

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

# Building Effective Beneficial Ownership Frameworks

A joint Global Forum and IDB Toolkit



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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

**CDD** Customer Due Diligence

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

**EOI** Exchange of Information

**EITI** Extractive Industries Transparency Initiative

**EOIR** Exchange of Information on Request

**EU** European Union

**FATF** Financial Action Tax Force

**FI** Financial Institution

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

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

**ToR** Terms of Reference

**UNCAC** United Nations Convention against Corruption

## 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 recent data leaks have shown 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 to hide the beneficial owners of assets are still being used. 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 exchange of information standards. Thus, all jurisdictions need to have effective beneficial ownership rules in place.

The Global Forum Secretariat and the Inter-American Development Bank (IDB) jointly published a *Beneficial*

*Ownership Implementation Toolkit* in 2019.<sup>1</sup> The toolkit aimed at fostering the understanding of beneficial ownership as contained in international transparency standards. In parallel, the Global Forum Secretariat and the IDB continued to assist members in amending their legislations to comply with the international standards. Through peer review and technical assistance processes, a global picture on beneficial ownership has emerged and this new 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 need to put in place or amend their beneficial ownership frameworks should therefore benefit from this 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 implementation and improvement of their systems, taking into account the unique 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.

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1. IDB and OECD (2019), A Beneficial Ownership Implementation Toolkit, available at <https://oe.cd/41V>.

**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 Tax 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 now required under the international standards of exchange of information for tax purposes (EOI standards): both on transparency and exchange of information on request (the EOIR standard) and on automatic exchange of financial account information (the AEOI standard).

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 of better achieving 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 beneficial ownership standard as there is no one-size-fits-all approach to achieving compliance. However, jurisdictions should act to implement a sound framework for ensuring effective availability of beneficial ownership information.

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 exchange of information 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.

This toolkit therefore supplements the Beneficial Ownership Implementation toolkit jointly published by the Global Forum Secretariat and the Inter-American Development Bank (IDB) in 2019 which provides a general presentation of the concept of beneficial ownership and the requirements for its implementation in the context of the EOI standards.<sup>2</sup>

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.

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2. IDB and OECD (2019), A Beneficial Ownership Implementation Toolkit, available at <https://oe.cd/41V>.

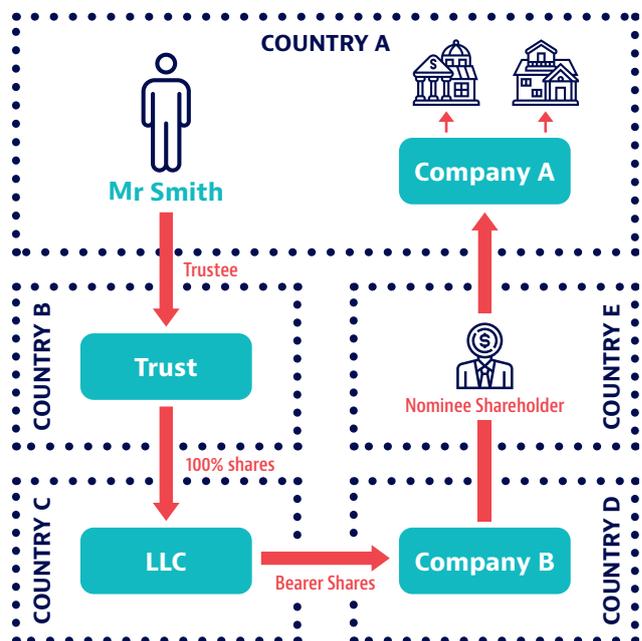
# 1. Beneficial ownership standard

## 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, 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 vehicles



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 money laundering, corruption, terrorism financing and tax evasion.

### ONE INTERNATIONAL DEFINITION ON BENEFICIAL OWNERSHIP

While the concept of beneficial ownership is a core component of several international initiatives on transparency (see Box 1), its internationally and predominantly accepted definition was set up by the FATF.

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>

3. FATF (2012-2021), *International standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*, FATF, Paris, France. Available at [www.fatf-gafi.org/recommendations.html](http://www.fatf-gafi.org/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).

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

### Beneficial ownership definition

According to the FATF Glossary, a beneficial owner is:

*"The natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement".*

This definition is reproduced in footnotes 8 and 12 if the EOIR Terms of Reference.

The FATF Glossary also specifies that *"ultimate ownership or control 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."*

A beneficial owner is thus always a **natural person** who has a **control ownership interest** in a legal entity and/or has the **ability to otherwise exercise control** over it. The concept of control refers to the ability to take relevant decisions within the legal person or arrangement and to impose those decisions.

Figure 2 demonstrates how the use of a legal entity can obscure the identity of a beneficial owner. The example in the left side shows that the individual in the left side 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 entity (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>

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

## 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 standard also includes the concept of beneficial ownership, similar to the definition in the FATF Recommendations, as a cornerstone in the reporting of financial accounts. Thus, reporting financial institutions must identify in certain circumstances the beneficial owners of certain financial accounts and their country of tax residence, and when appropriate, report this information to partner tax authorities (see also Box 6).

#### 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. 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.

The FATF is developing work to strengthen requirements and recommendations 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.<sup>3</sup>

#### Extractive Industries Transparency Initiative

Anti-corruption groups are also pushing for 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. With regard to 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 FATF standard 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.

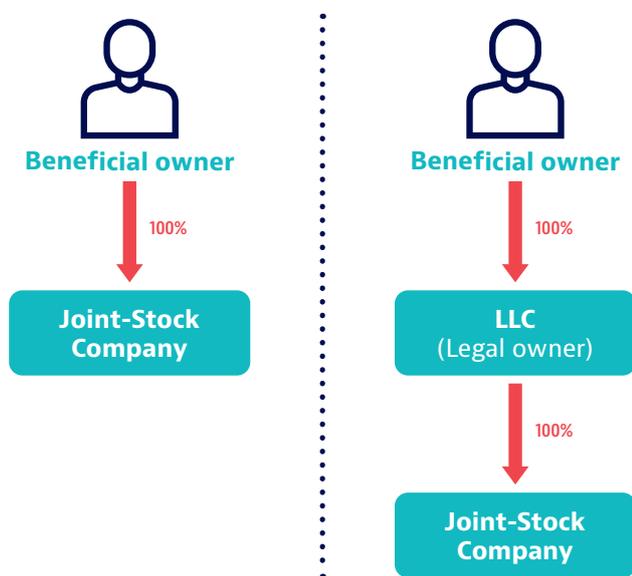
#### Partnering Against Corruption Initiative

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 more than 90 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, alongside other partners from 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. The group will be working with several governments to identify and address verification needs in countries.

Source: A Beneficial Ownership Implementation Toolkit, United Nations Convention against Corruption (available at [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)), and 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))

6. FATF, Outcomes 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)

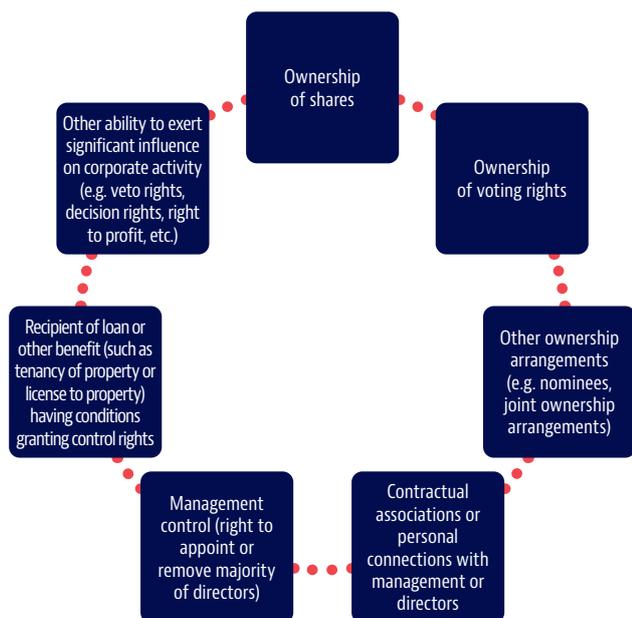
FIGURE 2. Difference between a beneficial owner and a legal owner



Source: A Beneficial Ownership Implementation Toolkit

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

FIGURE 3. Examples of direct and indirect ownership and control



Source: A Beneficial Ownership Implementation Toolkit

Factors that make it difficult to identify a beneficial owner are the use of nominees and bearer shares. The use of nominees, whereby an entity allows its name to appear as a shareholder or owner in the name of someone else (whose identity remains concealed), can be used to mask the real beneficial owner. If an entity issues bearer shares, the shareholder or owner of that entity 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.).<sup>7</sup>

From a tax perspective, knowing the identity of the natural persons behind a jurisdiction’s legal entity not only helps that jurisdiction preserve the integrity of its own tax system, but also gives treaty partners a means of better achieving their own tax goals. Box 2 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. Then comes 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>8</sup> and Virtual Assets Service Providers, when performing customer due diligence (CDD):
  - Recommendation 10 on CDD
  - Recommendation 11 on record-keeping
  - Recommendation 17 on reliance on third parties
  - Recommendation 22 on DNFBPs’ CDD

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

8. 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.

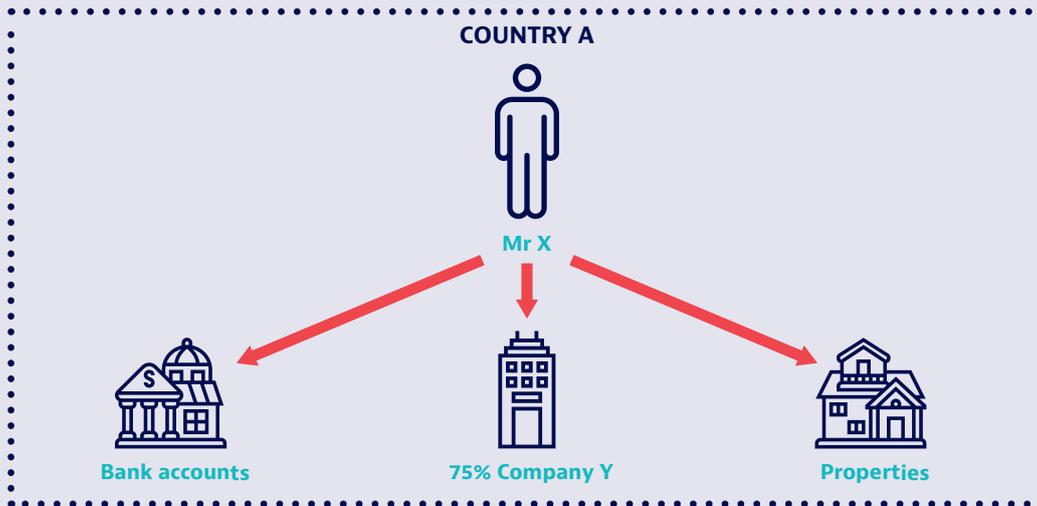
## Beneficial ownership standard

### Box 2. Examples on the relevance of beneficial ownership information for tax authorities

#### Example 1

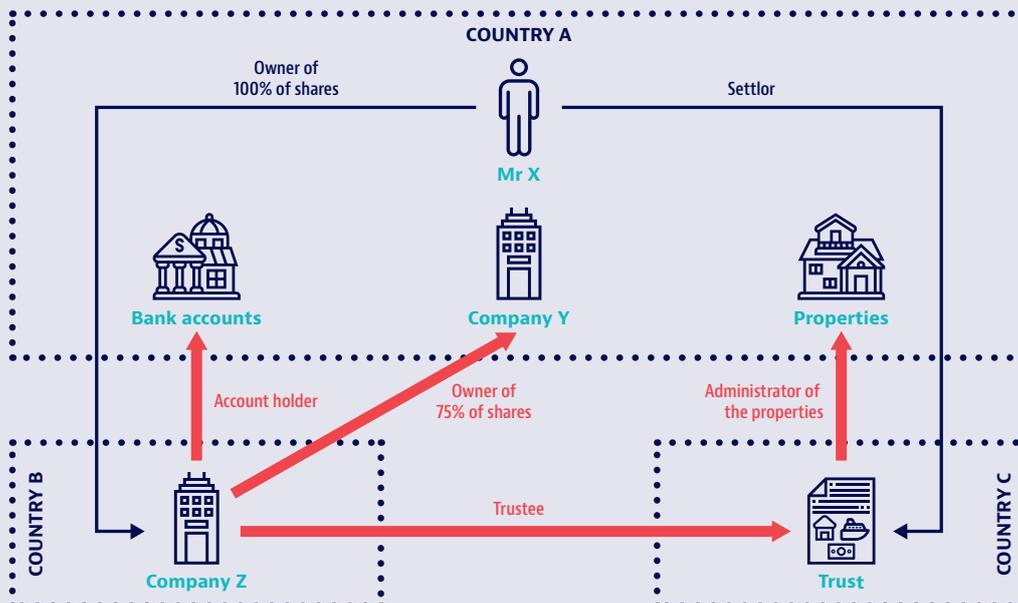
An individual, Mr X, wants to evade taxation in his country A.

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:



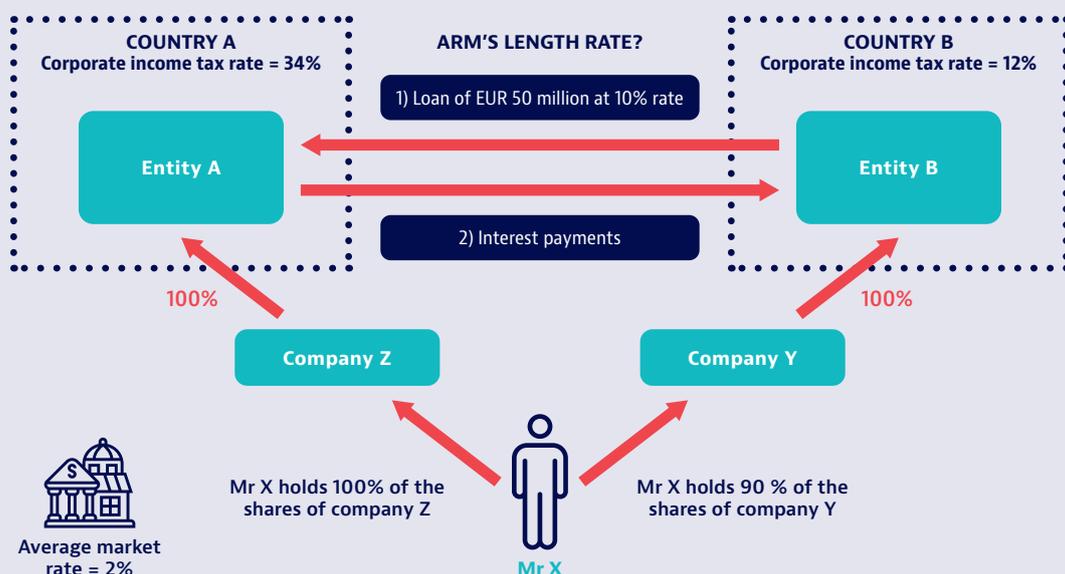
In this scenario, the immovable properties are administered by a Trust created in Country C, by the settlor Mr X. The trustee of the Trust is Company Z, a fully owned company of Mr X, incorporated in Country B. Company Z owns 75% of the shares of Company Y. The account holder of the bank accounts in 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 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, interests 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.

## Beneficial ownership standard

- 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

### 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.

### 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 USD/EUR 15 000 or USD/EUR 1 000 for wire transfers, (iii) when there is suspicion of money laundering or terrorist financing, or (iv) when the obliged person has doubts about the veracity or adequacy of the customer identification.

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 and 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 specific conditions and circumstances, which are:

- 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>9</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 the ultimate responsible for CDD measures performed on their customers, including beneficial ownership information.

### General measures

FATF Recommendations 24 and 25 refer to the general measures 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.

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

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 formed in that jurisdiction, and authorities should have the power to obtain this information in a timely manner. In particular, jurisdictions which allow legal persons to issue bearer shares or bearer share warrants, or which allow nominee shareholders or nominee directors,

should take effective measures to ensure that they are not misused for money laundering or terrorist financing.

Legal persons may include companies, foundations 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>10</sup> if they can establish a relationship with a FI or own property (see Box 6).

Recommendation 24 also indicates that countries should take measures to facilitate access of authorities to beneficial ownership and control information held by FIs and DNFBPs undertaking the requirements of Recommendations 10 and 22.

According to the Interpretive Note to Recommendation 24, 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 financial institution. 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

Recommendation 25 establishes that jurisdictions should take measures to ensure the availability of accurate and up-to-date beneficial ownership information of express trusts and other legal arrangements, including information on the settlor, trustee, protector and beneficiaries (or any other natural person exercising ultimate effective control over the trust). According to the Glossary of the FATF Recommendations, “legal arrangements” refers to express trusts or other similar arrangements such as *fiducie*, *treuhand*, *waqf* and *fideicomiso*.

Authorities should also have the power to obtain beneficial ownership information in a timely manner.

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10. 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, 2012-2021).

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

## Beneficial ownership standard

Jurisdictions should consider measures to facilitate access to beneficial ownership and control information by FIs and DNFBPs undertaking the requirements set out in Recommendations 10 and 22.

Trustees (or equivalent) should maintain this information for at least five years after their involvement with the trust or legal arrangement ceases (Interpretive Note). There should be 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 4).

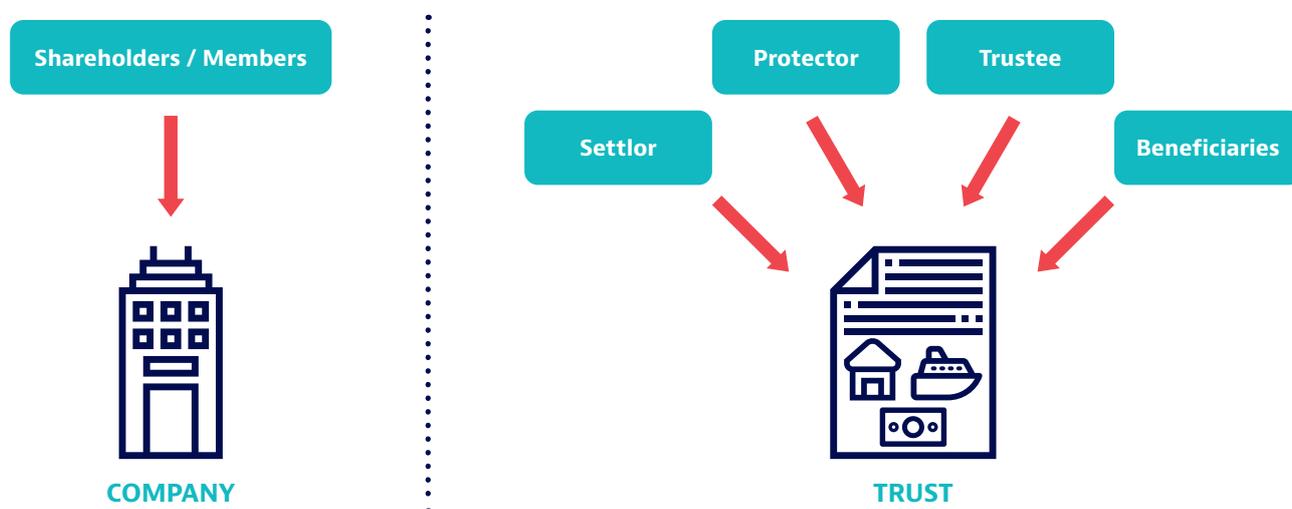
Legal arrangements can take the form of express trusts (in which the settlor's creation of a trust is deliberate,

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 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,

FIGURE 4. Difference in the control structure between a legal person and a trust



Source: A Beneficial Ownership Implementation Toolkit

such as discretionary trusts, there may be a “protector” (generally named by the settlor) who oversees the trustee’s actions.<sup>11</sup>

### **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 3).

Figure 5 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 AML/CFT obliged persons to follow a simultaneous approach rather than a cascading one. In a simultaneous approach, Steps 1 and 2 of the cascade are conducted at the same time so that

### Box 3. Cascade process to identify the beneficial owners of legal persons

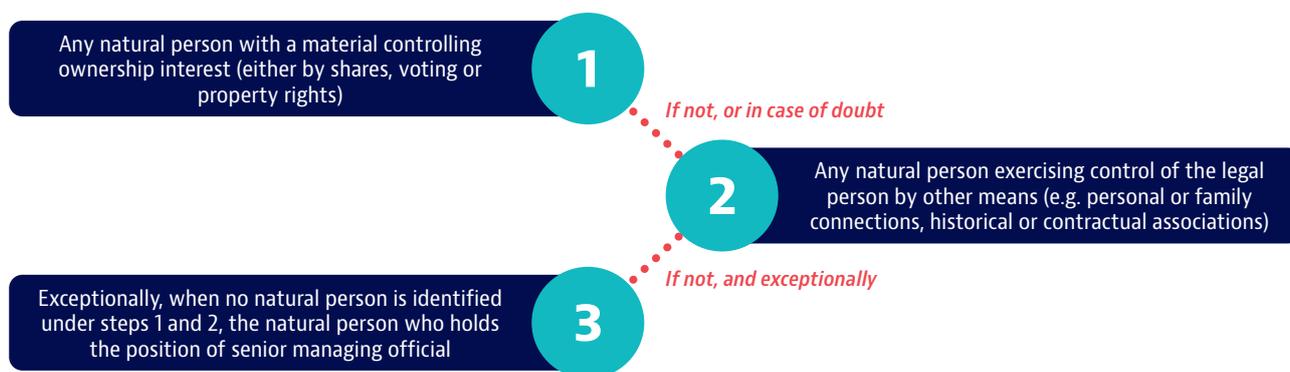
AML/CFT obliged persons should identify the beneficial owners of the customer who is a legal person, and verify their identity, through the following information:

- (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.

Source: FATF Interpretive Note to Recommendation 10 (para. 5.b.i).

any natural persons exerting control through ownership interest or otherwise are identified. Step 3 remains the exceptional backstop rule.

FIGURE 5. **Three-step test to determine the beneficial owners of legal persons**



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

## Beneficial ownership standard

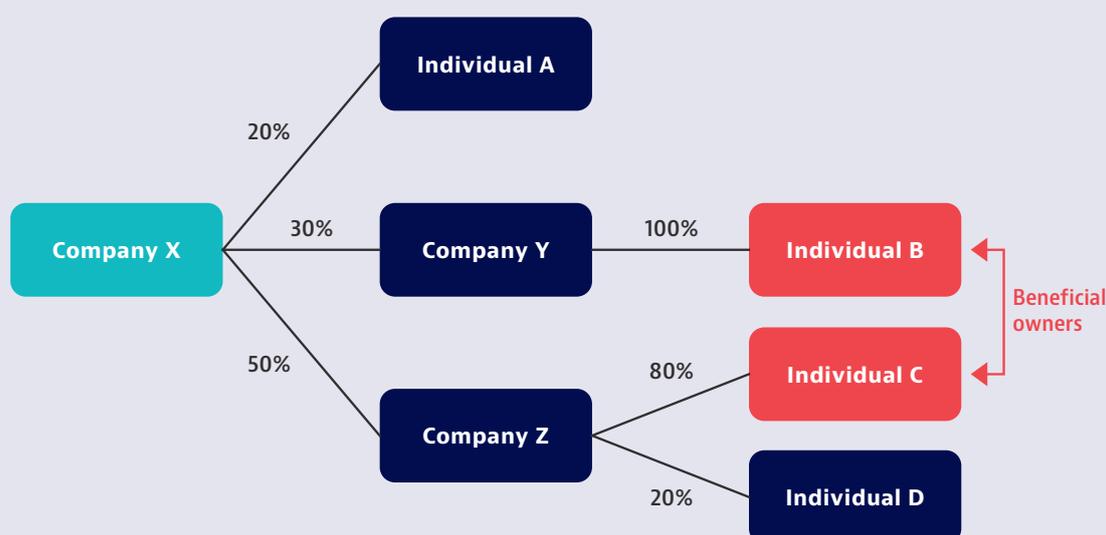
### Box 4. Identifying the beneficial owners of legal persons

#### 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 30% 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% ( $100 \times 30\% = 30\%$ ). In addition, Individual C is also a beneficial owner, because that individual owns 40% of Company X ( $80 \times 50\%$ ). By contrast, Individual D cannot be a beneficial owner, as this natural person has an ownership interest of 10% ( $20 \times 50\% = 10\%$ ), below the 25% threshold.



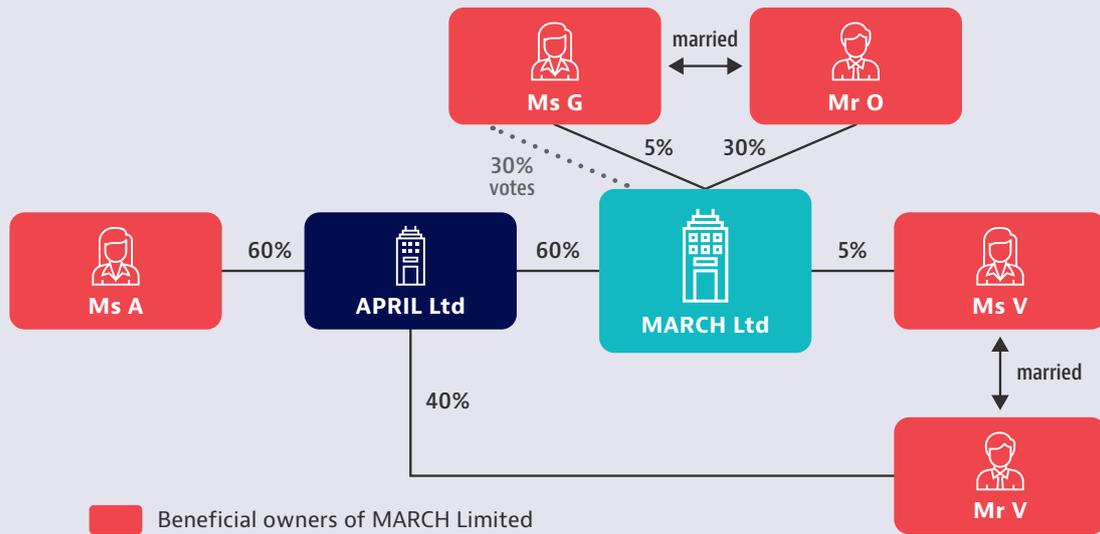
#### Example 2

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.

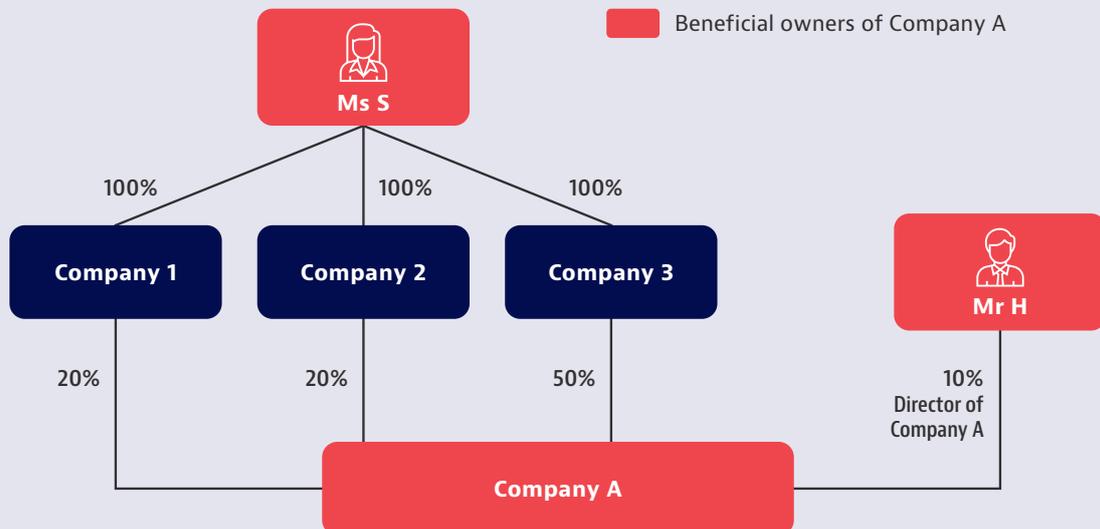


**Example 3**

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 three companies 1, 2 and 3).

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.



## Beneficial ownership standard

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>12</sup>

- 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 control through ownership interest.
- Second, with respect to companies, although Interpretive Note to Recommendation 10 does not establish a specific control ownership interest threshold, it indicates that it may be based on a threshold such as any natural person owning more than a certain percentage of the company (e.g. 25%).<sup>13</sup> The experience from Global Forum peer reviews shows that jurisdictions usually use a maximum 25% threshold but it can be lower, and this will depend 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.

The identification of the beneficial owners of a legal person should at minimum follow the principles of the cascading approach.<sup>14</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

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

13. Footnote 35 to Interpretive Note to Recommendation 10.

14. 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.

to report that information to a centralised 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 disclosure requirements (either by stock exchange rules or through law or enforceable means) which impose 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. See Box 4 for examples on the identification of beneficial owners of legal persons.

### Legal arrangements

The Interpretive Note to FATF Recommendation 10, states that the beneficial owners of a trust (or other legal arrangements) must be identified regardless of whether or not they hold a controlling ownership interest (see Box 5).

The reason for identifying all natural persons involved in a trust or other similar arrangements as beneficial owners, is that trusts 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.

#### Box 5. Procedure to identify the beneficial owners of trusts and legal arrangements

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

- Trusts – the identity of the settlor, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust (including through a chain of control/ownership);
- Other types of legal arrangements – the identity of persons in equivalent or similar positions.

Source: FATF Interpretive Note to Recommendation 10 (para. 5.b.ii).

The identification of the beneficial owners of a trust or other similar arrangements as described above should be applied by AML/CFT obliged persons as part of the AML/CFT rules. This approach should also be followed when a jurisdiction requires the trustee or the administrator of a legal arrangement to maintain beneficial ownership information or to report that information to a centralised register.

A trust may have ownership of a legal person, with the trustee holding the shares or other rights as the legal owner. 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 party to a trust should be looked through to identify the beneficial owners.<sup>15</sup> See Box 7 for examples of beneficial ownership identification when legal arrangements and legal persons are involved.

### **BENEFICIAL OWNERSHIP AND THE STANDARDS 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. It ensures global tax co-operation through its 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 that have not joined the Global Forum.

These standards allow jurisdictions to obtain information relevant for tax purposes from their counterparts in another jurisdiction. The scope of 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 AEOI standards are described in Box 6.

#### **Box 6. The standard on automatic exchange of financial account information and beneficial ownership**

The AEOI standard<sup>16</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 the FATF Recommendations. 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 1).
- 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 3).
- 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.

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

16. 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>.

## Beneficial ownership standard

### Box 7. Identifying beneficial owners when legal persons and legal arrangements (trusts) are combined

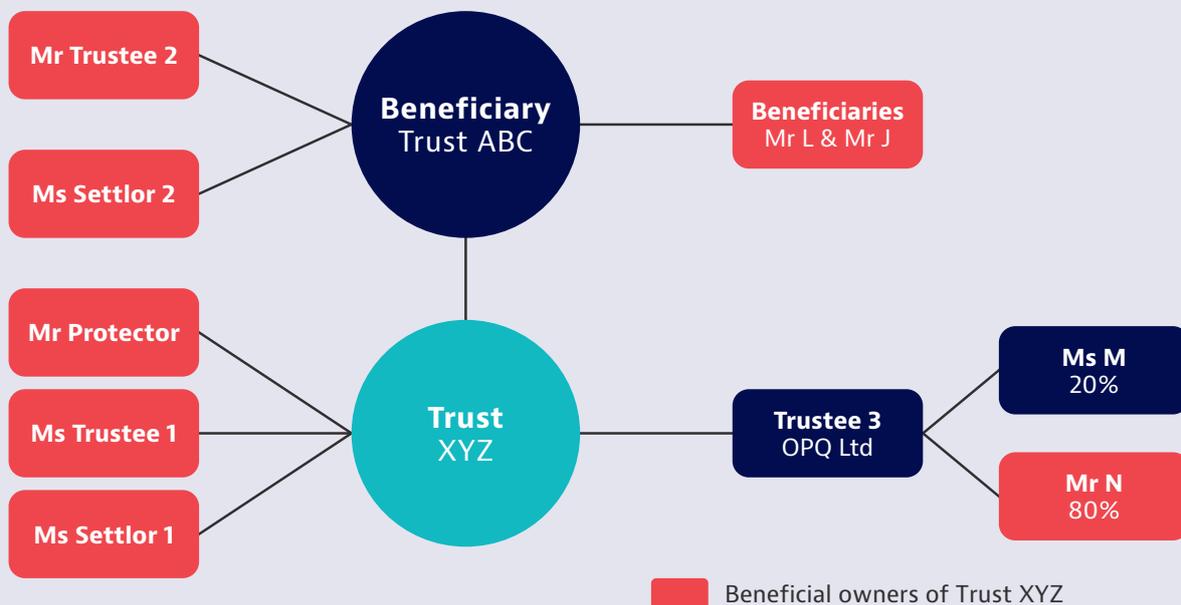
#### Example 1

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

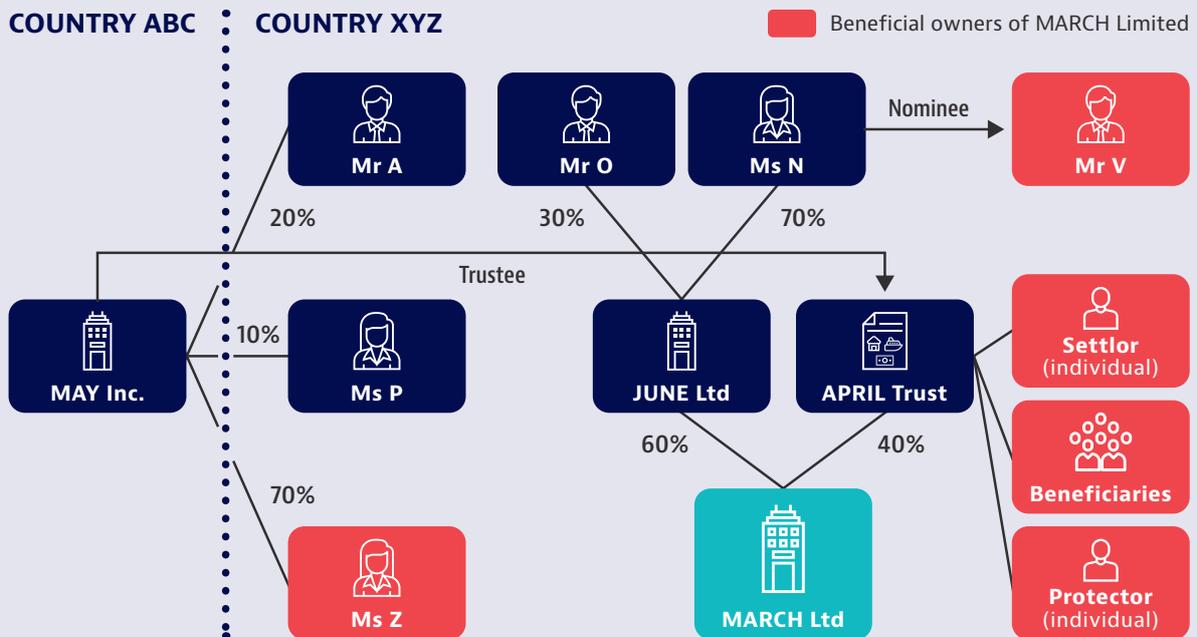
MARCH Limited is a company incorporated in country XYZ. Its shareholders are APRIL Trust and JUNE Limited, which respectively hold 40% and 60% of the shares and voting rights of MARCH Limited. MAY Inc., a company incorporated in country ABC is the trustee of APRIL Trust. Its shareholders are Ms Z (70% 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 Noriega 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

### Transparency and Exchange of Information on Request Standard

#### Relevance of the FATF Recommendations

The EOIR standard requires a tax 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>17</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.<sup>18</sup> 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 them both 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 (combatting 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 FATF and 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 update 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 needed for all relevant entities and bank accounts. 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 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>19</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>20</sup> on transparency and beneficial ownership are thus secondary authoritative sources of the EOIR standard (see Figure 6).

17. OECD (2016), "2016 Terms of Reference", in *Exchange of Information on Request, Handbook for Peer Review 2016-2020*, available at <https://oe.cd/41W>.

18. The FATF is developing work to strengthen requirements and recommendations 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: [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).

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

20. The FATF has issued two guidelines on beneficial ownership: OECD/FATF (2014), *FATF Guidance, Transparency and Beneficial Ownership*, available at <https://oe.cd/41X>, and FATF (2019), *Best Practices on Beneficial Ownership for Legal Persons*, available at [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).

### 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>21</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.

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 8).

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.

Jurisdictions can take the approach that fits the best to

21. 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).

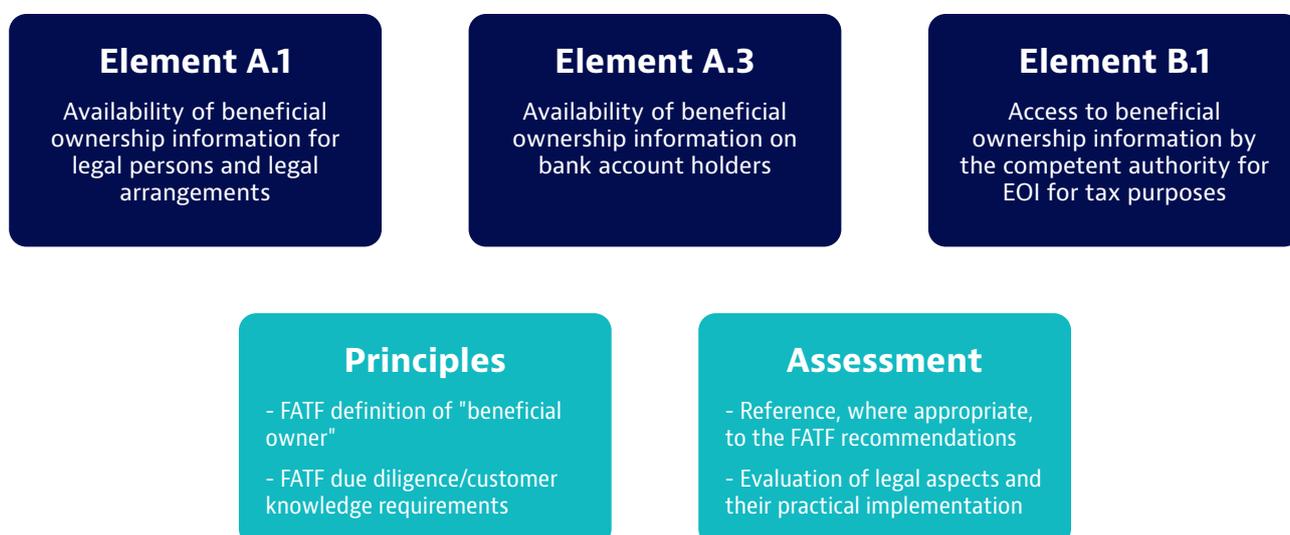
its legal and organisational circumstances provided that the availability of beneficial ownership is ensured. For instance, a jurisdiction could use:

- 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 beneficial ownership legal framework must cover all relevant legal persons and arrangements, be effectively implemented, and enforced in practice through supervisory activities.

Appropriate coverage combined with compliance, monitoring, and enforcement processes are therefore 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.

FIGURE 6. **2016 Terms of Reference on beneficial ownership**



## Beneficial ownership standard

### Box 8. Availability of beneficial ownership information under the EOIR standard

The concept of availability of information refers to:

- 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: minimum retention period of 5 years following the year to which the information relates, including in cases where the legal persons or arrangements cease to exist, or the bank account is closed.
- 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.

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

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>22</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 identification of the beneficial owners should follow the FATF Recommendations. The process to be followed with respect to 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. In some other cases where a partnership is considered as a legal person, the ownership interest criteria and the use of a specific threshold, which is the first step of the cascading approach as defined by FATF Interpretive Note to Recommendation 10, may not be the only relevant criterion for the identification of beneficial owners (see Box 9).

### Entities that ceased 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 has ceased to exist (due to striking off, liquidation or otherwise). In these situations, effective enforcement provisions to ensure availability of information should also be in place, 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

22. 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).

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

Aspect	Description
A.1.1 - Companies	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.
A.1.2 – Bearer shares	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.
A.1.3 - Partnerships	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;</li> <li>● is a limited partnership formed under the laws of that jurisdiction.</li> </ul>
A.1.4 - Trusts	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;</li> <li>● in respect of which a trustee is resident in that jurisdiction.</li> </ul>
A.1.5 - Foundations	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.

registered with the authority (e.g. commercial register, tax administration), but has no business activity or is considered inactive under the conditions set out in the domestic law of a jurisdiction (e.g. is not complying with its filing obligations of legal and beneficial ownership information, accounting information, tax returns, etc.). In many instances, the entities are also economically inactive, i.e. they have ceased their activity. Inactive entities do not fit with the category of entities that have ceased to exist, as the inactive entities still legally exist under 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, 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 authorities not carrying out adequate monitoring and supervision programmes to enforce these obligations in this category of entities, particularly where there is a

significant proportion of them.

Jurisdictions should therefore take actions to reduce the risk that beneficial ownership information would not be available or updated with respect of 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.
- eliminating/reducing the number of inactive entities in official registers by introducing rules 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.

## Beneficial ownership standard

### Box 9. 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. In both cases, the difference in form and structure of the existing type of partnerships should be taken into account.

Partnerships<sup>23</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 cascade approach is used by the jurisdiction, general partners would not be necessarily identified as beneficial owners under Step 1 (control ownership interest threshold), but all general partners would be identified as beneficial owners under Step 2 (control by other means). However, to ascertain whether limited partners are beneficial owners there would be need to follow at least Steps 1 and 2. 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 who should also be considered and identified as beneficial owners.

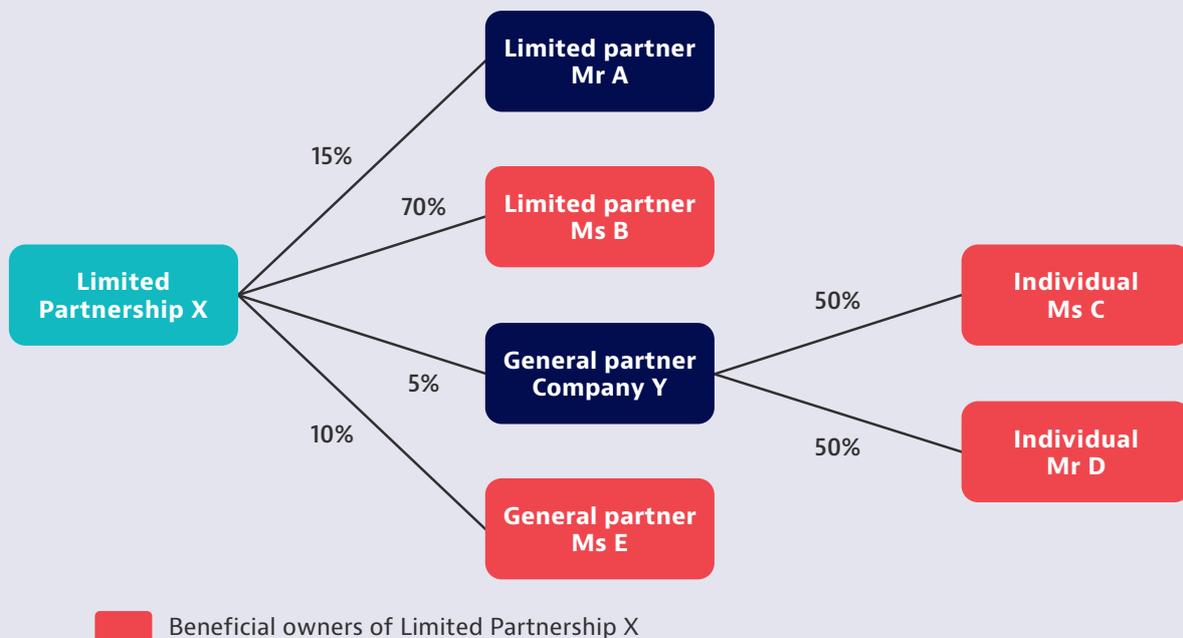
Therefore, in principle, Step 1 and 2 of the cascading approach should apply as the identification of beneficial owners through ownership interest should raise doubt as if the natural persons identified in Step 1 are the only beneficial owners of the partnership. All natural persons exercising control 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.

23. 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. The LP X has two limited partners, Mr A and Ms B, who own 15% and 70% of the LP X respectively, based on their investment contribution. The liability of the limited partners is limited to the extent of their contribution, and they do not have management control over the LP X. Company Y and Ms E are the general partners of LP X, and they contributed with 5% and 10% of the total investment, respectively. The general partners have unlimited liability over the LP X and exercise complete management and control, 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 should be as follows:



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 by other means than ownership interest, 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 with only 10% of the total investment of the LP X, she would be identified as a beneficial owner. There is the need to 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 through it complete control over the LP X.

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

## Beneficial ownership standard

### 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). The definition and identification of the beneficial owner(s) by banks must be in line with the FATF Recommendations.

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.

### 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.

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.

## 2. Lessons learned from Global Forum peer reviews

Between 2016 and 2021, 81 jurisdictions have 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 information (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 shows that the legal frameworks and the level of practical implementation of transparency of beneficial ownership on bank accounts (Element A.3) is in the vast majority satisfactory. In contrast, the availability of beneficial ownership information on all relevant legal entities information (Elements A.1) suffers more legal or practical deficiencies and appears less mature. This analysis is based on a snapshot of the situation of jurisdictions at the time of their review, and they may have enhanced their beneficial ownership frameworks post-evaluation.

#### Legal and regulatory framework

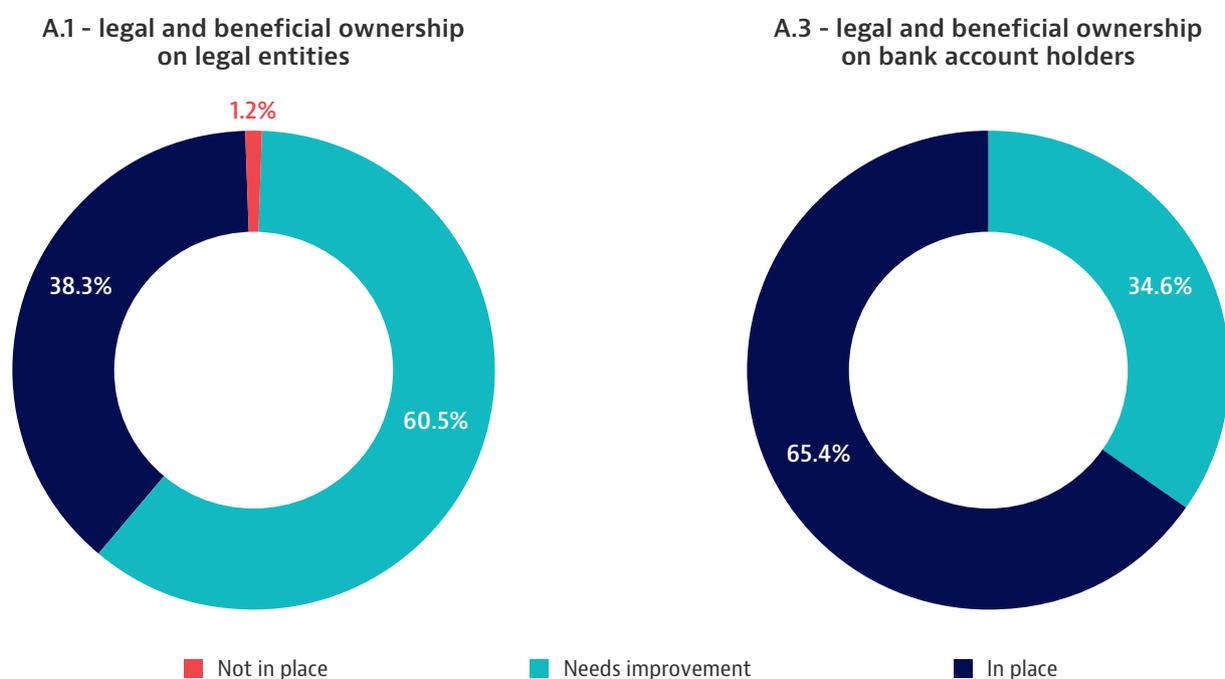
To ensure availability of beneficial ownership information on legal entities or bank account, the legal and regulatory framework implemented by a jurisdiction should:

- 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 record keeping obligations
- provide for sanctions in case of failure.

The outcomes of the reviews as depicted in Figure 7 show that the legislative framework aimed at ensuring availability of beneficial ownership information on account holders (Element A.3) is for 65.4% of the reviewed jurisdictions (53 jurisdictions) having a sound legislation to ensure the availability of beneficial owners of bank accounts while 61.7% of the reviewed jurisdictions (50 jurisdictions) had deficiencies at the time of their review in their legislation aimed at ensuring the availability of legal and/or beneficial ownership on legal entities (Element A.1).

## Lessons learned from Global Forum peer reviews

FIGURE 7. Legal and regulatory framework determinations – Elements A.1 and A.3



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 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 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 A.1 and A.3 (see Figure 8).

Only 51% of the reviewed jurisdictions (41 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 of 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

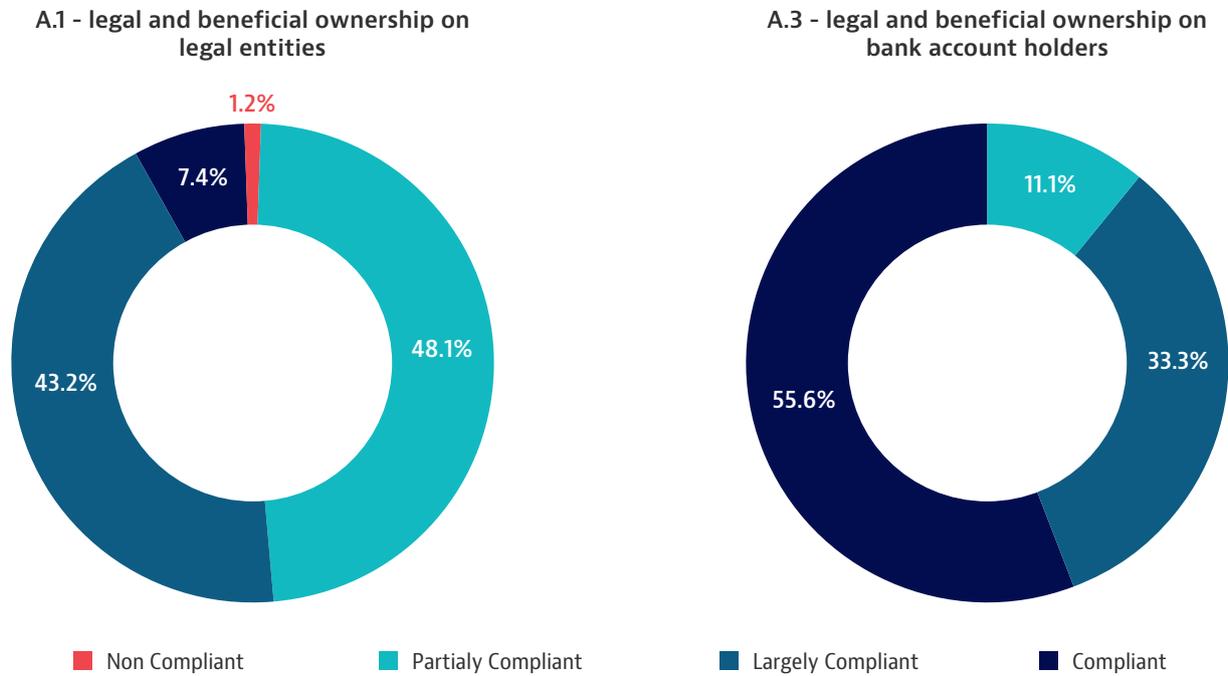
supervision of the beneficial ownership requirements. It reflects that beneficial ownership requirements with respect to all relevant legal persons and arrangements is relatively new for many jurisdictions and those jurisdictions are progressively implementing their approaches taking into account their specific circumstances.

The level of practical implementation of transparency of beneficial ownership on bank accounts (Element A.3) is in the vast majority satisfactory with 89% of the reviewed jurisdictions (72 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

FIGURE 8. Practical implementation of the legal framework – Elements A.1 and A.3



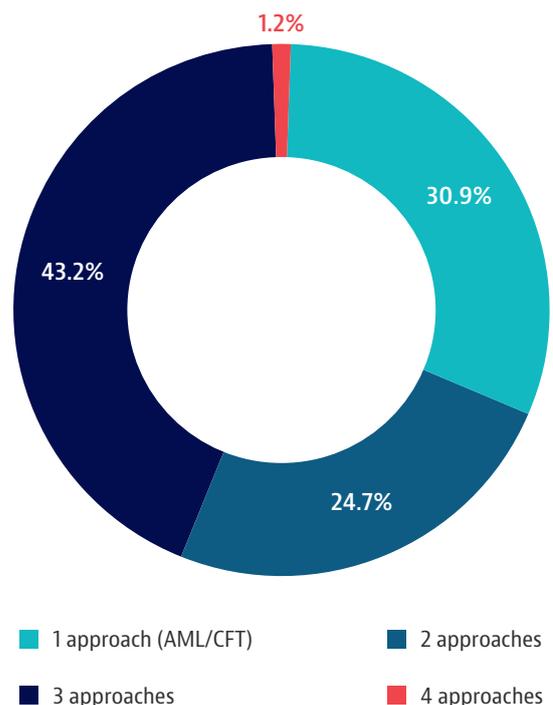
rely only on that approach to meet the requirements of Element A.1, while others combine that approach with one or more approaches.

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 81 jurisdictions fully reviewed, the majority (69.1% equivalent to 56 jurisdictions) used two or more approaches for the availability of beneficial ownership information. On the contrary, 30.9% (25 jurisdictions) used only one approach (AML/CFT) for the availability of beneficial ownership information (see Figure 9).

Figures 10 and 11 summarise and compare the performance of jurisdictions predominantly using one approach versus those using a multipronged 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 and/or poor

FIGURE 9. Percentage of jurisdictions using one or more approaches for the availability of beneficial ownership information



## Lessons learned from Global Forum peer reviews

supervision and enforcement mechanisms can have an impact on the overall availability of accurate beneficial

ownership information and thus, in the determinations and ratings received.

FIGURE 10. **Element A.1 - Number of approaches used and determination of the legal framework**

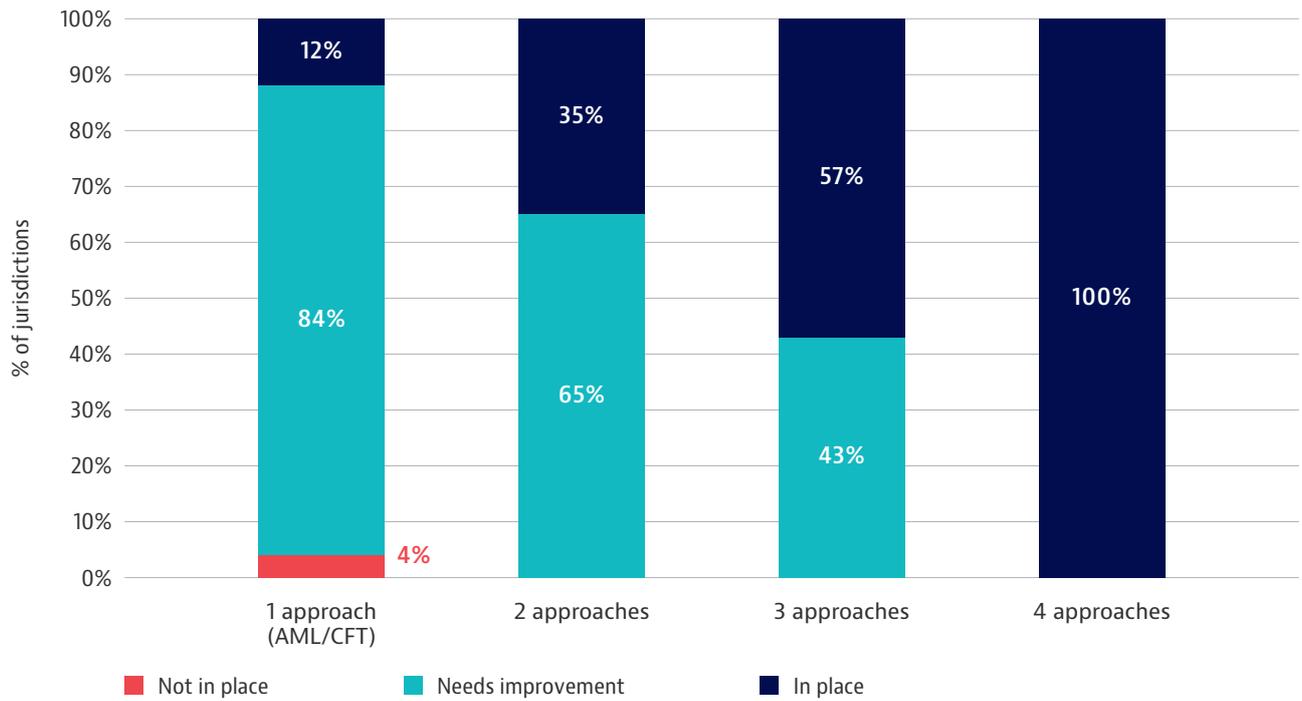
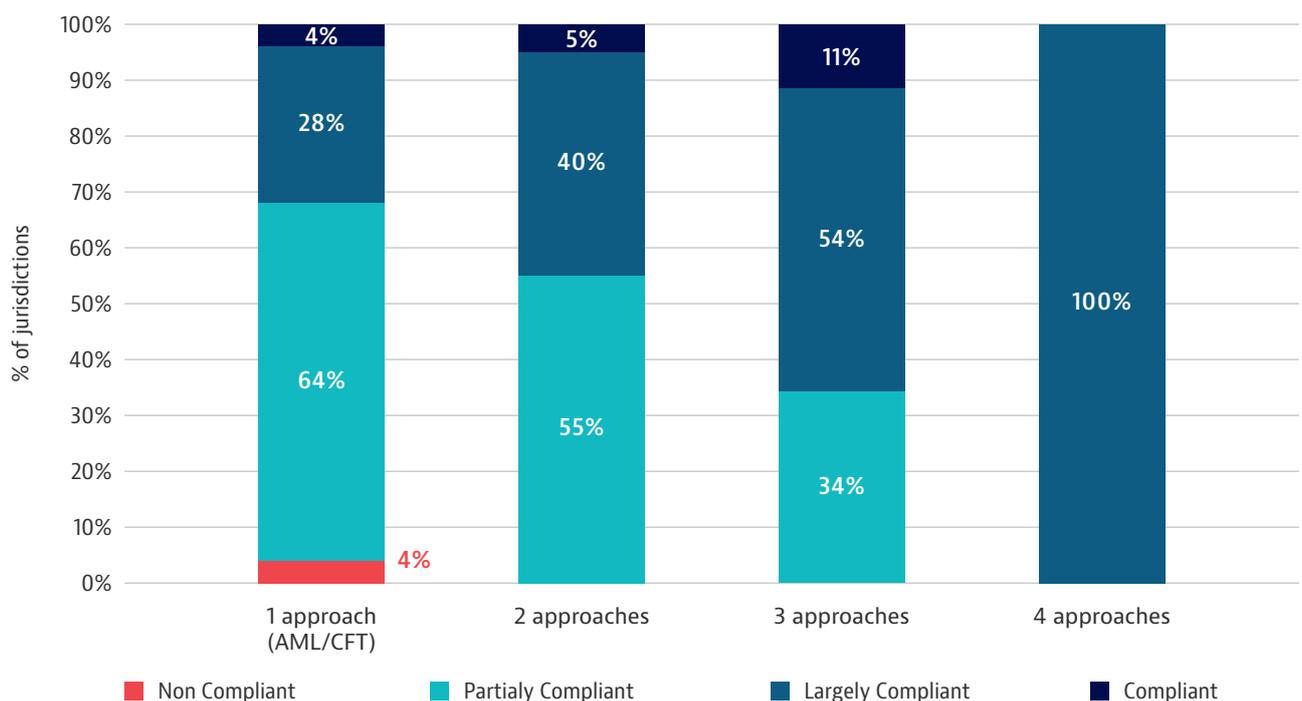


FIGURE 11. **Element A.1 - Number of approaches used and rating of the practical implementation**



Box 10 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

While the availability of beneficial owner of bank accounts essentially relies on the AML/CFT framework, 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.

- 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

#### Box 10. 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.

Source: France's peer review report, 2018 (second round), available at [www.oecd-ilibrary.org/taxation/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-france-2018-second-round\\_9789264291058-en](http://www.oecd-ilibrary.org/taxation/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-france-2018-second-round_9789264291058-en).

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.

of AML/CFT obliged persons and entities with their beneficial ownership obligations, and (iii) the authority responsible for the register carries out at least formal control of declaration and 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 EOI standards are not prescriptive and only require 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, update of information on beneficial owners and the related supervision mechanism.

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 4.

The experience derived from Global Forum peer reviews shows that using a combination of complementary approaches, also called a multi-pronged approach allows for greater transparency and for completeness in beneficial ownership coverage (see Box 11), and can serve to detect inconsistencies and inaccuracies in any one of the information sources.

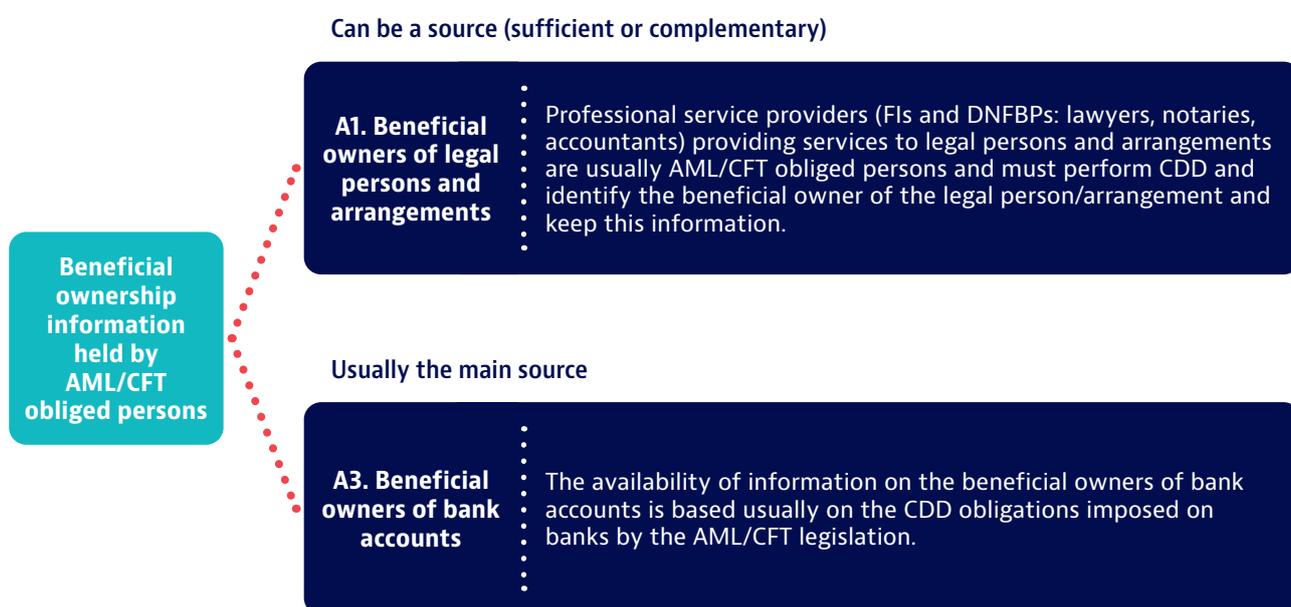
### BENEFICIAL OWNERSHIP INFORMATION MAINTAINED BY AML/CFT OBLIGED PERSONS

#### 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 12).

The AML/CFT framework is usually the main source of

FIGURE 12. Beneficial ownership information held by AML/CFT obliged persons



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

beneficial ownership information under Element A.3 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, DNFBPs such as attorneys, tax advisors, notaries, accountants, auditors, administrators and trustees, providing services to legal persons and arrangements, may be subject to CDD obligations.

Table 4. **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 interest control, date of acquisition and cessation if relevant) is to be collected and kept and in which format.
	Ensure beneficial ownership information is adequate, accurate and up-to-date. Thus, the information must be sufficient to identify the beneficial owner(s), it must be verified and it must be updated regularly.
	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.

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

### Box 11. 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 DNFBPs, in particular accountants, tax advisors, legal professions, 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). 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 update 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.

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

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 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>24</sup>, and to 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 the 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 5 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.

#### Coverage and scope

To ensure complete availability of beneficial ownership information, relevant legal entities within the

jurisdiction<sup>25</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. 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 obligation, 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 its clients as a more experienced accounting firm or a bank with a dedicated department; and

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

25. 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).

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

Table 5. **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 (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, and to update 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 Recommendations and the EOIR standard.</li> <li>● Beneficial ownership information is not verified nor regularly updated because of no clear rules established in this regard (e.g. different approaches depending on the risk, without minimum requirements for low risk clients).</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 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

- 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>26</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 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.

### 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.

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26. 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 or non-professional (e.g. a person acting without reward on behalf of family) (FATF, 2012-2021).

### 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 cascade 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;
- Verify the identity and accuracy of the beneficial ownership information of its customers;
- 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).
  - Although the EOIR standard does not prescribe a set frequency for updating information, beneficial ownership information must be regularly verified and updated, even for low risk clients. 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 should contribute to ensuring that beneficial ownership information maintained by AML/CFT obliged persons is up to date.

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

- In situations where simplified CDD is allowed in the legal framework, it must not prevent the identification of the beneficial owner. Simplified CDD may be allowed when the AML/CFT risk is lower and as long as the simplified measures are commensurate with the lower risks 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 update.<sup>27</sup> While jurisdictions may allow for the use of simplified CDD measures, they should always ensure that (i) beneficial owners are identified, (ii) their identity is verified, and (iii) beneficial ownership information is kept up to date.
- Retain all documents obtained or created in the context of CDD requirements, including beneficial ownership information<sup>28</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 or liquidation). 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; and
- Rely on CDD measures of third parties or business introducers only if the conditions of Recommendation 17 are complied with.

### Monitoring and supervision

#### Designation of a suitable supervisor

A supervisor with adequate mandate, experience 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. 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).
- 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 update 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.

27. See FATF Interpretive Note to Recommendation 10.

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

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

- 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.
- 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).

### 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:

- 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.

### Case study on the AML/CFT approach

Box 12 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 A.1 and A.3 elements.

### 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 also envisioned in FATF Recommendations 24 and 25.

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

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 6 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.

#### Box 12. Example of beneficial ownership implementation relying on the AML/CFT framework

##### 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 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.

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.

Source: Italy's peer review report, 2017 (second round), available at [www.oecd-ilibrary.org/taxation/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-italy-2017-second-round\\_9789264283800-en](http://www.oecd-ilibrary.org/taxation/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-italy-2017-second-round_9789264283800-en).

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.

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

Table 6. **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 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> </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> </ul>
	<ul style="list-style-type: none"> <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 to update this information in case of change.</li> <li>Obligation for 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 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 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>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 both the entities 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 obligation 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 and inactive entities</li> <li>• persons in the chain of ownership and relevant parties</li> <li>• administrators of legal arrangements (including with respect to their registration obligation).</li> </ul> </li> <li>● Legal entities are not adequately aware of and trained 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>

Under the entity approach, jurisdictions can expand on the existing requirements in their relevant laws and introduce the obligation for all relevant entities<sup>29</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.

29. 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

### 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.

### 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 of the beneficial owners;
- Update the beneficial owner register immediately and every time there is a change;
- 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.

- 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.
- Inform the authorities if 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. The same obligation should apply to the owners/relevant parties vis-à-vis persons in the chain of ownership.
- In addition, 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 facilitate compliance by the entity, and 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.

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

- 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.

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 keep a register of beneficial owners 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. They should have relevant expertise to enforce beneficial ownership obligations (including verification of the accuracy of data). 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 the accuracy and alignment with the standard of beneficial owner information maintained by entities in their register as well as compliance with the record-keeping obligation. Such a strategy should include:

- Preventive and awareness-raising measures to inform entities on their obligation, and to educate and train administrators of entities on their beneficial owner obligations. Identifying their beneficial ownership structures 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 with the FATF Recommendations and the EOIR standard, in particular in complex cases (as opposed to AML/CFT obliged persons). These 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 and situations where entities issue bearer shares or nominee arrangements are in place. 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); 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 owner 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.

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

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 13 shows an example of a jurisdiction 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.

#### Box 13. 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.

Source: Singapore's peer review report, 2018 (second round), available at [www.oecd-ilibrary.org/taxation/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-singapore-2018-second-round\\_9789264306165-en](http://www.oecd-ilibrary.org/taxation/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-singapore-2018-second-round_9789264306165-en).

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 at the time of publication of this toolkit.

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

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 Interpretive Note to Recommendation 24 indicates that countries can require company registers to obtain and hold up-to-date information on the companies' beneficial ownership. 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 the entities which need to identify, verify, update and maintain information on their beneficial owners, and keep documentary evidence and underlying documentation. It is therefore 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 7 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>30</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 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.

#### Determination of obligations

As the central register approach is an extension of the entity approach, entities and 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, update and record-keeping obligations:

- Entities must identify their beneficial owners following a definition and methodology aligned the FATF Recommendations and the EOIR standard, verify and update that information, and maintain it along with supporting documentation during the required period, including in case of cessation.
- Persons in the chain of ownership and/or other relevant parties should contribute to the identification, verification and update 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 and at least each time a change of beneficial owner occurs. However, to improve supervision of the reporting obligation, it is also recommended to require entities to provide their beneficial owners on an annual basis so that the supervisory authority can identify and take appropriate actions on non-filing entities.

30. 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 7. **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 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 to update this information in case of change.</li> <li>Obligation for 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 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 the entities to file beneficial ownership information with the central register upon creation of the entity, annually and every time there is a change.</li> <li>General obligation for all persons to which access to the central register is granted to report discrepancies.</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 update 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 or discrepancies to the central register.</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 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 does not have adequate mandate, resources and powers to rigorously enforce compliance of: <ul style="list-style-type: none"> <li>● legal entities, including administrators of legal arrangements and inactive entities</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> </li> </ul> <p>which may result in inadequate enforcement and supervision, as well as incomplete, inaccurate and outdated beneficial ownership information.</p>
<b>Access to information by tax/competent authorities</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 and privacy issues should be ensured, 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>

- 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 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

addition, 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).

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

Ideally, the register should be digitalised and 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.

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.

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.

### **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-fillers, 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.

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

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, update and record-keeping obligations are also relevant for the central register approach.

In addition, as explained in the entity approach, the obligation for the persons in the chain of ownership and/or other relevant parties to contribute to the identification and update 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.

### 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>31</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. Box 14 presents the approach taken by the European Union (EU). Following the implementation of the fourth and fifth Anti-Money Laundering Directives, EU Member States are implementing public central beneficial ownership registers.

### 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.

31. 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).

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

### Box 14. EU Anti-Money Laundering Directives and central beneficial ownership registers

An EU directive is a legislative act that establishes a common goal for all EU Member States to achieve, and mandates EU Member States to transpose its requirements into their domestic laws. The fourth and fifth revisions of the Directive on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (AMLD/CFT Directives) establish minimum standards for greater transparency on beneficial ownership.

In particular, the AMLD requires entities (legal persons and arrangements<sup>32</sup>) to hold adequate, accurate and current information on their beneficial ownership and report this information to a central register.

For legal persons, the Directive establishes that the information on the central register should be accessible to any member of the general public, while at the same time ensuring confidentiality and data protection rules. The information that can be accessed by the general public should be at least the name, the month and year of birth, the country of residence and the nationality of the beneficial owner as well as the nature and extent of the beneficial interest held.

For legal arrangements, the beneficial ownership information can be accessed by: (i) competent authorities and financial intelligence units, without any restrictions; (ii) obliged entities within the framework of CDD; and (iii) any other person that can demonstrate a legitimate interest.

In addition, this Directive establishes that EU Member States must ensure that the central registers are interconnected via the European Central Platform, to facilitate co-operation and exchange of information between EU Member States. Central registers should be interconnected via the European Central Platform.

Source: 4th AML/CFT Directive available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015L0849>, 5th AML/CFT Directive available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018L0843>.

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 15 presents examples of jurisdictions using central registers and rated “Largely compliant” with respect to Element A.1 of the 2016 ToR.

### 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. In particular, 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 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.

32. In the case of express trusts (i.e. trusts created knowingly and intentionally under a specific instruction of the settlor), the information should be held in a central register only if the trust has tax consequences.

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

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

### 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. Special attention should be paid to include 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>33</sup> Entities should be subject to these obligations irrespective of their taxpayer status to ensure a full coverage.

#### Determination of obligations

As the tax authority approach is an extension of the entity approach, entities, and 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, update and record-keeping obligations:

- Entities must identify their beneficial owners following a definition and methodology aligned with the FATF Recommendations and the EOIR standard, verify and update that information, and maintain it along with supporting documentation during the required period, including in case of cessation.
- Persons in the chain of ownership and/or other relevant parties must contribute to the identification, verification and update 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, 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. 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 promptly any change of beneficial owners as it occurs. This 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).

33. 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

### Box 15. 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 compliant rating.

Source: Croatia's peer review report, 2019 (second round), available at [www.oecd-ilibrary.org/taxation/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-croatia-2019-second-round\\_ccacbc7-en](http://www.oecd-ilibrary.org/taxation/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-croatia-2019-second-round_ccacbc7-en).

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 at the time of publication of this toolkit.

#### **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.

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

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 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.

Source: Nauru's peer review report, 2019 (second round), available at [www.oecd-ilibrary.org/taxation/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-nauru-2019-second-round\\_43120c29-en](http://www.oecd-ilibrary.org/taxation/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-nauru-2019-second-round_43120c29-en).

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 Nauru at the time of publication of this toolkit.

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, update 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 persons in the chain of ownership and/or other relevant parties to contribute to the identification and update 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 failure 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

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

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

	Main parameters	Challenges
<b>Coverage and scope</b>	<ul style="list-style-type: none"> <li>All legal persons and arrangements must have the obligation to identify their beneficial owners, maintain that information 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>
<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>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 to update this information in case of change.</li> <li>Obligation for 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 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 tax authority to ensure proper supervision of their beneficial ownership obligations.</li> <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, 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 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 update 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
<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>● No adequate organisation and resources within the tax authority to rigorously enforce compliance of: <ul style="list-style-type: none"> <li>• legal persons and arrangements, including inactive entities,</li> <li>• the persons in the chain of ownership and relevant parties; and</li> <li>• administrator of legal arrangements,</li> </ul> </li> </ul> <p>which may result in inadequate enforcement and supervision, as well as incomplete, inaccurate and outdated beneficial ownership information.</p>
<b>Access to information by tax/competent authorities</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>

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 owners 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.

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

### 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

In the context of the Global Forum peer reviews, some jurisdictions relied at the time of their review on the tax administration approach. Box 16 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 the availability of beneficial ownership information on all entities and on bank accounts and access to this information by the tax authority.

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

### Box 16. 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).

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.

Source: Ireland's peer review report, 2017 (second round), available at [www.oecd-ilibrary.org/taxation/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-ireland-2017-second-round\\_9789264280229-en](http://www.oecd-ilibrary.org/taxation/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-ireland-2017-second-round_9789264280229-en).

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.

## 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, 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 DNFBPs) 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.

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

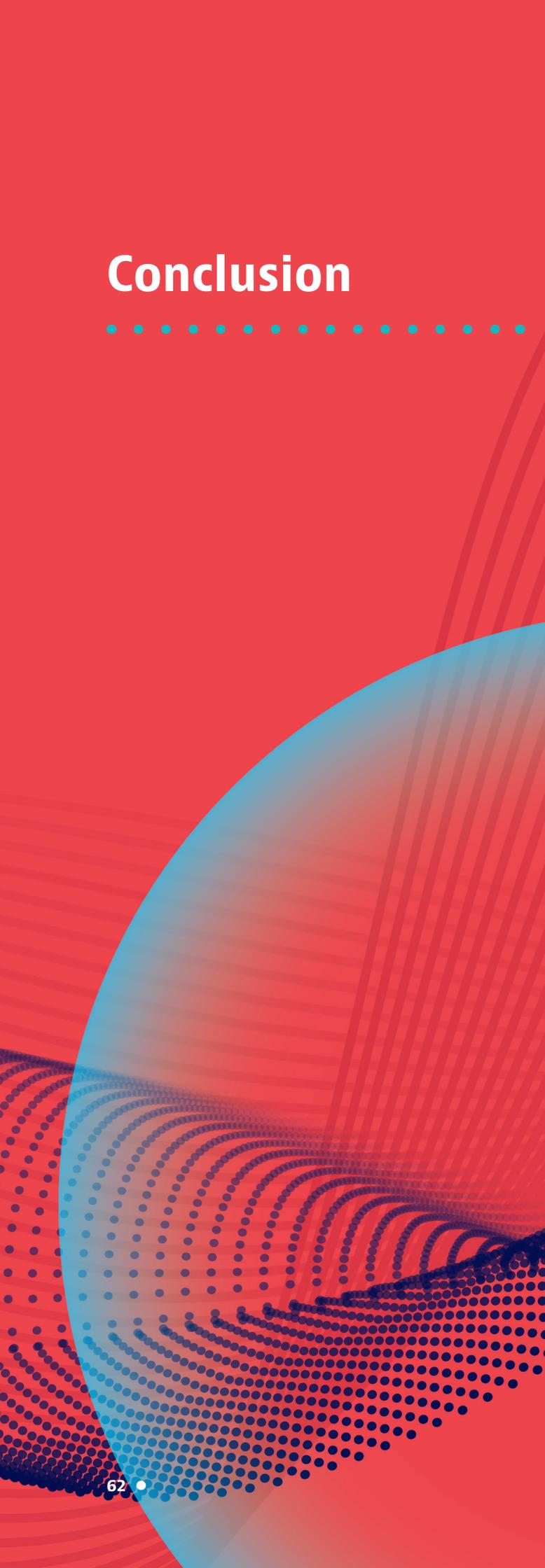
Clear requirements in these aspects should be in place for obliged persons, whether they are FIs, DNFBPs or the entities themselves. In approaches other than the AML/CFT one, persons in the chain of ownership and other relevant parties must also contribute to the diligence applied by entities to maintain 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, if the supervision and monitoring is weak, the availability of beneficial ownership information is at risk of not being complete, adequate and up to date.

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.

# Conclusion



The Global Forum requires jurisdictions to ensure the availability of 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 the four 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; and
- Tax administration approach: beneficial ownership information is kept by the tax administration.

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.

For each question below, please respond with as detailed a description as necessary.

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?
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?
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; or
  - d) the cessation of the legal person or legal arrangement?

- 7.** What sources would you access to gather information on beneficial owners of:
  - a)** legal persons registered in your country?
  - b)** legal persons registered in a foreign country with sufficient nexus in your country?
  - c)** trusts (or similar legal arrangements) registered in your country?
  - d)** trusts (or similar legal arrangements) registered in a foreign country with a trustee in your country?
- 8.** Do competent authorities within your jurisdiction, in particular competent authorities for EOIR 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? What enforcement activities are carried out with regard to beneficial ownership obligations, and what is the materiality of those?
  - 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?
- 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 for 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 (2012-2021), *International standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*, FATF, Paris, France. Available at [www.fatf-gafi.org/recommendations.html](http://www.fatf-gafi.org/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)
- Global Forum EOIR peer review reports, available at [www.oecd-ilibrary.org/taxation/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-peer-reviews\\_2219469x](http://www.oecd-ilibrary.org/taxation/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-peer-reviews_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 (2016), “2016 Terms of Reference”, in *Exchange of Information on Request, Handbook for Peer Review 2016-2020*, available at <https://oe.cd/41W>

Further resources, including an e-learning module on beneficial ownership developed by the Global Forum and the Asian Development Bank, are available at: [www.oecd.org/tax/transparency/resources/global-forum-e-learning.htm](http://www.oecd.org/tax/transparency/resources/global-forum-e-learning.htm).





For more information:



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