

STRENGTHENING THE FUTURE GLOBAL STANDARD

**Response to FATF's proposals on beneficial
ownership transparency**

COMMENTS ON REVISIONS TO RECOMMENDATION 24

MULTIPRONGED APPROACH TO COLLECTION OF BENEFICIAL OWNERSHIP INFORMATION

QUESTION



The requirement in paragraph 7 includes a compulsory company approach, a requirement for a public authority or body to hold beneficial ownership information (a beneficial ownership registry or another body) or an alternative mechanism, and the supplementary measures. Countries should decide, on the basis of risk, context and materiality, what form of registry or alternative mechanisms they will use to enable efficient access to information by competent authorities, and should document their decision. Do you agree with the approach set out in paragraph 7 of the Interpretive Note?

TRANSPARENCY INTERNATIONAL'S POSITION

We welcome the proposal to require a multi-pronged approach, where countries need to rely on at least three different mechanisms ((i) compulsory company approach; (ii) register or similar alternative mechanism; and (iii) supplementary measures such as information held by financial institutions and DNFBPs) to ensure the availability of beneficial ownership information.

In our submission to the previous FATF consultation on the revision of Recommendation 24¹, we demonstrated the importance of requiring beneficial ownership information to be collected centrally by a public authority or body (company register, beneficial ownership register, tax register) under a multi-pronged approach. Registers with beneficial ownership information have proven to be the best approach for ensuring information is available in a timely manner to competent authorities. When made public, beneficial ownership registers have also proven an important tool for foreign competent authorities, with the potential to simplify normally lengthy international cooperation requests and save resources. They can also be useful for the private sector, particularly obliged entities, in due diligence processes. Moreover, members of the public, civil society and journalists can ensure an additional layer of verification and scrutiny of the information. Registers also enable the use of gathered data to assess money laundering risks and therefore improve policies, supervision and enforcement.

These aspects are recognised somewhat in the proposed amendments, but could be made more prominent to achieve the overall objective of Recommendation 24 and the FATF standards more broadly.

The proposed text however lacks clarity on whether the register containing beneficial ownership should be held centrally. Central registers have many advantages over a decentralised approach (e.g. subnational registers). The OECD beneficial ownership toolkit identified some of the benefits of a centralised approach, including: (i) single point of contact authorities; (ii) ease of access, and (iii) greater ability to identify particular ownership holdings by

¹ Transparency International, 2021. *A New Global Standard on Beneficial Ownership Transparency – Response to FATF Consultation*, August 2021. <https://images.transparencycdn.org/images/A-New-Global-Standard-on-Beneficial-Ownership-Transparency-Response-to-FATF-Consultation-August-2021.pdf>

a specific individual and/or overall ownership trends.² The disadvantage, according to the OECD report, is higher costs to implement them. However, while costs have been raised as a potential problem, there is little to no concrete evidence of the actual costs or the cost-benefits of centralised registers.³ More evidence should be collected to understand how much it costs to set up functional registers and how much is saved when registers are in place to aid in investigations, due diligence, etc.

Moreover, beneficial ownership registers do not necessarily require a whole new standalone operation. Countries that have implemented a register model have taken different approaches, depending on their legal framework, other existing registers and infrastructure. Beneficial ownership information could be collected and stored in existing registers maintained by the company register, a tax authority, financial intelligence unit or a new entity created for this purpose. In fact, beneficial ownership disclosure should not duplicate existing systems, but rather complement them. This would avoid an unnecessary burden on legal entities, which would not be required to submit information multiple times and on authorities, which would be able to optimise processes and information about companies in a single system.

There are also examples of countries that have federal systems, where basic company information is registered at the subnational level, that have opted for collecting beneficial ownership register centrally using other approaches, such as registers maintained by tax authorities (e.g. Brazil) or by another authority (e.g. US). The source of information feeding the central register can of course come from subnational registers or sectoral registers, as long as the information in the register is comprehensive and covers all legal persons created or operating in the country.

Given the flexibility already available to countries on how to implement the register approach, it is unclear what "alternative mechanism" could be used that would also provide authorities with efficient access to adequate, accurate and up-to-date information. We appreciate the explicit mention that reliance on existing information alone is insufficient, but we suggest that if a reference to "alternative mechanism" is maintained, then examples of other approaches that would fulfil the requirements of paragraph 7b should be provided. The value of a register is that competent authorities, in most cases, can have direct access to the information without having to request it. This not only ensures timely access, but also allows authorities to use the information in the register more proactively during investigations. Any alternative mechanism should provide for the same features.

Another approach would be to clarify that the preferred option is that beneficial ownership information is held centrally by a public authority and body (7bi) and that as an alternative mechanism (7bii), countries could have decentralised beneficial ownership registers (e.g. subnational level) as long as rapid, direct and unfiltered access is guaranteed to competent authorities. In this case, countries should also ensure that the subnational registers follow the same rules (beneficial ownership definition, types of information collected, coverage of the law, verification, etc). The types and quality of information should not vary from state to state, but that they are harmonised across the country. There are several examples of how fragmentation could lead to regulatory arbitrage. For instance, the latest FATF mutual evaluation review on the United Arab Emirates (UAE) underscored that the fragmented system of registers in the country, where 39 corporate registers exist, has given "rise to different levels of understanding, implementation and application of measures to prevent the misuse of legal persons, creating regulatory arbitrage."⁴ The review concludes that implementing a national register in the UAE would be a positive step.

² OECD, Inter-American Development Bank, 2019. *A Beneficial Ownership Implementation Toolkit*
<https://www.oecd.org/tax/transparency/beneficial-ownership-toolkit.pdf>

³ In Latvia, for example, where beneficial ownership information is recorded centrally as part of the country's company register and made available to the public free of charge (and also as structured downloadable data), according to registry authorities, the following costs have been incurred so far: (i) Increased human resources costs to conduct additional checks on beneficial ownership data provided: 500 000 EUR/per year; (ii) To ensure information availability from the register (free of charge information on all legal entities in Latvia, including information on their BOs), the register receives yearly subsidy from the state budget – 1,2 million EUR/ per year. It is the cost of full information availability from the register in different formats (webpage, API integrations, open data); (iii) Investments in the IT system (which applies for the whole company register, not only BO): 90 000 EUR (2017 – 2021).

⁴ <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-United-Arab-Emirates-2020.pdf>

In this context, some aspects of Recommendation 24 and the Interpretive Note could be clearer or strengthened. See also our proposals to Rec 24 and IN24 draft amendment text in [BLUE](#) below and with deletions in [purple](#).

Recommendation 24:

- The reference to “alternative mechanism” in the Recommendation text should emphasise that the alternative mechanism needs to be similar – or produce effects that are similar – to a register.

Interpretive Note 24:

- Paragraph 7, caput, new footnote (now 13): A country's decision on what form of register or alternative mechanism to adopt should be well documented. An overview of the methodology used to analyse the risks, context and materiality should also be included in this documentation and publicised. We propose adding a footnote to this end.
- Paragraph 7, b)(i): The text lacks clarity. It is not clear if the intention was to say that there is no need to have a separate beneficial ownership register (i.e. it is fine to collect this information alongside an existing register), but that countries should still have ONE single register held centrally; or whether the intention was to suggest that the beneficial ownership information can be recorded in several registers (ie. subnational registers). We believe that a central register is key to achieve the objectives of the standard. Beneficial ownership data could still be collected alongside other information (company, tax) in existing registers, as long as these are centralised registers. The source of information feeding the central register can of course come from subnational registers or sectoral registers, as long as the information in the register is comprehensive and covers all legal persons created or operating in the country. Therefore, we suggest deleting “need not” and “only” and add that information “should” be held by a single body.
- Paragraph 7, b (i), Footnote 15 (former 10): the proposed footnote should explain that while beneficial ownership information should be recorded in a central register, it could still be available from a body that records beneficial ownership information alongside other information (e.g. basic ownership and incorporation information, tax information). The source of information in the central register may come from multiple registries (e.g. for provinces or districts, for sectors, or for specific types of legal person such as NPOs). Information in the central register should cover all legal persons created and operating in the country, including foreign-created entities with sufficient links, as per paragraph 1.
- Paragraph 7, b (ii): if the reference to “alternative mechanisms” is maintained, the interpretive note should include a few examples of what type of “alternative mechanism” would be acceptable. We suggest considering subnational beneficial ownership registers as a potential alternative mechanism. It should be made more explicit that they should produce the same effects as the registry approach (i.e. immediate, direct and unfiltered access) by, for example, qualifying what is understood by “efficient access” and that the same rules and standards should be applied across subnational registers. It could also be beneficial to more clearly state that this alternative mechanism should be adopted in addition to measures (a) and (c).

BEARER SHARES AND NOMINEE ARRANGEMENTS

QUESTION

- ☞ Should bearer shares and bearer share warrants without any traceability be subject to additional controls as set out in amendments to paragraph 14 of the Interpretive Note? Is the

draft glossary definition sufficiently clear to avoid inadvertently applying excessive controls to traceable and legitimate uses of such instruments? If there remains undue controls, how should this be mitigated? Should nominee arrangements be subject to the disclosure requirements as set out in amendments to paragraph 15 of the Interpretive Note? Will the proposed rules and the new glossary definitions create undue restrictions for institutional investors or other legitimate uses of such instruments, and if so, how should this be mitigated? Are there other specific mechanisms that should be permitted, in addition to those proposed, which could ensure their transparency?

TRANSPARENCY INTERNATIONAL'S POSITION

The prohibition of the issuance of new **bearer shares and bearer shares warrants** is an important step to reduce the obstacles to beneficial ownership transparency. However, we also believe that existing bearer shares and bearer share warrants must be converted into a registered form.

Moreover, when existing bearer shares are converted, shareholders should be registered in the company's shareholder list and the information about their beneficial owners should be disclosed according to paragraph 7b.

In case immobilisation remains an option, we believe that, in the spirit of the multi-pronged approach, existing bearer shares should be held with a public authority, where efficient access by other relevant competent authorities can be guaranteed.

Moreover, examples from other countries that have recently introduced measures to regulate existing bearer shares show the need for strong measures in case holders of bearer shares fail to convert or immobilise them. The proposal to ensure no rights can be exercised until registration or immobilisation happens is a step in the right direction. We suggest also including a mention to what should happen after the implementation deadline (e.g. cancellation of shares and no rights for compensation).

On **nominee directors and shareholders**, our preferred option would be to prohibit their use. However, if allowed, we believe that a combination of mechanisms is necessary to prevent and mitigate the risk of their misuse. Proposals should be compulsory to require (i) nominee shareholders and directors to disclose their nominee status and the identity of the nominator to the company, the register and obliged entities; and for this information to be recorded as part of basic information and (ii) to require nominees are licensed. We suggest adding a third obligation to require nominee shareholders and nominee directors to maintain information identifying their nominator and the natural person on whose behalf the nominee is ultimately acting, and making this information available to the competent authorities and the register upon request.

We therefore propose the following modifications to the Interpretive Note (see also draft amendment text in **BLUE** below and with deletions in **purple**):

- Paragraph 14 (a): establish the conversion of bearer shares and bearer shares warrants into registered shares as the preferred mechanism for dealing with existing bearer shares.
- Paragraph 14 (a), new footnote (now 23): register converted shares in the company's shareholder list and identify and report beneficial owners of shares in accordance with paragraph 7.
- Paragraph 14 (b): if immobilisation remains an option, require existing bearer shares and bearer shares warrants to be held with a public authority, instead of a regulated financial institution or professional intermediary, with timely access to the information by relevant competent authorities.
- Paragraph 14 (c), new footnote (now 24): include an explanation that after the deadline for registration or immobilisation, the holders of bearer shares and bearer shares warrants will permanently lose their shareholder status and have their shares cancelled, without the right to compensation.

- Paragraph 15: bring what used to be footnote 15 to the main text to make clear that a consideration to prohibit nominee shareholders and directors is the preferred option. Delete “one or more of” to make sure that all the mechanisms that follow should apply. Add (c) “requiring nominee shareholders and nominee directors 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 as well as to the register.”

RISK-BASED APPROACH

QUESTION

- “ Should countries be required to assess the ML and TF risks associated with foreign-created legal persons and take appropriate steps to manage and mitigate them? What constitutes a sufficient link with the country? Should a risk-based approach be applied to verification of beneficial ownership information?

TRANSPARENCY INTERNATIONAL'S POSITION

We suggest that all foreign-created legal persons with sufficient links with a country should be required to follow the same beneficial ownership disclosure rules as legal persons incorporated in that country. This would ensure that equal treatment is given to domestic and foreign companies. An analysis of risks would still be important to define whether any additional mitigating measures are necessary – similarly to what is required for domestic legal persons (paragraph 2d).

There is no justification for a foreign company that, even if only on an occasional basis, has a bank account, employs staff, owns real estate, invests in the stock market, owns commercial/business insurance, or is a tax resident in the country, to not disclose its beneficial owners, particularly if the reporting and disclosure rules in its country of incorporation differ from the ones applied in the country where it operates. By not extending beneficial ownership transparency rules to foreign legal entities, the FATF standard leaves a gap that can continue to be abused by key corporate formation centres that are less likely to establish comprehensive mechanisms domestically or to cooperate with foreign authorities in a timely manner.

Moreover, beneficial ownership information of all foreign-created entities with sufficient links with the country should be recorded in accordance with paragraph 7c.

We commend the amendment of footnote 1 (Paragraph 1), explaining that the definition of a threshold to determine beneficial ownership should be based on the jurisdictions' assessment of risks, with a maximum of 25%. We also suggest requiring that, in addition, to risk other concrete evidence is taken into account, for example, an analysis of the current distribution of shareholdings patterns within the country.

On **verification**, we agree with the proposal that verification measures may vary according to the specific level of risk. However, we believe that the adoption of a risk-based approach to verification would be more effective if certain criteria were in place and if a primary responsibility to verification was given to the public authority or body responsible for collecting beneficial ownership information.

While all of those holding beneficial ownership information should have a mandate to ensure the information is adequate, accurate and up to date, it is important to ensure public authorities or bodies holding beneficial ownership information have the main responsibility and employ additional measures to ensure the information is reliable. We suggest adding a paragraph (see below) specifying this expectation. Countries should mandate that the public authority independently verify information provided by legal entities. Adequate powers and resources should be given to the authority to check the information provided by legal entities, request documents, carry out

inspections and sanction non-compliance. When it comes to complementary measures, we suggest specifying who should be covered by discrepancy reporting measures, broadening it to authorities as well.

We therefore propose the following modifications to the Interpretive Note (see also below draft amendment text in **BLUE** and with deletions in **purple**):

- Paragraph 1: the mention to “present ML/TF risks and” before “have sufficient links” should be deleted. Competent authorities should always be able to obtain or have access to information on the beneficial ownership and control of foreign companies with a sufficient link to the country, regardless of the level of risk. The assessment of risks should be complementary and used to establish additional mitigation measures, following the same approach used for domestic entities (as per paragraph 2 d).
- Paragraph 1 (d), footnote 6: the minimum circumstances in which a foreign entity would have sufficient links with the country and therefore be under the obligation to disclose beneficial ownership information should be pre-determined. We believe that all examples listed in the proposed amendment text are circumstances that justify authorities to always have access to beneficial ownership information regardless of the level of risk. Countries can define additional circumstances that could be considered as sufficient link on the basis of risk.
- Paragraph 2 (e), footnote 7: It should be clarified that beneficial ownership information of all foreign-created legal persons with sufficient links to the country should be held as set out under paragraph 7 c.
- Paragraph 11, Accurate: include concrete examples of who is covered by discrepancy reporting requirements. We suggest that discrepancy reports should be required from competent authorities, financial institutions / DNFBPs or others with access to beneficial ownership information.
- Inclusion of a new paragraph after paragraph 11: an additional paragraph emphasising that “the public authority or body holding beneficial ownership information, as per paragraph 7b, should be mandated and given sufficient powers and resources to verify beneficial ownership and the veracity of information provided to it, as well as to report any suspicion to the country’s financial intelligence unit.”
- Inclusion of footnote 18: “In addition to collecting information that confirms the identity of the beneficial owner, public authorities or bodies in charge of the register should also rely on other mechanisms to verify beneficial ownership information, such as: measures to validate the information, cross-checking information against existing government databases, vetting information against sanctions lists and adverse media. Measures could be determined based on specific levels of risk.”

ACCESS TO INFORMATION

QUESTION

- “ Taking into account needs of competent authorities and other stakeholders, and concerns relating to privacy, security and other potential misuse of BO information, do you agree with the requirements on access to information as set out in paragraphs 12 and 13?

TRANSPARENCY INTERNATIONAL'S POSITION

The adoption of a multi-pronged approach with a requirement to have beneficial ownership information held by a public authority or body will certainly improve access to information by competent authorities. The draft amendment text proposes that competent authorities should have rapidly and efficiently access. It is also important to specify that access should be direct and unfiltered so that authorities can efficiently use the register during investigations.

Considering that money laundering very often includes a cross border element, it is also instrumental that foreign competent authorities have easy, direct and timely access to information about legal entities and their beneficial owners. If beneficial-ownership registers limit access to national competent authorities, foreign competent authorities will always have to resort to lengthy international cooperation processes. This also means registers can only be used in a reactive manner and will not support proactive transnational investigations.

When it comes international cooperation, the proposed amendment to paragraph 7 now establishes that countries will need to record beneficial ownership information in a register maintained by a public authority or body or use another mechanism that fulfils the same purpose. It is important to ensure that access to this information is also expanded to foreign competent authorities. We believe such an explicit provision is necessary to ensure that countries consider mechanisms to facilitate access to the beneficial ownership information in registers in a way that does not always require using the powers of domestic competent authorities as paragraph 19c suggests. The provision under paragraph 19c can still be kept in case foreign authorities need to access supplementary information, for example.

The standard should emphasise more strongly the importance of extending access to financial institutions, DNFBPs and the public more broadly.

Public and open registers also allow civil society organisations, academics and journalists to scrutinise the data. They can identify and expose conflicts of interest, potential corruption, tax evasion, and environmental and other crimes; and also undertake higher-level assessments to improve frameworks and registers so that beneficial ownership data serves as a useful tool against financial crime. For example, bulk analysis undertaken by civil society in the UK improved how Companies House, the national registrar of companies, collected data.

In our previous submission, we provided a list of cases where journalists and civil society were able to detect potential wrongdoing thanks to the information available in public beneficial ownership registers. For example, in Turkmenistan, amidst severe food shortages and an economic meltdown, the president of the country signed a decree instructing the country's Ministry of Trade and Foreign Economic Relations to approve food import contracts worth nearly US\$60 million with seven specific foreign companies. While the stated purpose of these imports was to increase the supply of food, a May 2021 investigation by the Organized Crime and Corruption Reporting Project (OCCRP) found that the decree made it possible for the president's inner circle to use offshore companies to conceal conflicts of interest and win government contracts. Records from the UK beneficial ownership register were crucial in uncovering this scheme. The data revealed that two of the specific companies authorised by the decree to import food were owned by the president's nephew and his close business associate.

Making registers with beneficial ownership information available to the public for free and in open data formats increases the impact they can have in the fight against money laundering and other crimes. We understand FATF members have different views about opening up registers and many of them are concerned about privacy and security-related issues, costs and other potential implications. We nevertheless invite the FATF Secretariat and its members to undertake a comprehensive analysis of the potential advantages and disadvantages of making beneficial ownership information available to the public, collecting data and impact stories to ensure an informed discussion can take place.

In relation to privacy and security concerns, we reiterate the point made in our previous submission that company incorporation does not provide the right to privacy. Individuals who create legal structures are actively choosing to benefit from them and take advantage of things like limited liability. Individuals could if they wanted trade in their own name and avoid the public reporting obligations that come with legal structures. In this context, requirements to disclose the beneficial owner of companies should strike a balance between privacy and public interest. All relevant information concerning the legal entity should be disclosed. Personal information,

such as the home address or identification number of the beneficial owner, should not be public. The law should make clear what personal data is collected and how it is used, shared and secured. Privacy and security concerns should also be treated differently. Beneficial ownership transparency laws should ensure that exceptions are in place for cases that pose a significant risk of harm. Requests for exceptions should be verified by an independent body and the beneficial owner should be able to appeal a denied request.

In this context, some aspects of Recommendation 24 and the Interpretive Note could be made clearer or stronger. See also our proposals to the Rec 24 and IN24 draft amendment text in [BLUE](#) below.

Recommendation 24:

- Add “direct” or “unfiltered” to qualify the type of access that should be guaranteed to competent authorities.
- The suggestion that countries should facilitate public access to the beneficial ownership information should be reflected in the text of the recommendation.

Interpretive Note:

- Paragraph 13: in line with the text of Recommendation 24, we suggest deleting the word “consider” before “facilitate”.
- Paragraph 19: include as part of (a) that countries should facilitate access by foreign competent authorities also to beneficial ownership information held in a register or similar alternative mechanism.

TIMELY ACCESS TO ADEQUATE, ACCURATE, AND UP-TO-DATE INFORMATION

TRANSPARENCY INTERNATIONAL'S POSITION

We appreciate the inclusion of more guidance on what is understood as adequate, accurate and up to date information. The interpretive note provides examples of the types of information that are considered sufficient to **identify** the beneficial owner. We believe that the FATF standards should seek to establish minimum requirements for countries. We suggest that the information included in what used to be footnote 12 (footnote 16 of our proposal) should be the minimum to identify the beneficial owner of legal entities across countries. Countries could still include additional measures if they wish, including based on an analysis of risk.

When it comes to ensuring the information is **up-to-date**, in addition to mandatory updates soon after the change happens (e.g. 30 days, as proposed), we believe that an annual requirement to confirm ownership status, which could be combined with other annual reporting duties of the company, would make it easier to hold companies and beneficial owners accountable if they provide false information or fail to accurately report changes.

The inclusion of **public procurement** is an important addition to the standard. Countries could also be encouraged to use their AML/CFT risk assessment to identify other relevant competent authorities that could benefit from timely access to beneficial ownership information. Examples could include supreme audit institutions, anti-corruption agencies, competition authorities, election management bodies, among others. This would be particularly relevant in countries where beneficial ownership registers are not publicly available.

We therefore propose the following modification to the Interpretive Note (see also draft amendment text in [BLUE](#) below):

- Paragraph 11, current footnote 16: establish that, at a minimum, information aimed at identifying the natural person(s) who are the beneficial owner(s) should include the full name, nationality(ies), the full date and place of birth, residential address, national identification number and document type, and the tax identification number or equivalent in the country of residence.

- Paragraph 11, Up to date: add a sentence at the end of the paragraph stating that companies should confirm their ownership status on an annual basis.

Paragraph 12, new footnote (now 18): add a new footnote after public procurement stating that “based on the assessment of AML/CFT risks, countries should extend timely access to beneficial ownership information to other competent authorities that can support or play

DRAFT AMENDMENT TEXT TO R.24 AND INR.24

TRANSPARENCY INTERNATIONAL'S SUGGESTIONS

Note on formatting: The current text of the Recommendation and Interpretive Note are shown in normal black text. All proposed amendments by FATF, including the ones agreed at the October PDG, are coloured in red, with additions underlined and ~~deletions struck-out~~.

Transparency International's suggestions are coloured in blue and deletions ~~struck-out~~ in purple.

Recommendation 24. Transparency and beneficial ownership of legal persons

Countries should assess the risks of ~~take measures to prevent the~~ misuse of legal persons for money laundering or terrorist financing, and take measures to prevent their abuse ~~misuse~~. Countries should ensure that there is adequate, accurate and timely-up to date information on the beneficial ownership and control of legal persons that can be obtained or accessed rapidly and efficiently-in a timely fashion by competent authorities, through either a register of beneficial ownership or a similar an alternative mechanism, in a direct / unfiltered manner. ~~In particular, c~~Countries ~~that have legal persons that are able to~~ should not permit legal persons to issue new bearer shares or bearer share warrants, and take measures to prevent the misuse of existing bearer shares and bearer share warrants. Countries, or which allow nominee shareholders or nominee directors, should take effective measures to ensure that nominee shareholders and directors~~they~~ are not misused for money laundering or terrorist financing. Countries should ~~consider measures to~~ facilitate access to beneficial ownership and control information by financial institutions and DNFBPs undertaking the requirements set out in Recommendations 10 and 22, as well as by the public.

Interpretive Note to Recommendation 24 (Transparency and Beneficial Ownership of Legal Persons)

1. Competent authorities should be able to obtain, or have access in a timely fashion to, adequate, accurate and current information on the beneficial ownership and control of companies and other legal persons (beneficial ownership information⁵) that are created⁶ in the country, as well as those that present ML/TF risks and have sufficient links⁷ with their country (if they are not created in the country). Countries may choose the mechanisms they rely on to achieve this objective, although they should also comply with the minimum requirements set out below. ~~It is also very likely that c~~ Countries ~~will need to should~~ utilise a combination of mechanisms to achieve the objective.
2. As part of the process described in paragraph 1 of ensuring that there is adequate transparency regarding legal persons, countries should have mechanisms that:
 - a) identify and describe the different types, forms and basic features of legal persons in the country.
 - b) identify and describe the processes for: (i) the creation of those legal persons; and (ii) the obtaining and recording of basic and beneficial ownership information;
 - c) make the above information publicly available; and
 - d) assess the money laundering and terrorist financing risks associated with different types of legal persons created in the country, and take appropriate steps to manage and mitigate the risks that they identify.
 - e) assess the money laundering and terrorist financing risks associated with different types of foreign-created legal persons to which their country is exposed, and take appropriate steps to manage and mitigate the risks that they identify⁸.

A. BASIC INFORMATION

3. In order to determine who the beneficial owners of a company⁹ are, competent authorities will require certain basic information about the company, which, at a minimum, would include information about the legal ownership and control structure of the company. This would include information about the status and powers of the company, its shareholders and its directors.

⁵ **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 and of other actual evidence – e.g. an analysis of the current distribution of shareholdings patterns within the country-, with a maximum of 25%).

⁶ References to creating a legal person, include incorporation of companies or any other mechanism that is used.

⁷ Companies are considered to have a sufficiency link when they, on a non-occasional basis, owns a bank account, employs staff, owns real estate, invests in the stock market, owns a commercial/business insurance, or is a tax resident in the country. Countries may determine which other circumstances should be considered as sufficient link on the basis of risk. Examples of sufficiency tests may include, but are not limited to, when a company, on a non-occasional basis, owns a bank account, employs staff, owns real estate, invests in the stock market, owns a commercial/business insurance, or is a tax resident in the country.

⁸ The assessment of risks could be done through national and/or supranational measures. These could include requiring Beneficial ownership information of some types of foreign-created legal persons with sufficient links to the country should be held as set out under paragraph 7.

⁹ Recommendation 24 applies to all forms of legal persons. The requirements are described primarily with reference to companies, but similar requirements should be applied to other types of legal person, taking into account their different forms and structures - as set out in Section E.

4. All companies created in a country should be registered in a company registry¹⁰. Whichever combination of mechanisms is used to obtain and record beneficial ownership information (see section B), there is a set of basic information on a company that needs to be obtained and recorded by the company¹¹ as a necessary prerequisite. The minimum basic information to be obtained and recorded by a company should be:
 - a) company name, proof of incorporation, legal form and status, the address of the registered office, basic regulating powers (e.g. memorandum & articles of association), a list of directors, and unique identifier such as a tax identification number or equivalent (where this exists); and
 - b) a register of its shareholders or members, containing the names of the shareholders and members and number of shares held by each shareholder¹² and categories of shares (including the nature of the associated voting rights).
5. The company registry¹³ should record all the basic information set out in paragraph 4(a) above.
6. The company should maintain the basic information set out in paragraph 4(b) within the country, either at its registered office or at another location notified to the company registry. However, if the company or company registry holds beneficial ownership information within the country, then the register of shareholders need not be in the country, provided that the company can provide this information promptly on request.

¹⁰ "Company registry" refers to a register in the country of companies incorporated or licensed in that country and normally maintained by or for the incorporating authority. It does not refer to information held by or for the company itself.

¹¹ The information can be recorded by the company itself or by a third person under the company's responsibility.

¹² This is applicable to the nominal owner of all registered shares.

¹³ Or another public body in the case of a tax identification number.

B. BENEFICIAL OWNERSHIP INFORMATION

7. ~~Countries should follow a multi-pronged approach in order to ensure that the beneficial ownership of companies a company can be determined in a timely manner by a competent authority. Countries should decide, on the basis of risk, context and materiality, what form of registry or alternative mechanisms they will use to enable efficient access to information by competent authorities, and should document their decision.¹⁴ This should include the following:~~

- a) ~~Countries should require companies to obtain and hold adequate, accurate and up-to-date information on the company's own beneficial ownership; to cooperate with competent authorities to the fullest extent possible in determining the beneficial owner, including making the information available to competent authorities in a timely manner; and to cooperate with financial institutions/DNFBPs to provide adequate, accurate and up-to-date information on the company's beneficial ownership information.~~
- b) (i) ~~Countries should require adequate, accurate and up-to-date information on the beneficial ownership of legal persons to be held by a public authority or body (for example a tax authority, FIU, companies registry, or beneficial ownership registry). Information need not should be held by a single body only¹⁵.~~
- b) (ii) ~~Countries may decide to use an alternative mechanism, such as subnational registries, instead of (b)(i) if it also provides authorities with efficient access to adequate, accurate and up-to-date BO information. For these purposes reliance on basic information or existing information alone is insufficient, but there must be some specific mechanism that provides immediate and direct / unfiltered efficient access to the information.~~
- c) ~~Countries should use any additional supplementary measures that are necessary to ensure the beneficial ownership of a company can be determined; including for example information held by regulators or stock exchanges; or obtained by financial institutions and/or DNFBPs in accordance with Recommendations 10 and 22¹⁶.~~

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

C. TIMELY ACCESS TO ADEQUATE, ACCURATE, AND UP-TO-DATE INFORMATION

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

¹⁴ ~~A summary with the results of the risk assessment conducted and the methodology used should be published.~~

¹⁵ ~~While beneficial ownership information should be recorded in a central register, it could still be available from a body that records beneficial ownership information alongside other information (e.g. basic ownership and incorporation information, tax information). The source of information in the central register could take the form come from of multiple registries (e.g. for provinces or districts, for sectors, or for specific types of legal person such as NPOs), or of a private body entrusted with this task by the public authority. Information in the central register should cover all legal persons created and operating in the country, including foreign-created entities with sufficient links, as per paragraph 1.~~

¹⁶ ~~Countries should be able to determine in a timely manner whether a company has or controls an account with a financial institution within the country.~~

Adequate information is information that is sufficient to identify¹⁷ the natural person(s) who are the beneficial owner(s), and the means and mechanisms through which they exercise beneficial ownership or control.

Accurate information is information which has been verified to confirm its accuracy by verifying the identity and status of the beneficial owner using reliable, independent source documents, data or information. The extent of verification measures may vary according to the specific level of risk.

Countries should consider complementary measures as necessary to support the accuracy of beneficial ownership information, e.g. discrepancy reporting by competent authorities, financial institutions / DNFbps or others with access to beneficial ownership information.

Up-to-date information is 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. Companies should confirm their ownership status on an annual basis.

12. The public authority or body holding beneficial ownership information, as per paragraph 7b, should be mandated and given sufficient powers to verify beneficial ownership and the veracity of information provided to it¹⁸, as well as to report any suspicion to the country's financial intelligence unit.

12. Competent authorities, and in particular law enforcement authorities, should have all the powers necessary to be able to obtain timely access to the basic and beneficial ownership information held by the relevant parties, including rapid and efficient access to information held or obtained by a public authority or body or other competent authority on basic and beneficial ownership information, and/or on the financial institutions or DNFbps which hold this information. In addition, countries should ensure public authorities have timely access to basic and beneficial ownership information on legal persons in the course of public procurement.¹⁹

13. Countries should require their company registry to provide and/or facilitate timely access by financial institutions, DNFbps and other countries' competent authorities to the public information they hold, and, at a minimum, to the basic information referred to in paragraph 4 (a) above. Countries should also ~~consider facilitate~~ timely access by financial institutions and DNFbps to information referred to in paragraph 4(b) above and to beneficial ownership information held pursuant to paragraph 7 above, as well as public access to these information.

D. OBSTACLES TO TRANSPARENCY

14. Countries should take measures to prevent and mitigate the risk of the misuse of bearer shares and bearer share warrants, ~~for example by prohibiting the issuance of new bearer shares~~

¹⁷ At a minimum, Examples of information aimed at identifying the natural person(s) who are the beneficial owner(s) should include the full name, nationality(ies), the full date and place of birth, residential address, national identification number and document type, and the tax identification number or equivalent in the country of residence.

¹⁸ In addition to collecting information that confirms the identity of the beneficial owner, public authorities or bodies in charge of the register should also rely on other mechanisms to verify beneficial ownership information, such as: measures to validate the information, cross-checking information against existing government databases, vetting information against sanctions lists and adverse media. Measures could be determined based on specific levels of risk.

¹⁹ Based on the assessment of AML/CFT risks, countries should extend timely access to beneficial ownership information to other competent authorities that can support or play a role in the investigation of money laundering / terrorist financing and predicate crimes (for example, supreme audit institutions, anti-corruption agencies, competition authorities).

and bearer share warrants²⁰, and, for any existing bearer shares and bearer share warrants, by applying one or more of the following mechanisms within a reasonable timeframe²¹:

~~(a) prohibiting them~~

~~(a) converting them into a registered form~~²²; ~~or~~

~~(b) immobilising them by requiring them to be held with a public authority regulated financial institution or professional intermediary, with timely access to the information by relevant competent authorities; and~~

~~(c) During the period before (a) or (b) is completed, requiring holders of bearer instruments to notify the company, and the company to record their identity before any rights associated therewith can be exercised.~~²³

15. Countries should consider prohibiting the use of nominee shareholders or directors.²⁴ If they are allowed, countries should take measures to prevent and mitigate the risk of the misuse of nominee shareholding and nominee directors, ~~for example~~ by applying ~~one or more of~~ the following mechanisms²⁵:

~~(a) requiring nominee shareholders and directors to disclose their nominee status and the identity of their nominator to the company and to any relevant registry, financial institution, or DNFBP which holds the company's basic or beneficial ownership information, and for this information to be included in the relevant register as part of basic information; or~~

~~(b) requiring nominee shareholders and directors to be licensed;²⁶ and for them to maintain information identifying their nominator and the natural person on whose behalf the nominee is ultimately acting²⁷, and make this information available to the competent authorities upon request²⁸.~~

~~(c) requiring nominee shareholders and nominee directors to maintain information identifying their nominator and the natural person on whose behalf the nominee is~~

²⁰ Or any other similar instruments without traceability.

²¹ This requirement does not apply to bearer shares or bearer share warrants of a company listed on a stock exchange and subject to disclosure requirements (either by stock exchange rules or through law or enforceable means) which impose requirements to ensure adequate transparency of beneficial ownership.

²² The converted shares should be registered in the company's shareholder list and the beneficial owners of shares should be identified and reported in accordance to paragraph 7.

²³ Passed the deadline for registration or immobilisation, the holders of bearer shares and bearer shares warrants will permanently lose their shareholder status and have their shares cancelled, without the right to compensation.

²⁴ There should be specific mechanisms in place to enforce the prohibition.

²⁵ Countries may instead choose to prohibit the use of nominee shareholders or nominee directors. If so, the prohibition should be enforced.

²⁶ A country need not impose a separate licensing or registration system with respect to natural or legal persons already licensed or registered as financial institutions or DNFBPs (as defined by the FATF Recommendations) within that country, which, under such license or registration, are permitted to perform nominee activities and which are already subject to the full range of applicable obligations under the FATF Recommendations.

²⁷ Identifying the beneficial owner in situations where a nominee holds a controlling interest or otherwise exercises effective control requires establishing the identity of the natural person on whose behalf the nominee is ultimately, directly or indirectly, acting.

²⁸ For intermediaries involved in such nominee activities, reference should be made to R.22 and R.28 in fulfilling the relevant requirements.

[ultimately acting²⁹, and make this information available to the competent authorities upon request³⁰ as well as to the register.](#)

E. OTHER LEGAL PERSONS

16. In relation to foundations, Anstalt, [Waqf³¹](#), and limited liability partnerships, countries should take similar measures and impose similar requirements, as those required for companies, taking into account their different forms and structures.

17. As regards other types of legal persons, countries should take into account the different forms and structures of those other legal persons, and the levels of money laundering and terrorist financing risks associated with each type of legal person, with a view to achieving appropriate levels of transparency. At a minimum, countries should ensure that similar types of basic information should be recorded and kept accurate and current by such legal persons, and that such information is accessible in a timely way by competent authorities. Countries should review the money laundering and terrorist financing risks associated with such other legal persons, and, based on the level of risk, determine the measures that should be taken to ensure that competent authorities have timely access to adequate, accurate and current beneficial ownership information for such legal persons.

E. LIABILITY AND SANCTIONS

18. There should be a clearly stated responsibility to comply with the requirements in this Interpretive Note, 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.

G. INTERNATIONAL COOPERATION

19. Countries should rapidly, constructively and effectively provide [the widest possible range](#) of international cooperation in relation to basic and beneficial ownership information held by public authority or body, on the basis set out in Recommendations 37 and 40. This should include (a) facilitating access by foreign competent authorities to basic information held by company registries [and to beneficial ownership information held in a register or similar alternative mechanism](#); (b) exchanging information on shareholders; and (c) using their powers, in accordance with their domestic law, to obtain beneficial ownership information on behalf of foreign counterparts. Countries should monitor the quality of assistance they receive from other countries in response to requests for basic and beneficial ownership information or requests for assistance in locating beneficial owners residing abroad. [Consistent with Recommendations 37 and 40, countries should not place unduly restrictive conditions on the exchange of information or assistance e.g., refuse a request on the grounds that it involves a fiscal, including tax, matters, bank secrecy, etc. Information held or obtained for the purpose of identifying beneficial ownership should be kept in a readily accessible manner in order to facilitate rapid, constructive and effective international cooperation. Countries should designate and make publicly known the agency\(ies\) responsible for responding to all international requests for BO information.](#)

²⁹ [Identifying the beneficial owner in situations where a nominee holds a controlling interest or otherwise exercises effective control requires establishing the identity of the natural person on whose behalf the nominee is ultimately, directly or indirectly, acting.](#)

³⁰ [For intermediaries involved in such nominee activities, reference should be made to R.22 and R.28 in fulfilling the relevant requirements.](#)

³¹ [Except in countries where Waqf are legal arrangements under R.25.](#)

GLOSSARY

<p>Bearer shares and bearer share warrants</p>	<p><i>Bearer shares</i> refers to negotiable instruments that accord ownership in a legal person to the person who possesses the <u>physical</u> bearer <u>share</u> certificate, <u>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.</u></p> <p><u><i>Bearer share warrants</i> refers 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 any other instruments that only confers a right to subscribe for ownership in a legal person at specified conditions, but not ownership or entitlement to ownership, unless and until the instruments are exercised.</u></p>
<p>Beneficial owner</p>	<p><i>Beneficial owner</i> refers to the natural person(s) who ultimately¹ owns or controls a customer² and/or the natural person on whose behalf a transaction is being conducted. It also includes those <u>natural</u> persons who exercise ultimate effective control over a legal person or arrangement. <u>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 entity or arrangement³.</u></p> <p>¹ - 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.</p> <p>² - This definition should also apply to beneficial owner of a beneficiary under a life or other investment linked insurance policy.</p> <p>³ - <u>The ultimate beneficial owner is always one or more natural persons. As set out in R.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 or arrangement through other means or, where no natural person is identified in that role, of the natural person who holds the position of senior managing official. In the latter case, senior managers should be recorded as such and not as the beneficial owner. This provision of R.10 does not amend or supersede the definition of who is the <i>beneficial owner</i>, but only sets out how CDD should be conducted in situations where the beneficial owner cannot be identified.</u></p>
<p>Beneficiaries</p>	<p>Please refer to the IN to Recommendation 8.</p>
<p>Beneficiary</p>	<p>The meaning of the term <i>beneficiary</i> in the FATF Recommendations depends on the context:</p> <p>In trust law, a beneficiary is the person or persons who are entitled to the benefit of any trust arrangement. A beneficiary can be a natural or legal person or arrangement. All trusts (other than charitable or</p>

<u>Nominator</u>	<u><i>Nominator is an individual (or group of individuals) or legal person that issues instructions to a nominee to act on their behalf in a certain capacity, also sometimes referred to as a “shadow director” or “silent partner”. In some cases, it may not be possible to identify the ultimate beneficial owner of such nominator, as ownership interests can be so diversified that there are no natural persons (whether acting alone or together) exercising control of the legal person through ownership.</i></u>
<u>Nominee shareholder or director</u>	<u><i>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” or “corporate director” (if the director is a legal person)) is an individual or legal entity that exercises the functions of the director in the company on behalf of and subject to the 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 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.</i></u>

SIGNATORIES

1. Civic Leaders for Clean Transactions (CLCT) Integrity Fiji
2. Civil Society Legislative Advocacy Centre (CISLAC) – TI Nigeria
3. Corruption Watch South Africa
4. Fundación Ciudadanía y Desarrollo – Ecuador
5. Fundación para el Desarrollo de la Libertad Ciudadana Panama (TI Panama)
6. Institute for Democracy and Mediation – IDM Albania
7. The Daphne Caruana Galizia Foundation
8. Transparência e Integridade, Associação Cívica (TI Portugal)
9. Transparencia Mexicana
10. Transparencia por Colombia
11. Transparency International
12. Transparency International Australia
13. Transparency International Azerbaijan
14. Transparency International Belgium
15. Transparency International Brazil
16. Transparency International Canada
17. Transparency International Czech Republic
18. Transparency International France
19. Transparency International Ghana
20. Transparency International Germany
21. Transparency International Greece
22. Transparency International EU
23. Transparency International Kazakhstan
24. Transparency International Kenya
25. Transparency International Mauritius
26. Transparency International Netherlands
27. Transparency International New Zealand
28. Transparency International Norway
29. Transparency International Russia

30. Transparency International Spain
31. Transparency International Solomon Islands
32. Transparency International Switzerland
33. Transparency International United Kingdom
34. Transparency International United States
35. Transparency International Zambia
36. Trinidad & Tobago Transparency Institute (TTTI)

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