiction and as such, relevant foreign entities should also be covered by this requirement.



## Implementation options to ensure the availability of beneficial ownership information

Table 9. Main parameters and challenges for effectiveness of the central register approach

	Main parameters	Challenges
Coverage and scope	<ul style="list-style-type: none"> <li>All legal persons and arrangements must have the obligation to identify their beneficial owners, maintain that information, update it periodically and each time a change occurs, and file it with a central register. This obligation should cover all relevant entities, including inactive entities.</li> </ul>	<ul style="list-style-type: none"> <li>The scope of the legal framework may not cover all legal persons and arrangements. For example, this can occur in jurisdictions that allow the operation of trustees of foreign trusts or introduce this obligation only for some categories of entities. The scope may also not be complete in practice, for instance in jurisdictions with a large number of unsupervised inactive companies.</li> </ul>
Determination of obligations	<ul style="list-style-type: none"> <li>The definition of beneficial ownership and the methodology for identification of beneficial owners must be in line with the FATF Recommendations and the EOIR standard.</li> <li>Obligation for legal persons and arrangements to identify their beneficial owners following a definition and methodology aligned with the FATF Recommendations and the EOIR standard, and to verify the information.</li> <li>Obligation for the legal entities to update immediately this information in case of change and to actively monitor at least on an annual basis that the beneficial ownership information maintained by them is adequate, accurate and up to date.</li> <li>Obligation for beneficial owners, persons in the chain of ownership and relevant parties to contribute to the verification process of the entities, by providing information and supporting documentation. They should also be required to inform the entity of any changes in their ownership or control.</li> <li>Obligation for the entities to report failure by beneficial owners, persons in the chain of ownership and relevant parties to provide requested information and documents to identify, verify and update the identity of their beneficial owners.</li> <li>Obligation for trustees and administrators of legal arrangements to register with the central register to ensure proper supervision of their beneficial ownership obligations.</li> <li>Obligation for all legal entities (e.g. their administrators, liquidators, trustees, etc.) to maintain a register of their beneficial owners, with clear record-keeping requirements during the lifetime of the entity, and for at least five years after the cessation of the entity.</li> <li>Obligation for the entities to file beneficial ownership information with the central register upon creation of the entity or by a prescribed date for pre-existing entities, and to confirm/update that information annually and every time there is a change.</li> </ul>	<ul style="list-style-type: none"> <li>The definition of beneficial ownership or the methodology for the identification of the beneficial owners is not fully aligned with the FATF Recommendations and the EOIR standard.</li> <li>Beneficial ownership can be a new requirement for most legal persons and arrangements, so they may not have the experience and knowledge for accurate identification in line with FATF Recommendations and the EOIR standard, particularly in cases with complex chains of ownership.</li> <li>Absence or lack of training, binding guidance and details on the modalities and procedure for determining beneficial owners (e.g. cascade, definitions for partnerships, trusts).</li> <li>Deficiencies in the obligation to identify, verify, update, keep records and file beneficial ownership information.</li> <li>Lack of provisions to facilitate compliance with beneficial ownership requirements in particular in case of complex structures (i.e. no or insufficient obligations for persons in the chain of ownership and relevant parties to contribute to the identification, verification and updating of beneficial ownership information).</li> <li>Reliance on already available information (legal ownership information for instance) to populate the central register and/or to assess the compliance with the filing requirement, without a requirement of confirmation/correction from the entities on the adequacy, accuracy and updating of the information.</li> <li>Absence of registration of administrators of legal arrangements which may lead to a lack of supervision.</li> <li>Absence or lack of provisions for the reporting of beneficial ownership information or discrepancies to the central register.</li> </ul>

## Implementation options to ensure the availability of beneficial ownership information

	Main parameters	Challenges
	<ul style="list-style-type: none"> <li>● General obligation for all persons to which access to the central register is granted to report discrepancies.</li> <li>● Liability of trustees and other administrators of legal arrangements in case of failure to comply with their obligations and/or with the obligation of the legal arrangement.</li> </ul>	
<b>Monitoring and supervision</b>	<ul style="list-style-type: none"> <li>● Designation of at least one supervisory authority with mandate and enforcement powers to supervise entities' beneficial ownership obligations effectively and regularly (including for inactive entities), with sanctions applied in case of failure to file accurate and up-to-date information.</li> <li>● The supervisory authority(ies) must have rigorous and/or enhanced monitoring functions, resources, and enforcement powers to supervise beneficial ownership obligations regularly. Supervision should include the verification of the accuracy of the beneficial ownership information, as well as the compliance with identification, updating, record-keeping and reporting obligations.</li> <li>● Implementation of preventive and awareness-raising measures to educate and train legal persons and arrangements on their beneficial ownership obligations.</li> </ul>	<ul style="list-style-type: none"> <li>● The authority(ies) in charge of supervision of the beneficial ownership obligations do(es) not have adequate mandate, resources and powers to rigorously enforce compliance of: <ul style="list-style-type: none"> <li>● legal entities, including administrators and trustees of legal arrangements and inactive entities</li> <li>● beneficial owners</li> <li>● the persons in the chain of ownership and relevant parties</li> <li>● administrator of legal arrangements</li> <li>● any other relevant person</li> </ul>                     which may result in inadequate enforcement and supervision, as well as incomplete, inaccurate and outdated beneficial ownership information.                 </li> <li>● Legal entities are not adequately aware of, and trained or guided on their beneficial ownership obligations, and are maintaining inaccurate beneficial ownership information</li> </ul>
<b>Access to information / other</b>	<ul style="list-style-type: none"> <li>● Tax authorities and competent authorities should have direct and full access to the beneficial ownership information held in the central register.</li> <li>● Access can be granted to other relevant persons (e.g. AML/CFT obliged persons) and/or to the general public with or without specific conditions (e.g. direct access or on request; legitimate interest to demonstrate or not; full or limited access to information).</li> </ul>	<ul style="list-style-type: none"> <li>● Law enforcement authorities' access to beneficial ownership information maintained by the central register, in particular the tax authority, is not clearly defined and stated in the legislation or is limited.</li> <li>● Depending on the scope, extent, criteria and modalities defined for the access to beneficial ownership information maintained by the registrar, compliance with data protection should be considered, in particular in the context of public central registers.</li> <li>● Broad professional privilege and secrecy without adequate exceptions may prevent access to entities' records on beneficial ownership information by law enforcement and supervisory authorities and prevent effective supervision of entities' obligations.</li> </ul>

## Implementation options to ensure the availability of beneficial ownership information

### Determination of obligations

As the central register approach is an extension of the entity approach, entities, beneficial owners, persons in the chain of ownership and/or other relevant parties must be subject to the same obligations mentioned under the entity approach regarding the definition and methodology for the identification of the beneficial owners, as well on the identification, verification, updating and record-keeping obligations:

- Entities must:
  - identify their beneficial owners following a definition and methodology aligned the FATF Recommendations and the EOIR standard
  - verify the identity and the status of the beneficial owners using reliable and independently sourced information
  - update that information immediately and every time there is change
  - actively monitor any change of circumstances, document the nature of the control exercised (e.g. ownership interest control, control by voting rights, control by other means or senior manager)
  - maintain the beneficial ownership information along with supporting documentation during the required period, including in case of cessation.
- Beneficial owners, persons in the chain of ownership and/or other relevant parties should contribute to the identification, verification and updating of beneficial ownership information.

In addition to these obligations, reporting obligations must be added:

- Entities must file with the central register information on their beneficial owners upon creation or by a prescribed date for pre-existing entities and at least each time a change of beneficial owner occurs. However, to improve supervision of the reporting obligation and to ensure that the information is always up to date, it is also recommended to require entities to provide or confirm their beneficial owners at least on an annual basis. This will ensure that entities conduct

periodically due diligence to validate/confirm their beneficial owners,<sup>39</sup> and that the supervisory authority(ies) can identify and take appropriate actions on non-filing entities.

- The filing requirements should be based on a specific form that captures all relevant information beyond the identity of the beneficial owner(s). For instance, information on the identification criteria (e.g. ownership interest control, control by voting rights, control by other means or senior manager) is very relevant for the supervision of the diligence carried out by the entities, and for the law enforcement authorities' work. In some jurisdictions, beneficial ownership information must be accompanied with supporting documentation related to the beneficial owner status and identity.
- The central register must maintain the beneficial ownership information for a minimum of five years following the cessation of the entity (although in many jurisdictions the information is maintained indefinitely).

Ideally, the register should be digitalised and must be maintained in a secure IT platform. Digital technologies are critical for managing high volumes of information, facilitating the reporting of information by obliged entities, lowering transactional costs, and ensuring the integrity of the information. Maintaining the register in an IT platform also facilitates the checking of consistency with other data sources and the timely access to information by law enforcement authorities and/or AML/CFT obliged persons if they are allowed access and have a discrepancy reporting obligation.

In addition, the filing obligation can be usefully coupled with the obligation to indicate an AML/CFT obliged person with whom a continuous business relationship is established. For instance, some jurisdictions require entities to report an account opened with a bank located within the jurisdiction, as it can enhance monitoring and supervision. The bank account number allows to verify the accuracy of the beneficial ownership information declared to the central register by comparing it with the one identified and verified by an AML/CFT obliged person.

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39. This is because beneficial owners may not have incentives to disclose their status as being a beneficial owner does not necessarily trigger a legal right, see entity approach.

## Implementation options to ensure the availability of beneficial ownership information

### Box 29. Central register approach: discrepancy reporting on beneficial ownership information

To ensure the availability of accurate and up-to-date beneficial ownership information, jurisdictions have introduced, in addition to the updating requirements, processes that allow AML/CFT obliged persons access to the central register and require them to report discrepancies to the authorities if the information held therein is not consistent to the one collected and maintained by them under their CDD obligations. However, AML/CFT obliged persons should not rely on the beneficial register to identify their beneficial ownership. For example:

- In Greenland, the primary source of beneficial ownership information is the central business register (who is fed by entities), which is complemented by the AML/CFT framework. The Greenlandic law requires that the information in the register is always up to date and as soon as a company becomes aware that a person has become a beneficial owner, it must provide the required identity information to the register as soon as possible. In addition, the company must annually check whether there have been any changes in its beneficial owners, and changes must be reported promptly. Moreover, the Greenlandic AML/CFT law strengthens the central business register with a discrepancy reporting requirement for AML/CFT obliged persons acting as a check on the accuracy of the information in the central business register.
- In Belgium, the financial intelligence unit has been able to establish that information on beneficial

owners transmitted by AML/CFT obliged persons is incorrect, where, for example, it already has different data on the customer concerned and its beneficial owners in its database, or where a suspicious transaction report is received from an entity subject to the AML/CFT Law and cross-checking with information held by another authority (tax authority or other financial or administrative authority) reveals discrepancies.

In some cases, when jurisdictions did not require entities to update the information periodically in the central register, this deficiency was partially compensated with the discrepancy reporting obligation of AML/CFT persons. However, whether this discrepancy reporting obligation would work in practice would depend on the soundness of the AML/CFT framework: whether all relevant legal entities are covered (i.e. obligation to always engage in a continuous relationship with an AML/CFT obliged person), AML/CFT obliged persons are subject to a specified frequency for updating beneficial ownership information, AML/CFT obliged persons are aware and educated on their reporting obligation, AML/CFT obliged persons do not primarily rely on information contained in the central register and adequate supervision and monitoring by authorities of this obligation are performed.

In addition, the law enforcement agencies which have access to the beneficial ownership should also report any discrepancies identified in their supervision activities.

Source: Global Forum Peer Reviews and OECD (2023), *Global Forum on Transparency and Exchange of Information for Tax Purposes: Greenland 2023 (Second Round): Peer Review Report on the Exchange of Information on Request*, op. cit., OECD (2018), *Global Forum on Transparency and Exchange of Information for Tax Purposes: Belgium 2018 (Second Round): Peer Review Report on the Exchange of Information on Request*, *Global Forum on Transparency and Exchange of Information for Tax Purposes*, op. cit.

Finally, the recommendation made in the entity approach regarding the introduction of an obligation for administrators of legal arrangements, including trustees, to register themselves with a public authority fits perfectly with the central register approach, even if the legal arrangement is constituted under foreign laws. Indeed, administrators of legal arrangements must comply with the obligation to file beneficial ownership information with the central register with respect to the legal arrangement and therefore they

should register themselves with the central register. This is an important requirement to ensure the effectiveness of the approach for legal arrangements as some might not otherwise be registered with any other authority.

### **Monitoring and supervision**

Entities' compliance with their obligations must be effectively monitored and supervised.

## Implementation options to ensure the availability of beneficial ownership information

### Designation of a suitable supervisor

The central register must be supervised by an authority with the legal and institutional capacity to monitor and enforce the obligations set forth by the regulations, and such an authority must effectively control entities' compliance with their reporting obligations. For that purpose, the authority must have appropriate monitoring functions, resources and enforcement powers for ongoing supervision of beneficial ownership obligations. The approach taken may vary, for example it could use existing powers (if the register is administered by an existing authority which already has supervision powers) or it could make use of new arrangements (particularly if beneficial owner-specific legislation is created for this purpose). Caution is needed when considering reliance on existing registrars, as these are often mere depositories of information lacking in strong monitoring functions and powers. The registrar may not have the capacity to verify the accuracy of the beneficial ownership information that is filed and/or may lack the resources necessary to do so. Traditionally, its monitoring role may have been limited to a formal control of the declaration, or perhaps only extending to the identification of non-filers and late filers to which penalties are applied.

To ensure effectiveness, the supervision of the identification and filing obligations can be done by:

- A single authority. For example, in some jurisdictions, the tax authority may be the most adequate body to maintain the central register and supervise entities compliance with both obligations, because of its experience as rigorous controller of tax and record-keeping obligations. In other jurisdictions, the commercial register may be a more adequate body to whom dedicated team and enhanced powers can be given.
- Different authorities. A jurisdiction can decide a mixed approach and have for example a central register held by the commercial register, the ministry of finance or the central bank, which will exercise formal control of the obligation and identify non-filers, while enhanced desk/based controls and onsite audits are performed by relevant law enforcement authorities, including the tax authority. For example, in a jurisdiction the central register is held by the central bank, but the supervision of obligations in general is carried out by the authority in charge of national internal audits. In another jurisdiction, the register is maintained by a

legal entity that provides information technology (IT) solutions to the financial sector, and the supervision of obligations is carried out by both the IT provider and the tax authority.

The appropriate choice will depend on the particular administrative structure and context of the jurisdiction. In any case, the authority(ies) must have a comprehensive compliance strategy. They should implement preventive and awareness-raising measures to educate and train entities on their beneficial ownership obligations (see the measures described in the entity approach), including their filing requirements.

### Effective monitoring and supervision strategy

Regarding the monitoring and supervision strategy, the developments made under the entity approach in relation to the supervision of the identification, verification, updating and record-keeping obligations are also relevant for the central register approach.

In addition, as explained in the entity approach, the obligation for the beneficial owners, persons in the chain of ownership and/or other relevant parties to contribute to the identification and updating of beneficial ownership information should be supervised too. In the context of the central register approach, it is recommended that entities inform the central register in case of failure so that it can take appropriate enforcement measures.

Depending on the policy choice of the jurisdiction with respect to the access to the central register, it is recommended that any persons who have access should also inform the central register of any mismatch or inaccuracy identified. This would help strengthen the effectiveness of the approach. For instance, some jurisdictions require AML/CFT obliged persons and law enforcement authorities, which have access to the central register, to inform the central register or other designated authority of any discrepancies identified. Some jurisdictions have introduced an obligation for any persons, including the general public, to inform the central register of discrepancies in the beneficial ownership information reported.

Finally, appropriate administrative, financial and/or criminal sanctions, proportional to the offence, should be applied in case of failure with any of the above-mentioned obligations. Sanctions can ultimately trigger the dissolution of the entity.

## Implementation options to ensure the availability of beneficial ownership information

### Box 30. Central register approach: examples of monitoring and supervision measures

To ensure availability of beneficial ownership information under a central register approach, jurisdictions have implemented different monitoring and supervision measures to verify compliance of legal entities with their beneficial ownership obligations.

The jurisdiction must establish one or more overseeing authorities (e.g. the financial regulatory body, the central bank, the business registrar, or the tax administration). The authority or authorities should be vested with ample powers to supervise, monitor, and impose sanctions to non-compliant entities.

The following are non-exhaustive examples of measures that have been adopted by jurisdictions reviewed by the Global Forum.

#### Monitoring measures

Regular monitoring of the central registry should be conducted to ensure that all required information is up-to-date and accurately recorded. Some legal frameworks establish specific provisions that enforce the requirement to register and update beneficial ownership information in the central register. These provisions may entail both direct and indirect measures to ensure compliance. Direct measures can include the legal processes related to breaches of registration obligations and private law consequences for failing to register beneficial ownership details accurately, like sanctions and penalties. Indirect measures involve negative repercussions affecting legal entities,

In some jurisdictions, the legal framework includes testing programmes that involve desktop reviews, on-site inspections, and cross-checking of information to assess the reliability of data in the beneficial ownership database. These programmes aim to identify compliance issues and evaluate the effectiveness of current measures without initially imposing sanctions, offering recommendations for rectifying non-compliance and providing work plans to achieve full compliance.

#### Penalties and other sanctions

A range of penalties and other sanctions for

non-compliance can be implemented. These are usually imposed for failures to comply with obligations such as not maintaining or updating the register, not uploading beneficial ownership information to the registry, or providing incorrect information. The objective of including sanctions and penalties in the legal framework is to deter noncompliance from obliged entities and countries should ensure that, in practice, they are actually enforced.

In some countries, non-compliant entities can be subject to indirect sanctions: for instance, in public procurement, compliance with beneficial ownership registration can be a determining factor in eligibility as a public vendor. Other examples of these type of sanctions are unenforceability of "shielding contracts" designed to conceal the true beneficial owners, a prohibition on the distribution of profits to unregistered beneficial owners, and restrictions on voting rights within the entity's highest decision-making body for those not registered. These measures are set directly by the law and do not require a judicial or administrative decision to take effect.

In other jurisdictions, sanctions for breaches such as providing false or misleading information or failing to update or populate the beneficial owner register include financial penalties or even imprisonment in case of intentional false declaration. Financial penalties are typically imposed for failures to upload, maintain, or update the information in the register, or for failing to perform periodic reviews as mandated by law. Certain legal frameworks can go even further and establish responsibility to beneficial owners themselves or directors who fail to maintain accurate records or provide necessary information to the register of beneficial owners.

Another example of sanctions is the power for the supervisory authority to strike off the entities from the commercial register in case of persisting non-compliance with the beneficial ownership reporting obligations. The consequences of non-compliance and being struck off from the register impact the entity's operational capabilities.

Source: Global Forum Peer Reviews.



## Implementation options to ensure the availability of beneficial ownership information

### Box 31. Belgium's supervision and enforcement framework for compliance with the Register of Ultimate Beneficial Owners

At the time of Belgium's EOIR peer review (2018), the main requirements for the availability of information on beneficial owners were set out in the AML Law and company law. A centralised register of ultimate beneficial owners was created (the Register) hosted by the Federal Public Service Finance. The AML Law imposes administrative fines between EUR 250 and EUR 50 000 for infringements related to the quality of information provided to the Register or failure to comply with recording obligations. These fines can be levied not only against directors but also members of the entity's statutory body or management committee. The Register was under development (including supervision procedures) and was due to enter service by the end of 2018, fed by legal persons that are required to collect and keep information on their beneficial owners.

Following the peer review, Belgium set up a supervision framework to enforce compliance with beneficial ownership registration obligations. Under article 1:36 of the Companies and Associations Code, directors who fail to maintain accurate records are liable to civil fines ranging from EUR 50 to EUR 5 000. Under article 132, section six of the Law of the 18 September 2017 on the prevention of the use of the financial system for the purposes of money laundering and terrorist financing and limitations to the use of cash, directors who fail to provide necessary information to the Register are liable to civil fines ranging from EUR 250 to EUR 50 000. The Federal Public Service Finance is tasked with overseeing these obligations. It possesses the authority to inspect documents and conduct on-site visits and interviews to verify compliance. A new legislation effective from December 2023 has further empowered the Federal Public Service Finance: it allows the Crossroads Bank

for Enterprises (*Banque Carrefour des Entreprises*), the Belgian register for legal persons, to ex officio strike off legal persons from its registry. This action is triggered when legal persons fail to transmit their beneficial ownership to the Register after following the imposition of an administrative fine, and/or when entities did not do any publication in the Belgian Gazette for seven years, and/or when entities fail to comply for at least one year with the annual updating obligation. The striking off is administrative and does not affect the legal existence of the legal person which retains its rights and obligations (in particular, its status as a company subject to registration, the obligation to submit value added tax and social security declarations, etc.). However, the administrative consequences of non-compliance and being struck off from the Belgian register for legal persons are significant, impacting the entity's operational capabilities and reputation severely. Struck off entities are prohibited from conducting economic activities and initiating court proceedings. Despite not affecting an entity's legal existence directly, such removal restricts interactions with financial institutions and service providers, blocking essential business operations. The Crossroads Bank for Enterprises is mandated to revoke such removals if the non-compliance is rectified or a manifest error is recognised by the relevant authorities, highlighting a pathway for legal persons to regain compliance and restore their standing. As of January 2024, almost 21 000 legal persons were struck off from the register for non-compliance with their beneficial ownership obligations.

This integrated system of supervision, penalties, and corrective measures is intended to ensure adherence to beneficial ownership disclosure requirements in Belgium.

Note: The analysis related to Belgium's peer review is a snapshot of the situation at the time of the review and may no longer accurately reflect the state of the law applicable in Belgium at the time of publication of this toolkit. The implementation in practice of Belgium's Register has not been reviewed by the Global Forum.

Source: OECD (2018), *Global Forum on Transparency and Exchange of Information for Tax Purposes: Belgium 2018 (Second Round): Peer Review Report on the Exchange of Information on Request, Global Forum on Transparency and Exchange of Information for Tax Purposes*, op. cit, Crossroads Bank for Enterprises (<https://economie.fgov.be/en/themes/entreprises/crossroads-bank-entreprises/contents/ex-officio-striking-offs-cbe>), Belgium's Code of Economic Law ([www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=fr&la=F&cn=2013022819&table\\_name=loi](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2013022819&table_name=loi)).

## Implementation options to ensure the availability of beneficial ownership information

### Access to beneficial ownership information

Regardless of who are designated as supervisory authority(ies) for the enforcement of beneficial ownership obligations under the central register approach, the tax authority and other relevant law enforcement authorities should have access to beneficial ownership information it maintains. The use of this approach can facilitate timely access to beneficial ownership information because it will be centralised in one source, without need to identify the information holder and/or without need to request this information from the entity itself or an AML/CFT obliged person.

Broad professional privilege and secrecy without adequate exceptions may prevent access to entities' records on beneficial ownership information by law enforcement authorities and supervisory authorities and prevent effective supervision of entities' obligations. Therefore, these privilege and secrecy rules should not be applicable to law enforcement and supervisory authorities, including the tax authority.

### Public beneficial ownership registers

Central registers are usually directly accessible to law enforcement authorities and to AML/CFT obliged persons. However, there is a trend in favour of opening more broadly the access.<sup>40</sup> For instance, in some jurisdictions, the general public can have access on request to beneficial ownership information if they demonstrate a legitimate interest (e.g. establishing a business relationship, a contract). In other jurisdictions, the general public can have direct access to limited beneficial ownership information or even to all the information maintained. Depending on the scope of the access granted, the jurisdiction should consider the requirements of their legal framework, including data protection, privacy and security issues.

### Case studies on the central register approach

More jurisdictions are implementing a central beneficial ownership register to strengthen their AML/CFT framework and to ensure better transparency of and access to beneficial ownership information by relevant persons and authorities. The implementation of a central register contributes to an effective multi-pronged approach.

40. Access may be relevant for the private sector also for economic reasons. For instance, to allow more effective due diligence in legitimate business transactions (e.g. mergers and acquisitions).

In the context of the Global Forum peer reviews, some of the jurisdictions had established at the time of their review a central beneficial ownership register. Box 32 presents examples of jurisdictions using central registers and rated "Largely compliant" with respect to Element A1 of the 2016 ToR. Box 33 present the regional instrument adopted by 15 West African countries to implement the entity and register approaches.

### BENEFICIAL OWNERSHIP INFORMATION KEPT BY THE TAX AUTHORITY

#### General presentation of the tax administration approach

This approach refers to jurisdictions relying on the tax authority for collecting and maintaining beneficial ownership information. Under this approach, relevant legal persons and arrangements identify their beneficial owners and report them to the tax authority upon creation, annually and every time there is a change in the information.

The use of the tax authority approach allows for the availability of beneficial ownership information under Element A.1 of the 2016 ToR. It is also a way to comply with FATF Recommendations 24 and 25. A tax authority approach is a way to meet the requirement of Recommendation 24 to have a central register held by a public authority or body. Also, the Interpretive Note to Recommendation 25 encourages countries to set up other sources of information on trusts, trustees and trust assets (apart from the trustee and AML/CFT obliged persons), one of the possibilities being authorities which collect information on assets and income related to trusts (e.g. the tax authority). This approach also facilitates access to beneficial ownership information by the tax authority and other law enforcement authorities.

The tax authority approach is an extension of the entity approach, as the reporting persons are the entities which need to identify, verify, update, and maintain information on their beneficial owners, and keep underlying documentation. It is also a variation of the central register approach as the tax authority will maintain centrally beneficial ownership information. As the central register approach, the tax administration approach therefore ensures better supervision of the beneficial ownership obligations and access to beneficial ownership information. In practice, the tax authority approach complements the AML/CFT approach

## Implementation options to ensure the availability of beneficial ownership information

### Box 32. Examples of beneficial ownership implementation relying on the central beneficial ownership register approach

#### **Croatia – Largely compliant with Element A.1**

In Croatia, there is no obligation to engage with an AML/CFT obliged person when doing business. However, all relevant legal persons and arrangements have to register their beneficial owners into the Register of Beneficial Owners. While Croatian law does not recognise the concept of trusts, there are no restrictions for a resident of Croatia to act as a trustee, protector or administrator of a trust formed under foreign law. Therefore, a Croatian resident acting as a trustee (professional or non-professional), administrator or protector of a trust formed under foreign law is obliged to input the information on the beneficial owner(s) of trusts in the Beneficial Ownership Register.

The information contained in the Register is available to AML/CFT obliged persons, who have access to the Register and are able to crosscheck the information with their own CDD information. If a discrepancy is identified, the AML/CFT obliged persons must report the discrepancy and/or file a suspicious transaction report to the Anti-Money Laundering Office.

The Register of Beneficial Owners is maintained by the Financial Agency (FINA) on behalf of the Ministry of Finance. The FINA is a provider of information technology services to the financial sector. The FINA is only in charge of the technical implementation of the electronic database, as the entities are responsible for providing the beneficial ownership information and recording it into the register.

The supervision of the Register of Beneficial Owners is done by FINA and the Tax Administration. The FINA is responsible for verifying whether the information has been entered into the register, in a way and within the deadlines prescribed by law. Once the beneficial ownership information has been entered into the Register, an important part of the supervision is carried out by the Tax Administration, which conducts onsite investigations, audits and makes sure that the information entered into the register is accurate and up to date.

Croatia has established fines that can be imposed on legal persons which do not record appropriate, accurate and up-to-date information on their beneficial owner(s)

in the Register, and in a way and within deadlines prescribed. The fines can also be imposed on members of the management board or another responsible person in the legal person and trustees. However, the effectiveness of the implementation of the Register in practice could not be assessed due to its recent entry into force. As other gaps not related to the availability of beneficial ownership information were identified, it led to a Largely complaint rating.

#### **Nauru – Largely compliant with Element A.1**

In Nauru, the Beneficial Ownership Act (the BO Act) requires all types of entities, including trusts, to maintain beneficial ownership information and to report it annually to the authority appointed under the BO Act, which is the Secretary of Justice.

The beneficial ownership definition under the BO Act is in line with the standard. It does not prescribe a threshold to determine who the beneficial owner is, and this ensures that all natural persons having an ownership or control interest directly or indirectly in a legal entity are identified as beneficial owners.

A beneficial ownership annual return needs to be filed by every entity. This return is to be filed as part of the annual corporation return filed by entities under the Corporations Act, and the same applies to partnerships and trusts under the Partnerships Act and the Trusts Act, respectively. Further, all entities filing annual returns under the Business Names Registration Act and/or for renewal of annual business licence under the Business Licences Act, need to file beneficial ownership information along with those returns.

The beneficial ownership information is required to be retained by the entities for at least seven years from the end of the period to which the information relates to, and there are effective penalties and enforcement provisions in place to ensure compliance.

Given that the legal requirements for the availability of beneficial ownership information were brought into force at the end of the review period, it was not possible at the time of the review to assess the enforcement measures and the level of compliance of entities with their beneficial ownership obligations. In addition, the

## Implementation options to ensure the availability of beneficial ownership information

supervisory authority had not issued any guidance to entities on how to determine direct or indirect control. These deficiencies led to the Largely Compliant rating.

The Secretary of the Department of Justice and Border Control performs the role of the Registrar of Business Names, Partnerships, Trust, Corporations and Business Licenses, and is the authority under the BO Act. The competent authority has sufficient access powers to request and obtain all types of relevant information including legal and beneficial ownership information, as well as accounting and banking information from any person in order to comply with obligations under Nauru's EOI arrangements.

### **Czech Republic – Largely compliant with Element A.1**

In the Czech Republic, the Beneficial Owners Register (BOR), established in June 2021, serves as the principal framework for maintaining beneficial ownership information. Entities are legally mandated to accurately document and sustain current information on their beneficial owners. This responsibility is incumbent primarily upon the entities and their governing bodies, referred to as "registrants." Following the acquisition of such information, entities are compelled to submit an application for the inclusion of this data in the BOR. AML/CFT obliged individuals and entities are also expected to execute and regularly update Customer Due Diligence (CDD) processes, which must incorporate the identification of beneficial owners.

The legislative framework obligates beneficial owners, as well as intermediaries who facilitate the benefits or exert influence on behalf of ultimate beneficiaries, to proactively assist the entity in fulfilling its duties to record and communicate comprehensive, accurate, and up-to-date information to the BOR. This extends beyond a mere responsive duty, encompassing the proactive obligation to inform the entity of any changes that would affect their status as beneficial owners. The BOR Act stipulates penalties for non-compliance

and a lack of cooperation, enforceable through court proceedings, highlighting the system's potential to impose private law consequences for incorrect or incomplete BOR entries. While enforcing penalties on non-resident beneficial owners might present challenges, the Czech framework provides remedies to ensure that entities comply with the registration requirements.

The Czech system of beneficial ownership registration encapsulates not just the responsibility of entities to identify and report their beneficial owners but also the duty of these owners to engage cooperatively. The BOR Act provides that updates to the BOR must be filed "without undue delay" following any change in beneficial ownership, and if entities fail to register such changes within a stipulated 15-day period, other stakeholders with a legal interest may initiate the update. Sanctions and legal repercussions, such as the unenforceability of contracts intended to conceal the beneficial owners of an entity (shielding contracts) and restrictions on profit distribution and voting rights, are in place for registrants, beneficial owners, and related intermediaries who fail to comply.

Note: This analysis is a snapshot of the situation at the time of the review and may no longer accurately reflect the state of the law applicable in Croatia, Nauru and the Czech Republic at the time of publication of this toolkit.

Source: OECD (2019), *Global Forum on Transparency and Exchange of Information for Tax Purposes: Croatia 2019 (Second Round): Peer Review Report on the Exchange of Information on Request*, Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD Publishing, Paris, <https://doi.org/10.1787/ccacbc7-en>, OECD (2019), *Global Forum on Transparency and Exchange of Information for Tax Purposes: Nauru 2019 (Second Round): Peer Review Report on the Exchange of Information on Request*, Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD Publishing, Paris, <https://doi.org/10.1787/43120c29-en>, and OECD (2023), *Global Forum on Transparency and Exchange of Information for Tax Purposes: Czech Republic 2023 (Second Round): Peer Review Report on the Exchange of Information on Request*, Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD Publishing, Paris, <https://doi.org/10.1787/366b187f-en>.

and strengthens the entity approach, in particular by addressing existing gaps vis-à-vis the beneficial ownership standard. Being the responsibility of the tax authority, the supervision and the enforcement of the beneficial ownership requirement can rely on its

experience and the effectiveness of its supervision.

Table 10 summarises the main parameters and challenges to consider for the effectiveness of the tax authority approach.

## Implementation options to ensure the availability of beneficial ownership information

### Box 33. Establishing central beneficial ownership registers in West Africa

The Directive C/DIR.2/07/23 on the harmonisation of rules on beneficial ownership of legal entities within Member States of the Economic Community of West African States (ECOWAS) was adopted by the ECOWAS Council of Ministers on 6-7 July 2023 in Bissau (Guinea-Bissau). This regional instrument aims at harmonising the availability of beneficial ownership information in the 15 ECOWAS Member States.

The Directive is designed to establish a comprehensive framework to combat tax evasion, money laundering and other illicit financial flows. It provides for a definition and a methodology of identification of beneficial owners in line with the FATF Recommendations and includes, for instance, a simultaneous approach for the identification of the beneficial owners of legal persons as well as the requirement to look through interposed entities to identify beneficial owners.

The Directive requires:

- legal entities to identify and verify the identity of their beneficial owners, keep this information up to

date and maintain it for at least five years after the registered beneficial owners lose their status

- beneficial owners and any interposed persons to contribute to the identification of the beneficial owners by the concerned legal entity
- legal entities to report beneficial ownership information (including any change to this information) to the national authorities for registration in the central register of beneficial owners
- national authorities to keep the information for at least five years after the date of the dissolution of the entity and to provide access to other public authorities to beneficial ownership information
- national authorities to report any discrepancies identified in the course of their activities with the beneficial ownership information contained in the central register.

The Directive should be transposed into domestic laws by ECOWAS Member States by 1 January 2027.

Note: Under the Fiscal Transition Support Programme in West Africa funded by the European Union, the 15 ECOWAS Member States benefited from the technical support of the Global Forum Secretariat in drafting the Directive C/DIR.2/07/23.

Source: OECD (2023), *Combating tax evasion, avoidance, and illicit financial flows to mobilise domestic resources in West Africa*, [www.oecd.org/tax/tax-global/combating-tax-evasion-avoidance-and-illicit-financial-flows-to-mobilise-domestic-resources-in-west-africa.pdf](http://www.oecd.org/tax/tax-global/combating-tax-evasion-avoidance-and-illicit-financial-flows-to-mobilise-domestic-resources-in-west-africa.pdf).

### Key parameters and challenges of an effective tax authority approach

This section explains in detail the key parameters that jurisdictions should consider for the implementation of an effective tax administration approach to fully meet the requirements of the EOIR standard, and the related challenges.

#### Coverage and scope

The tax authority approach is based on the entity approach. Therefore, all relevant legal persons and legal arrangements, including inactive entities, must be required to identify their beneficial owners as described in the entity approach and to provide that information to the tax authority, which will operate as a central register of beneficial ownership information.

Depending on the tax legislation, some relevant

entities and arrangements might not be considered as taxpayers. Therefore, special attention should be given to the inclusion of a reporting mechanism of the beneficial ownership information of these non-taxpayer entities.

Tax legislation usually requires taxable entities to submit some legal ownership information when registering with the tax administration and annually along with their tax returns. Under the tax authority approach, jurisdictions can expand the existing requirements and introduce the obligation for all entities to provide beneficial ownership information to the tax authority upon creation, annually and promptly after a change occurs.<sup>41</sup> Entities should be subject to these obligations irrespective of their taxpayer status to ensure a full coverage.

41. This obligation should extend to all entities registered with the tax authority in the jurisdiction and as such, relevant foreign entities should also be covered by this requirement.

## Implementation options to ensure the availability of beneficial ownership information

Table 10. **Main parameters and challenges for effectiveness of the tax authority approach**

	Main parameters	Challenges
Coverage	<ul style="list-style-type: none"> <li>● All legal persons and arrangements must have the obligation to identify their beneficial owners, maintain that information, update it periodically and each time a change occurs, and file it with the tax authority. This obligation should cover all relevant entities, including inactive entities. The obligation should apply irrespective of the tax status of the entities.</li> </ul>	<ul style="list-style-type: none"> <li>● The scope of the legal framework may not cover all legal persons and arrangements. For example, it can occur that non-taxable legal persons and arrangements (e.g. non-regulated trusts), companies exempted from tax-filing obligations or under simplified tax regimes are not subject to reporting to the tax authority. The lack of monitoring of inactive entities may also be an issue.</li> </ul>
Determination of obligations	<ul style="list-style-type: none"> <li>● The definition of beneficial ownership and the methodology for identification of beneficial owners must be in line with the FATF Recommendations and the EOIR standard.</li> <li>● Obligation for legal persons and arrangements to identify their beneficial owners following a definition and methodology aligned with the FATF Recommendations and the EOIR standard, and to verify the information.</li> <li>● Obligation for the legal entities to update this information in case of change and to actively monitor at least on an annual basis that the beneficial ownership information maintained by them is adequate, accurate and up to date.</li> <li>● Obligation for beneficial owners, the persons in the chain of ownership and relevant parties to contribute to the verification process of the entities, by providing information and supporting documentation. They should also be required to inform the entity of any changes in their ownership or control.</li> <li>● Obligation for the entities to report failure by beneficial owners, persons in the chain of ownership and for relevant parties to provide requested information and documents to identify, verify and update the identity of their beneficial owners.</li> <li>● Obligation for trustees and administrators of legal arrangements to register with the tax authority to ensure proper supervision of their beneficial ownership obligations.</li> <li>● Obligation for all legal entities (e.g. their administrators, liquidators, trustees, etc.) to maintain a register of their beneficial owners, with clear record-keeping requirements during the lifetime of the entity, and for at least five years after the cessation of the entity.</li> </ul>	<ul style="list-style-type: none"> <li>● The definition of beneficial ownership or the methodology for the identification of the beneficial owners is not fully aligned with the FATF Recommendations and the EOIR standard.</li> <li>● Beneficial ownership can be a new requirement for most legal persons and arrangements, so they may not have the experience and knowledge for accurate identification in line with the standard, particularly in cases with complex chains of ownership.</li> <li>● Absence or lack of training, binding guidance and details on the modalities and procedures for determining beneficial owners (e.g. cascade, definitions for partnerships, trusts).</li> <li>● Deficiencies in the obligation to identify, verify, update, keep records and file beneficial ownership information.</li> <li>● Lack of provisions to facilitate compliance with beneficial ownership requirements in particular in case of complex structures (i.e. no or insufficient obligations for persons in the chain of ownership and relevant parties to contribute to the identification, verification and updating of beneficial ownership information).</li> <li>● Absence of registration of administrators of legal arrangements which may lead to a lack of supervision.</li> <li>● Absence or lack of provisions for the reporting of beneficial ownership information to the tax authority.</li> </ul>



## Implementation options to ensure the availability of beneficial ownership information

	Main parameters	Challenges
	<ul style="list-style-type: none"> <li>● Obligation for the entities to file beneficial ownership information and a relevant bank account number with the tax authority upon creation of the entity or by a prescribed date for pre-existing entities, and to confirm/update that information annually and every time there is a change.</li> <li>● Liability of trustees and other administrators of legal arrangements in case of failure to comply with their obligations.</li> </ul>	
<b>Monitoring and supervision</b>	<ul style="list-style-type: none"> <li>● Full use the tax authority's inspection and enforcement powers (audits, investigations, etc.) to compel legal persons and arrangements to comply with their beneficial ownership obligations, and to take enforcement actions in case of non-compliance. The tax authority should verify the accuracy of the information filed.</li> <li>● Other law enforcement authorities, which have access to the beneficial ownership information maintained by the tax authority, should report to the tax authority any discrepancy identified in their activities.</li> <li>● Implementation of preventive and awareness-raising measures to educate legal persons and arrangements on their beneficial ownership obligations.</li> </ul>	<ul style="list-style-type: none"> <li>● Organisation and resources within the tax authority are not adequate to rigorously enforce compliance of: <ul style="list-style-type: none"> <li>• legal persons and arrangements, including inactive entities</li> <li>• beneficial owners</li> <li>• persons in the chain of ownership and relevant parties</li> <li>• administrator of legal arrangements</li> <li>• any other relevant person.</li> </ul> </li> </ul> <p>which may result in inadequate enforcement and supervision, as well as incomplete, inaccurate and outdated beneficial ownership information.</p> <ul style="list-style-type: none"> <li>● Legal entities are not adequately aware of, and trained or guided on their beneficial ownership obligations, and are maintaining inaccurate beneficial ownership information.</li> </ul>
<b>Access to information</b>	<ul style="list-style-type: none"> <li>● Other law enforcement authorities should have access to beneficial ownership information maintained by the tax authority.</li> </ul>	<ul style="list-style-type: none"> <li>● Access by other law enforcement authorities to beneficial ownership information maintained by the tax authority is not clearly defined and stated in the legislation or tax secrecy does not allow for such access.</li> <li>● Broad professional privilege and secrecy without adequate exceptions may prevent access to entities' records on beneficial ownership information by law enforcement and supervisory authorities, in particular the tax authority, and prevent effective supervision of entities' obligations.</li> </ul>

### **Determination of obligations**

As the tax authority approach is an extension of the entity approach, entities, beneficial owners, persons in the chain of ownership and/or other relevant parties

must be subject to the same obligations mentioned under the entity approach regarding the definition and methodology for the identification of the beneficial owners, as well on the identification, verification, updating and record-keeping obligations:

## Implementation options to ensure the availability of beneficial ownership information

- Entities must
  - identify their beneficial owners following a definition and methodology aligned with the FATF Recommendations and the EOIR standard
  - verify the identity and the status of the beneficial owners using reliable and independently sourced information
  - update that information immediately and every time there is change
  - actively monitor any change of circumstances, document the nature of the control exercised (e.g. ownership interest control, control by voting rights, control by other means or senior manager)
  - maintain the beneficial ownership information along with supporting documentation during the required period, including in case of cessation.
- Beneficial owners, persons in the chain of ownership and/or other relevant parties must contribute to the identification, verification and updating of beneficial ownership information.

In addition to these obligations, reporting obligations must be added. Entities should file with the tax authority information on their beneficial owners upon creation or by a prescribed date by pre-existing entities, annually and at least each time a change of beneficial owner occurs. To that end, all entities irrespective of their tax status must be required to:

- register upon creation with the tax authority. For legal arrangements, it implies that the administrators must register themselves with the tax authority at the same time they register the legal arrangement they manage.
- report on an annual basis beneficial ownership information (e.g. confirmation or update of the beneficial ownership information). For taxpayers, the reporting can be done either along with the tax return or through a specific return. For non-taxpayers, a specific return may be used.
- report immediately any change of beneficial owners as it occurs. For this purpose, in the same way as in the entity and the central register approaches,

jurisdictions should introduce an obligation on entities to actively monitor that the beneficial ownership information they maintain is adequate, accurate and up to date. Any needed update can be done based on a specific return.

As explained in the central register approach, the return used (e.g. tax return, specific return) must capture all relevant information beyond the identity of the beneficial owner(s) and supporting documentation, including on the beneficial owner's status, should be provided. The initial registration and the periodical updates ensure availability of up-to-date information and facilitate the supervision of the reporting obligation by identifying non-fillers and monitoring closely inactive companies. The filing obligation can be coupled with the obligation to indicate an AML/CFT obliged person with whom a continuous business relationship is established (see also the central register approach).

The tax authority must maintain the beneficial ownership information for a minimum of five years following the cessation of the entity. Ideally, the register should be digitalised and maintained in a secure IT platform. This should facilitate not only the reporting of information by obliged entities, but should also ensure the integrity of the information, the checking of consistency with other data sources and the timely access to information by law enforcement authorities.

### **Monitoring and supervision**

Entities' compliance with their obligations must be effectively monitored and supervised and the developments made under the entity approach in relation to the supervision of the identification, verification, updating and record-keeping obligations are also relevant for the tax authority approach, with the difference that the tax administration is at least one of the supervisory authorities.

Regarding the reporting obligation, the tax authority must also effectively supervise and monitor entities' compliance. Indeed, a low rate of compliance with filing obligations can significantly affect the effectiveness of this approach.

In addition, as explained in the entity approach, the obligation for the beneficial owners, the persons in

## Implementation options to ensure the availability of beneficial ownership information

the chain of ownership and/or other relevant parties to contribute to the identification and updating of beneficial ownership information should be supervised too. In the context of the tax authority approach, it is recommended that entities inform the tax authority in case of non-compliance of these persons so that it can take appropriate enforcement measures.

The monitoring and supervision under this approach can be relatively “easier” when compared to other approaches where supervision is carried out by other non-tax authorities, such as the registrar of companies or the central bank. This is because tax audits and inspections of legal persons and arrangements are regular activities of the tax authority (including verification of legal and beneficial ownership requirements). Therefore, the tax authority should use its supervision and enforcement powers (e.g. desk-based check, onsite audits, investigations) to ensure compliance but also to educate and raise awareness on the entities’ obligations (see the preventive measures described in the central register approach). The tax administration should also cross-check declared information with other information it has and with information held by banks on a risk-based approach. However, this approach requires adequate organisation within the tax authority to rigorously enforce tax and beneficial ownership compliance (training of auditors and other tax officials, level of resources devoted to compliance, human and financial resources devoted to the infrastructure, etc.).

Other law enforcement authorities should also inform the tax authority of any discrepancy with the beneficial ownership information it maintains that are identified in the course of their own activities.

The tax authority should take enforcement actions in cases of non-compliance (failure to identify, verify, update or keep record of beneficial owners, failure to declare, late declaration, false declaration, etc.), including administrative, financial and criminal sanctions that can ultimately trigger dissolution of the entity. Sanctions should be applied not only to the entity and its administrators, but also to beneficial owners, persons in the chain of ownership, and/or relevant parties, and any other person in the chain of ownership if they fail to comply with their obligation to provide supporting documentation for beneficial ownership identification.

### **Access to beneficial ownership information**

The use of the tax approach can facilitate timely access to beneficial ownership information because it will be centralised in one source, without need to identify the information holder and to request it from the entity itself or from an AML/CFT obliged person.

In addition to the tax authority, other law enforcement authorities should have access to beneficial ownership information maintained by the tax authority. A direct access should be privileged, but if an access on request can be streamlined then it can also be a viable possibility. The access should be clearly stated in the legislation.

Broad professional privilege and secrecy without adequate exceptions may prevent access to entities’ records on beneficial ownership information by the tax authority and other relevant authorities and prevent effective supervision of entities’ obligations. Therefore, these privilege and secrecy rules should not be applicable to law enforcement and supervisory authorities, in particular the tax administration.

### **Case studies**

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In the context of the Global Forum peer reviews, some jurisdictions relied at the time of their review on the tax administration approach. Box 34 shows an example of a jurisdiction rated “Compliant on Element A.1 of the 2016 ToR.

## **CONCLUSIONS AND LESSONS LEARNED FOR THE IMPLEMENTATION OF A BENEFICIAL OWNERSHIP FRAMEWORK**

.....  
While the Global Forum does not prescribe any particular approach or approaches, it requires jurisdictions to have system(s) in place that ensure (i) the availability of beneficial ownership information on all entities and on bank accounts and (ii) the access to this information by the tax authority.

The main challenges regarding beneficial ownership information in the Global Forum peer reviews refer mainly to the availability of beneficial ownership information on all entities. For each beneficial ownership approach to be effective, some main conditions must be in place:

## Implementation options to ensure the availability of beneficial ownership information

- **A definition and a methodology for identifying beneficial owners, in line with the EOIR standard.**

Having a beneficial owner definition and methodology aligned with the standard does not depend on a particular approach. However, if a jurisdiction uses more than one approach for beneficial ownership, there should be consistency of the definition and methodology across all approaches to ensure standardised information. In addition, jurisdictions should provide guidance to ensure that the identification process followed takes into account the specific characteristics and structures of each relevant entity (e.g. companies, partnerships, foundations, foreign legal arrangements).

- **Complete coverage of all relevant entities within the jurisdiction.**

Beneficial ownership information must be available for all relevant legal persons and arrangements, including inactive entities. To ensure an adequate scope of the beneficial ownership legal framework, some aspects need to be considered by jurisdictions depending on the approach(es) used. For example, a jurisdiction that decides to

rely primarily on the AML/CFT approach has to ensure that all entities are required to engage with an AML/CFT obliged person (FIs and/or DNFBCPs) in a continuous relationship. If this is not the case or not possible because of the particular context of the jurisdiction, then it is advisable to complement the AML/CFT approach with another one, such as the entity, central register and/or tax authority approach. Issues such as the presence of inactive or non-taxable entities, foreign/non-regulated trusts and/or low rate of compliance with filing obligations and other relevant circumstances to the jurisdiction that could influence coverage should be carefully evaluated when considering the approach(es) to implement. A multi-pronged approach is also a requirement of the FATF Recommendations.

- **Clear obligations for information collection and reporting, verification, maintenance and updating.**

Clear requirements in these aspects should be in place for obliged persons, whether they are FIs, DNFBCPs, the entities themselves, the beneficial owners and/or persons in the ownership chain. In approaches

### Box 34. Beneficial ownership implementation relying on the tax administration approach

#### *Ireland – Compliant with Element A.1*

In Ireland, beneficial ownership information is available through a combination of AML/CFT law (where any relevant legal person or arrangement engages a person obligated to conduct CDD) and tax law. In addition, Ireland has introduced a central beneficial ownership register but, at the time of the review, it was too recent to assess its implementation.

Tax law requires all companies who are resident in Ireland for tax purposes to file a Corporation Tax Return (CT1) every year. Close companies (companies that are resident in Ireland and are controlled by five or fewer participators or are controlled by any number of participators who are directors) must include details of their beneficial owners in this annual return. The vast majority of companies in Ireland are close companies (91% of companies are covered by the annual return declaration).

Note: This analysis is a snapshot of the situation at the time of the review and may no longer accurately reflect the state of the law applicable in Ireland at the time of publication of this toolkit.

Source: OECD (2017), *Global Forum on Transparency and Exchange of Information for Tax Purposes: Ireland 2017 (Second Round): Peer Review Report on the Exchange of Information on Request*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264280229-en>.

A domestic or foreign trust with a trustee resident in Ireland (whether professional or not) is subject to tax on its worldwide income. Trusts that are resident in Ireland or where the trust holds real property situated in Ireland, must register with the Irish Revenue. The trust is required to file a tax return in respect of any year in which the trust realises any income or gain, makes any distribution, or acquires any new assets, and also must identify the settlor, trustees and beneficiaries.

Irish Revenue's audit and compliance programme is risk-driven using Revenue's REAP system, which identifies cases suitable for compliance intervention. The REAP system is a rules-based system and includes a number of rules that specifically target close companies who are required to gather and report beneficial ownership information to the Irish Revenue. In particular, complex transactions or suspicions of fraud often trigger questions from auditors about ownership and the structure of the company.

## Implementation options to ensure the availability of beneficial ownership information

other than the AML/CFT one, beneficial owners, persons in the chain of ownership and other relevant parties must also contribute to the diligence applied by entities to maintain accurate and up-to-date beneficial ownership information.

- **Strong monitoring and supervision.** Authorities should effectively supervise and rigorously enforce compliance with beneficial ownership obligations. Even if a jurisdiction has a legal framework in place and aligned with the beneficial ownership standard, a weak supervision and monitoring will jeopardise the availability of adequate, accurate and up-to-date beneficial ownership information.

The scope of obliged entities supervised (AML/CFT obliged persons, entities) should be adequate and jurisdictions should not neglect the supervision of inactive companies. Clear supervision responsibilities and mandates must be defined, particularly for jurisdictions that use various regulatory frameworks for beneficial ownership and therefore may have many authorities involved in supervision. For example, in countries that have a central register, the collection and maintenance of the data may be the responsibility of the authority in charge of the register (e.g. the commercial register, the tax authority, the central bank), but the verification

of the accuracy of the data and the practical supervision may be the responsibility of other authority(ies) that has the infrastructure and resources for rigorous compliance and for a greater scope of inspections, and/or has more experience in auditing and supervising this type of obligations.

- **Access to beneficial ownership information by the relevant authorities.** Regardless of the approach(es) used, regardless of who is designated as the supervisory authority of beneficial ownership obligations and regardless of who collects and maintains the beneficial ownership information, law enforcement authorities, including the tax authority / the competent authority for EOI purposes, should always have access to the source of beneficial ownership information, whether held by AML/CFT obliged persons, the entities themselves or a central register.

Access by at least AML/CFT obliged persons to the relevant beneficial ownership information held in the beneficial ownership register can strengthen the supervision of the beneficial ownership obligation when it is coupled with a discrepancy reporting requirement. However, AML/CFT obliged persons should not rely on the information held in the beneficial ownership register to comply with their CDD obligations.



# Conclusion



The Global Forum requires jurisdictions to ensure the availability of adequate, accurate and up-to-date beneficial ownership information on all relevant legal persons and arrangements, as well as on bank accounts, and ensure that the tax authorities have access to this information.

This toolkit presents the main takeaways and conclusions from the peer reviews conducted so far by the Global Forum. Drawing up from these lessons learned, this toolkit presents four main implementation options to ensure the availability of beneficial ownership information in line with the standard:

- AML/CFT approach: beneficial ownership information is maintained by FIs and DNFBPs pursuant to CDD obligations under the AML/CFT framework
- Entity approach: beneficial ownership information is kept by the entities themselves
- Central register approach: a register of beneficial owners is held by a public authority
- Tax administration approach: beneficial ownership information is kept by the tax authority.

A combination of these approaches has been more successful to ensure the availability of beneficial ownership information. This empirical finding of the Global Forum peer reviews is now supported by the requirement of the FATF to implement a multi-pronged approach to ensure that adequate, accurate and up-to-date beneficial ownership information is available.

Beyond the legal design of the framework to ensure the availability of this critical information to fight tax evasion and other illicit financial flows, the monitoring and supervision in practice of the compliance with the beneficial ownership obligations is the cornerstone of an effective beneficial ownership framework.

This area remains challenging for Global Forum and IDB members, and technical assistance is available to jurisdictions upon request.



# Annexes



## Annex 1. Beneficial ownership gap analysis tool



Note: This simplified questionnaire can be used to gather information from all appropriate government stakeholders in order to obtain an initial picture of a jurisdiction's existing legal framework and identify potential gaps that may exist with regard to the EOIR standard on beneficial ownership.

1. How does your jurisdiction define beneficial ownership?
  - a) Is it in line with the FATF definition and the EOIR standard?
  - b) Does the legislation include methodologies of identification of beneficial owners for both legal persons and legal arrangements?
  - c) Is guidance provided on the identification of beneficial owners depending on the type of the entity as well as on the concept of “control through other means”?
2. Do AML/CFT rules apply to all financial institutions, DNFBPs or other obliged persons? Are they in line with FATF Recommendations 10, 11, 17 and 22? For example, describe any customer due diligence rules, methodology for identifying beneficial owners, thresholds of controlling ownership interest, etc.
3. Do regulations require the availability of beneficial ownership information for all relevant legal persons and arrangements within your jurisdiction?
4. Is beneficial ownership information required to be maintained in your country by the following institutions/ persons? If so, with respect to which particular entities?
  - a) licensed financial institutions (such as banks)
  - b) licensed/regulated trust and company service providers
  - c) unregulated trust and company service providers
  - d) the entities themselves
  - e) a central register
  - f) the tax administration
5. Is the beneficial ownership information required to be adequate, verified and updated regularly, and what are the requirements and mechanisms for doing so?
  - a) Is there an obligation to update the beneficial ownership information immediately after a change occurs?
  - b) Does the legal framework specify a frequency for updating the beneficial ownership information by the AML/CFT obliged persons?
  - c) Does the entity have an obligation to actively check at least once a year that the beneficial ownership information maintained by them is adequate, accurate and up to date?

## Annexes

6. What are the record-keeping requirements for beneficial ownership information and underlying documentation? Is the information required to be kept for a minimum of five years after:
  - a) the end of the business relationship or the completion of the occasional transaction
  - b) the change of beneficial owner(s)
  - c) the termination of the function of manager of the legal arrangement
  - d) the cessation of the legal person or legal arrangement
  - e) the cessation of the AML/CFT obliged person.
7. What sources would you access to gather information on beneficial owners of:
  - a) legal persons registered in your jurisdiction
  - b) legal persons registered in a foreign country with sufficient nexus in your jurisdiction
  - c) trusts (or similar legal arrangements) registered in your jurisdiction
  - d) trusts (or similar legal arrangements) registered in a foreign country with a trustee in your jurisdiction
8. Do competent authorities within your jurisdiction, in particular competent authorities for EOI purposes, have access to beneficial ownership information regardless of who is the information holder?
9. What are the main problems you face in investigating the ownership structure and beneficial ownership of:
  - a) domestic legal persons
  - b) cross-border legal persons
  - c) domestic trusts (or similar legal arrangements)
  - d) cross-border trusts (or similar legal arrangements)
10. Are bearer or nominee shares, or any other nominee arrangement, permitted? If so:
  - a) is there an effective mechanism that will allow the ultimate beneficial owner of the shares to be ascertained?
  - b) what is that mechanism?
11. Are supervision mechanisms and responsibilities adequately defined to assess the compliance with the obligations to obtain and hold beneficial ownership information?
  - a) by licensed financial institutions (such as banks)
  - b) by licensed/regulated trust and company service providers
  - c) by unregulated trust and company service providers

d) by the entities themselves

e) by a central register

f) by the tax administration

What enforcement activities are carried out with regard to beneficial ownership obligations, and what is the materiality of those?

- 12.** Are obliged persons within your jurisdiction trained on their beneficial ownership obligations (AML/CFT obliged persons, legal entities and/or public authorities depending on the approach implemented by the jurisdiction) through training, binding guidelines, forms, guidance, etc.?

## Annex 2. Useful resources

- FATF (2019), *Best Practices on Beneficial Ownership of Legal Persons*, FATF, Paris, [www.fatf-gafi.org/media/fatf/documents/Best-Practices-Beneficial-Ownership-Legal-Persons.pdf](http://www.fatf-gafi.org/media/fatf/documents/Best-Practices-Beneficial-Ownership-Legal-Persons.pdf)
- FATF (2012-2023), *International standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*, FATF, Paris, France. Available at [www.fatf-gafi.org/en/topics/fatf-recommendations.html](http://www.fatf-gafi.org/en/topics/fatf-recommendations.html)
- FATF, Outcomes of the Plenary, 22, 24 and 25 February 2021. Available at [www.fatf-gafi.org/publications/fatfgeneral/documents/outcomes-fatf-plenary-february-2021.html](http://www.fatf-gafi.org/publications/fatfgeneral/documents/outcomes-fatf-plenary-february-2021.html)
- FATF (2023), *Guidance on Beneficial Ownership for Legal Persons*, FATF, Paris, [www.fatf-gafi.org/en/publications/Fatfrecommendations/Guidance-Beneficial-Ownership-Legal-Persons.html](http://www.fatf-gafi.org/en/publications/Fatfrecommendations/Guidance-Beneficial-Ownership-Legal-Persons.html)
- FATF (2024), *Guidance on Beneficial Ownership and Transparency of Legal Arrangements*, FATF, Paris, [www.fatf-gafi.org/en/publications/Fatfrecommendations/Guidance-Beneficial-Ownership-Transparency-Legal-Arrangements.html](http://www.fatf-gafi.org/en/publications/Fatfrecommendations/Guidance-Beneficial-Ownership-Transparency-Legal-Arrangements.html)
- Global Forum EOIR peer review reports, available at <https://doi.org/10.1787/2219469x>
- IDB and OECD (2019), *A Beneficial Ownership Implementation Toolkit*, available at <https://oe.cd/41V>
- OECD/FATF (2014), *FATF Guidance, Transparency and Beneficial Ownership*, available at <https://oe.cd/41X>
- OECD (2017), *Standard for Automatic Exchange of Financial Account Information in Tax Matters*, Second Edition, OECD Publishing, Paris. Available at <https://doi.org/10.1787/9789264267992-en>
- OECD (2023), *Handbook for Peer Reviews on Transparency and Exchange of Information on Request: Second Round*, Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD, Paris, available at [www.oecd.org/tax/transparency/documents/handbook-for-peer-reviews-on-transparency-and-exchange-of-information-on-request.pdf](http://www.oecd.org/tax/transparency/documents/handbook-for-peer-reviews-on-transparency-and-exchange-of-information-on-request.pdf)

Further resources, including an e-learning module on beneficial ownership developed by the Global Forum and the Asian Development Bank, are available in the Global Forum Hub of the Knowledge Sharing Platform for Tax Administrations: [www.oecd.org/tax/transparency/resources/global-forum-e-learning.htm](http://www.oecd.org/tax/transparency/resources/global-forum-e-learning.htm).









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