

**WHO IS BEHIND THE WHEEL?
FIXING THE GLOBAL STANDARDS
ON COMPANY OWNERSHIP**

Transparency International is a global movement with one vision: a world in which government, business, civil society and the daily lives of people are free of corruption. With more than 100 chapters worldwide and an international secretariat in Berlin, we are leading the fight against corruption to turn this vision into reality.

www.transparency.org

Author: Maíra Martini

Researchers: Fabrizio Constantino, Guilherme France and Maíra Martini

© Cover photo: Hannes Egler on Unsplash

Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of 12 September 2019. Nevertheless, Transparency International Secretariat cannot accept responsibility for the consequences of its use for other purposes or in other contexts.

© 2019 Transparency International. All rights reserved.

Thanks to: José María Marín and Maximilian Heywood for their comments and feedback, Paul Bell and Eka Rostomashvili for their careful review and edits, and Michael Hornsby for his help with the communications strategy.

TABLE OF CONTENTS

EXECUTIVE SUMMARY	2
INTRODUCTION	6
WHAT COUNTRY EVALUATIONS REVEAL	11
1. Weak compliance with the standard across FATF member countries	11
2. The great majority of competent authorities do not have timely access to beneficial ownership information, as they rely only on one source – usually reporting entities	12
3. Countries with beneficial ownership registers perform better	19
4. The lack of beneficial ownership information hinders cross-border investigations	20
THE WEAKEST LINKS: THE CONSEQUENCES OF NON-COMPREHENSIVE BENEFICIAL OWNERSHIP STANDARDS	23
1. Deficiencies in major company formation centres are a global risk	23
2. Challenges with reliability and accuracy of data	24
CONCLUSION	26
Recommendations	26
ANNEX	27
Note on methodology	27
Country selection	28
Limitations	28
List of countries and assessment ratings	29

EXECUTIVE SUMMARY

To counter crime and corruption, law enforcement authorities around the world need to be able to swiftly uncover the identities of the real owners of companies. For instance, if there are suspicions that a bank account belonging to a company is being used to handle the proceeds of crime, authorities should have the power to quickly find out who the person behind that company is.

In the last five years, several major investigations have demonstrated how easy it is to set up and manage a legal entity without having to provide information about its beneficial owner – the real, natural person who ultimately owns and controls it and on whose behalf transactions are conducted. The challenge this poses to authorities is exacerbated when there is a transnational element: companies are often set up in one country, with the support of professionals in another. Assets and bank accounts, meanwhile, may be in a third country with the real person calling the shots in yet another.

The end result is that even when the authorities have identified a company as a vehicle for laundering illicit finances, the person in control remains a mystery. Crucially, this structural weakness is not limited to offshore jurisdictions alone.

The global anti-money laundering standard, to which more than 180 countries have signed up, is the 40 recommendations of the Financial Action Task Force (FATF). These include measures on tackling the abuse of anonymous companies. In particular, **Recommendation 24** requires countries to ensure that competent authorities, such as law enforcement, financial intelligence units and tax agencies, have access to or an ability to obtain adequate, accurate and up-to-date information on beneficial ownership and control of companies and other legal persons in a timely fashion.

However, the FATF standards do not prescribe how access to beneficial ownership information should be guaranteed. The interpretative note for Recommendation 24 states that, to achieve this objective, countries may choose the specific mechanisms they consider appropriate.

To gauge the overall effectiveness of FATF standards in helping prevent and investigate money laundering, Transparency International looked at the 83 country assessments published by FATF since 2014.

We then undertook a detailed qualitative analysis of 26 FATF mutual evaluations with a specific focus on measures related to company ownership both in law and in practice.

FINDINGS

1 There are significant weaknesses in terms of beneficial ownership transparency across the global network of FATF countries.

Out of the 83 countries assessed by FATF since 2014, only one was considered to be complying with Recommendation 24 (Trinidad and Tobago). Most countries – nearly 45 per cent – are only partially compliant and close to 14 per cent of countries assessed are non-compliant.

While countries have adopted some of the necessary rules and regulations, they are rarely working in practice. No country out of the 83 assessed has a high effectiveness rate. Only 9.64 per cent of countries have a substantial effectiveness rate and nearly half have a low effectiveness rate.

To understand what drives poor results when it comes to effectiveness, we undertook a detailed qualitative analysis of a pool of FATF mutual evaluations, with a specific focus on measures related to company ownership both in law and in practice. We selected 26 countries to illustrate the different levels of compliance with Recommendation 24 and its practical effectiveness. Some countries were chosen based on their significance as a company formation centre (for more details on the methodology, please refer to the Annex).

2 The great majority of competent authorities do not have timely access to beneficial ownership information, as they rely only on one source – usually reporting entities.

Our qualitative analysis shows that in the great majority of countries assessed, competent authorities have access to only one source of beneficial ownership information. In most cases, reporting entities – such as financial institutions, corporate service providers, lawyers, notaries, accountants and real estate agents – are named as the main source of beneficial ownership information available to authorities.

Such an approach does not guarantee that competent authorities have access to beneficial ownership information in a timely manner, and definitely not to accurate and reliable information. All countries assessed that rely solely on information from reporting entities are considered non-compliant or partially compliant with Recommendation 24, with low-to-moderate effectiveness ratings.

Relying only on information from reporting entities poses several challenges, including:

- Authorities often need to know the name of the bank holding a company's account or of the service provider in order to request information
- A legal entity might be incorporated in one place and have bank accounts in another, which makes it harder for the authorities to access information
- Authorities need to request information, often through a court order, which may hamper timely access and also limit intelligence work or more exploratory investigations
- Financial institutions and designated non-financial bodies and professionals (DNFBPs) often record beneficial ownership information exactly as their customers provide it. This information might not necessarily be accurate and up to date.

3 Countries with beneficial ownership registers perform better.

Countries perform better and therefore are more likely to meet the objectives of the FATF recommendation when they record beneficial ownership information in at least one register. This is particularly the case where competent authorities have direct access to the information, instead of having to request it from the register authority, for example. In these jurisdictions, timely access to beneficial ownership information is guaranteed, and authorities are also able to use the information in a proactive manner to identify potential suspicious activities and transactions.

Several FATF country reports recognise the importance of beneficial ownership registers. Evaluators acknowledge that the establishment of a beneficial ownership register is, or would be, an important step to address deficiencies related to timely access to beneficial ownership information.

In one of the reports, FATF evaluators found a public beneficial ownership register can be a powerful tool for verifying beneficial ownership information as it allows citizens, civil society, journalists, business and reporting entities to review the data and pinpoint inaccuracies.

4 The lack of beneficial ownership information hinders cross-border investigations.

The review of FATF mutual evaluation reports shows that competent authorities report greater challenges to identifying the beneficial owner of a company when a foreign company is involved or part of the ownership structure of a domestic company is foreign. In the absence of public beneficial ownership registers, they usually have to resort to complex and lengthy mutual legal assistance requests.

While most countries do not systematically compile data on the number of requests to access beneficial ownership information exchanged with foreign authorities, available examples in different country evaluations paint a worrying picture.

In addition, our analysis shows that the lack of concrete recommendations for methods of beneficial ownership transparency by FATF could have a negative impact and unintended consequences in two main ways:

1. **Major offshore centres** can continue to offer offshore services at scale without necessarily having to keep track of who the real owners of companies incorporated in their territory are.
2. Challenges with **reliability and accuracy of data** persist across all 26 countries analysed. These are related, to varying degrees, to the methods and actors responsible for maintaining and obtaining information.

The analysis of FATF mutual evaluation reports leads Transparency International to conclude that it is time for FATF to review its standards and guidance documents, and provide more detailed recommendations on what is necessary to ensure competent authorities have access to reliable and accurate information on beneficial ownership in a timely manner.

Country reviews show that timely access to quality beneficial ownership information is not possible without a multi-pronged approach that makes beneficial ownership information available from different and complementary sources. It is particularly not possible without a beneficial ownership register to which authorities have direct access.

More concrete recommendations on what mechanisms should be in place, combined with stricter consequences for those countries that fail to comply with them, are required if we want to ensure the global anti-money laundering framework is fit for purpose.

RECOMMENDATIONS

- 1 FATF should revise its recommendations and guidance documents to require member countries to establish beneficial ownership registers.
- 2 FATF should encourage countries to establish *public* beneficial ownership registers as a way of improving transparency and accountability, as well as accuracy of the data.
- 3 Register authorities should be mandated and resourced to independently verify the information in the register.
- 4 Reporting entities should be required to report inconsistencies in company data to authorities or to the company register.
- 5 FATF should require a multi-pronged approach to beneficial ownership transparency. In addition to beneficial ownership registers, FATF should require reporting entities and companies themselves to maintain accurate and reliable beneficial ownership information.
- 6 FATF should significantly strengthen its ongoing support, evaluation, monitoring and sanctioning systems for member countries, to provide clearer and more regular incentives for progress.

INTRODUCTION

Anonymous shell companies – companies without independent operations, ongoing business activities or employees – have often been compared to getaway cars for financial criminals.

A company that exists only on paper can still “own” a range of assets, from bank accounts and real estate to superyachts and private jets. Combined with the fact that in many locations worldwide, the identity of the person that controls a company is not easy to find, this creates a simple way for individuals to disguise their links to assets.

While anonymous shell companies can be used for legitimate reasons, this type of set-up predictably attracts a very specific kind of business: the criminal kind. Over the years, hundreds of cases of large-scale corruption, tax evasion, migrant smuggling and environmental crime, among others, have been found to involve anonymous shell companies.

In 2016, the Panama Papers shed light on the wide use of this practice – more than 140 public officials were using more than 214,000 offshore entities to hide the ownership of assets.¹ More recent revelations by investigative journalists, such as the case of the Azerbaijani Laundromat, again revolve around anonymous companies, enabling large-scale corruption and money laundering. In this specific case, in addition to enriching certain individuals, the scheme had the goal of laundering the reputation of Azerbaijan. Millions of Euros were flowing into the accounts of European politicians and other opinion makers, in exchange for their making positive statements about the country. Meanwhile, in Azerbaijan, human rights and anti-corruption activists were being harassed and arrested on fabricated charges.²

In 2011, an analysis of over 200 corruption cases conducted by the Stolen Assets Recovery (StAR) Initiative found that in 70 per cent of the cases, anonymous companies had been used to camouflage the identity of corrupt politicians.³ A more recent look at 106 case studies by the Financial Action Task Force (FATF) and the Egmont Group showed that legal structures, principally shell companies, are a key feature in illegal schemes, allowing criminals to conceal wealth and illicit assets.⁴

¹ International Consortium of Investigative Journalists (ICIJ), 2016. The Panama Papers: Exposing the Rogue Offshore Finance Industry. <https://www.icij.org/investigations/panama-papers/> While ownership of an offshore entity does not necessarily prove illegal practices, it does raise red flags.

² Transparency International, 2018. *The Azerbaijani Laundromat One Year On: Has justice been served?* www.transparency.org/news/feature/the_azerbaijani_laundromat_one_year_on_has_justice_been_served

³ van der Does de Willebois, E. et al., 2011. *The Puppet Masters How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It*. Stolen Assets Recovery (StAR) Initiative, star.worldbank.org/sites/star/files/puppetmastersv1.pdf

⁴ FATF – Egmont Group, 2018. *Concealment of Beneficial Ownership*, FATF, Paris, France, www.fatf-gafi.org/publications/methodandtrends/documents/concealment-beneficial-ownership.html



It is common for shell companies to be registered at an address that is nothing but a mailbox. This is a photo from the Cayman Islands. [Photo: photosforyou from Pixabay]

In short, the average large-scale corrupt deal is only possible because it is too easy to set up and manage a company without having to provide information about the real, natural person who benefits from it – technically known as the “beneficial owner”.⁵ Crucially, this high-risk loophole is not limited to offshore jurisdictions. While there are locations which have specialised in the wholesale supply of anonymous legal structures, virtually all countries have weaknesses to varying degrees, including major economies.

The difficulty in identifying the true beneficial owner of a company is a significant challenge not only for regular citizens, businesses, journalists and civil society, but also for prosecutors, law enforcement agencies and intelligence practitioners across the globe. This challenge is exacerbated when there is a transnational element: companies are often set up in one country, with the support of professionals in another. Assets and bank accounts, meanwhile, may be in a third country with the person who really calls the shots in yet another one.

International organisations and governments have been aware of these issues for over two decades. Forty recommendations by FATF⁶ form the global anti-money laundering standard, which more than 180 countries have signed up to. The standard includes measures on tackling the abuse

⁵ A beneficial owner is the real person who ultimately owns, controls or benefits from a company or trust fund and the income it generates. The term is used to contrast with the legal or nominee company owners and with trustees, all of whom might be registered the legal owners of an asset without actually possessing the right to enjoy its benefits. Complex and opaque corporate structures set up across different jurisdictions make it easy to hide the beneficial owner, especially when nominees are used in their place and when part of the structure is incorporated in a secrecy jurisdiction. Transparency International Anti-Corruption Glossary https://www.transparency.org/glossary/term/beneficial_ownership

⁶ Financial Action Task Force (FATF), <http://www.fatf-gafi.org/about/>

of anonymous companies. However, it has a number of gaps, which are compounded by its limited implementation in national law and practice.⁷

The end result is that even when the authorities have identified the vehicle for laundering illicit finances, the person in control remains a mystery. This report argues that public registers of beneficial ownership of companies should be the norm, allowing authorities to determine who's behind the wheel.

THE WORLD'S ANTI-MONEY LAUNDERING CHECKLIST: THE FATF RECOMMENDATIONS

The FATF standards are perhaps best described as a long and elaborate checklist. If countries tick off enough items, in theory they should be well-positioned to prevent, detect and sanction attempts at laundering money through their financial systems.⁸

Recommendation 24 of the FATF standards requires countries to ensure competent authorities – such as law enforcement, financial intelligence units and tax agencies – have access to or an ability to obtain adequate, accurate and up-to-date information on beneficial ownership and control of companies and other legal persons, in a timely fashion.

RECOMMENDATION 24

Countries should take measures to prevent the misuse of legal persons for money laundering or terrorist financing. Countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons, that can be obtained or accessed in a timely fashion by competent authorities. In particular, countries that have legal persons that are able to issue bearer shares or bearer share warrants, or which allow nominee shareholders or nominee directors, should take effective measures to ensure that they are not misused for money laundering or terrorist financing. Countries should consider measures to facilitate access to beneficial ownership and control information by financial institutions and DNFBPs [designated non-financial bodies and professionals] undertaking the requirements set out in Recommendations 10 and 22.

However, the FATF standards do not prescribe how access to beneficial ownership information should be guaranteed. The interpretative note for Recommendation 24 states that “countries may choose the mechanisms they rely on to achieve this objective”. The FATF guidance document on transparency and beneficial ownership emphasises the need to provide flexibility for countries to

⁷ FATF, 2012-2019. *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*, FATF, Paris, France, www.fatf-gafi.org/recommendations.html

⁸ For a critique of the conceptual framework and assumptions underpinning the global anti-money laundering system, see: Halliday, T., Levi, M. & Reuter, P., 2014. *Global Surveillance on Dirty Money: Assessing Assessments of Regimes to Control Money-Laundering and Combat the Financing of Terrorism*. Center on Law and Globalization. faculty.publicpolicy.umd.edu/sites/default/files/reuter/files/report_global_surveillance_of_dirty_money_released_date_30_january_2014.pdf

implement the requirement in a manner that corresponds with their “legal, regulatory, economic and cultural characteristics”.⁹

The different mechanisms used by countries as sources of beneficial ownership information may include:

- i. Requiring companies to identify and maintain up-to-date beneficial ownership information themselves, to be accessed by competent authorities on request
- ii. Requiring the registration of beneficial ownership information in a register created for this purpose or an existing register, such as a company register or with tax authorities
- iii. Relying on existing information compiled by reporting entities, including financial institutions and designated non-financial bodies and professionals (DNFBPs), such as company service providers, lawyers, accountants, notaries and real estate agents, as part of their customer due diligence requirements.

While the FATF highlights that countries may also use a combination of these mechanisms to achieve the objectives of the recommendation, it also stresses that the implementation of any of these mechanisms may be sufficient to meet the standards,¹⁰ giving countries the possibility of implementing only one of them.

The FATF, through mutual evaluations, regularly assesses how countries have been complying with the recommendation. This includes assessing technical compliance – that is, the extent to which countries have implemented the rules and norms, as well as the institutional framework that guarantees competent authorities have timely access to accurate and reliable information. Since 2014, the FATF mutual evaluation reviews have also been assessing the effectiveness of these measures (Immediate Outcome 5).

IMMEDIATE OUTCOME 5

Legal persons and arrangements are prevented from misuse for money laundering or terrorist financing, and information on their beneficial owners is available to authorities without impediment.

This report analyses the overall technical compliance with Recommendation 24 and effectiveness rates for the 83 countries that have been reviewed by the FATF as of September 2019.¹¹ Based on the findings, and in order to understand what is driving the results, this report analyses in detail the FATF mutual evaluation reports of 26 out of the 83 countries, with a specific focus on measures related to company ownership. The countries are: Albania, Australia, Austria, Bahamas, Botswana, Canada, Cayman Islands, Finland, Ghana, Greece, Hong Kong, Isle of Man, Italy, Latvia, Lithuania, Macao, Mauritius, Mexico, Panama, Peru, Seychelles, Singapore, Spain, Trinidad and Tobago, the United Kingdom and the United States.

⁹ FATF, 2012-2019

¹⁰ FATF, 2014. *Transparency and beneficial ownership: FATF Guidance*. <http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf>

¹¹ Last update 19 September 2019

We looked at the ability of competent authorities to obtain or access accurate and reliable beneficial ownership information of legal entities in a timely manner. We also considered, in particular, whether the choice of a specific mechanism as a source of beneficial ownership information has an impact on whether or not competent authorities have timely access, and on the quality of the information. Countries were selected to illustrate the different levels of compliance with Recommendation 24 and of its practical effectiveness, or based on their importance as a company formation centre (for more details on the methodology, refer to Annex I).

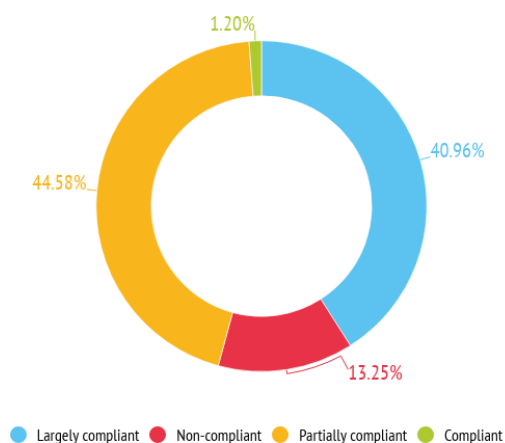
WHAT COUNTRY EVALUATIONS REVEAL

1. WEAK COMPLIANCE WITH THE STANDARD ACROSS FATF MEMBER COUNTRIES

An analysis of the overall ratings of the 83 countries assessed between 2014 and September 2019 shows that there are significant weaknesses across the global network of FATF countries.¹² Most countries still have not adopted the rules, regulations and institutional framework required to comply with Recommendation 24.

Only one country out of 83 assessed by mid-September 2019 is considered compliant (Trinidad and Tobago). Most of the countries – nearly 45 per cent – are partially compliant, but close to 14 per cent of countries assessed are non-compliant. This means they have not established even basic measures to ensure legal entities are not misused for money laundering and terrorist financing, and that competent authorities do not have access to accurate and reliable beneficial ownership information in a timely manner.¹³

RECOMMENDATION 24: TRANSPARENCY & BENEFICIAL OWNERSHIP OF LEGAL PERSONS



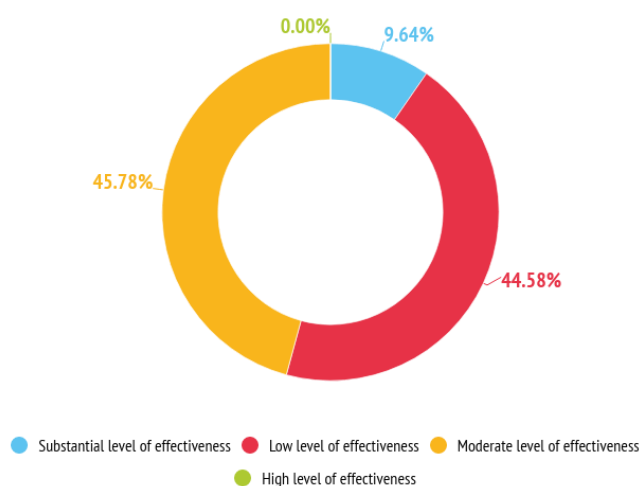
Source: Own elaboration based on FATF mutual evaluation reports published from 2014 to 12 September 2019

¹² The FATF currently comprises 37 member jurisdictions and 2 regional organisations. Countries have also committed to the FATF standards through FATF Associate Members, also known as FATF-style regional bodies. More information about the FATF members and observers: <https://www.fatf-gafi.org/about/membersandobservers/>

¹³ FATF Consolidated Assessment Ratings, updated 12 September 2019. [https://www.fatf-gafi.org/publications/mutualevaluations/?hf=10&b=0&s=desc\(fatf_releasedate\)](https://www.fatf-gafi.org/publications/mutualevaluations/?hf=10&b=0&s=desc(fatf_releasedate))

The situation regarding practical implementation is even worse.¹⁴ While countries have adopted some of the necessary rules and regulations, these are rarely working in practice. No country out of the 83 assessed has a high effectiveness rate. Only 9.64 per cent of the countries have a substantial effectiveness rate and nearly half have a low effectiveness rate.

IMMEDIATE OUTCOME 5: EFFECTIVENESS OF BENEFICIAL OWNERSHIP TRANSPARENCY FRAMEWORKS



Source: Own elaboration based on FATF mutual evaluation reports published from 2014 to 12 September 2019

2. THE GREAT MAJORITY OF COMPETENT AUTHORITIES DO NOT HAVE TIMELY ACCESS TO BENEFICIAL OWNERSHIP INFORMATION, AS THEY RELY ONLY ON ONE SOURCE – USUALLY REPORTING ENTITIES

In order to understand what is driving these low average ratings, we analysed in detail the FATF mutual evaluations of 26 countries, with a specific focus on measures taken by these countries, both in law and in practice, to ensure competent authorities have timely access to information on beneficial ownership of companies.

As noted, the FATF materials¹⁵ stress that countries are free to choose which mechanisms they use to ensure that adequate, accurate and timely information on the beneficial ownership of legal persons can be obtained or accessed in a timely manner by competent authorities. They suggest that compliance with FATF standards could be satisfied using one single mechanism as the sole source of information, or alternatively, a combination of different mechanisms.

¹⁴ Immediate Outcome 5

¹⁵ FATF Recommendations, interpretative note and guidance document.

Our analysis shows that in the great majority of countries assessed, competent authorities have only one source of beneficial ownership information available. Information held by reporting entities was, at the time of the review, the main source of beneficial ownership information available – usually on request – to authorities in nearly 85 per cent of the countries assessed.

In other words, most authorities are reliant on the information provided by financial institutions and professionals themselves, rather than storing and managing this information independently. Most countries rely on the information collected by financial institutions in the course of customer due diligence checks. Other reporting agencies often cited as a source include company and service providers, notaries, lawyers and accountants. However, our analysis of the mutual evaluation reports also shows that this approach is not guaranteeing competent authorities have access to beneficial ownership information in a timely manner, and is definitely not guaranteeing access to accurate and reliable information.

All countries assessed that rely solely on information by reporting agencies (financial institutions or DNFBPs) are considered non-compliant or partially compliant with Recommendation 24, with low-to-moderate effectiveness. Some countries (Austria, Hong Kong, Latvia, Ghana, Cayman, Isle of Man) were in the process of reforming their systems during the mutual evaluation review or immediately after, to include other mechanisms, such as registers of beneficial owners, in order to improve timely access to beneficial ownership information by competent authorities. However, as these changes were very recent and not yet fully implemented, the mutual evaluation reviews still provide a good overview of the challenges faced by authorities prior to the changes, when access to such information was only possible through financial institutions or company service providers and other reporting entities.

In 22 out of 26 countries assessed, mutual evaluation reports reveal significant challenges for competent authorities in accessing beneficial ownership information in a timely manner.

Having reporting entities as the main source of beneficial ownership poses significant challenges, limiting the ability of law enforcement authorities, tax agents and other intelligence practitioners to identify and investigate a wide range of crimes. Some of these challenges have been reported in 2018 by Transparency International in the report “G20 Leaders or Laggards?”¹⁶, but they also become apparent in the mutual evaluation reports.

In some cases, not all competent authorities have adequate powers to access or request information. For instance, in **Mauritius**, law enforcement authorities can have access to information on beneficial ownership of Global Business Companies through a court order issued by the Supreme Court. Although such orders are usually issued within a short timeframe (2-3 days), requests are limited to drug and arms trafficking and money laundering offences. The report highlights that “[T]his means that competent authorities are not able to obtain adequate, accurate and current beneficial ownership information when investigating the other offences”.¹⁷

Even if the authorities have adequate powers to request beneficial ownership information from reporting entities, timely access or having access at all is not guaranteed. In **Canada**, for example, the evaluation states: “While the legal powers available to LEAs [law enforcement agencies] are comprehensive and sufficient, the instances in which LEAs were able to identify the beneficial

¹⁶ Martini, M. & Murphy, M., 2018. *G20 Leaders or Laggards? Reviewing G20 promises on ending anonymous companies*. Transparency International.

¹⁷ ESAAMLG, 2018. Anti-money laundering and counter-terrorist financing measures – Mauritius, Second Round Mutual Evaluation Report, ESAAMLG, Dar es Salaam <http://www.esaamlg.org/reports/me.php>

owners of Canadian legal entities or legal arrangements appear to have been very limited”.¹⁸ In the **United States**, the report highlights that: “[L]ack of timely access to adequate, accurate and current beneficial ownership (BO) information remains one of the fundamental gaps in the US context. (...) While authorities did provide case examples of successful investigations in these areas, challenges in ensuring timely access to and availability of BO information more generally raise significant concerns, bearing in mind risk and context. However, as there are no legal requirements to record BO information (as defined by the FATF), LEAs must often resort to resource-intensive and time-consuming investigative and surveillance techniques. As a result, concerns remain about the ability of competent authorities to access accurate BO information in a timely manner”.¹⁹

In some cases, challenges could be related to inadequacies of the customer due diligence requirements imposed on financial institutions and other reporting entities, which is the case in the United States²⁰ or Australia²¹. However, in general, even if anti-money laundering obligations are in place and well implemented, relying only on this information poses several challenges, including:

- i. In order to request information, authorities often need to know the name of the bank holding a company’s account or of the service provider

In **Australia**, law enforcement authorities recognised during the FATF mutual evaluation review that the best source of beneficial ownership information is reporting entities. For that to be accessible, however, they must first discover “which reporting entity has a business relationship with the legal person or arrangement at stake, and that the legal person or arrangement has established a business relationship with a reporting entity”, which may delay the process and hamper investigations.²²

In **Austria**, until recent reforms of the country’s beneficial ownership transparency framework, the main sources of information for law enforcement were financial institutions and DNFbps, such as lawyers, notaries and tax advisors. For this reason, beneficial ownership information would only be available²³ if a legal entity was a client of an entity or professional with anti-money laundering obligations.²⁴

¹⁸ FATF, 2016. *Anti-money laundering and counter-terrorist financing measures – Canada, Fourth Round Mutual Evaluation Report*, FATF, Paris www.fatf-gafi.org/publications/mutualevaluations/documents/mer-canada-2016.html

¹⁹ FATF, 2016. *Anti-money laundering and counter-terrorist financing measures – United States, Fourth Round Mutual Evaluation Report*, FATF, Paris www.fatf-gafi.org/publications/mutualevaluations/documents/mer-united-states-2016.html

²⁰ Transparency International, 2018. *United States Beneficial Ownership Transparency, G20 Leaders or Laggards?* Country Report. www.transparency.org/whatwedo/publication/g20_leaders_or_laggards

²¹ In Australia, the FATF mutual evaluation report highlights that both financial institutions and DNFbps existing measures on identification of beneficial owners were not in line with the standards. FATF and APG, 2015. *Anti-money laundering and counter-terrorist financing measures – Australia, Fourth Round Mutual Evaluation Report*, FATF, Paris and APG, Sydney www.fatf-gafi.org/topics/mutualevaluations/documents/mer-australia-2015.html

²² FATF and APG, 2015

²³ FATF and GAFILAT, 2018. *Anti-money laundering and counter-terrorist financing measures – Mexico, Fourth Round Mutual Evaluation Report*, FATF, Paris www.fatf-gafi.org/publications/mutualevaluations/documents/mer-mexico-2018.html

²⁴ FATF, 2016. *Anti-money laundering and counter-terrorist financing measures – Austria, Fourth Round Mutual Evaluation Report*, FATF, Paris www.fatf-gafi.org/publications/mutualevaluations/documents/mer-austria-2016.html and FATF, 2018. *Anti-money laundering and counter-terrorist financing measures – Austria, 2nd Enhanced Follow-up Report and Technical Compliance Re-Rating*, FATF, Paris <http://www.fatf-gafi.org/publications/mutualevaluations/documents/fur-austria-2018.html>

In **Canada**, the mutual evaluation report stresses that the process of linking a specific financial institution with a legal entity or partnership subject to an investigation is not always timely, particularly in cases involving small or provincial financial institutions or DNFBPs. The report also stresses that it is not possible for law enforcement agents to check with each financial institution and DNFBP individually whether it holds relevant information. In these instances, the identification of the relevant financial institution or DNFBP relies on other potentially lengthier methods, such as surveillance.²⁵

This is also the case in **Mexico**. As the country does not have a central register of bank accounts or other similar mechanisms, timely access cannot be ensured. Authorities often have to rely on investigative techniques (wiretapping, search of premises, interviewing witnesses) or international assistance (requests via the Egmont network or for mutual legal assistance) – processes that, according to the evaluation report, can take months or even years and therefore do not ensure timely access to relevant information.

ii. A legal entity might be incorporated in one place and have bank accounts in another, which makes it harder for the authorities to access information

Legal entities in most countries are not legally required to open bank accounts with domestic banks. They are also often allowed to rely on service providers residing outside of the country.

In the **United Kingdom**, for example, a legal entity is not required to open a bank account in the country. The mutual evaluation report highlights that “timely access to verified BO information becomes more complicated and less timely where the relevant legal person or arrangement is banked overseas. (...) Case studies show that this structure is often used in high-end ML [money laundering] cases where a UK legal person avoids the UK CDD [customer due diligence] requirements by using bank accounts outside the UK”.²⁶ The Azerbaijani²⁷ and Troika²⁸ Laundromats, uncovered recently by journalists, illustrate this practice. UK companies used bank accounts in Baltic States, such as Danske Bank Estonia and UKIO in Lithuania, to reportedly launder vast quantities of assets. In a recent consultation put forward by the UK government, this is recognised as an issue.²⁹ The government is proposing to require all UK entities to have bank accounts in the UK and use UK-registered service providers, in order to ensure they pass through UK regulated entities. This information can then be used to complement and cross-check information recorded in the UK beneficial ownership register (Persons of Significant Control Register).

This is also the case in **Albania**, where there is no requirement for all legal persons to have a bank account. The mutual evaluation review concludes that if a legal entity has not entered into a

²⁵ FATF, 2016. *Anti-money laundering and counter-terrorist financing measures – Canada, Fourth Round Mutual Evaluation Report*, FATF, Paris www.fatf-gafi.org/publications/mutualevaluations/documents/mer-canada-2016.html

²⁶ FATF, 2018. *Anti-money laundering and counter-terrorist financing measures – United Kingdom, Fourth Round Mutual Evaluation Report*, FATF, Paris <http://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-united-kingdom2018.html>

²⁷ Organized Crime and Corruption Reporting Project (OCCRP), 2017. *The Azerbaijani Laundromat*. www.occrp.org/en/azerbajjanilaundromat/

²⁸ Organized Crime and Corruption Reporting Project (OCCRP), 2019. *The Troika Laundromat*. <https://www.occrp.org/en/troikalaundromat/>

²⁹ Department for Business, Energy and Industrial Strategy and Companies House, 2019. *Corporate Transparency and Register Reform*. United Kingdom. www.gov.uk/government/consultations/corporate-transparency-and-register-reform

relationship with a reporting entity, then there are no other legislative provisions to ensure competent authorities have access to accurate and current beneficial ownership information.³⁰

iii. Authorities need to request information, often through a court order, which may hamper timely access and limit intelligence work or more exploratory investigations

In the absence of databases of bank accounts that are accessible directly by competent authorities (such as in Italy or Spain – see below), obtaining beneficial ownership information from financial institutions will require that a request is made. In many countries, this request can only be made pursuant to a court order. This may also be the case for accessing information held with other reporting entities. The timeline to get the order and receive the information from the financial institution, lawyer or service provider will vary from country to country.

Ensuring financial institutions and DNFBPs provide the requested information may be a challenge in several countries. In **Austria**, for example, the mutual evaluation report states that law enforcement authorities can only ask financial institutions and DNFBPs for beneficial ownership information in the context of a criminal investigation. Another issue highlighted in the report is that “financial institutions and professional intermediaries may use the right of appeal against such requests for information, and, in fact, routinely do so. In practice that means that competent authorities do not have timely access to the beneficial ownership information”.³¹

In **Finland**, at the time of the evaluation, beneficial ownership information recorded with financial institutions was the only source of information available to the police and law enforcement authorities. However, existing rules did not include a timeframe within which this information should be provided. The report concludes that the ability of competent authorities to establish the beneficial owners of legal entities in a timely manner is “very limited”, and calls on Finland to implement the beneficial ownership register “as a matter of urgency”.³²

In the **Isle of Man**, the range of sanctions that can be applied by the financial intelligence unit (FIU) and law enforcement for failing to grant competent authorities timely access to information is not proportionate, creating a disincentive for compliance.³³

iv. Financial institutions and DNFBPs often record beneficial ownership information exactly as their customers provide it. This information might not be accurate and up to date

It is common that financial institutions and DNFBPs record beneficial ownership of legal entity clients as reported by them, without conducting any independent verification.

³⁰ MONEYVAL, 2018. *Anti-money laundering and counter-terrorist financing measures – Albania, Fifth Round Mutual Evaluation Report*, FATF, <http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/MONEYVAL-MER-Albania-2018.pdf>

³¹ FATF, 2016. *Austria*

³² FATF, 2019. *Anti-money laundering and counter-terrorist financing measures – Finland, Fourth Round Mutual Evaluation Report*, FATF, Paris <http://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-finland-2019.html>

³³ MONEYVAL, 2016. *Anti-money laundering and counter-terrorist financing measures – Isle of Man, Fifth Round Mutual Evaluation Report*, FATF, www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/Mutual-Evaluation-Isle-of-Man.pdf

Latvia was, at the time of the evaluation, in the process of establishing a beneficial ownership register as part of the country's company register. Otherwise, the main source of beneficial ownership information available to authorities was the information collected by financial institutions. However, the report identified problems with the quality of the process for identification of beneficial owners by these institutions. In some cases, banks would rely on self-identification or internet data to determine the beneficial owner of a customer without requiring further proof.³⁴

In **Panama**, beneficial ownership information is only available from financial institutions and DNFBPs, with a strong reliance on corporate services providers, such as lawyers and law firms, who function as resident agents for companies established in Panama (all companies incorporated in Panama require a resident agent). Resident agents have no legal obligation to verify, monitor or permanently follow up the customer's activity in order to detect changes in beneficial ownership, but are obliged only to collect this information at the beginning of the relationship. This means there is a great likelihood that the information held by them and made available to competent authorities on request is not reliable and up to date. The rules require competent authorities to indicate to resident agents the reasons why they need the information, which could end up tipping off agents and ultimately their clients. Finally, while resident agents should register with the country's FIU for supervision, the review shows that out of the 4,216 resident agents authorised to operate at the time of the on-site visit, only 522 had registered with the FIU, representing 12 per cent of the total. This limits effective supervision and the ability to ensure that resident agents are complying with their obligations.³⁵

Similarly, in the **Cayman Islands**, where great reliance is also put on corporate and service providers to identify the beneficial owners of legal entities, the mutual evaluation report identified deficiencies related to the ongoing monitoring of customers. According to the report, "where updated information on beneficial ownership is not maintained, the ability to identify assets that may be owned by criminals and associates in a timely manner may be impeded".³⁶

In the **Isle of Man**, trust and corporate service providers play an important role as one of the main sources of beneficial ownership information. Even with the adoption of a beneficial ownership register giving direct access to authorities, service providers will continue to play an essential role in obtaining and reporting beneficial ownership information of their clients. However, the report finds that the requirements placed on these service providers are not sufficient to ensure adequate, accurate and current beneficial ownership information, particularly because of the conditions under which these professionals operate. For example, the non-face-to-face nature of many relationships, the extensive use of professional intermediaries, and the tendency of trust and corporate service providers to downplay risk – and therefore not apply customer due diligence measures that are commensurate with the real risk – have an impact on the quality and accuracy of the data available to authorities.³⁷

³⁴ MONEYVAL, 2018. *Anti-money laundering and counter-terrorist financing measures – Latvia, Fifth Round Mutual Evaluation Report*, FATF <http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/Moneyval-Mutual-Evaluation-Report-Latvia-2018.pdf>

³⁵ GAFILAT, 2018. *Mutual Evaluation Report of the Fourth Round – Republic of Panama* www.gafilat.org/index.php/es/biblioteca-virtual/miembros/panama/evaluaciones-mutuas12/MERPanama-FourthRound.pdf

³⁶ CFATF, 2019. *Anti-money laundering and counter-terrorist financing measures – Cayman Islands Fourth Round Mutual Evaluation Report*. www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/CFATF-Cayman-Islands-Mutual-Evaluation.pdf

³⁷ MONEYVAL, 2016. *Isle of Man*

Mutual evaluation reviews show that reliance on financial institutions and DNFBPs as the main source of beneficial ownership information is not sufficient to ensure competent authorities have timely access to accurate and reliable beneficial ownership information. This contradicts the guidance provided to member states by FATF, which recognises this as a valid model on its own. Information collected by reporting entities is certainly an important part of the anti-money laundering framework and key in the identification of beneficial owners of legal entities. However, it should be used to complement other sources of information, such as the information maintained by companies themselves and in beneficial ownership registers.

THE CASE OF SPAIN

Competent authorities in Spain can rely on a variety of sources to access beneficial ownership information. The country is considered by FATF as one of the best examples among the FATF network. Authorities can rely on a recently established beneficial ownership register, on a register maintained by notaries, and on the information collected by financial institutions and DNFBPs. However, some challenges remain regarding the quality and accuracy of the data, as discussed below. In the particular case of financial institutions, Spain has established a “financial ownership database” that contains information on all bank and securities accounts in the country, such as the date of the account opening, the name of the account holder, the name of the beneficial owner, and the name and branch of the financial institution.³⁸ The database is directly accessible to examining judges and the Public Prosecutor’s Office, and, subject to court authorisation, to other law enforcement authorities. This database allows authorities to determine whether a specific individual has, or controls, a bank account in Spain, and to cross-check information available in the other registries or respond more quickly to international cooperation requests. According to the mutual evaluation report, prior to the existence of this database, it was “very difficult or cumbersome to determine where a person under investigation had an account”.³⁹

³⁸ This is a requirement under the new EU Anti-Money Laundering Directive, so it is expected that other countries in the EU will have similar provisions in the upcoming years. However, rules on accessibility of this information by different competent authorities is likely to vary from country to country.

³⁹ FATF, 2014. *Anti-money laundering and counter-terrorist financing measures – Spain, Fourth Round Mutual Evaluation Report*, FATF. www.fatf-gafi.org/topics/mutualevaluations/documents/mer-spain-2014.html

3. COUNTRIES WITH BENEFICIAL OWNERSHIP REGISTERS PERFORM BETTER

Despite taking just a sample of countries into account, perhaps the most encouraging finding of the analysis is that countries perform better, and therefore are more likely to meet the objectives of the FATF recommendation, when they record beneficial ownership information in at least one register. This is particularly the case where competent authorities have direct access to the information, instead of having to request it from the register authority, for example. In these jurisdictions, timely access to beneficial ownership information is guaranteed, and authorities are able to use the information in a proactive manner to identify potential suspicious activities and transactions, and as a start to investigations. This is the case in countries such as Spain, the UK and Macao.

United Kingdom authorities can rely on three different sources to access beneficial ownership information on legal persons and arrangements: financial institutions and DNFBPs, registers or the legal entity itself. The evaluation report concludes that the “variety of sources increases transparency and access to information and helps mitigate accuracy problems”.⁴⁰

In **Spain**, competent authorities can obtain beneficial ownership information on all legal entities created in the country in a timely manner through the Single Computerised Index (SCI), information held by financial institutions and DNFBPs, and the beneficial ownership database. Most relevant authorities, such as law enforcement agencies and specialised prosecutors, have direct access to the SCI, a database maintained by notaries. Most competent authorities have also direct access to the beneficial ownership database, where searches can be conducted by company or by individual. A system of alerts enables competent authorities to be immediately aware of any new act conducted before a notary by any natural or legal person who has previously been the subject of a search. Reporting entities also have access to the beneficial ownership database to support their customer due diligence efforts.⁴¹

In **Macao**, beneficial ownership information is held by legal persons, the State Register and the Central Depository, as well as reporting entities.

Most importantly, FATF country reports in a number of cases recognise the importance of beneficial ownership registers. Evaluators acknowledge in several reports that the establishment of a beneficial ownership register is or would be an important step to addressing deficiencies related to timely access of beneficial ownership information.

- In the **Cayman Islands**, where beneficial ownership information was historically only accessible by authorities on request to financial institutions and corporate service providers, the FATF country report concludes that “the recent establishment of a centralised beneficial ownership register lends to a more enhanced and efficient framework for transparency of beneficial ownership information in the jurisdiction”.⁴²
- In **Ghana**, the evaluation states, “the maintenance of a register of beneficial ownership obligated under the 2016 Company Act will definitely facilitate the process of exchanging beneficial ownership information”.⁴³

⁴⁰ FATF, 2018. UK Mutual Evaluation Report

⁴¹ FATF, 2014. Spain Mutual Evaluation Report

⁴² CFATF, 2019. Cayman Islands Mutual Evaluation Report

⁴³ GIABA, 2018. Anti-money laundering and counter-terrorist financing measures – Ghana, Second Round Mutual Evaluation Report, GIABA, Dakar

- The **Isle of Man** made significant progress after the visit by FATF, according to a follow-up report. It enacted the Beneficial Ownership Act 2017, adjusting the definition of beneficial owner and creating the Database of Beneficial Ownership by legal persons.⁴⁴
- Similarly, **Peru**, at the time of the evaluation, relied on financial institutions and DNFbps to access beneficial ownership information, which was considered insufficient to ensure competent authorities had timely access. After the on-site visit, the country adopted a new law requiring legal entities to disclose beneficial ownership. The law is expected to enhance transparency and facilitate the work of competent authorities.⁴⁵

4. THE LACK OF BENEFICIAL OWNERSHIP INFORMATION HINDERS CROSS-BORDER INVESTIGATIONS

Deficiencies in access to beneficial ownership information have serious implications for cross-border investigations of corruption and other crimes. Many grand corruption cases have a cross-border element, and perpetrators frequently use companies incorporated in different countries – often where company formation laws are less transparent. The review of FATF mutual evaluation reports shows that competent authorities report greater challenges in identifying the beneficial owner of a company when a foreign company is involved or is part of the ownership structure of a domestic company. In the absence of public beneficial ownership registers, authorities usually have to resort to complex and lengthy mutual legal assistance requests. This is without any guarantee that they will ever access the information, as beneficial ownership information may simply not be available in the company’s country of incorporation, which will impede the investigation and prosecution of wrongdoing.

While most countries do not systematically compile data on the number of requests sent to foreign authorities to access beneficial ownership, nor on the number of requests received from foreign authorities with the same purpose, available examples in different country evaluations paint a worrying picture.

In **Canada**, law enforcement authorities confirmed that in a number of their investigations where Canadian companies were owned by foreign entities or foreign trusts, it was not possible to identify the beneficial owners. According to the evaluation, this was due “mainly to foreign jurisdictions not responding to requests by the Canadian authorities for beneficial ownership information”.⁴⁶

In **Ghana**, law enforcement agencies report serious challenges in obtaining information when Ghanaian companies list a foreign entity or individual as part of their corporate structure, mainly due to delays and the non-cooperative attitude of some countries.⁴⁷

Reports also show that in addition to the challenges faced by the requesting states, the lack of beneficial ownership information is a burden to states receiving requests, which in theory need to use their own resources and investigative capacity to respond to requests from foreign counterparts.

⁴⁴ MONEYVAL, 2016. Isle of Man Mutual Evaluation Report

⁴⁵ GAFILAT, 2018. *Mutual Evaluation Report of the Fourth Round – Peru*. www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/GAFILAT-Mutual-Evaluation-Peru.pdf

⁴⁶ FATF, 2016. Canada Mutual Evaluation Report

⁴⁷ GIABA, 2018. Ghana Mutual Evaluation Report

The review highlights that in the **United States**, the lack of readily accessible beneficial ownership information does not allow resource-intensive investigations to uncover beneficial ownership on behalf of foreign counterparts.⁴⁸

In **Australia**, there is an overall limited ability to provide beneficial ownership information in response to foreign requests. Authorities stressed that “what is not required to be available in Australia cannot be shared”. Likewise in **Singapore**, where the evaluation concludes that exchange of beneficial ownership details with foreign counterparts is limited as Singapore can only share information that is available in the country.⁴⁹

In **Latvia**, requests for beneficial ownership information, especially in relation to shell companies, are one of the main types of mutual legal assistance requests received by authorities. While the country has an adequate framework to manage and deal with international cooperation requests, it is often unable to provide reliable beneficial ownership information to other authorities because the information available in the first place – from reporting entities and the company register – is not always accurate and up to date. Domestic authorities were – at the time of the evaluation – not able to access information directly, so in addition to the time needed to process the mutual evaluation assistance request, there is also the time local authorities need to request the information from the company register or reporting entities.⁵⁰

In **Panama**, the FATF mutual evaluation shows that the great majority of international cooperation requests received by the authorities are related to beneficial ownership of Panamanian companies, which are assessed as having a significant risk of being used for money laundering arising from illegal activities abroad. In 2016, the FIU received 273 requests related to 5,955 natural or legal persons, mainly about beneficial ownership information, financial information, property and commercial registries and registries of police records. The fact that Panama does not have an adequate system to ensure accurate and reliable information on the beneficial owners of companies incorporated in the country has a negative effect on investigations carried out by foreign authorities. This can hinder the ability of authorities to collect evidence to prove criminal activity.⁵¹

A case from **Hong Kong**⁵² shows that accessing beneficial ownership information in the country through a mutual legal assistance request can take more than a year. In this case, a foreign jurisdiction made a request to access beneficial ownership information in March 2016. The request was approved on 5 May 2017, more than one year later, allowing authorities in Hong Kong only then to request the beneficial ownership information of the bank account in question. The information was finally shared with the requesting authorities on 18 May 2017.

In the **Isle of Man**, most beneficial owners of legal persons and legal arrangements established under Manx legislation are non-residents. The country therefore receives many requests from foreign authorities related to legal entities and arrangements incorporated in the country. The FIU estimates that around 50 per cent of requests received are for intelligence in respect to beneficial ownership of legal persons and legal arrangements. Similarly, more than half of the cooperation requests received by the supervisory body are related to beneficial ownership of companies. With

⁴⁸ FATF, 2016. United States Mutual Evaluation Report

⁴⁹ FATF and APG, 2015. Australia Mutual Evaluation Report

⁵⁰ MONEYVAL, 2018. Latvia Mutual Evaluation Report

⁵¹ GAFILAT, 2018. Panama Mutual Evaluation Report

⁵² FATF, 2019. *Anti-money laundering and counter-terrorist financing measures – Hong Kong, China, Fourth Round Mutual Evaluation Report*, FATF, Paris www.fatf-gafi.org/publications/mutualevaluations/documents/mer-hong-kong-china2019.html

some exceptions, the evaluation concludes that authorities often respond to these requests, but no information on the timeline and reliability of the information provided is available.⁵³

Countries that have a beneficial ownership register can respond to international cooperation requests more easily and within a shorter timeframe.

In the **Cayman Islands**, the establishment of a beneficial ownership register by the government ensured the country was able to comply with an agreement signed with the United Kingdom. The agreement requires beneficial ownership information of legal entities and arrangements incorporated in the country to be shared with UK authorities within 24 hours. Prior to that, competent authorities relied on trust and corporate service providers to provide access to beneficial ownership information to assist foreign authorities. The FATF evaluation concluded that given the jurisdiction's significance in the global financial marketplace, such reliance posed a concern and was not sufficient to respond to the risks identified in the jurisdiction's own national risk assessment.⁵⁴

In the **UK**, the public beneficial ownership register can be accessed directly by foreign authorities, who can still request information recorded in the UK with other sources to verify accuracy or cross-check information.

In **Trinidad and Tobago**, the recently established beneficial ownership register is not public, but is accessible by foreign authorities on payment of a fee.⁵⁵

⁵³ MONEYVAL, 2016. Isle of Man Mutual Evaluation Report

⁵⁴ CFATF, 2019. Cayman Islands Mutual Evaluation Report

⁵⁵ CFATF, 2019. *Anti-money laundering and counter-terrorist financing measures – Trinidad and Tobago, 3rd Enhanced Follow-up Report & Technical Compliance Re-Rating*. cfatf-gafic.org/documents/4th-round-follow-up-reports/trinidad-and-tobago-3/11799-trinidad-andtobago-3rd-fur/file

THE WEAKEST LINKS: THE CONSEQUENCES OF NON-COMPREHENSIVE BENEFICIAL OWNERSHIP STANDARDS

The analysis of mutual evaluation reports shows some of the challenges faced by different countries when it comes to the technical and practical implementation of FATF recommendations around beneficial ownership of companies. They show that, in the past years, most countries have failed to reform their rules and implement measures that would ensure competent authorities' timely access to accurate and reliable beneficial ownership information. The fact that FATF does not prescribe in detail measures to be taken by countries seems to play an important role.

Beneficial ownership transparency is an issue that has impact across borders. It should therefore be the primary aim of a global standard-setter like the FATF to ensure minimum standards that are realistic to achieve the main objective – preventing the misuse of companies and ensuring competent authorities are able to obtain reliable information on their real owners in a timely manner. The failure to ensure such standards can have detrimental consequences to all efforts at improving corporate compliance.

Based on mutual evaluation reports, we have identified two main areas where we believe the lack of concrete recommendations by FATF could have a negative impact and unintended consequences:

1. DEFICIENCIES IN MAJOR COMPANY FORMATION CENTRES ARE A GLOBAL RISK

Several countries that have committed to the FATF standards are important company formation centres. They attract individuals from different nationalities seeking to incorporate companies that are usually then used for business outside the country. The reasons are many: ease of registering a company, lower costs and taxes, and lax regulations, anonymity and secrecy rules. Offshore company formation is a lucrative business and there seems to be insufficient incentive for offshore centres to adopt stricter rules, despite recognition by their own national risk assessments and FATF evaluations, that such companies are often used for corruption, money laundering and other crimes.

The analysis of FATF mutual evaluation reviews shows that most of these countries have interpreted the FATF guidance in the narrowest possible manner, relying only on reporting entities to collect beneficial ownership information.

The lack of clear international standards requiring countries to collect and maintain beneficial ownership information of companies incorporated in their territory leaves these offshore centres in the comfortable position of continuing to offer offshore services at scale, without necessarily being capable of keeping track of who the real owners of companies are. This means that the corrupt and other criminals will easily find a place where it is much easier to remain anonymous, hampering any attempts by foreign authorities to identify, investigate and prosecute corruption and other crimes.

Panama's risk assessment confirms that companies incorporated in **Panama** but without activities in the country are vulnerable to being used in other countries for money laundering.⁵⁶ In the **Seychelles**, most companies established in the international financial centre do not maintain a physical presence in the country, which presents inherently higher money laundering risks.⁵⁷ In the **United States**, the FATF evaluation stresses that the money laundering vulnerabilities identified in the country are amplified by contextual factors, such as "the enormous size of the US economy and the large number of companies formed in the US". The report concludes that while most companies are established in the United States for legitimate purposes, there are numerous examples of legal persons misused in complex money laundering and terrorist financing schemes.⁵⁸

Hong Kong's risk assessment identified that shell companies created in the country have been used to facilitate predicate crimes and money laundering offences. According to the report, money laundering syndicates may "abuse the efficient and open business environment which allows easy formation of shell companies to launder proceeds of crime, and common typologies include the use of shell companies formed by stooges to layer funds, hide beneficial ownership and commingle legitimate and illegitimate activities". The country has a stock of over 1.38 million companies, and 150,000 new companies are incorporated every day. These may do business in Hong Kong or elsewhere, which adds to the complexity and challenges for domestic and foreign authorities to access information.⁵⁹

2. CHALLENGES WITH RELIABILITY AND ACCURACY OF DATA

Challenges related to the accuracy and reliability of beneficial ownership information available to authorities exist in all 26 countries analysed. These are related, to varying degrees, to the methods and actors responsible for maintaining and obtaining information.

In countries where the sources of beneficial ownership information are financial institutions and corporate service providers, reliability issues are often related to the fact that information is usually recorded as declared by customers, without independent checks being carried out. In some countries, reporting entities do not systematically update the information collected when first engaging with the clients and overall supervision is often weak. In some of the countries where notaries are a source of beneficial ownership information, there is usually a legal requirement for them to check the accuracy of the information provided. However, the examples of Spain and Italy show that even in these cases, accuracy could be compromised if companies have a complex ownership structure with several layers and foreign companies involved, making it more difficult for notaries to confirm the information.

In countries where companies themselves are the main source of information, such as **Hong Kong** and the **Seychelles**, accuracy is also an issue. In this case, the large number of companies makes it virtually impossible for competent authorities to ensure compliance with the rules that beneficial ownership details are maintained, accurate and up to date.

In countries where beneficial ownership is maintained in registers, accuracy can also be an issue, particularly because no country gives register authorities the mandate, powers and resources to

⁵⁶ GAFILAT, 2018. Panama Mutual Evaluation Report

⁵⁷ ESAAMLG, 2018. *Anti-money laundering and counter-terrorist financing measures - Seychelles, Second Round Mutual Evaluation Report*, ESAAMLG, Dar es Salaam www.esaamlg.org/reports/me.php

⁵⁸ FATF, 2016. United States Mutual Evaluation Report

⁵⁹ FATF, 2019. Hong Kong Mutual Evaluation Review, p.141.

independently verify the information provided by companies. In **Latvia**, where information on beneficial ownership started to be collected recently in the company register, the mutual evaluation report finds that the lack of checks carried out by authorities led to them registering legal owners of companies as the beneficial owners, unless a specific notification from the beneficial owner was submitted. The evaluators concluded that due to this gap, it is likely that the beneficial owners of approximately 4,700 limited liability companies registered in the country are unknown.⁶⁰

The analysis of the evaluations shows that in places where authorities are able to rely on more than one source, the accuracy and reliability of the information is likely to be better. This is the case in the United Kingdom, Italy, Spain and Macao. It remains to be seen whether this will also be the case in countries that have recently adopted rules establishing beneficial ownership registers.

In the **United Kingdom**, the only reviewed country that has a public beneficial ownership register, the mutual evaluation report concludes that the “public character of the PSC [persons of significant control] register also allows for social accountability, which helps ensure the accuracy of the information provided. The centralised register (which includes PSC information) was accessed over 2 billion times in 2016/17. NGOs, for example, have undertaken bulk data analysis and reported on potential inaccuracies – they found approximately 4,500 companies listing other companies on the PSC register in situations this was not permitted; this led to Companies House taking action regarding these companies.”⁶¹

Public access to a beneficial ownership register can be a powerful tool, as it allows citizens, civil society, journalists, business and reporting entities to review the data and pinpoint inaccuracies.

Within this framework, to improve the quality of beneficial ownership information, FATF should require countries to establish public beneficial ownership registers and ensure that register authorities or other bodies have the mandate and adequate resources to verify the information provided by companies. Reporting entities should always be required to verify the information provided by customers and, in high-risk cases, conduct independent verification of the information.

⁶⁰ MONEYVAL, 2018. Latvia Mutual Evaluation Report

⁶¹ FATF, 2018. UK Mutual Evaluation Report

CONCLUSION

The analysis of FATF mutual evaluation reports of 26 countries shows there is a need for FATF to review its standards and guidance documents, to provide for more detailed recommendations on what is necessary to ensure competent authorities have access to reliable and accurate beneficial ownership information, in a timely manner.

While current recommendations recognise a wide variety of sources and mechanisms as being sufficient alone to guarantee this access, the country reviews show that timely access to quality beneficial ownership information is not possible without a multi-pronged approach. This requires that beneficial ownership information be available from different and complementary sources, and it is not possible without a beneficial ownership register with direct access by authorities.

The low levels of compliance with FATF Recommendation 24 seem to be related – at least in part – to the fact that the current standards support measures that are unlikely to achieve the expected results, even if they are implemented effectively (i.e. reliance on financial institutions and DNFBPs). More concrete recommendations on what mechanisms should be in place, combined with stricter consequences for countries that fail to comply, are required if we want to ensure the global anti-money laundering framework is fit for purpose.

RECOMMENDATIONS

1. FATF should revise its recommendations and guidance documents to require member countries to establish beneficial ownership registers.
2. FATF should encourage countries to establish public beneficial ownership registers as a way of improving transparency and accountability, as well as accuracy of the data.
3. Register authorities should be mandated and resourced to independently verify the information in the register.
4. Reporting entities should be required to report inconsistencies in company data to authorities or to the company register.
5. FATF should require a multi-pronged approach to beneficial ownership transparency. In addition to beneficial ownership registers, FATF should require reporting entities and companies themselves to maintain accurate and reliable beneficial ownership information.
6. FATF should significantly strengthen its ongoing support, evaluation, monitoring and sanctioning systems for member countries, to provide clearer and more regular incentives for progress.

ANNEX

NOTE ON METHODOLOGY

This study reviews the fourth round of FATF mutual evaluation reports of 26 countries – in particular, their technical compliance with Recommendation 24 and the effectiveness of measures to ensure competent authorities have access to beneficial ownership information in a timely manner (Immediate Outcome 5). It sought to understand:

1. Existing sources of beneficial ownership information available for competent authorities
2. Whether information is available in a timely manner
3. Whether information is reliable and accurate
4. The main challenges faced by competent authorities to access beneficial ownership information
5. Whether there are sanctions for non-compliance with the rules
6. The challenges faced by competent authorities to access beneficial ownership information held outside the country where investigations are taking place
7. The challenges domestic competent authorities face to share beneficial ownership information with foreign authorities.

The following questions were used as guidance during the research process:

- What are the sources of beneficial ownership available to competent authorities?
- Who is responsible for identifying and keeping beneficial ownership information?
- Do all relevant competent authorities (law enforcement, police, financial intelligence unit and tax agencies) have timely, ideally direct, access to beneficial ownership information?
- In cases where competent authorities have to request beneficial ownership information, does the law prescribe a timeline within which information should be provided? Is the timeline respected in practice?
- Are there sanctions in case reporting entities fail to provide requested information?
- Is there a mandate or mechanism for verifying beneficial ownership information?
- Is there a mandate or mechanism for updating beneficial ownership information?
- What are the main challenges faced by competent authorities to access beneficial ownership information?
- What are the challenges faced by competent authorities to access beneficial ownership information held outside the country where investigations are taking place? How many requests to access beneficial ownership information held abroad were made by authorities?
- What are the challenges faced by foreign competent authorities to access beneficial ownership information in the country? How many requests for beneficial ownership information has the country received related to companies incorporated in its territory?

COUNTRY SELECTION

As of 12 September 2019, FATF had published the mutual evaluation reports of 83 countries. This analysis focuses on 26 countries selected on two main criteria:

- i. diversity of results, to illustrate the different levels of compliance with Recommendation 24 (non-compliance, partially compliant, largely compliant and compliant) and of effectiveness of Immediate Outcome 5 (low effectiveness, moderate effectiveness, substantial effectiveness)
- ii. the country's importance as a company formation centre.

The analysis covered mutual evaluation reports of Albania, Australia, Austria, Bahamas, Botswana, Canada, Cayman Islands, Finland, Ghana, Greece, Hong Kong, Isle of Man, Italy, Latvia, Lithuania, Macao, Mauritius, Mexico, Panama, Peru, Seychelles, Singapore, Spain, Trinidad and Tobago, the United Kingdom and the United States.

LIMITATIONS

This study does not take into account whether a given country has an adequate beneficial ownership definition, nor whether anti-money laundering obligations applying to financial institutions and DNFBPs are adequate. The study focuses on private legal entities. We do not include in the analysis the availability of information related to listed companies, as they are less likely to be used in corruption cases, due to often being subject to stricter transparency rules. This study does not analyse technical compliance and effectiveness of measures related to legal arrangements.

LIST OF COUNTRIES AND ASSESSMENT RATINGS

JURISDICTION ⁶²	REPORT TYPE	REPORT DATE	ASSESSMENT BODY/BODIES	IO5	R.24
Albania	MER	Dec/18	MONEYVAL	ME	PC
Australia	MER+FUR	Oct/18	FATF/APG	ME	PC
Austria	MER+FUR	Nov/18	FATF	ME	LC
Bahamas	MER+FUR	Dec/18	CFATF	ME	PC
Botswana	MER+FUR	Aug/19	ESAAMLG	LE	PC
Canada	MER	Sep/16	IMF/FATF/APG	LE	PC
Cayman Islands	MER	Mar/19	CFATF	ME	PC
Finland	MER	Apr/19	FATF	ME	PC
Ghana	MER+FUR	Jun/18	GIABA	LE	LC
Greece	MER	Sep/19	FATF	ME	LC
Hong Kong, China	MER	Sep/19	FATF	ME	LC
Isle of Man	MER+FUR	Jul/18	MONEYVAL	ME	LC
Italy	MER+FUR	Mar/19	IMF/FATF	SE	LC
Latvia	MER	Jul/18	MONEYVAL	LE	LC
Lithuania	MER	Feb/19	MONEYVAL	ME	PC
Macao, China	MER	Dec/17	APG	SE	LC
Mauritius	MER+FUR	Apr/19	ESAAMLG	LE	NC
Mexico	MER	Jan/18	IMF/FATF/GAFILAT	ME	PC
Panama	MER+FUR	Aug/19	GAFILAT	LE	PC
Peru	MER	Feb/19	GAFILAT	LE	PC
Seychelles	MER	Sep/18	ESAAMLG	LE	LC
Singapore	MER	Sep/16	FATF/APG	ME	PC
Spain	MER+FUR	Mar/18	FATF	SE	LC
Trinidad and Tobago	MER+FUR	Jun/19	CFATF	ME	C
United Kingdom	MER	Dec/18	FATF	SE	LC
United States	MER	Dec/16	FATF/APG	LE	NC

Legend

MER	Mutual Evaluation Report
FUR	Follow-Up Report
HE	High level of effectiveness: The Immediate Outcome is achieved to a very large extent. Minor improvements needed.
SE	Substantial level of effectiveness: The Immediate Outcome is achieved to a large extent. Moderate improvements needed.
ME	Moderate level of effectiveness: The Immediate Outcome is achieved to some extent. Major improvements needed.
LE	Low level of effectiveness: The Immediate Outcome is not achieved or achieved to a negligible extent. Fundamental improvements needed.
C	Compliant
LC	Largely compliant: There are only minor shortcomings.
PC	Partially compliant: There are moderate shortcomings.
NC	Non-compliant: There are major shortcomings.

⁶² Click on the country name to go to the report on www.fatf-gafi.org.

Transparency International
International Secretariat
Alt-Moabit 96, 10559 Berlin, Germany

Phone: +49 30 34 38 200

Fax: +49 30 34 70 39 12

ti@transparency.org
www.transparency.org

blog.transparency.org
[facebook.com/transparencyinternational](https://www.facebook.com/transparencyinternational)
twitter.com/anticorruption