The Revised FATF Standards

10. Beneficial Ownership

Overview

- Misuse of corporate vehicles
- Previous FATF requirements and why they have been revised
- Who is the beneficial owner?
- Legal Persons (R.24)
- Legal Arrangements (R.25)
- International Cooperation
Misuse of corporate vehicles

- Misuse of corporate vehicles is common in crime and money laundering.
- Legal persons (e.g. companies) and legal arrangements (e.g. trusts) are a layer between assets and their owner – which can be misused to conceal the identity of the owner.

Previous FATF Requirements

- Old R.33 & 34 required countries to take measures to prevent the unlawful use of legal persons and legal arrangements by money launderers, by ensuring adequate transparency.
- Key goal was to ensure competent authorities can identify the beneficial owner, e.g. through:
  - Central Registration of beneficial owners; or
  - Records held by company service providers; or
  - Investigative powers.
Implementation in the 3rd round

- Problems identified in FATF evaluations:
  - Inconsistent evaluations;
  - Low levels of compliance;
  - R.34 not applicable in many countries;
  - Great practical difficulty for law enforcement in identifying beneficial owners.

- Causes - lack of clarity about the requirements & how to implement them; and low priority on implementation.

Objectives of the revision

- The goal is unchanged:
  
  *Authorities should have adequate, accurate and timely access to beneficial ownership information about companies & trusts.*

- New interpretive notes aim at providing more clarity as well as flexibility about the practical steps that should be taken by countries.

- Stronger requirements in the areas where implementation was weakest.
Who is the beneficial owner?

- **The Beneficial Owner** is the natural person who ultimately owns or controls a legal person or arrangement.
- For a legal person, this is normally the person (if any) who ultimately has a controlling ownership interest — including through a chain of companies;
- For a legal arrangement, ownership & control may be divided, so beneficial owners include the trustee(s), settlor, protector, and beneficiaries.
- The **beneficial owner must be a natural person** — so could be at the end of a chain of legal persons and arrangements
- The focus is on who has effective ownership/control.

Legal Persons and Arrangements

**Legal Persons:**
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.

**Legal Arrangements:**
Express trusts or other similar legal arrangements. Examples of other similar arrangements (for AML/CFT purposes) include fiducie, Treuhand and fideicomiso.
Legal Persons / Companies (R.24)

Basic information

- Definition:
  a) Company name, incorporation details, status, basic regulating powers, address, list of directors
  b) Register of all shareholders or members
- All companies should be registered by a company registry
- The company registry should record part (a) of the basic information relating to all companies
- All companies should hold part (a) and (b) of the basic information. Part (b) should be kept within the country, either at the company’s registered office or at another location notified to the company registry

Beneficial Ownership Information

- Can be either:
  - Recorded by the company (Proactive approach); or
  - Determined when necessary (Reactive approach)
- There is flexibility about how countries ensure this. They should use one or more of the following mechanisms:
  - Requiring companies or company registries to record the beneficial owner(s);
  - Requiring companies take reasonable measures to identify the beneficial owner(s);
  - Use existing information to identify the beneficial owner when needed (e.g. shareholder registers; financial institutions, and tax authorities).
Legal Persons / Companies (R.24)

Other requirements
- Companies must cooperate with competent authorities – either through a designated natural person or DNFBP in the country responsible for providing information & assistance, or a comparable measure
- Information must be accurate and up-to-date; available in a timely way
- Records must be retained for five years
- Countries should facilitate access to this information by financial institutions & DNFBPs - at minimum, to basic information, part a)
- Equivalent requirements apply to other legal persons (i.e. Foundations, Anstalt, and LLPs) as to companies

Legal Persons / Companies (R.24)

- Specific measures required to prevent misuse of bearer shares and nominees; for example:
  - For bearer shares & share warrants:
    a) Prohibition;
    b) Conversion to normal shares (e.g. dematerialised);
    c) Immobilisation; or
    d) Holders of controlling bearer shares should be registered by the company.
  - For nominee shareholders and nominee directors:
    a) Disclosure of the identity of their nominator to the company registry; or
    b) Require nominees to be licensed professionals, and to hold information on their nominators.
Legal Arrangements / Trusts (R. 25)

- In the 3rd Round, the Recommendation only applied to trust law countries
- The Recommendation now applies to all countries
- The focus is on the trustee ability to operate in the country, and as the best source of information
- Some requirements only apply to trust law countries

Requirements on trust law countries

- Trust law countries should require trustees of any express trusts governed under their law to obtain and hold:
  a) Beneficial ownership information about the trust;
  b) Basic information about the agents and service providers for the trust.
- These obligations would normally be part of trust law – so that it applies to all trusts governed by the country’s trust law.
Legal Arrangements / Trusts (R. 25)

Requirements on all countries

- All countries should ensure that trustees disclose their status to financial institutions and DNFBPs when they act as trustees.
- Trustees should not be prevented from disclosing their status.
- Countries are encouraged to ensure that other entities and authorities hold information on the trust, for example:
  a) Registries (of companies and of assets)
  b) Other competent authorities (e.g. Tax authorities) ; and
  c) Agents and service providers to trusts (e.g. Lawyers, TCSPs, asset managers etc)
- The same obligations apply to other types of legal arrangement.

International Cooperation

- Weak international cooperation has been a major barrier to investigation of corporate vehicles.
- New specific requirements added for international cooperation on beneficial ownership.
- Countries are required to:
  a) Facilitate access to basic information in registries;
  b) Exchange information on shareholders;
  c) Use their powers to obtain beneficial ownership information

Also required to monitor the assistance they receive regarding legal persons.

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