



LEGAL PERSONS- BENEFICIAL OWNERSHIP ISSUES

CFATF RESEARCH DESK
SEPTEMBER 22, 2022



IN THIS ARTICLE



- Definitions of Legal Persons and Beneficial Owner
- Key Features of an Effective System
- Requirements of R. 24
- Broad categories of Legal Persons
- Shell, Shelf and Front Companies
- Conclusions of FATF Report on Concealment of Beneficial Ownership



Definition of Legal Persons



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.

Source: [Glossary of the FATF Recommendations](#)



Definition of Beneficial Owner



A Beneficial owner refers to the natural person(s) who ultimately* owns or controls a customer** and/or the natural person on whose behalf a transaction is being conducted.

It also includes those persons who exercise ultimate effective control over a legal person or arrangement.

Footnotes:

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

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

Source: [Glossary of the FATF Recommendations](#)



Key Features of an Effective System

- Risk assessment to understand vulnerabilities and potential of abuse of legal persons and develop specific mitigating measures.
- Adequacy, accuracy and timeliness of information in beneficial ownership:
 - ✓ Obligated parties to verify or/and monitor the accuracy of the information;
 - ✓ Supplementary information platform in addition to company registry ;
 - ✓ Ongoing reporting at company level / to the reporting entities or company registry;
 - ✓ Verification through different means;
 - ✓ Enhanced measures for companies with foreign ownership/directorship ;
 - ✓ Highly effective law enforcement authorities with adequate resources;
 - ✓ Using technology to facilitate checking and validation;
- Access by competent authorities.
- Forbidding or immobilising bearer shares and nominee arrangements.
- Effective, proportionate and dissuasive sanctions.



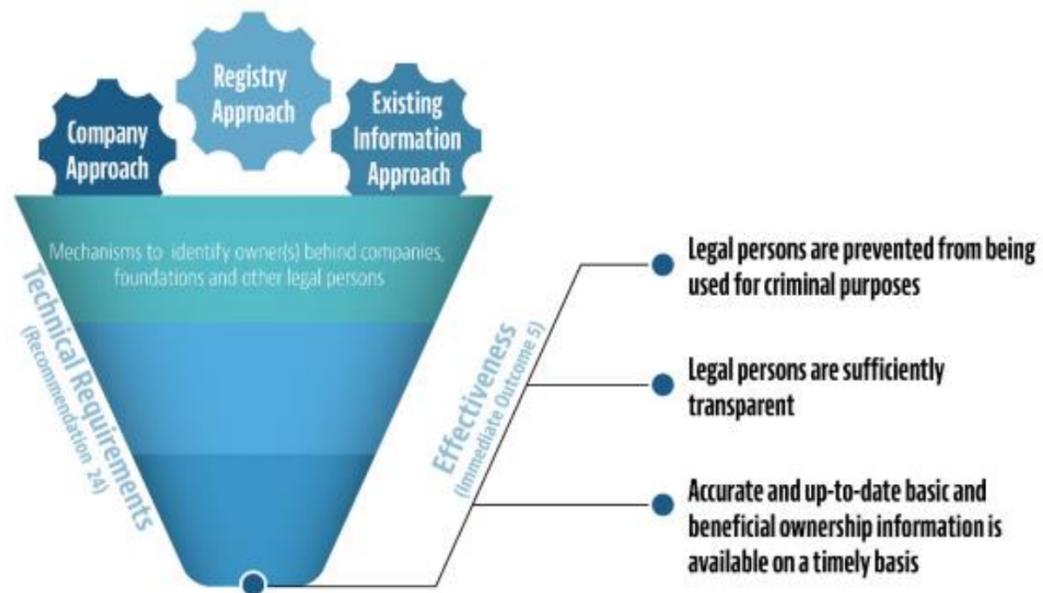
Requirements of R. 24- Transparency and beneficial ownership of legal persons

- **Technical Compliance-** Under R.24, countries should take measures to prevent the misuse of legal persons for ML/TF. Countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities.
- Countries should consider measures to facilitate access to beneficial ownership and control information by FIs and DNFBPs undertaking the requirements as set out in R.10 and 22
- **Effectiveness in the context of Immediate Outcome 5 -** Legal persons and arrangements are prevented from misuse for ML or TF, and information on their beneficial ownership is available to competent authorities without impediments.”



R. 24 FATF requirements- Multi pronged approach (1)

FATF Requirements
to identify the beneficial owner(s) behind legal persons, such as companies and foundations



Countries should use one or more of these mechanisms (the Registry Approach, the Company Approach and the Existing Information Approach) to ensure that BO information is obtained by that company and available at a specified location in their country; or can be otherwise determined in a timely manner by a competent authority.

For example, the Global Forum on Transparency and EOI (the GF)'s project on beneficial ownership, developed based on the FATF standard, encourages jurisdictions to develop complementary frameworks and enforcement programmes for tax transparency purposes. In March 2019, the GF's Beneficial Ownership Toolkit was launched, which contains policy considerations that jurisdictions can use to implement legal and supervisory frameworks to identify and collect beneficial ownership information.



R. 24 FATF requirements- Multi pronged approach (2)

1. **Company Registries:** Obtain and hold up-to-date information on the BO of companies.
2. **Companies:**
 - (a) Obtain and hold up-to-date information on their beneficial ownership;
 - (b) Take reasonable measures (with regard to risk) to identify their beneficial owners.
3. **Relying on existing information:** registries, DNFBPs, FIs (CDD info), stock exchanges, competent authorities (supervisors, tax authorities).



Broad categories of Legal Persons



- **Partnership**- ownership and control are exercised by all partners specified in the partnership contract;
- **Capital companies**- capital participation of shareholders and not their "personality", separate legal entity, often controlled and owned through shares;
- **Limited Liability Companies (LLCs)***- combine elements of partnerships and companies, shares not publicly offered and traded
- **Foundations**- separate legal entities with no owners or shareholders and are generally managed by a board of directors.

Footnote:

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



Shell, Shelf and Front Companies



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

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

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

Footnote:

*Footnote: *FATF Guidance Concealment of Beneficial Ownership, July 2018, Accessed on 15/9/2022:

<http://www.fatf-gafi.org/media/fatf/documents/reports/FATF-Egmont-Concealment-beneficial-ownership.pdf> pp.5



Conclusions of FATF Report on Concealment of Beneficial Ownership

Footnote:

*Footnote: *FATF Guidance Concealment of Beneficial Ownership, July 2018, Accessed on 15/9/2022: <http://www.fatf-gafi.org/media/fatf/documents/reports/FATF-Egmont-Concealment-beneficial-ownership.pdf> pp.5

1. Individual(s) exercising control is a significant challenge for prosecutors, law enforcement agencies, and intelligence practitioners across the globe.
2. Schemes designed to obscure beneficial ownership often employ a “hide-in-plain sight”.
3. Analysis of 106 case studies - legal persons, principally shell companies, are a key feature in schemes designed to disguise beneficial ownership, while front companies and bearer shares are less frequently exploited.
4. Individuals and groups seeking to conceal the ownership of assets are most likely to exercise control over those assets via a combination of direct and indirect control, rather than strictly one or the other.



Thank you!



**CFATF
GAFIC**



Phone Number
1868-623-9667



Email Address
cfatf@cfatf.org



Website
www.cfatf-gafic.org