



Anti-money laundering and counter-terrorist financing measures - Spain

7. Legal persons and arrangements

Effectiveness and technical compliance



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7. LEGAL PERSONS AND ARRANGEMENTS

Key Findings

Spanish authorities have increased the transparency of legal persons by ensuring that basic information is publicly available through the Companies Registry, and that adequate, accurate and current beneficial ownership information is easily and rapidly available to competent authorities via the notary profession's Single Computerised Index. These measures should, over time, make it significantly more difficult for criminals to misuse Spanish legal persons. However there are nevertheless some concerns - albeit relatively minor - about the extent to which notaries verify the identity of the beneficial owner and the chain of ownership.

Legal persons remain an important vehicle for money laundering networks in Spain. Law enforcement authorities note an increase in the use of individual companies, or networks of companies (both domestic and foreign) in large-scale ML schemes such as the *Malaya* case (see Box 3.4). However, they also expressed satisfaction with the level of transparency of Spanish legal persons. In practice, they have been successful in a number of cases in identifying straw men and, ultimately, the real beneficial owner.

Legal arrangements are generally less well understood in Spain given that they are not enforceable in Spanish courts. Some high-profile ML cases in recent years have involved complex networks, including foreign trusts holding beneficial ownership and have raised practical challenges in investigations. However, important progress has been made. Trustees are subject to the AML/CFT obligations and, in addition are under a separate obligation to declare their status to financial institutions and other obliged entities. The authorities need to build on this progress by providing more guidance to the financial sector on these measures.

7.1 Background and Context

(a) Overview of legal persons

7.1. The most common forms of legal persons in Spain are the private limited liability company (*Sociedades de Responsabilidad Limitada – SL*, which make up 92% of legal persons in Spain, and 96% of new incorporations) and the public liability company (*Sociedades Anónimas – SA*, which make up 7.5% of legal persons). Spanish law also permits six other types of legal persons, including general partnerships (0.06%), simple limited partnerships (0.01%), partnerships limited by shares (0%), cooperatives (0.03%), economic interest groups (0.11%), reciprocal guarantee societies (0.04%), and non-profit organisations (foundations and associations) with legal personality.¹ The dominance of SLs is based on the fact that they are easier to establish than SAs, have a lower minimum capital requirement (EUR 3 000 for a SL, compared with EUR 60 000 for a SA) and greater flexibility in the establishment of management rules in the bylaws.

7.2. The incorporation process for both main types of company is similar. A public document of incorporation must be executed before a notary, who conducts CDD on company owners and directors as part of the process. The incorporation document is then registered with the Companies Registry (on the basis of the information and documentation provided by the notary). During the incorporation process a temporary “NIF” tax identification document must be obtained from the Tax Authority. Registration with the Companies Registry serves to grant legal personality to the company. Reforms to company law and incorporation processes have made company formation easier than in the past. Currently, the incorporation process for a simple SL company can be completed within one day.

7.3. In Spain, notaries and registrars are public officials, and are also obliged entities under the *AML/CFT Law*. Because notaries act under delegated authority from the Ministry of Justice in incorporating legal persons, the involvement of a notary is required at the company formation stage, as well as subsequently, in the case of SLs, to validate specific changes in ownership. In addition to company services, notaries conduct some 300 different types of activities. When duly executed, notarial acts are presumed to be valid, self-authenticating and self-executing, as well as probative. Information submitted to the Companies Registry must be accompanied by a notarial document, and must be updated within a specified time period. Notaries and registrars therefore play an important role as gatekeepers with respect to the formation of legal persons and many of their actions.

7.4. Both professions have established central prevention bodies which, in addition to their statutory obligations, have responsibility for providing members of the profession with advice, training, and tools for AML/CFT. Both central prevention bodies also have a role in managing the information gathered respectively by notaries and registrars in the course of their work, and making this available to other authorities (see Box 7.1 for the notaries’ central prevention body).

(b) Overview of legal arrangements

7.5. Generally, legal arrangements (domestic or foreign) are not enforceable in Spanish courts. Spain is not a signatory to the *1992 Hague Convention on the law applicable to trusts*, and the Spanish Supreme Court has refused to recognise or enforce the requirements of such trusts: e.g., *Judgement 308/2008*. However, trusts formed on the basis of overseas law can and do operate in Spain, and Spanish lawyers do from time to time establish trusts using a foreign legal basis or deal with trusts located abroad. Spain has recognised this by including trustees as obliged entities under the *AML/CFT Law*.

7.6. Spanish contractual arrangements, known as *fiducia*, have some functional similarity to a trust. *Fiducias* are not regulated by Spanish law and are not expressly recognised in the Spanish legal system, but

1 At the time of the assessment there were 2 298 912, SLs and 185 125 SAs. The other legal persons are far less frequent: general partnerships (0,06%), simple limited partnerships (0,01%) partnerships limited by shares (0%), cooperatives (0,03%), economic interest groupings (0,11%), reciprocal guarantee societies (0,04%).

they have nevertheless been recognised in case law by Spanish courts: *Judgment of the Supreme Court of 4 July 1998 (ED 7896)*. A *fiducia* is normally established through written documents - one transferring an asset from its original owner (the *fiduciante*) to the other party (the *fiduciario*), and the other specifying that the asset will revert to its original owner in the event that the *fiduciario* fails to meet his responsibilities, as outlined in the document. A *fiducia* may apply to both immovable and movable property, in particular corporate shares or stock. The foregoing characteristics are very similar to an express common law trust in many respects, including its general structure (allocating assets to another person for a defined purpose), mode of establishment (through a document drawn up by the parties), and purpose. There is no requirement for such a document to be prepared by a lawyer or other professional, or to be registered with a notary or registry (although both are possible).

7.7. According to the authorities, the *fiducia* is not widely used in Spain because it does not offer adequate legal protection of the interests of the *fiduciante*/settlor. Most experts interviewed by the assessment team considered that Spanish residents who wish to use a trust-like arrangement would normally use a common-law trust (established under foreign law), rather than a *fiducia*, since foreign trusts are readily accessible, and offer a greater degree of legal protection (albeit under a foreign jurisdiction's law).

(c) *International context for legal persons and arrangements*

7.8. Spain is not an international centre for company formation and administration nor a source country for legal arrangements, other than as described above.

7.9. Legal persons remain vulnerable to misuse. In recent years, law enforcement authorities have noted an increase in the use of individual companies, or networks of companies (both domestic and foreign) in large-scale ML schemes. The SL is the type of legal person most commonly used in ML schemes, which is unsurprising considering that it dominates the Spanish corporate landscape. Legal persons are used for ML in several ways, from simple self-laundering, through smurfing, and the use of front companies with or without legitimate business activities, to the use of complex, multi-layered, and offshore corporate structures. One trend that has been noted in ML cases is a shift away from using newly-created simple front companies with no legitimate business activities, and towards laundering money through established companies which also conduct other, legitimate business (such as trading companies).

7.10. In recent years, the authorities have noted an increased presence of foreign trusts in various transactions or schemes conducted in Spain, but no strong evidence that, overall, the use of foreign trusts is a frequent occurrence. The notaries' central prevention body has studied some 19 cases of involvement of foreign trusts since 2008, some of which were legitimate while others appeared suspicious and were therefore referred to the SEBPLAC. LEAs also note some instances where foreign legal arrangements were used in large-scale ML schemes. The assessment team was not provided with any quantitative risk assessment on the use of legal arrangements in ML schemes in Spain. However, cases reviewed by assessors, and discussions with the notaries and LEAs in particular, suggest that foreign legal arrangements pose a relatively minor threat to Spain.

7.2 Technical Compliance (R.24, R.25)

Recommendation 24 – Transparency and beneficial ownership of legal persons

7.11. **Spain is largely compliant with R.24.** Spain principally relies on the notary profession's Single Computerised Index for information on beneficial ownership of legal persons. This includes information obtained and recorded by notaries when incorporating entities or conducting certain other acts or transactions by persons and entities, and information on the transfer of shares of SLs. This is supplemented by the use of other information (on account ownership), and information held by other authorities such as company registry, tax or stock market authorities. There are several weaknesses relating to sanctions for breaches, and the lack of effective controls on the transfers of shares in public limited companies (SA) which are not publicly listed.

Recommendation 25 – Transparency and beneficial ownership of legal arrangements

7.12. **Spain is largely compliant with R.25.** Spain principally requires information on the parties to foreign trusts holding assets in Spain to be obtained and recorded by notaries incorporating entities or conducting certain other acts or transactions or by other obliged entities. AML/CFT obligations apply to trustees, and Royal Decree 304/2014 (art.6) requires obliged persons (including trustees) to identify and verify the identity of the settlor, the trustees, the protector, the beneficiaries and of any other natural person who exercises ultimate effective control over express trusts or similar arrangements, even through a chain of control or ownership. The same Royal Decree obliges trustees of express trusts to report their status to obliged entities when they wish to establish business relationships or intervene in a transaction. Article 9.6 of Royal Decree 304/2014 allows obliged entities to access the notaries' Single Computerised Index for the purpose of verifying beneficial ownership. There are weaknesses in the level of sanctions or liability faced for breaches of the requirements.

7.3 Effectiveness: Immediate Outcome 5 (Legal persons and arrangements)*(a) Understanding of risks and vulnerabilities*

7.13. **Information on the creation and operation of the types of legal persons that may be established in Spain is widely available in both Spanish and English.²**

7.14. **Spain has adequately identified and assessed the vulnerabilities and ML/TF risks of legal persons created in its territory, and the competent authorities have a relatively good understanding of that risk.** The Ministry of Justice, acting through the Notaries' Central Prevention Unit (OCP), has recently conducted an assessment which establishes the level of risks faced by each type of legal person, and lays out factors that may increase that risk. The assessment includes an analysis of the current legal framework and a review of some court cases and suspicious transaction reports filed by notaries (through the OCP). No new measures have yet been taken on the basis of that assessment, but the main authorities nevertheless appeared familiar with its findings.

7.15. **Other competent authorities - law enforcement authorities in particular - appear to have a good understanding of the ML/TF risks of legal persons on the basis of the risk assessment and also from their own practical experience.** Some prosecutors have identified changes in ML patterns (such as a decline in the use of shell companies and an increase in the laundering of illegal proceeds in companies that also conduct legitimate activities), and noted certain "preferences" amongst the various types of organised crime groups for certain forms of company. The SL seems to be favoured by criminal groups engaged mainly in drug trafficking, while the SA is more common in corruption cases.

7.16. **The findings of the risk assessment were shared with the main competent authorities, but law enforcement authorities' understanding of current trends and typologies do not seem to be shared with or communicated to other relevant authorities or to reporting entities.** As a result, some authorities and reporting entities may not be sufficiently aware of the typologies of ML through legal persons. Notaries, in particular, seem to consider that the risks at the incorporation stage are limited, a view which is not corroborated by some of the cases under investigation, and which may lead them to pay insufficient attention to potential red flags at the incorporation stage. This is a relatively minor shortcoming which is partly compensated by the fact that some of the risk indicators listed by the OCP include elements linked to the incorporation process. Further efforts can nevertheless be devoted to fostering a greater understanding of the ML/TF risks amongst notaries, notably through greater sharing of information on typologies.

7.17. **No risk assessment has been conducted with respect to legal arrangements.** Overall, competent authorities and obliged entities seemed less aware of the risk presented by legal arrangements (in particular

² For example, guidance from www.ipyme.org or www.investinspain.org/guidetobusiness/index_en.htm.

foreign trusts) being misused for ML/TF purposes in Spain. LEAs expressed frustration that in some instances the beneficial ownership of certain Spanish entities had been difficult or impossible to establish because of the presence of one or more foreign legal person or arrangement in the chain of control, and the corresponding difficulty in obtaining further information from the relevant foreign authorities. In particular, there is a high level of awareness of the risks associated with some foreign jurisdictions (in particular, Gibraltar) under whose laws many of the legal arrangements used in Spain are established. However, it is noteworthy that if a trustee of a Gibraltar trust is located in Spain, such trustee has obligations under the *AML/CFT Law*, including the obligation to disclose their status to others as noted in more detail above.

(b) Measures to prevent misuse

7.18. **Spanish authorities have taken a number of measures aimed at preventing and mitigating the risk of misuse of Spanish legal persons.** They have in particular significantly increased the transparency of legal persons by ensuring that basic information is publicly available through the Companies Registry and that beneficial ownership information is easily and rapidly available to competent authorities and obliged entities through the Single Computerised Index maintained by the General Council of Notaries (see Box 7.1). While they note ongoing misuse of legal persons for money laundering, law enforcement authorities also expressed satisfaction in the level of transparency of Spanish legal persons. In practice, they have been successful in a number of cases in identifying straw men and ultimately discovering the real beneficial owner.

7.19. **However, Spanish authorities are less adept at dealing with foreign legal arrangements, likely because Spain has little internal experience in dealing with them.** As noted above, regulations that came into effect while the assessment team was on site oblige trustees located in Spain to disclose their status as such to other obliged entities when initiating business arrangements or participating in transactions. This should facilitate the identification of trustees. High-profile ML cases in recent years (for example, *White Whale* and *Operation Malaya*) have involved complex networks of companies and legal arrangements often comprised, in part, of trusts constituted abroad in nearby off-shore centres. LEAs in particular have noted that, in these situations, where the beneficial ownership trail leads to the presence of a foreign legal arrangement such as a trust, it is often very difficult or sometimes impossible to obtain further information from the jurisdiction where the trustee is located, or from the jurisdiction under whose laws the trust was formed.(which is not a problem unique to Spain).

7.20. **Corporate criminal liability was introduced in Spain comparatively recently.** This change, together with the ease of access to basic and beneficial ownership information, the strong preventive measures imposed on financial institutions and DNFBPs, (including notaries and company registrars, which are obliged entities under the AML/CFT law), and the measures taken by the courts to dissolve legal entities involved in ML schemes, and or seize their assets should, over time, act as strong deterrents to the misuse of Spanish legal persons.

7.21. **Bearer shares and nominee shareholders are not significant issues in Spain.** Bearer shares are effectively immobilised by the requirement to involve a regulated entity in any transfer. Nominee services are not permitted by Spanish law and not usually offered by TCSPs. Although not explicitly prohibited, there is no real incentive to have recourse to nominees because of the lack of legal protection offered. Normal CDD requirements include verification of the identity of the customer and of the person acting on their behalf (e.g., through a power of attorney) when doing business with an obliged entity, including when conducting any of the operations which require the involvement of a notary, which in the context of legal persons (e.g., incorporation, purchase or selling of real estate, increase of capital and, in most cases, transfer of shares).

7.22. **Although Spain has implemented measures to prevent the misuse of legal persons and legal arrangements, further efforts would prove useful.** Several features of the current Spanish framework constitute strong deterrents to the misuse of legal persons, including: (i) the ease of access to basic information about companies; (ii) the ability of competent authorities to quickly access beneficial ownership information in the notaries' Single Computerised Index; (iii) the CDD measures required of obliged entities (including obligations to determine the ultimate beneficial owners of clients and to perform enhanced due diligence in the presence of companies that issue bearer shares; (iv) the role of notaries and company registrars in detecting suspicious activity involving legal persons, as part of their duties as obliged entities; and (v) the recent introduction of corporate criminal liability, and application of significant criminal sanctions in some

recent cases.

7.23. **However, some areas of concern remain:**

- a. There is a concern with respect to records on transfers of shares. Such transfers are well documented except in the limited case of those public companies (SA) which are not publicly listed on a stock exchange. Registered shares in such companies can be transferred directly on the basis of the title document itself, without the application of any controls or disclosure requirements by a notary.
- b. It is possible for companies to conduct a range of activities for up to two months prior to their formal registration with the Company Registry, on the basis of a provisional tax ID number. Information on companies in this situation would appear in the notaries' single computerised index, but not in the publicly accessible Company Registry. Obligated entities can nevertheless identify companies in this situation through CDD, using the provisional tax ID number and of the notarial deed of incorporation. Companies are prevented from transferring shares or appointing directors during that time but, are otherwise able to conduct business without the legal entity being fully incorporated.
- c. The presence of foreign legal arrangements in the chain of beneficial ownership has been noted by LEAs in a few cases and, in some of these instances, has made it difficult or impossible to establish who ultimately controlled the domestic entities. Spain was unable to provide statistics on how frequently foreign trusts are used in Spain.

(c) Information on beneficial ownership

7.24. Customer due diligence undertaken by obliged entities makes a significant contribution to Spain's systems for providing authorities access to beneficial ownership information and to ensuring the quality of that information. All obliged entities normally perform basic CDD using the documents prescribed by law, are aware that information on the beneficial owner needs to be obtained, and generally do so in the manner prescribed by law (albeit unevenly across the different professions). The notary profession is particularly relevant in virtue of the legal requirements for their involvement to validate most acts involving legal persons. Notaries are very aware of their significant gatekeeper role, as well as of the importance of the information they hold, and have actively worked with the authorities to develop systems to open up their wealth of information for the authorities.

7.25. **There is scope to strengthen the CDD conducted by notaries on the beneficial ownership of companies.** Notaries are required in all cases, to identify and record the beneficial owner of a newly incorporated entity on the basis of a declaration made by the company's representative. In practice, the identity of the beneficial owner is only verified when certain risk indicators are met, and, unless one or more of the risk indicators are met, due diligence does not normally include verification of the status of the beneficial owner, or examination of the chain of ownership to the ultimate beneficial owner. This could indicate that customer due diligence is conducted in a "formalistic" way rather than on the basis of a clear understanding and assessment of the facts, and that beneficial ownership information may be included in the Single Computerised Index without notaries being fully satisfied that it is correct. As indicated above, this is compensated to some extent by the fact that the database also includes beneficial ownership information obtained through automatically processing the successive transfers of shares. It also provides information on the status of beneficial ownership and on the chain of ownership.

Box 7.1. Notarial Databases

The involvement of a notary is required in a large number of instances, in particular during the incorporation of legal persons. In all instances, notaries are required to collect information pertaining to all parties involved in an act or transaction (i.e. not only the person who ultimately covers the expenses of the notary's activity). Information collected includes: the name, surname, ID document, nationality, address of the parties and their representative, and information on the beneficial owner (see below); the type of transaction performed (including the type of legal relationship between the parties, and the percentage of rights in the transaction); the payment (means, amounts and date of payment); and the object involved (identification and description of the asset).

Since 1 January 2004, all the information collected by notaries is uploaded twice a month to a database - the Single Computerised Index - which is managed by the General Council of Notaries (the OCP). In addition to the basic information collected, the database includes scanned copies of ID documents and notarial deeds. At the time of the assessment, the database contained information pertaining to some 70 million notarial deeds, 96 million transactions, 140 million natural and legal persons, and 49 million objects.

The information contained in the Single Computerised Index is available to all competent authorities. For example, law enforcement agencies (National Police, Guardia Civil), specialised prosecutors (National Prosecutor's Offices against drugs and organised crime, corruption, and other economic crimes), Customs, and the SEBPLAC have direct, online access via a token system, with results delivered in real-time. Other authorities (e.g., the judiciary and the Secretariat of the Commission) may request access to specific information.

The Beneficial Ownership Database became operational in March 2014, and was made available to competent authorities in April of the same year. It builds upon the information available in the Single Computerised Index by aggregating the information on beneficial ownership and on transfers of shares. For each company, the database offers two levels of information: (i) the beneficial ownership information obtained by the individual notary in the conduct of the normal CDD requirements (i.e. the declaration of beneficial ownership which, if at least one risk indicator is met, includes a copy of the beneficial owner's ID document); and (ii) For SLs (which represent some 93% of all companies created in Spain) the beneficial ownership information obtained through aggregating the information on the successive transfers of shares. Since notaries are required to be involved in these transfers, this information is always verified and updated. It includes the names of all natural persons who are beneficial owners through direct or indirect ownership of more than 25% of the shares, and of those who hold less than 25% but exercise control. Information on intermediary intervening parties is also available (through the record of any transfer of shares except those of SA that are not listed on the stock exchange).

Searches may be conducted by company as well as per individual. A system of alerts enables competent authorities to be immediately aware of any new act conducted before a notary by any natural or legal person who has been previously the subject of a search, so that this new information can be incorporated into the investigation.

Under Royal Decree 304/2014, the Beneficial Ownership Database can be made available to obliged entities under the AML/CFT Law for the conduct of their CDD obligations, on the basis of an agreement between the obliged entity and the General Council of Notaries.

Alongside these databases, work is underway by the OCP to develop a database of domestic PEPS, which will be made available to obliged entities as well as to competent authorities, also upon approval of the Spanish Data Protection Agency.

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In addition to recording information, the Single Computerised Index facilitates the OCP's responsibility for the detection of suspicious activities by scoring the risk posed by individual notarised acts or groups of acts on the basis of a list of some 60 key risk indicators which include, for example, the incorporation of companies owned by foreign-based legal persons.

7.26. **The relevant authorities (in particular law enforcement authorities and SEPBLAC) can obtain adequate, accurate and current basic and beneficial ownership information on all types of legal persons created in Spain in a timely manner.** Competent authorities have adequate access to the beneficial ownership information through the notaries' Single Computerised Index (see Box 7.1), and information held in FIs and DNFBPs customer files (with a court order). Since April 2014, they have access to the information contained in the Beneficial Ownership Database established by the OCP. SEPBLAC, public prosecutors, and all the relevant law enforcement agencies have direct access to the Single Computerised Index, which ensures the timeliness of that access. Judges have access upon request, which the OCP seeks to implement without delay. Accurate basic information is publicly available through the Companies Registry, although its information on the share ownership is not necessarily up to date (because it is only included at the incorporation stage and during an increase or decrease of capital). Updated information on ownership is maintained in the Single Computerised Index, and is available to competent authorities. At the time of the assessment, reporting entities did not have access to the beneficial ownership information in the database, but such access had been authorised by the data protection agency and was in the process of being operational. In practice, the authorities frequently use the information contained in the Single Computerised Index database in the course of ML/TF investigations. They expressed their satisfaction with the quality, comprehensiveness, and ease of access of the database

7.27. **Competent authorities have little access to beneficial ownership information on legal arrangements.** Currently, little information is available. Accessing information relies on the use of law enforcement powers and, in the absence of any central database, the use of those powers requires prior knowledge of the existence of the legal arrangements and of who the trustee or *fiduciario* is. Because trusts are not legally recognised in Spain, information collected by tax authorities does not record the existence of trusts or the parties to them, and so therefore cannot be used to supplement gaps in other information sources, even with a court order.

7.28. **Although the risk of misuse of foreign and/or domestic legal arrangements has not been formally assessed, both competent authorities and reporting entities consider these risks to be low, because such arrangements are not commonly used in Spain** (notably due to the fact that they are not enforceable under Spanish law). However, TCSPs and lawyers in Spain and neighbouring jurisdictions do participate in the establishment of common law trusts (governed by another country's laws), and banks hold assets held in such trusts (especially on the Costa del Sol where the number of foreign residents is substantially higher). Some reporting entities have suspected the presence of foreign legal arrangements in some ML schemes, and law enforcement authorities have noted their use in some high profile and complex cases (see above), but there is no indication that this is a frequent occurrence.

7.29. **Recently introduced measures are expected to improve the situation.** Royal Decree 304/2014 requires obliged persons to identify and verify the identity of the settlor, the trustees, the protector, the beneficiaries, and any other natural person who exercises ultimate effective control over trusts or similar arrangements, even through a chain of control or ownership. However, this requirement was introduced during the on-site and is not yet implemented in practice. The Financial Ownership File (see Box 1), when established, will hold data identifying the account holders, representatives or authorised persons, together with all other persons who have withdrawal powers over the account: *AML/CFT Law art.43*. This will assist authorities in identifying accounts held in trust, provided either that the financial institution opening the account determines that it is dealing with a trustee, or that the trustee identifies themselves as such to the financial institution.

7.30. **Sanctions are available (including criminal sanctions) but rarely need to be applied against persons who do not comply with information requirements.** In the absence of all the requested

information, notaries (and others, such as the Company Registry) do not proceed with the requested activity. False information is easily detected because the notarial database is self-checking and highlights any inconsistency. Disclosure of false information to notaries constitutes a criminal offence: *art.392 Penal Code*. In practice, it rarely occurs and is therefore rarely sanctioned. Other failures to comply with information requirements are in general not sanctioned for similar reasons.

Overall conclusions on Immediate Outcome 5

7.31. **In terms of ensuring access to basic and beneficial ownership information on legal persons, Spain's system appears to be effective**, and only moderate improvements are needed. Law enforcement authorities have shown that they can successfully investigate money laundering cases which make extensive use of legal persons, and can identify and prosecute the beneficial owners in such cases. Beneficial ownership information on Spanish companies is easily and rapidly available to competent authorities via the notary profession's Single Computerised Index. This is a strong positive feature of Spain's system and the measures taken for managing and enabling access to information are an example of good practice for other countries.

7.32. **Some weaknesses remain in the implementation of preventive measures against the misuse of legal persons and arrangements, but, overall, appear relatively minor compared to the positive features of the Spanish system.** They include: the limited information on beneficial owners of foreign legal arrangements (which is not a frequent occurrence but has occurred in some high profile ML cases noted above); the limited transparency of transfer of shares on SAs that are not listed on a stock exchange (which is a limited number); the ability of not-yet-registered companies to make financial transactions for up to two months (a problem which is mitigated by the availability of information in the notaries' Single Computerised Index as well as in financial institutions and DNFBPs customer files); and limitations on the extent to which notaries verify the identity of the beneficial owner and the chain of ownership (which is also mitigated by the Single Computerised Index and by the fact that, in most instances, at least one risk indicator is met and triggers the obligation to verify the identity of the beneficial owner). In addition, guidance on conducting CDD on legal arrangements is non-existent, CDD measures in respect of trusts and trustees only took effect during the on-site, and thus it is too early to assess how the new obligations are implemented in practice.

7.33. **Spain's system will be strengthened further by recent changes to Spain's laws and regulations (in particular corporate criminal liability), and by additional practical measures under development (in particular the financial ownership file and reporting entities' access to the beneficial ownership database).** These will, over time, make it significantly more difficult for criminals to misuse Spanish legal persons.

7.34. **Overall, Spain has a substantial level of effectiveness on Immediate Outcome 5.**

7.4 Recommendations on Legal Persons and Arrangements

7.35. Based on the findings above, the assessment team recommend the following moderate improvements to the measures applied to legal persons and arrangements in Spain.

7.36. Spain should increase transparency on the transfers of shares of non- publicly listed SAs (for example by requiring that transfers be made with the involvement of a notary) and ensure that there is adequate information on the parties to the transfer.

7.37. In light of the central role of notaries as gatekeepers in Spain's system, authorities should:

- conduct outreach to the profession to foster a greater understanding of the ML/TF risks, in particular of companies being created for the sole or main purpose of laundering funds. This is related to the recommendation above (paragraph 5.77) on implementation of procedures for verifying the identity of high-risk customers.
- produce guidance on additional steps which could or should be applied as part of (enhanced) due

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diligence on legal persons, including: (i) examination of the ownership and control structure of the company; (ii) deeper examination of the purpose and nature of the company's business; and (iii) verification of the status of the beneficial owner and (if applicable) the chain of ownership.

- ensure that recently issued procedures addressing these items are effectively implemented (e.g., through supervision focused on the implementation of these requirements and on the quality of beneficial ownership information).

7.38. To improve the understanding of risks in this area, authorities should assess the risks of foreign legal arrangements being misused for ML/TF purposes, and should ensure that there is adequate sharing of information on ML risks, trends and typologies between competent authorities and communication to the reporting entities. This would ensure that reporting entities, in particular, are more sensitive to and more familiar with typologies involving legal arrangements. It could also focus on improving the ability of the LEAs to obtain beneficial ownership information when these arrangements are detected, particularly in complex networks of companies and legal arrangements.

7.39. Given the general lack of experience in Spain in dealing with trustees and legal arrangements, Spain should consider ways to improve guidance to financial institutions and DNFBDs on conducting CDD on persons who may act as professional trustees of foreign trusts. In addition, given the direct obligation imposed on trustees to self-identify to obliged entities, the Spanish authorities should consider introducing guidance directed at service providers in Spain, such as lawyers and other trust and company service providers, focusing on their obligations.

7.40. Spain is encouraged to carry through with its plans to make beneficial ownership information on legal persons and arrangements available to financial institutions and DNFBDs, as these entities do not yet have access to the Beneficial Ownership Database.

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Recommendation 24 – Transparency and beneficial ownership of legal persons

a7.1. *Criterion 24.1.* There is publicly available information (in Spanish and English) which describes the types of legal person in Spain, the process for their formation, and the information required.¹

a7.2. *Criterion 24.2.* The Ministry of Justice has analysed the ML/TF risks posed by legal persons. This analysis is the basis for a multi-agency consideration of risk. Regulations also require EDD when dealing with higher-risk forms (i.e., those with bearer shares, and pre-constituted “off-the-shelf” companies).

a7.3. *Criterion 24.3.* Basic information must be included in the company’s deed of incorporation, which is held by the Company Registry and publicly available.

a7.4. *Criterion 24.4.* For both of the most common forms of legal person (SL and SA), there is a requirement to maintain a register of shareholders and their holdings. For private companies (SL) and public companies (SA)² with registered shares, the shareholder register must be maintained at the registered address of the company in Spain: *Corporate Enterprises Act, Art.9.1*. For public companies (SA) with dematerialised shares, the register of shareholders must be held by a depository institution (i.e., by Ibericlear, or by a FI or investment firm, subject to AML/CFT supervision). Information on meaningful shareholders of listed companies is also held by CNMV. For public companies (SA) which are not publicly listed on a stock exchange, a transfer of shares can be made directly using the title document itself, without the application of any controls or disclosure requirements by a notary. This represents a gap in the requirements of R.24, however it has limited scope as SA only account for 7.5% of Spanish legal persons and the CNMV holds information on shareholders or persons controlling public companies, directly or indirectly, through voting rights (see para.280 below). Several other types of legal person (general partnerships, simple limited partnerships, and economic interest groupings) are not required to hold a register, as they are small, personal undertakings. This is consistent with the requirements to apply R.24 to other types of legal persons on the basis of their form and structure, and the level of risk.

a7.5. *Criterion 24.5.* The involvement of a notary is required to validate changes in basic information. Information submitted to the Company Registry must be accompanied by a notarial document, and must be updated within a specified time period (varying from 8 days to 2 months, depending on the type of information). Notaries also maintain the same information, as well as information related to changes in shareholders of SLs, in a separate database (the Single Notarial Computerised Index) which is updated within a maximum timeframe of 15 days. For registers of shareholders, if these are held by the company itself or a depository institution, the company director is responsible³ for ensuring their accuracy, and for updating them immediately when changes take place. It is the entry in the ledger of shareholders, not the share certificate, which constitutes the shareholding.

a7.6. *Criterion 24.6.* Spain uses a combination of mechanisms to address this requirement, including a general obligation on companies, supplemented by additional measures to facilitate access to beneficial ownership information obtained by FIs and DNFbps through the CDD process. Information on beneficial

1 e.g., from: www.investinspain.org/guidetobusiness/index_en.htm.

2 In this report the term “public company” is used to refer to *Sociedad Anónimas* (SA). It does not imply that such companies are state-owned. The main governing laws for both S.L and S.A are Act 3/2009 on structural modifications of commercial companies, and the *Corporate Enterprises Act* (Royal Legislative Decree 1/2010).

3 This requirement is in RD 1/2010 art.105.1 (for Private LLCs), and art.116 and 120.1 (for public LLCs and limited partnerships by shares). Art.107.2 requires share purchasers to inform the directors of the transaction. Directors are liable to the company, shareholders, and other parties for damages caused by acts or omissions in this area.

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ownership is obtained and held by FIs or DNFBBs as part of the CDD process. Regulated entities are required to identify (and take reasonable steps to verify the identity of) the beneficial owner before entering business or executing a transaction. The identification of the beneficial owner may be based on a sworn declaration, though in higher-risk cases the FI/DNFBB is required to obtain additional documentation. Further measures were adopted to add clarity as the type of additional documentation that notaries should seek but, due to their recent adoption, cannot be taken into consideration for the purposes of this assessment. Spain's legislation in this area largely meets the FATF requirements (see criteria 10.5 and 22.1). The following specific measures facilitate access to this information by competent authorities:

- a. Beneficial ownership information obtained by notaries through their CDD is held in the notary profession's Single Computerised Index (see box 6 in the main report). This database records separately the information obtained through customer declarations at the time of notarised transactions and the verified, aggregated information compiled by notaries. Currently the Single Computerised Index contains information on all acts authorised by notaries since 2004, and is available to competent authorities (including LEAs, relevant specialist prosecutors, SEPBLAC, and some others). A linked *Beneficial Ownership database* gives access to beneficial ownership declarations and has capacity to determine owners of a company's shares (including those who hold less than 25% of shares), directly or indirectly, using records of transfers of share ownership.
- b. Credit institutions are required to provide a *financial ownership file* to the Ministry of Economy, with information on the names of account holders (or signatories) and, for legal persons, their beneficial owners. Once this system is operational (expected in late 2016), this information will be available to prosecutors and LEAs to enable them to determine where a person or company has an account.
- c. Several existing sources of information are also available in order to identify beneficial ownership, including the Tax Agency (which contains names of company owners and directors), Company Registry, CNMV (which holds information on meaningful shareholders or persons directly or indirectly controlling meaningful voting rights (over 3%) in public companies), and Ibericlear.

a7.7. *Criterion 24.7.* Information held in the Single Notarial Computerised Index is verified and checked for consistency. Certain changes to company ownership and other information require the intervention of a notary, who is required to update the Index within a maximum of 15 days. Companies are required to ensure that the information they hold is accurate and up-to-date. There is a general requirement in the *AML/CFT Law* for FIs/DNFBBs to ensure that the documents, data and information they hold on customers are kept up to date. The frequency of the update depends on the level of risk, but at a minimum, CDD information must be updated: once a year in higher-risk cases; in the event of a suspicion that the information is inaccurate; or in a special review (of an unusual transaction): *RD 304/2014 art.11.2*. Financial ownership file information must be updated monthly. CNMV information on meaningful shareholders must be updated within four days. There are no specific mechanisms to ensure the accuracy of declarations by customers, or of the records held by companies on beneficial ownership, such as inspections, or penalties for providing false or incomplete information. However, under Spain's *Penal Code*, providing false information to a notary is an offence (of forgery/falsification).

a7.8. *Criterion 24.8.* Company administrators and directors have responsibility for maintaining beneficial ownership information. They are not required to be resident in Spain (or to designate another person to hold this information within Spain), though this may be a practical necessity in order to conduct any business. However, this information is also held by notaries, which are authorised and accountable for providing information and further assistance to the authorities.

a7.9. *Criterion 24.9.* Beneficial ownership information obtained by FIs/DNFBBs must be held for 10 years following the end of the business relationship. Information obtained by notaries must be held indefinitely (for 25 years in the notary's office, and thereafter in the general record). The Company Registry retains information permanently, and information held by companies themselves must be held for 6 years.

a7.10. *Criterion 24.10.* Analysis of the powers of law enforcement under R.31 does not indicate any gaps or deficiencies which would hinder their ability to access information on beneficial ownership.

a7.11. *Criterion 24.11.* Bearer shares may be issued by public limited companies (SA). Spain requires any valid transfer of bearer shares to be performed through a notary, securities firm, or credit institution, all of which are regulated entities and subject to CDD and record-keeping requirements: *Law 24/1998, additional provision three*. In effect, this immobilises bearer shares, since no transfer can take place without the involvement of a regulated entity. In addition, the *AML/CFT Law* requires EDD by FIs and DNFBPs when dealing with legal persons that have issued bearer shares, with a specific requirement to verify the identity of the beneficial owner (i.e., not to accept an unsupported declaration). Spain does not have bearer share warrants.

a7.12. *Criterion 24.12.* Nominee shareholders and nominee directors are not a normal feature of Spanish company law, and Spanish TCSPs do not offer nominee services. Nominees are not expressly allowed in Spain, however they are not specifically prohibited or controlled. Normal CDD requirements include verification of the identity of the customer and of the person acting on their behalf (e.g., through a power of attorney) when they conduct business with an obliged entity, including any of the operations which require the involvement of a notary.

a7.13. *Criterion 24.13.* For regulated entities under the *AML/CFT Law*, there is clear liability, and proportionate administrative sanctions are applicable for failure to comply. For other entities (i.e., the owners and directors of legal persons), a failure to include the required information will invalidate the registration of a given act, such as the transfer of shares to a new owner. There is no specific liability or sanction in cases where a company fails to maintain accurate information on its beneficial ownership, or where it makes a false or incomplete declaration to a financial institution or DNFBPs. Sanctions for filing false information only exist with respect to information given to tax authorities or the CNMV.

a7.14. *Criterion 24.14.* Basic information held in the company registry is publicly available and can be accessed online. When implemented, EU Directive 2012/17 is expected to further facilitate access to this information through the interconnection of national company registries throughout the EU. Normal provisions for cooperation with competent authorities in other countries apply to requests for shareholder or beneficial ownership information, with neither restrictions nor special measures applied. The analysis of R.37 to 40 does not indicate any specific deficiencies which would affect the ability to provide international cooperation regarding information on beneficial ownership.

a7.15. *Criterion 24.15.* Normal mechanisms for monitoring the quality of cooperation are applied. Only SEPBLAC assesses the quality of assistance it receives answers it receives from other countries in response to requests for basic and beneficial ownership information, but other authorities do not do this in a systematic way, and results are not collated.

a7.16. *Foundations and Associations.* The role of foundations and associations, and the monitoring regime applied to them are discussed in more detail in relation to R.8. For both foundations and associations, the information required with registration includes the equivalent of basic and beneficial ownership information (albeit with complex institutional arrangements for registration). The requirements of 24.7, 24.8 and 24.9 are applied to foundations, through the involvement of notaries and the use of the Notarial Single Computerised Index, and to many associations through the process of registration as an *Association of public interest* - although this does not include all associations.

a7.17. *Weighing and conclusion:* Spain fully meets criteria 24.1, 24.2, 24.3, 24.5, 24.6, 24.8, 24.9 (for all types of legal persons except some associations), 24.10, 24.11 and 24.14, and largely meets 24.4, 24.7, and 24.12. Spain does not meet criteria 24.9 (for some associations only), 24.13 and 24.15. Overall, Spain seems to have a high degree of compliance with the core elements of the Recommendation relating to basic and beneficial ownership information. However, it has weaknesses on some supporting aspects of the Recommendation: sanctions; monitoring assistance received; and lack of controls on transfers of shares in public companies (SA) which are not publicly listed. Based on the relative importance of these elements, **R.24 is rated largely compliant.**

Recommendation 25 – Transparency and beneficial ownership of legal arrangements

a7.18. In its 3rd MER, these requirements were considered to be not applicable, as Spain does not recognise the legal concept of common law trusts. The *FATF Recommendations* were revised to clarify that R.25 does apply to countries in such circumstances.

a7.19. Spain also has *fiducia*—a type of legal arrangement with some similarity to a trust. *Fiducias* are not established through legislation and not expressly recognised in the Spanish legal system, but they have nevertheless been recognised in case law by Spanish courts. There are no formal obligations on *fiducia* or on the parties to a *fiducia* (the *fiduciario* and *fiduciante*). However, the CDD requirements of the *AML/CFT Law* apply to “trusts and other legal arrangements or patrimonies which, despite lacking legal personality, may act in the course of trade”: art.7.4. This includes *fiducia*.

a7.20. *Criterion 25.1.* For trusts, parts (a) and (b) are not applicable. On part (c), lawyers acting as professional trustees (or *fiduciarios*) are required to apply the standard CDD and record-keeping requirements in the case of trusts and other legal arrangements.

a7.21. For *fiducia*, parts (a) and (b) apply. There is no clear obligation on the *fiduciario* (trustee) of a *fiducia* to hold information about it, except when the *fiduciario* is an obliged person (such as a lawyer). Nevertheless, because of the nature of a *fiducia* and the role of the *fiduciario*, it seems to be a practical necessity for the *fiduciario* to have information on the parties to the *fiducia* and the purpose of the *fiducia*.

a7.22. *Criterion 25.2.* Obligated persons are required to obtain a copy of the founding document of an “anglo-saxon trust” or similar legal arrangement, verify the identity of the trustee or representative, and verify the identity of other parties to the legal arrangement. There is an exemption for legal arrangements that do not conduct economic activity, which allows obliged entities to limit documentation to the person acting on behalf of the legal arrangement. Information must be updated according to an RBA, with annual updates required in higher-risk cases. Lawyers (and other regulated entities) whose customers are acting pursuant to legal arrangements (or are acting as a trustee / *fiduciario*) are required to conduct CDD and maintain records in line with the general requirements. However there are no legal requirements on other *fiduciarios* to update information (though this may be a practical necessity): *RD304/2014 art.6.3 & 9.5*.

a7.23. *Criterion 25.3.* Trustees and persons with equivalent role are required to disclose their status to obliged entities when forming relationships or carrying out occasional transactions. Discovery that a trustee has failed to do so triggers a special review (to consider an STR) and the termination of the business relationship: *RD 304/2014 art.6.3*.

a7.24. *Criterion 25.4.* There seem to be no provisions in law or regulation which would prevent the disclosure of information regarding a legal arrangement.

a7.25. *Criterion 25.5.* The general powers of law enforcement, prosecution and judicial authorities apply to information regarding trusts and legal arrangements, including *fiducia*. The analysis of R.31 indicates that LEAs have comprehensive powers to obtain access to all necessary documents and information for use in those investigations, prosecutions, and related actions.

a7.26. *Criterion 25.6.* Normal provisions for cooperation with competent authorities in other countries apply to requests for shareholder or beneficial ownership information on legal arrangements, with neither restrictions nor special measures applied for legal arrangements. The analysis of R.37 to 40 does not identify any major deficiencies which would affect the exchange of information on legal arrangements.

a7.27. *Criterion 25.7.* Lawyers or other regulated entities acting as professional trustees (or *fiduciarios*) are obliged to perform the obligations above. However, there are no legal obligations or specific sanctions for non-professional trustees for failing to comply. However, failure to disclose their status or provide adequate information may invalidate the attempted action, or lead a regulated entity to refuse the transaction or end the business relationship. As the basis for *fiducia* is in case law and not in legislation, there are no formal obligations on non-professional *fiduciarios*.

a7.28. *Criterion 25.8.* For regulated entities under the *AML/CFT Law*, there are proportionate and dissuasive administrative sanctions applicable for failure to comply with the CDD obligations (which include cooperating with competent authorities). For other persons, there is no specific sanction for failure to grant access to information, but general sanctions (for failure to comply with a judicial warrant) apply.

a7.29. *Weighting and conclusion:* Spain meets most of the criteria, but does not apply the requirements to *fiducia* and does not have specific sanctions for non-professional trustees who fail to comply with obligations (25.7) or provide information (25.8). In the context of Spain these are minor deficiencies. ***R.25 is rated largely compliant.***



Table of Acronyms

AEAT	Tax Agency
AECID	Spanish Agency for International Cooperation and Development
AML/CFT	Anti-money laundering / counter-terrorist financing
Art.	Article / articles
BNI	Bearer negotiable instruments
BOE	Spanish State Official Gazette
CD	Council Decision
CDD	Customer due diligence
CICO	Centre of Intelligence against Organised Crime
CIRBE	Bank of Spain database on the Balance of payments
CNCA	National Centre for Counter-terrorism Coordination
CNI	National Intelligence Centre
CNMV	National Securities Market Commission
CNP	National Police
Commission	Commission for the Prevention of Money Laundering and Monetary Offences
CP	Common Position
CRAB	AML Centre of the Spanish Registers
DGSFP	Directorate-General for Insurance and Pension Funds
DNFBPs	Designated non-financial businesses and professions
DPRK	Democratic People's Republic of Korea
EDD	Enhanced due diligence
EEA	European Economic Area
EIOPA	European Insurance and Occupational Pensions Authority
ETA	Euskadi Ta Askatasuna
EU	European Union
FIs	Financial institutions
FIU	Financial intelligence unit
FSAP	Financial Sector Assessment Program
FUR	Follow-up report
JI	Service of Information (Civil Guard)
JIMDDU	Inter-ministerial Body on Material of Defence and Dual-use
JIT	Joint Investigation Teams
LEAs	Law enforcement authorities
MAEC	Foreign Affairs and Cooperation Ministry
MER	Mutual evaluation report
Merida Convention	United Nations Against Corruption

TABLE OF ACRONYMS

ML	Money laundering
MLA	Mutual legal assistance
MOU	Memorandum of Understanding / Memoranda of Understanding
MVTS	Money or value transfer services
NPO	Non-profit organisation
OCP	General Council of Notaries Centralized Prevention Unit
OJEU	EU Official Gazette (OGEU),
OLA	Asset Tracing Office (Civil Guard)
ORA	Asset Recovery Office (CICO)
Palermo Convention	United Nations Convention Against Transnational Organised Crime, 2000
Para.	Paragraph / paragraphs
R.	Recommendation / Recommendations
Reg.	Regulation
RD	Royal Decree
SEPBLAC	Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences
SINVES	System of Investigation (Civil Guard)
SP	Special Prosecutor
SRI	System of Register of Investigation (CNP)
STR	Suspicious transaction report
TCSP	Trust and company service provider
TF Convention	International Convention for the Suppression of the Financing of Terrorism, 1999
TF	Terrorist financing
TFS	Targeted financial sanctions
TGSS	Registry of Social Security
UDEF	Central Unit against Economic and Fiscal Crime (National Police)
UDYCO	Unit Against Drugs Organised Crime (National Police)
UN	United Nations
UTPJ	Judicial Police Technical Unit (Civil Guard)
Vienna Convention	United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988
WP	Working Party