

BEST PRACTICES ON BENEFICIAL OWNERSHIP FOR LEGAL PERSONS



According to the Financial Action Task Force (FATF), a **Beneficial Owner (BO)** 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.

FATF Requirements on Beneficial Ownership (BO)

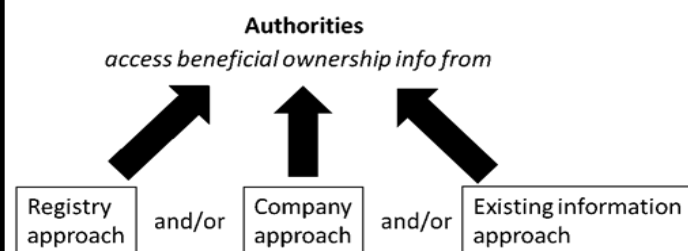
In accordance with FATF Recommendation 24, countries are required to take measures to prevent the misuse of legal persons for money laundering, terrorist financing and proliferation financing (ML/TF/PF). Countries should ensure that there is accurate, adequate and timely information on beneficial ownership and control of legal persons that can be accessed in a timely manner by competent authorities.



Common Challenges Faced by Countries in Implementing Beneficial Ownership Measures

- ◇ Inadequate risk assessment of possible misuse of legal persons or arrangements for ML/TF/PF.
- ◇ Inadequate measures to ensure information on beneficial ownership is accurate and up to date.
- ◇ Inadequate mechanisms to ensure competent authorities had timely access to beneficial ownership information.
- ◇ Lack of effective, proportionate and dissuasive sanctions for entities which failed to provide accurate and up to date information on beneficial ownership. These include sanctions against entities that provide false information to the Company's Registry or not keeping information about shareholders and members as well as entities that fail to apply the required customer due diligence (CDD) measures for legal persons and arrangements.

Approaches to Identify Beneficial Ownership



Countries are encouraged to use one or more of the approaches (Registry, Company and/or Existing Information) to ensure that information on the beneficial ownership of an entity is obtained and is available or can be accessed without delay by competent authorities.

Registry Approach

All companies created in a country are registered in the Company's Registry. The Registry is responsible for maintaining basic information of a company, including its name, proof of incorporation, legal form, status, address of the registered office, basic regulating powers, beneficial ownership information and list of directors. The information held by the Registry is publicly available and annual updating is required for all registered/incorporated entities.

Company Approach

In this approach, companies are required to maintain basic information, including company name, proof of incorporation, legal form and status, basic regulating powers, register of shareholders and members containing the number of shares, categories of shares and associated voting rights. Companies are generally provided powers within legislation, to request updated information from their shareholders and who are required to disclose the names of persons on whose behalf shares are held. Under this structure, companies can apply restrictions and sanctions against shareholders for failure to provide information on beneficial ownership.

Existing Information Approach

Financial Institutions (FIs) and Designated Non Financial Businesses and Professions (DNFBPs) are required to take reasonable measures to verify the identity of clients, understand the nature of their businesses, ownership and control structures. They rely on information provided by the client which includes the certificate of incorporation, statutory statement, partnership agreement, deeds of trust and any existing information in the public domain. To ensure compliance, supervisors will conduct inspections and impose a range of sanctions to non compliant FIs and DNFBPs.

As indicated, information on Beneficial Ownership can be found in a number of different places including a company registry, FIs and DNFBSs and the company itself. Implementing different approaches can therefore complement each other to verify and monitor information on beneficial ownership and ensure that it is accurate and accessible. Under this **multipronged approach**, competent authorities can gain access to beneficial ownership information through different sources. The competent authorities can also ensure the accuracy of information through cross checking.

Roles and Responsibilities of Key Stakeholders

To effectively implement the multipronged approach, it is vital to ensure that the responsibilities of various parties are clear and all parties have played their roles in defending the system against misuse. Stakeholders should therefore know and understand their obligations, the risks involved and carry out their respective duties in a timely manner with sufficient resources.

Company and Legal Persons

- Provide basic beneficial ownership information via obliged parties (notaries, accountants, lawyers, FIs) for the Company Registry upon registration/ incorporation.
- Maintain shareholder and director registers and make it available upon request.

Shareholders

- Provide accurate information on beneficial ownership and updates on changes to beneficial ownership without delay.

Company Registry

- Maintain information on beneficial ownership and basic information on directors and management and make it publicly available including full search capability.
- Apply the necessary sanctions when obligations are breached.

FIs and DNFBSs

- Conduct customer due diligence (CDD) at the on-boarding stage and carry out ongoing CDD on the business relationship.
- Maintain records for at least five years.
- Report suspicious transaction activities.

Supervisors and Self Regulatory Bodies (SRBs)

- Conduct supervision and monitoring of all regulated entities including FIs and DNFBSs to ensure that they are complying with CDD requirements.
- Conduct training and outreach to foster a greater understanding of ML/TF/PF risks associated with legal persons and arrangements.

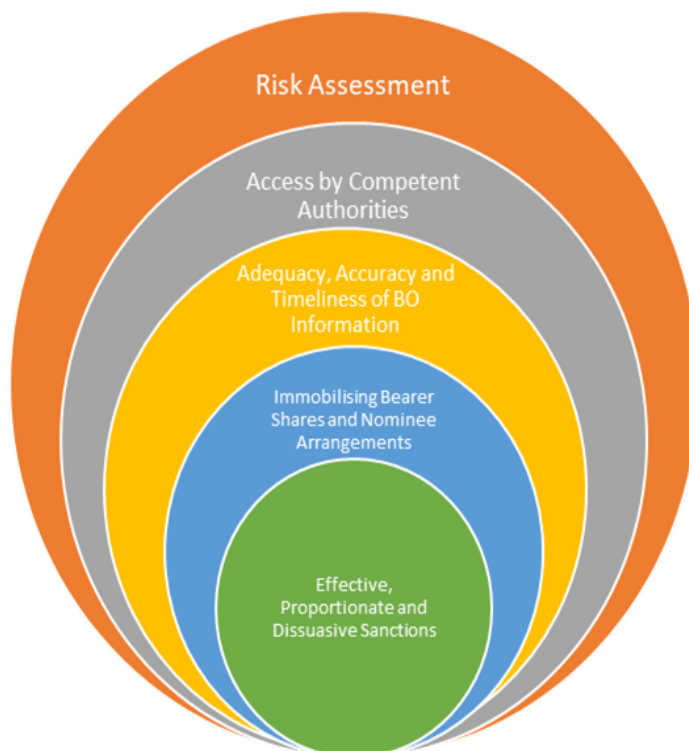
Competent Authorities

- Know what basic and beneficial ownership information is available in the country and which stakeholder is maintaining it.
- Establish processes and procedures in obtaining information on beneficial ownership in respect of training, sharing of information and reporting responsibilities.

National Authorities

- Ensure cooperation between government agencies holding beneficial ownership information and identify and assess the risks associated with legal persons and arrangements.

KEY FEATURES OF AN EFFECTIVE SYSTEM TO IDENTIFY THE BENEFICIAL OWNERS BEHIND LEGAL PERSONS



1. Risk Assessment: Countries should conduct a comprehensive risk assessment of legal persons so as to develop a more thorough understanding of vulnerabilities and threats to this sector.

2. Access by Competent Authorities: Competent Authorities should have direct access to the BO information held by a company's registry, database held by other Competent Authorities and information maintained by FIs and DNFBSs.

3. Accuracy, Adequacy and Timeliness of BO information: Using the multipronged approach to identify, maintain and access BO information in a timely manner.

4. Immobilising Bearer Shares and Nominee Arrangements: Countries are required to take measures to prevent the misuse of Bearer Shares and Bearer Share Warrants as well as nominee shares and directors. These measures include prohibiting, dematerialising and disclosing them. **Bearer shares** may not be registered on any share registry and whoever holds the share certificate has full ownership of the share. A **nominee arrangement** is where one person agrees to act on behalf of another person in a matter.

5. Effective Proportionate and Dissuasive Sanctions: These sanctions should include administrative sanctions and prosecutorial actions against entities that fail to comply with information filings.