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**Open-ended Intergovernmental Working Group  
on Asset Recovery**

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Agenda item 4 (a)

**Good practices and challenges with respect to  
beneficial ownership and how it can foster and  
enhance the effective recovery and return of  
proceeds of crime, taking into consideration  
article 63 of the Convention****Good practices and challenges with respect to beneficial  
ownership and how it can foster and enhance the effective  
recovery and return of proceeds of crime***Summary*

This conference room paper is prepared pursuant to resolution 9/7 of the Conference of the States Parties (Conference) to the United Nations Convention against Corruption (Convention) 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 to ensure beneficial ownership transparency (BOT) in place in the States parties that provided information to UNODC in response to a note verbale, as well as a discussion of common issues/challenges and good practices. The document also highlights the relevance of beneficial ownership transparency in encouraging and enhancing the effective recovery and return of proceeds of crime.



## I. Introduction

1. One of the key obstacles to tracing and recovering illicit gains from corruption is a lack of corporate transparency: during corruption investigations, investigators often must first uncover who controls a company or benefits from the ownership of an asset – for example, a real estate property or a corporate bank account that is involved in a corrupt scheme – since the beneficial owner may be hidden behind multiple layers of shell companies or behind a nominee director. Implementing an effective beneficial ownership disclosure regime is increasingly seen as an essential policy tool in the fight against corruption and for preventing money laundering, countering the financing of terrorism, and tax evasion.

2. Ensuring access to adequate, accurate and up-to-date information on legal owners and beneficial owners of corporate vehicles is a fundamental tool to “substantially reduce corruption and bribery in all their forms” as required by Goal 16 of the Sustainable Development Goals (SDGs) part of the 2030 Agenda for Sustainable Development adopted in 2015 by the UN General Assembly.

3. Article 12, paragraphs 1 and 2, of the Convention promotes beneficial ownership transparency by providing that each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector. It states that such measures may include, inter alia, [p]romoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities. Article 14 of the Convention further requires States parties to establish comprehensive domestic and supervisory regimes for banks and non-bank financial institutions, which emphasises the requirements for beneficial ownership identification, where appropriate, as part of customer due diligence checks. Article 52 of the Convention also requires each State party to take such measures, as may be necessary, in accordance with their domestic law, to require financial institutions to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts.<sup>1</sup>

4. 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 to the Convention decided that the Open-ended Intergovernmental Working Group on Asset Recovery should include in its workplan for the period 2022–2023 the topic of good practices and challenges with respect to beneficial ownership and how it can foster and enhance the effective recovery and return of proceeds of crime, taking into consideration Article 63 of the Convention.

5. In the same resolution, the Conference also encouraged States parties, with the assistance of the Secretariat, to share, on a voluntary basis, examples of good practices on promoting beneficial ownership information transparency to facilitate the recovery and return of proceeds of crime.

6. In addition, in paragraph 16 of the political declaration, entitled *Our common commitment to effectively addressing challenges and implementing measures to prevent and combat corruption and strengthen international cooperation*, adopted by the General Assembly at its special session against corruption, the Member States, inter alia, committed to 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.

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<sup>1</sup> For more information, please see the thematic report prepared by the Secretariat that contains a compilation of the most relevant information on successes, good practices, challenges and observations on the implementation of chapter V of the Convention, including beneficial ownership identification, contained in the executive summaries and country review reports in the framework of the UNCAC Implementation Review Mechanism (CAC/COSP/2021/6).

7. UNODC has prepared the present conference room paper to facilitate the thematic discussion to be conducted on those topics during the sixteenth meeting of the Working Group. The document contains an overview of the concept of “beneficial ownership”, the access to basic information and beneficial ownership information on legal persons and on (express) trusts and other similar legal arrangements. It will also outline the different existing sanctions for non-compliance with beneficial ownership transparency requirements and the existing practices on the exchange of beneficial ownership information among States. For this purpose, the document will analyse the beneficial ownership transparency regimes of the States parties that provided information to UNODC in response to a note verbale, including identifying emerging trends, common challenges, and good practices in ensuring beneficial ownership transparency. The paper also explores how these factors can strengthen and support the asset recovery and return mechanisms of States parties.

## II. Methodology and data collection

8. This paper draws on (a) the information provided by 38 States parties<sup>2</sup> in response to a *note verbale* circulated by the Secretariat in May 2022, which included a questionnaire on beneficial ownership transparency regimes,<sup>3</sup> and (b) information from open sources and selected publications on the topic, as referenced. All thirty-eight State parties responded by stating that a type of regime to collect and record beneficial ownership (BO) information on legal persons/arrangements exists in their respective jurisdictions. These regimes, however, range from those that have established a central BO register as part of a multi-pronged approach<sup>4</sup> to those that rely primarily on customer due diligence (CDD) information collected by reporting entities, as mandated by anti-money laundering and countering the financing of terrorism (AML/CFT) laws. Specific features of BO regimes contained in States parties’ responses, supplemented by information from publicly available official sources, are discussed in the sections below.

## III. The concept of the “beneficial owner”

### (i) Definition of “beneficial owner”

9. The Convention does not provide a definition of “beneficial owner”. To date, the most widely adopted definition of beneficial owner is the definition in the “General Glossary” of the Financial Action Task Force (FATF) Recommendations. In the “General Glossary”, the term “beneficial owner” is defined to include “*the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.*”<sup>5</sup> The FATF definition, as revised in 2022, clearly provides that only a natural person(s) can be an ultimate beneficial owner(s) and that more than one natural person can be a beneficial

<sup>2</sup> Algeria, Armenia, Australia, Austria, Azerbaijan, Belarus, Bosnia and Herzegovina, Brazil, Canada, Chile, Colombia, Côte d’Ivoire, Czech Republic, El Salvador, France, Germany, Honduras, Israel, Italy, Japan, Lithuania, Moldova, Morocco, Myanmar, Namibia, Oman, Pakistan, Panama, Paraguay, Peru, Portugal, Russian Federation, Saudi Arabia, Sweden, Thailand, Türkiye, Turkmenistan, Venezuela. Due to their late submission, responses from Cuba, Egypt and Suriname have not been included in the analysis. All contributions of States parties that did not object to their publication are made available to the attention of the Working Group.

<sup>3</sup> The comprehensiveness and scope of the information provided in the responses submitted by States parties varied. Examples of specific countries and measures cited throughout this paper refer to those explicitly provided for in the responses.

<sup>4</sup> In this context, a ‘multi-pronged approach’ refers to a system where multiple different sources of beneficial ownership information are available in a given jurisdiction, which may supplement each other and may ultimately lead to better quality information. Also see “FATF Best Practices on Beneficial Ownership for Legal Persons” (2019).

<sup>5</sup> The FATF Recommendations 2012, p. 119.

owner of a given legal person<sup>6</sup> or legal arrangement.<sup>7</sup> It further clarifies that the reference to “ultimately owns or controls” and “ultimate effective control” in the definition “refers to situations in which ownership/control is exercised through a chain of ownership or by means of control other than direct control.”<sup>8</sup>

(ii) “Beneficial owner” of legal persons

10. All States parties that responded to UNODC’s questionnaire have a legal and regulatory framework that includes a definition of beneficial owner of legal persons. Most States parties’ definitions of beneficial ownership of legal persons refer to both direct and indirect control or ownership. Many jurisdictions also define control via other means than equity ownership interests, e.g. by considering the percentage of voting rights, the right to appoint or remove the board of directors, as well as a general/residual option, e.g. a person exercising ultimate effective control over the legal entity. In addition, some States parties<sup>9</sup> also consider as beneficial owners those who have rights to economic benefit (for example, dividends) from the entity. Nonetheless, except in a few countries,<sup>10</sup> the majority of definitions do not cover all relevant factors or criteria (for example, ownership, voting rights, control over the board of directors, control via other means) in the definition of beneficial owner(s) for legal persons.

11. The majority of jurisdictions that provided information have defined a specific equity ownership threshold to determine the beneficial owner(s) of legal persons, except for a few countries which only provide a general definition of BO without a defined threshold. The threshold varies across States parties. For instance, in Austria, Brazil, Côte d’Ivoire, Czech Republic, France, Germany, Italy, Japan, Lithuania, Portugal, Russian Federation, Sweden and Türkiye, the threshold is “more than 25 per cent”; in Australia, Canada, Honduras, Israel, Moldova, Morocco, Pakistan, Panama and Saudi Arabia, it is “25 per cent or more”; in Armenia, Bosnia and Herzegovina, and Namibia, it is “20 per cent or more”; in Belarus, Chile, El Salvador, Paraguay, and Peru, the threshold is “10 per cent or more”; in Myanmar, the threshold is “more than 5 per cent”; and in Colombia, it is “5 per cent or more”.

<sup>6</sup> The term ‘legal persons’ is used in this paper in accordance with the FATF Glossary definition which refers to “any entities other than natural persons that can establish a permanent customer relationship with a financial institution or otherwise own property. This can include companies, bodies corporate, foundations, anstalt, partnerships, or associations and other relevantly similar entities.” Thus, both legal persons with and without a distinct legal personality are included within this definition.

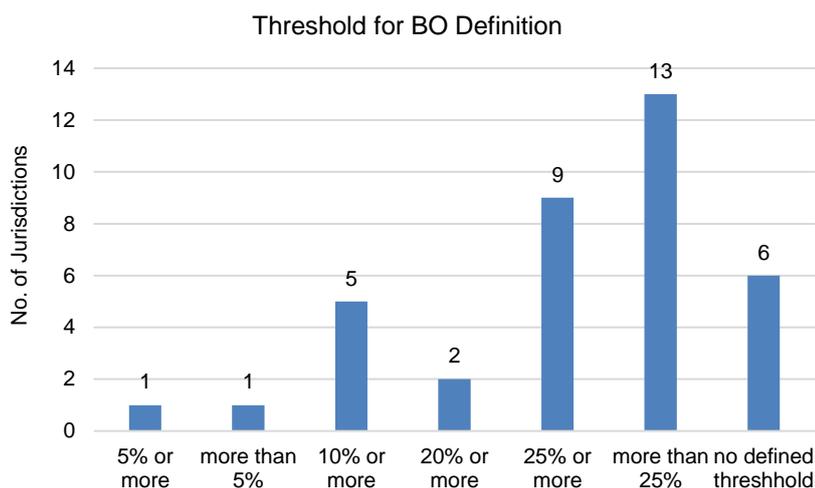
<sup>7</sup> As defined in the FATF Glossary, this paper uses the term ‘legal arrangements’ to refer to express trusts and other similar legal arrangements. Examples of other similar legal arrangements include *fiducia*, *treuhand*, *fidecomiso*, private foundations, and *waqf*, which share similar features and functions as express trusts. The term ‘express trust’, as defined by the FATF, “refers to a trust clearly created by the settlor, usually in the form of a document e.g., a written deed of trust.”

<sup>8</sup> The FATF Recommendations 2012, p. 119.

<sup>9</sup> Colombia, Czech Republic, El Salvador and Japan.

<sup>10</sup> E.g. Brazil, Czech Republic, France and Myanmar.

Figure I  
Ownership threshold to determine the beneficial owner(s)



12. Interestingly, a few countries also differentiate between thresholds applied for shares and voting rights. For instance, Italy set a threshold of “more than 25 per cent” for ownership via shares, but for determining beneficial owners via voting rights, it is “majority of voting rights”. Similarly, in Paraguay, the threshold of controlling via holding shares in total capital is “10 per cent or more” whereas via voting rights, it is “more than 25 per cent”.

13. The BO definition of legal persons thus varies among the responding States parties. Rather than conform to any specific global standard, a jurisdiction’s BO definition might be dependent on national policy goals and national-level risk assessment of legal persons within a jurisdiction. For many countries, policy goals include, for instance, combating corruption, money laundering, terrorist financing, and tax evasion, or promoting economic growth by reducing the risk of fraud. While high thresholds could leave a disclosure regime vulnerable to loopholes, lower thresholds could needlessly increase the reporting burden on companies and increase administrative burdens on registries and other government resources. For this reason, it can be helpful, in line with article 5, paragraph 3, of the Convention, to periodically review the threshold(s) to ensure that the level chosen is appropriate and to enable the country to achieve the policy goals connected with BO disclosures.

(iii) *“Beneficial owner” of trusts and similar legal arrangements*

14. The definition of beneficial owner of trusts and similar legal arrangements differs from the definition of beneficial owner of legal persons, which is mainly due to their distinct nature and different legal form. Unlike legal persons, trusts and similar legal arrangements are mostly considered as private arrangements, which in many jurisdictions do not have a separate legal personality and do not require incorporation to come into existence.

15. For trusts and similar legal arrangements, only limited information has been provided on the definition of the beneficial owner of trusts or similar legal arrangements by the State parties that responded to the questionnaire. On the basis of the information provided in States parties’ responses, the definition of beneficial owner of trusts is not uniform among the analysed countries. Eight countries<sup>11</sup> require all parties to the trust to be identified as beneficial owners (i.e. settlor(s), trustee(s), protector(s), beneficiaries or class of beneficiaries, and any other natural person with control over the trust), whereas the definition of beneficial owners of trusts in other

<sup>11</sup> Brazil, France, Germany, Lithuania, Morocco, Panama, Portugal and Thailand.

countries does not cover all parties to the trust.<sup>12</sup> In Peru, the protector(s) is only required to be identified in the case of a foreign trust. In Paraguay, Italy, Côte d'Ivoire, and Canada, only settlor, trustee and beneficiaries are included within the BO definition of trusts. Moreover, a few jurisdictions<sup>13</sup> also apply a threshold of profit share or assets owned to the definition of trusts. In Japan, for instance, the definition of beneficial owners of legal arrangements is the same as for legal persons, i.e. only those beneficiaries who are entitled to more than 25 per cent share of profit or assets of a trust are required to be identified as BOs, in addition to persons who exercise effective control over the legal arrangement in other ways.

#### IV. Access to basic information on legal persons

16. Article 12 of the Convention requires States parties to promote transparency among private entities and take measures, where appropriate, to identify the legal and natural persons involved in the establishment and management of corporate entities. The Interpretive Note to FATF Recommendation 24 requires countries to obtain and record certain minimum basic information about a company in the company registry and make it available to competent authorities. This basic information includes: (a) company name; (b) proof of incorporation; (c) legal form and status; (d) address of the registered office; (e) basic regulating powers (e.g. memorandum and articles of association); (f) a list of directors; and (g) unique identifier, such as tax identification number or equivalent (where this exists).<sup>14</sup> Companies are also required under FATF Recommendation 24 to maintain additional information, including the names of all shareholders and members, number of shares held by each shareholder; and categories of shares (including the nature of the associated voting rights).

17. Except a few States parties that did not provide detailed information, almost all the State parties that responded to the questionnaire obtain and record the basic information about a company in a company register. A few States<sup>15</sup> also obtain and record unique identifiers (such as tax identification). The number of shares held by each shareholder and/or categories of shares is also reported to be held in the company registries of a few States.<sup>16</sup> The majority of jurisdictions collect more information about companies, including registered capital, economic activities, agencies or branches, legal representatives, assets etc.

18. Most of the States parties keep a record of the basic information about legal persons in a commercial registry, which is freely accessible online. However, a few jurisdictions<sup>17</sup> charge a small fee to access some information about a legal person or to get an extract. In Australia, for instance, information about company officeholders, address, principal place of business and share structure is publicly available for a small fee. Similarly, in Israel, information on the company/partnership name, registration date and number, legal form and status, and address of the registered office is publicly available free of charge. Both, information on current share capital and the identity of shareholders and directors and equivalent data for partnerships is

<sup>12</sup> The FATF Recommendation 10 (and its Interpretive Note) provides that all parties to the trust should be identified as beneficial owners, which includes: (a) settlor(s); (b) trustee(s); (c) protector(s)(if any); (d) beneficiaries or class of beneficiaries; and (e) any other natural person(s) exercising ultimate effective control over the trust. All these natural persons must always be identified as BOs regardless of whether or not any one of them exercises control over the trust. In the case of other legal arrangements similar to trusts, the natural person(s) holding equivalent or similar positions to those referred to above for trusts are required to be identified as beneficial owners INR 10, the FATF Recommendations 2012, p. 66; article 31(c), EU 5th AML Directive.

<sup>13</sup> Such as Canada, France and Japan.

<sup>14</sup> Interpretive Note to FATF Recommendation 24, p. 92.

<sup>15</sup> Such as Armenia, Australia, Bosnia and Herzegovina, Czech Republic, Israel, Moldova, Paraguay, Peru and Russian Federation.

<sup>16</sup> For example, Czech Republic, El Salvador, Israel, Namibia, Pakistan, Paraguay, Thailand, Türkiye and Venezuela.

<sup>17</sup> E.g. Australia, Israel, Japan and Oman.

publicly available, as well as a copy of the full docket of the company/partnership, including its constitutional documents, are available for a small fee. In a small number of States parties, where the commercial register is not online, the information could be requested from the designated authority in writing.<sup>18</sup>

19. Only in very few States parties,<sup>19</sup> even certain basic information of legal persons is not publicly accessible, and even the competent authorities have to request this information from the company registry. In Belarus, for instance, the registry information is available to competent authorities via remote access within the framework of existing inter-departmental agreements; however, detailed information is available only via a request to the Ministry of Justice and Ministry of Taxes. In the Russian Federation, basic information on legal entities in the State registers is open and publicly available. However, access to the information contained in the state register of legal entities may be limited/restricted by the registering authority on the basis of a request of the concerned legal entities and, as such, would only be accessible to competent authorities in certain circumstances.

## V. Access to BO information on legal persons

20. All State parties that responded to the questionnaire have stated that the competent authorities within their jurisdiction have access to the BO information. Nonetheless, it appears that only a small number of State parties have established a multi-pronged approach to ensure that the competent authorities have efficient access to the BO information.

21. Twenty States parties have adopted a registry approach to obtain and record the BO information, which includes both establishing a central BO register or other registers with public authorities or bodies holding the BO information. In nineteen jurisdictions, a central BO registry for legal persons has been set up, whilst other registers exist in one jurisdiction – the extent or scope of which might be limited. In Japan, there is a BO register of stock exchange listed companies.

Table 1  
Access to BO information on legal persons

<i>I. Countries that have adopted a registry approach</i>		<i>II. Countries that rely on different mechanisms</i>
<i>a. Countries that have a central BO registry</i>	<i>b. Other registers</i>	
Armenia, Austria, Brazil, Colombia, Czechia, France, Germany, Italy, Lithuania, Moldova, Morocco, Namibia, Pakistan, Panama, <sup>20</sup> Paraguay, Peru, Portugal, Sweden, Türkiye	Japan <sup>21</sup>	Algeria, Australia, Azerbaijan, Belarus, Bosnia and Herzegovina, Canada, Chile, Côte d'Ivoire, El Salvador, Honduras, Israel, Myanmar, Oman, Russian Federation, Saudi Arabia, Thailand, Turkmenistan, Venezuela

<sup>18</sup> For instance, in Algeria, Côte d'Ivoire, Namibia and Turkmenistan.

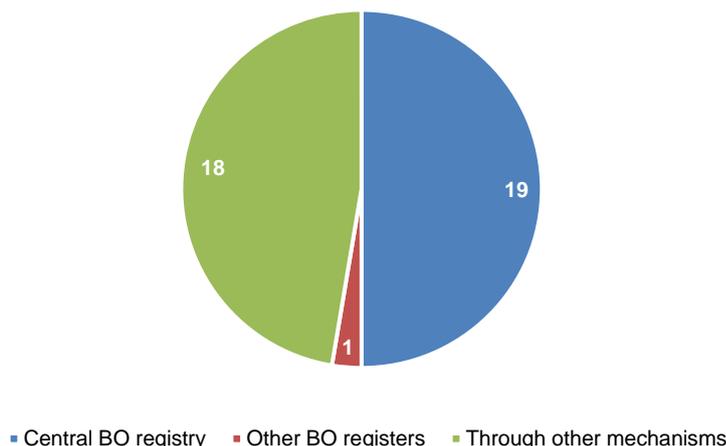
<sup>19</sup> For example, Belarus, Paraguay and Venezuela.

<sup>20</sup> Panama is currently in the process of establishing a BO register, which is maintained by the Superintendency of Non-Financial Institutions (SSNF), in which resident agents record the BO information of their clients, covering corporations, limited liability companies, private interest foundations, and certain foreign companies registered in the country.

<sup>21</sup> Commercial Registry keeps a Beneficial Ownership of Legal Persons List of stock companies only.

22. In eighteen jurisdictions, States indicated that competent authorities rely on different mechanisms; in most cases, either the company approach or a version of the so-called “existing information approach”, or a combination of both, to obtain the BO information about legal persons. “Company approach” refers to obliging corporate entities to obtain and maintain adequate, accurate, and up-to-date BO information, and to make it available to the competent authorities in a timely manner and “the existing information approach: requiring the regulators, stock exchanges, or reporting entities under the AML/CFT law of the country (such as banks, lawyers, accountants, trusts, and company service providers) to collect and maintain the BO information as part of their customer due diligence obligations, and to make it available to the competent authorities in a timely manner.”<sup>22</sup>

Figure II  
**Mechanisms to obtain and record BO information**



**A. Registry Approach**

23. In the 20 State parties where the BO information is obtained and recorded using a central register or other registries, the following are some of the issues highlighted by this paper for detailed analysis.

(i) *Authority(ies)/agency(ies) responsible for obtaining and maintaining BO information*

24. Most of the State parties that responded to the questionnaire and implement the registry approach reported that the BO information is held by a public authority or body. The most common authorities are the corporate regulator, the tax authority, and the securities regulator. In Armenia, Czech Republic, France, Germany, Italy, Lithuania, Moldova, Morocco, Namibia, Paraguay, Portugal, Sweden, and Türkiye, for instance, corporate regulators are designated as the competent authorities, as the BO provisions are embodied in company laws and a wider range of legal entities are covered within the BO disclosure regime; In Brazil, Colombia, and Peru, it is the tax authorities; and, the securities regulator for Pakistan and Japan. In Panama, the authority holding the BO information is the Superintendency of Non-Financial Institutions (SSNF), the regulator of resident agents.

25. Except in a few countries,<sup>23</sup> the designated authority usually has merely a general supervision or verification obligation, which is not necessarily specific to BO.

<sup>22</sup> For further details on different mechanisms to obtain and record BO information, see Interpretive Note to FATF Recommendation 24.

<sup>23</sup> For example, Moldova and Panama.

*(ii) Categories of BO data obtained and maintained*

26. Collecting certain minimum information on beneficial owners is essential to ensure their proper identification. In this regard, the Interpretive Note to FATF Recommendation 24 provides examples of information that should be collected to identify a beneficial owner. This includes: the full name, nationality(ies), the full date and place of birth, residential address, national identification number and document type, and the tax identification number or equivalent in the country of residence. The revised FATF Recommendation 24 also requires, under “adequate” BO information, to determine the means and mechanisms through which the beneficial owner(s) exercise(s) ownership or control.

27. Most jurisdictions that implement a registry approach reported that they collect sufficient identification details on BOs in the register, which include full name, nationality, residential address or country of residence, date of birth, national identification, or passport. A few State parties also obtain and record the tax identification number<sup>24</sup> as well as the nature and extent of BO interest, for example, percentage of votes or shares or means of control.<sup>25</sup> Most States also require information about the date when the beneficial owner status has been acquired.<sup>26</sup> The disclosure of the place of birth of beneficial owner(s) is required only by a few States.<sup>27</sup> While many jurisdictions require the disclosure of the nationality of beneficial owners, most States parties, except Germany, do not explicitly require the disclosure of all nationalities of the beneficial owner (since an individual may hold more than one nationality). This information could prove to be extremely relevant to competent authorities in case of investigations.

28. A few States parties<sup>28</sup> require the full ownership chain to be disclosed and registered in the BO register, which can be critical in the context of an investigation, for competent authorities to determine and verify how a beneficial owner ultimately owns or controls a legal person. The disclosure of this information to the public should be in accordance with the data protection and privacy laws of each jurisdiction.

29. A few countries<sup>29</sup> also request other details of beneficial owners, such as contact details and marital status. Paraguay is the only country that indicated in their response that they require the beneficial owner(s) to disclose their profession or occupation, which could, for example, lead to the disclosure of their politically exposed person (PEP) status.

*(iii) Scope of legal entities covered within the BO register (including exempt entities)*

30. The majority of countries implementing the registry approach reported that they cover all domestic legal persons within the BO disclosure regime. Even if a legal framework covers all domestic legal persons, there may be certain types of entities which are considered not to have a legal personality (such as general partnerships, limited partnerships, non-profit organizations, foundations etc.) and would thus fall outside the scope. Nonetheless, there are a few jurisdictions that also specifically require other legal entities – such as general partnerships,<sup>30</sup> limited

<sup>24</sup> These include, for instance, as Brazil, Colombia, Czech Republic, Morocco, and Paraguay.

<sup>25</sup> These include, for instance, Colombia, Czech Republic, France, Germany, Italy, Lithuania, Morocco, Peru and Sweden.

<sup>26</sup> For example, Colombia, Czech Republic, France, Panama, Paraguay, and Peru.

<sup>27</sup> Colombia, France, Italy and Morocco.

<sup>28</sup> I.e. Armenia, Brazil, Czech Republic, Paraguay and Peru.

<sup>29</sup> Such as Namibia and Peru.

<sup>30</sup> E.g. Germany, Paraguay and Peru.

partnerships,<sup>31</sup> foundations/associations,<sup>32</sup> non-profit organizations<sup>33,34</sup> – to disclose their BO information.

31. A few countries<sup>35</sup> have extended BO reporting requirements to foreign entities with tax residence, nexus to the country, or local operations. This may happen, especially if these foreign entities were already required to register with the commercial register or with the tax authorities to operate in the country. For example, Brazil extends BO registration to foreign entities with specific operations such as carrying out activities related to leasing and chartering of vessels. Similarly, Germany requires foreign legal entities and legal arrangements that own real estate assets in the country to file their BO information.

32. A number of jurisdictions have exempted state-owned enterprises or other bodies (such as government bodies, embassies, international organizations etc.) from BO registration requirements, including Brazil, Colombia, Lithuania, Czech Republic and Sweden. However, given the presence of corruption risks involving state-owned enterprises in some jurisdictions, such exemptions may not always be justified, especially in situations where there is a lack of other controls, e.g. a strong supervisory framework, to address abuse. It may, in some cases, be appropriate to include state-owned enterprises within a jurisdiction's BO disclosure regime and in lieu of information on beneficial owners require, for example, the disclosure of senior managing officials with authority to represent, sign contracts or dispose of the state-owned enterprise's assets.<sup>36</sup>

33. Other commonly exempt legal entities from the scope of the BO registration requirements include cooperative housing associations, political parties, religious organizations, and entities listed on the stock exchange. A publicly listed company is typically exempt from the BO registration regime on the grounds that publicly listed companies are mostly subject to extensive disclosure requirements that often exceed beneficial ownership reporting requirements for other companies. While in most countries, the stock exchange or the securities regulator already has the necessary BO information, this may not always be the case in all jurisdictions. Among the State parties that responded to the questionnaire, a few countries<sup>37</sup> have exempted listed companies from the BO registration framework, and several other countries<sup>38</sup> have explicitly covered the listed companies within their BO regime.<sup>39</sup>

(iv) *Access to BO information in registries*

34. In the jurisdictions analysed for the purposes of this study and implementing the registry approach, the access to BO information falls in the spectrum between access

<sup>31</sup> E.g. Germany, Sweden.

<sup>32</sup> E.g. in Germany, Namibia, Panama, Portugal, Peru and Sweden.

<sup>33</sup> E.g. in Colombia, Moldova and Sweden.

<sup>34</sup> In Brazil, NGOs are exempt from BO registration requirements provided they are not located in tax havens.

<sup>35</sup> E.g. Austria, Brazil, Chile, Colombia, France, Germany, Morocco, Panama, Paraguay, Peru and Sweden.

<sup>36</sup> To identify the beneficial owners of legal persons in practice, the FATF Recommendation 10 (and its Interpretive Note) provides for adopting a three-tiered information-gathering approach, commonly referred to as a “cascading process”, where each measure in the process will be used where the previous has been applied and has not resulted into the identification of a beneficial owner. These include: first, identify natural persons (acting alone or together) who have a controlling ownership interest (which may be based on a threshold; for example, owning more than a certain percentage of the company, such as 25 per cent); second, if there are doubts or no one passes the ownership threshold criterion, identify the natural persons with control via other means; and third, if no one has been identified based on the above two steps, identify the natural person who is a senior manager.

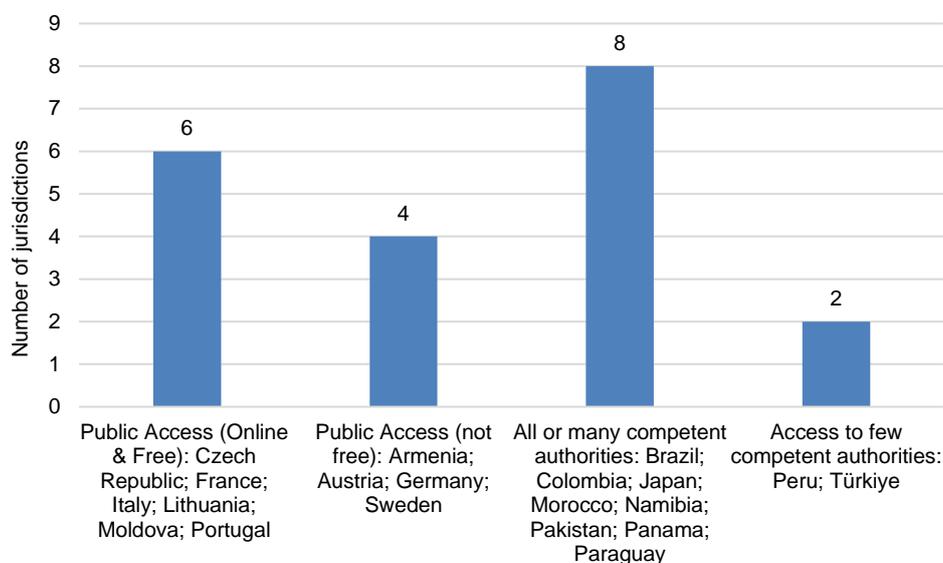
<sup>37</sup> E.g. Brazil, France, Morocco (only required to declare the name of the regulated market in question) and Sweden.

<sup>38</sup> Such as Colombia, Czech Republic, Germany, Moldova, Panama, Paraguay and Portugal.

<sup>39</sup> As noted in paragraph 21 and Table 1, Japan has established a BO register of stock exchange listed companies and classified as a jurisdiction that implemented other register approach for the purpose of this paper.

provided to only one or two unique authorities and open public access with no charge.<sup>40</sup> In the European Union, the 5<sup>th</sup> EU Anti-Money Laundering Directive mandates public access to beneficial ownership registries of legal persons.

Figure III  
Access to BO register



35. Intermediate scenarios may involve access only to competent authorities,<sup>41</sup> or many relevant competent authorities but not all,<sup>42</sup> or access to authorities and reporting entities.<sup>43</sup> Italy has also established public access by law, with the register becoming operational in August 2022. In other countries, it is not clear in the legislation as to who has access to the BO information, which may be specified in the regulation.

36. In many countries where the public can access BO information, it is typically online and free of charge. A few countries, however, do charge a small fee.<sup>44</sup> For instance, in Germany, accessing the register costs €1,65 plus VAT per excerpt. Similarly, Austria charges a fee of €3 to the public to access a public extract of the BO register.<sup>45</sup>

37. In addition to costs, there can be other impediments to efficient access. In some countries, to access the BO register, registration on a portal is required, which can require multiple steps. For instance, in Portugal, to access the BO information, authentication in the Central Beneficial Ownership Register (RCBE) is carried out through secure authentication services that allow natural persons to confirm their identity in the RCBE service available online, including foreign citizens. However, for authentication purposes, natural persons must have a Portuguese Digital Mobil Key, which makes the information non-accessible for anyone without this key.

38. In States parties where the BO information is only accessible to the competent authorities, there are different ways to access it. This can sometimes affect how “rapidly and effectively” the information is made available. For instance, in

<sup>40</sup> Such as in Armenia, Czech Republic, France, Germany, Italy, Lithuania (available to public free of charge only until 31 December 2022 and then a fee will be charged), Portugal and Sweden.

<sup>41</sup> Such as Colombia, Morocco and Pakistan.

<sup>42</sup> As in Brazil, Japan, Panama and Peru.

<sup>43</sup> For example, in Paraguay and Moldova.

<sup>44</sup> In contrast, the fee charged by Sweden in the amount of SEK250 (approximately USD20) to access the BO register is not small.

<sup>45</sup> In Austria, the fee to access BO register differs for obliged entities and public. In the case of obliged entities, the fee is €3 for simple extract, €3.6 for extent extract and €7.2 for compliance package. There is also a possibility to pay lumpsum fee upfront which gradually reduces the fee per usage. The register is available free of charge to the competent authorities.

Colombia, the authorised competent authorities can access the information from the register in real-time, whereas in Moldova, the access is “upon request” to the securities regulator. Similarly, in Türkiye, the FIU and the tax administration have direct access to the BO register, whereas other law enforcement authorities (LEAs) and the judiciary can access the information ‘upon request’. In Panama, access to the BO register by other competent authorities also requires a request to the regulator, the Superintendency of Non-Financial Institutions.

39. Providing wider access to BO information on the register beyond competent authorities may prove to be an effective measure in improving the overall transparency of the business environment in a country and thereby contributing to a better investment climate. Public access to beneficial ownership information also enables scrutiny by a wide range of interested stakeholders, which facilitates reporting of incomplete, incorrect or outdated information to the designated authority, by non-governmental stakeholders including by civil society and media. However, public access does not obviate the need for data verification and is not a guarantee that information is accurate.

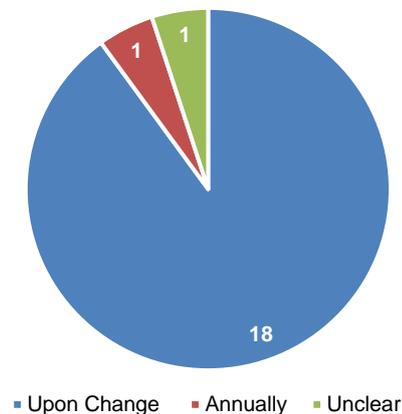
40. Importantly, in the context of international cooperation, public access to the BO register also allows easy and direct access by foreign authorities without needing to make a request for information, freeing resources both from the requesting authority as well as by the authority handling the register.

(v) *Update of BO information on the Register*

41. All countries analysed for this paper require that information is updated either upon any change<sup>46</sup> or annually.<sup>47</sup> A number of jurisdictions that responded to the questionnaire<sup>48</sup> prescribe a period of 30 days to register any changes to their BO register.<sup>49</sup> Some other jurisdictions give a shorter timeframe for legal persons to update their BO information in the register. Within the examined jurisdictions, these include Austria (within four weeks), Germany (as soon as possible), Lithuania (10 days), Moldova (immediately), Panama (20 days), Paraguay (15 days) and Sweden (promptly). Armenia requires the information to be updated ‘immediately’ but no later than 40 days from the occurrence of a change in the BO information.

Figure IV

**Requirements to Update BO Information on the register**



42. With regards to countries that require only annual updates of the BO information but no updates upon change,<sup>50</sup> the beneficial owner(s) as of the date of filing the

<sup>46</sup> Austria, Armenia, Brazil, Colombia, Czech Republic, France, Germany, Italy, Lithuania, Moldova, Morocco, Pakistan, Panama, Paraguay, Peru, Portugal, Sweden, and Türkiye.

<sup>47</sup> For instance, Namibia.

<sup>48</sup> E.g. Brazil, France, Italy, Morocco, Peru, Portugal, and Türkiye.

<sup>49</sup> Peru gives 30 business days from the date of change.

<sup>50</sup> For instance, Namibia.

annual return need to be reported. It is not always clear whether BOs that met the criteria over the past year but, for example, relinquished ownership just before the reporting date would also need to be reported.

43. A few countries, such as Austria, Armenia, Italy, Panama, Paraguay and Türkiye, also require legal entities to confirm/validate the accuracy of the BO information on an annual basis.<sup>51</sup> In Armenia, for instance, legal entities are required to confirm their BO data each year by the 20 February via the confirmation statement that the most recent declaration of beneficial owner(s) submitted to the registrar contains up-to-date information as of 31 December of the previous year. In Italy, the annual confirmation is made by legal entities with their filing of annual financial statements. Interestingly, in Türkiye, corporations have to confirm their BO information annually with their corporate tax return, as well as three times a year with temporary tax returns, whereas other taxpayers only need to confirm their BO information every year.

(vi) *Mechanisms to verify BO information*

44. BO information is useful only if it is adequate, accurate and up to date. Effective verification is thus essential for a BO register to be a reliable tool for enhancing transparency and combating financial crime. However, ensuring the completeness and accuracy of the BO information – both submitted initially at incorporation or formation and later updated over time – is one of the major challenges that countries face.

45. Responses received from States parties indicate that the existing practices on the verification of BO information could be classified in three broad categories, namely (i) limited verification mechanisms; (ii) no automated verification mechanisms in place; and (iii) verification mechanisms that rely on advanced automatic verification systems, which allow verification of the BO data at the point of submission. A number of jurisdictions analysed for this paper and implementing the registry approach have limited verification mechanisms in place to verify the BO information and mainly rely on the legal entities to file and report “accurate” information.

46. At the technical level, to ensure the adequacy and authenticity of the BO data at the point of submission, a number of solutions have emerged in the past few years which include performing conformance checks on the BO data and cross-checking it with other databases held nationally and internationally.

47. A number of States parties have no automated verification mechanism (for example, to identify if the information is complete, or whether entities filed information on time, etc.) in place, which could potentially help save limited resources of designated authorities. In a number of jurisdictions, there are no mechanisms in place to ensure the interconnection or cross-checking of information against other databases held by public authorities to detect inconsistencies.

48. A few countries<sup>52</sup> have developed and built their BO data registration systems in such a manner that they can identify and highlight any discrepancies in the BO data at the point of submission using automated checks.<sup>53</sup> In Brazil, for instance, the interoperable IT system automatically exchanges and cross-checks the reported information among trade registrars, civil registrars, federal and state tax authorities, state and municipal bodies for state licensing. Lithuania also implements cross-checks between the BO register and other registers, for example, population register, address register etc. Lastly, in countries where the tax administration holds the BO register, it may be possible, if national laws permit, to cross-check information against other tax

<sup>51</sup> Andreas Knobel (2019), “Beneficial ownership verification: Ensuring the truthfulness and accuracy of registered ownership information” (Tax Justice Network, 22 January 2019) p. 33.

<sup>52</sup> E.g. Brazil, Lithuania and Sweden.

<sup>53</sup> Such checks are also conducted in other countries outside the scope of this study, such as Belgium and Latvia.

data. This has also been the case in Sweden, where the Swedish Companies Registration Office (SCRO) compares the BO register with a number of other registers, including the register held by the tax agency. In Austria, the beneficial ownership register is interconnected with other registries, such as the Business Register and the Central Residence Register to enable automatic updating and cross-checking of data in the BO register.

49. Authorising the designated authority in charge of the BO register to use its own internal or external resources to conduct sample checks/analysis, as well as cross-checking of the submitted BO data, can serve as an important mechanism for enhancing the quality of BO data. Such checks are performed by Colombia, where it cross-checks the submitted information with other databases of the entity. These are also performed by Germany, for instance, to analyse the adequacy and completeness of the BO information that is submitted at the time of registration.

50. Most jurisdictions that submitted information for this paper do not require reporting entities<sup>54</sup> to report any discrepancies identified between the BO information disclosed to them as a part of their customer due diligence measures and the BO information recorded on the BO register, or other relevant register containing BO information. A few countries<sup>55</sup> require mandatory reporting of discrepancies by reporting entities under their AML/CFT laws. Under the EU 5th Anti-Money Laundering Directive, EU member countries are required to impose a discrepancy reporting obligation on the reporting entities. In Brazil, while lawyers are required to verify incorporation documents, it is not clear if they are the reporting entities subject to AML/CFT obligations.

## B. Other mechanisms

51. Nearly half of the State parties that responded to the questionnaire noted that they rely on mechanisms other than a registry to ensure that competent authorities have efficient access to BO information. These other mechanisms mainly include (a) relying on legal persons to obtain and provide the necessary BO information to the competent authorities (i.e. “company approach”<sup>56</sup>); and (b) relying on the reporting entities which are obliged under AML/CFT laws of the jurisdiction to obtain and hold the necessary BO information as a part of their CDD measures and when required, provide it to the competent authorities upon request.

52. Regarding the so-called “company approach”, it is not immediately clear from the questionnaire responses, except for a few jurisdictions, as to how this requirement is enforced and monitored in the case of the companies.<sup>57</sup> Similarly, there also appears to be a lack of clear legislative provisions in some State parties on the obligation of companies to maintain and keep their BO information up to date. While in Canada, for instance, companies are required to maintain up-to-date BO information, which should be updated within 15 days in case of any change, in some countries, no such

<sup>54</sup> The term “reporting entities” here is used to refer to entities that are subject to CDD and suspicious transaction reporting obligations under the AML/CFT law of a country. Such entities may typically include financial institutions, such as banks, credit unions, brokerage firms, insurance companies, etc., as well as designated non-financial businesses and professions, such as casinos, real estate agents, dealers in precious metals and stones, lawyers, notaries and other independent legal professional and accountants.

<sup>55</sup> E.g. Austria, Czech Republic, France, Namibia, Panama, Portugal, and Sweden. In Israel, although not obligatory in all cases, but lawyers subject to CDD obligations are always involved with the establishment of a company or partnership and thus required to obtain and hold BO information although they are not required to submit it to any register. The tax authority of Israel also requires any entity reporting to it to maintain a bank account; thus, requiring an intervention by a reporting entity under the AML/CFT law.

<sup>56</sup> Interpretative Note to FATF Rec.24, 7(a), as revised in March 2022.

<sup>57</sup> Under the revised FATF Rec.24, the “company approach” is now a mandatory requirement - but it alone is not deemed sufficient to comply with the FATF Standards. It needs to be complemented with either a BO registry held by a public authority or body, or by an alternative mechanism that ensures efficient access to BO information for competent authorities.

requirement is imposed on companies, and the reporting entities conducting customer due diligence are mainly relied on for the BO information.

53. To obtain the necessary BO data from legal persons or reporting bodies, the competent authorities in all responding State parties must adhere to the applicable legal procedures and protocols, which may include obtaining court orders or the right to access granted to some competent authorities (e.g. the FIU) under the AML/CFT law to acquire such information.

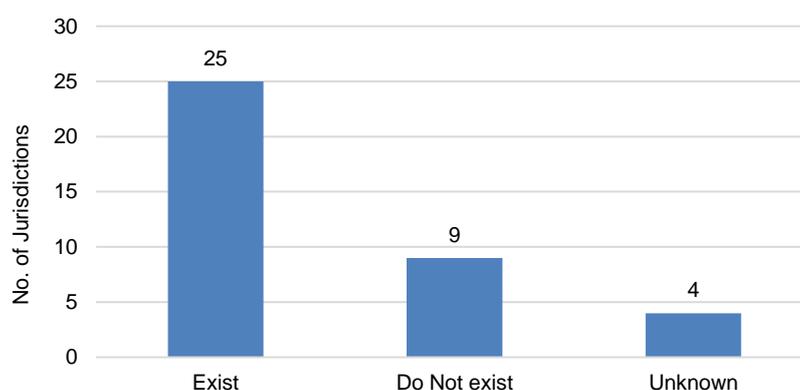
## VI. Access to basic and BO information on (express) trusts and other similar legal arrangements

### (i) Overview of the BO framework on (express) trusts and other similar legal arrangements

54. Trusts are widely recognized and exist in common law countries. In civil law countries, the concept of (express) trusts<sup>58</sup> has not been recognized, but it does not necessarily imply that they do not have any trust-like legal arrangements. For instance, in Germany, *Treuhand* and in Czech Republic, *Svěřenský Fond* – legal arrangements similar to trusts exists. Similarly, trust-like arrangements, such as *fiducia*, *fidecommisum*, *fideicomisos*, private foundations, or *waqf*, do exist in various legal systems (both civil and Islamic), and they can share the same or similar nature, features, and functions as trusts, depending on their specific legal form. Trusts or similar legal arrangements exist in the majority of the State parties that responded to the questionnaire.

Figure V

#### Trusts or similar legal arrangements under domestic law

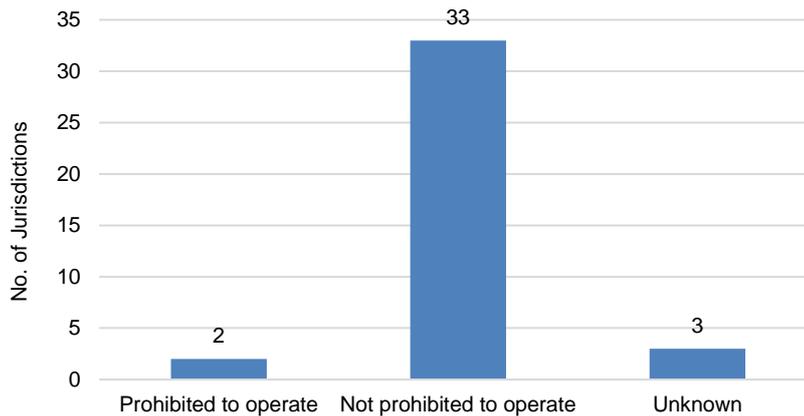


55. Moreover, in many civil-law jurisdictions, while trusts or similar legal arrangements are not recognized or allowed to be created domestically, the foreign law trusts or other legal arrangements are not necessarily prohibited from operating within the jurisdiction or from being administered by trustees residing within their jurisdiction. Among the State parties that have responded to the questionnaire for this paper, with the exception of two, almost all States allow foreign trusts or similar legal arrangements to operate in their jurisdiction, regardless of whether domestic trusts exist under their laws or not.<sup>59</sup>

<sup>58</sup> The term ‘express trust’, as defined by the FATF, “refers to a trust clearly created by the settlor, usually in the form of a document e.g. a written deed of trust.” It further states that express trusts “are to be contrasted with trusts which come into being through the operation of the law and which do not result from the clear intent or decision of a settlor to create a trust or similar legal arrangements (e.g. constructive trust)”.

<sup>59</sup> There is no clear information available on the operation of foreign law trusts or similar legal arrangements in Belarus, Honduras, Moldova and Turkmenistan.

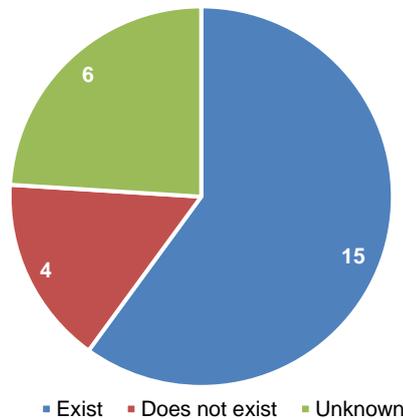
Figure VI  
**Foreign trusts or similar legal arrangements under domestic law**



(ii) *Access to basic information on trusts and similar legal arrangements*

56. In the majority of the trust-law jurisdictions,<sup>60</sup> there is no registration requirement for domestic trusts to come into existence – they are viewed as private arrangements and their existence is not a matter of public record. However, for tax purposes, in some trust-law jurisdictions where the trusts have a tax liability or receive local income, they are required to be registered with the tax authorities.<sup>61</sup> Yet, even in those cases, the disclosure of all the relevant parties of the trust might not be required, except the trustee. Similarly, among the civil-law countries that allow domestic trust-like arrangements to be created, it appears that a few require them to be properly registered and incorporated before starting to operate (for instance, *fiducie* in France or *Svěřenský Fond* in Czech Republic),<sup>62</sup> and they usually register if they have tax obligations or local trustee. The register of trusts appears to exist in some form, mostly with the tax authorities, in more than half (15) of the responding State parties (i.e. out of 25) that permit domestic trusts or similar legal arrangements.

Figure VII  
**Register of domestic trusts or similar legal arrangements**



57. With regards to foreign law trusts or similar legal arrangements, the registration is commonly triggered when a trustee of a foreign trust or a person with an equivalent position is a resident in the respective jurisdiction.<sup>63</sup> In a few jurisdictions, the

<sup>60</sup> This phrase has been used in this paper to refer to jurisdictions which recognize or allow the creation of trusts under their domestic law.

<sup>61</sup> For instance, in Australia and Canada.

<sup>62</sup> In Japan, however, trusts are not required to be registered to come into existence.

<sup>63</sup> E.g. Australia, Chile, Colombia, Germany, Japan, Morocco, Namibia, Peru and Venezuela.

registration of a foreign law trust is also required if another party to a trust, such as a settlor or beneficiary, is a resident in the jurisdiction<sup>64</sup> or if a trust has made an investment,<sup>65</sup> or carries out business activities,<sup>66</sup> or has a real estate property<sup>67</sup> or establishes a business relationship with an obliged entity under the AML/CFT law in the respective jurisdiction.<sup>68</sup> In Australia and Chile, for instance, foreign trusts or similar legal arrangements are also required to be registered if they have a local source of income.

58. On the basic information that needs to be disclosed or registered on domestic or foreign trusts or similar legal arrangements, there is very limited information provided by the responding State parties. However, Colombia reported that domestic trusts have to provide information about the type of trust, its purpose, description of the applicable commissions, its settlors, trustees, agents and registered assets. In Namibia and Japan, information about the trust parties, i.e., settlors, trustees and beneficiaries, have to be reported. In the majority of jurisdictions that responded to this questionnaire, since the registration of trusts is mainly with the tax authorities, it is not available to the public, and the information has to be requested by the competent authorities. An exception to this is Panama, where information on *fideicomisos* that hold real estate is available publicly, free of charge, in pdf format (trust deed) and through the Public Registry.<sup>69</sup>

(iii) *Access to BO information on trusts or similar legal arrangements*

59. While most States' BO legal and regulatory framework covers legal persons, this does not always extend to trusts or similar legal arrangements. Nearly half (18) of jurisdictions that responded to the questionnaire cover domestic or foreign trusts or similar legal arrangements within their BO framework, typically by placing an obligation on trustees to provide the BO information to the designated authority (e.g. Australia, Chile, Japan, Peru, Türkiye), or to the BO register.<sup>70</sup> Many countries exempt domestic law trusts from the BO registration requirements unless they have a local trustee or are subject to tax.

60. A number of countries require foreign trusts or similar legal arrangements to register their BO information if they enter into a business relationship or acquire real estate in the country in the name of trusts or similar legal arrangements. Such BO registration requirements are based on a number of factors. These include: (a) local operations or tax nexus that already requires trust registration with the tax authorities;<sup>71</sup> (b) establishment of a business relationship with a reporting entity (for instance, a bank or notary) within the respective jurisdiction;<sup>72</sup> (c) ownership of a real estate or other assets within the jurisdiction;<sup>73</sup> and (d) presence of a local party to a trust within the jurisdiction.<sup>74</sup>

<sup>64</sup> E.g. in France.

<sup>65</sup> E.g. Brazil, Chile.

<sup>66</sup> E.g. Chile.

<sup>67</sup> E.g. Czech Republic, France, Germany, Morocco.

<sup>68</sup> E.g. France, Germany.

<sup>69</sup> A. Knobel (2022) 'Reforms to FATF Recommendation 25 should reflect fact not fiction' (28 July 2022).

<sup>70</sup> E.g. Brazil, Colombia, Czech Republic, Germany (for foreign trusts), Morocco, Namibia, Panama (trusts holding real estate property or engaged services of resident agent), Portugal, Sweden (with certain limitations)

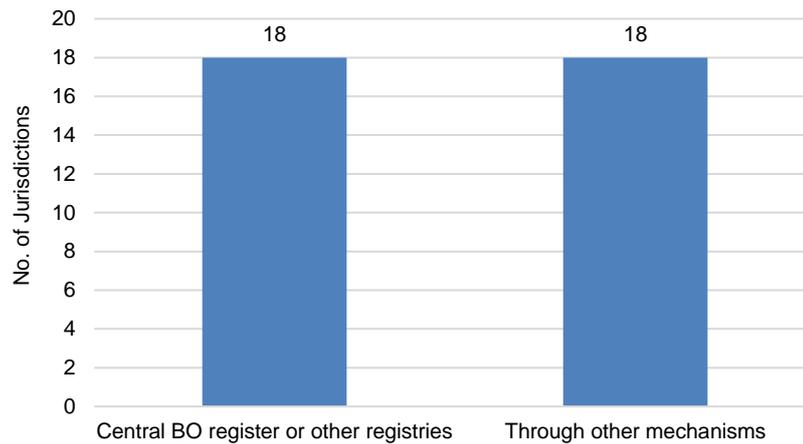
<sup>71</sup> E.g. Canada and France.

<sup>72</sup> E.g. Germany and Morocco.

<sup>73</sup> E.g. Germany and Morocco.

<sup>74</sup> E.g. Czech Republic, Germany and Morocco.

Figure VIII  
**Mechanisms to obtain & access BO information on trusts or similar legal arrangements**



61. Except for a few State parties<sup>75</sup> where the BO information on trusts or similar legal arrangements is available to the public (although usually with limitations), in the majority of States parties, the BO data is not accessible to public and may only be available to the competent authorities. An exception is Panama, where BO information on trusts that hold real estate is available online and through the search functionality of the Public Registry.

62. Among both the trust-law and non-trust law countries, only a small number of the State parties that responded to the questionnaire provided information on other mechanisms to access BO information on trusts and similar legal arrangements, other than a trust registry or other registry option. However, similar to legal persons, these other mechanisms include the trustee approach and the existing information approach. The mechanisms for the competent authorities to access the BO information from trustees and the reporting entities are the same as reported above for legal persons.

## VII. Sanctions for non-compliance with BOT requirements

63. Having adequate sanctions in place, and enforcing them effectively, is crucial for enforcing compliance and ensuring the effective implementation of the BO requirements. Nonetheless, many studies at international level highlighted that putting in place “effective, proportionate, and dissuasive” sanctions is one of the most common challenges faced by countries in regard to implementing BOT.<sup>76</sup>

64. Types of sanctions that are enforced for breaches of BO disclosure usually vary across jurisdictions and include administrative, civil, and criminal sanctions, although monetary sanctions are the most common. Administrative sanctions include denial of a license/registration,<sup>77</sup> suspension or revoking of license (in Pakistan), suspension of tax identification,<sup>78</sup> prohibition to distribute dividends or to vote in the highest body,<sup>79</sup> imposing temporary or permanent ban on holding certain management positions or engaging in certain activities<sup>80</sup>, and forced dissolution/removal from the commercial register.<sup>81</sup> Civil sanctions generally include fines, which range from a low end of

<sup>75</sup> E.g. Czech Republic, Germany, Namibia and Panama.

<sup>76</sup> FATF (2019), *Best Practices on Beneficial Ownership for Legal Persons* (FATF: Paris, October, 2019), p. 15. Available at: [www.fatf-gafi.org/media/fatf/documents/Best-Practices-Beneficial-Ownership-Legal-Persons.pdf](http://www.fatf-gafi.org/media/fatf/documents/Best-Practices-Beneficial-Ownership-Legal-Persons.pdf) (accessed 15 July 2022).

<sup>77</sup> For instance, Moldova.

<sup>78</sup> For example, in Brazil and Panama.

<sup>79</sup> For instance, Czech Republic.

<sup>80</sup> For instance, in Armenia, Pakistan and Portugal.

<sup>81</sup> For instance, Panama.

approximately USD\$550.00 (Türkiye), or EUR103 to EUR1,032 (Italy); a mid-range fine of up to USD\$3,900 (Canada - against company), EUR4,700 (Morocco), or EUR6,000 (Lithuania); to a high end of nearly USD\$150,000 (Germany and Canada; in the latter case against directors or officers on summary conviction). Criminal sanctions include criminal fines or imprisonment, which is 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; and in Cote d'Ivoire, up to three years.

65. In a number of jurisdictions, only one type of sanction is imposed (for example, monetary penalty) rather than a combination of different types of sanctions. Monetary sanctions alone, for instance, might prove to be ineffective if a legal entity still carries out its operations or continues to engage with the reporting entities; for example, when the sanctioned entity can still open a bank account or transfer money. In some countries, monetary sanctions are too low to incentivise compliance (for example a USD\$ 550 fine), or even if they are high enough, it is difficult to conclude that they may be effective, for criminals may just view them as added costs to their business.

66. A few jurisdictions also impose other types of non-financial sanctions that include preventing financial institutions (such as banks) and designated non-financial businesses and professions (DNFBPs) from forming business relationships or executing transactions with an entity that has failed to register or update information in the central BO register (such as in Lithuania and Brazil – in the latter case, the prohibition is limited to banking institutions ) or making natural and legal persons who have failed to comply with the BO disclosure requirements ineligible for government contracts (for example, in Czech Republic and Portugal).<sup>82</sup> These sanctions, in combination with other sanctions, might prove helpful in enforcing compliance with the BOT regime.

67. The most common types of conduct that have been sanctioned in the majority of jurisdictions include: (a) failure to provide BO information, either to the register or when requested by the competent authorities; (b) providing incomplete or inaccurate information; (c) failure to update the BO information; and (d) providing false BO information.

68. In almost all countries analysed for this study, liability is mainly imposed on the declarant, who may be an individual or a company. Some jurisdictions, however, extend liability to company officers, which usually includes directors, the executive and management of the company,<sup>83</sup> or to the beneficial owner(s) of the company.<sup>84</sup> Furthermore, some jurisdictions also impose liability for other service providers such as private sector intermediaries – collectively sometimes referred to as “gatekeepers”. For instance, in Panama, resident agents must identify and verify the identity of beneficial owners and register and update this information in the registry. In case of non-compliance, the Superintendency may impose pecuniary sanctions on them when such information is not provided or updated. While the Austrian reporting system allows beneficial ownership reports by legal professionals on behalf of their clients, sanctions are also established for these professionals for submitting false, incorrect or incomplete reports to the register (Art. 13(3)-(5), Beneficial Owners Register Act). In addition, some jurisdictions may also hold other third parties (such as lawyers, accountants, auditors, tax advisors and notaries) liable for information accuracy.<sup>85</sup>

<sup>82</sup> FATF (2019), *Best Practices on Beneficial Ownership for Legal Persons* (FATF: Paris, October, 2019), p. 15. Available at: [www.fatf-gafi.org/media/fatf/documents/Best-Practices-Beneficial-Ownership-Legal-Persons.pdf](http://www.fatf-gafi.org/media/fatf/documents/Best-Practices-Beneficial-Ownership-Legal-Persons.pdf) (accessed 15 July 2022).

<sup>83</sup> For example, in Lithuania, Morocco and Sweden.

<sup>84</sup> For example, in Armenia and Czech Republic.

<sup>85</sup> States did not report on the possibility of holding third parties accountable. However, research shows that some countries (such as Slovakia and Denmark, which did not respond to the questionnaire) have implemented this approach. For example, see [www.openownership.org/en/publications/designing-sanctions-and-their-enforcement-for-beneficial-ownership-disclosure/](http://www.openownership.org/en/publications/designing-sanctions-and-their-enforcement-for-beneficial-ownership-disclosure/).

## VIII. International cooperation on exchange of BO Information

69. Most State parties highlighted the significance of mutual legal assistance requests, either under the multilateral or bilateral treaties or conventions, to request the necessary BO information. Most countries have established the necessary legal and regulatory framework, including designating a central authority to request international legal assistance or exchange information in criminal matters.

70. A number of countries have also highlighted the exchange of BO information under the tax transparency initiatives i.e., tax treaties and conventions, such as double tax agreements and double tax conventions, tax information exchange agreements, and multilateral conventions on mutual administrative assistance in tax matters – Exchange of Information on Request (EOIR) and Automatic Exchange of Information (AEOI).

71. Many State parties also emphasised on the use of informal mechanisms to exchange the BO information, such as via the Egmont group, INTERPOL, as well as asset recovery networks, such as CARIN, ARIN and other regional networks. Australia also mentioned the possibility of the exchange of BO information by the FIU in the absence of a Memorandum of Understanding (MoU) provided the foreign counterparty provides a specific written undertaking relating to data protection.

72. Two countries<sup>86</sup> highlighted the direct international exchange of information between supervisory authorities of the reporting entities under the AML/CFT law.

## IX. BOT and Asset Recovery

73. As shown in the note prepared by the Secretariat entitled *Collection of information on international asset returns, including challenges, good practices and lessons learned* (CAC/COSP/WG.2/2022/3),<sup>87</sup> while concrete examples of completed international returns of proceeds of corruption have increased between 2017 and 2021, international asset recovery continues to be challenging. The process of recovering proceeds of corruption is complex, especially when more than one jurisdiction is involved. In response to a questionnaire circulated by the Stolen Asset Recovery (StAR) Initiative, where authorities completing the survey were asked, among others, about factors that represented barriers to successful recovery of proceeds of corruption, from a total of 73 responses, one factor that was reported as an especially problematic barrier to successful international asset recovery under chapter V of the Convention was difficulties in identifying and verifying beneficial ownership of suspected corruption proceeds (for further information see CAC/COSP/2021/CRP.12).

74. The report developed by the StAR Initiative, *The Puppet Masters*,<sup>88</sup> based on the review of more than 150 actual cases of corruption from a wide range of jurisdictions, exposed the central role played by corporate vehicles, such as companies and trusts, in concealing the proceeds of corruption and facilitating schemes to launder illicit funds.<sup>89</sup> In any financial crime investigation, whether involving money laundering or corruption, investigations first need to determine who actually benefits from the ownership of an asset – for example, a company, a real estate or a trust that is involved in the scheme, in order to subject the related asset to

<sup>86</sup> Russian Federation and Venezuela.

<sup>87</sup> The note was prepared on the basis of two questionnaires circulated by the Stolen Asset Recovery (StAR) Initiative and UNODC and updated a conference room paper (CAC/COSP/2021/CRP.12) developed by the StAR initiative. The total number of responding States and jurisdictions was 87.

<sup>88</sup> StAR Initiative (2011) 'The Puppet Masters' (October 2011) Available: <https://star.worldbank.org/publications/puppet-masters>.

<sup>89</sup> While the 150 corruption cases involved 817 legal vehicles, in 128 cases, companies were used to conceal illicit proceeds, and more than half of the cases demonstrated the use of complex ownership structures involving multiple layers of ownership.

confiscation or disgorgement. While using multiple layers of shell companies, nominee directors, nominee shareholders or legal arrangements, criminals often make it difficult for investigators to uncover who ultimately owns or controls, or benefits from the related assets.

75. Schemes used by natural and legal persons to obscure their beneficial ownership information to hide the proceeds of corruption often span international borders. They include a complex chain of interconnected networks of cross-ownership, with each layer created in different jurisdictions and using diverse legal entities and arrangements. The more corporate vehicles and layers of ownership used, and the more jurisdictions the corporate networks span, the harder it can be to identify the ultimate beneficial owner and trace and identify the illicit assets due to the need to find out who controls each of the vehicles and layers. The BO information transparency is thus essential to ensuring effective asset recovery and the return of assets.

76. Given that this area is still developing in practice, the responses received from the State parties did not provide a very comprehensive picture of either good practices or case studies on the effective use of BO information for the recovery or return of the proceeds of crime.

77. Nonetheless, a few case studies have emerged from outside the responding State parties where the BOT has proved to be effective in identifying assets that might be involved in criminal activity or the results of the proceeds of crime. For instance, there are two recent case studies from the UK, where the publicly available BO information from the UK register, along with other related sources, has proved to be useful in uncovering assets worth over millions of US dollars, which are alleged to be the proceeds of corrupt activities.<sup>90</sup> These assets were held in different jurisdictions by using a complex network of companies and other legal structures.

Box

**A case study**

In an investigation of a drug-related offence, law enforcement authorities found that the main perpetrator had established two legal entities in the Czech Republic and opened bank accounts in the name of the legal entities. Both legal entities were owned by a UK company which was, in turn, owned by another legal entity based in Florida, USA. No information on beneficial owners of the legal entities was available from the official business registers of any jurisdictions involved. However, authorities were able to establish relevant details on beneficial ownership in relation to the whole network of legal entities from the banks involved based on an MLA request made according to the Criminal Procedure Code of the Czech Republic (Sec. 8(2)), as the banks were required to verify beneficial ownership within their CDD procedures under the relevant national AML legislation. As a result, authorities seized criminal assets (i.e., funds and a vehicle) worth ca. 500,000.00 EUR.

78. Complex schemes often prevent law enforcement authorities from identifying the true beneficial owner(s), confiscating the proceeds of crime, and returning the assets or compensating the victims. Lack of effective access to BO information of each legal vehicle in every jurisdiction poses significant challenges to tracing, identifying and recovering the assets. If one jurisdiction in the chain does not grant access to and exchange information on BO with others, the process will become even more challenging. While lack of capacity and resources remains a challenge for law enforcement authorities, a tremendous amount of time and resources will need to be spent identifying the BOs through a chain of ownership. Furthermore, even when

<sup>90</sup> Transparency International (2021) “Response to FATF’s Public Consultation on Revisions to Recommendation 24” (August 2021). Available at: <https://images.transparencycdn.org/images/A-New-Global-Standard-on-Beneficial-Ownership-Transparency-Response-to-FATF-Consultation-August-2021.pdf> (accessed 1 September 2022).

assets are located, linking them to suspects and holding the suspect accountable present a challenge. Therefore, access to BO can enhance the process of tracing and confiscating the proceeds of crime, including those derived from corruption and is of the utmost importance for asset recovery and return. Equally important is that effective BOT regimes could also have deterrent value by making it less effective for offenders to hide their assets behind a chain of legal vehicles.

## X. Challenges

79. The responding State parties to the questionnaire have noted only a few specific challenges in ensuring BOT and exchanging the BO information effectively at the international level. Based on the information provided, this paper highlights some challenges, including those specifically referred by State parties.

80. First, in some jurisdictions, there is a lack of a unified, robust and comprehensive definition of beneficial owner of legal persons and legal arrangements, respectively, which covers all relevant factors or criteria to determine a beneficial owner.

81. Second, the scope of legal entities covered with the BO framework of jurisdictions also varies, which could impact the availability of adequate, accurate and up-to-date BO information to the competent authorities. In a number of jurisdictions, foreign entities (even when having a sufficient nexus with the country), state-owned enterprises, domestic trusts, and listed companies (blanket exemption) have been exempted from the BO regime. One State party<sup>91</sup> has noted the lack of BO reporting obligations imposed by another State party on certain entities about which the BO information is requested as a challenge to international cooperation in this field.

82. Third, while most State parties require sufficient identification details on beneficial owners, only a few States parties collect and record information on the nature and extent of beneficial ownership interest, even though this information can often be of significant value in an investigatory context. Additionally, ensuring that this information is updated in a timely manner presents a significant challenge. The availability of this information is crucial to accurately identifying the beneficial owners and the entities, which may spread across various jurisdictions, through which the BO interest is held. Peru highlighted the lack of a unique identification code for legal persons and arrangements that could potentially enable large-scale cross-referencing of data at the international level as one of the challenges in international cooperation to trace ownership and/or control.

83. Fourth, limited access to the BO information of the competent domestic authorities in some jurisdictions and the complication in obtaining such information (e.g., written resolution or request, inter-agency agreements etc.) will impact the timely availability of this information to the competent authorities and thus, the exchange of this information with the foreign counterparts. The lack of timely access to the BO information of the competent authorities within the requested State has been noted as one of the challenges in international cooperation by the responding State parties.<sup>92</sup>

84. Fifth, the verification of BO information, whether by the register(s), by professional intermediaries, or by reporting entities, is one of the major challenges in ensuring BOT. Due to limited resources – whether financial, human or technical, a number of State parties have been relying mainly on legal entities to provide accurate BO information to the register with no or minimum verification processes installed at the submission and post-submission of the BO data. This impacts the adequacy, accuracy and currency of the BO data on the register. On the other hand, many jurisdictions relying on reporting entities to provide BO data, when requested, have

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<sup>91</sup> Peru.

<sup>92</sup> E.g. Morocco and Panama.

also been facing challenges in ensuring that CDD data provided is accurate and up to date.

85. Sixth, the lack of automated systems, proper verification and monitoring of the BO data in requested foreign jurisdictions to ensure that it is accurate and up to date has been noted as one of the major challenges in international cooperation by a number of responding States parties,<sup>93</sup> leading to difficulty in obtaining accurate BO information on foreign legal entities.

86. Seventh, imposing and, critically, enforcing effective, dissuasive and proportionate sanctions is a major challenge faced by the State parties in ensuring effective BOT. The most common sanctions involved monetary penalties, and many State parties have failed to enforce compliance with the rules, sanction conduct, and target all the key individuals for BO violations, including professional intermediaries.

87. Finally, on the exchange of information with the foreign counterparts, some of the common challenges noted by the State parties include: i) challenges in identifying the contact points from other jurisdictions to whom the request for BO information should be submitted, which causes delay in responses; ii) challenges in identifying the legal framework for cooperation with the holders of the right of access to the BO register in the requested State as well as legislative restrictions on information sharing; iii) lack of proper information sharing mechanisms, such as bilateral and multilateral agreements with a foreign country that allows exchange of information; iv) long response timeframe and increased costs when the BO information is requested through formal mutual legal assistance processes; v) lack of recognition of non-conviction based action or certain types of offenses which can hinder the exchange of information using formal mutual legal assistance processes vi) lack of proper frameworks for direct and timely access to beneficial ownership information for reasons such as the absence of single registry and centralised authority for managing BO information; vii) slow or unresponsive foreign competent authorities possibly due to the difficulties in collection BO information domestically; ix) inadequately reasoned requests which are not properly drafted (i.e. difficult to identify types of legal entities and arrangements and degree of their involvement in the alleged criminal actions) and are not based on the applicable international instruments.

## **XI. Good practices**

88. Good practices highlighted by States parties include:

(a) Risk-based supervision of resident agents in which priority is given to obtaining information on beneficial owners of legal entities with greater risk exposure. This is done to ensure that non-financial entities acting as resident agents are sufficiently collecting and verifying the BO information, as well as submitting information to the registry;<sup>94</sup>

(b) Implementation of automated coercive penalties; high level of interconnection of domestic registers - automated reports on legal entities based on various registers, and automated updates of personal data via a direct connection to the permanent residence register;<sup>95</sup>

<sup>93</sup> E.g. Cote d'Ivoire, Czechia, El Salvador, Namibia, Panama and Peru.

<sup>94</sup> Highlighted by Panama

<sup>95</sup> Highlighted by Austria

(c) Reporting of the beneficiaries of trust and foundations to the BO register, and in cases where the shareholder is a nominee,<sup>96</sup> the nominator<sup>97</sup> being reported as a beneficial owner. Public inspection is allowed in both cases;<sup>98</sup>

(d) Spontaneous information disclosures - sectoral authorities and Financial Intelligence Units are allowed to provide information concerning beneficial ownership, and other information relevant to investigations and pre-trial inquiries proceedings in foreign countries that have treaties or conventions spontaneously, i.e. immediately and directly, if and when it is deemed appropriate to alert to operations or transactions of a transnational nature which they suspect may serve to launder proceeds of the illicit acts committed or may finance actions and movements connected with terrorism;<sup>99</sup>

(e) Where no coercive measures and judicial authorizations are required, beneficial ownership information sought by a foreign State can be exchanged through informal law enforcement cooperation channels.<sup>100</sup>

89. The following highlights measures reported by States parties that could be used in the identification of good practices:

(a) Establishing a robust and comprehensive definition of beneficial owner of legal persons and beneficial owner of legal arrangements, respectively, covering all the relevant factors or criteria for each definition;<sup>101</sup>

(b) Covering a wide range of legal persons and legal arrangements, including foreign entities and foreign trusts with a relevant nexus to the jurisdiction, based on risk, context, and materiality, within the scope of a country's BO regime;<sup>102</sup>

(c) Establishing a centralised BO register for legal persons and legal arrangements to ensure the timely availability of the BO data to competent authorities. Other mechanisms would need to ensure that competent authorities have quick and efficient access to BO information held by different entities. In order to ensure that the data on the register is accurate and reliable, the adoption of a multi-pronged approach can be beneficial in order to cross-reference data from different sources;

(d) Imposing an obligation on the reporting entities in some jurisdictions<sup>103</sup> to report any discrepancies they found between the BO information available to them and the BO data held in the registers to support the efforts of the authorities to hold accurate and up to date BO information. However, implementation of such a requirement has proven to be a challenge in many countries. It is important for discrepancy reports to be addressed and resolved in a timely and fair manner. Also, a discrepancy reporting requirement does not replace the need for verification checks performed by the authority or other party collecting the BO information;

(e) Requiring the disclosure of additional details about the means and mechanisms through which beneficial ownership is exercised, i.e. the basis for the identification of a person as a beneficial owner, the nature and extent of BO interest (e.g. percentage of votes or shares or other means of control), information on full

<sup>96</sup> Nominee is an individual or legal person instructed by another individual or legal person ("the nominator") to act on their behalf in a certain capacity regarding a legal person. The FATF Recommendations 2012, p. 128.

<sup>97</sup> Nominator is an individual (or group of individuals) or legal person that issues instructions (directly or indirectly) to a nominee to act on their behalf in the capacity of a director or a shareholder, also sometimes referred to as a "shadow director" or "silent partner". Nominee is an individual or legal person instructed by another individual or legal person ("the nominator") to act on their behalf in a certain capacity regarding a legal person. The FATF Recommendations 2012, p. 128.

<sup>98</sup> Highlighted by Austria.

<sup>99</sup> Highlighted by Portugal.

<sup>100</sup> Highlighted by Canada.

<sup>101</sup> As in Brazil, Czech Republic, France and Myanmar.

<sup>102</sup> E.g. as is the case in Brazil, Germany and Sweden.

<sup>103</sup> E.g. Czech Republic, France, Portugal and Sweden.

ownership chain,<sup>104</sup> profession or occupation,<sup>105</sup> date when the BO status is acquired and ceased, especially for higher risk entities or sectors;

(f) Ensuring the availability of the BO information on legal persons to the general public free of charge and in open data format has been identified as a good practice, providing access to this information for civil society, their customers or contractors, whose scrutiny could contribute towards enhancing the quality of the BO data.<sup>106</sup> An important benefit of publicly available BO information can be the timely availability of this information to foreign counterparts in the context of cross-border information, provided that the information is adequate, accurate, and up-to-date;

(g) Verifying BO data, among others, through: (i) clearly designating the responsibility for verification to a certain department within the government; (ii) conducting spot-checks of the submitted BO information, which should be based on risk-based approach; (iii) using automated verification checks;<sup>107</sup> (iv) inter-connecting and cross-checking with other databases; (v) mandatory discrepancy reporting by reporting entity(ies) under the AML/CFT law on verifying the BO data submitted on the register<sup>108</sup>;

(h) Improving the accuracy of the BO data, it is a good practice to give a reasonable timeframe (e.g. 30 days) to update the BO information on the central BO register. Additionally, a requirement for an annual confirmation of the BO data (as in Austria, Armenia, Italy, Panama and Türkiye) to ensure that the data is kept accurate and up to date can be useful to ensure that the data is checked and updated on a regular basis;

(i) Enforcing a combination of sanctions, including administrative, civil and criminal, might prove to be effective in ensuring compliance with the BOT regime. In addition, some countries effectively combine non-financial sanctions with other sanctions Automated fines (as proposed in Lithuania) may reduce the administrative burden on the sanctioning authority, given the resource constraints and improve compliance.

## XII. Conclusion and next steps

90. Beneficial ownership transparency is a critical policy tool for combatting corruption and tackling the misuse of legal structures to conceal proceeds of corruption. Over the past few years, many States parties have enacted laws and issued regulations to enhance their domestic frameworks and achieve greater transparency of the ultimate beneficial ownership of legal entities and trusts. While a few States established a comprehensive framework as early as in 2018, e.g. Austria, most recently among States that responded to UNODC's questionnaire, new reforms entered into force in Armenia and Colombia in January 2022. In addition, many States parties<sup>109</sup> indicated that they are currently in the process of setting up, or are actively considering creating, a framework for the establishment of a beneficial ownership register.

91. While the BOT may be an effective tool for asset recovery in complex transnational corruption cases, the analysis provided above demonstrates that it remains a highly technical area in which many countries still lack sufficient legal, regulatory and institutional framework and systems, as well as the practical experience.

92. The Working Group may wish to discuss in more detail the challenges and promising practices highlighted in the present document, which might deserve further

<sup>104</sup> As in Armenia, Brazil, Czech Republic, Paraguay and Peru.

<sup>105</sup> Paraguay.

<sup>106</sup> E.g. Armenia, Czech Republic and France.

<sup>107</sup> E.g. Brazil, Lithuania, and Sweden – red flagging of any inaccuracies.

<sup>108</sup> E.g. Czech Republic, Namibia and Panama.

<sup>109</sup> Such as Australia, Azerbaijan, Canada, Chile, Côte d'Ivoire and Israel.

consideration by the Conference. As more data is provided voluntarily by the States parties, a more comprehensive analysis of BOT regimes may be prepared with a view of making it available to future sessions of the Conference.

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