

FATF



FATF Report to the G20

Beneficial Ownership

September 2016





FINANCIAL ACTION TASK FORCE

The Financial Action Task Force (FATF) is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. The FATF Recommendations are recognised as the global anti-money laundering (AML) and counter-terrorist financing (CFT) standard.

For more information about the FATF, please visit the website:

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Executive Summary

The G20 Finance Ministers and Central Bank Governors called on the Financial Action Task Force (FATF) and the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) to make initial proposals on ways to improve the implementation of the international standards on transparency, including on the availability of beneficial ownership information, and its international exchange.¹

The FATF will work on the following proposals on reinforcing implementation of the existing international standards relating to transparency and beneficial ownership:

- Ensure the emphasis on beneficial ownership in the FATF peer review follow-up processes is effective to apply peer pressure to countries to accelerate their implementation of the FATF Standards in this area.
- Deliver clear and consistent recommendations to countries on how to improve implementation of the beneficial ownership requirements during assessment processes.
- Enhance cooperation between the FATF and the Global Forum to further ensure the coherence and mutual reinforcement of work to improve transparency in relation to beneficial ownership, including through identifying examples of effective implementation.

In addition, the FATF proposes the G20 to lead by example by:

- Issuing a public commitment by G20 members to meet the FATF Standards on beneficial ownership.

These initial proposals were developed by the FATF, building on the extensive work it has already done on beneficial ownership, and reflect discussions with the Global Forum. Another report focusing on the Global Forum's ongoing work on the same topic will be submitted to the G20 separately.

The FATF is an inter-governmental body comprised of 37 members which sets internationally-recognised standards (the FATF Recommendations) to combat money laundering, and the financing of terrorism and proliferation. The FATF leads a global network of 198 jurisdictions which have all committed to implementing the FATF Standards and undergoing peer reviews to evaluate their level of technical compliance and the effectiveness of their implementation. Beneficial ownership is a core aspect of the FATF Standards, and an important focus of its peer review and related follow-up processes.

¹ Statement from the Communiqué of the G20 Finance Ministers and Central Bank Governors meeting held in Washington D.C. on 13 April 2016 meeting, which was reiterated in the Communiqué of their meeting held in Chengdu, China on 24 July 2016.

I. Introduction

In April 2016, the G20 Finance Ministers and Central Bank Governors asked the FATF and the Global Forum to make initial proposals by their next meeting on ways to improve implementation of the international standards on transparency, including on the availability of beneficial ownership information and its international exchange. In response to this request, the FATF is submitting this report to update the G20 on the FATF's ongoing work on transparency of and timely access to beneficial ownership information, and to set out initial proposals for further work which will be discussed at the next FATF Plenary meeting to be held in Paris, France on 19 to 21 October.

II. International standards on transparency of beneficial ownership

▶ *FATF issued the first international standards on beneficial ownership in 2003*

The FATF has a long history of taking action to facilitate transparency and timely access to beneficial ownership information on legal persons and legal arrangements. In 2003, the FATF became the first international body to set international standards on beneficial ownership which focused on legal requirements for financial institutions and other gatekeepers to collect and verify information on the ownership of legal persons and arrangements, and on measures to ensure that reliable information on their beneficial ownership is available to investigators. Over 190 jurisdictions subsequently committed to implementing those standards and underwent peer reviews (mutual evaluations) for their compliance with them.

The FATF's third round of evaluations focused primarily on assessing countries' implementation of the technical requirements on transparency. The results showed some weaknesses, including lack of clarity about how the transparency requirements could be applied in practice, insufficient measures to prevent the misuse of bearer shares and nominees, and accurate and adequate beneficial ownership information not being available in a timely manner. Countries found to have serious deficiencies in their AML/CFT frameworks were subjected to a rigorous follow-up process. This pressure generated positive change and now many countries have put in place solid legal frameworks requiring their financial institutions and other professions and businesses to collect beneficial ownership information about their customers.

As well, the FATF continued to study the issue of beneficial ownership in the context of money laundering and terrorist financing risks, methods and trends, and has issued several reports aimed at raising global awareness of these issues.

▶ *FATF strengthens its standards on beneficial ownership in 2012*

In 2012, the FATF strengthened its standards on beneficial ownership, to give more clarity about how countries should ensure information is available, and to deal with vulnerabilities such as bearer shares and nominees. The revised standards also clearly distinguish between basic ownership information (about the immediate legal owners of a company or trust), and beneficial ownership information (about the persons who ultimately own or control it). They also clarify that having accurate and up-to-date basic information about a legal person or legal arrangement is a fundamental prerequisite for identifying the ultimate beneficial owners, and require countries to provide international cooperation in relation to ownership information. In total, 198 jurisdictions

subsequently committed to implementing the FATF's strengthened standards on beneficial ownership, and undergoing peer reviews to assess their compliance.

To facilitate these efforts, the FATF followed up by issuing *Guidance on Transparency and Beneficial Ownership* in 2014 to further clarify what the FATF Standards require. This guidance paper gives a step-by-step guide on how to access publicly available information on corporate vehicles, and establish procedures to facilitate information requests from foreign counterparts. The FATF continues to issue sector-specific guidance papers aimed at helping financial institutions and other gatekeepers to implement the FATF Standards, including the beneficial ownership requirements. The FATF's ongoing work to facilitate information sharing more generally will also improve transparency and timely access to beneficial ownership information. A full list of relevant FATF publications on beneficial ownership is [annexed](#) for reference.

III. Implementation of the existing standards on beneficial ownership: lessons learned

The FATF is now assessing countries' implementation of the revised 2012 standards, and applying a follow-up process to make sure any problems are addressed. Crucially, FATF assessments review whether the international standards are being applied effectively, not just whether countries' laws include the relevant provisions. This places the FATF at the forefront of international peer review bodies, and enables us to identify any gaps or problems with the international standards or with how they are implemented.

▶ *Results of the FATF evaluations conducted to date*

As reported to the G20 in July 2016, the FATF has identified some significant implementation challenges on beneficial ownership based on recent peer reviews. Nine FATF members have been assessed since the FATF Standards were strengthened in 2012. Only two of those nine countries were found to have a substantial level of effectiveness in preventing the misuse of legal persons and arrangements. Major improvements are required in the other seven countries assessed. Some specific problems have been identified, including:

- Insufficient accuracy and accessibility of basic information relating to company registration;
- Less rigorous implementation of customer due diligence (CDD) measures by key gatekeepers such as company formation agents, lawyers, and trust-and-company-service providers;
- Lack of sanction on companies which fail to update information held by national company registries, or to keep information about their shareholders or members up-to-date; and
- Obstacles to information sharing such as data protection and privacy laws which impede competent authorities from getting timely access to adequate, accurate and up-to-date basic and beneficial ownership information.

The large-scale misuse of legal persons and arrangements which was exposed in April 2016 focused attention on the need to strengthen controls against the misuse of corporate structures. Our analysis to date does not point to specific gaps or inadequacies in the international standards. Rather, it is

becoming clear that some countries (including G20 members) have not yet fully or effectively implemented the FATF Standards on preventing the misuse of legal persons and arrangements. It is therefore imperative for countries to fully and effectively implement the FATF Standards in order to close the gaps in their national systems with regard to legal persons and arrangements.

▶ *Synergies with the work of the Global Forum*

The Global Forum's core mandate is focused on improving transparency and exchange of information for tax purposes through its peer review process. To date its peer reviews have been in relation to the *Exchange of Information on Request Standard* and have incorporated a focus on legal ownership rather than beneficial ownership information. In that context, it has also identified a number of areas for improvement in relation to the access to, and availability of, legal ownership information for tax compliance purposes. The Global Forum recently commenced a new round of reviews based on new Terms of Reference which now require that all jurisdictions have access to information regarding the beneficial ownership of entities and legal arrangements (as defined by the FATF) operating in their jurisdiction to allow for its international exchange for tax compliance purposes. The Global Forum has also recently adopted the *Automatic Exchange of Information Standard*, which also incorporates the FATF's definition of beneficial ownership information, and requires financial institutions to identify and report beneficial ownership information to their tax authorities for onward exchange in relation to certain financial accounts. The Secretariats of the FATF and the Global Forum have had some preliminary discussions concerning the synergies between their respective assessment processes.

IV. Initial proposals to reinforce the implementation of international standards

The existing FATF Standards provide a robust framework for ensuring that adequate and accurate beneficial ownership information is available to the competent authorities in a timely manner. However, the results of the peer review process show that many countries still struggle to implement the existing requirements effectively. For that reason, the FATF will work on the following proposals on reinforcing implementation of the existing international standards relating to transparency and beneficial ownership.

Ensure the emphasis on beneficial ownership in the FATF peer review follow-up processes is effective to apply peer pressure to countries to accelerate their implementation of the FATF Standards in this area.

The FATF process for assessing country compliance has proven to be an effective driver for countries to improve their implementation of AML/CFT measures, including those related to beneficial ownership. The related follow-up processes are particularly rigorous and give the FATF a broad range of tools for applying pressure to countries to make the necessary changes to their systems. As a result since the last round of evaluations, many countries have put in place sound legal frameworks requiring financial institutions and other gatekeepers to collect beneficial ownership information on customers who are legal persons or legal arrangements. The FATF will ensure the emphasis on beneficial ownership in the peer review follow-up processes is effective to apply peer pressure to countries to accelerate their implementation of the FATF Standards in this area.

Deliver clear and consistent recommendations to countries on how to improve implementation during assessment processes.

The FATF and its global network of assessment bodies assess compliance with beneficial ownership requirements as they apply in the context of implementing AML/CFT measures. The Global Forum is also an assessment body which assesses compliance with beneficial ownership requirements as they apply in the context of transparency and exchange of information for tax purposes.

Although the scope of FATF and Global Forum assessments differ, it is important to ensure that countries receive clear and consistent recommendations on how to improve their implementation of the international standards on beneficial ownership for AML/CFT purposes (in the case of FATF) and for tax purposes (in the case of the Global Forum). This minimises confusion on the part of assessed countries about what steps they need to take to improve implementation, and facilitates consistent peer pressure and technical assistance which could increase the traction of both bodies' recommendations to countries overall.

The FATF Secretariat and Global Forum Secretariat will map where the respective standards and assessment processes coincide, consider ways to promote clear and consistent recommendations to countries.

Enhance the cooperation between the FATF and the Global Forum to further ensure the coherence and mutual reinforcement of work to improve transparency in relation to beneficial ownership, including through identifying examples of effective implementation.

Some practical challenges recur in the context of different legal and administrative systems, for example: how to ensure the accuracy of ownership information held in a company registry, or how to enable ownership information to be exchanged between fiscal and law enforcement authorities, in both directions.

The FATF Secretariat has taken stock of recent research on the misuse of corporate structures to identify the most important methods and vulnerabilities, looking at the risks posed by different types of legal persons and arrangements, and the challenges related to identifying their beneficial owners. The FATF Secretariat is also conducting a horizontal review of fourth round mutual evaluations to identify specific obstacles to effective implementation, and best practices in overcoming those obstacles. This analysis will enable us to identify priority issues where further work may be needed. Proposals for further work on specific problems will be considered by the FATF Plenary in October 2016, including identifying ways to sustain cooperation between the FATF and Global Forum in the long term and potential options for joint work to be conducted by the FATF and Global Forum members.

In the meantime, the FATF Secretariat will continue its technical discussions with the Global Forum on issues relating to the exchange of beneficial ownership information for tax purposes with a view to ensuring a common understanding of the FATF Standards on beneficial ownership information and how they apply in the broader context of AML/CFT.

V. Next Steps

The next step will be for the FATF Plenary to consider these initial proposals at its next meeting which will be held in Paris, France on 19 to 21 October. The Global Forum will be invited to attend that meeting and participate in those discussions.

In the meantime, the FATF will continue to intensively monitor the steps taken by countries to fill gaps in their national systems and improve their effectiveness. Many countries have already put in place adequate legal frameworks to collect and maintain beneficial ownership information as part of CDD processes. However, improving effective implementation of these measures remains key, particularly in relation to the requirements to ensure that adequate, accurate and up-to-date basic and beneficial ownership information is available to the authorities in a timely manner. The operational challenges of preventing the abuse of corporate vehicles can only be addressed by individual countries. For this reason, the FATF makes the following proposal to the G20:

Issuing a public commitment by G20 members to meet the FATF Standards on beneficial ownership.

The G20 members would lead by example by meeting the FATF Standards on legal and beneficial ownership and ensuring they are properly enforced, including:

- (a) Fully and effectively implement the FATF Standards on transparency and beneficial ownership (Recommendations 24 and 25) without further delay.
- (b) Effectively monitoring key gatekeepers (including company formation agents, lawyers, and trust-and-company-service providers) for compliance with their CDD obligations, and enforcing those requirements – including identifying and shutting down those who facilitate misuse of corporate structures.
- (c) Taking action at the national and global level to address barriers to information-sharing (e.g. reviewing data protection and privacy laws).
- (d) Taking action to facilitate the timely sharing of basic and beneficial ownership information at the domestic and international level, including ensuring that such information is accurate and up-to-date.

Annex – Relevant FATF publications on transparency and beneficial ownership

FATF Standards:

- [FATF Recommendations](#) (2012). See in particular:
 - FATF Recommendation 24 on transparency of legal persons;
 - FATF Recommendation 25 of transparency of legal arrangements;
 - FATF Recommendation 10 on customer due diligence; and
 - Immediate Outcome 5 on effective implementation of measures to prevent legal persons and arrangements from being misuse for money laundering or terrorist financing, and ensuring that information on their beneficial ownership is available to competent authorities without impediment

FATF Methodology for assessing compliance with the FATF Standards:

- [FATF Methodology for assessing technical compliance with the FATF Recommendations and the effectiveness of AML/CFT systems](#) (2013)

FATF studies on beneficial ownership, and money laundering/terrorist financing risks:

- [Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals](#) (2013)
- [Money Laundering Using Trust and Company Service Providers](#) (2010, FATF and the Caribbean Financial Action Task Force)
- [The Misuse of Corporate Vehicles, including Trust and Company Service Providers](#) (2006)

FATF guidance to assist countries, financial institutions and other businesses and professions implement the FATF Standards, including those on beneficial ownership:

- [Guidance on Transparency and Beneficial Ownership](#) (2014)
- [Guidance for a risk-based approach for money or value transfer services](#) (2016)
- [Guidance for a risk-based approach: effective supervision and enforcement by AML/CFT supervisors of the financial sector and law enforcement](#) (2015)
- [FATF Guidance: National money laundering and terrorist financing risk assessment](#) (2013)
- [Guidance on the Risk-Based Approach for Trust and Company Service Providers](#) (2008)
- [Risk Based Approach Guidance for Legal Professionals](#) (2008)
- [Guidance on the Risk-Based Approach for Accountants](#) (2008)