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Asset recovery

**Good practices and challenges with respect to beneficial
ownership transparency and how it can foster and enhance
the effective recovery and return of proceeds of crime**

Note by the Secretariat

Summary

The present note was prepared pursuant to resolution 9/7 of the Conference of the States Parties to the United Nations Convention against Corruption, entitled “Enhancing the use of beneficial ownership information to facilitate the identification, recovery and return of proceeds of crime”. It provides an overview of the legal, regulatory and institutional frameworks in place to ensure beneficial ownership transparency in the States parties that provided information to the secretariat.

* CAC/COSP/2023/1.



I. Introduction

1. Two commonly cited obstacles to tracing and recovering proceeds of crime are the lack of corporate transparency and the misuse of corporate vehicles, such as companies and trusts, to conceal the proceeds of corruption and facilitate schemes to launder illicit funds. Schemes used to obscure beneficial ownership information with a view to hiding the proceeds of corruption often span international borders.

2. In this regard, recognizing the importance of beneficial ownership transparency, in its resolution 9/7, entitled “Enhancing the use of beneficial ownership information to facilitate the identification, recovery and return of proceeds of crime”, the Conference of the States Parties to the United Nations Convention against Corruption encouraged States parties, with the assistance of the secretariat, to share, on a voluntary basis, examples of good practices on promoting beneficial ownership transparency to facilitate the recovery and return of proceeds of crime.

3. In addition, in paragraph 16 of the political declaration adopted by the General Assembly at its special session against corruption held in June 2021, Member States committed to, inter alia, making efforts in international cooperation and taking appropriate measures to enhance beneficial ownership transparency by ensuring that adequate, accurate, reliable and timely beneficial ownership information was available and accessible to competent authorities.

4. In response, the secretariat has prepared the present note, drawing on the information provided by 55 States parties¹ in response to two notes verbales, circulated by the secretariat in May 2022 and April 2023. In addition, the thematic discussion at the sixteenth meeting of the Open-ended Intergovernmental Working Group on Asset Recovery and conference room paper CAC/COSP/WG.2/2022/CRP.1, which was presented at that meeting, served as a basis for the preparation of the present note.

II. The concept of the “beneficial owner”

A. Definition of “beneficial owner”

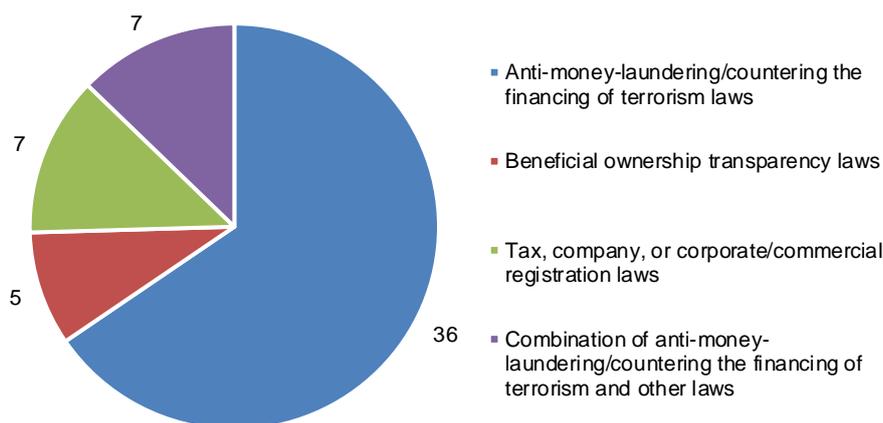
5. The most widely adopted definition of “beneficial owner” is provided in the general glossary contained in the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation of the Financial Action Task Force and encompasses the natural person or persons who ultimately own or control a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those natural persons who exercise ultimate effective control over a legal person. The Task Force definition, as revised in 2022, clarifies that the references to “ultimately owns or controls” and “ultimate effective control” in the definition refer to “situations in which ownership/control is exercised through a chain of ownership or by means of control other than direct control.”²

6. All 55 States parties that responded have a legal and regulatory framework in place that includes a definition of the term “beneficial owner”. In most States, the definition and the beneficial ownership transparency regime in general are laid down in anti-money-laundering and countering the financing of terrorism laws.

¹ See table 1 below.

² *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation: The FATF Recommendations* (Paris, 2012–2023), pp. 119–120.

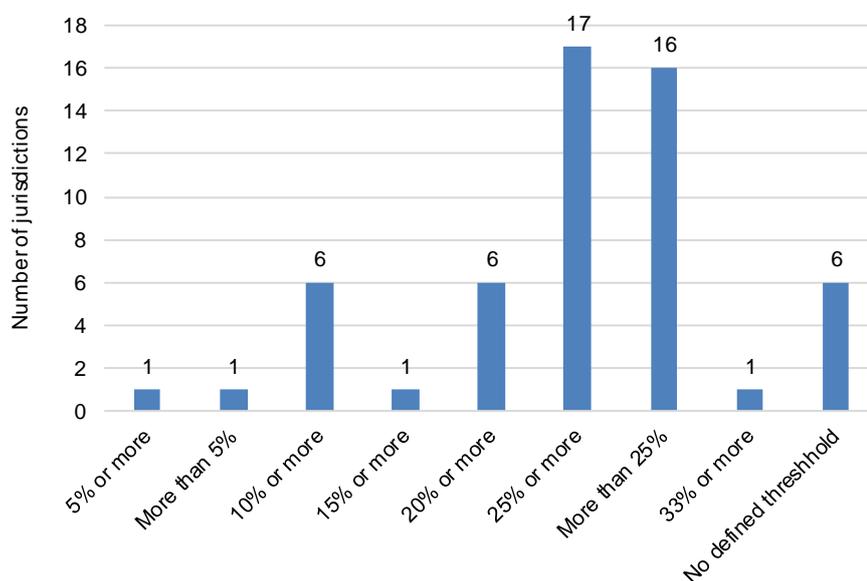
Figure I
Legal basis for beneficial ownership transparency



B. Beneficial owner of legal persons

7. All States parties’ definitions refer to both direct and indirect control or ownership, and the majority of States have defined a specific equity ownership threshold to determine the beneficial owners of legal persons.

Figure II
Ownership threshold to determine beneficial owner(s)



8. Most jurisdictions also define control through other means. While some States explicitly define such means of control using, for example, percentages of voting rights and/or the right to appoint or remove the management, including boards of directors, most States employ a general or residual option, such as the exercise of ultimate effective control over the legal entity, without specifying exact means. A variety of other means of ownership and control were reported by States, including: (a) the capacity to determine decisions about financial and operating policies and to participate in decision-making regardless of whether or not the person holds a formal position in the legal person (Peru); (b) the possibility of exercising “significant” or “decisive” influence over the legal entity on “matters of essential importance” for its operation and decision-making; and (c) having control over the management, administrative or executive bodies or the general meeting of members.

Table 1
Convergence of definitions

<i>State</i>	<i>Direct/ indirect ownership</i>	<i>Ownership threshold</i>	<i>Ultimate effective control</i>	<i>Voting rights</i>	<i>Threshold (voting rights)</i>	<i>Right to appoint/remove management</i>	<i>Top management (as part of the cascade approach)</i>	<i>Other means</i>
Algeria	•	-	•	-	-	-	-	-
Armenia	•	20% or more	•	•	20% or more	-	•	-
Australia	•	25% or more	•	-	-	-	•	•
Austria	•	more than 25%	•	•	more than 25%	-	•	-
Azerbaijan	•	-	•	-	-	-	-	-
Belarus	•	10% or more	•	-	-	-	-	-
Bolivia (Plurinational State of)	•	20% or more	•	-	-	-	-	•
Bosnia and Herzegovina	•	20% or more	•	•	20% or more	•	-	•
Brazil	•	more than 25%	•	-	-	•	-	•
Bulgaria	•	25% or more	•	•	sufficient %	-	-	•
Canada	•	25% or more	•	•	25% or more	-	-	•
Chile	•	10% or more	•	•	10% or more	-	-	•
Colombia	•	5% or more	•	•	5% or more	-	•	•
Côte d'Ivoire	•	more than 25%	•	•	more than 25%	•	-	•
Cuba	•	more than 25%	•	-	-	-	•	-
Cyprus	•	25% or more	•	•	25% or more	-	-	•
Czechia	•	more than 25%	•	•	more than 25%	•	-	•
Egypt	•	25% or more	•	•	25% or more	-	•	-
El Salvador	•	10% or more	•	•	10% or more	-	-	•
France	•	more than 25%	•	•	more than 25%	-	•	•
Germany	•	more than 25%	•	•	more than 25%	-	-	•
Greece	•	25% or more	•	•	more than 25%	-	•	•
Honduras	•	25% or more	•	-	-	-	-	-
Hungary	•	25% or more	•	•	25% or more	-	•	•
Israel	•	25% or more	•	•	25% or more	-	-	•
Italy	•	more than 25%	•	•	majority	-	•	•

<i>State</i>	<i>Direct/ indirect ownership</i>	<i>Ownership threshold</i>	<i>Ultimate effective control</i>	<i>Voting rights</i>	<i>Threshold (voting rights)</i>	<i>Right to appoint/remove management</i>	<i>Top management (as part of the cascade approach)</i>	<i>Other means</i>
Japan	•	more than 25%	•	•	more than 25%	-	-	•
Kenya	•	10% or more	•	•	10% or more	•	-	-
Kuwait	•	25% or more	•	•	25% or more	•	•	•
Lithuania	•	more than 25%	•	•	more than 25%	-	-	•
Malaysia	•	20% or more	•	•	20% or more	•	•	•
Mauritius	•	20% or more	•	•	no threshold	-	•	•
Mongolia	•	33% or more	•	-	-	-	-	•
Morocco	•	25% or more	•	•	25% or more	-	-	•
Myanmar	•	more than 5%	•	•	more than 5%	•	•	•
Namibia	•	20% or more	•	•	20% or more	-	-	-
Oman	•	-	•	-	-	-	-	-
Pakistan	•	25% or more	•	•	25% or more	-	-	•
Panama	•	25% or more	•	•	25% or more	-	-	•
Paraguay	•	10% or more	•	•	more than 25%	-	-	•
Peru	•	10% or more	•	•	more than half	•	•	•
Portugal	•	more than 25%	•	•	more than 25%	-	•	•
Republic of Korea	•	25% or more	•	-	-	•	-	•
Republic of Moldova	•	25% or more	•	•	25% or more	-	-	-
Russian Federation	•	more than 25%	•	-	-	-	-	•
Saudi Arabia	•	25% or more	•	-	-	-	•	•
Slovakia	•	25% or more	•	•	25% or more	•	•	•
Slovenia	•	more than 25%	•	•	more than 25%	-	•	•
Suriname	-	-	-	-	-	-	-	-
Sweden	•	more than 25%	•	-	-	-	-	-
Thailand	•	-	•	•	-	-	•	•
Türkiye	•	more than 25%	•	-	-	-	•	-
Turkmenistan	•	more than 25%	•	-	-	-	-	-

<i>State</i>	<i>Direct/indirect ownership</i>	<i>Ownership threshold</i>	<i>Ultimate effective control</i>	<i>Voting rights</i>	<i>Threshold (voting rights)</i>	<i>Right to appoint/remove management</i>	<i>Top management (as part of the cascade approach)</i>	<i>Other means</i>
Uruguay	•	15% or more	•	•	15% or more	-	-	•
Venezuela (Bolivarian Republic of)	•	-	•	-	-	-	-	-

9. In addition, in some States, those who have rights to receive economic benefits (e.g. dividends or profits) from an entity are also considered to be beneficial owners. For instance, the thresholds for such benefits in Colombia are “5 per cent or more of the assets, yields or profits”; in Czechia, a “significant part of the aggregate benefit”; in Japan, “more than one quarter of the total profit or assets”; in Paraguay, “frequent use of or benefiting from the assets owned by the person”; and in Slovakia, “at least 25 per cent of the legal entity’s business or operations”. Furthermore, in Czechia, it is required that such benefits are not passed on to other persons.

10. Control through informal means, such as close personal connections to relatives or associates, is also explicitly provided for in Czechia, Malaysia, Pakistan and Peru. In a few States, indirect ownership and control through a chain of ownership, including through trusts, agreements, nominee arrangements and bearer shareholdings, are explicitly stipulated in their definitions.

11. While most States explicitly stipulate that a legal entity may have multiple beneficial owners if they independently meet the established thresholds, the definitions in Austria, Canada, Malaysia and Peru explicitly stipulate that two or more individuals can be beneficial owners if they, acting jointly, exercise ownership or control that surpasses the applicable threshold.

12. Interestingly, a few countries also differentiate between the thresholds applied to shares and voting rights. For instance, Italy has set a threshold of more than 25 per cent for ownership on the basis of shares held, but for determining beneficial owners on the basis of voting rights, the threshold is a majority of voting rights. A few States have set more stringent definitions, including lower thresholds and additional control elements for legal persons operating in specific sectors, such as extractive industries (e.g. Armenia) and mass media (e.g. Republic of Moldova).

C. Beneficial owners of trusts and similar legal arrangements

13. The definition of beneficial owners of trusts and similar legal arrangements typically differs from that of beneficial owners of legal persons. Unlike legal persons, trusts and similar legal arrangements are mostly considered private arrangements, which in many jurisdictions do not have a separate legal personality and do not require registration to come into existence.

14. For trusts and similar legal arrangements, States provided only limited information on the definition of beneficial owners. The definition of the beneficial owner of a trust is not uniform. Twenty-one States require all parties to the trust to be identified as beneficial owners.³ In Canada, Côte d’Ivoire, Italy, Paraguay and Uruguay, only the settlor, trustee and beneficiaries are included in the definition of beneficial owners of trusts.

³ Financial Action Task Force recommendation 25 (and the corresponding interpretive note) provides that all parties to the trust should be identified as beneficial owners, which includes: (a) settlors; (b) trustees; (c) protectors, if any; (d) all beneficiaries or, where applicable, each class of beneficiaries and objects of a power; and (e) any other natural persons exercising ultimate effective control over the trust.

15. A few jurisdictions, when defining the beneficial owners of trusts, also apply a threshold based on profit shares or assets owned. In Austria, for instance, if members of the group of persons in whose interest the trust was established or is operated receive benefits from the trust exceeding the value of 2,000 euros in a calendar year, they are to be considered beneficiaries in that calendar year. In Côte d'Ivoire, France and Japan, among other countries, holders of rights to at least 25 per cent of the assets, rights and securities of a trust are recognized as beneficial owners of the trust.

III. Access to basic information on legal persons

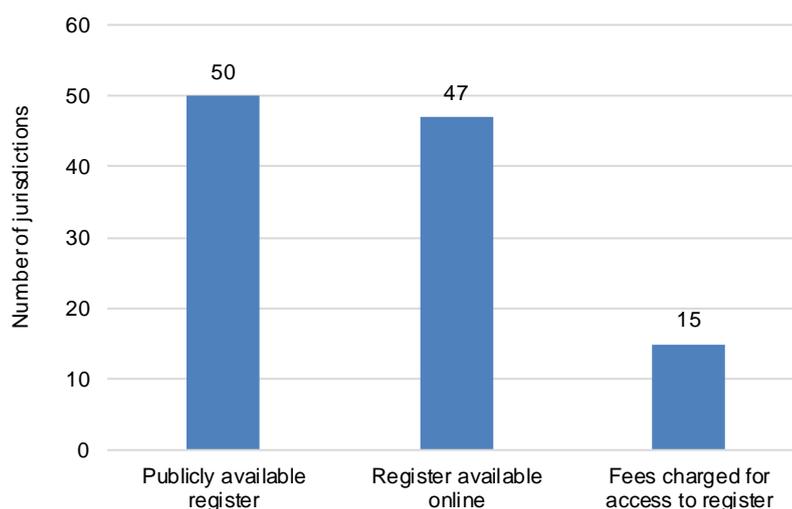
16. Except for a few States parties that did not provide detailed information, all States obtain and record basic information⁴ about companies. That information is held in company registers, which exist in different forms and under various institutional arrangements. Most States have established centralized commercial (business) registries. Some States operate several individual registries designed for different types of legal persons. In some States, separate registries exist at the state and federal levels with a unified (single) access function. The registers are typically managed and held by State registry authorities, tax authorities, central authorities for commerce, finance, investment, interior, justice and trade, chambers of commerce or other authorities. In addition, in several States, for all or certain types of legal entities, the register is established or maintained by general or special courts or by notaries public.

17. In a few States, the company registers include the following information: (a) unique identifiers (e.g. tax, registration and corporate identification numbers); and (b) the names of shareholders and the number and categories of shares held by each shareholder. Further information collected by the majority of States includes the composition of the founders, managers and directors and information about them (i.e. full name, social security number, address of residence, means of communication, etc.), location and official communication details, registered capital, composition of participants and relevant changes, economic activities, licences, certificates and special permits, bank account information, agencies or branches, legal representatives, assets, etc.

18. In almost all States, the basic information in the registry is freely accessible and available online. In those States, access is generally provided either freely to any member of the public through an online platform or upon request in electronic or paper format. In some countries, while certain basic information (e.g. information deemed sufficient to prove the existence of legal persons) is publicly available without restrictions, more consequential information, such as extracts from or copies of documents of incorporation, information on economic activities and personal information on the participants, is made available upon request and often for a fee. In a few States where the commercial register is not online, the information can be requested from the designated authority in writing.

⁴ *FATF Recommendations*, Interpretive note to recommendation 24, para. 4 (a).

Figure III
Access to basic information



19. In very few States, basic information about legal persons is available only to competent authorities. In all States, the competent authorities have full access to basic information either directly or indirectly. Access methods vary from remote (direct) online access through information exchange and cooperation arrangements to access upon request in writing or online.

20. States did not report on any specific measures to facilitate timely access by financial institutions, designated non-financial businesses and professions and the competent authorities of other countries to the basic information held in public registers.

IV. Access to beneficial ownership information on legal persons

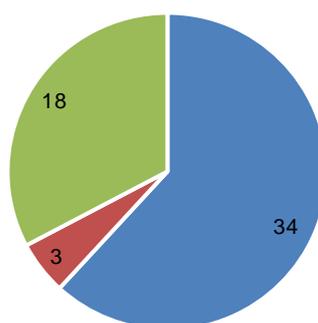
21. All 55 responding States parties reported that their competent authorities had access to beneficial ownership information. However, the regimes for collecting and recording that information ranged from those that include beneficial ownership registers as part of a multi-pronged approach⁵ to those that rely primarily on other mechanisms: 37 States rely on the registry approach, while 18 States rely on other (alternative) mechanisms. In accordance with Financial Action Task Force standards, both the registry approach and the alternative mechanism approach must be complemented with: (a) a mandatory duty for companies to obtain their beneficial ownership information and make such information available to competent authorities and financial institutions and designated non-financial businesses and professions promptly (the “company approach”);⁶ and (b) any supplementary measures that are necessary to ensure the determination of the beneficial owners of a company.⁷

⁵ In this context, as prescribed in the *FATF Recommendations*, Interpretive note to recommendation 24, para. 7, a “multi-pronged approach” refers to a system in which multiple different sources of beneficial ownership information are available in a given jurisdiction, which may supplement each other and may ultimately lead to higher-quality information.

⁶ *FATF Recommendations*, Interpretive note to recommendation 24, para. 7 (a).

⁷ *Ibid.*, para. 7 (c).

Figure IV
Access to beneficial ownership registers



■ Central beneficial ownership register ■ Other beneficial ownership registers ■ Other mechanisms

22. In the case of the company approach, the submissions from States that rely on alternative mechanisms, except for a few jurisdictions, did not make it immediately clear how that requirement was enforced and monitored. Similarly, in general, except in jurisdictions that implement the registry approach, there also appears to be a need for comprehensive and clear legislative provisions in some States parties on the obligation of companies to maintain and keep their beneficial ownership information up to date. For instance, in Australia, such an obligation currently exists only for listed companies, while in Azerbaijan and Bosnia and Herzegovina, companies have no statutory duty to identify and report their beneficial owners at the time of registration.

23. Several States provided examples of additional supplementary measures that were necessary to ensure that a company's beneficial ownership information could be determined or obtained. Brazil reported that all financial institutions must maintain data records on account holders, clients and their legal representatives as part of a centralized general reference file held at the Central Bank of Brazil. That allowed authorities to request and consult beneficial ownership data in real time and to freeze assets instantly, while the public could also access the database through a secure system. In Austria, obliged entities use a web-based application to access the beneficial ownership register directly, and the application informs obliged entities of any changes in the beneficial ownership data concerning their clients.

Table 2
Access to beneficial ownership information on legal persons

<i>Countries that have adopted a registry approach</i>		<i>Countries that rely on other mechanisms</i>
<i>Central beneficial ownership registers</i>	<i>Other registers</i>	
Armenia, Austria, Bolivia (Plurinational State of), Brazil, Bulgaria, Canada, Colombia, Cuba, Cyprus, Czechia, Egypt, France, Germany, Greece, Hungary, Italy, Kenya, Kuwait, Lithuania, Mauritius, Mongolia, Morocco, Namibia, Pakistan, Panama, Paraguay, Peru, Portugal, Republic of Moldova, Slovakia, Slovenia, Sweden, Türkiye and Uruguay	Japan, ^a Myanmar ^b and Suriname ^c	Algeria, Australia, Azerbaijan, Belarus, Bosnia and Herzegovina, Chile, Côte d'Ivoire, El Salvador, Honduras, Israel, Malaysia, Oman, Republic of Korea, Russian Federation, Saudi Arabia, Thailand, Turkmenistan and Venezuela (Bolivarian Republic of)

^a The commercial registry keeps a list of beneficial owners of legal persons for stock companies only.

^b Primarily for businesses operating in the extractive sector.

^c Only for a few sectors, such as the extractive sector.

A. Registry approach

24. As noted above, 37 States have adopted the registry approach to obtaining and recording beneficial ownership information, which entails establishing a central beneficial ownership register or other registers. In 34 jurisdictions, a central beneficial ownership register for legal persons has been set up, while three jurisdictions have other types of registers, the extent or scope of which may be limited.

1. Authority or authorities responsible for obtaining and maintaining beneficial ownership information

25. Most States reported that beneficial ownership information is held by a public authority or body. The most common authorities are the corporate regulator, the tax authority and State public registration authorities, such as corporate regulators designated as competent authorities.

26. In almost half of the countries, the designated authorities responsible for obtaining and managing beneficial ownership information have mandates merely for general maintenance or supervision of beneficial ownership reporting and lack wide-ranging powers and the extensive resources necessary to enforce beneficial ownership regulations. In contrast, for instance, in Austria, the competent authority has extensive powers and analytical capabilities to ensure the accuracy and completeness of the beneficial ownership data, including by carrying out on- and off-site audits.

2. Categories of beneficial ownership data obtained and maintained

27. Collecting certain minimum information⁸ on beneficial owners is essential to ensuring their proper identification. Most jurisdictions reported that they collected sufficient identification details on beneficial owners in their registers, which included the person's full name, nationality, residential address or country of residence, date and place of birth, national identification or passport type and number, as well as the tax identification number or equivalent identification number in the country of residence.

28. A few States parties explicitly require and record information explaining the basis for the position of the beneficial owner, including the nature and extent of the beneficial ownership interest, such as the percentage of votes or shares or means of control. Some States also require information about when beneficial owner status was acquired or the duration of that status.

29. While Sweden requires a declaration of whether beneficial ownership is exercised through or together with close family members, Czechia requires information on each individual who previously held the status of beneficial owner of a legal entity. A few States require the full ownership chain to be disclosed and recorded in the beneficial ownership register, which can be critical in the context of an investigation, as that information allows competent authorities to determine and verify how a beneficial owner ultimately owns or controls a legal person.

30. In addition, Austria, Bulgaria and Czechia require all necessary details of legal entities involved in the beneficial ownership chain directly and indirectly, including their names, addresses, legal forms and identification numbers and the shareholder and voting rights structure (for European Union legal entities). Some States also require other details on beneficial owners, such as their contact details, marital status and profession or occupation, which could, for example, lead to the disclosure of their status as politically exposed persons.

⁸ *FATF Recommendations*, Interpretive note to recommendation 24, para. 4 (b).

3. Scope of legal persons covered and exempt entities

31. All States implementing the registry approach reported that their beneficial ownership disclosure regimes covered a wide range of domestic legal persons, with companies being the most frequent and critical focus of the regimes. In addition, many States specifically require entities that may not have the status of legal entities in their jurisdiction, such as general and limited partnerships, foundations and associations, and non-profit organizations,⁹ to disclose beneficial ownership information. In addition, Brazil covers cooperative societies and football corporations, and Hungary covers State-owned economic operators, joint ventures, bailiff's offices, notary offices, law firms, patent offices, voluntary mutual insurance funds, private pension funds and housing cooperatives in their beneficial ownership transparency regimes. In Peru, political parties, movements and alliances are also covered, while Hungary explicitly excludes political parties.

32. In Lithuania and Sweden, information on beneficial owners must be provided by all legal entities established in their territories. On the other hand, in Slovakia, the register of public sector partners, an individual register that contains beneficial ownership information, covers only those entities that receive public funds, assets or services from the State worth more than 100,000 euros (for a one-off performance) or 250,000 euros (aggregate sum of performances over one year), including those that receive public funds indirectly.

33. Some States have extended beneficial ownership reporting requirements to foreign entities with a connection to the country or with a tax residence or local operations in the country. For example, Brazil and Bulgaria require beneficial ownership registration of foreign entities with specific operations, such as activities related to leasing and chartering vessels. Similarly, Germany and Bulgaria require foreign legal entities and legal arrangements that own real estate in the country to file beneficial ownership transparency information. Foreign commercial companies with offices or subsidiaries established in France (except for companies located in other States members of the European Union), foreign legal persons operating in Sweden (except those already registered for beneficial ownership in another member of the European Economic Area), foreign companies that have their headquarters or a resident manager in Bulgaria and Türkiye, and foreign entities that commit themselves to acquiring ownership of a plot of land located in Austria, are subject to beneficial ownership transparency regimes.

34. Several jurisdictions have explicitly exempted State-owned enterprises and publicly listed companies or other bodies, such as government bodies, embassies and international organizations, from beneficial ownership registration requirements. In Hungary, State-owned companies in which the percentage of State or municipal ownership comes to 75 per cent or more, either directly or indirectly, are exempted.

4. Access to beneficial ownership information in registries

35. Public access to beneficial ownership registers is granted in 23 States and ranges from access provided for a fee (9 States) and open public access free of charge (14 States).¹⁰ In most States, unrestricted access is granted online to all members of the public, while in a few States access is granted upon request only, both in electronic and/or paper form. The scope of access also varies from the most basic beneficial ownership information to a wider range of (or all) beneficial ownership data. For instance, while access is granted upon request in Namibia, anyone can obtain primary beneficial ownership data from the registers online and free of charge. In Greece, members of the general public, for a special fee, can gain access to additional information that allows the identification of the beneficial

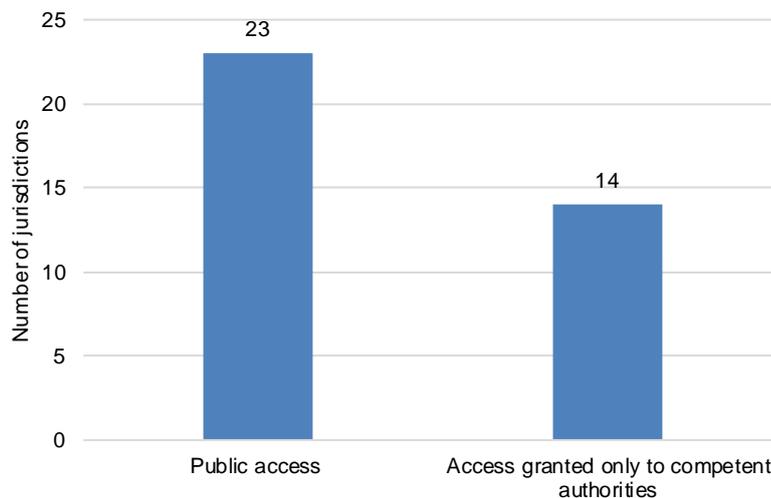
⁹ In Brazil, non-governmental organizations are exempt from beneficial ownership registration requirements provided that they are not located in tax havens.

¹⁰ In the European Union, the fifth European Union anti-money-laundering directive mandated public access to beneficial ownership registries of legal persons.

owner, which includes at least the date of birth or contact details, on the basis of proof of a particular legal interest established by a prosecutor's order.

Figure V

Access to beneficial ownership registers



36. The most recent and notable change in public access has occurred in the States members of the European Union in relation to the judgment of the Court of Justice of the European Union in joined cases C-37/20 and C-601/20 of 22 November 2022,¹¹ which invalidated the requirement of the fifth European Union anti-money-laundering directive under which member States were obliged to make information on the beneficial ownership of legal persons held in central registers accessible to any member of the general public in all cases. As a result, in Austria, open public access was converted into a “public inspection” based on legitimate interest¹² as at 1 September 2023, and only certain groups were given access to the registry, such as: (a) journalists, members of scientific communities, civil society organizations related to anti-money-laundering/countering the financing of terrorism activities; (b) obliged entities; and (c) any person, with a justified and sufficient interest, aiming to enter into a business relationship with a legal entity registered in the beneficial ownership register.

37. Similarly, in Germany, members of the public must now justify their requests for access to the Transparency Register and demonstrate a legitimate interest in inspection. In Greece, if granting access to beneficial ownership information held in the register may expose the beneficial owner to a disproportionate risk, beneficial owners may submit a justified request to the central coordinating unit for an exceptional restriction on access to part or all of the information concerning them. In Cyprus, access to the register of beneficial owners for the general public was suspended as from 23 November 2022.

38. Furthermore, in several States, beneficial ownership registers provide features that allow searches using various identifiers, such as the name of the legal entity, the name of the founder, participant or beneficial owner of the legal entity and their unique identification codes.

39. Most States reported that their competent authorities had rapid access to beneficial ownership registers. The number of authorities varied between only a few (e.g. tax authorities) to many competent authorities (e.g. law enforcement, financial intelligence units, tax authorities, and supervisory authorities responsible for countering money-laundering and the financing of terrorism). Typically, access is granted to all relevant beneficial ownership data. For instance, in Austria, Colombia

¹¹ Available at <https://eur-lex.europa.eu/>.

¹² Sufficient proof of the existence of a legitimate interest is relevant.

(subject to the existence of an inter-agency agreement), Czechia (for certain entities, such as tax authorities and the Czech National Bank), Italy, Paraguay and Türkiye, public authorities can access the register remotely using an online application. In States where beneficial ownership information is accessible only to competent authorities, there are various ways to access that information, which in certain cases can affect how rapidly and effectively the information is made available.

40. Access by reporting (obliged) entities, such as financial institutions and designated non-financial businesses and professions, has also been reported by several States. For instance, in Austria, France, Hungary, Italy, Lithuania, the Republic of Moldova and Slovenia, reporting entities have direct access to the beneficial ownership register and may obtain extracts from the register for a small fee. In Greece, the competent supervisory authorities have direct and immediate access without any restrictions or prior notice to the person concerned. However, for reporting entities, direct access (without any restrictions or prior notice) is granted upon presentation of proof of the customer relationship for the purpose of carrying out customer due diligence measures. In Portugal, obliged entities have access only to the current beneficial ownership information of their customers.

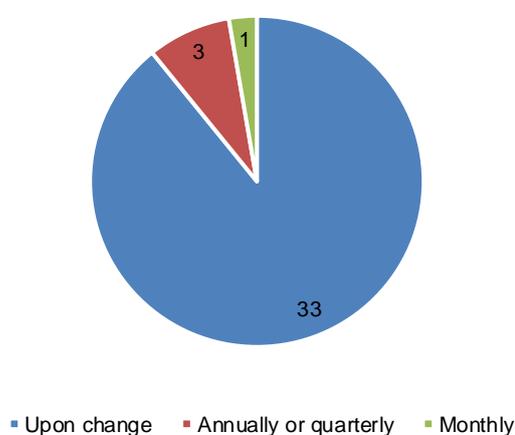
41. A catalogue with online links to corporate and beneficial ownership registers, names and contact details of competent national authorities, where available, and an overview of cooperation channels is contained in conference room paper CAC/COSP/2023/CRP.3.

5. Update of beneficial ownership information in the register

42. Most States require that information be updated whenever any changes arise. Namibia and Türkiye, on the other hand, require only annual updates. The time frame for regular updates varies from 7 to 60 days, while in Czechia, Germany, the Republic of Moldova and Sweden, the update must be recorded either promptly, as soon as possible, immediately or without undue delay. In addition, a few States, such as Armenia, Austria, Canada, Cyprus, Italy, Panama, Paraguay, Türkiye and Uruguay, require legal entities to confirm or validate the accuracy of beneficial ownership information annually.

Figure VI

Requirements to update beneficial ownership information in the register



6. Mechanisms to verify beneficial ownership information

43. Existing practices relating to the verification of beneficial ownership information can be classified into three broad categories, namely: (a) no or limited verification mechanisms; (b) moderate mechanisms; and (c) advanced verification mechanisms that rely on automatic verification systems. In some States, the responsible authorities and applicable legal instruments do not include specific mechanisms to verify beneficial ownership information and rely mainly on the legal

entities themselves to file and report accurate information. On the other hand, in some other countries, such as Bulgaria, Colombia, Czechia, France, Mauritius, Morocco, Peru and Uruguay, designated authorities in charge of the beneficial ownership register use internal or external resources for verification, including sample checks and analysis and ongoing monitoring of submitted beneficial ownership data using a risk-based approach.

44. Advanced verification mechanisms allow, among other things, the verification of beneficial ownership data at the point of submission to ensure the adequacy and authenticity of the data, ongoing monitoring of the quality of beneficial ownership data through automated cross-checks across various databases and the detection of inconsistencies for further inspection. Several States (e.g. Bolivia (Plurinational State of), Brazil, Cuba, Germany, Lithuania, Slovenia and Sweden) have developed and built their beneficial ownership data registration systems in such a manner. In Brazil, for instance, the interoperable information technology system automatically exchanges and cross-checks the reported information with trade registries, civil registries, federal and state tax authorities, and state and municipal bodies for government licensing.

45. In Austria, in addition to the application of risk-based supervision by the beneficial ownership registry authority, which consists of reviews of reports based on random, risk-based and ad hoc selection, the beneficial ownership register is interconnected with other registries, such as the business register, the central residence register and international information service providers in order to enable automatic updating and cross-checking of data in the beneficial ownership register. Similarly, in Slovenia, the beneficial ownership register is linked with data from the country's business register, central population register and tax register.

46. The role of "gatekeepers" (i.e. authorized persons such as lawyers, banks and auditors) was also stressed by several States. For instance, in Austria and Portugal, the reporting systems allow reporting by legal professionals on behalf of their clients, which contributes to the accuracy of the reported data. In Brazil, Cyprus, Israel and Namibia, the creation of a company requires the services of lawyers, who verify documents of incorporation, including beneficial ownership data. In Slovakia, the Register of Public Sector Partners is supplied only with information submitted by gatekeepers, who carry out ex ante verification of beneficial ownership data on the basis of information given by public sector partners, in addition to ex post checks carried out by the courts or the registry.

47. States also rely on various external mechanisms to ensure that the registered data are adequate, accurate and up to date. Such external mechanisms relate to the legal duty of reporting persons, as well as other persons, to report discrepancies to the designated authority if they discover any incorrect details. A few countries (e.g. Austria, Cyprus, Czechia, France, Greece, Namibia, Panama, Portugal and Sweden) require mandatory reporting of discrepancies by reporting entities under their anti-money-laundering/countering the financing of terrorism laws. In Greece and Portugal, in addition to the reporting entities, the competent authorities are also obliged to report discrepancies. Furthermore, in Portugal, entities subject to beneficial ownership reporting obligations and beneficial owners are required to report any omissions, inaccuracies, instances of nonconformity or outdated information.

B. Other mechanisms

48. Eighteen States responded that their competent authorities relied on mechanisms other than a registry to ensure that competent authorities had efficient access to beneficial ownership information. The interpretive note to recommendation 24 of the Financial Action Task Force (para. 7 (b)), as revised in March 2022, stipulates that if countries decide to use an alternative mechanism instead of a registry, such mechanisms should provide authorities with efficient

access to adequate, accurate and up-to-date beneficial ownership information. For these purposes, reliance on basic information or existing information¹³ alone is insufficient.

49. Although all responding States reported that their competent authorities could obtain beneficial ownership information, specific examples of measures to ensure or assess the efficiency (i.e. rapidness and reliability) of such access were not provided. In Azerbaijan, Belarus, Côte d'Ivoire, El Salvador, Kuwait, Malaysia, Myanmar, the Russian Federation, Turkmenistan and Venezuela (Bolivarian Republic of), competent authorities (e.g. law enforcement authorities and financial intelligence units) can obtain beneficial ownership information in various ways, including upon request to supervisory authorities responsible for countering money-laundering and the financing of terrorism, reporting entities, tax authorities and public bodies in charge of public databases, such as commercial registers, as well as to the legal entities concerned. In Australia, the financial intelligence unit can request the beneficial ownership information of a customer by issuing a notice to a reporting entity that has a relationship with a given customer.

50. To provide authorities with efficient access, in Chile, all information, including basic and beneficial ownership information obtained by reporting entities in compliance with anti-money-laundering/countering the financing of terrorism obligations, is incorporated in a unified customer due diligence register managed by the financial intelligence unit. The competent authorities are provided with centralized and direct access to the register.

V. Access to basic and beneficial ownership information on (express) trusts and similar legal arrangements

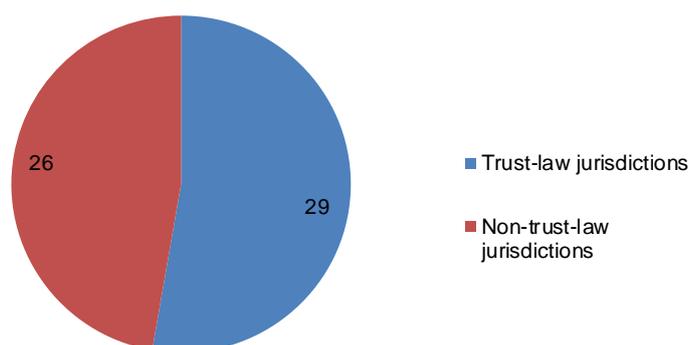
A. Overview of the beneficial ownership framework relating to (express) trusts and similar legal arrangements

51. Express trusts¹⁴ or similar legal arrangements exist in most States. Moreover, according to submissions from States, in jurisdictions that prohibit domestic trusts or similar legal arrangements, foreign trusts or other legal arrangements are not necessarily prohibited from operating within the jurisdiction or being administered by trustees residing within the jurisdiction.

¹³ This refers to requiring regulators, stock exchanges or reporting entities under the anti-money-laundering/countering the financing of terrorism law of the country (e.g. banks, lawyers, accountants, trusts and company service providers) to collect and maintain beneficial ownership information as part of their customer due diligence obligations and to make it available to the competent authorities in a timely manner.

¹⁴ The term “express trust”, as defined by the Financial Action Task Force, refers to “a trust clearly created by the settlor, usually in the form of a document e.g., a written deed of trust”. Express trusts exist mainly in common-law countries.

Figure VII
Trusts or similar legal arrangements under domestic law



B. Access to basic information on trusts and similar legal arrangements

52. In the majority of trust law jurisdictions (i.e. in 19 out of 29 States),¹⁵ there is a registration requirement in order for domestic trusts to come into existence. For instance, it appears that countries require domestic trusts and similar legal arrangements to be properly registered and incorporated before starting to operate (e.g. in France and Czechia).¹⁶ They are usually subject to registration requirements if they have tax obligations and receive local income or are administered by a local trustee.

53. In addition, in 17 trust-law jurisdictions, foreign trusts and similar arrangements must be registered. In non-trust law jurisdictions, trusts are usually viewed as private arrangements, and their existence is not a matter of public record. Nevertheless, registration requirements exist for foreign trusts and similar legal arrangements in nine of those jurisdictions.

54. The registration requirement is commonly triggered when a foreign trust has a sufficient connection with the host jurisdiction, for example when a trustee of a foreign trust, a person with an equivalent position or a member of the management is a resident of the respective jurisdiction. In a few jurisdictions, the registration of a trust established under foreign law is also required if another party to a trust, such as a settlor or beneficiary, is a resident of the jurisdiction (e.g. in France and Uruguay), or if a trust has made an investment (e.g. in Brazil, Chile and Hungary), carries out business activities (e.g. in Austria, Chile, Hungary, Panama and Slovakia), owns real estate or establishes a business relationship with an obliged entity under anti-money-laundering/countering the financing of terrorism law in the respective jurisdiction (e.g. in France and Germany). In Australia and Chile, foreign trusts or similar legal arrangements must be registered if they have a local source of income.

55. On the information that needs to be disclosed or registered, Colombia, Cyprus and El Salvador reported that domestic trusts have to provide information about the type of trust, its purpose, the applicable payments, its settlors, trustees, agents and registered assets. In Hungary, a list of assets managed, as well as the accounting records and financial statements of each trust, must be collected.

56. In most jurisdictions, since the registration of trusts is mainly with tax authorities, registration information is not available to the public. Only five States indicated that such registration data are freely accessible to the public.

¹⁵ Jurisdictions that recognize or allow the creation of trusts under their domestic law.

¹⁶ In Japan, however, trusts are not required to be registered in order to come into existence.

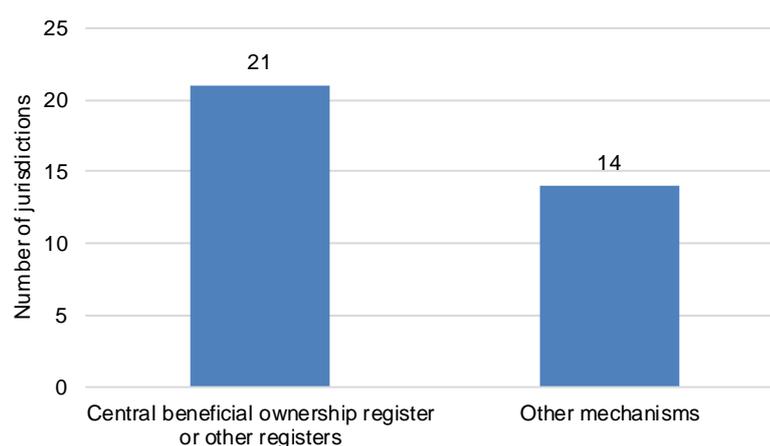
C. Access to beneficial ownership information on trusts or similar legal arrangements

57. Among both the trust-law and non-trust-law jurisdictions, nearly two-thirds (35) of the jurisdictions cover domestic or foreign trusts or similar legal arrangements within their beneficial ownership frameworks. In 14 States, beneficial ownership information is collected typically by placing an obligation on trustees to provide that information to the designated authority or through other mechanisms, including the “trustee approach”¹⁷ and the “existing information approach”, as in the case of legal persons.

58. Beneficial ownership information on trusts and similar legal arrangements is collected and maintained in registers in 21 States.

Figure VIII

Mechanisms to obtain and gain access to beneficial ownership information on trusts or similar legal arrangements



59. With only a few exceptions, States provided limited information on the categories of beneficial ownership data subject to collection. Several States, such as Colombia, Cyprus and Czechia, require information on the founder, trustee (administrator), protector, beneficiary and person authorized to supervise the management of the trust to be collected and stored in the central beneficial ownership register. In France, the register contains personal data on the settlors, administrators and beneficiaries of the trusts. In Israel, the tax authority holds significant information on trusts, including the purposes and beneficiaries, in a single database.

60. Except for a few States parties (e.g. Czechia, Namibia and Panama) where beneficial ownership information on trusts or similar legal arrangements is available to the public (albeit usually with limitations), in the majority of States, beneficial ownership data are not accessible to public and may only be available to the competent authorities. An exception is Panama, where beneficial ownership information on trusts that hold real estate is available online and through the search functionality of the public registry. The mechanisms that allow the competent authorities and reporting entities to access beneficial ownership information on trustees are the same as reported above for legal persons.

¹⁷ This refers to the requirement for a trustee to be responsible for keeping information.

VI. Sanctions for non-compliance with beneficial ownership transparency requirements

61. The types of sanctions enforced for breaches of beneficial ownership disclosure requirements usually vary from one jurisdiction to another and include administrative (or civil) and criminal sanctions. In some States, both types of sanctions are available; in others, those sanctions are mutually exclusive. Criminal sanctions include criminal fines or imprisonment, mainly for knowingly providing false information. In Armenia, for instance, the penalty is up to two months of imprisonment; in Canada, up to six months; in Egypt, up to two years; in Côte d'Ivoire, up to three years; in El Salvador, up to four years; and in Mauritius, up to five years.

62. Administrative sanctions are the most common type of penalty and are typically imposed in the form of fines. In some States, administrative sanctions also include non-pecuniary penalties that are imposed in conjunction with fines, such as denial of a licence or registration, suspension or revocation of certificates or licences to carry out business activities, suspension of registration (e.g. in Cuba and France), prohibition from registering legal acts or transactions in public registers (e.g. in Uruguay), suspension of tax registration, prohibition from distributing dividends or profits or exercising voting rights, temporary or permanent bans on holding certain management positions or engaging in certain activities, forced dissolution/removal from the commercial register, and permanent or temporary exclusion from public benefits, aid, contracts for works and services, supplies or subsidies.

63. A few jurisdictions also impose other types of non-financial restrictions that include preventing financial institutions (such as banks) and designated non-financial businesses and professions from forming business relationships or executing transactions with an entity that has failed to register or update information in the central beneficial ownership register (e.g. in Brazil, Hungary and Lithuania), or rendering natural and legal persons who have failed to comply with beneficial ownership disclosure requirements ineligible for government contracts (e.g. in Czechia, Germany, Portugal and Slovakia).

64. Moreover, in Czechia, non-compliance with beneficial ownership transparency requirements may have a significant impact on contractual relations between businesses and their shareholders and may result in the unenforceability of contracts that conceal the identity of beneficial owners and in the prohibition of payment of profits and exercise of voting rights. In Hungary, if the registered beneficial ownership information is classified as unreliable, the registration body may publish it on its website. Similarly, in Israel, non-compliance entails a declaration of the company as a “company in violation”, a status that is publicly accessible and may prevent the company from executing certain legal acts. In Panama, the suspension of the corporate rights of legal entities leads to the non-registration of acts, documents or agreements and non-issuance of certifications to the sanctioned legal entity for the duration of the suspension.

65. The most common types of conduct that have been sanctioned in the majority of jurisdictions include: (a) failure to provide beneficial ownership information or late submission, either to the register or when requested by the competent authorities; (b) providing false, incomplete or inaccurate information; (c) failure to keep or update beneficial ownership information in the register; (d) concealment of beneficial ownership data or failure to provide access to those data; (e) violation of timelines or procedures for submission of beneficial ownership information; (f) failure to notify the company of changes in beneficial ownership status; and (g) destroying and removing records and facilitating false reporting.

66. In almost all countries analysed for the purposes of the present note, liability is mainly imposed on the declarant, who may be an individual or a legal person. Some jurisdictions, however, extend liability to company officers, which usually includes

directors, executives and the management of the company, or to the beneficial owner or owners of the company. Sanctions are also imposed on persons who have access to or manage beneficial ownership registers, for instance, for disclosing restricted information from the register or failing to take timely action.

67. Furthermore, some jurisdictions also impose liability on other service providers, such as private sector intermediaries, or gatekeepers. For instance, in Panama, resident agents must verify the identity of beneficial owners and register and update that information in the registry. In Austria, sanctions are also established for legal professionals reporting on behalf of their clients for submitting false, incorrect or incomplete reports to the register. In addition, some jurisdictions may also hold other types of gatekeepers and third parties (e.g. lawyers, accountants, auditors, tax advisers and notaries) liable for failure to ensure the accuracy of beneficial ownership information.

VII. International cooperation on the exchange of beneficial ownership information

68. Most States parties highlighted the significance of mutual legal assistance requests, based on the principle of reciprocity and multilateral or bilateral agreements on mutual legal assistance in criminal matters, to request the necessary beneficial ownership information during criminal proceedings. Many States stressed that beneficial ownership information in their jurisdiction was public, with unrestricted access, and could be accessed from abroad, including by competent foreign authorities.

69. Several States have also highlighted the exchange of beneficial ownership information under tax transparency initiatives, that is, tax treaties and conventions, such as double taxation agreements and conventions, agreements on the exchange of tax information and multilateral conventions on mutual administrative assistance in tax matters.

70. Many States also emphasized the use of direct or informal cooperation mechanisms to exchange beneficial ownership information among law enforcement authorities, including through the Egmont Group of Financial Intelligence Units, the Global Operational Network of Anti-Corruption Law Enforcement Authorities (Globe Network), the International Criminal Police Organization (INTERPOL) and asset recovery networks, such as the asset recovery inter-agency networks and other regional networks. States also reported on the possibility of exchanges of beneficial ownership information by financial intelligence units, as well as the direct exchange of information between financial supervisory authorities and central banks. Several States members of the European Union also mentioned the Beneficial Ownership Registers Interconnection System, a tool that connects national central registers holding beneficial ownership information on corporate and other legal entities, trusts and other legal arrangements.

VIII. Challenges

71. States parties noted various specific challenges in ensuring beneficial ownership transparency and exchanging beneficial ownership information effectively at the international level, which included:

- (a) Lack of a unified, robust and comprehensive definition of “beneficial owner” that covers all relevant factors or criteria to determine beneficial ownership;
- (b) Varying scope of legal entities covered, as well as the type and level of detail of beneficial ownership information;
- (c) Collection of insufficient identification details on beneficial owners, including the nature and extent of their beneficial ownership interest, and the

absence of effective mechanisms for verification, monitoring and timely updating of the collected information;

(d) Lack of timely or restricted access to beneficial ownership information by competent domestic authorities, complications in obtaining such information, and limited access to beneficial ownership information on legal arrangements;

(e) Lack of dissuasive and proportionate sanctions and mechanisms for imposing and enforcing sanctions.

72. On the exchange of information with foreign counterparts, some of the common challenges noted by States parties included:

(a) Difficulties in identifying contact points and ascertaining the location of records and, subsequently, in gaining access to beneficial ownership data;

(b) Difficulties in identifying the types of legal persons and arrangements and the level of control that exists over suspected proceeds of crime;

(c) Lack of proper information-sharing mechanisms, such as bilateral and multilateral agreements, and the absence of direct and informal channels that allow the exchange of beneficial ownership information;

(d) Long response times and increased costs when beneficial ownership information is requested through formal mutual legal assistance processes, unresponsiveness on the part of foreign authorities, and incomplete responses;

(e) Lack of recognition of non-conviction-based action or of certain offences, and inadequately justified requests;

(f) Lack of proper frameworks for direct and timely access to beneficial ownership information for reasons such as the absence of a single registry and centralized authority for managing beneficial ownership information, a lack of automated systems, and a lack of proper verification and monitoring of beneficial ownership data in requested foreign jurisdictions.

IX. Good practices

73. Good practices highlighted by States included:

(a) High level of interconnection of domestic registers, which enables automated synchronization and cross referencing of data from different sources to ensure that the beneficial ownership data are accurate;

(b) Implementation of a multi-pronged approach to ensure that data are adequate, accurate and up to date, featuring risk-based supervision of the beneficial ownership register and full integration of the register into the business systems of obliged entities;

(c) Enhanced transparency of trusts and similar legal arrangements, as well as nominee arrangements, with the possibility of public inspection of records;

(d) Reporting of the beneficiaries of trusts and foundations to the beneficial ownership register, and in cases where the shareholder is a nominee, reporting of the nominator¹⁸ as a beneficial owner;

(e) Existence of effective coordination mechanisms at the national level and spontaneous disclosures of information concerning beneficial ownership by financial intelligence units and supervisory and law enforcement authorities;

(f) Exchange of beneficial ownership information through informal channels and law enforcement cooperation channels where no coercive measures and judicial authorizations are required.

¹⁸ For the definitions of “nominee” and “nominator”, see the *FATF Recommendations*, General glossary, p. 130.

74. States also highlighted the following measures as good practices:

(a) Establishing a robust and comprehensive definition of beneficial owners, covering all relevant factors or criteria, including requirements for disclosing additional details about the means and mechanisms through which beneficial ownership is exercised and the full ownership chain, especially for higher-risk entities or sectors;

(b) Covering a wide range of legal persons and legal arrangements, including foreign entities and foreign trusts with a relevant connection to the jurisdiction, based on extensive risk assessment, context and materiality;

(c) Establishing a centralized beneficial ownership register for legal persons and legal arrangements that ensures efficient access by competent authorities;

(d) Requiring obliged persons to report discrepancies that they find between the beneficial ownership information available to them and the beneficial ownership data held in the registers;

(e) Ensuring the availability of beneficial ownership information on legal persons to the general public free of charge and in an open data format;

(f) Verifying beneficial ownership data, including by: (i) assigning responsibility for verification to a specific department within the Government; (ii) conducting spot checks of the submitted beneficial ownership information using a risk-based approach; (iii) using automated verification checks; (iv) interconnecting with and cross-checking against other databases; (v) engaging the public in verification; (vi) allowing downloads in open data formats and wide searchability across the register; (vii) effective enforcement of the obligation to report; and (viii) integration of online registers into the business systems of obliged entities and gatekeepers;

(g) Improving the accuracy of beneficial ownership data by giving a reasonable time frame for updating existing beneficial ownership information and requiring an annual confirmation of beneficial ownership data;

(h) Enforcing a combination of administrative, civil and criminal sanctions and effectively combining non-financial sanctions and restrictions with other sanctions.

X. Conclusion and next steps

75. Beneficial ownership transparency is a critical policy tool for combating corruption and tackling the misuse of legal structures to conceal the proceeds of corruption and other crimes. Over the past few years, many States have enacted laws and issued regulations to enhance their domestic frameworks and achieve greater transparency regarding the beneficial ownership of legal entities and trusts.

76. The present note demonstrates that beneficial ownership transparency remains a highly technical area in which many countries still lack sufficient legal, regulatory and institutional frameworks. It is also worth noting that owing to these challenges, there is also a lack of effective cooperation channels and mechanisms for the collection and exchange of beneficial ownership data across borders.

77. The Conference may wish to remain seized of the subject, to encourage States parties to continue to strengthen their beneficial ownership transparency regimes, and to call upon States, in accordance with the Convention and the fundamental principles of their domestic law, to enhance their cooperation with a view to facilitating the exchange of beneficial ownership information.

78. Moreover, the Conference may wish to consider concrete measures that would address some of the challenges highlighted by States parties, in particular the challenges summarized above relating to a unified definition and enhancing mechanisms for sharing information, including the development of model

agreements and the development of good practices and guidelines that would assist States parties in improving the gathering and sharing of beneficial ownership information.
