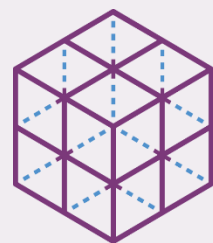


TRANSPARENCY OF ASSET AND BENEFICIAL OWNERSHIP INFORMATION

19 JULY 2020
FACTI PANEL BACKGROUND PAPER 4
ANDRES KNOBEL

This background paper was commissioned to support the FACTI Panel's deliberations and will be used to inform the Panel's interim and final reports. The paper benefited from comments and contributions from the FACTI Panel members, the FACTI Panel secretariat, and staff at the UN Office of Drugs and Crime, the OECD secretariat, the Global Forum secretariat, the FATF secretariat, Alex Cobham and Moran Hariri. The views expressed in this paper are those of the author(s) and do not necessarily represent the views of the FACTI Panel, its members, the FACTI Panel Secretariat or the United Nations.

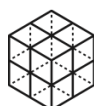
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**FINANCIAL
ACCOUNTABILITY
TRANSPARENCY &
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CONTENTS

1. INTRODUCTION.....	3
2. Understanding beneficial ownership.....	3
2.1. The importance of beneficial ownership transparency	4
2.2. Real-life cases.....	7
2.3. How secrecy is created.....	9
2.4. Legal vehicles versus assets.....	11
2.5. Shortcomings of legal ownership information.....	12
2.6. The beneficial ownership concept.....	13
2.7. Uses of beneficial ownership information	14
3. Beneficial ownership standards and legal frameworks.....	15
3.1. The FATF and the multi-pronged approach.....	15
3.2. Trend towards beneficial ownership registration.....	17
3.3. Trend towards public beneficial ownership information	18
4. Gaps, vulnerabilities and impediments in beneficial ownership registration frameworks..	19
4.1. The pros and cons of the FATF approaches	19
4.2. Gaps in beneficial ownership legal framework.....	27
4.3. Access by non-local authorities.....	42
5. Recommendations.....	46
5.1. Modify current FATF and Global Forum standards to require beneficial ownership registration for legal vehicles	46
5.2. Close the legal framework's loopholes to ensure effective beneficial ownership registration for legal vehicles	48
5.3. Establish asset ownership registries and wealth annual returns for individuals	51
5.4. Ensure a level playing field in the setting of international norms and assessment of countries.....	52
6. Conclusions.....	53
REFERENCES.....	56
ANNEX I: Gender abuses using legal vehicles' structures and secrecy	60



1. INTRODUCTION

In the first meeting of the FACTI Panel, the importance of strengthening international cooperation, accountability, transparency, public reporting and information sharing was emphasized. As discussed in the FACTI Panel’s first background paper, countries are implementing stronger rules on the disclosure and exchange of beneficial ownership information.¹ Yet, the maintenance of beneficial ownership information is an area with comparatively low compliance with the international standards, even among the jurisdictions that have signed up to global standards.

The goal of this paper is to describe the concept and explain the importance of beneficial ownership transparency, the evolution of relevant international standards and practices, and finally to propose recommendations on how to achieve better frameworks to tackle tax avoidance and evasion, corruption and money-laundering. The paper is based on relevant publications, especially by international organisations (e.g., the Financial Action Task Force) as well as the author’s previous research relating to analysing loopholes in the beneficial ownership frameworks of more than 100 jurisdictions.

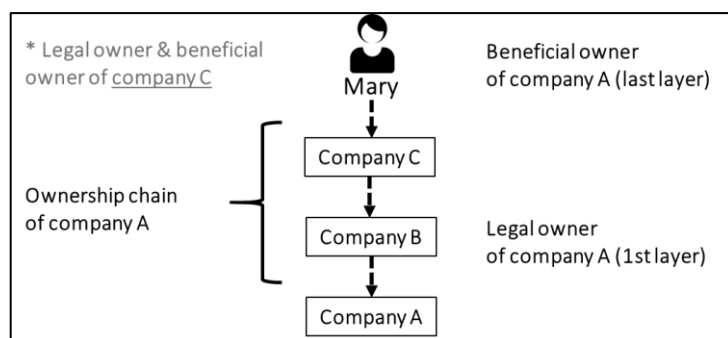
The section 2 of this paper will explain the concept of beneficial ownership and the importance that information about beneficial ownership has for country authorities trying to promote accountability and financial integrity. Section 3 will review the standards currently in place for maintaining beneficial ownership information, their implementation, and the gaps in the current system. Section 4 will discuss the availability of beneficial ownership information across borders and discuss the mechanisms for country authorities to obtain information on assets outside their own jurisdiction. It will also inform on the impediments to implementation of existing systems as well as gaps in the system. Section 5 will turn to proposals for addressing the gaps, vulnerabilities and impediments that have been identified.

2. Understanding beneficial ownership

The two basic concepts needed to understand this paper are legal ownership and beneficial ownership. The distinction between legal and beneficial ownership is described in figure 1.

The beneficial owner (Mary in the figure) is the natural person who ultimately (last layer) owns or controls a legal vehicle (company A). In contrast, the first layer of ownership (company B) is the legal owner, for example a shareholder, who has title and directly holds the shares of company A. Moreover, it is important to identify the whole ownership chain, because by identifying the (legal) owners of each layer, it will be possible to determine, in principle, also the beneficial owner. In the figure, we can confirm that Mary is the beneficial owner of company A because she is the legal and beneficial owner of company C, which is the legal owner of

Figure 1: Schematic overview of ownership



¹ “Overview of Existing International Institutional and Legal Frameworks Related to Financial Accountability, Transparency and Integrity”, FACTI Panel Background Paper 1, 6 April 2020, www.factipanel.org/documents/background-paper-1-overview-of-existing-international-institutional-and-legal-frameworks-related-to-financial-accountability-transparency-and-integrity



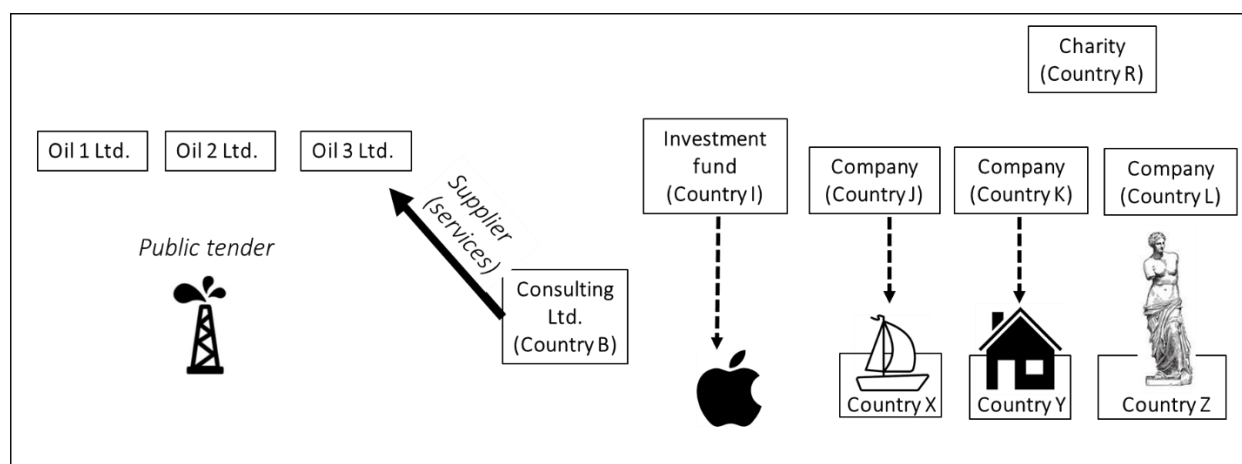
company B, which is the legal owner of company A.

Nevertheless, the beneficial owner may control a legal vehicle by means different from ownership (e.g., family influence, a power of attorney, a secret agreement). For this reason, the identification of the ownership chain is relevant, but it is not the only factor to consider.

2.1. The importance of beneficial ownership transparency

Legal vehicles (companies, trusts, partnerships, foundations, cooperatives) serve many functions in society. They can promote investment, employment, and economic growth. They may help protect vulnerable people, organise charities and help fund religious, educational, health and social endeavours. From the outset, all legal vehicles may look legitimate and unsuspecting, as figure 2 shows.

Figure 2: Schematic diagram of legal vehicles owning assets



The figure shows a public tender with three competing companies (Oil 1, 2 and 3), a supplier contract to provide services, a charity and four different legal vehicles holding assets: an investment fund with interests in shares from a listed company, and companies owning a yacht, a house and art work in different countries.

However, there may be a lot more to each legal vehicle than meets the eye. The same type of legal vehicles used for legitimate activities may be abused for illicit purposes, such as money laundering, corruption, tax evasion or abuse, or the financing of terrorism.

One of the key tools to investigate and eventually prosecute those involved in financial crimes and other abuses is to identify the natural persons who ultimately own, control or benefit from legal vehicles. These individuals are called the “beneficial owners”. The following fictional example, depicted in figure 3, shows how beneficial ownership transparency could reveal that the seemingly legitimate and unrelated companies and trusts from figure 2 are in fact part of a global financial crime scheme.

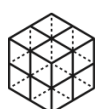
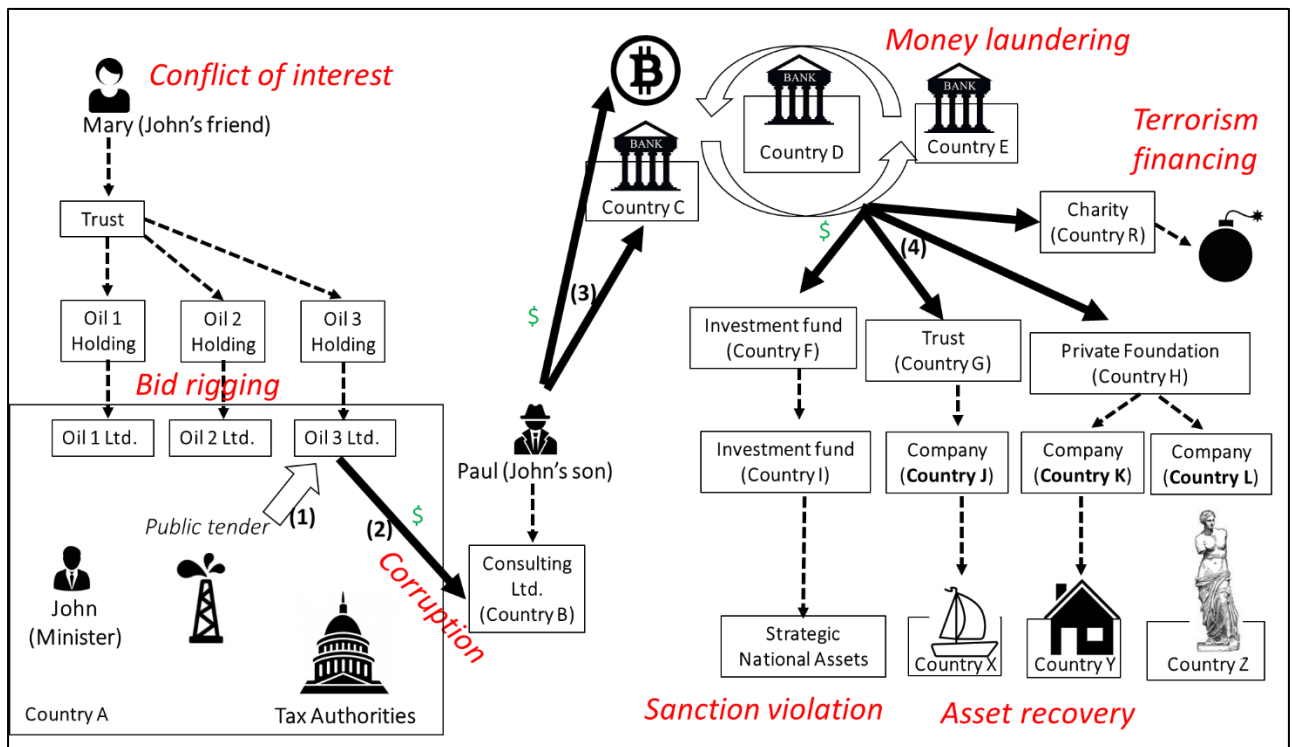


Figure 3: Schematic diagram of global financial crime scheme



First, the apparent competitive tender for an oil license was in fact rigged, because all three companies (Oil 1, Oil 2 and Oil 3) are not independent but owned by the same beneficial owner, Mary. When investigating Mary further it is possible to find out that there was a conflict of interest, because she is a friend of John, the minister in charge of selecting the winning company. However, John selected Mary's company (arrow 1) not only out of friendship but in exchange for a bribe that was paid to the company Consulting Ltd from Country B which is owned by John's son, Paul (arrow 2). The next step was to launder the proceeds of corruption by setting up bank accounts in Country C and buying crypto-currencies (arrow 3). Financial institutions from different countries such as countries D and E were also employed to conduct multiple financial transactions that would help conceal and lose traceability of the funds, as part of the money laundering process. Once the money had been shifted enough, it was used (arrow 4) to purchase hard assets such as a yacht, a house and art works through different secretive legal vehicles (companies, trusts and private foundations) that were ultimately owned by Paul. In addition, by investing through investment funds and other intermediaries that use omnibus accounts that hide the beneficial owners by pooling together money from different investors, Paul was able to acquire interests in strategic national assets (eg. military, technology or financial assets) even though Paul was mentioned in a sanction list (but the country was unable to find out that sanctioned Paul was behind the investment fund's acquisition). Finally, part of the laundered funds were donated to a charity. However, the charity was a cover for a terrorist organisation which channelled the money to fund terrorist acts.

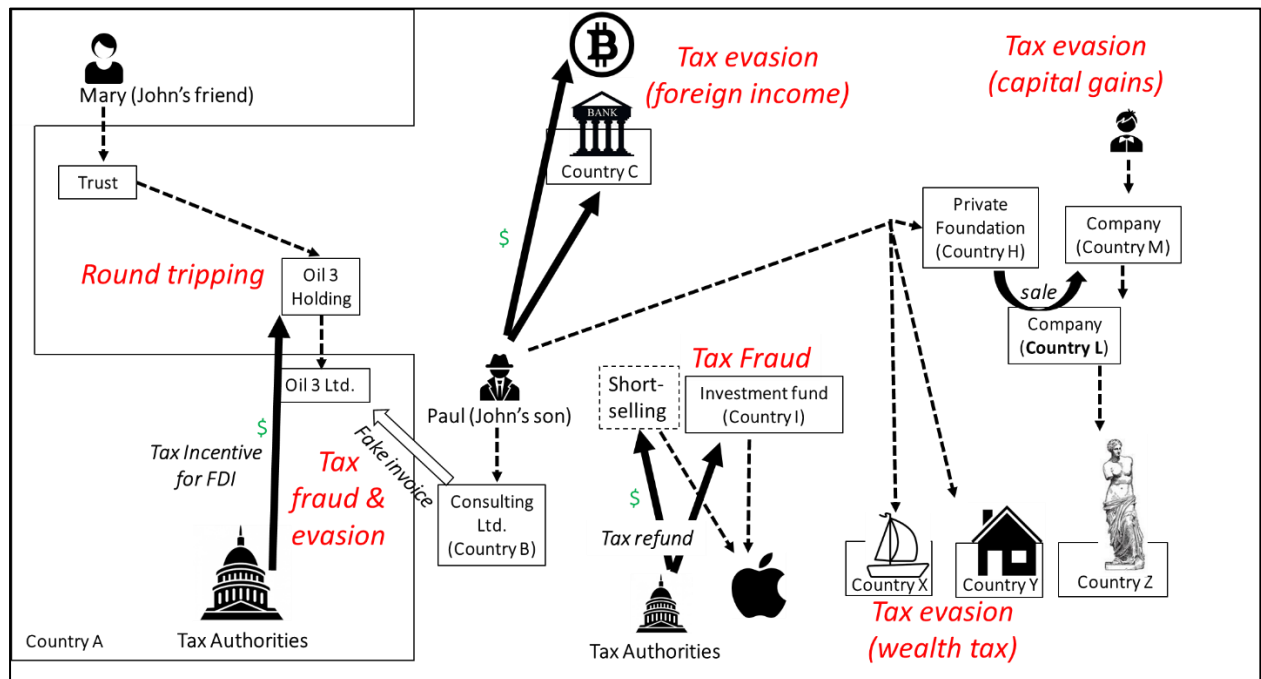
Fully unravelling this global financial crime scheme would require significant amounts of information. While discovering Mary's and Paul's involvement in the public tender would have served to prosecute them for corruption, it would not be sufficient to recover the assets. To make such a recovery, it would also be necessary to discover all the financial transactions that happened after the bribe was paid. This may be very difficult, if not impossible. Information on the beneficial ownership of the assets would greatly assist authorities. This way it would be possible to reveal that Paul is the beneficial owner of the interests in national strategic assets



revealing that sanctions have been violated. At the same time, if real estate registries, and registers for boats and art works (existed and) disclosed beneficial ownership information, it would be possible to know that Paul is the beneficial owner of the house, the yacht and art works, which could be subject to asset recovery. By the same token, even if the corruption scheme has not been discovered, information on the assets held by Paul could prompt an investigation, if his declared income was not sufficient to explain his wealth.

The fictional example described above could also involve tax abuses as illustrated by the following simplified figure.

Figure 4: Schematic diagram of global tax abusive scheme



First, there could be a case of round-tripping if Mary’s company benefitted from a special tax regime meant for non-residents (e.g., a tax incentive to promote foreign direct investment), while in reality Mary is not a foreigner but a resident in the same country. Second, to conceal the bribe, Paul’s company could have simulated providing a consulting service to Mary’s company by issuing a fake invoice, even though no service took place (tax fraud). This way, Mary’s company would have inflated its costs to declare not to have any profit, engaging in tax evasion. Third, if Paul failed to declare his income from investing in foreign assets through Country C’s bank, he would have also engaged in tax evasion. Tax authorities in Country A may not be able to find out about Paul’s foreign income if they do not receive bank account information through international exchange mechanisms. Fourth, Paul may be subject to a wealth tax. Transparency on the beneficial ownership of the house and the yacht would reveal that Paul failed to declare his asset holdings and thus evaded wealth tax. Fifth, Paul’s private foundation may have indirectly sold the artwork by transferring ownership over company L which directly held the statue, instead of selling the statue itself. This way, Paul would have evaded capital gains tax because tax authorities would not be able to know that the artwork was effectively sold (authorities would only see that the artwork is still owned by Company L). The sale would only be revealed by looking at the change of legal and beneficial owners above the statue’s direct holder (Company L). Finally, Paul could have defrauded tax authorities by engaging in sophisticated schemes similar to the Cum-Cum and Cum-Ex scandals (see below). These worked by concealing and simulating ownership of a financial asset, e.g. a share in a listed company, in



specific days when dividends are distributed, dividend tax has to be paid and when dividend tax refunds may apply.

In conclusion, legal and beneficial ownership transparency on assets and the legal vehicles that hold them would help reveal financial crimes and other abuses. In doing so they can also provide an effective deterrent, thus preventing further financial crimes from taking place.

2.2. Real-life cases

Even though the above examples of financial crimes were used for illustrative purposes, the abuse of legal vehicles is not just theoretical but a very real risk. With regard to corruption, in 2011 the Stolen Asset Recovery Initiative (StAR) published the “Puppet Masters” report based on an investigation of 150 corruption cases from 80 countries where “the approximate total proceeds of corruption amounted to approximately \$56.4 billion, with ... 68 cases involving more than \$20 million.”² The report had a whole section on the ‘elusive beneficial owner’ and the accompanying database’s key statistics described that the 150 corruption cases involved 817 legal vehicles, most of which were companies (72%), followed by trusts (5%), foundations (4%) and partnerships (1%).³ However, the report acknowledged that investigators interviewed for the study considered that the database failed to capture the true extent to which trusts are used because trusts may prove such a hurdle to investigation, prosecution, civil judgment or asset recovery that they are seldom prioritized in corruption investigations.⁴ As for the geographical scope, while the cases originated in many different countries, there was less diversity in terms of the place of incorporation of legal vehicles and financial assets. The abused legal vehicles were mainly from the United States of America, followed by the British Virgin Islands, Panama, Liechtenstein, Bahamas, the United Kingdom, Hong Kong, Nigeria, South Africa and the Cayman Islands. Likewise, these legal vehicles had bank accounts mainly in the United States of America and Switzerland, followed by the United Kingdom.⁵

As regards money laundering, the UN Office on Drugs and Crime (UNODC) described that “the estimated amount of money laundered globally in one year is 2 - 5% of global GDP, or \$800 billion - \$2 trillion in current US dollars.”⁶ Recent cases of alleged money laundering scandals include the Azerbaijani Laundromat where close to \$3 billion were channelled through two limited partnerships (LPs) and two limited liability partnerships (LLPs) from the UK⁷; the Russian Laundromat where ca. \$21 billion were moved from Russia into 112 bank accounts mainly from Eastern Europe (especially Moldova and Latvia) using 21 companies from the UK, Cyprus and New Zealand⁸; and finally the Danske Bank scandal involving more than €200 billion (which likely included transactions from the Azerbaijan and Russian Laundromats), which involved companies from Cyprus, the British Virgin Islands and Seychelles⁹, although the first report by the whistleblower referred to UK LLPs.¹⁰

With regard to the financing of terrorism, while the values involved may be low, “terrorist organisations/ individuals are known to rely on complex legal structures to hide the underlying

² Emile Van der Does de Willebois and others, *The Puppet Masters. How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It*, 2011 <<https://star.worldbank.org/sites/star/files/puppetmastersv1.pdf>> [accessed 27 January 2020].

³ *Ibid.*, page 121.

⁴ *Ibid.*, page 45.

⁵ *Ibid.*, page 121.

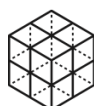
⁶ <https://www.unodc.org/unodc/en/money-laundering/globalization.html>

⁷ <https://www.occrp.org/en/azerbajani-laundromat/the-core-companies-of-the-azerbajani-laundromat>

⁸ <https://www.occrp.org/en/laundromat/the-russian-laundromat-exposed/>

⁹ <https://www.theguardian.com/business/2018/nov/19/whistleblower-reveals-more-players-in-178bn-danske-bank-scandal>

¹⁰ <https://www.theguardian.com/business/2018/nov/19/whistleblower-reveals-more-players-in-178bn-danske-bank-scandal>



beneficial owner.”¹¹ For instance, the Financial Action Task Force (FATF) described the case of a charity undertaking humanitarian work for orphans, war victims and disasters operating in Ghana since 2016. At one point, the charity received three remittances totalling over \$1 million from another charity which was revealed to be the wing of an UN-designated terrorist group.¹² By the same token, a case that may be related to the financing of proliferation of weapons of mass destruction was described by the FATF: “U.S. authorities identified front companies used to conceal the ownership of certain U.S. assets by Bank Melli, which was previously designated by US authorities for providing financial services to entities involved in Iran’s nuclear and ballistic missile program... These assets included a 36-story office tower in Manhattan at 650 5th Avenue having an appraised value of more than USD 500 million, other properties, and several million dollars in cash.”¹³

In relation to tax abuses, only in the US there were inquiries about billions of dollars in undisclosed assets held in offshore bank accounts. These assets and their income could have been appropriately taxed with effective exchanges of information that reported the beneficial owners of the bank accounts. The investigations over Liechtenstein’s LGT bank and Switzerland’s UBS¹⁴ and Credit Suisse¹⁵ led to the development of automatic exchange of bank account information after the US discovered that these banks had helped US clients evade taxes by assisting them to open accounts in the names of offshore entities and advising clients on complex offshore structures to hide ownership of assets. More information on financial account information exchange is provided in FACTI Background Paper 3.

As for tax fraud, the lack of beneficial ownership information is one factor that contributes to Cum-Cum and Cum-Ex tax frauds. In both cases, the abuse refers to simulating ownership to obtain an inappropriate tax refund for taxes on dividends. When dividends are distributed, a dividend tax may apply. Some investors may be entitled to a refund of the paid dividend tax, for example based on their residency. In the Cum-Cum abuse, the shares held by an investor without a right to a dividend tax refund are loaned to an investor that does have the right to a reimbursement. Afterwards, the shares are returned to the original owner, and the inappropriate reimbursement is shared among both parties. The Cum-Ex abuse is more sophisticated and it involves institutional investors (not retail ones). In essence, it refers to pretending that two (or more) different investors own the same share allowing each of them to obtain a reimbursement of the dividend tax. However, only one investor held the share at the relevant time and paid the dividend tax.¹⁶ Estimated costs to European taxpayers of the Cum-Ex scandal amount to more than €55 billion.¹⁷ Beneficial and legal ownership transparency over shares, especially indicating a history of changes, would reveal these abuses.

Lastly, the use of investment funds, banks and intermediaries who use omnibus accounts pooling together money from many different investors may hide the beneficial owner (end-investor natural person) of those funds, allowing individuals or countries to avoid national or

¹¹ FATF, *Terrorist Financing Risk Assessment Guidance*, 2019, 26 <<https://www.fatf-gafi.org/media/fatf/documents/reports/Terrorist-Financing-Risk-Assessment-Guidance.pdf>> [accessed 7 July 2020].

¹² Financial Action Task Force (FATF), *Concealment of Beneficial Ownership*, 2018, 128 <<http://www.fatf-gafi.org/media/fatf/documents/reports/FATF-Egmont-Concealment-beneficial-ownership.pdf>> [accessed 11 December 2018].

¹³ Financial Action Task Force (FATF), *Concealment of Beneficial Ownership*, 32.

¹⁴ United States Senate - Permanent Subcommittee on Investigations, *Tax Haven Banks and U.S. Tax Compliance*, July 17, 2008 (Washington, DC, 2008), 16 <<http://www.hsgac.senate.gov/download/tax-haven-banks-report-july-17-08>> [accessed 6 April 2012].

¹⁵ United States Senate - Permanent Subcommittee on Investigations, *Offshore Tax Evasion: The Efforts to Collect Unpaid Taxes on Billions in Hidden Offshore Accounts*, 26 February 2014 (Washington, DC, 2014), 6 <www.hsgac.senate.gov/download/report-offshore-tax-evasion-the-effort-to-collect-unpaid-taxes-on-billions-in-hidden-offshore-accounts-5-14-14-update> [accessed 21 March 2015].

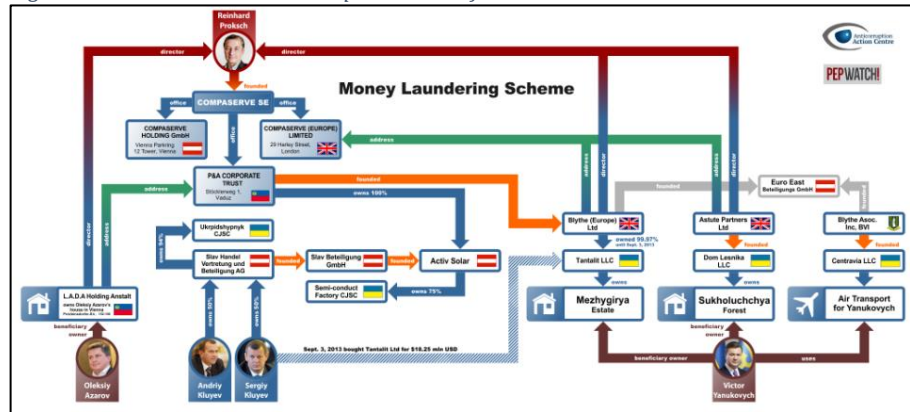
¹⁶ <https://cumex-files.com/en/> and <https://www.europarl.europa.eu/cmsdata/158435/2018-11-26%20-%20Information%20paper%20on%20Cum-ex%20-%20Cum-cum.pdf>

¹⁷ <https://www.dw.com/en/cum-ex-tax-scandal-cost-european-treasuries-55-billion/a-45935370>



international sanctions or to invest in restricted strategic assets. For instance, the US had established sanctions against the Islamic Republic of Iran. Yet, the Central Bank of Iran was able to invest \$2.8 billion in US securities by hiding its holdings through a financial intermediary: Clearstream Banking from Luxembourg.¹⁸

Figure 5: Reconstructed ownership structure of Victor Yanukovich's assets



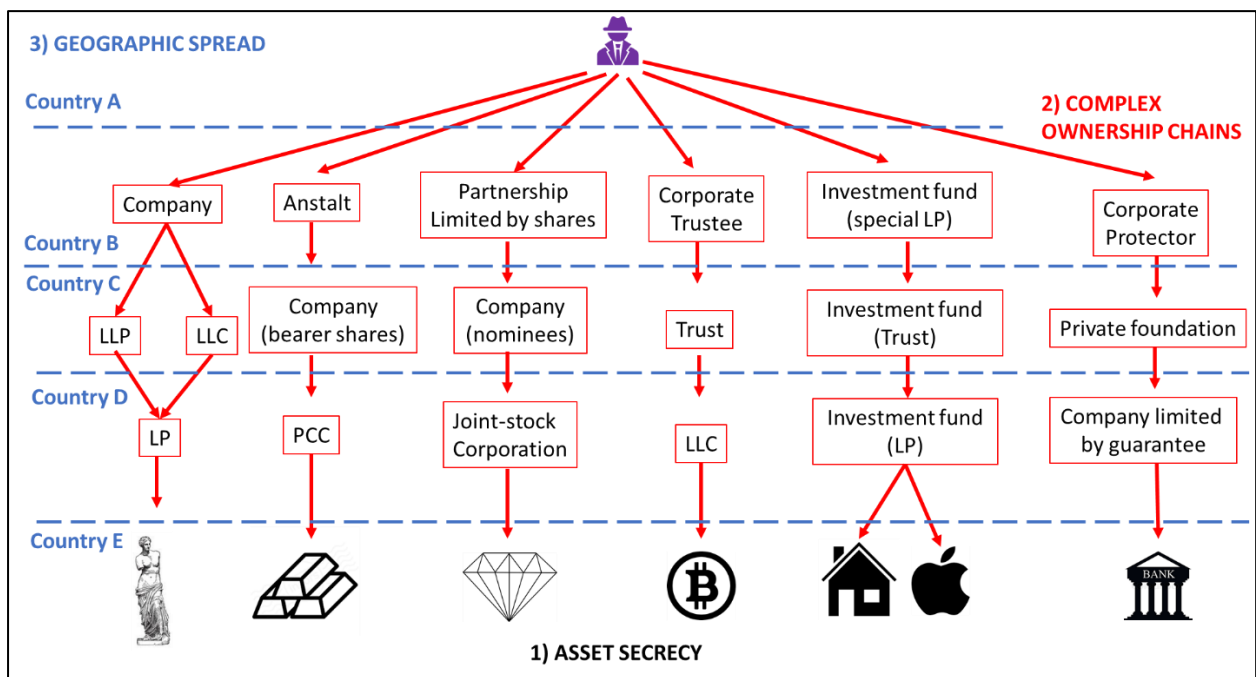
Source: <http://yanukovich.info/dr-reinhard-proksch/>

2.3. How secrecy is created

The ownership structure over assets and legal vehicles may be very convoluted. Figure 5 shows a reconstruction by anti-corruption activists on the asset ownership structure of the alleged money laundering scheme involving former Ukrainian president Victor Yanukovich.

There are three basic secrecy levels exploited by those engaging in financial crimes as described in figure 6.

Figure 6: Schematic diagram of types of secrecy



First, asset secrecy (in black), which involves holding assets that are not subject to registration by anyone (e.g., cash, jewellery, crypto-assets, art objects), or assets that may require only legal ownership information to be registered (e.g., real estate).

¹⁸ https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20140123_clearstream_settle.pdf



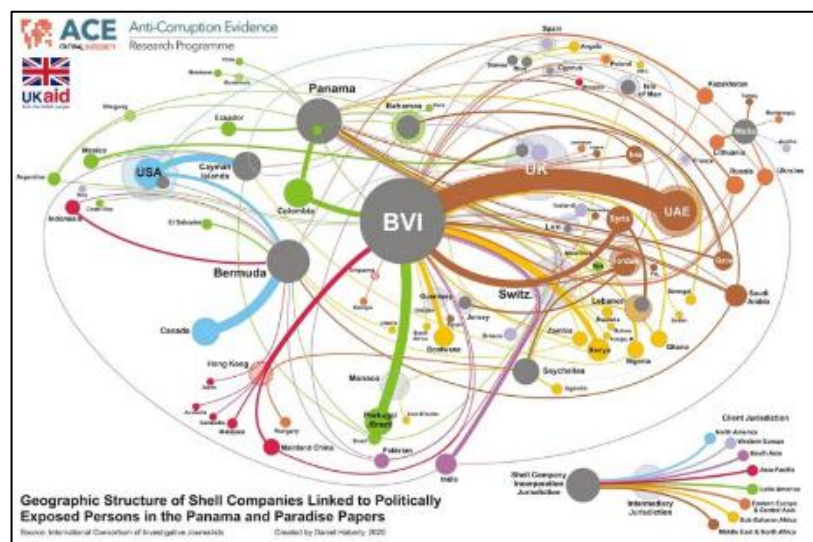
The second level of secrecy involves holding assets not under the individual's own name but through complex ownership chains of legal vehicles (in red). In essence, this second level involves two sub-strategies: using types of legal entities that allow more secrecy and making complex ownership chains. Setting up the most secretive types of legal vehicles may include using bearer shares or nominee shareholders (including family members) or choosing entities that do not need to register or update their legal and beneficial ownership information with a central register. To make the ownership chain as complex as possible, actors add many layers to extend the length of the chain and can cross or mix ownership structures. This can include circular ownership schemes (company A is owned by company B which is owned back by company A) and distributing shareholdings to be below regulatory thresholds that would trigger registration. Finally, they may combine different types of legal vehicles that have distinct control structures. For example, companies limited by shares or companies limited by guarantee may be owned by partnerships with different types of partners (general and limited ones) or by trusts and private foundations that do not have owners but different parties with different roles and rights: a settlor or founder, a trustee or council of administration, a protector and beneficiaries.

The third and last secrecy level (in blue) comprises spreading the location of assets and legal vehicles in as many jurisdictions as possible. Actors aiming to hide assets will choose jurisdictions strategically based on their legal regime and levels of international cooperation. In some jurisdictions, information about legal ownership is not reported for certain asset categories or types of legal vehicles. In others, such information is not required to be updated when legal ownership changes. Beneficial ownership information may also not be maintained in some jurisdictions. Even within jurisdictions that have beneficial ownership registries, some may be more lax about verification or enforcement of registry provisions, such as update requirements. Finally, certain jurisdictions do not exchange information with other countries. Someone aiming to hide assets will look for jurisdictions that share information neither with their home countries nor with conduit countries in the ownership chain.

Figure 7 provides an example of the geographical spread of companies owned by politically exposed persons (PEPs) based on an analysis of companies mentioned in the database of the International Consortium of Investigative Journalists (ICIJ) relating to the Panama Papers and Paradise Papers leaks.

The focus of this paper is on the first and especially the second secrecy levels: (legal) ownership transparency over an asset, and beneficial ownership transparency for the legal vehicles that hold the asset. However, the third secrecy level involving geographical diversification indicates why national measures may be insufficient to address abusive transnational activity. It takes only one secretive link in the ownership chain of legal vehicles to prevent authorities from identifying the beneficial owner.

Figure 7: Geographical spread of PEP companies mentioned in ICIJ database



Source: <https://ace.globalintegrity.org/shellcompanies/>



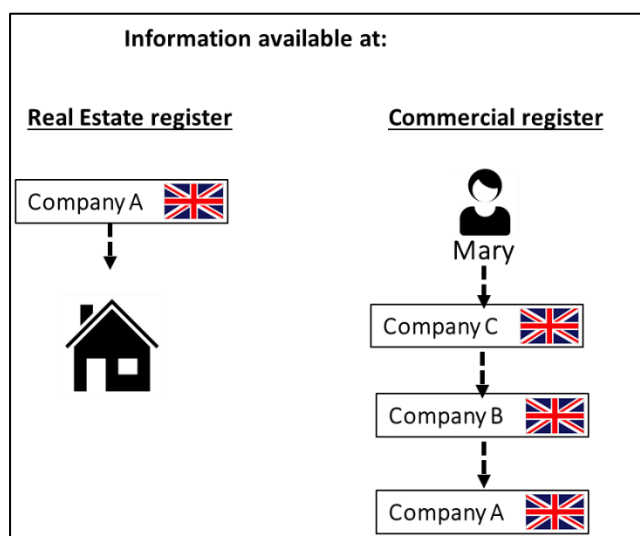
2.4. Legal vehicles versus assets

As figure 8 illustrates, the most transparent scenario would involve comprehensive information on the legal and beneficial owners of every asset, and on the legal and beneficial owners of every legal vehicle holding that asset. In that scenario, all registries would also be interconnected so that any change in the ownership of a legal vehicle integrating the ownership chain would automatically be reflected in all other registries, making sure the information remains updated and consistent everywhere.

Reality is very distant from that scenario. First, many assets are not even subject to registration. Second, registries for assets and legal vehicles may be local (not a central one for each country) without any interconnection to other national registries let alone to foreign ones. For example, a scoping study on asset ownership

information in the UK described that some assets (e.g., cash, crypto-assets, art works and jewellery) are not subject to registration; that government registries for assets cover only legal ownership information (such as private jets and racehorses) or merely the keeper, custodian or intermediary (for example, cars and listed securities), and that some registers are not central for the whole country, such as the register for land and property.¹⁹ Federal countries, e.g.

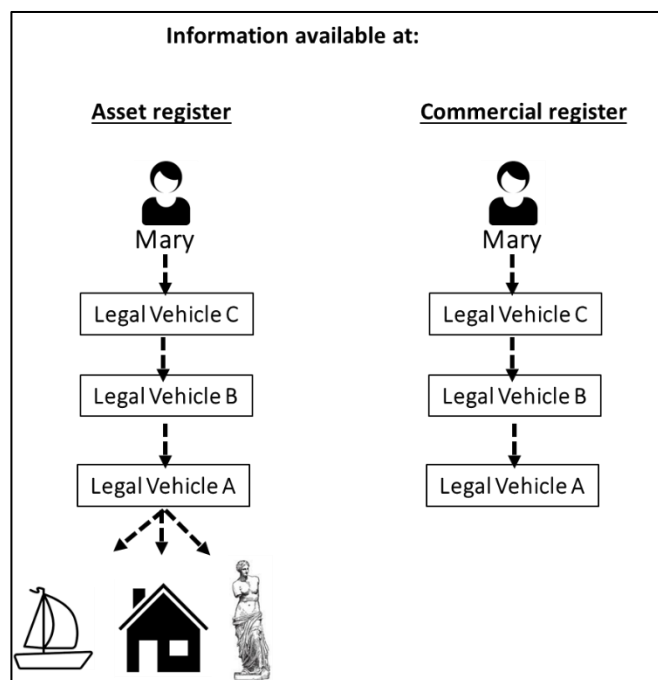
Figure 9: Scenario of registries in the UK



¹⁹ Knobel, Andres, *Pilot Study for a UK Asset Registry – Phase 1: An Assessment of Available Asset Ownership Information* (2019) <<https://static1.squarespace.com/static/5a0c602bf43b5594845abb81/t/5dfa0c37437fa7242cbe3793/1576668258459/Pilot+study+for+a+UK+Asset+Registry-Phase1-revised+version.pdf>> [accessed 19 June 2020].

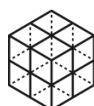
²⁰ <https://www.parliament.uk/documents/joint-committees/draft-registration-overseas-entities/Report.pdf>

Figure 8: Most transparent scenario



Argentina or the US, may also have subnational registries, instead of a central one, for some types of assets.

For example, in the UK the HM Land Register collects legal ownership information for real estate while the beneficial ownership register at Companies House collects beneficial ownership of local companies. This leaves a gap related to real estate ownership by foreign legal entities. To close the gap a proposed Overseas Entities Bill²⁰ would require foreign companies, which are not currently covered by the beneficial ownership register at Companies House, to also register their beneficial ownership



Box 1: Are legal vehicles “assets”?

There are questions about whether legal vehicles are assets in themselves or are merely vehicles that hold assets. The short answer: it depends.

One classification, for example used by the Common Reporting Standard (CRS) for automatic exchange of financial account information, distinguishes between “passive” and “active” legal vehicles. Passive legal vehicles may be those where the legal vehicle merely holds assets, so that the legal vehicle’s value depends on its underlying assets. These assets could be hard assets such as real estate or financial assets including bank accounts or securities. The CRS defines “passive entities” as entities whose assets (could) produce passive income such as rent, dividends, interests, royalties. In contrast, active legal vehicles may be those which provide goods or services, where the legal vehicle’s underlying assets are not necessarily relevant in relation to the legal vehicle’s income and value. For example, a law firm’s only physical assets may be books and computers, but it derives value from its partners’ relationship with clients.

This distinction between passive and active entities is relevant because the CRS contemplates exchanging information on financial accounts at the beneficial ownership level only for account holders that are passive entities. In contrast, most countries requiring legal vehicles to register their beneficial owners do not distinguish between passive and active entities, establishing the same requirements on all of them.

data. Eventually the UK will have beneficial ownership information on both local and foreign legal vehicles that hold real estate in the country.

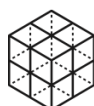
2.5. Shortcomings of legal ownership information

While legal vehicles and especially legal persons (e.g. companies, foundations) are treated by the law as if they were people – in the sense that they may own assets, enter contracts, and use the courts – legal vehicles are just a “legal fiction” created by the law. The obvious distinction between a legal vehicle and a natural person becomes relevant in the field of crime prevention, detection and prosecution.

From the perspective of the criminal justice system, the most serious sanction most countries may impose for a crime is imprisonment time. Naturally, only an individual may be sent to prison, given that a legal vehicle may have no physical presence at all, other than a paper containing its statute or bylaws.

Natural persons are finite (approximately 7 billion people) and tend to have some type of official identification issued by their country of birth, nationality or residence (e.g. birth certificate, national identity number, social security number, passport, driver license or tax identification number). At least one of these would usually involve some physical identification, either a photograph, fingerprints or at least a written signature. In addition, it takes time for an individual to be created (approximately 9 months). It is illegal to kill a person, and it is impossible to divide or merge people. Natural persons have their international mobility limited too. They may require a visa to visit, work or live in a different country.

Legal vehicles are the exact opposite. There may be infinite number of legal vehicles, they do not always have to register, so no country may know of its existence, and any foreigner may be able to create or at least hold interests in a local legal vehicle in almost any country without a visa. It



is completely legal to incorporate, dissolve, merge, decant, divide and even to buy or sell legal vehicles.

If the only ownership data that law enforcement authorities may have is that a legal vehicle is the legal owner of another legal vehicle, no natural person will be held accountable for any violations of law. Beneficial ownership information could be seen as a way to “anchor” these unlimited legal vehicles to the limits of a natural person to subject them to the law.

2.6. The beneficial ownership concept

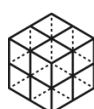
Beneficial ownership could be understood as a way to prevent abuses. The concept was developed by English courts in the Middle Ages when developing the Common Law trust. Trusts enabled a man to go to war while someone else (the trustee) would manage the land for the benefit of the warrior’s wife and children. Graphically, trusts separate the original man’s “absolute” ownership into (i) “legal ownership” given to the trustee (who has the title over the assets, meaning that the assets are held in the trustee’s name but do not belong to the trustee’s personal wealth) and (ii) equity or “beneficial ownership” given to the beneficiaries (the warrior’s wife and children). This “beneficial ownership” held by the wife and children ensured that the trustee would not keep the land for himself, because he was merely holding it and managing it for the benefit of someone else. The true owners, with the right to enjoy the benefits of the assets, were the wife and the children.

Fast forward many centuries, and beneficial ownership is used in many different fields but also in relation to preventing abuses. The FATF Recommendations on anti-money laundering and combating the financing of terrorism and proliferation (AML/CFT) define the beneficial owner as the natural person who ultimately owns or controls a legal vehicle, or on whose behalf a transaction is made. It also includes those persons who exercise ultimate effective control over a legal person or arrangement. From the FATF perspective, it is important to identify the beneficial owners to prevent, detect, investigate and prosecute those responsible for money laundering and the financing of terrorism and of proliferation of weapons of mass destruction. Likewise, the Global Forum on Transparency and Exchange of Information for Tax Purposes uses the same FATF definition for beneficial owners, with the goal of preventing tax evasion and other abuses.

The OECD’s Model Tax Convention uses a different definition of beneficial owner (because it may include an entity), but the concept tries to prevent tax treaty abuses, by ensuring that tax treaty benefits will only be given to persons or entities that are the final and ultimate recipients of a payment,²¹ such as a dividend payment. Finally, regulations for listed companies usually require the identification of the beneficial owner (usually a natural person), to protect minority shareholders and investors who would need to know whether a new person acquired a significant shareholding that could give them effective control over the listed company’s decisions and activities. By finding out about the listed company’s new beneficial owners, minority shareholder and other investors unable to appoint a director would at least be able to sell their shares in case they consider there is a risk to their investment.²² The G20/OECD Principles for Corporate Governance also mentioned that beneficial ownership information is

²¹ This beneficial owner entity would be different from an intermediary entity that was set up in a country only to receive the payment but that will automatically transfer it to another entity.

²² OECD, *Disclosure of Beneficial Ownership and Control in Listed Companies in Asia*, 2016 <<https://www.oecd.org/daf/ca/Disclosure-Beneficial-Ownership.pdf>> [accessed 24 June 2020].



relevant “for enforcement purposes, and to identify potential conflicts of interest, related party transactions and insider trading.”²³

2.7. Uses of beneficial ownership information

One perspective of beneficial ownership information relates to crime prosecution. Authorities discover (or get tipped off) about an entity involved in money laundering, corruption or the financing of terrorism, and they need to identify the entity’s beneficial owners in order to prosecute them or to apply the corresponding sanctions. Moreover, comprehensive beneficial ownership information over all relevant assets could be useful for compliance and enforcement of other national policies. The most prominent example would be allowing authorities to ensure applicable wealth taxes have been paid and to measure inequality.

Beneficial ownership information also helps responsible authorities detect cases of corruption or money laundering whenever an individual cannot justify their wealth or asset ownership based on their declared income. For instance, the UK has started applying Unexplained Wealth Orders (UWOs) to allow authorities to freeze (and eventually confiscate) assets worth more than £50,000 where the owner’s reported income would not be enough to afford those assets. Four UWOs have been reported: the first against Zamira Hajieva, the wife of an Azerbaijani banker who was jailed for embezzlement; the second against London property worth £80 million owned by the descendants of the former head of state of Kazakhstan, and two further UWOs against UK nationals accused of involvement in organised crime.²⁴

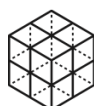
Beneficial ownership information will be essential in asset recovery. This helps ensure there is no one benefiting from the proceeds of criminal activities and can also prevent the illegal activity from being continued or financed even after one of the responsible individuals was prosecuted. Otherwise, a criminal may end up in jail, but the illicit resources will remain available. After the beneficial owners of an entity involved in illegal activities are identified, all the related assets can be subject to confiscation or disgorgement.

The third and best use of beneficial ownership information, however, is for prevention. Effective beneficial ownership information could be used to prevent illegal or illegitimate activities (e.g. corruption, tax evasion, money laundering, the financing of terrorism or of proliferation of weapons of mass destruction) from happening in the first place. First, the need to provide such information can deter those contemplating illegal activities from committing the crimes. Second, for those still attempting a financial crime, beneficial ownership information can prevent the crime from taking place. For example, if a lawyer is trying to set up a company that involves beneficial owners, shareholders or directors that are suspected of a crime, under a sanction list, or where provided information is wrongful or fraudulent (e.g., beneficial owner refers to a dead person or includes fake identification information), authorities could prevent those entities from being incorporated. Likewise, regulated entities could refrain from opening bank accounts or formalising acquisition of real estate of suspect entities.

Ultimately, beneficial ownership transparency is a way to constrain the unlimited secrecy capabilities available to legal vehicles when compared to individuals.

²³ <https://www.oecd-ilibrary.org/docserver/9789264236882-en.pdf?expires=1594136994&id=id&accname=guest&checksum=F59CC3DF78301999F4C98B5C872998BA>

²⁴ <https://www.ft.com/content/4710b8e0-a93e-11e9-984c-fac8325aaa04>, <https://nationalcrimeagency.gov.uk/news/nca-secures-freezing-order-over-leeds-businessman-s-10-5-property-portfolio>, <https://nationalcrimeagency.gov.uk/news/nca-secures-unexplained-wealth-order-against-properties-owned-by-a-northern-irish-woman>



3. Beneficial ownership standards and legal frameworks

As noted above there are different frameworks on beneficial ownership (securities law, model tax treaties, etc.). However, the rest of the paper refers to the FATF definition. The Global Forum applies the same FATF definition and framework but with a focus on tax purposes.²⁵

3.1. The FATF and the multi-pronged approach

The FATF Recommendations²⁶ require countries to ensure beneficial ownership availability through requirements that fall to two different parties. On the one hand, financial institutions and designated nonfinancial businesses and professions (DNFBPs, e.g. lawyers, notaries, trust and corporate service providers, and virtual asset service providers) are required, mainly under Recommendations 10 and 22, to collect beneficial ownership information from their clients as part of customer due diligence procedures. On the other hand, countries themselves are required to ensure beneficial ownership transparency for legal persons (e.g. companies) and legal arrangements (e.g. trusts) based on Recommendations 24 and 25 respectively.

Based on Recommendation 24, countries may ensure beneficial ownership transparency by at least one of three mechanisms: the registry approach, the company approach (the legal person collects beneficial ownership data and makes it available to authorities on request), or the “existing information approach” (accessing any beneficial ownership information available in banks, corporate service providers, tax authorities, land registries, etc.).

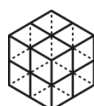
In 2019 the FATF published a report on ‘Best practices on beneficial ownership for legal persons’. The report described that, based on the experience of mutual evaluations, “a multi-pronged approach” using a combination of the three mechanisms with several sources of information “is often more effective in preventing the misuse of legal persons for criminal purposes and implementing measures that make the beneficial ownership of legal persons sufficiently transparent. The variety and availability of sources increases transparency and access to information, and helps mitigate accuracy problems with particular sources.”²⁷

Up until recently, the most common approach implemented by countries to comply with Recommendation 24 may have been the “existing information approach”. On the one hand, authorities could start with the legal ownership information that may be available at the commercial register, given that countries are required to maintain basic company information (company name, address, names of directors) under Recommendation 24. Additional sources of legal ownership information may be an asset register (e.g. real estate register) or the tax authorities, if taxpayers are required to include ownership information in their tax returns. The legal owners may coincide with the beneficial owners or at least provide some indications on who these may be. In addition, authorities may obtain information from the company itself. Although this may vary among countries, a local authority such as the tax administration may

²⁵ Global Forum on Transparency and Exchange of Information for Tax Purposes, *Terms of Reference to Monitor and Review Progress towards Transparency and Exchange of Information Request for Tax Purposes*, 2016 <<http://www.oecd.org/tax/transparency/about-the-global-forum/publications/terms-of-reference.pdf>> [accessed 28 March 2019].

²⁶ Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation. The FATF Recommendations (2012 - Updated 2019)* (Paris, June 2019) <<https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>> [accessed 29 January 2020].

²⁷ FATF, *Best Practices on Beneficial Ownership for Legal Persons*, 2019 <<https://www.fatf-gafi.org/media/fatf/documents/Best-Practices-Beneficial-Ownership-Legal-Persons.pdf>> [accessed 24 June 2020].



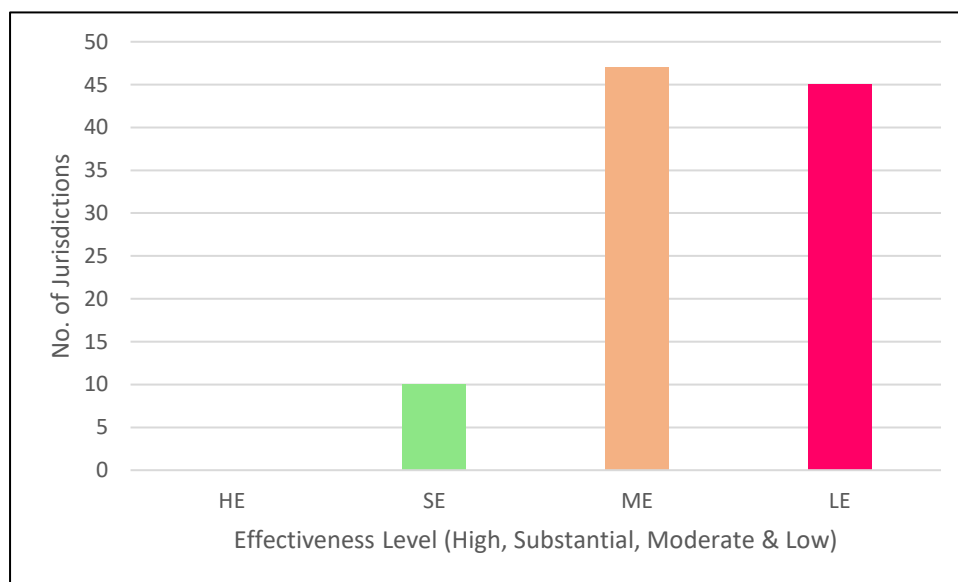
have a general right, in the context of an audit or to respond to an exchange of information request, to require information from legal vehicles that could include ownership information.

An even more relevant “existing information” source for beneficial ownership information, may be to rely on financial institutions and other corporate service providers subject to AML/CFT regulations. Based on FATF Recommendation 10, most countries have established customer due diligence (CDD) procedures for their financial institutions that require obtaining beneficial ownership information when a customer establishes a business relationship. In fact, the OECD’s CRS for automatic exchange of information for tax purposes allows countries in some cases to rely on the information that they have already obtained pursuant to their know-your-customer (KYC) and other anti-money laundering procedures. Lastly, depending on the country and based on FATF Recommendation 22, these due diligence requirements may have also been extended to notaries or to trust and corporate service providers. They can thus also be an important source for beneficial ownership data. New sources may include virtual asset service providers, based on Recommendation 15.

With regard to beneficial ownership transparency for trusts, FATF Recommendation 25 requires countries to rely essentially on the trustee to hold beneficial ownership information. However, the Interpretative Note to Recommendation 25 mentions other potential sources for trust information: a central registry of trusts or trust assets, asset registries (e.g. real estate register), information held with the tax authorities or information held by other agents including lawyers, investment advisors or trust and corporate service providers.

As of 30 April 2020, no county that has been subject to the fourth round of mutual evaluations obtained a high level of effectiveness on Immediate Outcome 5 which assesses, among others, whether information on beneficial ownership is available to competent authorities without impediments.²⁸

Figure 10: Ratings of Immediate Outcome 5



Out of 102 evaluated jurisdictions, 10 were rated as “substantial level of effectiveness” (SE), 47 as “moderate level of effectiveness” (ME) and 45 as “low level of effectiveness” (LE).

²⁸ <https://www.fatf-gafi.org/publications/mutualevaluations/documents/assessment-ratings.html>



3.2. Trend towards beneficial ownership registration

Despite not being a formal requirement but only one of the three possible approaches described above, countries have started requiring legal persons, and sometimes trusts, to file beneficial ownership information with a central government authority (e.g. the commercial register, the tax authorities, the Central Bank). This paper refers to these central databases of beneficial ownership information held by any government authority as “beneficial ownership registries”.

It is not entirely clear why countries have decided to establish beneficial ownership registration. One reason may be the potential benefits of centralising information for accessing and cross-checking purposes, as it will be explained below. A second motive may be the suggestion on authorities to obtain beneficial ownership information up-front, as contained in the OECD template on “Options for Obtaining Beneficial Ownership and Control Information.”²⁹ The G20/OECD Principles of Corporate Governance also underscore the importance for authorities to obtain this information.³⁰

Moreover, there has been the greater awareness and advocacy on this issue. For instance, beneficial ownership transparency has been endorsed at the G20 (the 2014 High-Level Principles on Beneficial Ownership Transparency³¹), and other engagement groups including the B20³² and C20³³. Other government-based organisations have also been advocating and requiring beneficial ownership transparency including the Extractive Industry Transparency Initiative (EITI)³⁴ and the Open Government Partnership (OGP).³⁵ Advocacy by civil society organisations may also have had an impact.³⁶ Another reason may be the more demanding country assessments undertaken by the fourth round of mutual evaluations by the FATF and FATF-style regional bodies (FSRBs) or the second round of Global Forum peer review reports.

The first wave of beneficial ownership registration laws started in the EU with the approval of the fourth Anti-Money Laundering Directive requiring the 28 member states to establish beneficial ownership registers for legal persons incorporated in the EU and for trusts administered in the EU that generated tax consequences.³⁷ As of June 2018, there were at least 34 jurisdictions, mostly in Europe but also some in Latin America, that already had a law requiring beneficial ownership to be filed with a government authority.³⁸

²⁹ <https://www.oecd.org/corporate/ca/1961539.pdf>

³⁰ The Principles stipulate that disclosure of “information about record ownership needs to be complemented with current information about beneficial ownership...[and]...should be obtainable at least by regulatory and enforcement agencies and/or through the judicial process.” The Principles also reference the importance of adherence to international information exchange agreements, notably the IOSCO (International Organisation of Securities Commissions) Multilateral Memorandum of Understanding Concerning Consultation, Cooperation and the Exchange of Information, which has 120 jurisdiction signatories establishing strict commitments for exchange of information on beneficial ownership for the purposes of enforcement among securities regulators. The Principles are available in: <https://www.oecd-ilibrary.org/docserver/9789264236882-en.pdf?expires=1594136994&id=id&accname=guest&checksum=F59CC3DF78301999F4C98B5C872998BA> and the IOSCO MOU in: <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD386.pdf>

³¹ http://www.g20.utoronto.ca/2014/g20_high-level_principles_beneficial_ownership_transparency.pdf

³² https://www.iccmex.mx/uploads/B20%20Priorities%20RBCAC_ICC_Mexico.pdf

³³ <https://civil-20.org/c20/wp-content/uploads/2018/08/C20-2018-POLICY-PACK-pdf>

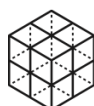
³⁴ <https://eiti.org/beneficial-ownership>

³⁵ <https://www.opengovpartnership.org/wp-content/uploads/2019/05/Global-Report-Beneficial-Ownership.pdf>

³⁶ For example, the Financial Transparency Coalition brings together many organisations working on beneficial ownership transparency including, among others, the Tax Justice Network, Transparency International and Global Witness: <https://financialtransparency.org/issues/beneficial-ownership/>. Other examples include OpenOwnership.

³⁷ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015L0849>

³⁸ Andres Knobel, Moran Harari and Markus Meinzer, *The State of Play of Beneficial Ownership Registration: A Visual Overview*, 2018 <<https://www.taxjustice.net/wp-content/uploads/2018/06/TJN2018-BeneficialOwnershipRegistration-StateOfPlay-FSI.pdf>> [accessed 27 January 2020].



By April 2020, that number had jumped to more than 80 jurisdictions, covering countries not only in Europe and their dependencies but also in Latin America, Africa and Asia.³⁹ In North America too there were discussions to establish beneficial ownership registration: Mexico has included this in its action plan for Open Government Partnership (OGP)⁴⁰, Canada held a consultation in this regard⁴¹, and a bi-partisan supported bill⁴² that would require beneficial ownership information to be filed with the US financial intelligence unit (FinCen) was passed at the US House of Representatives in October 2019.⁴³ The bill has been endorsed by a wide range of US businesses, professionals, academia and civil society organisations⁴⁴, including a positive statement on the measures issued by the White House.⁴⁵ A related reform of the anti-money laundering framework is under discussion in the US legislature, that would also entail beneficial ownership transparency.⁴⁶

3.3. Trend towards public beneficial ownership information

The approval in 2018 of the fifth EU Anti-Money Laundering Directive (AMLD 5)⁴⁷ started a new wave. Not only did it extend beneficial ownership registration for all trusts administered in an EU country (regardless of tax consequences), but it also broadened the scope to cover also trusts administered outside the EU that acquired real estate or that established business relationships in the EU. However, the most striking change of AMLD 5 referred to the access to beneficial ownership information. Information on beneficial owners of legal persons would become publicly accessible. For trusts, access would be subject to a legitimate interest.

AMLD 5 establishes minimum standards, allowing countries to go beyond them. The UK, for instance, already in 2016 (before AMLD 5 was even approved) upgraded its commercial register at Companies House to include beneficial ownership information that was available online for free and in open data format. EU countries were not alone. Ukraine was also among the first non-EU countries to establish a public and free online beneficial ownership register. Ecuador's online commercial register also made available information on beneficial owners for legal persons and trusts.⁴⁸ After the approval of AMLD 5, more countries started establishing online beneficial ownership registries available for free (Denmark, Luxembourg and Slovenia) or for a fee (Austria⁴⁹, Estonia, Germany and Ireland).⁵⁰

In 2018, the UK Parliament approved an amendment to the sanctions and anti-money laundering bill which requires British Overseas Territories (e.g. Cayman Islands, BVI, etc.) to

³⁹ Moran Harari and others, *Ownership Registration of Different Types of Legal Structures from an International Comparative Perspective: State of Play of Beneficial Ownership - Update 2020* (1 June 2020) <<https://www.taxjustice.net/wp-content/uploads/2020/06/State-of-play-of-beneficial-ownership-Update-2020-Tax-Justice-Network.pdf>> [accessed 4 June 2020].

⁴⁰ <https://www.gob.mx/sfp/articulos/presentan-en-la-funcion-publica-el-cuarto-plan-de-accion-2019-2021-de-mexico-en-la-alianza-para-el-gobierno-abierto?idiom=es>

⁴¹ <https://www.ic.gc.ca/eic/site/142.nsf/eng/00001.html>

⁴² Corporate Transparency Act of 2019 (H.R.2513)

⁴³ <https://maloney.house.gov/media-center/press-releases/house-passes-maloney-bill-to-crack-down-on-anonymous-shell-companies>

⁴⁴ <https://thefactcoalition.org/endorsements-beneficial-ownership-transparency/>
In June 2020, the US Chamber of Commerce also endorsed beneficial ownership transparency:

⁴⁵ https://www.whitehouse.gov/wp-content/uploads/2019/10/SAP_HR-2513.pdf

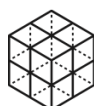
⁴⁶ The Anti-Money Laundering Act (AMLA) of 2020. More information is available in: <https://www.acfcs.org/lawmakers-banking-trade-transparency-groups-push-for-sweeping-aml-bill-to-be-included-in-ndaa/>

⁴⁷ https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2018.156.01.0043.01.ENG

⁴⁸ Ecuador's registration requirements cover the legal owners of each layer up to a natural person legal owner. A visual example on the information available on Ecuador's online register is available in Annex II here: <https://www.taxjustice.net/wp-content/uploads/2020/06/State-of-play-of-beneficial-ownership-Update-2020-Tax-Justice-Network.pdf>

⁴⁹ <https://www.bmf.gv.at/en/topics/financial-sector/beneficial-owners-register-act/Public-access.html>

⁵⁰ Harari and others, *State of Play of Beneficial Ownership - Update 2020*.



establish public beneficial ownership registries by 2020. The Cayman Islands, however, have already indicated that they will publish beneficial ownership information only by 2023.⁵¹

Finally, at the May 2019 Summit of the Open Government Partnership (OGP), the UK and other partners initiated the Beneficial Ownership Leadership Group, where membership includes a commitment to implementing the Beneficial Ownership Transparency Disclosure Principles, which emphasise free and easy accessibility of beneficial ownership data to the public.⁵² Argentina, Armenia, Finland, Kenya, Latvia, Norway, Slovakia, and Ukraine have made formal endorsements to join the coalition.⁵³

These recent changes have also been noted by the FATF. Its report on ‘Best practices on beneficial ownership’ recognised “the trend of openly accessible information on beneficial ownership is on the rise among countries.”⁵⁴

Public access to beneficial ownership information may allow for better informed investigations and international cooperation, perhaps also better understandings of risks. However, a public beneficial ownership register does not solve by itself all gaps and vulnerabilities in relation to beneficial ownership transparency, especially in relation to information accuracy (see below).

It also relevant to note that “public access” does not mean that everyone will access the same level of details. While authorities would generally have access to all the relevant information, the general public may find out only basic details of the beneficial owner, such as name and declared address (which may not be their residential address), month and year of birth (but not the date), country of residence (but not the tax identification or passport number). In addition, some countries allow exemptions if an authority confirms the danger or risk from public information disclosure.

4. Gaps, vulnerabilities and impediments in beneficial ownership frameworks

4.1. The pros and cons of the FATF approaches

As explained above, to ensure availability, access and accuracy of beneficial ownership information, countries may rely on any of the three approaches recognised by the FATF and the Global Forum, or a combination of them: the company approach, the existing information approach, or the registry approach. The FATF described that the best results were obtained when a multi-pronged approach combining many sources is implemented. Each approach has advantages and disadvantages. Analysis can focus not only on availability, accuracy and access, but also on the economic costs, political costs, privacy concerns, the bureaucratic demands raised by enacting changes in the law, matters of legal tradition, supervision and effectiveness. This is summarised in Table 1.

4.1.1. The company/trustee approach

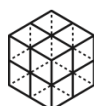
The company/trustee approach may be the simplest and cheapest to implement from the perspective of the government. There may already exist a regulation allowing an authority to request information from the legal vehicle so no major legal changes may be required. Companies and legal persons would usually already hold beneficial ownership information

⁵¹ <https://caymannewsservice.com/2019/10/cayman-commits-public-registers>

⁵² <https://www.opengovpartnership.org/documents/beneficial-ownership-leadership-group-terms-of-reference-declaration-glossary/#:~:text=The%20Leadership%20Group%20is%20a,practice%20on%20beneficial%20ownership%20transparency.>

⁵³ <https://www.opengovpartnership.org/policy-area/beneficial-ownership/>

⁵⁴ FATF, *Best Practices on Beneficial Ownership for Legal Persons*, 74.



because they would need it to open a bank account. Trustees may already be required to hold some information based on common law (although this may not always involve the beneficial owners if the parties to the trust are legal persons). From the privacy perspective, the legal vehicle would be the only one holding beneficial ownership information, and authorities would only get access to it for a specific case.

However, ensuring availability and access to information may be very hard or impossible, making effectiveness low. On the one hand, authorities may not even know that the legal vehicle exists. While FATF Recommendation 24 requires countries to publish basic company information, the company may have no physical presence in the country so no one would respond to a request for information. Moreover, many countries allow “de facto” or “unlimited” companies to exist, which may own assets despite not being properly incorporated in the commercial register. Trusts also may not need to register, except with the tax authorities when the trust has taxable income. Even for known legal vehicles with a local physical presence, when authorities request information they may find out that the legal vehicle does not have it. While authorities may audit the riskier types of legal vehicles, ensuring that all legal vehicles hold beneficial ownership information is likely impossible given that it would require authorities to reach out to the possibly millions of legal vehicles in their country.

Moreover, it would be unlikely that an investigated legal vehicle will provide accurate data that incriminates or affects its beneficial owner, especially if no FI/DNFBP or authority was involved in verifying the information. Even if accurate data is provided, the suspect vehicle will realise that it is under suspicion and may attempt to erase evidence, close bank accounts or find ways to thwart the investigation. The company/trustee approach also makes it impossible to search for unknown information. Overall, this indicated that the company approach has low potential effectiveness if implemented in isolation.

4.1.2. The “existing information” approach

The “existing information” approach – especially in relation to obtaining beneficial ownership information from financial institutions (FIs) or lawyers, notaries and trust and company service providers which fall under the category designated non-financial businesses and professions (DNFBPs)⁵⁵ – addresses some of the disadvantages of the company/trustee approach and shares some of the advantages in terms of costs for the government. However, it also shares many of the disadvantages in terms of availability, access and effectiveness.

⁵⁵ While the “existing information” approach would also consider checking for legal ownership information available with the commercial register, asset registries or tax authorities, the main shortcoming is that the legal ownership may not coincide with the beneficial ownership. Instead, if the commercial register or tax authorities collect beneficial ownership information, this will be analysed under the “registry approach”.

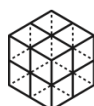
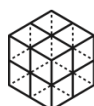
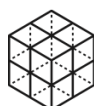


Table 1: Summary comparative analysis of the three FATF approaches

Considerations	Company approach	Existing information approach	Centralised register approach
Economic cost of for the government	Low	Low	High (if new / technological register) Mid / Low (if only upgrading existing register / adding BO field to incorporation form or to tax returns)
Economic cost for the private sector	Low (data already needed, e.g. to open a bank account)	Low (if no obligation to engage with an FI/DNFBP) Mid / High (if obligation to engage with an FI/DNFBP)	Low / Mid (depending on user friendliness of the register)
Political cost	Low	-Low for FIs (the need for KYC/CDD are well established) Mid / High for DNFBPs (esp. for lawyers and those with professional privilege)	Low (if there is a register tradition and only requires an upgrade of existing register or if threat of blacklisting) Mid / High (for federal countries with local registries)
Privacy concern	Low	Low / Mid (especially after leaks, eg Panama Papers, Paradise Papers, etc)	Low / Mid for confidential register (only information security concern) High (if public access)
Bureaucratic demands	It depends on the country. It may require a new law or just a regulatory change.		
Incompatibility with legal tradition	Low	Low	Low for legal persons Mid / High for trusts.
Availability	Not guaranteed (e.g. if company has no physical presence in the country)	Not guaranteed (if no obligation to engage with a local FI/DNFBP) Potentially very low (based on quality and information sharing of KYC/CDD and standards of professional privilege)	High (if scope is comprehensive and registry is effective) Low / Mid (if registry is a passive repository of information)
Accessibility for local relevant authorities	None (if company has no physical presence in the country)	None (if FI/DNFBP has no physical presence in the country or if it doesn't hold the information)	High (if digitalised register) Mid (if paper-based registry)



Considerations	Company approach	Existing information approach	Centralised register approach
		<p>Low (if there are many FIs or unlicensed DNFBPs)</p> <p>Mid (if low number of FIs/DNFBP and all are licensed, and the link between the legal vehicle and the FI/DFNBP is known to authorities)</p>	
Searchability for unknown information	None	Low / Not guaranteed (if not mandatory to engage with an FI/DNFBP)	<p>High (if digitalised registry with structured data)</p> <p>None (if paper-based registry)</p>
Accuracy	Potentially very low	Potentially high or mid (it depends on KYC/CDD procedures and supervision by financial regulators)	<p>Potentially very high (if digitalised registry with structured data, interconnections to other databases, advanced analytics, and compliance incentives)</p> <p>Potentially very low (if registry is a passive repository of information or paper-based)</p>
Risk of thwarting investigation	Very high (legal vehicle will know it is under investigation)	High / Mid (depending on sanctions and supervision of anti-tipping off provisions)	Very low
Cost of verification of riskier cases	High in time and resources for authorities	High in time and resources for authorities	<p>Very low (if digitalised registry that applies verification)</p> <p>High (if registry is a passive repository of information or paper-based)</p>
Cost of verification of all cases	Impossible	Impossible	<p>Very low (if digitalised registry that applies verification)</p> <p>Very high (if registry is a passive repository of information or paper-based)</p>



Considerations	Company approach	Existing information approach	Centralised register approach
Potential effectiveness in promoting integrity	Low	Mid / Low (if not mandatory to engage with an FI/DNFBP, not all are licensed)	Very high (if digitalised registry with verification & FIs and DNFBPs must intervene to create a legal vehicle & they report discrepancies) High (if digitalised registry with verification) Low (if registry is a passive repository of information or paper-based)

Note: financial institutions (FI); designated non-financial or businesses and professions (DNFBPs); know your customer (KYC); customer due diligence (CDD)

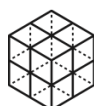
This approach also involves low economic costs for the country. Beneficial ownership information collection and verification would depend on the FI/DNFBP (including virtual asset service providers) who would have to provide it to authorities upon request. Political costs would be low because know-your-customer (KYC) and customer due diligence (CDD) provisions are well established for banks and financial institutions. In fact, some banks may already go beyond local regulations and implement stricter rules, especially if they are part of global financial institutions. However, the political cost may be higher for DNFBPs, such as lawyers who may invoke professional privileges (e.g. attorney-client privilege for lawyers) to reject providing information to authorities despite being a requirement under FATF Recommendations.⁵⁶

The availability and accessibility to information, as well as the economic costs for the private sector, will depend on: the number of FIs and DNFBPs available in the country, whether they are licensed (so that authorities know who they are, making it easier to supervise and sanction them) and especially whether legal vehicles need to engage with a regulated entity to be incorporated. For example, a public notary, a resident agent or a corporate service provider may be necessary to incorporate some legal vehicles (e.g. Spain and Panama). A condition for incorporating a legal vehicle may also include opening a bank account for receipt of the legal vehicle's capital. If all legal vehicles must engage with either an FI or DNFBP in the country, it will be easier to ensure availability of beneficial ownership information, but this will also add economic and bureaucratic costs to doing business (this may be badly reflected in indexes such as the World Bank's Doing Business Report⁵⁷).

While availability and access to beneficial ownership information would be improved if engagement with FIs/DNFBPs is mandatory, it may still not be guaranteed. By the time authorities contact the corporate service provider, assuming they have a physical presence, they may find out that provider does not hold the information or that they have not done proper due diligence. To incentivise compliance, authorities would need to supervise and audit the

⁵⁶ Financial Action Task Force (FATF), *Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals*, 2013, 148 <<http://www.fatf-gafi.org/media/fatf/documents/reports/ML%20and%20TF%20vulnerabilities%20legal%20professionals.pdf>> [accessed 11 December 2018].

⁵⁷ <https://www.doingbusiness.org/en/methodology/starting-a-business>



available information from all FIs and DNFBPs to ensure that it is properly held. While supervising every FI and DNFBP would be easier than supervising every legal vehicle, it may still involve hundreds of financial institutions and thousands of lawyers, notaries and corporate service providers. Searching for unknown information, for example finding all the legal vehicles related to one beneficial owner, would also require contacting every single FI and DNFBP. The task would be easier, however, if legal vehicles are required to provide information on the engaged FI/DNFBP to government authorities. For example, if the annual return mentions or is signed by a resident agent, authorities would know who may have the information. However, this would only help if the legal vehicle filed the annual return in the first place.

Verification of beneficial ownership information may work well with fully trained FIs and DNFBPs, given their expertise and direct contact with the client. However, preventing them from tipping off their clients about the request for information would require another set of supervision and audit. What is more, based on the money laundering and corruption cases mentioned above, FIs and DNFBPs may be actively advising their clients on how to create opaque entities to hide their assets from authorities. The Panama Papers related to the law firm Mossack Fonseca show that corporate service providers may also suffer from the wrong incentives and may end up assisting clients to remain hidden from authorities, as reported by the BBC.⁵⁸ An even more extreme case would be the recent 'Lava jato' scandal related to Odebrecht, where a bank was directly bought to be part of the alleged corruption and money laundering scheme.⁵⁹

In conclusion, while relying on FIs and DNFBPs reduces some costs, supervising all of them in real time would be impossible. This approach improves some aspects (such as verification) but it also adds new risks (such as the service provider assisting their clients to hide from authorities). Other limitations include the possibility that, by the time the information is needed, authorities find out that the FI has not collected the information or that the service provider does not have a physical presence in the country, or that no local regulated entity has been engaged at all (because the local legal vehicle operates exclusively abroad). Overall, while the existing information approach addresses some of the shortcomings of the company/trustee approach, it still suffers from potentially low effectiveness.

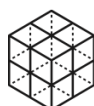
4.1.3. The registry approach

The registry approach, understood as any centralised register or database of beneficial ownership information held or at least supervised by a government authority, addresses the shortcomings of the previous two approaches. First, it facilitates accessing information because it would be contained in one unique place, instead of depending on obtaining it from hundreds or thousands of FIs or DNFBPs, or from millions of legal vehicles. Second, it facilitates supervision. A well-functioning and digitalised beneficial ownership register could detect whether all registered entities filed beneficial ownership information on time or not. Lastly, suspicious legal vehicles would not find out that their information is being used for an investigation. However, these benefits come at a price. The registry approach may have much more costs when compared to the other two approaches. Innovative measures may reduce some of these costs.

Setting up a centralised register or database of beneficial ownership information held or supervised by a government authority would involve an initial cost for the government, especially if it will involve technological development. However, the costs of setting up a new

⁵⁸ <https://www.bbc.com/news/35956324>

⁵⁹ <https://www.ft.com/content/91c23442-c7ee-11e6-8f29-9445cac8966f>



register could be avoided or mitigated. Since most countries already have commercial registries, these could be upgraded to include collection of beneficial ownership information, as implemented by the UK's Companies House. As another example, Uruguay's register of holders of bearer shares, maintained by the Central Bank, was upgraded to include beneficial ownership information for legal persons and trusts. Other economical solutions would be to add a field to include beneficial ownership information to tax returns or other pre-existing filings. A technological and user-friendly beneficial ownership register would also favour businesses if they reduce bureaucracy. (The less transparency and the more steps that depend on the approval of more register officers, the more risks for corruption).

The political costs of establishing a central register, especially for federal countries with subnational commercial registries or strong opposing groups of businesses, should be balanced by the reputational cost in case a country fails to ensure availability of beneficial ownership. This reputational cost may involve becoming grey or blacklisted. Countries might also be affected by de-risking, when global financial institutions decide not to establish business relationships or transactions with local institutions because of the perceived risks. Moreover, the global trend described above, where more than 80 jurisdictions have approved laws requiring registries of beneficial ownership information may involve the opposite political cost: countries may not want to be left behind and considered a laggard on transparency. The subnational limitation may be addressed by requiring a federal agency to collect beneficial ownership information, e.g. the tax administration, the financial intelligence unit or the Central Bank.

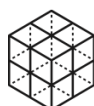
The bureaucratic demands raised by enacting changes in the law may depend on the country. Not all countries will need to undergo a parliamentary legal amendment. Argentina, for instance, established beneficial ownership registration requirements first through a resolution by the commercial register of the city of Buenos Aires⁶⁰, and then by a resolution issued by the federal tax administration.⁶¹

In addition, many parliaments have become used to approving legal amendments in relation to tax transparency. When the US enacted the Foreign Account Tax Compliance Act (FATCA), more than a hundred countries had to amend their laws or sign treaties to allow their financial institutions to collect and send account holder information to local or foreign authorities. The OECD BEPS process and the Global Forum's monitoring have also resulted in countries needing to amend their regulations in terms of harmful tax regimes, banking secrecy, availability of bearer shares or accounting standards.

The difference in matters of legal traditions, especially in relation to common law countries where trusts traditionally did not need to register even their basic information, may create a political cost. However, as mentioned in the paragraph above, in the last years countries may have had to amend their laws and regulations to close loopholes. In the case of trusts, countries whose laws did not recognise or allowed domestic law trusts to be created still had to incorporate transparency provisions for trusts (in case foreign trusts operated in their territories). Likewise, trust-traditional countries have had to increase the transparency regulation on trusts more than what they were used to, resulting in a new transparency tradition. For instance, during the discussions that led to fourth EU AML Directive, the UK

⁶⁰ http://www.jus.gob.ar/media/2951604/resolucion_general_07-15_actualizada.pdf

⁶¹ http://biblioteca.afip.gob.ar/dcp/REAG01004697_2020_04_14



opposed the registration of trusts in a central register.⁶² However, by 2017 the UK had already established a register for trusts' beneficial owners (the Trust Registration Service) with the tax administration. The trust register will also expand its scope based on the EU AMLD 5,⁶³ even though the UK is no longer a member of the EU. Another case is New Zealand, where the government held an Inquiry and decided to increase transparency provisions for trusts, after NZ trusts were mentioned in the Panama Papers.⁶⁴

As for the privacy concerns, these will matter especially in the case of public access to information. Given that a beneficial ownership register does not necessarily involve public access, this will be discussed below in the section on access. As for the privacy concerns of a confidential beneficial ownership register available only to local authorities, while there may be a risk of leaks or breaches if the central register does not have high data security standards, the same could be said for any other data held by any agency. In fact, many government and private agencies hold much more sensitive data than who the beneficial owners of legal vehicles are: tax authorities may hold a trove of income and asset ownership information, financial institutions may hold financial information, civil registries may hold personal information (family relationships, identify of children and spouse), hospitals and health providers would hold health records, etc.

Based on the explanations above, beneficial ownership registers have the potential (not available to the other approaches) of facilitating access to information, the capacity to provide unknown information (all the other legal vehicles related to a person), and the possibility to implement sophisticated and automated verification techniques. These could include interconnecting databases to cross-check for consistency, applying advanced analytics, comparing discrepancies between information held at the register versus information held by financial institutions and service providers, etc. However, this potential effectiveness is not guaranteed. To echo the words of the Global Forum Toolkit, "the registry in itself does not ensure accurate and up-to-date beneficial ownership information."⁶⁵ The accuracy, update and overall effectiveness will depend on the registry being properly equipped and staffed, its use of tools such as digitalised records, the possibility to sanction cases of wrong or missing information, mechanisms to verify information, and other features.

Instead, if the beneficial ownership register is paper-based and lacks the technological, budget and staff resources, none of the positive features mentioned above would apply. A beneficial ownership register that is merely a passive repository of unchecked information will involve a low economic cost, but also low effectiveness.

4.1.4. The multi-pronged approach

The above analysis refers to the advantages and disadvantages of each approach in isolation. However, as the FATF best practices paper has described, a combination of different approaches employing several sources may result in more effectiveness, especially in terms of accuracy. For example, a central and digitalised register would ensure availability and facilitate access to beneficial ownership information, and it would enable automated cross-checks. The involvement of financial institutions and DNFBPs could increase accuracy of the registered

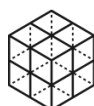
⁶² <https://www.theguardian.com/politics/2016/apr/07/david-cameron-offshore-trusts-eu-tax-crackdown-2013>

⁶³

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/860269/Technical_consultation_document_Fifth_Money_Laundering_Directive_and_Trust_Registration_Service.pdf

⁶⁴ <https://treasury.govt.nz/sites/default/files/2016-06/report-giftdr-27jun2016.pdf>

⁶⁵ <http://www.oecd.org/tax/transparency/documents/beneficial-ownership-toolkit.pdf>

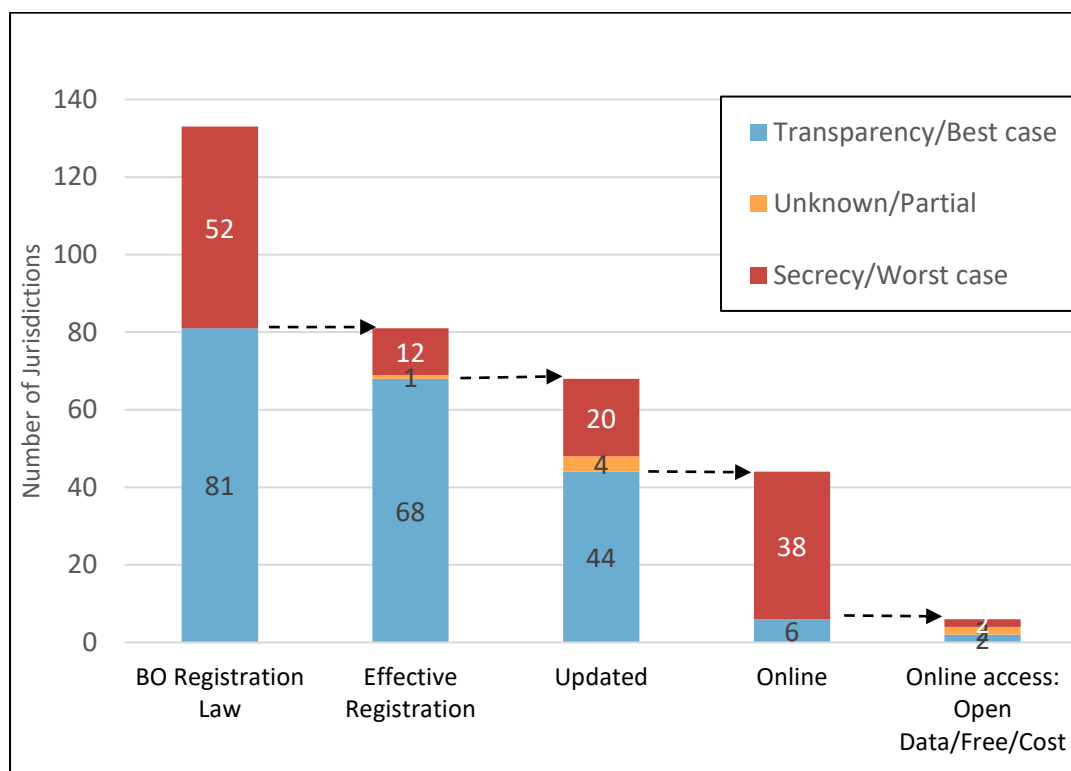


information if banks have to report discrepancies and if public notaries and corporate service providers must certify (and be held liable) for the accuracy of registered information.

4.2. Gaps in beneficial ownership legal framework

As described above, more than 80 countries have approved laws to require beneficial ownership registration with a government authority. Even if these countries implement well-resourced and digitalised beneficial ownership registries, there may be shortcomings, exemptions and loopholes in the legal framework that would prevent the system’s effectiveness. For example, on the types of companies that need to register beneficial ownership information or the need to update it.

Figure 11: Effective beneficial ownership registration and online access for companies

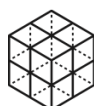


Note: This chart does not consider the accuracy of information.

The chart of figure 11, based on the findings of the Financial Secrecy Index published in 2020⁶⁶, shows that out of the 81 jurisdictions with a law requiring beneficial ownership to be filed with a government authority, only 68 ensure effective registration for companies where all relevant companies and their beneficial owners have to be registered. Of these, only 44 require information to be updated. While there may be more cases where the law requires beneficial ownership to be updated, legal frameworks where bearer shares are freely circulating or are immobilised/registered by a non-government authority (e.g. a bank or lawyer) are considered not to have updated information. Of the 44 jurisdictions with updated beneficial ownership information, only 6 offer information available online.

This section describes many of the shortcomings that could prevent a country from ensuring availability of beneficial ownership information that is complete, updated and accurate. Some of

⁶⁶ <https://fsi.taxijustice.net/en/>



the gaps apply to all three approaches, notably the scope of legal vehicles that are subject to beneficial ownership transparency.

4.2.1. Types of legal vehicle within scope

Legal vehicles come in all shapes and sizes. For example, only within the term “partnership” one may find: general partnership (GP), limited partnership (LP), limited liability partnership (LLP), limited liability limited partnership (LLLLP)⁶⁷, exempted limited partnership (ELP)⁶⁸, partnership limited by shares (SCA) or special limited partnership (SCSp)⁶⁹, even though the SCA⁷⁰ and the SCSp may actually be companies.

In principle, whenever a country exempts a type of legal vehicle from beneficial ownership registration, such as cooperatives, charities or state-owned companies, this secrecy could be exploited for illicit purposes. The exclusion may be tacit. Some laws require only legal persons to register their beneficial owners. This would usually exclude trusts, and any other vehicle considered not to have legal personality, e.g. LPs in some common law countries.

Some countries exempt specific types of legal vehicles, for example sole proprietorships or local companies owned by natural persons, because their information would already be available somewhere else, usually at the commercial register. Denmark exempts, among others, cooperative housing associations, voluntary associations and independent public companies (SOV) from beneficial ownership registration.⁷¹ It would take an external assessment to determine whether these exemptions are justified or pose risks. For instance, the UK beneficial ownership register originally exempted limited partnerships, but after their involvement in alleged money laundering scandals, Scottish limited partnerships (SLPs) were required to file beneficial ownership information.⁷² Nevertheless, LPs from England and Wales or Northern Ireland are still not required to register their beneficial owners.

Finally, a common exemption refers to companies listed on a stock exchange because it is assumed that their beneficial ownership information is already held by the stock exchange or the securities regulator, although this may not always be the case. This will be explored further below.

While a scope that covered all existing legal vehicles would prevent loopholes, one could argue that it is an excessive measure because most legal vehicles are legitimate and the scope should focus on the riskier types. In response to that, the problem is that criminals would act accordingly. For example, when the UK required Scottish limited partnerships to register their beneficial owners, there was an increase in registration of LPs from England & Wales and Northern Ireland that were not covered.⁷³

4.2.2. Conditions that trigger beneficial ownership registration

In principle, if every country in the world required beneficial ownership registration for all local legal vehicles, no legal vehicle would fall outside the global scope. Until that transparency scenario happens, the conditions established by a country that trigger beneficial ownership

⁶⁷ <https://www.gao.gov/new.items/d06376.pdf>

⁶⁸ <https://www.ogier.com/publications/cayman-islands-exempted-limited-partnerships>

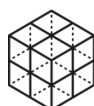
⁶⁹ <https://guichet.public.lu/en/entreprises/creation-developpement/forme-juridique/entreprise-individuelle-societe-personnes/scsp.html>

⁷⁰ <https://guichet.public.lu/en/entreprises/creation-developpement/forme-juridique/societe-capitaux/seca.html>

⁷¹ <https://erhvervsstyrelsen.dk/hvem-skal-registrere-reelle-ejere>

⁷² <https://www.gov.uk/government/news/new-measures-to-tackle-international-money-laundering>

⁷³ <https://www.taxjustice.net/2018/07/31/the-abuse-of-limited-partnerships-in-the-uk-predicting-the-future-with-the-financial-secrecy-index/>



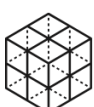
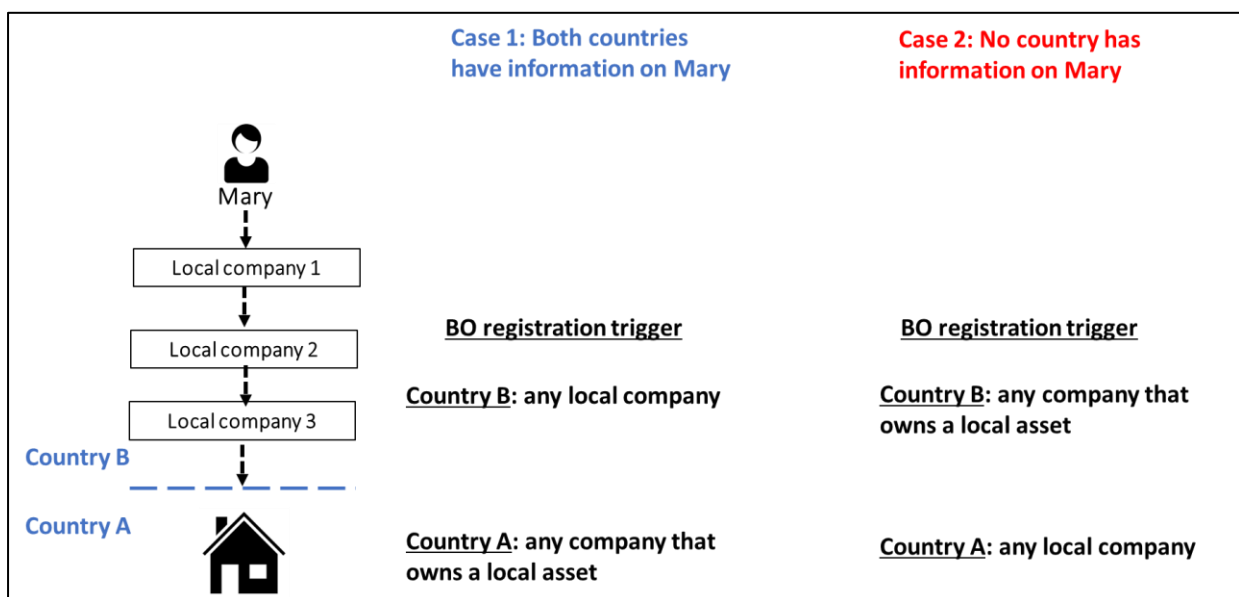
registration will have direct consequences on how the country protects both itself and foreign countries from corporate secrecy.

For instance, the 5th EU AML Directive (AMLD 5) establishes beneficial ownership registration for legal persons incorporated in the EU. Although it may sound counterintuitive, this usual approach of requiring beneficial ownership information only for local legal vehicles favours every country where the legal vehicle is operating, but not necessarily the country of incorporation itself. That local legal vehicle may have no relation to its country of incorporation in practice, for example if it exclusively operates abroad (holding real estate, bank accounts, etc.). Instead, the self-serving way in which a country could protect itself would be to require beneficial ownership registration for any legal vehicle, local or foreign, that operates in its territory (holding assets, engaging in commercial transactions, etc.). This registration obligation could also be extended to any local or foreign legal vehicle that interacted economically with resident taxpayers. For instance, a legal vehicle that sells goods or services, or that pays a dividend or makes trust distribution to a resident taxpayer.

The figure shows that if the country where the company was incorporated registers beneficial ownership information for local companies, and the country where the asset is located registers beneficial ownership information for any company (local or foreign) that owns local assets, then both countries will have information on the beneficial owner. Instead, if the country where the company was incorporated implements a self-serving policy and only registers beneficial ownership for any company owning a local asset (but not for local companies that operate abroad, like in the figure’s example), while the country where the asset is located does not protect itself and registers beneficial ownership information only for local companies, then neither country will have information on the beneficial owner.

Nevertheless, most countries adopt only the condition of incorporation for legal persons, exempting foreign legal persons that may also be operating in their territories. Consequently, if local authorities need information on these exempted foreign legal persons, they will depend on a foreign authority or a financial institution to obtain this information, although neither may end up having it.

Figure 12: Consequences of different conditions that trigger beneficial ownership registration



In the case of trusts and similar legal arrangements, based probably on common law traditions and the FATF Recommendation 25, countries rely on the trustee to hold the information. By the same token, some beneficial ownership registration laws adopt the same condition, and require registration only when the trustee is resident in the country (regardless of the law governing the trust). Civil law countries that allow domestic law trusts to be created, in contrast, may treat trusts in a similar way to legal persons, requiring the same type of registration. In Costa Rica domestic law trusts must also register with the same beneficial ownership register for legal persons.⁷⁴

Interestingly, the EU AMLD 5 started innovating and “protecting” EU countries in the case of trusts, because it requires trusts to be registered if they acquire real estate or establish professional relationships in the EU. While this does not cover all the possible ways in which a trust could operate in or affect an EU country, it is a good start. At the same time, however, the EU is adopting a self-serving position in relation to trusts because it does not require all local trusts to be registered. Therefore, there may be no information at all about an EU trust (governed by the laws of an EU country) that operates abroad, if that trust is managed outside the EU and has real estate or bank accounts also in non-EU countries.

4.2.3. Beneficial ownership definitions

The definition of a beneficial owner is crucial because it will determine who (and how many) will need to be registered. The broader the definition, the more information authorities will already have on all individuals that could be relevant for an investigation.

The FATF Recommendations Glossary contains the general definition: “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.”⁷⁵

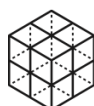
In order to allow the beneficial ownership definition to be applied in practice, most countries’ laws adopt the rules established by FATF Recommendation 10 (and its interpretative note), which are meant for the due diligence to be performed by FIs and DNFBPs. Companies and similar legal persons are subject to a cascading test: first, identify the individuals with a controlling ownership (which could be based on a threshold, e.g. 25%). Second, if no one passes the ownership threshold or if there are doubts, identify the individual with control through other means. Third, if no one passes the previous tests, identify the senior manager.

Accordingly, many beneficial ownership definitions for legal persons adopt the “greater than 25%” threshold for ownership or voting rights. An individual may also be considered a beneficial owner if they have the right to appoint or remove the majority of the board of directors.

The first problem with this approach is that such a high threshold is very easy to avoid. It takes only four people with equal shareholdings. Some countries establish lower thresholds. Uruguay and Costa Rica apply a threshold of 15%, Peru of 10% and Colombia of 5%. Lower thresholds make it harder to avoid registration, but not necessarily hard, let alone impossible. For example, Kroll’s summary report on the Moldova Laundromat described how suspects were able to deliberately remain below a threshold to avoid disclosing information and needing to obtain an

⁷⁴ Art 6, Law 9416.

⁷⁵ Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation. The FATF Recommendations (2012 - Updated 2019)*.



approval from authorities. The individuals managed to take over one of the banks involved in the scheme (Unibank) by having all the bank shares sold and transferred to 21 shareholders, “each with a stake between 4.5% and 4.99%. A shareholder who held a stake of at least 5% was classified as a significant shareholder, with their acquisition subject to formal approval by the NBM [National Bank of Moldova].”⁷⁶

One way to partially address the issue of thresholds is to aggregate all shareholdings held by family members, as required by some countries. Instead, some countries (e.g., Argentina, Botswana, Ecuador and Saudi Arabia) do not apply any thresholds, requiring any individual that holds at least one share to be identified as a beneficial owner.⁷⁷ This approach seems more aligned with the original FATF glossary definition which does not refer to “controlling ownership” (which could involve a threshold) but rather to “ownership or control”.⁷⁸

Countries that apply only the ownership condition but not the control condition⁷⁹ and those that apply the control condition will be creating secrecy on some types of beneficial owners.

There are further questions about whether ownership should be subject to a controlling ownership threshold. For example, countries that apply a threshold, would require disclosing any individual passing that threshold. If a company is owned 30% by Paul and 70% by Mary, it is obvious that Mary has control over the company because she would have the majority of the votes (more than 50%). Nevertheless, both Mary and Paul would have to be registered for passing the threshold. Another case that shows that “control” is a “sufficient” condition, but not a “necessary” one becomes clearer in the case of trusts. FATF Recommendation 10 (and its Interpretative Note), adopted by some countries, including the EU, requires the identification of all parties to the trust: settlor(s), trustee(s), protector(s), beneficiaries or classes of beneficiaries, and any other person with effective control over the trust, including through a chain of control/ownership. Depending on the trust, the settlor, the beneficiaries, and even the trustee, may have no control over the trust. Yet, all of them must be registered as beneficial owners.

In other words, an individual with effective control over a legal vehicle would always have to be registered according to FATF definitions. But an individual without effective control does not necessarily become non-registrable. Examples of non-controlling individuals who are required to be registered by FATF definitions include a settlor, a beneficiary or a shareholder with 30% of the shares or voting rights.

Another argument why excluding beneficial owners who have ownership below a threshold creates secrecy risks relates to the use of beneficial ownership transparency to detect/prevent illicit activities, to prosecute those responsible and to ensure asset recovery. It is also especially relevant for listed companies and investment funds.

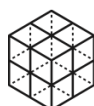
In simple terms, “control” may be relevant for prosecution or to prevent some abuses. If an entity is found to be engaging in an illicit activity, it will be necessary to know who had control over it, because they will likely bear responsibility. In the case of a company listed on the stock exchange, a majority shareholder with control over the entity could affect minority

⁷⁶ Kroll, *Project Tenor II. Summary Report Prepared for the National Bank of Moldova*, 2017, 37 <https://bnm.md/files/Kroll_%20Summary%20Report.pdf> [accessed 24 June 2020].

⁷⁷ Harari and others, *State of Play of Beneficial Ownership - Update 2020*, 22.

⁷⁸ Knobel, Andres, ‘Not Just about Control: One Share in a Company Should Be Enough to Be a Beneficial Owner’, 2019 <<https://www.taxjustice.net/2019/10/02/not-just-about-control-one-share-in-company-should-be-enough-beneficial-owner/>> [accessed 27 January 2020].

⁷⁹ A similar case is when the identification process stops after identifying an individual with controlling ownership, without checking if another individual has control through means different from ownership.



shareholders, and that is why securities laws require them to disclose this information to the public. Interestingly, given the atomized ownership structure of listed companies (with thousands of shareholders), thresholds for reporting are much lower, usually at 5%, because it may take much lower levels of share holding than 25% to control the listed company.

However, the focus on “control” omits the other uses of beneficial ownership information that relate to “ownership”: detection, prevention and asset recovery. For instance, as of June 2020, a mere 0.01% of Apple’s shares was worth \$150 million. Knowing who owns that much money in Apple shares could be relevant to determine either if it is a case of unexplained wealth, to impose the applicable wealth or inheritance tax, or to allow for indemnification or asset recovery if the owner was responsible for a wrongdoing. The same applies to investment funds which may have billions or trillions of dollars in assets under management. While some beneficial ownership registration laws exclude listed companies and investment funds because they may already be subject to reporting under securities laws, the latter has a focus, thresholds and goals (protection of investors, especially minority investors) that do not necessarily address the risks of money laundering and tax evasion.

Even if both listed companies and investment funds are covered by beneficial ownership registration laws (as is sometimes the case, e.g. Ecuador⁸⁰ and Argentina⁸¹), the issue of thresholds becomes crucial. Otherwise, given that no other than the founder of the listed company may have shareholdings greater than 25% of the capital, the only “beneficial ownership” information that will be registered is the CEO or the fund manager (as senior managers), which says nothing about the (natural-person) end-investors that may have interests worth millions in either entity. This subject has been explored further in other research.⁸²

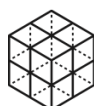
In addition to the issue of thresholds, other shortcomings in beneficial ownership registration laws include:

- **Same definition for all:** while the FATF Interpretative Note to Recommendation 24 requires countries to take into account the different forms and structures of legal persons, some countries apply the same beneficial ownership definition, e.g. 25% ownership threshold, to all legal vehicles. This is problematic not only because a legal vehicle such as a trust may have no “owners”, but also because in some cases no threshold should be applied at all. According to the FATF Recommendation 10, all of a trust’s parties should be registered regardless of any thresholds. Applying the same beneficial ownership definition to trusts (which are considered “legal arrangements”), but not to all “legal persons” is also problematic. Private foundations, for instance, are considered legal persons but have a control structure similar to trusts. The more diverse and complex the legal vehicles, the harder it may be to correctly cover all relevant individuals with a single definition.
- **Incomplete definition:** In the case of companies and similar legal vehicles, the definition may cover only “ownership” but not “control through other means” (for

⁸⁰ Art. 6, Resolution No. NAC-DGERCGC16-00000536 from the tax administration.

⁸¹ Listed companies are not exempted in Resolution 4697/2020 from the tax administration.

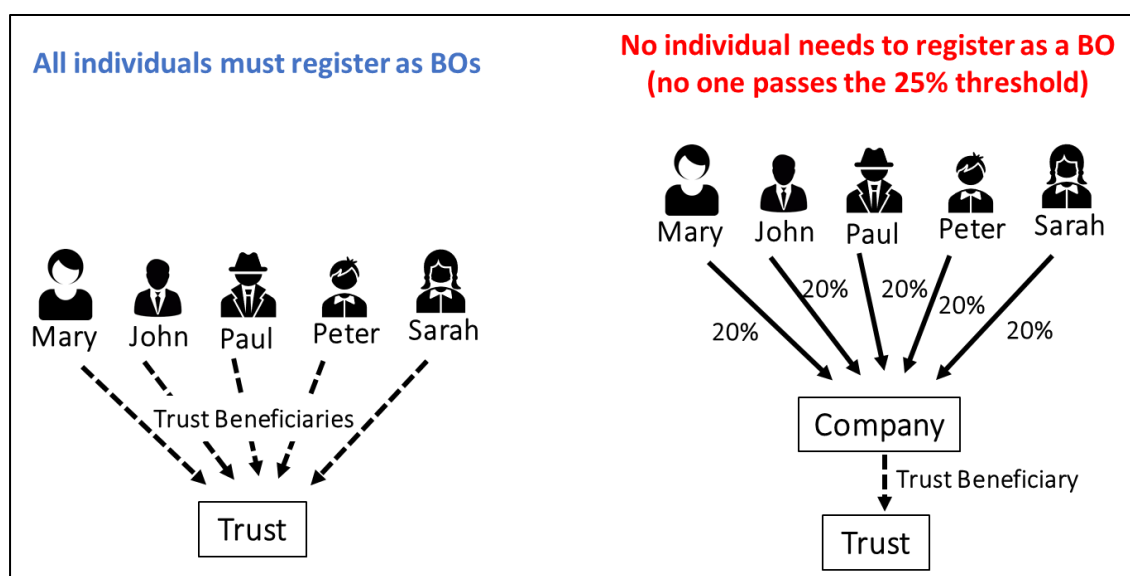
⁸² Knobel, Andres, *Beneficial Ownership in the Investment Industry. A Strategy to Roll Back Anonymous Capital*, 2019 <<https://www.taxjustice.net/wp-content/uploads/2019/10/The-transparency-risks-of-investment-entities-working-paper-Tax-Justice-Network-Oct-2019.pdf>> [accessed 22 May 2020].



example, Ecuador⁸³). In the case of trusts and private foundations, it may cover only the settlor, trustee and beneficiaries, but not the protector (for example, Costa Rica⁸⁴). Not recognizing the existence of a certain type of legal vehicle under the domestic law does not mean that legal vehicles of that type cannot create secrecy risks. For example, a foreign trust could be integrating the ownership chain of a local entity even in countries where it is not possible under domestic law to create a trust.

Combining types of legal vehicles may also result in abuses. As explained above, based on the FATF Recommendations, in the case of a trust, all parties, including all beneficiaries must be identified as beneficial owners, regardless of their interests in the trust income or capital. This means that if a trust has five natural-person beneficiaries, they should all be identified as beneficial owners. However, if the trust beneficiary is a company owned by five individuals, it may be the case that no one gets identified. The trust would first identify the company, but a company cannot be a beneficial owner because it is not a natural person. Therefore, the beneficial ownership rules for companies would apply. If no individual passes the threshold over the company, then no one will be identified as a beneficial owner of the company. Thus, no individual beneficiary will be identified as a beneficial owner of the trust as shown in figure 13. On the one hand, this complex structure could trigger “enhanced” customer due diligence measures by an FI/DFNBP based on the risk factor.⁸⁵ On the other hand, if beneficial ownership laws do not have thresholds, this abuse would not be possible.⁸⁶

Figure 13: Interposition of a legal vehicle to circumvent registration of the parties to a trust



4.2.4. Identification and relevant details of the beneficial owner

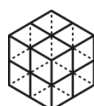
For those individuals that are considered beneficial owners, it is necessary to obtain sufficient information to determine who that individual is, as well as other details that may be relevant for

⁸³ Art. 4, Resolution No. NAC-DGERCGC16-00000536 from the tax administration.

⁸⁴ Art 6, Law 9416.

⁸⁵ The FATF Interpretative Note to Recommendation 10 includes among the customer risk factors, cases when “the ownership structure of the company appears unusual or excessively complex given the nature of the company’s business”.

⁸⁶ Knobel, Andres, ‘More Beneficial Ownership Loopholes to Plug: Circular Ownership, Control with Little Ownership and Companies as Parties to the Trust’ <<https://www.taxjustice.net/2019/09/06/more-beneficial-ownership-loopholes-to-plug-circular-ownership-control-with-little-ownership-and-companies-as-parties-to-the-trust/>, <https://www.taxjustice.net/2019/09/06/more-beneficial-ownership-loopholes-to-plug-circular-ownership-control-with-little-ownership-and-companies-as-parties-to-the-trust/>> [accessed 23 May 2020].



an investigation: since when and until when they were beneficial owners and how they became beneficial owners in the first place. Lastly, especially for countries without thresholds that may end up collecting information on many individuals as beneficial owners, it is important to disclose why each person is a beneficial owner (e.g. because they hold 80% of the votes, because they are the trustee, or because they have a power of attorney to manage the entity).

4.2.4.1. Identification

Identification details are not only necessary to determine who the relevant person is (is the owner the John Smith born in 1965 or the John Smith born in 1966?). It is also relevant to determine whether two different companies owned by a “John Smith” refer to the same person or to two different ones who happen to share the same name.

Most countries require sufficient identity details (eg full name, address, date of birth, country of residence, tax identification number or passport number) that would help address both goals. However, there are many challenges with these details. First, the country may have no official identification. Second, there may be issues with how a foreign name is transliterated (e.g. there are at least 14 ways to write the name Muhammed⁸⁷) and the address may be spelled differently (street name or street number first). Standardised ways to transliterate and write addresses would help address those risks.

Identification based on “numbers” (passport number, tax identification number, etc.) are easier to use. Nevertheless, the passport may be fake (e.g. an investigation into former Chilean head of state Augusto Pinochet revealed that he used three different passports, each with a different name, photo and signature⁸⁸), or the passports may be real but stolen or rented in exchange for money, as described by the FATF.⁸⁹ Tax residency may also be simulated based on countries offering “golden visas”^{90,91} (citizenship or residency in exchange for money). Financial crime consultant Kenneth Rijock claims in a blog post that offshore jurisdictions also offer fake birth certificates to substantiate their passports for sale.⁹² The FATF Guidance on Digital Identity coincides: “Searches on the internet for ‘fake IDs’ reveal hundreds of websites promising counterfeit drivers’ license, passports, birth certificates, immigration papers and other official documents that can be indistinguishable from the legitimate versions.”⁹³ In fact, the FATF Guidance describes that synthetic identities which combine real (usually stolen) and fake information pose the greatest risk in identity proofing in the US.⁹⁴

The Guidance acknowledges that digital identification based on reliable, independent digital ID systems with appropriate risk mitigation may have a lower risk than traditional face-to-face identification based on official identification. Less sophisticated digital identities, eg the use of passwords, may be subject to more risks (eg credential stuffing, phishing or man-in-the-middle) than digital identities based on biometrics. Examples of the latter, already in use by the UN to

⁸⁷ <https://www.bbc.com/news/uk-england-45638806#:~:text=If%20we%20combine%2014%20different,%2C%20Mouhamed%2C%20Mohammad%20and%20Mouhamad>.

⁸⁸ Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs - United States Senate, *Supplemental Staff Report on U.S. Accounts Used by Augusto Pinochet*, 2005, 70 <[https://www.hsgac.senate.gov/imo/media/doc/SUPP%20REPORT-Money%20Laud%20&%20Foreign%20Corrup%20\(March%202005\).pdf](https://www.hsgac.senate.gov/imo/media/doc/SUPP%20REPORT-Money%20Laud%20&%20Foreign%20Corrup%20(March%202005).pdf)> [accessed 24 June 2020].

⁸⁹ Financial Action Task Force (FATF), *Concealment of Beneficial Ownership*, 152.

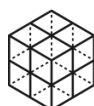
⁹⁰ Andres Knobel and Frederik Heitmüller, *Citizenship and Residency by Investment Schemes: Potential to Avoid the Common Reporting Standard for Automatic Exchange of Information*, 2018 <http://taxjustice.wpengine.com/wp-content/uploads/2018/03/20180305_Citizenship-and-Residency-by-Investment-FINAL.pdf> [accessed 21 August 2018].

⁹¹ Transparency International EU and Global Witness, *European Getaway - Inside the Murky World of Golden Visas*, 2018 <https://images.transparencycdn.org/images/2018_report_GoldenVisas_English.pdf> [accessed 24 June 2020].

⁹² <https://rijock.blogspot.com/2018/06/corrupt-dominica-officials-try-to.html>

⁹³ FATF, *Guidance on Digital Identity*, 2020, 40 <<http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/Guidance-on-Digital-Identity.pdf>> [accessed 24 June 2020].

⁹⁴ Ibid.



give aid to refugees or by financial institutions for anti-fraud purposes, include biometric attributes that could be biophysical (eg fingerprints, iris patterns, facial recognition), biomechanical (eg how the individual holds the mobile phone, swipes the screen or uses certain keyboard or gestural shortcuts) or behavioural (eg an individual's email or text message patterns, mobile phone usage, geolocation patterns, and file access log such as channels, geolocation, timing; frequency and type of usage). However, biometric identifiers also suffer from weaknesses (fingerprints may not be recognised, facial recognition may become unreliable with makeup, and stolen biometric authenticators are difficult to revoke or replace) in addition to being used for human rights abuses.

4.2.4.2. Contextual details

Many countries require also the beneficial owners to describe how they own or control the entity. They must specify their shareholdings or voting rights, or disclose their condition as a settlor, trustee, or even as a senior manager (in case no "real" beneficial owner was identified).

In terms of relevant dates, most countries would be able to determine the exact dates in which a person was a beneficial owner by looking at all beneficial ownership filings or annual returns. It would make the job easier for authorities if the full "history" of beneficial owners was available as another piece of information, similar to Ecuador's Kardex online registry that shows every transfer of shares for each company.⁹⁵

What beneficial ownership laws do not usually require is information on the value of the acquired shares or the reason why a person became a beneficial owner. They do not require anyone to ask "why has John been appointed a beneficiary of the trust even though he has no familiar relationship to the settlor?" This information could be relevant to detect abuses, for instance if de facto nominees are declared as beneficial owners. A basic analysis could reveal that these de facto nominees are people with low declared income who could never have acquired those shares in the first place.

In this regard, Nougayrède described the saga by UK courts to establish the beneficial ownership of companies related to the case of former banker Mukhtar Ablyazov who was accused of embezzling \$5 billion from the Kazakh BTA Bank. For instance, "two and half years of effort were required in order to compile sufficient circumstantial evidence [about ownership] involving only eight companies."⁹⁶ The beneficial owners of one investigated company changed five times within two years. Each change coincided with key phases in the judicial proceedings, and the appointments were even backdated. In the end, the judge understood that Mr. Ablyazov had been the true beneficial owner of the company all along. Another company owned by Mr. Ablyazov under investigation also had many backdated changes of beneficial owners take place, but the court disregarded these alleged beneficial owners on the grounds that they did not have any wealth of their own.⁹⁷

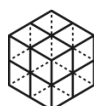
4.2.4.3. Additional details

Countries may also require beneficial owners disclosing information on their spouse and other family members, which would help detect cases of nominee ownership or to aggregate shareholdings for threshold purposes. In addition, if the beneficial owner must disclose whether

⁹⁵ A visual example on the information available on Ecuador's online register is available in Annex II here: <https://www.taxjustice.net/wp-content/uploads/2020/06/State-of-play-of-beneficial-ownership-Update-2020-Tax-Justice-Network.pdf>

⁹⁶ Delphine Nougayrède, 'The Use of Offshore Companies in Emerging Market Economies: A Case Study', *Columbia Journal of European Law*, 23/2 (2017) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2947110>.

⁹⁷ Ibid.



they are a politically exposed person (PEP) as it happens in Zambia, authorities would be able to determine whether such legal vehicle is subject to a higher risk.

4.2.4.4. *Gender data*

If beneficial ownership registers required collection of gender information, it would be possible to allow statistical analysis, e.g. proportion of female ownership or female directors. This could lead towards policy measures to address gender imbalances (e.g. if most board of directors included only men). In some cases, gender analysis could be done based on the prefix that has to be included, either “Mr” or “M(r)s”. For instance, the UK Companies House structured-machine-readable data provides a prefix for beneficial owners but not for directors. The gender analysis could also be used for patterns and red-flagging and to design policies to reduce the abuse of women. For example, an investigation determined that the presence of female shareholders was a red-flag because mafia-infiltrated companies had a larger percentage of female ownership compared to the rest of country’s companies (see below section 4.2.6). Gender data would also allow analysing cases of simulated beneficial ownership to detect if more women than men are more exploited to act as nominees. Annex I contains more analysis on potential gender-related abuses with legal vehicles.

4.2.5. **Complementary information: legal owners and the full ownership chain**

Beneficial ownership registration laws deal with the last ownership level held by a natural person. However, to confirm this last layer of ownership, it is necessary to know the legal owners of every other layer up to the beneficial owner.

Most countries require the first layer of legal owners, such as shareholders or partners, to be registered in a commercial register. Legal ownership registration laws, however, may suffer from the same loopholes in terms of scope: not all types of legal vehicles may need to register their legal owners. In addition, while not very common, some countries establish thresholds also for legal ownership registration (e.g. 5% in Denmark⁹⁸). Lastly, not all types of legal owners may be covered. In some countries, limited partners of partnerships limited by shares need not register or update their information (e.g. Belgium⁹⁹).

Most countries do not require the full ownership chain to be registered (exceptions to this include Ecuador¹⁰⁰ and Uruguay¹⁰¹). As explained above, the ownership chain is relevant to confirm the beneficial owner. If authorities have information that Mary owns company B, which owns company A, it is possible to confirm that Mary is the beneficial owner of company A. In addition, disclosing the full ownership chain may reveal abuses including circular ownership (Company B owns company A, which in turn owns company B) where either there are no natural-person owners at all, or where an individual holding merely 2% would have actual control given that the remaining 98% is owned by a circular structure. The ownership chain would also reveal pyramid schemes. Paul may claim not to be a beneficial owner of company A because he indirectly holds merely 3%. However, the ownership chain could disclose that Paul does control company A because he owns 51% of the company E, which owns 51% of company D, which owns 51% of company C and so on up to company A.¹⁰²

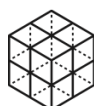
⁹⁸ <https://erhvervsstyrelsen.dk/legale-ejere>

⁹⁹ https://fsi.taxjustice.net/database/dbr_Comments.php?juris=BE&InfoID=470&Per=20

¹⁰⁰ Art. 7, Resolution No. NAC-DGERCGC16-00000536 from the tax administration.

¹⁰¹ Art. 5.1.b) of Decree 166/2017.

¹⁰² Knobel, Andres, ‘More Beneficial Ownership Loopholes to Plug’.



On the other hand, confirming the identity of the beneficial owner who “controls” the legal vehicle through means different from ownership would require identifying relevant documents, including powers of attorney, letters of wishes related to a trust, sophisticated contracts (e.g. used by foreigners to control and profit from Chinese companies that are meant to have Chinese ownership¹⁰³) or financial instruments (such as convertible debt, derivatives or options that may give a person voting rights and even economic exposure to the value of a company’s stock without holding any share at all).¹⁰⁴

Lastly, local authorities’ capacity to determine and confirm the beneficial owner of a local legal vehicle will be affected by:

- **The length of the ownership chain:** the more layers involved, the harder it will be to determine each layer’s owner and to make sure that information remains updated.
- **The complexity of the ownership chain:** beneficial ownership definitions may not contemplate the control structure of “exotic” foreign legal vehicles (e.g. a discretionary trust, an Anstalt or a private foundation), thus being unable to identify all the relevant individuals.
- **The secrecy of some links integrating the ownership chain:** the ownership chain may include entities that issued bearer shares, that employ nominee shareholders or that are incorporated in countries that do not require legal ownership to be registered and updated or that do not exchange information.

The consequences of long ownership chains with foreign links is exemplified by a study that explored the legal ownership structure of UK companies. According to a private database, one UK company had 23 layers of ownership. When looking at Companies House’s data on that company it was possible to confirm, not only that they had disclosed other companies as beneficial owners (instead of natural persons), but that the reported legal ownership information was contradictory in itself: annual returns, when available, referred to a different legal owner than the company’s account. Once layers involved foreign entities it was not possible for researchers to identify who were the owners of those layers.¹⁰⁵

Lastly, just as it happens with the identification of beneficial owners, it is necessary to obtain sufficient identity details of each legal vehicle, such as name, country and date of incorporation, incorporation number, tax identification number, etc. Given the unlimited features of legal vehicles described above (possibility to merge, divide, decant, redomicile, etc.) and the possibility of having many legal vehicles with the same name, the use of Legal Entity Identifiers (LEIs) facilitates the identification of legal vehicles.¹⁰⁶

4.2.6. Verification

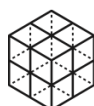
The FATF and the Global Forum require beneficial ownership information to be complete and available, as described above, but also accurate. Establishing a beneficial ownership register does not ensure that information will be verified, especially if legal vehicles may be created

¹⁰³ Brandon Whitehill, *Buyer Beware: Chinese Companies and the VIE Structure* (2017) <https://www.cii.org/files/publications/misc/12_07_17%20Chinese%20Companies%20and%20the%20VIE%20Structure.pdf> [accessed 24 June 2020].

¹⁰⁴ Knobel, Andres, ‘Beneficial ownership definitions: loopholes on “control” unrelated to ownership’ [forthcoming].

¹⁰⁵ Knobel, A., Seabarron, O., “Exploring UK companies’ legal ownership chains to detect red-flags and verify beneficial ownership information – Part 1”, Tax Justice Network, June 2020: <https://www.taxjustice.net/2020/07/06/exploring-uk-companies-legal-ownership-chains-to-detect-red-flags-and-verify-beneficial-ownership-information/>

¹⁰⁶ <https://www.gleif.org/en/about-lei/introducing-the-legal-entity-identifier-lei>



remotely through self-declarations. Global Witness' analysis of the UK beneficial ownership data revealed many violations and inconsistencies, from finding 500 different ways to write the nationality "British" (eg Brittish, Britisch, etc), persons with the same name and birth date as those appearing in sanctions lists, to disclosing entities rather than natural persons as beneficial owners.¹⁰⁷

In essence, verification of information may entail different levels:

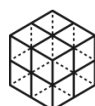
- **Authentication:** making sure the beneficial owner is who they say they are. Enhanced digital or biometrical identifiers for individuals could address the risks of official identification certificates which may not exist or may easily be faked.
- **Authorisation:** ensuring that the beneficial owner, director or shareholder does intend to be involved in the legal vehicle. To ensure this, some countries require the involvement of a notary to issue or certify a power of attorney used to create a legal vehicle on someone's behalf. Another option, implemented by Denmark, is to directly contact the beneficial owner (based on contact details held by the government) to confirm whether they are aware and intend to be involved in the legal vehicle that is being created.¹⁰⁸
- **Validation:** to prevent the filing of mistakes or deliberate wrong information, validation may involve basic checks (e.g. how to write the word "British") or making sure that the passport or tax identification number includes only number-characters and the right structure, as already applied by many online forms that do not allow free-text entries. More complex validation techniques involve cross-checks against other local databases to confirm that the name, address and identification number exists and is consistent with other records, or that the registered person is still alive. Pre-filled forms based on information that a country already holds, and real-time validations would prevent wrong information from being filed in the first place. More sophisticated validation mechanisms would include making sure that an address exists in the map, and that it refers to a building instead of a park or lake.
- **Patterns and red-flagging:** without knowing what a typical legal vehicle looks like, it is impossible to detect outliers. The exploration of ownership structure could provide statistics on the number of shareholders, how shareholdings are allocated (50-50%, 1-99%) and the number of layers. These patterns may depend on the size, the business sector or whether the entity is listed or privately owned.

Some red-flags may be more obvious. For example, a beneficial owner, director or address that is the same for thousands of entities may be an indication of a nominee. The same if a person appears in a sanction list. More complex analyses would depend on authorities already holding a database of entities involved in illegal activities. Then, it would be possible to compare legal ownership structures to see if they resemble those suspected of wrongdoing to be further investigated. For example, an investigation in one country determined that the presence of female shareholders could be a red-flag because mafia-infiltrated companies had a larger percentage of female ownership compared to the rest of country's companies.¹⁰⁹ On the other

¹⁰⁷ Global Witness, *The Companies We Keep. What the UK's Open Data Register Actually Tells Us about Company Ownership*, 2018 <<https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/anonymous-company-owners/companies-we-keep/#chapter-0/section-0>> [accessed 30 November 2018].

¹⁰⁸ FATF, *Best Practices on Beneficial Ownership for Legal Persons*, 57.

¹⁰⁹ Ernesto Savona and Michele Riccardi, *Mapping the Risk of Serious and Organised Crime Infiltration in European Businesses – Final Report of the MORE Project* (Milan, 2018) <http://www.transcrime.it/wp-content/uploads/2018/12/MORE_FinalReport.pdf> [accessed 18 January 2019].



hand, information on the economic profile of a beneficial owner (based for example on data held by the tax authorities) would allow checks on whether the profile of a person is suspicious, despite all the registered information being true and consistent. For instance, suspected cases of corruption in Argentina involved low-income people (living in low-income neighbourhoods, with low declared income or even receiving aid from the government) being exploited to appear as directors or shareholders of companies channelling millions of dollars in subsidies or being involved in acquiring the company in charge of printing the local currency.¹¹⁰

It is up to countries to define who is in charge of verification and how it should be done. One option is for authorities to spend resources to do it themselves, either directly at the beneficial ownership register or through another agency. Alternatively, countries may outsource verification onto financial institutions, trust and corporate service providers, etc. In that case, the same consequences relating to the company or existing information approach mentioned above would apply. Requiring local legal vehicles to engage with a local financial institution or corporate service provider may increase the cost of doing business in the country. Additionally, authorities will have to spend resources in supervising those financial institutions and service providers. Otherwise, if no one will be in charge, beneficial ownership cannot be expected to be accurate.

On the one hand, authorities themselves may be in charge of verification, for example by having the register's officials check the completeness of incorporation forms and asking for official identity certificates. If legal and beneficial ownership information is digitalised, registries may perform automated verifications including automated cross-checks against other databases or apply artificial intelligence to detect red-flags. The FATF described that Austria, Belgium, Denmark and the Netherlands are applying many of these sophisticated automated checks.¹¹¹

The interconnection of beneficial ownership registers and other databases could be used to cross-check foreign information as well, such as details on a non-resident beneficial owner about whom local authorities may have not enough details. The EU for instance requires the interconnection of beneficial ownership registries, and Estonia and Finland have already interconnected theirs.¹¹² Otherwise, countries could allow zero-knowledge proof queries¹¹³, where the registry from country A would "automatically query" a database from country B to confirm whether the information declared by a resident from country B matches the information on that individual held by country B's database (e.g. please confirm whether Otto, who claims to be a resident in your country, has the following passport number, address and date of birth). The automated response could either confirm that information is consistent or alert that it is not, without disclosing the real data. Knowing that information is inconsistent would be enough for country A's register to reject the registration of that individual.¹¹⁴

Countries that lack a digitalised register or the resources and infrastructure to implement automated checks could do it manually. Uruguay for instance required an existing agency, the

¹¹⁰ <http://www.lanacion.com.ar/1447857-jubilado-sin-plata-y-controla-ciccone> and 8 <https://www.lanacion.com.ar/2205250-canalizaron-reintegros-por-716-millones-pero-sus-accionistas-cobranla-auh>

¹¹¹ FATF, *Best Practices on Beneficial Ownership for Legal Persons*.

¹¹² New Art. 30.4 of the EU AML Directive incorporated by Art. 1.(15) of AMLD 5.

¹¹³ Method by which one party (the prover) can prove to another party (the verifier) that they know a value x , without conveying any information apart from the fact that they know the value x .

¹¹⁴ Andres Knobel, 'Beneficial Ownership Verification: Ensuring the Truthfulness and Accuracy of Registered Ownership Information', *SSRN Electronic Journal*, 2019 <<https://www.ssrn.com/abstract=3320600>> [accessed 3 September 2019].



National Audit Office (AIN) to be responsible for verifying beneficial ownership information, allowing them to audit and request additional details from suspicious entities.¹¹⁵

As explained above, the multi-pronged approach recommended by the FATF should include as many sources as possible to verify information. Financial institutions and corporate service providers may be in the best position to do this. The EU AMLD 5, for instance, requires financial institutions to report to the register any discrepancies they come upon, for example if the beneficial owner available in the register is different from the beneficial owner declared by the legal vehicle when opening a bank account. In addition, as proposed by a challenge organised by the UK financial intelligence unit, financial institutions could also undertake anonymous checks among themselves to detect inconsistencies (a company declaring to bank A that John is the beneficial owner, while declaring to bank B that Mary is the beneficial owner).¹¹⁶ The use of macro-data on national and global bank transfers, as it may be available by the central bank or SWIFT could also reveal sophisticated money laundering schemes (and wrong beneficial ownership data) as described in Moldova's Laundromat case, especially if SWIFT incorporated beneficial ownership data to the information that financial institutions must provide in the messaging system.¹¹⁷

Trust and corporate service providers can also be required to intervene, given that they also hold direct contact with legal vehicles. For example, Uruguay and Spain rely on public notaries to verify beneficial ownership data before filing it to the beneficial ownership register.¹¹⁸ Slovakia's approach for the procurement sector involves appointing a resident lawyer or professional to certify the declared beneficial ownership data, and to be held liable if it turns out to be wrong.¹¹⁹

The access to beneficial ownership information will also have an effect on verification. Public access may create a deterrent effect in addition to allowing more actors to verify information. For example, if access is public and in open data format, not only authorities and regulated entities subject to anti-money laundering provisions could verify it, but also civil society organisations, investigative journalists and other businessmen. The FATF paper on best practices on beneficial ownership for legal persons referred to the UK's public access which allowed Global Witness' analysis.¹²⁰ In addition, the public access enabled more than 58,352 mistakes or inconsistencies to be reported by users within 8 months.¹²¹

An alternative or complementary measure would be for countries to impose normative limits on the ownership chain, e.g. the number of layers that may integrate the ownership chain of a local vehicle. The StAR quoted a proposal in this regard as a way to sense inappropriate complexity: "One compliance officer suggested an informal 'three-layer complexity test' as a quick-and-dirty rule of thumb. Whenever more than three layers of legal entities or arrangements separate the end-user natural persons (substantive beneficial owners) from the immediate ownership or control of a bank account, this test should trigger a particularly steep burden of proof on the

¹¹⁵ GAFILAT, *Mutual Evaluation Report of the Eastern Republic of Uruguay*, 2020 <<http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/GAFILAT-Mutual-Evaluation-Report-Uruguay-2020.pdf>> [accessed 24 June 2020].

¹¹⁶ <https://www.fca.org.uk/events/techsprints/2019-global-aml-and-financial-crime-techsprint>

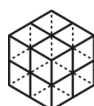
¹¹⁷ Knobel, Andres, *Data on Bank Transfers: Complementing Automatic Exchange of Information and Detecting Illicit Financial Flows in Real Time* (2019) <<https://www.taxjustice.net/wp-content/uploads/2019/07/Swift-proposal-2019-Tax-Justice-Network.pdf>>.

¹¹⁸ <https://www.taxjustice.net/2020/06/04/how-authorities-banks-and-researchers-from-around-the-world-are-verifying-beneficial-ownership-information/>

¹¹⁹ <https://ceelegalmatters.com/slovakia/6605-world-wide-rarity-anti-letterbox-companies-act-in-slovakia>

¹²⁰ FATF, 'Best Practices on Beneficial Ownership for Legal Persons', 2019, p. 51.

¹²¹ <https://www.gov.uk/government/news/6-things-you-need-to-know-about-our-performance>



part of the potential client to show the legitimacy and necessity of such a complex organization before the bank will consider beginning a relationship.”¹²²

Limits may also be imposed on the quality of the ownership chain. The StAR report gave an example: “one Indian bank refuses to do business with a Liechtenstein Anstalt, regardless of the circumstances, because they do not understand ‘what it is, why someone would use it, or what business it has in India.’”¹²³ Similarly, in Argentina, the commercial register of the City of Buenos Aires prevents or establishes enhanced requirements for offshore entities (or those incorporated in non-cooperative countries) attempting to own local companies, unless they register as any other local company.¹²⁴ These regulatory limits may save economic resources (compared to digitalising the register and automating verification), but they may add the cost of doing business.

In conclusion, there is no size fit all approach. The more verification mechanisms available, the more accurate information will be. However, the costs “saved” at the time of verification may have to be paid to supervise others or accuracy will not be ensured.

4.2.7. Sanctions

Enforcement of beneficial ownership provisions ultimately depends on establishing effective sanctions in case of registering wrong information or for failing to update or to file any information at all.

The most common sanctions involve economic penalties. If these are not high enough, actors may consider it cheaper to pay the penalty than to file correct information. Economic penalties imposed automatically - in Austria an entity is fined if it files information after the due date - may free resources from authorities and simplify the process. Other countries also contemplate prison sentences for filing wrongful information.

In addition to monetary and criminal sanctions, another sanction to encourage compliance involves losing the rights that were intended to be acquired by setting up a legal vehicle. In some countries, for example, limited liability is not obtained for unregistered entities. The UK Overseas Entities Bill prevents companies from purchasing or selling real estate unless they have registered their beneficial ownership information. There may be a limit to obtain a government contract. Some countries prevent legal vehicles from operating locally if they fail to register correct beneficial ownership information. For example, their tax identification may be suspended. However, as the Global Forum tends to warn (e.g. to Andorra¹²⁵), this does not prevent a legal vehicle from operating abroad. Denmark, in contrast, may remove a legal vehicle from its register for failing to provide correct information.¹²⁶ This will prevent the legal vehicle from operating both locally and abroad.

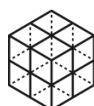
¹²² Van der Does de Willebois and others, *The Puppet Masters. How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It*, 56.

¹²³ *Ibid.*, page 100.

¹²⁴ Arts. 217 and 218, Annex A of IGJ Resolution 2/2020 and Arts. 229-231, 237 and 248.3 of IGJ Resolution 7/2005.

¹²⁵ The 2019 Global Forum Peer Review on Andorra wrote: “An inactive company is under administrative blockade, meaning that no act relating to the company (eg transfer of shares, change of name, change of purpose of the company, etc) can be registered with the Companies Register until the company complies with all of its obligations...Nonetheless, a company under administrative blockade remains in legal existence ... In practice, there could be cases in which a non-compliant company continues to hold assets or conduct transactions entirely abroad without the need to engage with the Andorran financial system, an Andorran notary, other Andorran entities or authorities, and does not maintain or file up-to-date ownership and accounting information. The availability of adequate, accurate and up-to-date legal and beneficial ownership information for these entities might not be assured.” (page 35).

¹²⁶ FATF, *Best Practices on Beneficial Ownership for Legal Persons*, 67.



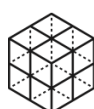
Additional measures may refer to determining the legal consequence of the registration. For example, some asset registries in civil law countries have what is defined as a “constitutive effect” (opposite to a “declarative effect”) where the right or obligation exists only upon registration (and terminates upon removal from the register). This may apply for instance to car ownership. The owner of the car would be whoever appears on the register, both for property and for liability purposes in case of a car accident. This creates an incentive to update the register both for the seller and buyer. If beneficial ownership registration also had a “constitutive effect”, the rights and obligations would exclusively depend on being mentioned in the register. A person who does not appear in the register would have no rights to dividends or to voting, and any corporate decision undertaken by them could be nullified. Uruguay for instance, prevents people from receiving dividends if they have not registered with the beneficial ownership register.¹²⁷ This legal effect could also discourage the use of de facto nominees. For example, if the law considered the nominee appearing in the register to have absolute rights over the shares or assets, disregarding any secret agreement that says otherwise, real beneficial owners may be deterred from using nominees. If applied to obligations, similar to the case of car ownership, a director who resigned but still appeared in the register may be held liable as if they were still a director. This would create an incentive to ensure the update of information.

4.3. Access by non-local authorities

Section 3.1 dealt with the advantages and disadvantages of each approach (the company, the beneficial ownership registry or “existing information”), where “accessibility” referred to relevant local authorities. However, beneficial ownership information may be relevant for more users including other local authorities, foreign authorities, businessmen and investors, or investigative journalists and civil society organisations focusing on AML and tax abuses.

The challenges to access information by local authorities present in the “company/trustee” and “existing information” approach make it even harder, and most likely impossible, for other users to access beneficial ownership information. First, the information may be confidential preventing investors, businessmen, journalists and civil society organisations from accessing it. Foreign authorities, however, could rely on local authorities to access information. The Egmont Group has a framework for exchanges of information related to money laundering among financial intelligence units. There are also bilateral, regional and multilateral frameworks to exchange information for tax purposes, such as based on the OECD or the UN model tax convention, tax information exchange agreements (TIEAs) or the Council of Europe/OECD Convention on Mutual Administrative Assistance in Tax Matters. However, requests for information may demand many resources both for the requesting and responding country. As it is described by the FACTI background paper 2 on exchange of information, the requesting country will have to spend substantial resources to substantiate a request given that fishing expeditions are prohibited (an authority, however, may want to know all the legal vehicles related to an individual). At the same time, the recipient country will have to spend resources to respond the request, which would involve contacting the legal vehicle, a financial institution or a corporate service provider.

¹²⁷ GAFILAT, *Mutual Evaluation Report of the Eastern Republic of Uruguay*, 206.



The registry approach, in contrast, may allow more actors to access information, depending on the legal framework. Based on current experiences of beneficial ownership registration laws, the different cumulative levels¹²⁸ include access by:

- i. **One authority:** For example, in Argentina it appears that only the tax administration will have access;¹²⁹
- ii. **Relevant authorities:** These usually include at least those working on AML/CFT and the tax administration, especially for exchange of information purposes;
- iii. **Regulated entities:** These include financial institutions and those DNFBPs covered by AML/CFT provisions;
- iv. **Legitimate interest:** Access may depend on having a legitimate interest, e.g. a journalist or civil society organisation investigating a money laundering case or a company owned by a trust that wants to identify the trust's beneficial owners (eg EU AMLD 5 for trusts);
- v. **Public access:** For example, for legal persons within the EU, based on AMLD 5.

The type of users that may access the beneficial ownership information will create a trade-off between privacy, uses, data security and costs for responding requests. The more users that may access information, the more privacy will be affected.

As the list above shows, a central register facilitates access but does not ensure that all the relevant users will obtain information if access is restricted. While foreign authorities may access information based on an international request for information or mutual assistance procedures, this does not mean that all relevant local authorities will have access to the register. If only one local authority can access beneficial ownership information, e.g. the tax authorities but not the financial intelligence unit, a country will be addressing tax evasion risks but not those of money laundering or the financing of terrorism. Even if all relevant local authorities have a right to obtain information from the register, this does not mean that they will have direct access. In this case, local authorities will also have to make a request to the authority managing the beneficial ownership register, creating an additional demand for resources to respond to each request. Access by regulated entities (FI and DNFBPs) allows them to cross-check information and report discrepancies. However, countries should ensure that these entities will actually use beneficial ownership registers to cross-check data, instead of relying on the register to avoid doing any KYC/CDD analyses themselves. The widest type of access involves public access either for nationals (a local official identification number may be required to access the register) or for any person.

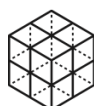
4.3.1. Privacy issues

The arguments against public access usually refer to the risk of crime, identity theft, kidnappings, violence, etc. While the idea of giving public access to personal information may result in any of these criminal risks, the direct relationship is not clear. In fact, there has been no reported evidence on the relationship between beneficial ownership disclosure of legal vehicles and crime,¹³⁰ despite beneficial ownership being available online for some years not only in some developed countries that may be perceived as safer, but also in other countries. For example, Ecuador has been disclosing online and for free even the identification or passport

¹²⁸ Each level includes all the previous levels as well.

¹²⁹ The regulation by the tax administration (AFIP Resolution 4697/2020) does not mention access from anyone else.

¹³⁰ <https://www.openownership.org/news/who-owns-our-companies-why-privacy-isnt-always-in-the-public-interest/>



number and the email of natural-person shareholders. Moreover, as the next paragraphs will describe, wealth and personal data has already been publicly available in many cases.

4.3.1.1. *Wealth and income information*

It is not clear how public beneficial ownership over a legal vehicle, without any indication of the value or wealth held by that legal vehicle, would lead to more crimes against their beneficial owners. In any case, the level of disclosure of wealth or income information may depend on the country. For instance, in Argentina it is possible to find out the salary of public officers by their position.¹³¹ In Sweden, it may be possible to find out the salary of any individual.¹³² In the state of Oregon in the US, it is possible to obtain the final salary and the current annual income for beneficiaries from the Oregon Public Employees Retirement System, by searching by name or by top income.¹³³

As for wealth, in many countries, real estate and car registries already disclose ownership information to the public because citizens need to know this information before they buy a house or vehicle from someone else. Assuming that in most cases individuals own their house or car under their own name (rather than using a legal vehicle), this information would already be publicly available.

Furthermore, in most countries local people already know the identity of most members of the economic elite, especially when magazines such as Forbes list the name of billionaires. Otherwise, given the “geographic inequality” present in many countries, it only takes to see who resides in expensive neighbourhoods, drives expensive cars, attends exclusive clubs or sends their children to private schools to know who may be wealthy.

4.3.1.2. *Personal data*

As expressed above, beneficial ownership registries do not necessarily provide all personal data to the public. For instance, they may disclose only the full name of the beneficial owner, the declared address (which may be different from the residential address), month and year of birth (but not the date) and the country of residence.

Nevertheless, the level of public access to personal data may also depend on the country. For instance, in Argentina just by searching online by an individual’s name it is possible to obtain for free their national identification number, their tax identification number, their declared address and their taxpayer category (which would give an indication of their declared income).¹³⁴

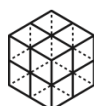
Social media users also disclose a trove of personal data (friends and family, day routine, sources of wealth, cars, trips, houses, etc.) many times in fully public platforms accessible with one click. This new trend also creates a new culture and awareness. It is possible that 30 years ago, if a person pretended to be an old friend by showing knowledge of who your family and friends are and where you went to school, one would have probably believed them. Today, that person might be consider a stalker who spent enough time searching on internet. In fact, it is the current public access to a lot of personal information from social media and other platform what could lead to the development of digital technologies and biometrics identification to prevent cases of stolen identities. In other words, issues around identification and stolen identities are not relying on making personal information less available, but rather on finding better ways to

¹³¹ It is possible to find out who has each position by looking at appointments in the official gazette, and an example of the salary scale is here: <https://www.argentina.gob.ar/sites/default/files/sinep-agrup-profesional.pdf> and here: https://www.mpf.gob.ar/transparencia-activa/files/2020/02/Escala_Salarial_MPF_12-2019.pdf

¹³² <https://www.businessinsider.com/sweden-salaries-freely-available-2017-4>

¹³³ <https://gov.oregonlive.com/pers/>

¹³⁴ <https://www.cuitonline.com/>



identify a person, including using biometrics instead of depending on a password or identification number.

4.3.1.3. *Balancing disclosure risks*

The idea of disclosing beneficial ownership information for the first time may sound alarming. However, it is likely that in many countries beneficial ownership information has already been publicly available because in many cases the legal owner and the beneficial owner are the same person. Many commercial registries have been giving public access to legal ownership information (even on paper-based registries), because it was supposed to be a requirement for the smooth functioning of trade and commerce. Businesses needed to know with whom they were engaging in business. In most cases, individuals do not resort to creating complex ownership structures, but they directly own the legal vehicles that they have incorporated. In the UK, for instance, 80% of entities registered in Companies House are either held by a natural person directly or by a local entity which in turn is owned by a natural person. In other words, by being able to access legal ownership information, the beneficial owner was also known.

Moreover, for extreme situations where beneficial ownership disclosure would pose a risk, beneficial ownership registration laws may allow for exemptions if an authority confirms the danger on a case-by-case basis. However, it appears that in practice beneficial owners who have their information disclosed are not too worried about it. For instance, in the UK, out of 1 million entities that registered their beneficial owners, there were only 270 cases where the exemption was requested.¹³⁵

4.3.1.4. *Trade-off*

One way to see the trade-off between ownership and publicity refers to the fact that, to enjoy property rights, for example over a house or company, the owner needs to identify itself. Otherwise, if two different people claim to be the exclusive owners authorities would not know to whom the house or company belongs. In other cases, an owner may prefer not to have disclosure if the details of the registration could end up harming them. Fragrance companies may opt not to register the intellectual property of a fragrance because it would become public after some time, e.g. 20 years.¹³⁶ If they expect the fragrance to be profitable for a longer time, they will attempt to keep it a secret, even if it means not enjoying the protection of private property if someone else develops the same fragrance. In both cases there is a trade-off.

Legal ownership, however, eliminates the trade-off by keeping all the benefits for the owner and transferring all the costs to society as a whole, which bears them in the form of less efficient markets, less effective legal enforcement, unlevel playing fields, etc. One could argue that society, in exchange for ownership information, offered property rights (this house belongs to company A, so please leave!) and limited liability for some legal vehicles (you are a creditor of my company, so you have access to the corporate assets but not to my personal wealth). However, transparency of only legal ownership allows the owner to enjoy property rights and limited liability, without disclosing who the real owner is. Beneficial ownership is a way to restore justice so that, property rights and limited liability will be given in exchange for useful ownership information.¹³⁷

4.3.1.5. *Benefits enabled by public access*

Even if a public register does affect privacy, this should be measured against the benefits of a wider access. As expressed above, a public access would make access much easier for foreign

¹³⁵ Ibid.

¹³⁶ <https://jipel.law.nyu.edu/vol-5-no-1-6-cronin/>

¹³⁷ Knobel, Andres, 'Is financial secrecy always bad?', Tax Justice Network, in: <https://www.taxjustice.net/?p=27709>



authorities and other local authorities, freeing many resources from everyone to make and respond to a request. Regulated entities would then be able to verify information declared by their customers by cross-checking it against the register. Investors, businessmen and others who need information for their business decisions would also highly benefit. For instance, the UK beneficial ownership register was accessed 6.5 billion times only in 2018.¹³⁸

4.3.2. Ways to access information

As regards the way to access information, it may entail the need to physically go to the register in person or otherwise have online access. As for costs, access may depend on a fee or it can be free of charge. Accessible data may be as an image (e.g. a photo or scanned document) or it may include structured, machine-readable data available in open data format. The level of structured data may be related to the possibilities to search for information. These may require the user to know beforehand the exact name or incorporation number of a legal vehicle, or searches may allow free text searches based on the name, address, identification number or residency of either the legal vehicle, the legal and beneficial owners or directors, as well as by date of incorporation.

To sum up, the type of access available in a country may lie somewhere in the spectrum between restricted access - by few actors, the need to be at the register in person or limited search options that require the user to already know the name or incorporation number of the entity - versus public, online, free access in open data format, allowing Boolean searches on every registered detail. The more sophisticated and technological the register, the more expensive it will be for the country, but the more useful it will be for all users and the easier it will be to verify information. A paper-based register or one that merely holds non-machine-readable data will be cheaper but its use much more limited, if useful at all.

5. Recommendations

5.1. Modify current FATF and Global Forum standards to require beneficial ownership registration for legal vehicles

Although neither the FATF nor the Global Forum require establishing a beneficial ownership register, the FATF Guidance on Transparency and Beneficial Ownership acknowledged: “a well-resourced and proactive company registry holding beneficial ownership information can be an effective mechanism because it allows competent authorities to access such information from a single source.”¹³⁹ Interestingly, the 2014 Guidance did not refer to any advantage when describing the other two approaches in isolation.¹⁴⁰ In 2019, the FATF, however, described the benefits of a multi-pronged approach.

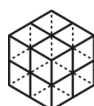
The OECD template on options for obtaining beneficial ownership and control information had also proposed back in 2002 that authorities should obtain beneficial ownership information upfront when jurisdictions have legal vehicles that are owned or controlled by non-residents: “An up-front disclosure system requires the disclosure of the beneficial ownership and control of corporate entities to the authorities charged with responsibility at the establishment or

¹³⁸

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819994/Corporate_transparency_and_register_reform.pdf

¹³⁹ Financial Action Task Force (FATF), *Transparency and Beneficial Ownership*, 2014, 20 <<http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf>> [accessed 21 December 2018].

¹⁴⁰ *Ibid.*, pages 23-26.



incorporation stage.... An up-front disclosure system may be more suitable for jurisdictions in which a high proportion of the corporate entities are beneficially owned and controlled by non-residents because the authorities in these jurisdictions face greater difficulties in ascertaining the beneficial ownership and control of the corporate entity.”¹⁴¹

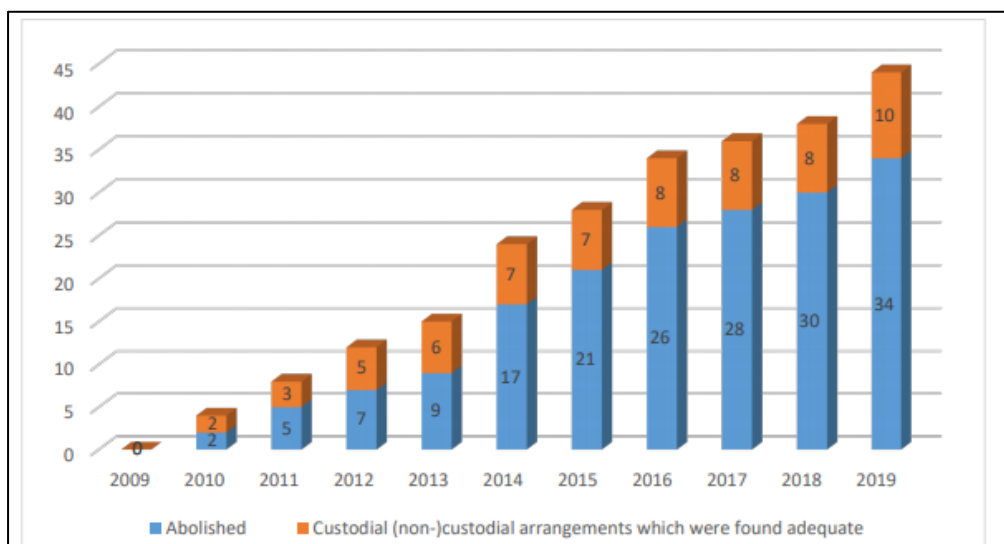
Based on the analysis presented, especially in relation to concerns on access and verification, this paper proposes that, in addition to any existing approach, countries should establish a beneficial ownership register (for example within existing registries such as the commercial register).

Some may argue that the other two approaches (the company or “existing information” approach) authorised by the FATF and the Global Forum for beneficial ownership transparency are sufficiently robust, while the problem lies in implementation and enforcement. However, the legal framework itself needs to be improved, not only enforced.

For instance, the Global Forum has published about the progress on the abolition or immobilisation of bearer shares. These are instruments where the owner may be any party holding a paper-based shareholding at any given time. If bearer shares are freely circulating, it becomes impossible for authorities to know who the legal and beneficial owners (unless they know who is holding the instrument at that specific moment).¹⁴²

However, as the chart shows, not all countries have abolished bearer shares but some have only immobilised them with a custodial arrangement, which is still considered adequate by the current standards. For instance, Uruguay’s framework on bearer shares has been found adequate (at least it was not mentioned as a factor subject to a recommendation) both by the Global Forum’s 2015 peer review report¹⁴³ and by the GAFILAT Mutual Evaluation of 2020.¹⁴⁴ Despite being “adequate” and not prompting any recommendation to improve the legal framework, the 2020 Mutual Evaluation described that based on the national risk assessment, “public limited companies with bearer shares are the corporate type with the highest risk.”¹⁴⁵

Figure 14: Progress on regulation of bearer shares



¹⁴¹ <https://www.oecd.org/corporate/ca/1961539.pdf>

¹⁴² OECD, *OECD Secretary-General Tax Report To G20 Finance Ministers and Central Bank Governors*, 2020.

¹⁴³ Global Forum’s 2015 Peer Review Report on Uruguay, page 132.

¹⁴⁴ GAFILAT, *Mutual Evaluation Report of the Eastern Republic of Uruguay*.

¹⁴⁵ *Ibid.*, page 10.



Source: OECD secretary-general tax report to G20 finance ministers and central bank governors, Riyadh, Saudi Arabia, February 2020

Similarly, the Global Forum's 2019 peer review report on Panama noted that "although Panama has introduced various legislative amendments to require that companies continuing to allow bearer shares place them with custodians and have information available, in practice it has not been able to provide peers with ownership information involving companies with bearer shares in some cases."¹⁴⁶

In other words, while one still could argue that the current international frameworks are sufficiently robust while the problem relies on enforcement, the examples of Uruguay and Panama show that the framework itself could be improved, for example by abolishing bearer shares altogether.

5.2. Close the legal framework's loopholes to ensure effective beneficial ownership registration for legal vehicles

Table 2 describes the short, mid and long-term recommendations to address the gaps and vulnerabilities mentioned in section 4 above. This way, the legal framework for beneficial ownership registration will be effective to enable authorities to tackle corruption, money laundering, tax evasion and other abuses. As the table describes, recommendations include a combination of the registry approach and the existing information approach (by requiring banks and service providers to be involved in reporting discrepancies and be held liable for the accuracy of information).

Table 2 presents the recommendations based on how easy (short-term) or difficult (long-term) it may be to implement the changes based on technical and technological capacities.

Improvements that have already been implemented by more than one country (especially if these include lower-income countries) are considered short-term. Each cell may include in grey font the countries that are already adopting adopt such measures (or required to do so).

5.2.1. The economic constraints

While technological advances may already be available, one could argue that economic costs could prevent some lower-income countries from implementing these recommendations. However, this argument should be taken with caution.

First, most of the measures mentioned in table 2 have no economic cost, but merely require changing current laws and regulations. For instance, deciding that the register will be publicly accessible, expanding the scope of legal vehicles subject to beneficial ownership registration, determining the conditions that trigger registration, widening the definition of a beneficial owner, specifying the details that have to be registered on each beneficial owner, requiring the ownership chain to be registered, establishing limits to the length or quality of the ownership chain and modifying sanctions to include re-registration and "constitutive" effect.

¹⁴⁶ Global Forum's 2019 Peer Review Report on Panama, page 15.

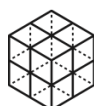
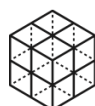


Table 2: Recommendations for an effective framework of beneficial ownership registration

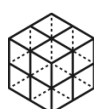
	Short-term	Mid-term	Long-term
1. Approach to ensure beneficial ownership availability of legal vehicles	Establish a central beneficial ownership register held by a government authority [More than 80]	Digitalise the beneficial ownership register	Interconnect the beneficial ownership with foreign ones [EU countries]
2. Access to the beneficial ownership register	Public, online and free [Denmark, Ecuador, Luxembourg, Slovenia, UK, Ukraine]	In open data format [Denmark, UK]	Allowing Boolean searches on any registered detail (name, date, address, etc)
3. Scope of legal vehicles subject to beneficial ownership registration	All legal persons and trusts [16 jurisdictions ¹⁴⁷]	Investment funds and listed companies [Argentina, Ecuador]	
4. Conditions that trigger registration	Any legal vehicle: - incorporated or governed by domestic law, or - operating locally (owning assets) [Germany ¹⁴⁸ and the UK in relation to real estate]	Any legal vehicle that provides goods or services or engages in transactions in the country that are subject to tax	Any legal vehicle that interacts (e.g. sells goods or services, makes a distribution or pays a dividend) with a resident taxpayer
5. Definition of beneficial owner	Any individual holding at least one share or control through other means [Argentina, Botswana, Ecuador, Saudi Arabia]	Any individual with power of attorney to manage the legal vehicle or any of its assets, e.g. the bank account	Any individual with a contract or financial instrument, eg convertible note, call option, etc that could influence, gain ownership or have economic exposure
6. Details of the beneficial owner	- Identification information (official documents) - Date (since and until) - Type of beneficial owner	- Biometric data or digital identification - Value of acquired shares / reason for being appointed a beneficial owner	

¹⁴⁷ At least Argentina, Andorra, Belgium, Bulgaria, Costa Rica, Czech Republic, Dominican Republic, Ecuador, France, Croatia, Monaco, Norway, Peru, Sweden, San Marino, Uruguay (when considering only registration, not update of information for companies, partnerships with limited liability, foreign and domestic law trusts and private foundations. Registration is also considered present when a type of legal vehicle cannot be created based on local laws, eg LP, trust or private foundation.

¹⁴⁸ <https://dejure.org/gesetze/GwG/20.html>



	Short-term	Mid-term	Long-term
	<ul style="list-style-type: none"> -Condition as PEP -Gender <p>[Zambia]</p>		
7. Legal ownership and ownership chain	<ul style="list-style-type: none"> -Disclose LEI of legal owners -Disclose full ownership chain (prohibit circular ownership) <p>[Ecuador and Uruguay in relation to chains]</p>	<ul style="list-style-type: none"> -Establish limits on length and quality of ownership chain, or require every layer to also register their legal and beneficial owners at the local register 	
8. Verification	<ul style="list-style-type: none"> -Establish a verification unit within existing government agencies -Require FIs/DNFBP to report discrepancies -Require a resident natural person to be held liable for the data accuracy <p>[Uruguay, EU countries and Slovakia, respectively]</p>	<ul style="list-style-type: none"> -Interconnect registers to cross-check data against all relevant local databases for consistency -Contact each beneficial owner to ensure they are aware and intend to be related to the legal vehicle -Require FIs/DNFBPs to run zero-knowledge proof queries among themselves to detect inconsistencies about their shared customers <p>[Denmark, except for last issue]</p>	<ul style="list-style-type: none"> -Apply machine learning, explore the legal ownership structure of local legal vehicles to find patterns and red-flags -Interconnect or allow for zero-knowledge proof queries against foreign databases for non-resident beneficial owners -Require SWIFT to collect beneficial ownership information and assess global bank transfers to detect money laundering schemes and report information on the legal vehicles used or the use of nominees
9. Sanctions	<ul style="list-style-type: none"> -De-register any legal vehicle that has failed to provide information or that filed wrong information -Apply economic penalties and criminal sanctions for deliberate wrongdoing <p>[Denmark and Uruguay, respectively]</p>	<ul style="list-style-type: none"> -Apply “constitutive effect” to the register, recognising rights and obligations depending on being mentioned in the beneficial ownership register 	



Second, the establishment of a beneficial ownership register should not add excessive costs because countries may upgrade any existing register to also collect beneficial ownership information. For instance, the UK expanded its commercial register's data to include beneficial ownership information. Uruguay did the same with the register for ownership of bearer shares held at the Central Bank which now also collects beneficial ownership information. Argentina required beneficial ownership data to be included in annual returns that must be filed with the tax authorities.

The only economic cost that is unavoidable is the digitalisation and standardisation of information to allow for online access, interconnection of registries and application of advanced analytics. On the one hand, international aid organisations could fund the costs for lower-income countries. Developed countries that have already developed a digital platform could also share it with lower-income countries. On the other hand, given the benefits of having digitalised information, countries should consider investing in it as a strategic investment.

Countries should consider that effectiveness on beneficial ownership transparency as a price to be paid either at the time of collection of information or for supervision and verification. In this sense, a digitalised public register, while adding costs at the time of collection, would reduce costs when it comes to verifying information. It would allow automated cross-checks, as well as verification by civil society organisations, investigative journalists and reporting of discrepancies by financial institutions. Of these, only automated checks would involve an economic cost for the government.

Having digitalised information on the beneficial owners of legal vehicles operating in the country would not only help fight against corruption and money laundering, but also tackle tax evasion and other abuses that have a direct effect on the government's revenues. In addition, a digitalised online beneficial ownership register will facilitate the use of information for business purposes. The Copenhagen Consensus described that the economic benefits of public access to beneficial ownership information would outweigh its costs.¹⁴⁹

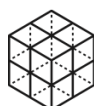
In conclusion, most of the recommendations mentioned in table 2 involve no economic costs but only normative changes. Countries could see these improvements as strategic, and benefitting the country as a whole, resulting in more economic benefits.

5.3. Establish asset ownership registries and wealth annual returns for individuals

Many countries already have legal ownership registries for real estate, cars, ships, boats and aircrafts. There may be no short-term need for asset ownership registries to require beneficial ownership information, as long as the country establishes a well-equipped beneficial ownership register (based on the recommendations above) for any legal vehicle that holds local assets. This way, the asset registers would disclose legal ownership information (e.g. the house is owned by company A) while the beneficial ownership register would disclose the beneficial owner (the beneficial owner of company A is Mary).

Similar to the recommendations for legal vehicles, asset registries should also expand their scope to cover all relevant assets, such as art works, virtual assets such as bitcoins, gold and other precious metals, jewellery, etc. They should also be centralised or at least interconnected so that it becomes possible to find out any relevant asset held by a person. This asset ownership

¹⁴⁹ <https://www.copenhagenconsensus.com/post-2015-consensus/illicit-financial-flows>



information would help find cases where a person cannot explain the origin of their wealth, assist in asset recovery, and help measure inequality and apply wealth taxes.

To cross-check the information held at the asset registries, and especially until they cover all relevant assets, individuals should be required to file wealth or asset declarations to authorities, eg to tax authorities, disclosing their relevant assets (at least above a certain threshold). For example, the UK returns for inheritance tax already require the filing of several types of assets including real estate, cars, art, shares, etc.¹⁵⁰

Eventually, national asset registries could be interconnected and lead to a global asset registry to allow for asset recovery and determination of an individual's wealth not only at the national level but at the global level.¹⁵¹ Global asset registers may not only help the fight against financial crimes, but also the private sector. For instance, there already is an international registry of movable aircraft assets to facilitate information on financial interests affecting aircrafts. This international registry benefits the private sector because it establishes priority of interest and reduces financial costs.¹⁵²

5.3.1. Economic costs

While establishing national asset registries should also be considered a strategic investment, developing countries that are unable to afford all these improvements at once could start with the requirement for individuals to report their wealth, detailing the type of asset, their value, where it is located and how it is held.

Even if only major financial centres start implementing these national asset registries (for any asset located in their territory), most of the world would benefit because of the imbalance in wealth location. While the economic elites of developing countries in Africa, Latin America or Asia are likely holding part of their wealth in major financial centres, it would very unlikely for the economic elites of developed countries to hold their wealth in developing countries. Therefore, the asset ownership information collected in developed countries (e.g. real estate, yachts, private jets, art works, bank accounts, etc) would be useful for most countries.

5.4. Ensure a level playing field in the setting of international norms and assessment of countries

The current standards by the FATF and the Global Forum result in most countries, including most offshore financial centres and tax havens, appearing as either compliant or largely compliant, suggesting that secrecy is a problem of very few and small countries. For instance, according to the FATF, as of February 2020 the only “high-risk jurisdictions subject to a call for action” (blacklisted) are Iran and the Democratic People's Republic of Korea.¹⁵³ According to the Global Forum, as of April 2020, jurisdictions considered “non-compliant” are Guatemala and Trinidad and Tobago.¹⁵⁴

These results contradict the cases described in section 2.2 given that most of the major grand corruption, money laundering and tax abuse scandals did not involve only these four jurisdictions, but many of the world's most powerful countries and many tax havens and

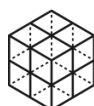
¹⁵⁰ Knobel, Andres, *Pilot Study for a UK Asset Registry – Phase 1: An Assessment of Available Asset Ownership Information*, 55.

¹⁵¹ <https://www.icrict.com/icrict-documents/a-roadmap-for-global-asset-registry>

¹⁵² https://information.aero/international_registry/mobile_aircraft_assets

¹⁵³ <http://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/call-for-action-february-2020.html>

¹⁵⁴ Partially compliant jurisdictions are: Anguilla, Barbados, Botswana, Ghana, Kazakhstan, Liberia, Panama, Seychelles, Sint Maarten, Turkey and Vanuatu: <http://www.oecd.org/tax/transparency/documents/exchange-of-information-on-request-ratings.htm>



offshore jurisdictions. In contrast, other assessments may show a better resemblance to the countries involved in major financial crimes. For instance, the Tax Justice Network's Financial Secrecy Index, assesses among others, whether countries have beneficial ownership registries for companies, partnerships, trusts and private foundations. In 2020, the top countries in the Financial Secrecy Index ranking of "worst offenders" (considering the legal assessment as well as how much each jurisdiction is used in practice by non-residents) included: the Cayman Islands, the United States, Switzerland, Hong Kong, Singapore, Luxembourg, Japan, the Netherlands, the British Virgin Islands and the United Arab Emirates.¹⁵⁵

To ensure a level-playing field, progress and harmonization, it is important that all countries participate in the decision-making process. For example, a UN Convention could be agreed and signed by all countries to make the above recommendations binding on all countries. Two warnings should be raised however. First, the process should ensure that tax havens, offshore jurisdictions and secrecy jurisdictions will not block progress towards more transparency. Second, countries with a higher share of world wealth/cross-border holdings and with a high number of offshore legal vehicles incorporation should bear more responsibility in ensuring global transparency. These countries should assist developing countries in implementing some of the new requirements. For example, rich developed countries should fund or offer their already developed digital platform for a beneficial ownership register to lower-income countries. In addition, as expressed above, there is an imbalance in the location of wealth. Therefore, major financial centres should collect information about the wealth located in their territories (e.g. through national asset registries) and share the information about developing country nationals with their governments. The fact that a developing country cannot yet reciprocate should not be an obstacle for major financial centres to share ownership information on assets and legal vehicles.

6. Conclusions

Individuals engaging in corruption, money laundering, tax evasion and other abuses enjoy almost unlimited freedom to set up as many complex legal vehicles in as many jurisdictions as they please to own different types of assets. In contrast, governments are usually bound and limited by their own borders and by lack of cooperation, both globally and within local authorities (for example among AML and tax authorities). They may also suffer from limited resources (budget and staff). On top of this, there are countries (e.g. tax havens or secrecy jurisdictions) and country authorities (e.g. the Ministry of Economics or Employment) which undermine any regulation towards more transparency because their goal is to make it as easy as possible to increase investments in the country. The prevention of illicit activities may not be their top priority, hence leading to lenient legal frameworks or to low levels of enforcement

On the bright side, one of the fundamental tools to address many of the financial crimes related to tax evasion and abuse, corruption, money laundering or the financing of terrorism refers to transparency. However, effective transparency, achieved by having a well-resourced beneficial ownership register, may demand economic, political, bureaucratic and technological costs.

For some low-income countries with limited resources, economic costs may prove prohibitive. In those cases, international organisations or developed countries' aid funds could assist in financing them. In other cases, the government may have the resources but decide that a register, or transparency in general, is not worth the cost. As this paper showed, echoing the famous phrase "buy cheap, pay dear", whatever the government saves at the time of information

¹⁵⁵ <https://fsi.taxjustice.net/en/introduction/fsi-results>



collection (e.g. by outsourcing it to the legal vehicle itself or to a bank or corporate service provider), will have to be spent to supervise and audit those actors, resulting in much higher costs.

As for political, bureaucratic and other costs, these could be reduced by merely amending an administrative regulation to add a beneficial ownership field to the filings that are already required to be made to the commercial register or the tax authorities (instead of setting up a brand new beneficial ownership register). In addition, the internal political costs from needing to amend legislation and the opposition by some of the private sector should be balanced with the reputational cost of the country. The more demanding assessments by the FATF and the Global Forum, and the global trend towards establishing beneficial ownership registries may involve a political risk for those who oppose spending on transparency: becoming grey or blacklisted or having the reputation of a laggard compared to other countries.

Other arguments against establishing beneficial ownership registries refers to the impact. After all they may claim, some countries have beneficial ownership registries, but financial crimes are still happening. In response to this, one could think of the following analogy. If the goal is to have many engineers cooperate to build a machine, but one of them does their part only half-way, the conclusion should not be that the machine is not working, but that it has not been properly built in the first place. Establishing a register, like any other government policy, will only be effective if done properly. It is obviously not enough to set up a register, even a public one, if half the types of legal vehicles are not covered, the definition contains high thresholds, no verification takes place nor sanctions are imposed in case of filing wrong information.

At the same time, financial crimes have a global dimension, so international cooperation is needed. While the world is slowly moving towards more transparency (many countries have limited bearer shares, more countries are exchanging information with each other and establishing beneficial ownership registers), the weakest (most secretive) link in the chain can make the whole transparency system break, especially if most links are weak. For this reason, a UN Convention that established binding minimum beneficial ownership transparency requirements on all countries, would make the transparency chain system strong enough, so that the system survives even if some links become weaker. However, until that happens, countries willing to protect themselves should not only set up well-resourced beneficial ownership registries, but also implement anti-abuse provisions. These could include requiring beneficial ownership registration for any legal vehicle, local or foreign, that will operate in their territories – before they are allowed to buy real estate, open a bank account or provide goods or services to local taxpayers. In addition, countries could impose length and quality limits on the ownership chain of legal vehicles, to prevent never-ending layers of secretive foreign entities owning local vehicles and assets.

To sum up, there are several options countries may choose from to ensure beneficial ownership transparency. While opposition to it may invoke many different arguments, in most cases the issue is rather political. An example to understand these “political” arguments is the case of trusts. Trusts are often defended as being instruments needed to protect the vulnerable, including spouses and children. However, the reality may be different. Many cases of trusts that come to light refer to a husband trying to leave his wife without any assets after a divorce. Similarly, the powerful sectors of society that use and abuse complex legal vehicles to stay above the law may invoke many different arguments against transparency, only because they prefer the status-quo they managed to achieve, as if it were their entitled right. However, legal vehicles are actually a legal fiction, so the secrecy many of them have been enjoying is merely a privilege that society should claim back.



To put the alleged high political and economic costs of increasing beneficial ownership transparency in perspective, one could think of the global fight against terrorism. Only in the US, the Department for Homeland Security spending for prevention and response to terrorism between 2001 and 2016 was estimated at \$548 billion¹⁵⁶ (if the costs of wars on terrorism are also considered, estimates move up to \$2.8¹⁵⁷ or \$3.6 trillion¹⁵⁸). However, since 11 September 2001 there were three terrorist attacks against commercial airplanes¹⁵⁹ out of approximately 40 million flights.¹⁶⁰ That gives an average of 0.0000075%. By the same token, despite the vast majority of passengers not being terrorists, every person willing to take a flight knows the stringent security provisions at airports, including security checks, needing to undress, remove electronic items and avoid having liquids. Terrorism's direct connection to costs in human lives enables the political decision to keep funding such severe anti-terrorism measures.

The cost of beneficial ownership transparency would involve much lower levels of resources while tackling many financial crimes and abuses at the same time, including the financing of terrorism. Global leaders are expected to understand that while the connection between financial secrecy and costs in human lives may be blurrier, violence (including terrorism) is financed by money laundering, corruption and other financial crimes, and the deprivation of State's revenues resulting from tax abuses prevents countries from ensuring basic human rights for their citizens, including their health and safety.

Beneficial ownership transparency in all countries is a global public good, because the lack of this data undermines markets and governments everywhere. Countries that benefit from global secrecy, either because of the number of incorporated offshore legal vehicles or because cross-border wealth is located and invested there, have the responsibility and the funds to invest and support lower-income countries getting the right systems in place. Global transparency should not be seen just as a responsibility or charity, but rather as a self-serving investment.

¹⁵⁶ Neta Crawford, *US Budgetary Costs of Wars through 2016: \$4.79 Trillion and Counting* (2016) <<https://watson.brown.edu/costsofwar/files/cow/imce/papers/2016/Costs%20of%20War%20through%202016%20FINAL%20final%20v2.pdf>> [accessed 24 June 2020].

¹⁵⁷ Stimson, *Counterterrorism Spending: Protecting America While Promoting Efficiencies and Accountability* <https://www.stimson.org/wp-content/files/file-attachments/CT_Spending_Report_0.pdf> [accessed 24 June 2020].

¹⁵⁸ Crawford, *US Budgetary Costs of Wars through 2016: \$4.79 Trillion and Counting*.

¹⁵⁹ <https://edition.cnn.com/2016/03/24/world/terrorism-and-war-related-airplane-crashes-fast-facts/index.html>

¹⁶⁰ There were 38.9 million flights between 2004 and 2019: <https://www.statista.com/statistics/564769/airline-industry-number-of-flights/>



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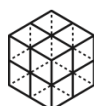
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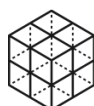
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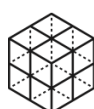
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ANNEX I: Gender abuses using legal vehicles' structures and secrecy

While any legal vehicle may be used for legitimate or illegitimate purposes, trusts are a paradigmatic case. A trust involves a party (the settlor) transferring assets to another one (the trustee) who will manage the assets in favour of the beneficiaries. Trusts, based on their Medieval English origin (see section 2.6) are usually regarded as private family matters, at least in many Common Law countries. Along these lines, the most basic example of trust beneficiaries refers to the “wife and children”.

However, recent cases that came to light because of legal conflicts involving public figures suggest that trusts are not only used to protect family members, but also to protect from soon-to-be-ex-family members. For instance, the New York Times feature “How to hide \$400 million” described the saga of Sarah Pursglove trying to recover money from her millionaire husband Robert Oesterlund only to find out that most of the wealth was now owned by Cook Islands trusts and a web of other legal vehicles: “On paper, it was hard to find anything that Oesterlund actually owned himself.”¹⁶¹ The offshore world made the legal battle harder: “The trusts had hired a small Miami law firm called Kaplan Zeena, whose lawyers excelled at navigating the complexity and opacity of the offshore legal world. They cited obscure international treaties and arcane points of Caribbean law.... They filed endless procedural and jurisdictional objections.... Oesterlund’s trusts were filing motions or objections it seemed certain to lose, just to exhaust and bankrupt Pursglove.”¹⁶²

A similar case was reported in 2020 by the Wall Street Journal “A High-Stakes Divorce Illustrates How the Rich Play Real-Estate Tug of War” about Houston billionaire Ed Bosarge being accused of using trusts and limited liability companies to prevent his wife from accessing cash and the 13 homes they bought together.¹⁶³

While these may seem like isolated cases, it seems that jurisdictions are engaging in a race to the bottom to protect trust assets from all creditors, including spouses and children who used to enjoy more protection. One article described South Dakota’s 2013 legal amendment to set strict limits on the rights of divorcing spouses by establishing that the list of creditor exceptions in the state now includes the ex-spouse and children only to the extent to which the trust creator already owes them money.¹⁶⁴

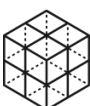
The amended law contains the following provisions. Transfers would enjoy the trust’s asset protection against creditors (including the spouse) on transfers to the trust regarding separate property. As for transfers of marital property, they will be protected if the spouse was provided with the following notice (it has to be written in capital letters): YOUR SPOUSE IS CREATING A PERMANENT TRUST INTO WHICH PROPERTY IS BEING TRANSFERRED. YOUR RIGHTS TO THIS PROPERTY MAY BE AFFECTED DURING YOUR MARRIAGE, UPON DIVORCE (INCLUDING THE PAYMENT OF CHILD SUPPORT OR ALIMONY OR A DIVISION OR DISTRIBUTION OF PROPERTY

¹⁶¹ <https://www.nytimes.com/2016/11/30/magazine/how-to-hide-400-million.html>

¹⁶² Ibid.

¹⁶³ <https://www.wsj.com/articles/a-high-stakes-divorce-illustrates-how-the-rich-play-real-estate-tug-of-war-11586458598>

¹⁶⁴ <https://www.thewealthadvisor.com/article/trust-wars-experts-say-new-law-makes-south-dakota-asset-protection-trusts-top-choice>



IN A DIVORCE), OR AT THE DEATH OF YOUR SPOUSE. YOU HAVE A VERY LIMITED PERIOD OF TIME TO OBJECT TO THE TRANSFER OF PROPERTY INTO THIS TRUST. YOU MAY, UPON REQUEST TO THE TRUSTEE AT THE ADDRESS BELOW, BE FURNISHED A COPY OF THE TRUST DOCUMENT. IF YOU HAVE ANY QUESTIONS, YOU SHOULD IMMEDIATELY SEEK INDEPENDENT LEGAL ADVICE. IF YOU FAIL TO OBJECT WITHIN THE REQUIRED TIME PERIOD, YOU WILL HAVE CONSENTED TO THE TRANSFER OF PROPERTY INTO THIS TRUST.¹⁶⁵

In contrast, the State of Nevada does not include spouses as an exception creditor even if the settlor owed them money by the time of the transfer of assets into the trust: “Nevada is one of only two states with no statutory exception creditors. An exception creditor is a creditor that is able to gain access to DAPT [domestic asset protection trust] assets after the statute of limitations period, because the public policy of that state offers additional protections for that particular type of creditor.”¹⁶⁶

While the secrecy and abuses of trusts have been analysed in other research^{167,168}, it would be valuable to conduct gender studies to understand the systematic ways in which legal vehicles, especially trusts, can be used to cause gender inequalities and abuses.

¹⁶⁵ Section 55-16-15, available at:

https://sdlegislature.gov/Statutes/Codified_Laws/DisplayStatute.aspx?Type=Statute&Statute=55-16-15

¹⁶⁶ https://www.nvbar.org/wp-content/uploads/NevadaLawyer_Dec2018_Asset-Protection-Trust.pdf

¹⁶⁷ Andres Knobel, *Trusts: Weapons of Mass Injustice?*, 2017 <www.taxjustice.net/wp-content/uploads/2017/02/Trusts-Weapons-of-Mass-Injustice-Final-12-FEB-2017.pdf> [accessed 21 January 2020].

¹⁶⁸ Andres Knobel, *“Trusts: Weapons of Mass Injustice?” A Response to the Critics* (2017) <<https://www.taxjustice.net/wp-content/uploads/2017/09/Trusts-criticism-response-1.pdf>> [accessed 25 June 2020].

