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Report on practices and challenges of Latin American countries on mechanisms for collecting basic and beneficial ownership information

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Glossary

AML/CFT	Anti-Money Laundering and Counter Terrorist Financing
AMLD 5	European Union's Fifth Anti-Money Laundering Directive
DNFBP	Designated Non-Financial Businesses and Professions
BO	Beneficial Ownership/Beneficial Owner
FSRB	FATF-Style Regional Body
FATF	Financial Action Task Force
GAFILAT	Financial Action Task Force of Latin America
ML/TF	Money Laundering and Terrorist Financing
PEP	Politically Exposed Person
R.	FATF Recommendation(s)
IO.	Immediate Outcome
STR	Suspicious Transaction Report
RI	Reporting Institution(s)
EU	European Union



Executive Summary

1. Transparency on owners and controllers of legal persons and arrangements is one of the core elements in the anti-money laundering and counter terrorist financing system (AML/CFT). It is also a relevant tool for the investigation of other crimes, including tax evasion and corruption.
2. The purpose of this paper is to introduce the practices, challenges and barriers that exist in the Financial Action Task Force of Latin America (GAFILAT) member countries regarding the availability and access to basic and beneficial ownership (BO) information. Likewise, based on the challenges identified, the work presents proposals, best practices and lessons learned from both Latin American countries and the rest of the world. The last section of the paper presents a possible road map, depending on each country's context, as well as a list of resources adopted by different countries to overcome obstacles to increased transparency.
3. The main sources used in this work include the latest evaluations of GAFILAT and the Global Forum on Transparency and Exchange of Information for Tax Purposes of the Organisation for Economic Cooperation and Development (OECD), and other publications on the matter. In addition, questionnaires were sent to GAFILAT member countries and telephone interviews were conducted with several authorities. This allowed to obtain the most updated information on the legal framework of the countries as of December 2019, as well as the opinion of technical officers on the challenges and potential solutions.
4. Both the Financial Action Task Force (FATF) and the Global Forum allow countries to ensure the availability and access to basic information on legal persons and arrangements through 3 alternative, but combinable, mechanisms: Requesting it directly from the entity, using existing sources of information (e.g. information held by the tax administration or reporting institutions (RI)), or keeping it in a register. Likewise, the 2019 FATF report on "Best BO Practices for Legal Persons" highlights that the countries that achieved the best results are those that implemented a multi-pronged approach, having more than one source and mechanism to access information. However, no country in the world has yet reached a "high" level of effectiveness in Immediate Outcome 5, which, among other aspects, measures the effectiveness of access to BO information by competent authorities.



5. Given the current situation in many countries, this paper aims to suggest proposals for improving transparency, based on publications related to the topic, country experiences, and discussions with authorities. The different measures mentioned in this document in many cases go beyond the requirements of the FATF and the Global Forum (e.g., the establishment of a public BO register), so they should be considered as proposals, i.e., they are not mandatory or subject to evaluation processes by international bodies. The transparency proposals are presented in relation to 4 correlative stages: (i) the availability of information on all relevant legal vehicles (legal persons and trusts); (ii) timely access; (iii) the quality of the information; and (iv) its effective use.

6. Although not all GAFILAT members have been evaluated in the last round, the information published so far provides an overview of the situation regarding compliance with the GAFILAT and Global Forum standards. (Note that published evaluations may not reflect the current legal framework in some countries due to recent reforms.)

7. In relation to the evaluations on the AML/CFT system carried out by GAFILAT, FATF and other evaluation bodies, the following conclusion can be observed. Although the legal framework of GAFILAT member countries is usually equal to (e.g., R. 24 on transparency and beneficial ownership of legal entities), or even better than that of FATF member countries (e.g., R. 25, on transparency and beneficial ownership of other legal structures), effective compliance (IO.5¹) is usually lower on average than that of FATF member countries, and more similar to the rest of the countries.

8. With respect to the Global Forum on Transparency and Exchange of Information for Tax Purposes, in section A1 of the Peer Reviews (on availability of information), GAFILAT member countries obtained lower than average ratings of both FATF member countries and the rest of the world. GAFILAT countries were rated one time "Non-Compliant" and none "Compliant." The opposite situation occurs in FATF member countries and the rest of the countries, with no "Non-Compliant" and 10% "Compliant."

9. Moreover, when considering compliance with the Extractive Industries Transparency Initiative (EITI) standard on BO transparency, GAFILAT member countries

1 Immediate Outcome 5 assesses, among other things, that legal persons and other legal arrangements cannot be misused for money laundering or terrorist financing, and that information about their beneficial ownership is available to competent authorities without impediment.



show—on average—better compliance with the legal framework for BO in the extractive industries than other countries, including FATF members. However, in terms of publication of information, only 1 country (20%) publishes some information, and there is no case of complete publication that does exist in 2 countries (5%) in the rest of the world. Among FATF member countries, none publishes, or at least it was not reported.

10. Finally, according to the Financial Secrecy Index of the civil society organisation Tax Justice Network, in relation to partners or shareholders of companies, all countries have a similar level of registration with the authorities. In contrast, according to the Index, there is a standard for declaring and updating the BO to an authority in almost 60% of GAFILAT member countries, while only about one third of FATF member countries and the rest of the world have it. Likewise, the registration of trusts with an authority (either for both types of trusts or just for one) is also higher in GAFILAT member countries than in FATF member countries, and even higher in comparison with the rest of the world.

11. According to the sources consulted, the situation in GAFILAT member countries is quite uneven, especially in relation to the availability and access to BO information. In terms of basic information on shareholders or partners, although there are company registers, there is usually no single register that concentrates the information on all types of legal vehicles. Registration may be decentralised to regions, or it may depend on the type of legal vehicle. In addition, factors that may hinder access to information include the possibility of companies having legal validity even without registration, no obligation to update the register in the event of a transfer of shares, or registers that are still in paper format (not digitised). However, several countries are establishing other digital systems that unify or centralise the information held in different types of registers. Anyway, countries usually have more than one source to obtain basic information, being the tax administration the main alternative source.

12. With regard to trusts, some countries require that they be registered with a government authority. Also, at least 7 countries establish restrictions to act as a trustee (administrator of the trust), authorising only banks or other financial institutions. Thus, being a concentrated and highly regulated universe, access to information on trusts is made easier.



13. With regard to BO, most countries have been using the “existing information” mechanism to obtain information, using RIs, company registers (in case the shareholder is also a BO), or the information available from the tax administration as their main sources. Only 2 countries considered Suspicious Transaction Reports (STRs) as one of the main sources, and 1 country uses mainly the resident agent or directly the entity to obtain information. Other countries also consider private databases as relevant sources.

14. However, since 2016, increasingly more countries in the region have established a BO register or, at least, have required that BO of all relevant entities be declared annually to a government authority. As of April 2020, at least 10 countries have a regulation that requires the declaration of the BO: Argentina, Brazil, Colombia, Costa Rica, Ecuador, Panama, Paraguay, Peru, Dominican Republic, and Uruguay. Moreover, Guatemala, Mexico, and Nicaragua are also considering this option. It should be highlighted that countries have chosen different authorities to handle BO information: While most of them chose the tax authority, other options include the central bank, the company register, or other authorities. Likewise, countries that already have a BO register or are in the process of implementing the obligation on all entities to declare the BO to an authority, consider that it will be the main source of BO information.

15. Regarding access to BO information held by an authority, most of them provide access to several domestic authorities. For example, Ecuador even provides online, free, and public access to information on the chain of ownership up to a shareholder that is a natural person, and Paraguay is considering the possibility of publishing the name of the BO. Moreover, authorities in certain countries admit that initially the registry is confidential, but they consider that in a second phase it will be available at least to RIs or to the general public.

15. Challenges present in GAFILAT member countries can be classified based on the 4 consecutive phases used in this paper. Regarding the availability of BO on all relevant vehicles, challenges include the risks of bearer shares, definitions that do not include the effective control through other means (different than ownership of shares), chains of ownership that end in tax havens, or lack of effective sanctions. In relation to access, barriers include lack of digitisation or lack of access by all relevant authorities. The third phase, on information quality, presents challenges regarding the lack of updated information or the difficulty in cross-checking information between different State bases.



Finally, the effective use may be mostly affected by the lack of technological, budgetary, and human resources.

16. Given the challenges that exist, this paper aims at offering a range of proposals for countries to consider. From more technological options, such as the cross-checking of information or the interconnection of registers, to more traditional ones, such as the creation of a special verification unit, the hiring of more personnel in public agencies, or legislative reforms to limit the use of foreign legal vehicles. The paper aims not only at presenting options, but also at considering some costs, explaining that what is not invested in the first phase will have to be invested in the second phase. For example, one country may choose not to establish a register but rather depend on each entity to hold information on their BO and request such information on a case by case basis. However, this approach will make monitoring more expensive, as hundreds of thousands of entities will need to be monitored to ensure compliance with the law, or otherwise the system's effectiveness cannot be guaranteed. On the contrary, a country could initially invest in digitising the registry information and automating the crossing of information, with the objective of reducing the subsequent costs of compliance monitoring and verification.



1. Introduction

1. Transparency on basic and BO information of legal persons and arrangements is one of the core elements in the AML/CFT system. It is also a relevant tool for the investigation of other crimes, including tax evasion and corruption.

2. On the one hand, transparency on the ownership of legal persons and trusts allows to establish the corresponding criminal liabilities when an entity is an active component of an illegal activity. For example, if a disco, restaurant or business are used to launder money from drug trafficking, or if a company issues apocryphal invoices, the transparency of basic and BO information allows for the identification of the actual persons responsible for operating and controlling such entities.

3. On the other hand, information on the BO also helps to detect illegal activities even when an entity is not actively operating in the provision of products and services, but rather passively acts as an asset holding. Many registrable assets, such as real estate, automobiles, private vessels or aircrafts can be registered in the name of a legal person instead of identifying the human owner. The transparency of the BO can then reveal the true owners of registrable property. This is relevant both for asset recovery, and for the preventive detection of possible criminal activities, if it is discovered that a person's income cannot justify his or her patrimony. In this regard, the UK has begun to issue unexplained wealth orders or UWOs² against foreign politically exposed persons (PEPs) who acquire or hold assets of more than GBP 50,000 without being able to justify them with their declared income.

4. In summary, the availability and effective use of transparency of owners and controllers of legal persons and legal arrangements facilitates both the resolution of known cases and the preventive detection of otherwise unsuspected cases.

2. Purpose and structure of the present paper

5. The purpose of this paper is to describe the practices, barriers and best cases present in the 17 GAFILAT member countries in terms of availability and access to basic and BO information. The document presents proposals to address the challenges,

² <https://www.transparency.org.uk/unexplained-wealth-orders-a-brief-guide/>



describing international experiences that can serve as examples and that can assist in fostering synergies and cooperation among authorities.

6. The objective and methodology of this paper was agreed with the Secretariat of GAFILAT and the German Development Cooperation implemented by GIZ and was presented at the meeting of the Risk Analysis and Financial Inclusion Working Group (GTARIF) in Arequipa, Peru in December 2019.

7. This report considers and in many cases is based on the descriptions and results that emerge from the publications related to the matter, especially the evaluations of GAFILAT and the Global Forum. However, this is not meant to be an evaluation of the countries, but rather to help understand the situation in GAFILAT member countries, from the perspective of the authorities who work with basic and BO information on a daily basis.

8. One of the sources of information consisted in sending a written questionnaire (see Annex II) to the delegations of the 17 countries, followed by a guide of questions (see Annex III) for a telephone interview with the designated authorities. The written questionnaire, which was answered by 11 countries, provided more details on challenges, lessons learned, and use of information, especially in cases where GAFILAT and Global Forum evaluations did not have updated information as of December 2019. Telephone interviews were arranged with authorities from 7 countries, which lasted between 1 and 2 hours each.

9. The structure of the paper begins with a comparison between GAFILAT members and the rest of the countries in terms of basic and BO information transparency. Then, some common practices and challenges existing in the region are described. The research then focuses on describing transparency proposals to address the challenges and obstacles identified, based on lessons learned, best cases, and theory. This section is divided into four consecutive stages to ensure effective use of basic and BO information by authorities: Availability of information for all relevant legal vehicles, access by authorities, quality of information, and, finally, the ability to make effective use of it. Finally, a potential road map is presented, and experiences are described that allowed some countries to overcome obstacles to greater transparency.



10. The different measures and proposals mentioned that go beyond the requirements of GAFILAT and the Global Forum are not mandatory and are not subject to evaluation processes by international organisations.

3. International context

11. The availability of, and effective access to, basic and BO information is at the core of the policies and recommendations of international bodies, including the FATF, GAFILAT, the OECD Global Forum for Exchange of Information for Tax Purposes, the G-20 and other affinity groups including the B-20 and C-20, the EITI extractive industries transparency initiative, and the Open Government Partnership, among many others.

12. At the global level, one of the milestones in BO's transparency was the approval in 2015 of the European Union's 4th Anti-Money Laundering Directive that required Member States to establish central BO registers for legal persons and some trusts.³ In 2016, the United Kingdom was the first country to establish a free, public, online BO register for commercial companies. In 2018, the European Union approved an amendment to the 4th Directive, known as the 5th Directive or AMLD 5, which requires giving public access to BO information on legal entities.⁴ In the case of trusts, instead of public access, authorities and RIs, as well as those who demonstrate a legitimate interest, will have access. The AMLD 5 even extended the conditions for registration of trusts not only for cases where the trustee is a resident of the European Union, but also when a trust acquires real estate or establishes professional relationships in a Member State. Finally, the AMLD 5 requires the interconnection of BO registers.⁵

13. The Extractive Industries Transparency Initiative (EITI) also requires its 52 member countries, including several in Latin America, to publish by 2020 the BO information of extractive industries' companies.

14. Although transparency measures on BO started in Europe, the movement has spread to other continents. In 2018, the Tax Justice Network described on the basis of its

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

⁴ http://ec.europa.eu/newsroom/just/document.cfm?action=display&doc_id=48935

⁵ *New Art. 30.10 as amended by the 5th Directive.*



Financial Secrecy Index⁶ that 34 jurisdictions had a law requiring the declaration of BO to a government authority.⁷ By 2020, the Index revealed that this number had more than doubled, with 78 jurisdictions already having their law in place to declare BO to authorities, including countries in Latin America, Asia, and Africa. Similarly, during the Open Government Partnership Meeting in 2019, the United Kingdom launched the BO Leadership Group in which countries such as Armenia, Kenya, Latvia, Mexico, and the Slovak Republic committed to principles of disclosure.

15. With respect to public access to BO information, in addition to the 27 Member States of the European Union, the United Kingdom required its British overseas territories to do so,⁸ and many of them, such as the Cayman Islands, committed to do so by 2023.⁹

4. Related BO publications

16. Considering the last few years, in 2017 the Inter-American Development Bank (IDB) published the report on “Regulation of Beneficial Ownership in Latin America and the Caribbean”¹⁰ describing the importance of the matter, and the regulations and ratings obtained by 26 countries in the region. In 2018, the FATF published its report on “Concealment of Beneficial Ownership”¹¹ describing the mechanisms through which BO can be concealed, including the use of front men and bearer shares. In March 2019, the OECD Global Forum published “A Beneficial Ownership Implementation Toolkit”¹² explaining the steps countries should take to approve the second round of peer evaluations and to understand the similarities and differences between the FATF and Global Forum evaluations on BO. In October 2019, the FATF published the report on “Best Practices on Beneficial Ownership for Legal Persons.”¹³

⁶ <https://fsi.taxjustice.net/es/>

⁷ <https://www.taxjustice.net/wp-content/uploads/2018/06/TJN2018-BeneficialOwnershipRegistration-StateOfPlay-FSI.pdf>

⁸ <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2019-01-23/211611>

⁹ <https://www.caymancompass.com/2018/12/23/fco-beneficial-ownership-register-to-be-made-public-by-2023/>

¹⁰ <https://publications.iadb.org/en/regulation-beneficial-ownership-latin-america-and-caribbean>

¹¹ <https://www.fatf-gafi.org/media/fatf/documents/reports/FATF-Egmont-Concealment-beneficial-ownership.pdf>

¹² <https://publications.iadb.org/en/beneficial-ownership-implementation-toolkit>

¹³ <https://www.fatf-gafi.org/media/fatf/documents/Best-Practices-Beneficial-Ownership-Legal-Persons.pdf>



17. Since 2017 both GAFILAT and the OECD Global Forum have been organising workshops on the topic of BO with the support of the German Development Cooperation implemented by GIZ, the World Bank, the Inter-American Development Bank, and the Inter-American Centre of Tax Administrations (CIAT). These workshops were held in Mexico in 2017,¹⁴ in the Dominican Republic in 2018,¹⁵ and in Buenos Aires in 2019.¹⁶

18. Finally, in recent years many Latin American countries were evaluated by both GAFILAT's 4th round and the Global Forum's 2nd round. The issue of availability, access and use of basic and BO information is mainly analysed in Recommendations 24 and 25, and in Immediate Outcome 5 of the FATF Assessment Methodology, as well as in section A1 of the Global Forum Peer Reviews.

¹⁴ <https://www.oecd.org/tax/transparency/seminar-on-beneficial-ownership-mexico-11-13-september-2017.htm>

¹⁵ <https://www.gafilat.org/index.php/es/espanol/19-noticias/64-taller-regional-sobre-transparencia-y-beneficiario-final>

¹⁶ <https://www.oecd.org/tax/transparency/global-forum-delivers-a-seminar-in-argentina-on-beneficial-ownership-information-and-the-fight-against-tax-evasion.htm>



Section A. Comparison between GAFILAT member countries' ratings and those of the rest of the world

19. This section describes the ratings obtained by GAFILAT member countries in comparison with those of FATF members, and of the other countries, in terms of availability and access to basic and BO information. The charts consider the latest evaluations by the FATF, FATF-style regional bodies (FSBRs), and the OECD Global Forum. The same applies to BO transparency legal framework for the extractive industries according to the EITI standard. It also compares the number of countries that must declare basic and BO information to a government authority according to the Financial Secrecy Index.

20. However, not all countries have been evaluated for effective and timely access to BO information during the 4th round of GAFILAT mutual evaluations because the round is still ongoing. The same applies to the 2nd round of the Global Forum, which has been analysing the issue of final beneficiaries since 2016 when the Terms of Reference were modified. Additionally, the findings identified in the GAFILAT and Global Forum evaluation processes may not reflect the current situation, since some countries amended their legal framework after the publication of their evaluation reports as a result of their action plans to overcome weaknesses in the AML/CFT system.

21. The graphs below consider the situation at the time of the evaluations, but the rest of this paper considers the new legislative changes that were reported in the questionnaire and telephone interviews. Similarly, in some cases the FATF/GAFILAT evaluation does not match that of the Global Forum, although this may be due to the fact that the evaluations were conducted at different times, or to the difference in approach. While the FATF and GAFILAT evaluate all types of legal vehicles in relation to ML/FT risk, the Global Forum focuses on the availability and access to information on legal persons and arrangements that is relevant to the payment of taxes and for the purpose of exchanging information in response to a foreign request.



i. Ratings in the AML/CFT system evaluations

22. By February 2020, the FATF published the results of the 4th round of mutual evaluations and follow-up conducted by the FATF, GAFILAT, and the other FSRBs (e.g. Moneyval, APG, CFATF, EAG, etc.) for 102 countries, including 11 of GAFILAT: Colombia, Costa Rica, Cuba, Guatemala, Honduras, Mexico, Nicaragua, Panama, Peru, Dominican Republic, and Uruguay.¹⁷ Since Mexico is part of the FATF and GAFILAT, the following charts consider it a “FATF country” (with Mexico, there are ratings on 28 FATF countries). The remaining 64 countries were evaluated by other FSRBs.

23. Recommendations 24 and 25 analyse transparency and BO for legal persons and legal arrangements respectively.

ILLUSTRATION 1. RATINGS OF R.24

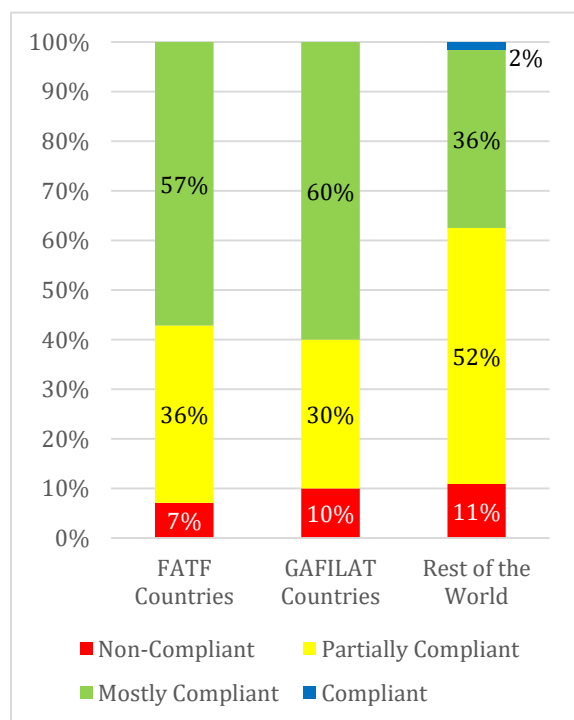
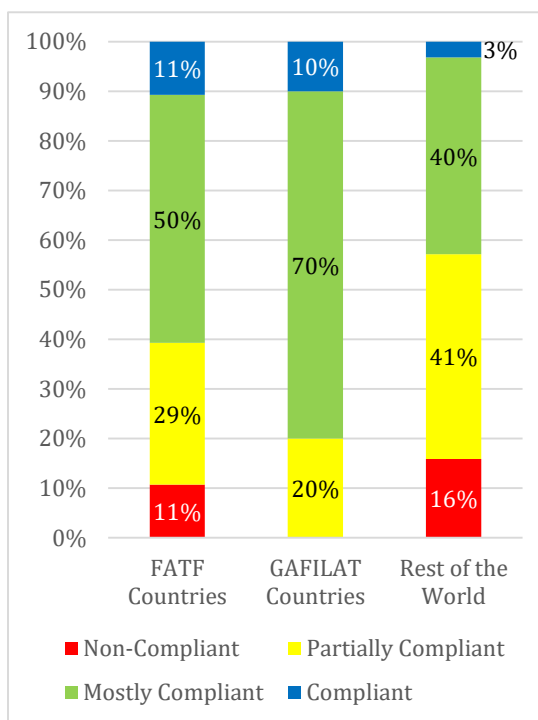


ILLUSTRATION 2. RATINGS OF R.25



¹⁷ <https://www.fatf-gafi.org/publications/mutualevaluations/documents/assessment-ratings.html>



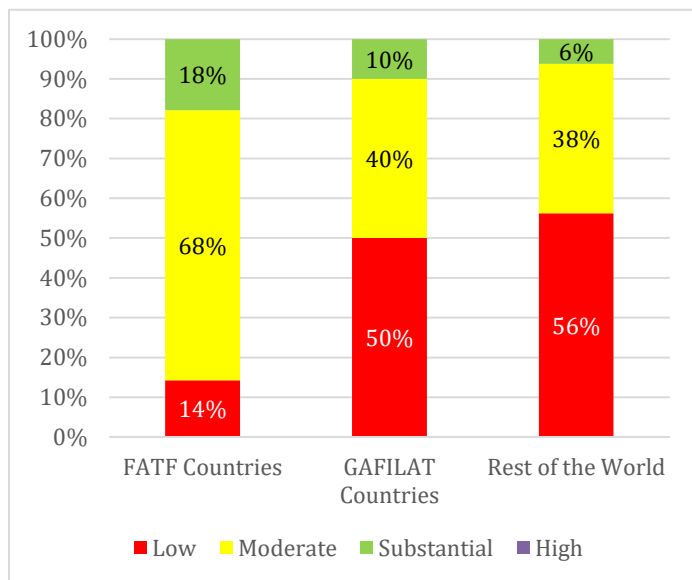
24. In the area of transparency and BO of legal persons (R.24), the 10 GAFILAT countries obtained similar ratings, although slightly higher than the average of the FATF member countries' ratings. However, only 7% of the FATF countries were rated as "Non-Compliant" compared to 10% of GAFILAT countries. The rest of the countries obtained more "Non-Compliant" ratings (11%), and more "Partially Compliant" ratings than "Largely Compliant" (compared to FATF and GAFILAT member countries that had more "Largely Compliant" cases compared to "Partially Compliant"). However, no FATF or GAFILAT member country achieved the "Compliant" rating.

25. With respect to transparency and BO of legal arrangements such as trusts (R.25), GAFILAT member countries achieved better results than the rest of the countries, considering both FATF member countries and the rest of the FSRB's members. In comparison, no GAFILAT country was rated as "Non-Compliant", and most cases were rated as "Mostly Compliant." While the FATF and GAFILAT member countries had approximately 10% of countries rated "Compliant", only 3% of the rest of the countries achieved that rating.

26. This difference and better results in GAFILAT member countries in relation to R.25 may be due to the fact that, in the region, trusts are usually considered subjects of law or subject to taxes, in addition to the existence of limitations to exercise the role of trustee (being sometimes restricted to financial institutions). In other cases, such as Brazil, trusts cannot be created under domestic law. Cuba was the only country in the region to obtain a "Compliant" level, since civil trusts are prohibited, and can only be administered by financial institutions, although their use in general is very restricted at the moment. However, in the rest of the countries, especially in the common law tradition, the trust does not always have to be registered and it is the trustee who is usually considered the owner of the property and responsible for tax purposes.

27. Immediate Outcome 5, in accordance with the FATF Evaluation Methodology, analyses, among other aspects, whether the misuse of legal persons and arrangements for ML/TF is prevented, and whether authorities have full access to BO information.

ILLUSTRATION 3. RATINGS ON IMMEDIATE OUTCOME 5



28. The 10 GAFILAT member countries evaluated (excluding Mexico) were rated lower than the average of the 28 FATF countries, although slightly higher than the rest of the countries. No country in the world achieved a “high” effectiveness rating. Only one country in GAFILAT—Cuba—showed a substantial level of effectiveness, although the evaluation noted that the Cuban economy is in a process of opening up to the world, and it should

be monitored in case the legal framework is modified. Also, 50% of GAFILAT member countries and almost 60% of the rest of the countries were rated “low”, compared to only 14% of the FATF member countries.

29. In conclusion, while the legal framework of FATF member countries is generally close to (e.g., R. 24), or even better (e.g., R. 25) than that of FATF member countries, effective compliance (IO.5) tends to be on average lower than that of FATF countries, and more similar to the rest of the countries.

ii. Ratings in OECD Global Forum Peer Reviews

30. The OECD Global Forum publishes the results of peer reviews.¹⁸ Section A1 discusses the availability of basic and BO information for companies, partnerships, private interest foundations, trusts created under local law, foreign trusts with a resident trustee, and other entities (e.g., cooperatives, investment entities, etc.). The BO issue has only started to be evaluated in the 2nd round after 2016, so only those evaluations are considered in this section.

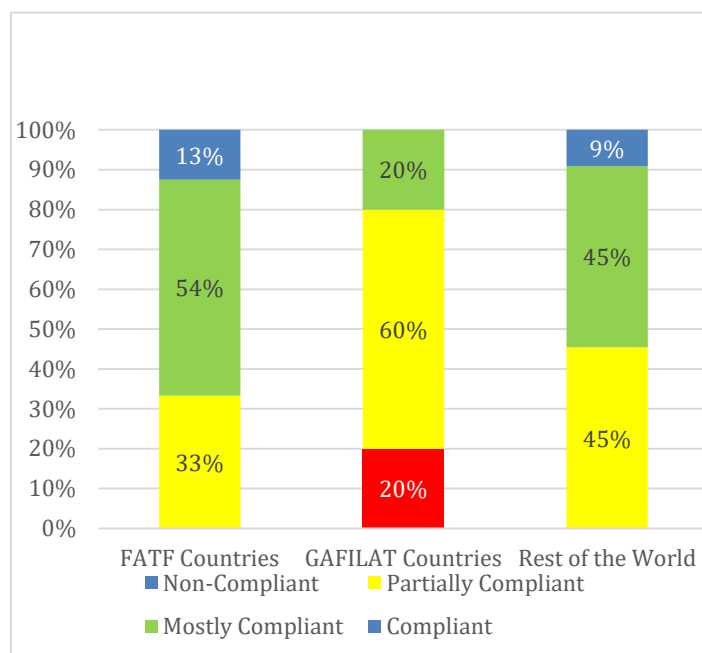
31. By early April 2020, second round evaluations are available for 62 countries, including 6 from GAFILAT: Brazil, Costa Rica, Guatemala, Panama, Peru, and Dominican

¹⁸ <https://www.oecd.org/tax/transparency/exchange-of-information-on-request/ratings/details-ratings-second-round-EOIR-peer-reviews.pdf>



Republic. However, as Brazil is also a member of the FATF, it is considered along with the other 23 FATF countries evaluated by the second round of the Global Forum. Although the number of countries is low (less than half of the GAFILAT membership), a similar comparison can be made to the AML/CFT evaluations.

ILLUSTRATION 4. SECTION A1 RATINGS IN GLOBAL FORUM EVALUATIONS



32. Most countries' ratings are divided between "Partially Compliant" and "Largely Compliant", both for GAFILAT member countries (80% of cases), FATF member countries (87%) and the rest of the countries (90% of cases), although the distribution is different. Only 20% of GAFILAT member countries were rated "Largely Compliant" compared to 54% of FATF member countries or 45% of the remaining countries. No country in the region attained the "Compliant" rating, which was

attained by approximately 10% of the FATF member countries and the rest of the world: France, Ireland, Italy (FATF), Jersey, Liechtenstein and Qatar (Rest of the World). Finally, the only country that was rated "Non-Compliant" was Guatemala, representing 20% of GAFILAT member countries.

33. In summary, GAFILAT member countries were rated lower than the average for both FATF member countries and the rest of the world. GAFILAT countries were rated one time "Non-Compliant" and none "Compliant." The opposite situation occurs in FATF member countries and the rest of the countries, with no "Non-Compliant" and 10% "Compliant."

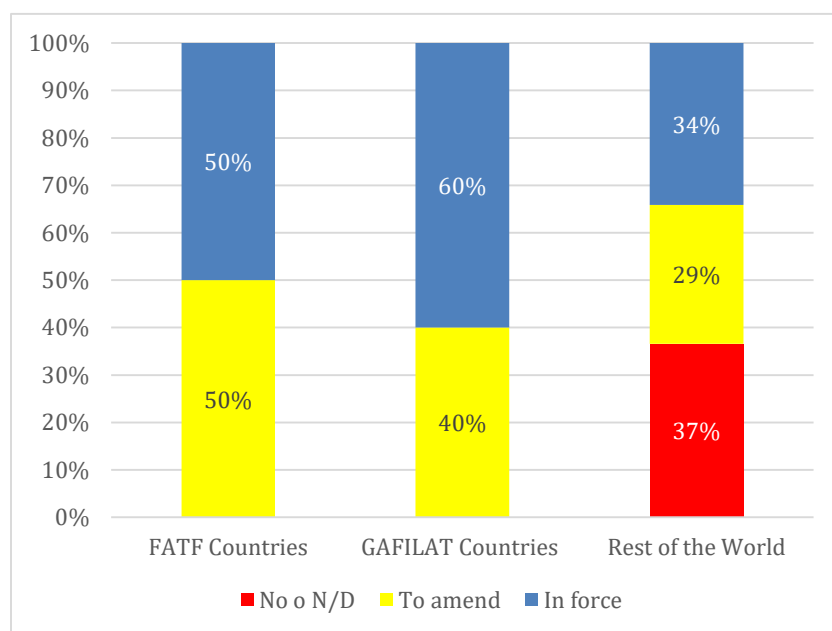


iii. The Extractive Industries Transparency Initiative (EITI)

34. The Extractive Industries Transparency Initiative (EITI) requires in Article 2.5 of its standard that oil, gas and mining-related industries publish the BO information of companies that seek to apply for or already hold a participating interest in an exploitation contract or license.¹⁹ Of the 52 countries that are members of EITI, 7 are also members of GAFILAT: Argentina, Colombia, Guatemala, Honduras, Mexico, Peru, and Dominican Republic. However, since Argentina and Mexico are also members of FATF, they are considered among the 6 FATF countries that are members of EITI.

35. The following charts, based on the “Progress Report on the Implementation of the EITI Standard from July to September 2019”, compare whether the countries’ legal frameworks require the notification or publication of the BO of extractive industries companies, and whether the information is already published, even partially.

ILLUSTRATION 5. LEGAL FRAMEWORK ON NOTIFICATION OR PUBLICATION OF BO FROM THE EXTRACTIVE INDUSTRIES



36. According to the graph, of the 5 GAFILAT member countries, 60% already has a legal framework in place that requires the notification or publication of BO of companies in the extractive industries, and 30% are planning reforms in this regard. This result is slightly better than that of the FATF countries with 50% in each

case. By comparison, in the remaining 41 countries only a third has the legal framework

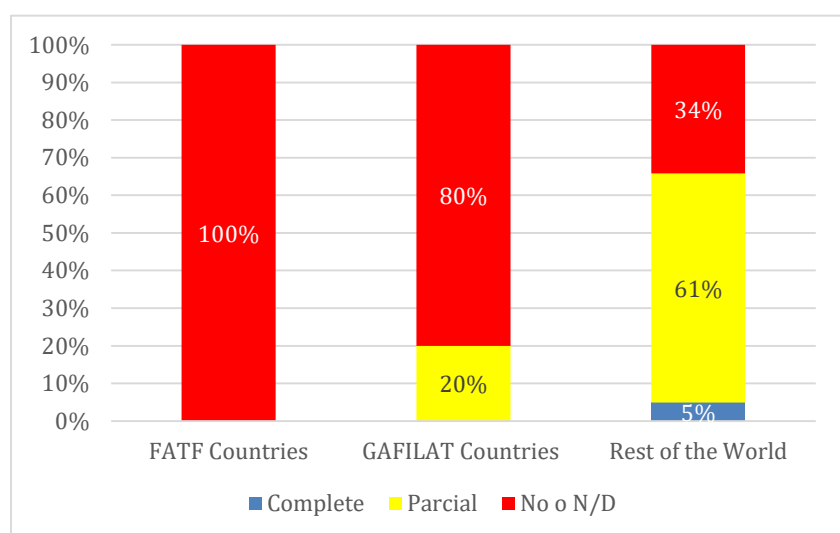
¹⁹ <https://eiti.org/beneficial-ownership>



in place, 29% are planning reforms, while the remaining 37% have made no progress or have not yet reported.

37. In contrast, in terms of BO information on companies in the extractive industries that has already been published, there is still a long way to go before all countries comply with the standard.

ILLUSTRATION 6. BO INFORMATION ON THE EXTRACTIVE INDUSTRIES ALREADY PUBLISHED



38. Among GAFILAT member countries only Peru (20%) publishes some information on BO from companies in the extractive industries, while 80% do not or have not reported. Among FATF member countries, none publishes, or it has not yet reported. In comparison,

among the rest of the countries of the world, more than 60% publishes some information, and 2 countries, Indonesia and Ukraine (representing 4%) are already publishing the complete information.

39. In summary, GAFILAT member countries have on average better compliance with the legal framework for BO in the extractive industries than other countries, including FATF members. However, in terms of publication of information, only 1 country (20%) publishes some information, and there is no case of complete publication that does exist in 2 countries (5%) in the rest of the world. Among FATF member countries, none publishes, or at least it was not reported.



iv. The Tax Justice Network Financial Secrecy Index

37. The civil society organisation Tax Justice Network based in England publishes the Financial Secrecy Index²⁰ every two years, which serves as the basis for, for example, the Basel AML Index²¹ and the BO Report of the Open Government Partnership.²² The Index is a tool of sources of corporate and tax information included in the Availability of Public Information (DIP, as per its acronym in Spanish) database provided by the Inter-American Centre of Tax Administrations (CIAT) to the tax authorities of Latin America. However, it should be noted that the Index uses criteria that do not coincide with the methodology of the FATF or the Global Forum, so the graphs presented below serve as context and as a description, but do not create obligations for the countries or constitute an evaluation from the perspective of GAFILAT.

38. The Financial Secrecy Index analyses 133 jurisdictions, including 16 in Latin America: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Mexico, Panama, Paraguay, Peru, Dominican Republic, Uruguay, and Venezuela. However, the following graphs also consider the situation in Cuba, Honduras and Nicaragua, while El Salvador and Venezuela are considered “Rest of the World” because they are not members of GAFILAT. Also, Argentina, Brazil, and Mexico are considered part of the 28 FATF member countries analysed by the Index.

39. The following charts analyse, on the basis of the Financial Secrecy Index, whether countries require companies to declare, at least annually, their partners, shareholders and BO to a government authority (e.g. Company register, tax administration, central bank, etc.). The Index considers the information to be out of date if there are bearer shares that are not immobilised or registered with a government authority.

²⁰ <https://fsi.taxjustice.net/es/>

²¹ <https://www.baselgovernance.org/basel-aml-index/methodology/indicators>

²² https://www.opengovpartnership.org/wp-content/uploads/2019/05/Global-Report_Beneficial-Ownership.pdf



ILLUSTRATION 7. COUNTRIES THAT REGISTER SHAREHOLDERS

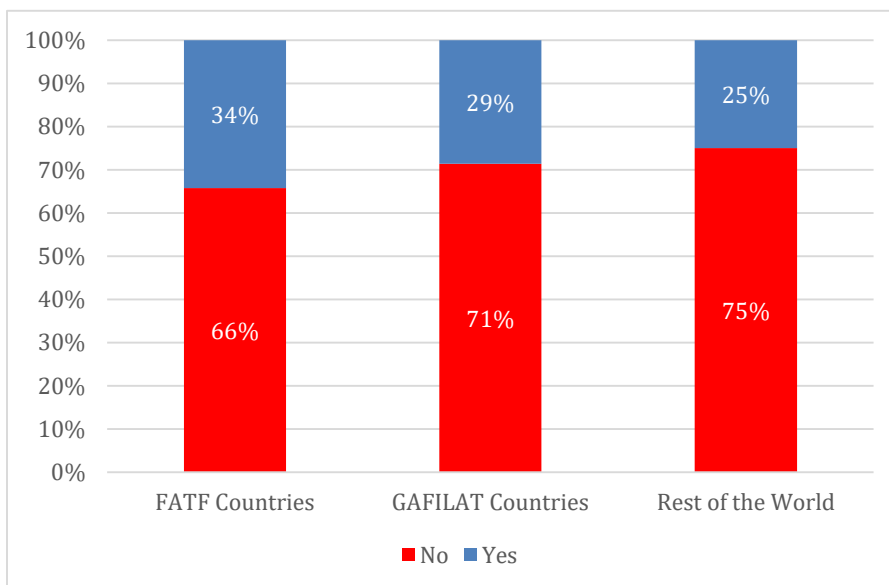
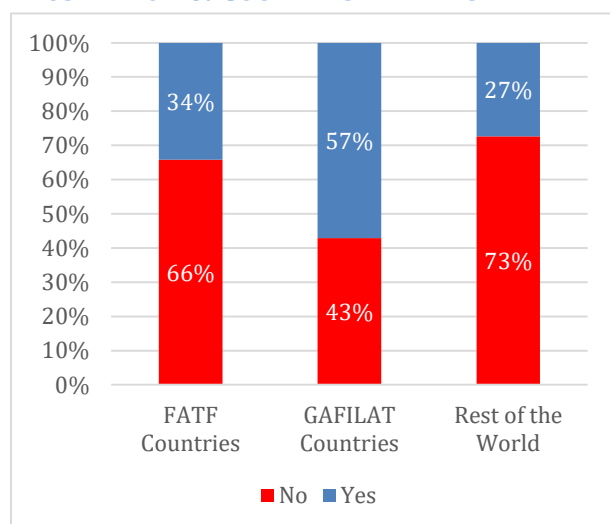


ILLUSTRATION 8. COUNTRIES THAT DECLARE THE BO TO A GOVERNMENT AUTHORITY



40. With respect to companies, according to the Financial Secrecy Index, GAFILAT member countries have levels of registration of partners or shareholders (part of the basic information) with a government authority comparable to other countries, although slightly lower than FATF member countries. The very low level of registration worldwide, from the perspective

of the Index, is due to the fact that there may be countries with bearer shares that move freely or that must be immobilised or registered by a private custodian (e.g. a bank, lawyer or corporate service provider) rather than an authority, so the Index considers that basic partner or shareholder information may not be up to date. The Index also considers that



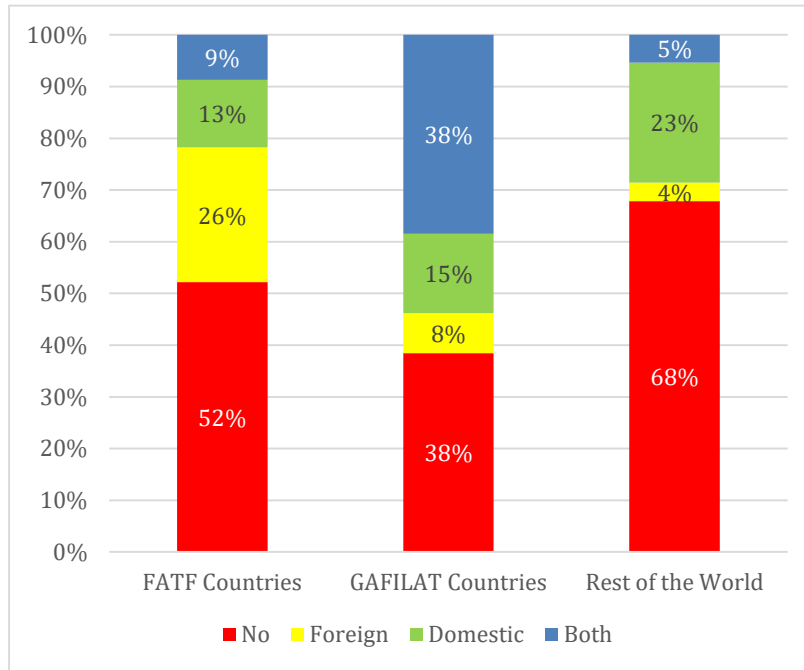
a country does not have a register of shareholders if there is any type of company or type of shareholder that should not update its information before any authority.

41. However, when it comes to the declaration of companies' BO before an authority, GAFILAT member countries are in the lead with respect to the rest of the world. According to the Financial Secrecy Index, 57% of GAFILAT member countries (compared to approximately 30% of the rest of the world and FATF member countries) already has effective laws that establish the obligation to declare and update the BO of companies before a government authority. This will be analysed in section C.II in more detail.

42. The following chart describes the number of countries that require the declaration of the parties to a trust before a government authority, for those countries where both types of trusts are available: Domestic trusts (created under domestic law) and foreign trusts, where the trustee is a resident in the country. The chart excludes countries such as Brazil, where trusts cannot be created under domestic law, or Cuba, where foreign trusts cannot operate or be managed locally.



ILLUSTRATION 9. COUNTRIES WITH REGISTRATION OF TRUSTS WITH A GOVERNMENT AUTHORITY



43. Regarding the registration of domestic and foreign trusts with a government authority, 38% of GAFILAT countries require the registration of both types of trusts compared to 9% in FATF member countries, and 5% in the rest of the world. In all countries, between 20% and 40% require the registration of one type of trust in all cases, either domestic or foreign. Finally, approximately one third of

GAFILAT member countries, more than half of FATF member countries, and more than two thirds of the rest of the world do not require the registration of any trust, or not in all cases. The Index considers registration to exist when it is appropriate in all circumstances. In other words, the Index and this graph do not consider the cases of many countries where registration is required only if the trust has taxable income or owns real estate.

In summary, in relation to partners or shareholders of companies, all countries have a similar level of registration with the authorities. In contrast, according to the Index, there is a standard for declaring and updating the BO to an authority in almost 60% of GAFILAT member countries, while only about one third of FATF member countries and the rest of the world have it. Likewise, the registration of trusts with an authority (either for both types of trusts or just for one) is also higher in GAFILAT member countries than in FATF member countries, and even higher in comparison with the rest of the world.



Section B. The situation in GAFILAT member countries regarding availability and access to basic and BO information

44. The FATF and the Global Forum require countries to ensure the availability and timely access to basic and BO information on legal persons and legal arrangements that is accurate and up to date. Three alternative, but combinable, mechanisms are established to comply with this requirement regarding partners or shareholders and BO: Require entities to keep this information and provide it to the authorities when requested (company approach); require authorities to obtain the information from any existing source, whether it be data held by the tax authority, the real estate registry, a RI, etc. (existing information approach); or lastly, require that the information be contained in a register (registry approach).

45. The 2019 FATF report “Best Practices on Beneficial Ownership for Legal Persons” describes that all countries have challenges in achieving effective transparency of BO. It also concludes that best results are achieved by countries that implement a multi-pronged approach among the three mechanisms to ensure transparency of BO.

46. Ideally, all three mechanisms could be available in each country, with the authority being able to obtain shareholder and BO data either from a register, from information available from other authorities or third parties, or directly from the legal person. The report describes that the multiplicity of sources also facilitates data verification. For example, if a RI can obtain the information from different registers, it could compare them with the information provided by its customer to ensure that all the details are consistent (FATF 2019: 5).

i. Availability and access to information in GAFILAT countries

a) Information on partners and shareholders

47. In terms of information on shareholders or partners (part of the basic information) all GAFILAT member countries have at least one register in the hands of a government authority, usually the company register. However, the following factors may exist that would make access to information difficult, for example, if all current legal vehicles in which an individual under investigation is a shareholder, partner or member were to be known:



- Company registers that by law do not necessarily have updated information because only the original shareholders listed in the bylaws must be registered. This can occur either for all entities or for a specific type. For example, it may be the case that partnerships may have to update the register on transfers of shares or parts, but not corporations. If the authorities need to know who current shareholders are, they need to go directly to the entity in question or see if another authority (usually the tax administration) has the information. However, in at least two countries, the same law provides that not all entities must be registered in the company register to have legal validity and may operate as irregular or de facto companies.
- Company registers with little verification or supervision, in which many entities do not update their information, despite having to do so. In response, for example, Costa Rica, the Dominican Republic, and Uruguay removed or are in the process of removing entities that have been inactive for years.
- Registers that are not yet digitised and that are still only on paper. In one country, this is the case for all but the two most important local registers.
- Local registers in each province, state, city or canton. In at least 5 countries, there are local company registers that are not centralised. However, there are countries that have adopted systems to unify information. Argentina, for example, has established the National Registry of Companies available online (although as of April 2020 it has no information on shareholders). Colombia established the Single Business and Social Registry (RUES) system.
- For example, Uruguay has the National Registry of Commerce for personal companies, the Registry of Owners of Equity Holdings for all other companies, and the National Registry of Personal Acts for trusts. Similarly, Guatemala has the Commercial Registry, the Registry of Legal Persons (non-profit) and the Registry of Cooperatives.



48. In most countries, the company register is not the only one with information about partners or shareholders. The other body that usually has this information is the tax administration.

49. With respect to trusts, if they are required to be registered, they usually have their own register different from the rest of the legal persons, for example, by the financial regulator. Likewise, in 7 countries there are limits to those who can have the capacity of trustees to administer the trust. In most cases this role is reserved to financial institutions.

b) BO Information

50. In relation to the availability and access to BO information, among the three possible mechanisms, the “existing information” has been the most used resource. The main source is usually RIs, especially banks and other financial institutions, which must obtain BO information from their customers within the framework of know-your-customer and due diligence measures, according to R.10 of the FATF.

51. According to the interviews conducted with authorities and the relevant publications of GAFILAT and the Global Forum, among the most used sources of information, the main ones are: beneficial ownership register (if any), information held by RIs (especially banks), the company register (in case the shareholder is also the BO) and information held by the tax administration.

The tax authority, in addition, usually has the power to obtain information directly from the entity, either for domestic tax purposes or for the purpose of information sharing with other countries. Also, 2 countries considered STRs as a relevant (although not the main) source of information. Other 2 countries considered Designated Non-Financial Businesses and Professions (DNFBPs) as a relevant source of information. One of them specifically considered resident agents²³ as the main source of information on DNFBPs, followed by the mechanism for obtaining information directly from the entity. One of the reasons why few countries consider DNFBPs as a relevant source may be because not all partnerships

23 Lawyer or law firm that renders its services as such and that must keep the records required by this Law for the legal persons constituted in accordance with the laws of the Republic of Panama and with which it maintains a current professional relationship.

https://www.organojudicial.gob.pa/uploads/wp_repo/uploads/2015/05/Lev-2-de-1-de-febrero-de-2011.pdf



require a notary to be established. Another reason may be that some DNFBPs, such as intervening lawyers, may be absolutely protected by professional secrecy (even when acting as corporate agents) or not be considered RI by local legislation. Finally, two countries considered private databases as an important source of information.

52. It should be noted, as described below, that the above sources do not necessarily imply that BO information will always be obtained. For example, the definitions of BO in both RIs' regulation and the register may not be complete (e.g., include only ownership control, but not other forms of effective control). In other cases, the information may not be available due to deficiencies in monitoring or difficulties in imposing proportionate sanctions.

53. Although one of the main sources of BO information has been information held by RIs, this may change in the near future. In the last years, and in some cases in the last months or weeks, more and more GAFILAT member countries, following a worldwide trend, are approving laws for the annual declaration of BO to a government authority. However, as noted above, the establishment of a BO register or declarations to an authority is not mandatory, but countries may choose other mechanisms to ensure the availability and access to basic and BO information.

54. The first GAFILAT member countries to establish a standard requiring registration of BO with an authority for all relevant entities (without relying on a specific requirement) were: Brazil (Tax Regulation 1634/2016), Costa Rica (Law 9416/2016), Ecuador (No. NAC-DGERCGC16-00000536/2017), Dominican Republic (Law 155-17 of 2017) and Uruguay (Law 19484 regulated by Decree 166/2017). The second round of regulations was followed by Peru (Legislative Decree 1732/2018), Paraguay (Law 6446 of December 2019), Colombia (Law 2010 of December 2019, Art. 68, paragraph 4°), Panama (Law 129 of March 2020) and Argentina (even though Art. 26 of Law 27444 of 2018 mentioned the need to require BO declarations in the different local public registers, this had only been complied with by 3 local registers. Then, AFIP General Resolution 4697 of April 2020 required it to be done nationwide).



TABLE 1. DETAILS OF THE REGULATIONS ON BO’S MANDATORY ANNUAL DECLARATION TO A REGISTRY OR GOVERNMENT AUTHORITY

Country	Regulation	Description
Argentina	- AFIP General Resolution 4697	Information system before the tax administration for legal persons to provide information on their shareholders and partners. If these are not natural persons, they must provide information on their BO.
	Art. 26 of Law 27.444	Domestic company registers must submit by computer to the Ministry of Justice information on entities they register or modify, including BO declarations.
Brazil	Normative Instructions 1634/2016 and 1863/2018	The Global Forum reported in 2018 that “the NI 1634/2016 amended the rules that regulate the national registry of legal persons (CNPJ) and established it as a BO registry.” ²⁴ In 2018, the NI 1863/2018 amended NI 1634/2016 to establish greater sanctions and new rules for companies listed on the stock exchange.
Colombia	Law 2.010 and Art. 86.4°	Creation of the Single Registry of Effective, Beneficial or Real Ownership (RUB), whose operation and administration will be in charge of the National Directorate of Taxes and Customs (DIAN) and will be implemented by means of a resolution issued by said entity seeking interoperability with the Single Tax Registry (RUT).
Costa Rica	Law 9416	It establishes a central BO register held by the Central Bank ²⁵
Ecuador	NAC-DGERCGC16-00000536/2017	Information regime before the tax administration so that legal persons and trusts report 100% of the first tier of partners/shareholders, except in the case of non-resident companies that must report all tiers up to the last level of the corporate structure.
Panama	Law 129	Creation of the Private and Unique System of Beneficial Ownership Registration for legal persons incorporated or registered under the laws of Panama
Paraguay	Law 6446	Creation of BO register for legal persons and trusts

²⁴ Peer Review of the 2018 Global Forum on Brazil, p. 45.

²⁵ 2019 Global Forum Peer Review on Costa Rica, p. 24 (based on the GAFILAT 2018 Fifth Follow-up Report).

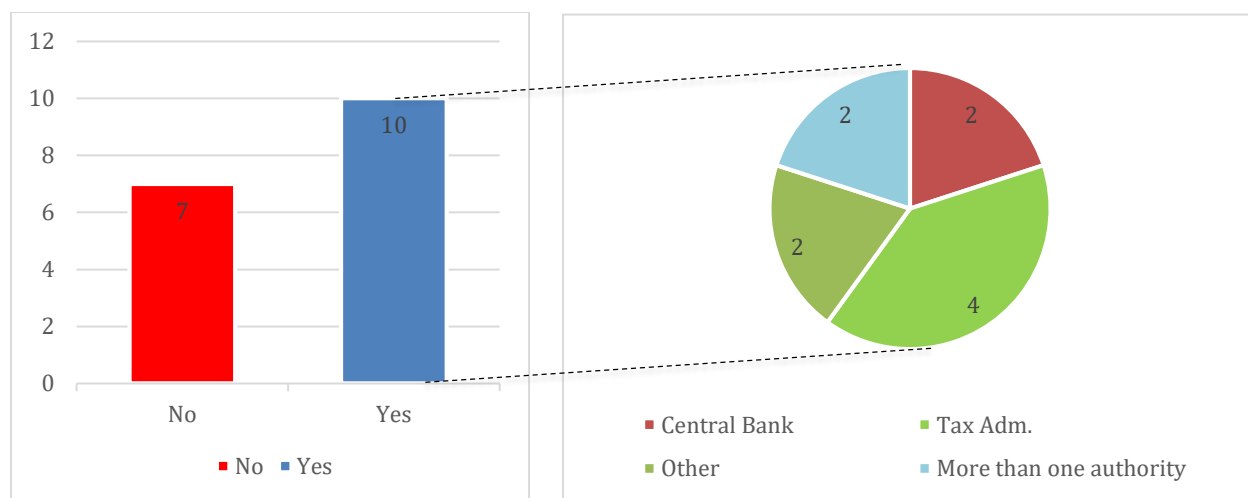


Peru	Legislative Decree 1732/2018	Obligation to provide information on the BO to the tax authorities.
Dominican Republic	Law 155-17 and Regulatory Decree 408-17	Obligation to provide information on the BO to the tax authorities.
Uruguay	Law 19484 regulated by Decree 166/2017	BO register for legal persons and trusts held by the Central Bank

55. Among the 7 countries that do not yet have a standard requiring all relevant entities to declare their BO to a government authority, Guatemala, Mexico, and Nicaragua are discussing or have committed to doing so in the coming years, either as part of the Extractive Industries Transparency Initiative (EITI) or for all legal persons.

56. As the following illustration shows, 10 GAFILAT member countries have chosen different authorities to register BO declarations: Costa Rica and Uruguay, chose the central bank; Brazil, Colombia, Peru and the Dominican Republic, the tax administration; Argentina and Ecuador, both the tax administration and the company register; and Panama and Paraguay chose “others” (the Superintendence of Supervision and Regulation of Non-Financial Entities, and the Ministry of the Treasury, respectively).

ILLUSTRATION 101. GAFILAT MEMBER COUNTRIES WITH A STANDARD THAT REQUIRES BO DECLARATION TO AN AUTHORITY





57. In relation to access to BO information, several countries will provide access to relevant local authorities (e.g. Costa Rica, Panama, Paraguay, Peru, Uruguay). Ecuador provides free, online access on the web page of the Superintendence of Companies, Securities and Insurance to information on the chain of ownership up to the individual shareholder (see section C.II.iii for more details). Paraguay is considering giving public access to the name of the BO.

58. It should be noted that not all of the 10 countries have the register in place, nor have they received the declarations from all relevant entities. Also, since these standards are recent and have not yet been evaluated by GAFILAT and the Global Forum, there may be room for improvement, such as the definitions of BO or the situation with regard to existing bearer shares.

59. According to the interviews conducted, officials expect that the BO register administered by the authority determined by law, whether the central bank, tax administration, etc., will become the main source of information on BO, although other sources of information, especially RIs, will continue to be important.

ii. Challenges to ensure availability and access to information in GAFILAT countries

60. According to the latest available evaluations conducted by GAFILAT and the Global Forum, GAFILAT member countries present some of the following obstacles and challenges, to a greater or lesser extent, in ensuring the availability and access to basic and BO information. Other needs were also added by the authorities consulted through written questionnaires and telephone interviews. The challenges can be classified into four stages to ensure effective use of basic and BO information:

1. Information on all relevant legal vehicles

Definition and scope

- Not all entities are required to identify their BO
- Risks of legal entities, e.g. mutual investment funds, especially if they comprise legal persons and arrangements



- Entities whose chains of ownership end up in tax havens from which no further information can be obtained
- Bearer shares continue to represent risks. Laws implementing the prohibition or registration of bearer shares become ineffective if a court invalidates them. A country that requires the immobilisation of bearer shares with private custodians (e.g., lawyers) did not always gain access to information about the owners
- The definition of BO refers only to ownership of shares, not to control by other means
- The definition of BO unfairly benefits ownership chains that include bearer shares, by allowing them not to identify the BO
- Trusts and fiduciaries represent a greater risk, both because of their control structure (not all their parties need to be identified as BO) and because of the fact that they do not have to be registered in order to be created (so it is not known how many there are). Private interest foundations are also a risk factor.

RI

- Lack of training for RIs and entities on BO obligations and definitions
- RIs are one (or the) source of BO information, but entities are not always required to operate or use a RI

Sanctions

- Insufficient or insufficiently dissuasive sanctions are imposed on those who fail to report BO (e.g., low fines)
- Non-compliant entities, even if they are disqualified from operating locally when their tax identification is suspended, do not lose their legal validity and are not removed from the register, so they can continue operating abroad
- There is a lack of action against nominee shareholders (straw men) and trustees who fail to notify their condition to RIs

II. Timely access to information

- Registers are not computerised or systematised
- Basic and BO information is decentralised
- Lack of cooperation or information sharing between all local authorities that should have access to basic and BO information



III. Quality information: complete, updated and verified

- Basic or BO information does not need to be updated
- Lack of supervision of the information registered and of the information held by RIs
- Difficulty in cross-checking information because other state agencies do not hold the data in a structured way
- Lack of resources for the agency responsible for verification
- Lack of cooperation or information sharing between all local authorities that should provide basic and BO information

IV. Effective use of information

- No national risk analysis was conducted focusing on legal persons, or the riskiest types were not included (e.g., companies incorporated remotely in 24 hours)
- Public corruption risk
- Need to improve the operational capacity of the authorities
- Budget needs
- Need for more staff
- Need for better technological capacity, (e.g. computer development to import BO information contained in local registers)
- Need for legislative changes

Section C. Proposals to improve the availability and access to BO information

61. As explained above, countries can opt for any of the 3 mechanisms recognised by GAFILAT and the Global Forum to ensure availability and access to basic and BO information, either by requesting it from the entity, taking advantage of existing information (e.g. held by authorities or RIs), or establishing a register. The 2019 FATF report on best practices describes that those countries that opted for more than one mechanism (multi-pronged approach) have obtained better results.

62. This section presents some proposals that could go beyond the FATF or Global Forum Recommendations (therefore, not mandatory) to improve BO transparency. The



requirements and barriers in each case are explained, and examples of best practices or ideal scenarios are given.

63. The transparency proposals are presented in 4 consecutive and correlative stages: Availability of information on all legal vehicles; timely access; quality of the information (complete, updated and verified); and finally, its effective use. While countries may face challenges at each of these stages, barriers not addressed in the early stages will have consequences at subsequent stages. For example, if there is no information on a type of legal person (stage I), it will be difficult to access this information (stage III) or use it effectively (stage IV).

Stage I: Availability of basic and BO information for all legal vehicles

64. The key basis is that basic and BO information for all legal vehicles, including legal persons (e.g. partnerships, companies, foundations, associations, cooperatives) and legal arrangements (trusts) is available in the country (regardless yet of who holds it). This section will discuss in detail: the conditions for requiring registration or obtaining information, the nationality of the legal vehicle, definitions, anti-circumvention strategies, and barriers presented by bearer shares and nominee shareholders or directors (straw men). Finally, sanctions will be proposed to ensure effective compliance.

i. Criteria for requiring the availability of information on legal vehicles linked to the country

65. A legal vehicle can be linked to the country according to 3 criteria: (i) the vehicle was incorporated in the country or is regulated under domestic law; or the vehicle is foreign, but (ii) it has a party resident in the country (shareholder, partner, BO, trustee, director, etc.) or (iii) it operates in the country because it owns registrable property, conducts transactions (provision of goods or services) or has taxable income.

66. The following table summarises the most common registration practices in the countries for each criterion.



TABLE 2. CRITERIA THAT TRIGGER THE NEED TO REGISTER A LEGAL PERSON OR TRUST

Criterion		Legal persons	Trusts	Exemptions / Remarks
(i) Incorporated/regulated under domestic law		With the company register	- No registration required to be legally valid (Anglo-Saxon countries) - With trust / BO register (e.g. Costa Rica, Uruguay)	Irregular commercial companies may not register If the incorporation or creation of legal vehicles requires the intervention of an attorney, notary, or corporate service provider (e.g. resident agent) and these are considered RIs, they should obtain basic and BO information
(ii) Foreign vehicle whose only link to the country is to have a resident party, e.g. shareholder, partner, BO, director, trustee		The parties (e.g. shareholder, director, BO) may be required to register their shares with the tax authority if they have taxable income (e.g. Argentina)	Yes, with respect to the trustee (if resident in the country)	Foreign legal persons do not usually have to register just because they have a local party, except for affidavits to be completed by members of parliament or politically exposed persons
(iii) Foreign vehicle with operations in the country for having:	- Registrable property (e.g. real estate)	No, but the real estate or other registrable property registry usually registers basic (non-BO) information about the owners of the property		The European Union's Fifth Directive requires the registration of BO to trusts that purchase real estate or establish professional relationships (with a RI) in the European Union Some DNFBPs, e.g. lawyers, notaries or accountants are not always considered RIs, even if they provide corporate services, or are prevented from cooperating by professional secrecy
	- Operations with RI	The RI (e.g. bank, notary) must obtain basic and BO information from its customers		



Criterion		Legal persons	Trusts	Exemptions / Remarks
	- Taxable income/ provision of goods or services	The tax authority usually requires registration if they have taxable income, but this does not always include BO information (especially if it is the entity, and not its parties, who must pay the tax)		In the cases of digital economy (e.g. internet companies) that do not require physical presence, compliance control is often difficult

67. According to FATF R.24, most countries apply criterion (i) for basic (and sometimes BO) information on local legal persons, requiring their registration or inscription in a company, cooperative or foundation register, etc. This requirement may be a condition either for the legal validity of the legal person, for its enforceability against third parties, or for the limitation of the liability of the partners or shareholders. However, in some countries there may be “irregular” companies, where the lack of registration does not affect the legal status (since it can own real estate) or generate joint and several liability of the partners. This is the case, for instance, in Argentina for the so-called “chapter IV companies” according to the new Civil and Commercial Code.²⁶ This is also the case in Honduras.²⁷

68. However, the new Argentine tax regulation established by AFIP General Resolution 4697/2020 partially establishes criterion (ii) for legal persons, by requiring all Argentine taxpayers to declare the shares, holdings or participations in a foreign company, or in which they are directors, administrators or attorneys-in-fact.

69. Most countries, especially those of Anglo-Saxon tradition, apply criterion (ii) to trusts, requiring their registration or the obligation to obtain relevant information only if the trustee is a resident of the country (regardless of the law governing the trust). This is the criterion adopted by the European Union’s 4th and 5th Anti-Money Laundering Directives. However, there may be countries that adopt a different criterion. In New Zealand, for example, not only the residence of the trustee, but also the residence of the

²⁶ <https://archivo.consejo.org.ar/consejodigital/RC38/balonas.html>

²⁷ GAFILAT Evaluation of Honduras, p. 92.



trustor (also called settlor) is relevant to require registration.²⁸ In other countries, such as South Africa²⁹ or the United Kingdom,³⁰ the obligation to register basic and BO information may depend on whether the majority, the principal or absolutely all trustees (but not only a minority) are resident in the country. These differences in criteria may create situations where no country will register trust information.

70. In GAFILAT member countries, trusts are usually treated similarly to legal persons, requiring the registration of local trusts in a register (e.g. BO register such as Costa Rica or Uruguay) or with the tax authorities (e.g. Peru, Dominican Republic). However, the tax authorities may require the provision of information if any of the parties to the trust is resident in the country or is subject to tax. For example, Argentina requires the registration of all local trusts with the tax authority, and also of foreign trusts, if one of the parties is a resident of Argentina.³¹

71. With respect to criterion (iii), legal vehicles do not usually have to be registered in order to operate in the country, although they do have to provide information in order to operate. For example, according to FATF R.10, a local or foreign legal vehicle must provide basic and BO information to the bank to open a bank account. Some countries require registration with the tax authority to obtain a tax identification number to operate in the country (whether to open a bank account, acquire a property, or bill for services) but do not necessarily provide BO information. The European Union, however, in its 5th anti-money laundering directive (AMLD 5) requires the registration of BO to trusts that purchase real estate or establish professional relationships with RIs in any Member State, regardless of the country where they were created. Likewise, the United Kingdom is considering the requirement of BO registration to foreign legal persons purchasing real estate in the country, in order to level the transparency of local legal persons that already have to register their BO.³²

28 Peer Review of the 2018 Global Forum on New Zealand, p. 65: <http://www.eoi-tax.org/jurisdictions/NZ#latest>

29 Peer Review of the 2018 Global Forum on South Africa, p. 33: <http://www.eoi-tax.org/jurisdictions/ZA#latest>

30 Peer Review of the 2018 Global Forum on United Kingdom, p. 67: <http://www.eoi-tax.org/jurisdictions/GB#latest>

31 AFIP Resolution 3312/2012: http://biblioteca.afip.gob.ar/dcp/REAG01003312_2012_04_18

32 <https://www.lexology.com/library/detail.aspx?g=2b470a1a-3bd4-475f-9bf3-df2d4ab37ebb>

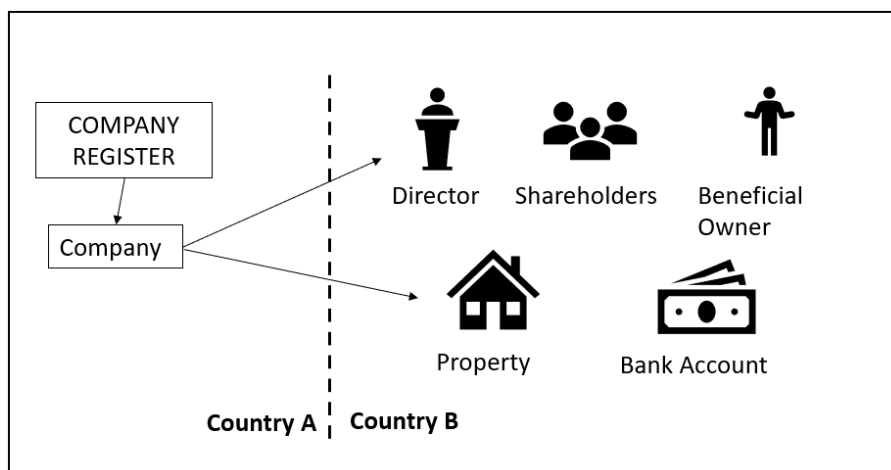


72. In conclusion, most countries do not require legal persons and arrangements to register with a local authority basic and BO information for all three criteria. Also, even if a country requires the registration or collection of information for several or all criteria, the information is likely not to be centralised in one place, but dispersed among the company register, trust register, tax authority, real estate register, RIs, etc.

Registration and risks for the country

73. Paradoxically, the usefulness of the information for national authorities does not always match the criteria applied. From the perspective of the local authority, the greatest risk of ML/TF or tax evasion are those legal vehicles operating in the country or whose parties are resident in the country (criteria ii and iii). However, for legal persons, the registration criterion usually occurs because of criterion (i) on place of incorporation. Requiring registration under criterion (i) is important for cooperation with other countries, but not necessarily for local authorities.

ILLUSTRATION 21. DIFFERENCE BETWEEN PLACE OF INCORPORATION AND EFFECTS



74. To understand this, let us suppose that a company is created in country A but all its shareholders, directors, BO, real estate, bank accounts and income are in country B. This

company hardly affects country A. However, it is important that country A obtains information about the company in order to cooperate with country B, because if country B adopts the same registration criteria only for locally incorporated entities, it will not have information about the company because it was not incorporated in country B.

75. An example of these companies is the International Business Companies (offshore companies) that are incorporated in a country, usually a tax haven, but can only operate, own property or carry out transactions abroad. Argentina, for example, applied an anti-



abuse rule against this type of companies that cannot operate in their country of incorporation, requiring their registration as if they were local entities if they wished to operate in the country.³³ Best BO practices report refers to this solution implemented by Argentina. Another option pointed out by the FATF for “country B” would be to establish a list of jurisdictions with deficient registration regimes so that entities from those countries would be prevented from operating locally (FATF 2019: 70).

76. The effects that a local entity can have abroad are also being considered by the Global Forum in its latest evaluations. Many countries establish as a sanction for failure to update basic or BO information, the inability of the local legal person to operate in the country, by suspending, for example, the tax identification number. However, the Global Forum warns that this sanction is not sufficient because if the entity continues to be registered, it will be able to continue operating abroad (for example, by establishing legal persons abroad). In other words, the inability to operate locally will not affect their ability to conduct businesses abroad. This is why the availability of information on local legal vehicles is relevant mainly for all the countries in which the vehicle can operate. However, in order to prevent cases in which “country A” does not remove a defaulting entity from its company register (e.g. because it did not update its basic or BO information) as required by the Global Forum, “countries B” could require the registration of any foreign entity that wants to operate locally so as not to depend on country A for information.

77. Anglo-Saxon trusts, for example, do not usually have to be registered in their country of establishment to be legally valid. That is why countries, to ensure the availability of information, establish the criteria for registration or information gathering if the trustee or administrator of the trust is a resident of the country. Otherwise, it is possible that no country would have information about the trust. The Global Forum also acknowledges this, when it describes that if a trust was created under the law of country C but all of its parties and operations occur in country D, country C may not even be aware of the existence of this trust (Global Forum 2019: 16).

78. In conclusion, if countries only ensure the availability of basic and BO information when a legal entity is incorporated locally (criterion i) and when a trust has a resident

33 IGJ Resolution 7/2005: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/105000-109999/109087/texact.htm>



trustee (criterion ii), they will lack centralized information on many other cases relevant to local authorities: foreign legal entities operating in the country or involving persons resident in the country, trusts whose trustee is resident abroad, including locally incorporated trusts and foreign trusts whose settlors or beneficiaries are resident in the country.

Transparency proposals

79. The degree of maximum transparency would imply that a country ensures the availability and access to basic and BO information for all legal vehicles (legal persons and trusts) incorporated locally, with local operations and whose parties are residents in the country.

80. If the country wants to ensure that it will have information on all legal vehicles that may affect it, it should ensure the availability and access to information on local or foreign vehicles operating in the country (having assets, and conducting transactions or having taxable income). Also, countries will want to have information about legal vehicles that have a party resident in the country, for example, to ensure that that person is paying the appropriate taxes.

81. If the country wants to have information to cooperate with other countries, it should have access to information about any legal vehicle that has been incorporated in the country, regardless of where it operates.

82. A starting point would be to focus at least on those types of entities considered to be most at risk according to their risk assessments.

ii. Availability of basic and BO information, and chain of ownership

83. Both GAFILAT and the Global Forum require that countries have access to basic and BO information, and that this information is up to date. Also, in interviews with the authorities of Latin American countries, all agreed that both basic and BO information are extremely useful and necessary. In other words, the availability of BO information does not replace the absence of basic information, nor vice versa. As one country described, when the BO is known, the basic information can establish the entire network of contacts.



84. Although countries agree on the importance of both basic and BO information, this is not always the case in regulatory terms. On the one hand, many countries require registration of basic information in company registers or with the tax authorities, but not on BO. According to the Financial Secrecy Index published in 2020, 94 jurisdictions require the registration (although not necessarily updating) of companies in a company register for basic information, but only 63 for BO.

85. However, the opposite is also true. Some countries, in an effort to improve transparency, establish new regulations on BO, even a new type of register, but skip improving transparency on basic information.

86. The United Kingdom, for example, was one of the first countries to establish a free, online BO register. However, the register is not as transparent about basic shareholder and partner information. Although the information must be up to date, it includes only the name, but no other identifying data,³⁴ and is not available as structured data (data separated into different fields and machine readable).

87. In other words, while there is a clear need to increase the transparency of BO for those countries that do not ensure its availability, it is also important to achieve an acceptable level of transparency of basic information. Especially because the availability and veracity of basic information is indispensable to obtain, or at least confirm, BO data, since if the holders of the first tier of ownership (shareholders or partners) are not known, it is difficult to corroborate the identity of the holders of the last tier of ownership or control (BO).

Chain of ownership and abuses

88. Although it is not essential to require a description of the entire chain of ownership, it is extremely useful for verifying BO information. While it is necessary to know first tier owners, by knowing also the owners of all the following tiers, the identity of the beneficial owners can be confirmed by deduction. Costa Rica, Peru, and Uruguay, for example,

34 See page 35:

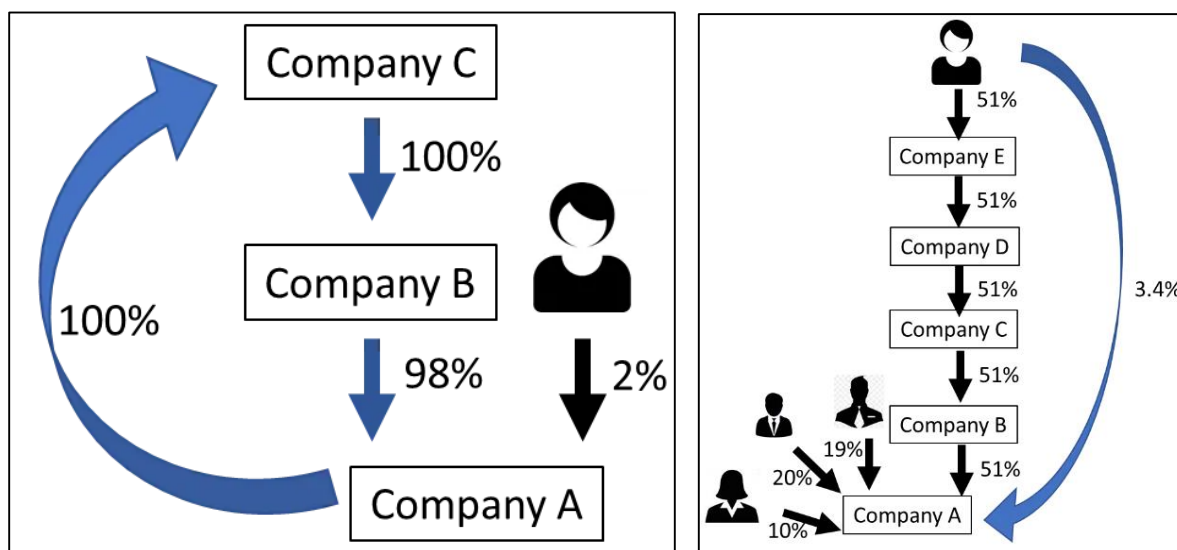
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819994/Corporate_transparency_and_register_reform.pdf



require the declaration of the entire chain of ownership before the BO register or the tax administration (as the case may be).

89. The availability of information on the entire chain is important to prevent cases of abuse to avoid identifying BO, such as cases of circular control (where company C owns B, which owns A, which owns C) or where the BO has very little indirect ownership (e.g., 3.4%), although it exercises control over all the entities that make up the chain of ownership by having more than 50% of the capital of each one). The following figure describes these cases.

ILLUSTRATION 12. ABUSE BY CIRCULAR OWNERSHIP AND FRAGMENTED INDIRECT OWNERSHIP



Source: <https://www.taxjustice.net/2019/09/06/more-beneficial-ownership-loopholes-to-plug-circular-ownership-control-with-little-ownership-and-companies-as-parties-to-the-trust/>

90. The importance of knowing the whole chain is also evident from the conversations with Latin American authorities. One of the interview questions was about the importance of information available abroad for local investigations. The authorities agreed that when an investigation deals with a complex structure, there will surely exist a foreign element. Among the options (foreign vehicle operating directly in the country; foreign vehicle part of the chain of ownership of a local entity; or foreign BO), the second was the most frequent. Therefore, if countries always required the availability of, and access to, the entire chain of ownership, they would not only make it easier to confirm the identity of



the BO and discover cases of abuse, but would also save their authorities resources so that they would not have to request information from abroad, or at least provide the initial data for the investigation.

Transparency proposals

91. Require the highest level of transparency for both basic and BO information (not just for one of the two), and report the chain of ownership.

iii. BO Definitions

98. FATF Recommendations contain the definition and elements to identify BO. While the definition in the FATF Glossary is sufficiently broad and comprehensive (“natural person 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”), in practice it may be too general for those who must record or collect the information.

99. Most countries, following R.10 and its Interpretive Note, establish different definitions for legal persons and trusts. For the former, the cascade rule (natural person with control by majority ownership with a given threshold, or control by other means, or identify the senior administrative officer). For trusts, the identification of all parties.

100. A particular situation occurs with private interest foundations (available in many countries, including Panama). These differ from public good foundations related to education, religion, sports, etc. because private interest foundations may have as their purpose the concentration of wealth or administration of a family’s estate. Private interest foundations have a structure and purposes very similar to trusts. Although private interest foundations are usually considered legal persons, since they have a control structure similar to trusts, the rules for trusts should apply to them and require the identification of all parties (founder, board of directors, protector and beneficiaries). This is what is required by the European Union’s 4th Anti-Money Laundering Directive.³⁵

35 Art. 3.6.c) of the 4th Directive



101. Given the complexity of the types of legal vehicles, the following problems with definitions may arise.

TABLE 3. PROBLEMS WITH THE BO DEFINITION

Same definition for all types of legal vehicles	Only adopting a single general definition or the cascade definition with ownership threshold (applicable to commercial companies) for all legal vehicles (including trusts).
Definition for legal persons applied to trusts	Applying the definition of BO relating to legal persons, e.g., ownership thresholds, to trusts. The Global Forum, for example, criticizes countries that provide that the beneficiary of a trust should be identified only if the trust is entitled to 25 percent of the trust’s income (Global Forum 2019: 19), instead of identifying all trust beneficiaries (regardless of rights to the trust) as required by the FATF recommendations.
Single-criteria definition: Ownership or control	Applying only the criterion of control by ownership (e.g., by exceeding the threshold of 25% of shares), but not the criterion of control by other means (or vice versa), in the definition of BO for commercial companies. The Global Forum has been stressing this to several countries. ³⁶
Incomplete definition considering special parties of foreign vehicles	Require identification of the parties to the trust under local law, but not contemplate parties that may exist in foreign trusts. The FATF requires the identification of the settlors, trustees, beneficiaries, classes of beneficiaries, protectors, and any other person who exercises ultimate effective control over the trust. The figure of the protector can be very relevant for “discretionary trusts”, where the protector exists to control the trustee, since the trustee has discretion to choose the beneficiaries and for other decisions. In other countries, such as the Cayman Islands STAR Trusts, there is an “enforcer” figure, similar to that of the protector. Since these foreign trusts can be part of the chain of ownership of any entity in a country, regulations may require the identification of all parties to the trust. However, there are GAFILAT countries where the registration of BO of trusts does not require the identification of the protector.
Definition does not contemplate	Even if a country has different definitions for legal persons and trusts, it should be explicitly required that for mixed arrangements both definitions must be applied organically. For example, if a company has

³⁶ See for example the Global Forum Peer Review to Costa Rica (2019) and Guatemala (2019).



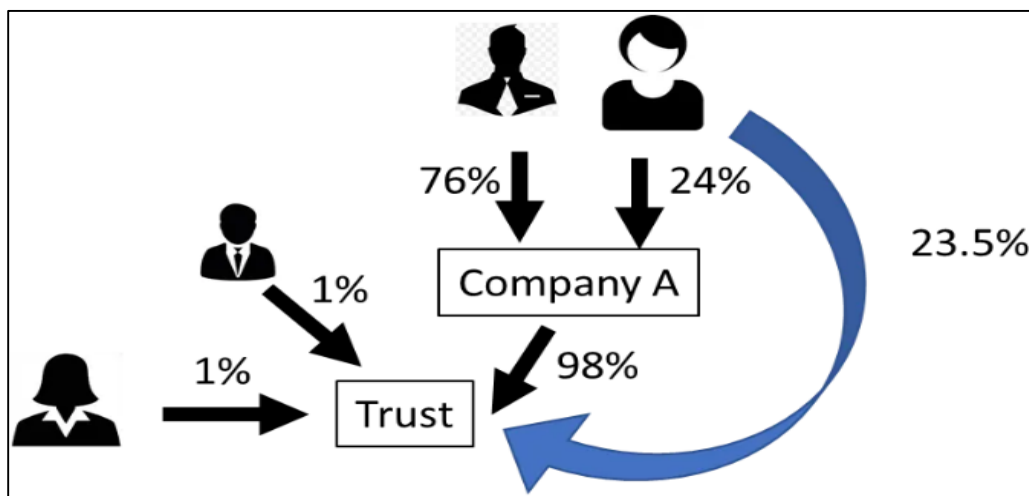
mixed arrangements	<p>among its shareholders a trust, it should first be considered whether the trust “should be considered” a BO of the company, for example, by having more than 25% of the shares. In such a case, since the trust cannot be a BO because it is not a natural person, the definition of BO regarding trusts should be applied and all parties to the trust (settlor, trustee, protector, beneficiaries, classes of beneficiaries and any other person with ultimate effective control over the trust) should be identified as the BO of the corporation</p> <p>The opposite case is when a party to the trust is a legal person. For example, the settlor may be an entity. In this case, natural persons who have more than the applicable threshold, e.g. 25%, of the “entity-trustee” should be considered the BO of the trust, along with the other parties to the trust. The OECD’s Common Reporting Standard (CRS) for the automatic exchange of banking information states the same.</p>
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Transparency avoidance on trusts

102. It could be considered that the interposition of an entity as part of the trust succeeds in frustrating the comprehensive definition of the trust that requires the identification of all its parties. The following figure describes this issue. For example, let’s assume a trust with 3 beneficiaries: 2 individuals and 1 entity (company). The entity in turn has 2 other individuals as BO. If all of these 4 individuals were directly beneficiaries of the trust, they should all be identified. However, the chart shows that the woman who indirectly has (through the entity) the right to 23.5% of the assets or income of the trust manages not to be identified since she holds less than 25% of the entity.



ILLUSTRATION 13. INTERPOSITION OF AN ENTITY TO REDUCE TRANSPARENCY ABOUT A TRUST



Source: <https://www.taxjustice.net/2019/09/06/more-beneficial-ownership-loopholes-to-plug-circular-ownership-control-with-little-ownership-and-companies-as-parties-to-the-trust/>

103. Countries could opt, as an anti-circumvention measure, that when an entity is part of the trust, the definition of trust beneficiaries should also apply to the entity, and require the identification of all shareholders or partners (not only those with more than 25% or the established threshold).

Transparency proposals

104. It would be advisable to establish different definitions according to whether they are legal vehicles similar to commercial companies, or to private interest trusts and foundations, respecting the requirements of the FATF and the Global Forum, and also requiring the residual formula "any other person with control or effective influence over the legal vehicle" to cover foreign figures such as the protector or the "enforcer".

105. The definitions could require that the identification of a BO is not exhausted by finding an individual with a certain threshold of shares, but that the control analysis by other means must also be made in case there are individuals with control or influence not exceeding the threshold of shares. Likewise, it should be determined how to identify the BO when there are mixed structures and opt for some anti-circumvention formula when entities are interposed to add thresholds to the identification of BO of trusts.



iv. Thresholds in the BO definition

106. FATF Recommendations suggest the application of a threshold as a way to determine a majority shareholding, establishing as an example of a threshold a holding “greater than 25%” of the capital. This is one of the analyses, but not the only one that should be carried out, to determine who has effective control over the entity.

107. While European Union countries have been applying the thresholds suggested by the FATF, either “at least 25%” or “more than 25%”, some FATF countries have been establishing lower thresholds. Costa Rica and Uruguay apply a threshold of 15%, Peru and Paraguay 10%, Colombia 5%, and Argentina and Ecuador require the identification of any individual who owns 1 share to cover 100% of the stock ownership.

108. It should be noted that the capacity of BO does not give an individual any rights over the entity, but only generates the obligation to identify oneself to the authorities or RI. The more comprehensive the definition of BO, or the lower the threshold, the more data the authorities will have on individuals who may end up being relevant to an investigation into ML/TF or tax evasion.

109. However, it must be taken into account that the analysis of who has effective control is not exhausted with the analysis of share ownership (even if the threshold of 1

Being a BO does not confer rights over the entity nor does it necessarily imply that one is in control

It should be noted that the nature of BO imposes a requirement for transparency, but does not give rights over the entity to be identified as such. One authority explained that his country is opposed to lowering the threshold because they believe that a person with 5% or 10% could never have control over the entity. However, “control” could be considered a “sufficient” but not “necessary” condition to be identified as BO. In other words, a person with no shares but who nevertheless has control or influence over the entity should be considered BO (control should be “sufficient” to be BO). Similarly, in a 2-shareholder company, John, with 30% of the shares, should be considered BO, even if Peter has 70% of the shares and therefore control over the entity. It would not be possible to identify only Peter because he is the only one with control over the entity (from John’s perspective, control is not “necessary” to be BO).

The inapplicability of “control” as a “necessary” condition is even clearer in the case of trusts. All trustors must be identified as BO, even if it is an irrevocable trust. Likewise, all beneficiaries must be identified,



share is considered), so it must be analysed who else can have effective control by other means.

Transparency proposals

110. In practice, while BO definitions should be applied holistically and effectively, seeking to identify all relevant individuals, it is likely that those responsible for the identification (e.g. RIs), or the BOs themselves will apply the definition mechanically, identifying only those who pass the threshold, without exhausting the analysis of any other individual who has effective control over the legal vehicle. Consequently, countries can choose from the following (non-exclusive) options:



a) **THRESHOLD AS LOW AS POSSIBLE.** In order for the mechanical application to identify a larger number of individuals, the threshold should be lowered as much as possible. In such a case, the reason why an individual is identified as BO should be required (and users of the information should be warned). As long as it is “information” rather than “noise”, as much data on individuals with potential control will be useful. Therefore, instead of requiring an unjustified list of all individuals who are considered BO, the reason for identification should be indicated for each one. For example, “John has 80% of the shares, Peter has 50% of the votes, Mary has influence through family relationships, Martin is the senior official,” etc. In this way, the authorities or the RI will be able to discern and prioritise among all the BO data.

Uruguay, for example, requires this information to be identified as described in the BO guidelines.³⁷ The following illustration shows how to indicate who has the role of trustor, trustee, beneficiary, etc.

³⁷ <https://www.gub.uy/ministerio-economia-finanzas/sites/ministerio-economia-finanzas/files/2019-09/ppt-2017-bcu-por-ain-3.pdf>

ILLUSTRATION 14. URUGUAY'S BO REGISTRY REQUIRES INDICATING THE POSITION OF EACH BO IN A TRUST

SECCION B.1							
N° Ref	Tipo	Fecha Vigencia	Nombre completo	V. Nom. Decl.	% s/el total	Ben. Fin?	Observ.
1	Titular	1/7/17	AABB SA	1,000	100%		
SUMA TOTAL				1,000	100%		
SECCION B.2							
N° Ref	Tipo	Fecha Vigencia	Nombre completo	Pers. Asoc.	% s /Per Asoc.	% Control Global	Observ.
2	Cadena	1/7/17	FIDEICOM.	1	100%	100%	Fideicomiso
3	Cadena	1/7/17	MNO SA	2	0%	0%	Fiduciario
4	Cadena	1/7/17	HG SA	2	0%	0%	Fideicomitente
5	BF-Cad	1/7/17	P. Pérez	2	80%	80%	BF Ben. Fid.
6	Cadena	1/7/17	XXZZ SA	2	20%	20%	BF Fideic.
7	BF-Otros	1/7/17	L. López	3	100%	0%	BF del Fiduciario
8	BF-Otros	1/7/17	J. García	4	100%	0%	BF del Fideicomitente
9	BF-Cad	1/7/17	R. Gómez	6	100%	20%	BF Ben. Fid.

b) **MECHANICAL THRESHOLDS FOR CONTROL BY OTHER MEANS.** Establish “mechanical” thresholds with examples of non-ownership related control. Costa Rica, for example, defines a BO as someone who “has a majority of the voting rights of the shareholders or partners, has the right to appoint or dismiss most of the administrative, management or supervisory bodies, or has the controlling status of that company under its bylaws.”³⁸ Whoever has a power of management over the entity or the bank account, etc. could be added. In the case of trusts, for example, the Guidelines of the Central Bank of Trinidad and Tobago,³⁹ establish as control criteria over the trust the possibility of appointing or removing the trustee, protector or beneficiaries, the possibility of managing the trust assets or making distributions, or the possibility of modifying the trust clauses or vetoing decisions of the trustee. One authority described that the person who manages the bank accounts or pays the taxes could also be an undercover BO.

³⁸ Art. 5 of Law 9416.

³⁹ <https://www.central-bank.org.tt/sites/default/files/page-file-uploads/Anti-Money%20Laundering%20Combating%20of%20Terrorist%20Financing%20Guideline%20October%202011.pdf>



c) ***THOSE WHO COMPLY WITH EITHER MEASURE I.I OR I.II (NOT CASCADING)***. Footnote 29⁴⁰ in the FATF Interpretive Note to R.10 suggests that the BO's identification rule for legal persons is cascading (i.i control by majority ownership of capital; otherwise, i.ii control by other means; and otherwise, i.iii identify the senior administrative officer). While the footnote warns that the three measures are not alternatives, the cascade rule implies that if a BO was identified by measure i.i (e. for holding more than 25% of the shares), the process could be stopped and it would not be necessary to identify anyone else. This means that those who have control by other means, e.g. influence or voting rights, could avoid being identified. Therefore, definitions may require the identification of all individuals who are covered by either measure i.i or i.ii (shareholding or control by other means). Peru, for example, establishes this in its definition of BO because the criterion of "control by means other than ownership" does not depend on the fact that no one has been identified in the criterion of "control by ownership" (Art. 4, Decree 1372).

v. *Bearer shares*

111. One of the greatest risks to transparency originates in bearer shares. Unlike registered shares in shareholders' books, bearer shares are paper-based securities in which the owner holds the document at any given time. If bearer shares are in free circulation, it is impossible to identify BO.

112. In recent years, countries have been eliminating or restricting the circulation of bearer shares by prohibiting their circulation, or requiring their immobilisation with a government authority (e.g. Uruguay requires the registration of their holders with the Central Bank) or with private custodians. For example, the Global Forum in 2019 described that Panama,⁴¹ Luxembourg,⁴² or the Netherlands⁴³ empower banks and lawyers to act as custodians of bearer shares.

⁴⁰ "Measures (i.i) to (i.iii) are not alternative options, but are cascading measures, with each to be used where the previous measure has been applied and has not identified a beneficial owner."

⁴¹ https://fsi.taxjustice.net/database/dbr_Comments.php?Juris=PA&InfoID=172&Per=20

⁴² https://fsi.taxjustice.net/database/dbr_Comments.php?Juris=LU&InfoID=172&Per=20

⁴³ https://fsi.taxjustice.net/database/dbr_Comments.php?Juris=NL&InfoID=172&Per=20



113. In GAFILAT member countries, bearer shares are prohibited in the following countries: Argentina, Chile, Colombia, Costa Rica, Ecuador, Mexico, Paraguay, Peru, Guatemala and the Dominican Republic. However, the following barriers can undermine transparency, even when countries try to limit them:

- a) **PRIVATE CUSTODIAN ABROAD.** Bearer shares are immobilised by a private custodian who can hold the information abroad. In this case, it may be difficult to obtain the information when necessary, if the custodian does not respond to the request and there is no resident person to be held accountable and sanctioned (this will be discussed in sections C.I.vii and C.II on optimal sanctions and access to information). For example, the Global Forum in 2019 reported that Panama was unable to respond to requests for information relating to bearer shares.⁴⁴
- b) **THERE IS A LACK OF SANCTIONS FOR SHARES THAT ARE NOT IMMOBILISED.** Bearer shares were prohibited, but there are insufficient sanctions for pre-existing bearer shares to be immobilised. For example, the Global Forum described in 2018 that in Brazil there are 3 large companies that still have bearer shares whose value in 2017 was approximately USD 400 million.⁴⁵ The worst case scenario is the absence of sanctions or a simple fine which can be economically attractive for those trying to stay hidden. Other partial sanctions include the suspension of voting rights or of the right to receive dividends until the holder identifies himself or goes to court to recover his rights. However, in these cases, identification depends on the bearer share and therefore there is no guarantee that the holder's information will be obtained in all circumstances.
- c) **FAILURE TO KEEP UP TO DATE WITH THE COMPANY REGISTER GENERATES THE SAME RISK AS BEARER SHARES.** Bearer shares are formally prohibited, but the lack of a requirement to update information to a company register allows registered shares to take effect as if they were bearer shares. One Latin American country described how, while bearer shares are prohibited, the only requirement for companies is to keep a book of shareholders and provide the information if the authority requires it. In practice, therefore, the shareholders' book resembles a "bearer" share and can be amended as often as necessary.

⁴⁴ 2019 Global Forum Peer Review on Panama, p. 29.

⁴⁵ Peer Review of the 2018 Global Forum on Brazil, p. 36.



- d) **BEARER SHARES IN THE CHAIN OF OWNERSHIP.** Bearer shares are prohibited in the country. However, bearer shares of a foreign entity that owns a local company can be used as an excuse not to identify the BO of the local company. The Global Forum noted this issue to Costa Rica in 2019.⁴⁶ This will be discussed in section C.I.vii on sanctions.

Transparency proposals

114. Countries could prohibit bearer shares or require their immobilisation with a government authority, establishing as a sanction for non-compliance the absolute and definitive loss of all rights.

115. Countries that choose private custodians could require that the private custodian (e.g. bank or lawyer) must be resident and must notify authorities of each change. As a resident, compliance could be ensured as the private custodian would be liable for failure to submit information on bearer shares.

116. The presence of bearer shares at any tier in the chain of ownership should never be considered a reason to allow non-identification of BO.

vi. Nominee shareholders or directors (straw men)

117. Nominee shareholders or directors are usually allowed and regulated in certain countries with Anglo-Saxon tradition or influence. In such cases, the FATF requires them to identify themselves as such, for example to the RI, and to keep information on the BO they represent.

118. In most GAFILAT countries, nominee shareholders are prohibited. Although the figure of the principal and agent exists, the agent is not listed as the owner of the shares and therefore does not generate a risk to transparency. However, despite the prohibition of figures such as the "apparent partner", it may be the case that individuals are used as straw men. This will be discussed in section C.III.iii on verification.

⁴⁶ 2019 Global Forum Peer Review on Costa Rica, p. 14.



119. Also, since foreign entities with nominee shareholders can be part of the chain of ownership of a local company, countries should adopt measures on nominee shareholders, as is the case in countries where straw men are permitted.

Transparency proposals

120. Countries should require nominee shareholders to identify their status. The FATF best practices paper proposes, for example, compulsory licensing (FATF 2019: 14). However, the problem is that many may deliberately choose not to license themselves or identify their status to RIs.

121. In the ideal of transparency, nominee shareholders should be prohibited. As an incentive for compliance, it could be established that the presence of a nominee shareholder causes the loss of the right to the shares, which would pass to the company (if there are real shareholders) or to the State (if all shareholders are nominees), liquidating the company and its assets.

122. Another option would be to discourage BO from using straw men by giving the absolute right over the shares to the straw men, with the BO losing any right to claim their shares.

vii. Responsibility for providing information and sanctions

123. The obligation to register, collect or provide basic and BO information should be placed on those who are in the best position to do so because they are closest to the information or because it is cheaper for them to obtain the data. This is similar to the principle of the economic analysis of law which requires that the burden of proof be placed on whoever is in the best position to produce it. For example, for control and enforcement purposes, it is more efficient to require an organisation to register its BO than to require registration of each BO on its own. However, Germany originally required in certain cases that the BO itself be identified.⁴⁷

124. There are also various types of sanctions for non-compliance, ranging from administrative, financial, and even criminal sanctions. In general, countries set fines either

⁴⁷ https://fsi.taxjustice.net/database/dbr_Comments.php?Juris=DE&InfoID=471&Per=20



fixed or proportional to the company's income, e.g. Peru.⁴⁸ The United Kingdom, for example, provides for criminal penalties for providing false information to the register.⁴⁹ However, administrative sanctions and fines may not be sufficiently dissuasive if they are considered a cost factor in obtaining concealment. With regard to imprisonment, crime theories explain that, if the possibility of being discovered is low, imprisonment may not be sufficiently effective.

125. Uruguay's legal framework, for example, has a varied range of sanctions. According to GAFILAT's 2020 Evaluation "Laws 18.930, 19.288 and 19.484 provide for various sanctions for entities that fail to comply with the obligation to submit statements with the corresponding data to the Central Bank of Uruguay (BCU) Registry, including information on shareholders and BO: Fines for the non-compliant entity and its representatives for their personal actions, suspension of the issuance of the single certificate of the General Tax Directorate (DGI), joint and several liability of the purchaser of equity interest titles, publication of a list of non-compliant parties by the Executive Power, impossibility of registration of legal acts before the General Directorate of Registers (DGR), non-payment of dividends and a fine for the maximum amount unduly distributed, fine for the use of inadequate legal forms, dissolution of the legal personality of the non-compliant companies."

Transparency proposals

126. The ideal sanction, in addition to any fine or administrative or criminal sanction, would be one that attacks precisely the right or benefit sought. For example, if a country sought to require the retention of a company's accounting documentation, it would be more dissuasive not to allow the deduction of expenses that have no supporting documentation rather than to establish a fixed fine for not retaining the information. Article 69-B of the Mexican Federal Tax Code establishes the same as an anti-simulation measure.⁵⁰ In terms of transparency, the same should apply.

⁴⁸ <http://orientacion.sunat.gob.pe/index.php/empresas-menu/declaracion-y-pago-empresas/declaraciones-informativas-empresas/declaracion-informativa-del-beneficiario-final/7152-06-infracciones-y-sanciones>

⁴⁹

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/621568/170622_NON-STAT_Summary_Guidance_4MLD_Final.pdf

⁵⁰ <https://home.kpmg/mx/es/home/tendencias/2018/06/articulo-69-b-del-codigo-fiscal-de-la-federacion.html>



127. The following table describes the proposed sanction according to the type of measure being enforced.

TABLE 4. OPTIMAL SANCTION FOR EACH DESIRED BEHAVIOUR.

Identification and updating of:	Responsibility to:	Provision of information to:	Optimal sanction (additional to fines or imprisonment) in case of non-compliance
Shareholders, chain of ownership and BO	Shareholders / Partners	Entity in which they are partners / shareholders	Loss of all rights (optimal) or inability to vote; receive dividends; be appointed, appoint or remove part of the Board of Directors
	Entity (legal entity, trust, etc.)	Professional needed to set up entities: lawyer, notary, corporate service provider, resident agent	Inability to formalise an instrument or to register it (that the entity has no legal validity)
	Entity / Professional	Company register	Inability to register (optimal) / Be removed from the register (if it already exists but does not update data); or suspension of tax identification number to operate in the country. Require that there is always a representative of



Identification and updating of:	Responsibility to:	Provision of information to:	Optimal sanction (additional to fines or imprisonment) in case of non-compliance
			the entity or professional who is a natural person and resident in the country, to respond personally for errors or omissions.
Identification and updating of bearer shares	Holder of bearer shares	Registration / Custodian of bearer shares	<p>Loss of all rights (optimal) or inability to vote; receive dividends; be appointed, appoint or remove part of the Board of Directors</p> <p>Inclusion of the defaulting holder in a list of persons who are prohibited from constituting or being a shareholder of future entities.</p>
Identification and updating of nominee shareholders	Nominee shareholder and BO represented by nominee shareholder	Entity / RI / Register	Loss of all rights (optimal), or the nominal shareholder can be considered the real shareholder (with all rights), without any possibility of claim



Identification and updating of:	Responsibility to:	Provision of information to:	Optimal sanction (additional to fines or imprisonment) in case of non-compliance
			<p>by the concealed shareholder/BO.</p> <p>Inclusion of the defaulting holder or shareholder in a list of persons who are prohibited from constituting or being a shareholder of future entities.</p>
Trusts	Trust / trustee	Registration of Trusts / Registration of BO	<p>Invalidity of the trust: the assets of the trust should be deemed to belong to the trustee (to the detriment of the trustor/settlor and the beneficiaries), and distributions from the trust to the beneficiaries should be considered "unjustified income/unlawful enrichment."</p>

128. First, the legal vehicle should be the one that needs to obtain basic information about its shareholders, chain of ownership and BO. It is easier, for example, for the register to require the entity to ask its shareholders than to expect each shareholder to register



directly with the register. The optimal sanction would be not to allow the collection of dividends, votes or directly to cancel the shares of those shareholders who do not provide information on the BO. The FATF best practices report proposes this same type of sanction (FATF 2019: 18). The same should apply to bearer shares that are not identified and to nominee shareholders who do not disclose their status.

129. Secondly, if the country requires the intervention of a notary or lawyer for the incorporation of legal vehicles, it would be more useful for the professional to oppose signing or registering the document if he or she does not obtain all the necessary data, rather than simply registering the documents and making a suspicious transaction report to the financial intelligence unit. The same should happen when an entity wishes to open a bank account (FATF 2019: 65).

130. Third, if the institution does not record all the correct shareholder and BO data, or does not update them, it is more effective for the institution to be removed from the register, as is the case in Denmark (FATF 2019: 67) to prevent it from operating in the country and the rest of the world, rather than merely fining it or suspending its tax identification number so that it cannot operate in the country, but leaving it registered and thus allowing it to operate abroad. This sanction that only disqualifies the entity from operating locally, but allows it to operate abroad, is what the Global Forum criticises. For this reason, Uruguay and Costa Rica eliminated 84,655⁵¹ and 264,109⁵² non-compliant entities from their respective registers. The Dominican Republic is considering doing the same for 77,000 companies.⁵³

131. Fourthly, in the case of a nominee shareholder who does not identify his status (and the identity of the real BO), the sanction could be the total loss of the shares (which would pass to the entity, if there are other real shareholders) or else to the State when the company is liquidated. Another alternative to discourage the use of straw men would be to consider the nominee shareholder as the real BO, with all the rights of a real shareholder. The real BO should not be entitled to make any claim, even if it proves the

51 See page 135 at <http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/GAFILAT-Spanish-Mutual-Evaluation-Report-Uruguay-2020.pdf>

52 These represented almost 40% of the registered entities in Costa Rica (Global Forum Peer Review on Costa Rica 2019, p. 34).

53 2019 Global Forum Peer Review on Dominican Republic, p. 35



existence of a proxy agreement by which it hired the other to be its nominee or straw man. In the case of nominee directors, they should have full civil and criminal liability for unlawful actions committed through the entity, and no indemnity agreements can be invoked. In the case of both nominee and bearer share holders, those who fail to comply should be placed on a list of non-compliant shareholders and should not be allowed to join or incorporate in the future, for at least some years.

132. In the case of trusts, if they do not require registration to be legally valid, it may be impossible to monitor compliance with the requirement to register their BO. One solution would be to require their registration to become legally valid. Otherwise, the trust assets should be considered as belonging to the trustee (to the detriment of the trustor/settlor who had transferred the assets to the trust). Additionally, distributions from the trust to the beneficiaries should be considered “unjustified income/illicit enrichment.” Expenses related to an unregistered trust should not be tax deductible.

133. Finally, with respect to how sanctions are applied, they should be automatic or require the least amount of effort. An automated register would facilitate the application of automatic fines without the need to intervene. For example, if an entity missed the deadline for updating its information, it could be sanctioned automatically. As described in the FATF Best Practices Report, Austria’s automated register applies automatic fines and Belgium is also considering it (FATF 2019: 66).

Stage II: Holding and accessing basic and BO information

i. Advantages and disadvantages based on the mechanism adopted to ensure access to information

134. Access to basic and BO information depends largely on who is to obtain and hold it. The investment and effort that a country makes in establishing or reforming its system for obtaining and holding information (step one) is directly related to the investment and effort needed subsequently for access and compliance monitoring (step two). If the country does not invest enough in any step, it is likely that the effectiveness of the system will not be ensured.



135. As mentioned above, GAFILAT and the Global Forum envisage 3 independent but combinable mechanisms to ensure availability and access: (i) requiring the information from the entity, (ii) relying on many existing sources of information, or (iii) establishing a register. Each has a level of investment or effort in resources to establish it and a level of enforcement if effective access to quality information is to be achieved. The FATF best practices paper suggests the use of more than one mechanism, the so-called multi-pronged approach.

136. The following table describes the ways in which information availability and access can be implemented, describing when further investment is required for each. The table is colour-coded as follows: blue for positive (low cost/high effectiveness), yellow for intermediate (medium cost and effectiveness) or red for negative (high cost/low effectiveness).

TABLE 5. NECESSARY INVESTMENT AND EFFECTIVENESS FOR EACH OPTION ON HOW TO IMPLEMENT AVAILABILITY AND ACCESS TO INFORMATION

The information available in the hands of:	How to implement it	Resources to implement it	Resources to control it	Effectiveness
(1) The company approach	Require all legal vehicles to obtain and hold information, and access by the authority when required	While there may be a political cost to achieving a legal reform, the cost to agencies is low and requires only obtaining and holding the information (which they may already have had to obtain in order to open an account or operate)	Effective control is impossible. It would require auditing hundreds of thousands or millions of registered entities. It is possible to audit only a sample or the riskiest cases. However, when it comes to obtaining information, it may not exist or the entity may not want to cooperate, especially if there is no natural person	Potentially very low and extemporaneous. In addition, when the request for investigation is made, the entity being investigated would be alerted.



The information available in the hands of:	How to implement it	Resources to implement it	Resources to control it	Effectiveness
			resident in the country who can be sanctioned.	
<p>(2) Existing information held by RIs, e.g. banks or notaries (existing information approach)</p>	<p>Trust that legal vehicles will use RIs that will request and verify the information</p>	<p>No reform would be necessary. The information that banks and notaries already have would be available, including Suspicious Transaction Reports</p>	<p>Effective control is very difficult. It would require auditing thousands of banks, notaries, lawyers. It is possible to audit only a sample or the riskiest cases. However, when it comes to obtaining information, it is possible that this information does not exist or that the RI is unwilling to cooperate or is an accomplice to the illegal manoeuvre. For example, in the Lava Jato case, Odebrecht had acquired its own bank to make bribe payments.</p>	<p>Potentially very low and extemporaneous, especially if the vehicle under investigation did not operate with any RI.</p> <p>Furthermore, by making the request for investigation, the RI would be alerted that the entity is being investigated, and it could alert its customer.</p>
<p>(3) Mandatory information held by the RI, banks and/or notaries</p>	<p>Require the participation of a notary or lawyer to incorporate entities and/or the opening of a bank account to subscribe</p>	<p><u>Overall cost:</u> low for the State (but high for the private sector) There may be a political cost in achieving a</p>	<p>The cost of control would remain high (monitoring thousands of RI)</p>	<p>Average. Effectiveness would be somewhat enhanced by the obligation to employ a notary/attorney and/or a bank, who should apply due</p>



The information available in the hands of:	How to implement it	Resources to implement it	Resources to control it	Effectiveness
	shares or deposit investments	legal reform. However, the private sector would oppose it because of the increased bureaucracy and costs of doing business. Ministries responsible for employment and investment may have the same arguments as the private sector		diligence measures to identify the customer. However, by making the request for investigation, the RI would be alerted that the entity is being investigated, and it could alert its customer.
(4) Paper-based / incomplete information in the hands of an authority	Require the registration of the entity with the company register or BO register or declare the BO to a specific authority	<u>Overall cost:</u> average (if the register or reporting regime to the authority already exists) There may be a political cost if the company register does not yet exist, or if it does not yet require the registration of BO information. Infrastructure and resources	<u>Control cost:</u> medium or low (if registry already exists). Each time a company tries to register, it could be verified that it complies with the formal requirements (that it contains all the information requested).	Medium/low, if the register is paper-based, incomplete or with few resources it may not have up-to-date information, or it may be very difficult to search for information, or documents may be lost, stolen or burned, either accidentally or deliberately. At the very least, the entity is not aware that it is being investigated.



The information available in the hands of:	How to implement it	Resources to implement it	Resources to control it	Effectiveness
		are required to administer a BO register or declarations.		
(5) Information in the hands of a digital and automated register held by an authority	Require the registration of the entity with the company register or BO register or declare the BO to an authority	<p><u>Overall cost:</u> high (infrastructure of a digital and automated register) There may be a political cost if the company register does not yet exist, or if it does not yet require the registration of BO information.</p> <p>Economically, infrastructure, technology and resources are required to administer a register.</p>	<p><u>Control cost:</u> very low (automated registry could check if information is complete and up to date). However, human monitoring of how the automated control works would be useful.</p>	<p>Potentially very high, especially if methods are applied to verify information, cross-check data and establish early warnings</p> <p>By containing all the information in an efficient register, the whole universe of entities could be controlled, before it is necessary to obtain certain data from a given company, as well as cross-checking data to preventively detect irregularities.</p> <p>In addition, the entity is not aware that it is being investigated.</p>
Combine 3 and 5	Require the intervention of lawyers and/or notaries in their capacity as RIs to constitute entities, and the registration	<p><u>Overall cost:</u> very high (high for the State to implement the register, and high for the private sector to operate with</p>	<p><u>Control cost:</u> very low (automated registry could check if information is complete and up to date)</p>	<p>Very high, especially if methods are applied to verify information, cross-check data and establish early warnings and RIs are</p>



The information available in the hands of:	How to implement it	Resources to implement it	Resources to control it	Effectiveness
	in an automated register in the hands of some authority	banks and notaries)		<p>required to report discrepancies.</p> <p>By containing all the information in an efficient register, the whole universe of entities could be controlled, before it is necessary to obtain certain data from a given company, as well as cross-checking data to preventively detect irregularities. Also, the presence of two types of RIs adds an extra level of human verification.</p> <p>In addition, the entity is not aware that it is being investigated.</p>

137. According to the table, the most economical thing for the State is to require the entity to obtain the information and request it. However, control would be almost impossible, as it would require auditing hundreds of thousands or millions of companies. If representative samples or those with the highest risk were taken, this would reduce effectiveness as it would not ensure that the information would be available in all cases. Furthermore, by requesting information, the entity would know that it is being investigated (FATF 2019: 17).



138. If the collection and verification of information is entrusted to RIs, the State would be able to reduce control costs since, from hundreds of thousands or millions of entities to be audited, it is possible to move to “only” thousands of RIs. In any case, the audit would still be very costly, or else effectiveness would be reduced. One authority described in the written questionnaire that the large volume of RIs makes it difficult to monitor them effectively. In addition, there would be the risk of those entities not using a RI.

139. To further enhance effectiveness, a notary or lawyer may be required to incorporate entities, provided they are considered RIs with a duty to implement due diligence measures. In addition, or as an alternative, a local bank account may be required to be opened for the bank to carry out the analysis of the partners and BO (FATF 2019: 31). However, this increases the economic costs of setting up businesses, as well as bureaucracy, which can be considered negative in comparative reports on how easy it is to do business in each country, such as the World Bank’s “Doing business” report.⁵⁴ The same negative view would be held by the private sector, business chambers or ministries responsible for promoting investment and employment. There would also still be, albeit to a lesser extent, the risk that the entity would learn that it is being investigated if the bank, notary or lawyer tipped off their customer. Sanctions can be established against RIs that alert their customers, but compliance monitoring is very difficult.

140. Moreover, the implementation of a register represents the highest costs for the State, although in general most countries already have a company register that can be improved. The major advantage of the register (which can be the company register or be administered by some authority, e.g. the central bank) is that it allows all information to be centralised in one place, facilitating access to information and control. The effectiveness, however, will depend on the resources and technology of the register. The best practices paper warns that the establishment of a public register does not in itself guarantee the effective⁵⁵ availability of correct and up-to-date information (FATF 2019: 22). This warning actually applies to any government measure. It is not enough to pass a

⁵⁴ <https://www.doingbusiness.org/en/methodology/starting-a-business>

⁵⁵ Among the factors that make registration inefficient are: passive role of the register acting as a repositories of information; lack of supervision and prevention of money laundering; lack of effective sanctions, for example not allowing registration if information is incomplete; insufficient resources to obtain, verify and monitor compliance with the information registered (FATF 2019: 16).



law or create a body if it does not have the necessary technological, budgetary and personnel **resources**.

141. A register held by an authority with digitised information would allow for rapid and effective control of registered entities. It would also allow information to be cross-checked and more complex verification mechanisms to be established. If the State manages the register, authorities could obtain information without tipping off those being investigated. It should be emphasised that the register itself should not create more bureaucracy. Indeed, a digitised and automated register could allow entities to be set up remotely.

Transparency proposals

142. The best case would be the establishment of a centralised, digital (not paper) and automated register of basic and BO information in the hands of some authority, combined with the obligation to use RIs (banks, notaries) who would also have the responsibility of verifying the customer's information (FATF 2019: 23). However, this would also entail costs.

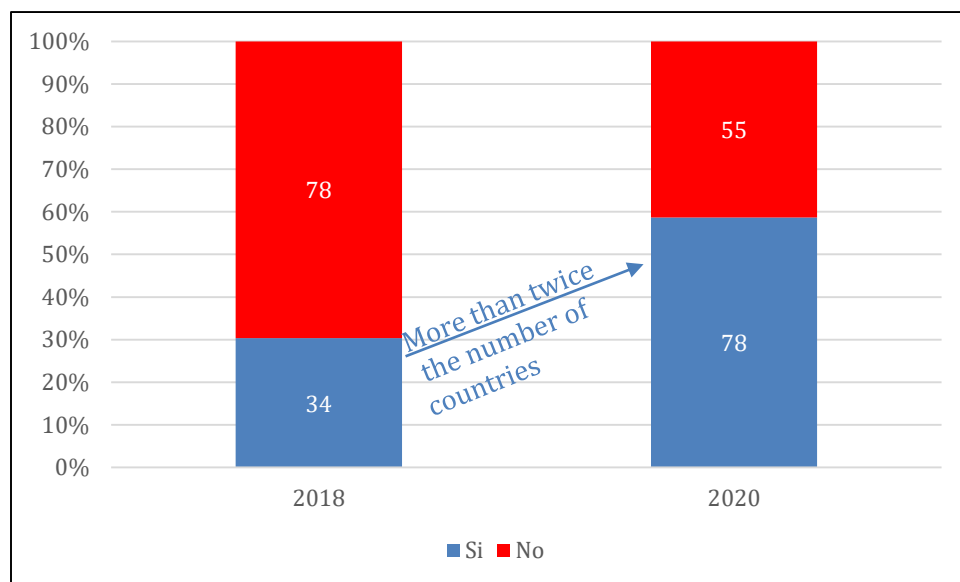
ii. International trend towards registers

143. Among the three mechanisms for accessing information, most countries have a company register with some basic information on shareholders and directors, although it may not be up to date. With respect to BO, most countries have resorted to taking advantage of any existing information held by banks, the tax authority, or corporate service providers, or requesting it directly from the company (see section B). However, in recent years there has been a trend towards BO registration, with "registration" meaning a requirement to declare BO to a government authority.

144. By 2018, the Financial Secrecy Index described that 34 countries already had a law requiring BO to be declared to a government authority (not necessarily the company register, but also the central bank, tax administration or other authorities). By 2020, this number had risen to 78 countries which had passed a law requiring the BO to be registered with an authority. Although not all of these registers are already in place, the number of countries marks an important trend.



ILLUSTRATION 15. COUNTRIES WITH REGULATIONS REQUIRING BO TO BE DECLARED TO AN AUTHORITY



The percentage is in relation to the number of countries evaluated. In 2018, the Financial Secrecy Index covered 112 countries while in 2020, the Index evaluated 133 jurisdictions.

iii. What is registered: shareholders, BO and chain of ownership

145. There are different ways for authorities to require information on shareholders and BO, as described in the table below.

TABLE 6. LEVEL OF DATA REQUIRED TO BE REPORTED TO GET TO THE BO

What is registered	Details
First and last tier only (shareholders and BO)	Argentina, for example, requires registration of individual or corporate shareholders (first tier) and their BO (last tier), but information on the chain of ownership is not required to be declared to the authority but kept by the entity. ⁵⁶
First tier for local shareholders but BO (and chain) for foreign shareholders	Ecuador, for example, requires only identifying shareholders (first tier) if they are local shareholders. If one wants to know the BO, one should look for information on each shareholder in Ecuador’s register, until one gets to a shareholder who only has individuals as shareholders, which would be the BO. In the case of foreign shareholders, however, the chain of ownership and the BO should be

⁵⁶ Art. 1.1.a-e) and Art. 3, AFIP GR 4697/2020



	published directly, because it would not be possible to search for foreign information in Ecuador’s register. ⁵⁷
All: First tier, chain of ownership and local shareholders	Costa Rica and Uruguay, for example, require the identification of shareholders, chain of ownership and BO

146. In some cases, BO information is registered and published directly. In other cases, each user should browse the register, identifying the shareholders of the shareholders, until they reach the BO. The exception are foreign shareholders, who should provide information on the entire chain up to the BO, as this information would not be available in the local register.

Transparency proposals

147. The authorities should register all 3 data in one place: The shareholders, the complete chain of ownership tree, and the BO. If the information is already available in another place (e.g. another register, or the registration data of one of the shareholders), the system should bring it in or copy it so that the user can see in one place all the necessary information, instead of having to browse through one or several registers trying to recreate the chain of ownership.

148. If the authorities are going to require the information in duplicate (where each entity declares its shareholders, the chain and the BO), verification mechanisms should be established to avoid contradictory information. For example, if company A declares that its shareholder is company B, whose shareholder / BO is John, company B should not be able to declare that its shareholder is company C instead of John. Costa Rica establishes this verification mechanism (see section C.III.iii on verification).

iv. Which authority could hold BO declarations?

149. There are different alternatives when choosing which authority will be in charge of receiving and holding the information on BO.

⁵⁷ Art. 7, No. NAC-DGERCGC16-00000536



TABLE 7. WHICH AUTHORITY RECEIVES AND HOLDS INFORMATION ON BO

	Advantages	Disadvantages	Example
Company register	<ul style="list-style-type: none"> - A company register is usually already in place - Experience in handling registry information. - Combine basic and BO information in one place. - Facilitate access if it is to be made public or at least for RIs 	<ul style="list-style-type: none"> - Not all company registers are centralised - Not all company registers have the technological and budgetary resources (some still operate only on paper). - The register may not have access to other databases to verify data, although interconnections could be established. 	<p>United Kingdom</p> <p>Argentina (Art. 26 of Law 27.444, only implemented in 3 local registers).</p>
Tax Authorities	<ul style="list-style-type: none"> - Centralised register - Experience in handling registry information. - Combine or cross-check BO information with tax data (e.g. income) to verify information. - May have better information security standards. 	<ul style="list-style-type: none"> - Impossible to share information with other authorities, RIs or the public due to tax secrecy. Therefore, resources are required to respond to each request for information and there is no extra verification from the RI and the public. - Focus only on tax evasion, but not on fighting corruption or money laundering. 	<p>Argentina, Brazil, Colombia, Ecuador, Peru, Dominican Republic</p>
Central bank	<ul style="list-style-type: none"> - Centralised register 	<ul style="list-style-type: none"> - Impossible to share information with 	<p>Costa Rica, Uruguay</p>



	Advantages	Disadvantages	Example
	<ul style="list-style-type: none"> - May have better information security standards. - Potential to combine or cross-check BO information with bank information obtained through know-your-customer measures 	<p>other authorities, RIs or the public due to banking secrecy. Therefore, resources are required to respond to each request for information and there is no extra verification from the RI and the public.</p>	
Financial Intelligence Unit	<ul style="list-style-type: none"> - Centralised register - May have better information security standards. - Potential to combine or cross-check BO information with STR information 	<ul style="list-style-type: none"> - Impossible to share information with other authorities, RIs or the public due to secrecy. Therefore, resources are required to respond to each request for information and there is no extra verification from the RI and the public. - Focus only on combating money laundering but not corruption or tax evasion. 	United States ⁵⁸ (bill of law)
Digital Combined Register	<ul style="list-style-type: none"> - Combining information from different registers - Surpassing limits of decentralised 	<ul style="list-style-type: none"> - Risk of inconsistencies if information is duplicated 	Ecuador, Paraguay, Argentina (the National Registry of Companies,

⁵⁸ <https://www.congress.gov/bill/116th-congress/house-bill/2513/text>



	Advantages	Disadvantages	Example
	registers, and of authorities with tax or banking secrecy - Facilitating access		although it does not yet contain information on shareholders and BO)

150. The choice of the authority that will keep the register responds to the needs of security, experience in data management and technology, although it may have implications for access.

151. Costa Rica and Uruguay, which were among the first countries in Latin America to establish a BO register, opted for their Central Bank as it had better technology to establish a digital register, as well as better standards for information security compared to the company register. In the case of Uruguay, the Central Bank had already been in charge of managing the register of bearer shares and therefore had some experience with the registration of corporate information.

152. In the case of Brazil, Ecuador, Peru and the Dominican Republic, the decision was made to register the information with the tax authority which already had the capacity and experience to handle confidential data, with high security standards, and also allowing the data to be cross-checked with the large amount of data handled by the tax administration, including declared income, accounting statements, assets, etc. Colombia and Argentina, which passed their laws between late 2019 and early 2020, also opted for the tax administration. Argentina, for example, decided to expand existing tax administration reporting regimes to add information on BO.



153. In cases where the tax administration maintains the register, it is important to differentiate between establishing a register or database specifically on BO, which for example allows all entities to which a BO is a party to be added (and searched), and those cases where the BO is just another piece of information on tax returns, where the information can only be obtained by searching the file or the affidavit of a specific entity, but without being able to analyse and search for BO in a comprehensive manner.

154. Argentina and Ecuador, in addition to requiring that the information be sent to the tax administration, must also be sent in certain cases to the company register or the regulator. For example, in Ecuador, regulation No. NAC-DGERCGC16-00000536 on the mandatory declaration of BO is a joint resolution of the tax administration (SRI) and the Superintendence of Companies, Securities and Insurance. In Argentina, prior to the regulation of BO by the tax administration (AFIP GR 4697/2020), Art. 26 of Law 27444 requires local company registers to request BO declarations. As of December 2019, three local registers were already requesting such information, including the register of the City of Buenos Aires, in accordance with Resolution 7/2015 of the Legal Persons Control Bureau (IGJ).

155. Argentina, furthermore, being a federal country with decentralised company registries in each province, established the National Registry of Companies, which duplicates information contained in the provincial registers, and uses information from the tax administration to keep at least the company's address updated. It is expected that in the future this register will include information on shareholders and BO. In addition, Paraguay passed its BO registration law, which requires various agencies to allow entry into their databases to complete the information (see section C.II.vii).

BO registers that are not in the hands of an authority

Spain: Register held by Notaries

In Spain, since notaries must be involved in the incorporation of companies, they already have BO information. For this reason, they established a common computerised register which centralises information and establishes verification mechanisms (FATF 2019: 39).

Bahamas Resident agent database search platform

The Bahamas has established a [platform for access](#) by the Attorney General which allows him or her to search databases managed by registered agents which contain information on

Transparency proposals



156. Computerisation and technology criteria, management resources, expertise, information security and information sharing capabilities should be considered in choosing the authority that will manage information on BO. While the tax administration or central bank may have better technology and security standards, confidentiality duties may prevent or hinder access to information by RIs, foreign authorities or the general public.

v. Ways to access information

157. For those authorised, access to basic and BO information should be as direct and immediate as possible, ideally through digital and online media. Direct means in the least number of steps, for example, without requiring authorisations or making requests to the administrator in charge of the register or to the RI holding the information. Immediate refers to as soon as possible.

158. It is also important how to search for the data. Ideally, it should be possible to search for basic and BO information in as many fields as suggested in the best practices paper (FATF 2019: 24). From company name or tax identification number, but with the option to search for information by name or tax identification number of the BO, shareholders and directors. The search by address also allows to identify cases of front companies, or the use of nominee shareholders and directors.

159. For example, in Ecuador, the Superintendence of Companies, Securities and Insurance provides a search by name or identification of natural or legal persons to determine if they are current or past managers or shareholders of an Ecuadorian entity, or shareholders of a foreign entity;⁵⁹ the search of Ecuadorian entities by name, identification or file number;⁶⁰ and the search of trusts by name or RUC (tax identification) number.⁶¹

⁵⁹ https://appscvs.supercias.gob.ec/consultaPersona/consulta_cia_param.zul

⁶⁰ <https://appscvsmovil.supercias.gob.ec/PortalInfor/consultaPrincipal.zul?id=1>

⁶¹ https://appscvsmovil.supercias.gob.ec/portallInformacion/mercado_valores.zul



ILLUSTRATION 36. WAYS TO SEARCH FOR INFORMATION AT THE SUPERINTENDENCE OF COMPANIES, SECURITIES AND INSURANCE OF ECUADOR

Parámetros de Búsqueda

Usted podrá verificar por medio de un número de identificación o nombre, si una persona natural o jurídica está relacionada a una compañía.

Identificación Nombre

Parámetro:

Buscar

Parámetros de búsqueda

Expediente Identificación Nombre

Parámetro:

Buscar

ABC Búsqueda por nombre

001 Búsqueda por RUC

160. Some countries have implemented systems to search for corporate information in the official gazette. Argentina allows a search for historical corporate information published in the Official Gazette either by name of the entity, related persons or a free search.⁶²

ILLUSTRATION 17. WAYS TO SEARCH FOR INFORMATION IN THE ARGENTINE OFFICIAL GAZETTE

Búsqueda de sociedades

Esta aplicación permite acceder a la historia de sociedades comerciales y personas relacionadas con las mismas a través de los avisos publicados por ellas en nuestro Boletín Oficial, mostrándose cada uno a través de una línea de tiempo, pudiéndose además ingresar a su contenido.

por CUIT o denominación de la sociedad	?	Q	🗑️
por DNI, CUIT o nombre de persona	?	Q	🗑️
por texto libre	?	Q	🗑️

161. It is also important to be able to filter the information, either by the type of legal vehicle (public limited company, limited liability company, etc.), by year of incorporation, nationality or tax residence of partners, directors and BO, etc. For example, the Luxembourg Official Gazette allows you to filter by type of legal vehicle, including whether it is local or foreign, the date, and the type of document (bylaws, accounting statements, etc.):

⁶² <https://timeline.boletinoficial.gob.ar/>



ILLUSTRATION 18. SEARCH FILTERS FOR THE LUXEMBOURG OFFICIAL GAZETTE

Société: (1)

Recherche par le nom Considérer plusieurs mots comme une expression

Recherche par le numéro du registre de commerce

Forme juridique: (2) toutes

sélection: Société à responsabilité limitée de droit luxembourgeois
Société anonyme de droit étranger
Société anonyme de droit luxembourgeois
Société civile à caractère commercial
Société commerciale à statut légal spécial de droit étranger
Société commerciale à statut légal spécial de droit luxembourgeois

Type de publication: (2) tous

sélection: Administrateurs (publications faites en dehors des frontières de la Belgique)
Administrateurs et changement adresse
Annulation de liquidation judiciaire
Bilan et Changement adresse
Bilan et Conseil d'Administration
Bilans, mention du dépôt

Date de publication: n'importe quand

le 1 janvier 2020

entre le 1 janvier 2020 et le 26 mars 2020

Transparency proposals

162. Those authorised to access to the information should be able to access it as quickly as possible, and in the least number of steps (or authorisations), using many fields to search for information (e.g. name, address or tax ID of the entity, or name of shareholders or BO), and filtering the results by type of legal vehicle, country of incorporation, date, etc.

vi. Persons authorised to access basic and BO information

163. Countries have chosen to set up registers with different degrees of access or clearance.



TABLE 8. ADVANTAGES AND DISADVANTAGES DEPENDING ON WHO HAS ACCESS TO BO INFORMATION

Persons authorised to access information directly or indirectly	Advantages		Disadvantages	Cases
A single local authority	Control over access and use of information		<p>Lack of timeliness of information to combat other types of crimes</p> <p>Need for resources to answer foreign information requests</p> <p>Need for resources for information security</p> <p>Difficulty in verification by RIs and the general public</p>	Argentina (tax administration) ⁶³
+ Other local authorities (e.g. tax administration and financial intelligence unit)	Control over access and use of information		<p>Need for resources to answer foreign information requests</p> <p>Need for resources for information security</p>	Costa Rica, Panama, Peru, Uruguay

⁶³ As of April 2020, AFIP GR 4697/2020 establishing the new information regime on BO does not mention access, so it is understood that the information will only be available to the tax administration or to answer requests from abroad.



Persons authorised to access information directly or indirectly	Advantages		Disadvantages	Cases
			Difficulty in verification by RIs and the general public	
+ RI	Control over access and use of information Possibility for RIs to verify information and report discrepancies		Need for resources to answer foreign information requests Need for resources for information security Difficulty in verification by the general public Possibility for information to be leaked to the public Possibility that RIs only rely on the register instead of conducting due diligence	Paraguay ⁶⁴ European Union's 4th Anti-Money Laundering Directive (2015)
+ persons with a legitimate interest	Control over access and use of information		Need for resources to answer foreign information requests	European Union's 5th Anti-Money Laundering

⁶⁴ Ley 6.446, Art. 11, 2nd paragraph.



Persons authorised to access information directly or indirectly	Advantages		Disadvantages	Cases
	<p>Possibility for RIs to verify information and report discrepancies</p>		<p>Need for resources for information security</p> <p>Need for resources to analyse legitimate interest requests</p> <p>Difficult for the general public to verify, except for those who prove a legitimate interest</p> <p>Possibility for information to be leaked to the public</p> <p>Possibility that RIs only rely on the register instead of conducting due diligence</p>	<p>Directive (2018) for Trusts</p>
<p>+ general public (online)</p>	<p>No resources are required to control access or to answer requests from abroad</p>		<p>Objections for violation of the right to privacy</p> <p>Perceived risk of increased criminality</p>	<p>Ecuador, United Kingdom, Ukraine, European Union's 5th Anti-Money Laundering</p>



Persons authorised to access information directly or indirectly	Advantages		Disadvantages	Cases
	<p>Possibility of interconnecting registers</p> <p>Possibility for RIs, investors, traders, and public (e.g. NPOs) to verify information and report discrepancies</p>		<p>Possibility that RIs only rely on the register instead of conducting due diligence</p>	<p>Directive (2018) for legal persons</p>

164. In those countries where there is a register or an authority that manages BO declarations, an important question to be defined is who will have access to the information. This choice will have implications especially for the resources required to manage access, the effectiveness of the BO database, and the use of the information.

165. At one extreme is limiting access to a single authority, and even a few officials within that authority, who may share it with those authorised, for example, a foreign authority requesting information. The major concern behind this scenario is privacy and the risks of violence and criminality if this information becomes public. Furthermore, regulations on tax secrecy or personal data protection may be an impediment to publishing or sharing information.⁶⁵

⁶⁵ See OpenOwnership’s conclusions on this issue: <https://www.openownership.org/uploads/oo-data-protection-and-privacy-188205.pdf>



166. By limiting access, the use that can be made of this information is also limited. This is substantial not only for authorities, but also for the private sector including businesspeople who want to know who they are about to partner with, RIs who must carry out due diligence, investigative journalists, and civil society organisations.

167. All authorities interviewed agreed on the need to obtain information from abroad, especially on foreign legal vehicles that are part of the chain of ownership of a local entity. If BO information is publicly available, it also facilitates access by authorities abroad, freeing up resources of the authority in both countries who otherwise must prepare a formal request for information exchange, and on the other hand, obtain the information and respond to the request. The FATF Best Practices Paper describes that when registers are not public, foreign authorities face difficulties in obtaining the information (FATF 2019: 70).

168. Another disadvantage of restricted access is that the possibility of verification mechanisms is lost. The European Union's 5th AML/CFT Directive, for example, requires RIs to report discrepancies to the register, e.g. if the customer provides information as part of the due diligence process that does not match the information contained in the register.⁶⁶

169. Finally, by restricting access to information, the State must invest in security mechanisms, increasing costs.

170. An intermediate step is to give access to authorities and RIs, as was established in the European Union already in 2015, with the approval of the 4th AML/CFT Directive. This facilitates verification by banks and other financial institutions, although there is still a need to establish information security mechanisms and control access.

171. One country's authority considered during the interview that giving banks or other RIs access to the BO register creates the risk that the bank will rely on that information and not conduct its own due diligence. In contrast, the European Union's 4th Directive expressly prohibits RIs from only relying on the information in the register, but they must

⁶⁶ New Art. 30.5 as amended by the 5th Directive.



carry out their own analysis.⁶⁷ However, the risk that banks do not carry out their own analysis does not necessarily depend on whether they have access to BO information held by an authority. For example, some countries allow legal entities to provide banks with the information they filed with the BO register to open an account, so the bank may choose not to conduct its own analysis of the customer. It is precisely the risk that banks and other RIs may not adequately perform due diligence measures that was described in section C.II.i for cases where the availability of BO information depends on existing information held by banks.

172. Whether access can be given to those claiming a legitimate interest (beyond the entity's own shareholders) will depend on how comprehensive the concept is. The European Parliament, for example, proposed to include investigative journalists or concerned citizens.⁶⁸ However, administering legitimate interest requests can generate administrative costs.

173. Finally, the possibility at the other end is to give public (and online) access to BO information.

174. Some authorities consulted agreed that the risks of kidnapping and other crimes because of the publicity of BO information may be more the result of fears and assumptions than actual risks. However, giving public access does not mean that absolutely all information will be public. The UK, for example, only provides the full name, address, month and year of birth (but not the day) and other details such as document or passport number.

175. In addition, AMLD 5 contains exceptions in which the publication of information on the BO may be excluded, if the holder of the information alleges a danger.⁶⁹ However, in the United Kingdom, for example, very few BO requested to be excluded from the

⁶⁷ Art. 30.8 of the 4th Directive "Member States shall require that obliged entities do not rely exclusively on the central register referred to in paragraph 3 to fulfil their customer due diligence requirements in accordance with Chapter II. Those requirements shall be fulfilled by using a risk-based approach."

⁶⁸ <https://www.europarl.europa.eu/news/en/press-room/20141216IPR02043/money-laundering-parliament-and-council-negotiators-agree-on-central-registers>

⁶⁹ Refer to the new Art. 30.9 of the 5th Directive



public register. Out of more than 1 million companies, only 270 persons requested to have their information not accessible by the public.⁷⁰

176. Among the benefits of public registration, the case of the United Kingdom can be considered. In one example of the use and interest of the registers, the English BO register kept in the Companies House register was accessed more than 6.5 billion times in 2018 alone.⁷¹ In effect, the publicity of the English register of companies which includes information on accounting statements that can be downloaded online (now free of charge) led to the discovery of the largest money laundering case in history, involving Danske Bank. It was an employee of the Estonian branch who, by paying £2, was able to download the financial statements of a company that had been moving millions of dollars a day, but was inactive and without operations according to the company register.⁷² That was the tip of the iceberg that led to the discovery. Finally, the publicity of the register allows for delegating or at least adding verification by the public, as in the case of the analysis made by the non-governmental organisation Global Witness, as described below.

Trend towards public registers

177. The FATF best practices paper recognised that “the trend of openly accessible information on beneficial ownership is on the rise among countries.” (FATF 2019: 74).

178. In 2016, the UK was the only country with a public, online BO register. Ukraine was another country to adopt a public register as part of its fight against corruption scandals. By 2020, all EU countries should have public BO registers. Some, such as those in Denmark, Estonia, Ireland, Luxembourg and Slovenia, have been in place since 2019.⁷³

⁷⁰ <https://www.openownership.org/uploads/learning-the-lessons.pdf>

⁷¹

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

⁷² <https://www.wsj.com/articles/how-one-stubborn-banker-exposed-a-200-billion-russian-money-laundering-scandal-1540307327>

⁷³ <https://fsi.taxjustice.net/en/>



179. Similarly, the United Kingdom will require its overseas territories to establish these public registers as well, so the Cayman Islands, British Virgin Islands and others must give public access to their register by 2023.⁷⁴

180. Among GAFILAT member countries, Ecuador has an online public register, free of charge since 2017, which provides information on the chain of shareholders up to natural persons. Paraguay, which approved its BO register law at the end of 2019, is considering giving public access to the BO name. Other authorities interviewed from GAFILAT member countries considered that their BO registers will eventually become public in a second phase, but establishing the confidential register is a first step.

ILLUSTRATION 19. FREE, ONLINE REGISTER OF ECUADOR FOR THE WHOLE CHAIN OF SHAREHOLDERS UP TO THE NATURAL PERSON

ÁRBOL ACCIONARIO DE PERSONAS

Puede usar click derecho sobre un registro del arbol accionario para ver mas opciones.

N°	Identificación	Nombre	Nacionalidad	Tipo Inversión	Capital	Restricción
1	[REDACTED]	[REDACTED] SOCIEDAD ANONIMA	URUGUAY	EXT. RESIDENTE	130,100.0000	N
1	[REDACTED]	[REDACTED] S.A.	URUGUAY			
2	[REDACTED]	[REDACTED] S.L.U.	ESPAÑA	EXT. DIRECTA	2,447,820.0000	N
1	[REDACTED]	[REDACTED] S.L.U.	ESPAÑA			

⁷⁴ <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2019-01-23/211611>

2. INFORMACIÓN DE LA SOCIEDAD EXTRANJERA

IDENTIFICACION: [REDACTED] NOMBRE: [REDACTED] SOCIEDAD ANÓNIMA

MOTIVO: ANUAL DIRECCIÓN: [REDACTED] MONTEVIDE URUGUAY

AÑO / FECHA: 2017 NACIONALIDAD: URUGUAY

SOCIEDAD REMISA: NO COTIZA EN BOLSA: NO

3. DATOS DE LOS APODERADOS DE LA SOCIEDAD EXTRANJERA

IDENTIFICACION	NOMBRE	TIPO IDENTIFIC.	NACIONALIDAD	DIRECCION DOMICILIARIA	CORREO ELECTRONICO
[REDACTED]	[REDACTED]	CEDULA	ECUADOR	[REDACTED]	[REDACTED]

4. DATOS DE LOS SOCIOS O ACCIONISTAS/MIEMBROS DE LA SOCIEDAD EXTRANJERA

No	IDENTIFICAC.	NOMBRE	TIPO IDENTIFIC.	NACIONALIDAD	DIRECCION DOMICILIARIA	ESTADO CIVIL	CORREO ELECTRONICO	COTIZA BOLSA
1	[REDACTED]	[REDACTED]	OTRO	URUGUAY	[REDACTED]		[REDACTED]	NO
1.1	[REDACTED]	[REDACTED]	SOCIEDAD EXTRANJE	ESPAÑA	[REDACTED]		[REDACTED]	NO
1.1.1	[REDACTED]	[REDACTED]	SOCIEDAD EXTRANJE	ESPAÑA	[REDACTED]		[REDACTED]	NO
1.1.1.1	[REDACTED]	[REDACTED]	SOCIEDAD EXTRANJE	PANAMA	[REDACTED]		[REDACTED]	NO
1.1.1.1.1	[REDACTED]	[REDACTED]	PASAPORT	PERU	[REDACTED]		[REDACTED]	NO
1.1.1.1.2	[REDACTED]	[REDACTED]	PASAPORT	PERU	[REDACTED]		[REDACTED]	NO
1.1.1.1.3	[REDACTED]	[REDACTED]	PASAPORT	PERU	[REDACTED]		[REDACTED]	NO
1.1.1.1.4	[REDACTED]	[REDACTED]	PASAPORT	PERU	[REDACTED]		[REDACTED]	NO

The free, online register of the Superintendence of Companies, Securities and Insurance of Ecuador allows you to search by name or other data of the entity. Once found, you can see the tree of shareholders [image above] where the chain of entities about which information is available is shown. In the case of Ecuadorian entities, all their data should be available. If the shareholder is a foreign entity, the information should be available (not as structured data) in the “online documents - general documents - foreign company information form” option. This document [image below] in turn shows in the first column [highlighted in yellow] the chain of shareholders (e.g. 1, 1.1, 1.1.1) up to the natural person shareholders (e.g. 1.1.1.1, 1.1.1.2, 1.1.1.3, etc.) who could be considered the BO by ownership. The details of each shareholder include passport or ID number, nationality and address.



Transparency proposals

181. In accordance with the confidentiality rules of each country, allow access to as many stakeholders as possible (local authorities, foreign authorities, RIs, the general public), to enable more people to use and verify the information.

vii. Taking advantage of, and improving other sources of information

182. According to the interviews conducted (see Section B), in addition to the information contained in the company and BO registers, there are other relevant sources for obtaining BO information:

a) Information held by the tax authority

183. FATF Recommendation 2 requires cooperation between local authorities. According to the interviews, the information in the hands of the tax authority is often very relevant to obtain BO data, or to be able to verify the information. Therefore, countries could sign memoranda of understanding to ensure exchange and cooperation between domestic authorities. For example, Paraguay's BO law provides for the creation of a comprehensive system where different agencies must allow access to their data.⁷⁵

b) Information held by financial institutions

184. Financial institutions are often a very relevant source of BO information because they must obtain this information as part of their due diligence measures when a customer wishes to open an account. By knowing who is handling the account in practice, financial institutions are also able to verify the information provided about the BO.

185. In countries where there is no register or where no authority yet receives BO information, information held by banks on each customer could feed into a BO register

75 Article 13 of Law 6446: "The Ministry of Finance must set up a Comprehensive Administrative Register and Control System for Legal Persons, Legal Arrangements and Beneficial Ownership, which will contain the required information and enable the completion of procedures, data processing, as well as the certification of veracity and consistency of the information, referred to in this Law and Law No. 5895/2017 "ESTABLISHING RULES OF TRANSPARENCY IN THE REGIME OF COMPANIES CONSTITUTED BY SHARES" and its regulations. The State Agencies and Entities shall allow access to their database through the comprehensive system or shall provide, by appropriate means, the information required by the authority enforcing this Law, for the purposes of implementing and operating the system".



which could be maintained by the financial regulator. Alternatively, the banks themselves could create the register. For example, based on the conglomerate of banks that form the SWIFT interbank messaging system, a customer database is being developed for the Know Your Customer procedures (the KYC Registry), where certain customer details are shared to facilitate the checking of information through the data of different financial institutions.⁷⁶

186. Also, the authorities often have access to the information held by RIs for specific investigations, sometimes with judicial authorisation. However, it would be interesting if authorities, or the BO register, were to be directly and automatically informed (not only if there is a specific investigation) of all BO information held by local financial institutions.

187. One option would be to create a national register of bank accounts (FATF 2019: 77). In Spain, for example, the financial intelligence unit, the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences (SEPBLAC), receives monthly information from credit institutions on BO of bank accounts and financial asset accounts (FATF 2019: 40).

188. Related to this, the OECD's Common Reporting Standard (or CRS) for the automatic exchange of banking information requires local financial institutions to report account holder information (including BO) to the local tax authority so that this information can be exchanged with each country's authority. It would be important for tax administrations to be able to use this information also to verify and feed into the country's BO register.

189. Most GAFILAT countries are already implementing automatic information exchange, including Argentina, Brazil, Chile, Colombia, Costa Rica, Mexico, Panama and Uruguay. Ecuador and Peru will do so from 2020. Honduras, Guatemala, Paraguay, and the Dominican Republic have also committed to implementing the automatic exchange, although they have not yet set a start date.

190. In principle, according to the CRS, banks should only inform account holders (and BO) from customers that are residents of a country that is participating in the automatic information exchange. However, countries may opt for the "wider approach" and require

⁷⁶ <https://www.swift.com/our-solutions/compliance-and-shared-services/financial-crime-compliance/kyc-solutions/the-kyc-registry>



financial institutions to obtain information from all account holders (including from any entity that is resident in the country). Argentina, Brazil, Chile, Colombia, Costa Rica, Mexico, Panama and Uruguay opted for this option. Argentina went even further and requires that information on all account holders be not only collected by the banks (wider approach), but also sent to the tax authority (widest approach).⁷⁷

191. GAFILAT member countries could choose to implement the widest approach as well. They could then allow the use of shareholder and BO information reported by financial institutions not only for the exchange of banking information, but also to feed and cross-check the BO register.

192. However, the BO information established by the CRS has a limitation because the bank must only identify BO if the account holder is an entity considered to be “passive” by virtue of having income related to royalties, interest or dividends (compared to “active” income from the sale of goods or services). Consequently, countries may require financial institutions to obtain and report BO information for any entity, not just for passive ones.

c) Information arising from suspicious transaction reports (STRs).

193. The information contained in suspicious transaction reports may be a relevant source of information on the BO, as well as an input to an investigation. However, this will depend on the quality of the reports submitted by the reporting institutions under the AML/CFT regime of the countries.

194. Argentina has also implemented three new types of reports under Resolution 30-E/2017: Cash Transaction Reports (CTRs), Cash Transaction Reports for Foreign Exchange Operations, and International Transfer Reports (ITRs).⁷⁸ These data provide information on the actual controllers of legal vehicles and could be implemented by more countries.

d) Information held by DNFBPs

195. Notaries, lawyers and corporate service providers can be important sources of BO information, especially if they are considered RIs. On the one hand, some RIs, such as

⁷⁷ Art. 3, AFIP Resolution 4056-E/2017.

⁷⁸ <http://servicios.infoleg.gob.ar/infolegInternet/anexos/275000-279999/275996/norma.htm>



notaries, could establish a shared registry system as is the case in Spain (FATF 2019: 39), which is a source of BO information and validation.

196. The professional secrecy that some DNFBPs enjoy could present a particular obstacle if it is used to avoid cooperating with the authorities. The Interpretive Note to FATF R.24 states that countries should require that DNFBPs be authorised by commercial companies to provide all basic and BO information and to provide assistance to competent authorities.⁷⁹ In this scenario, if all entities were to authorise DNFBPs involved to share their BO information, they would not be able to invoke professional secrecy because they have already been authorised to provide the data.

e) Information from abroad

198. FATF R.24, and 36 to 40 require international cooperation. The authorities can collect data within the framework of mutual legal assistance mechanisms, exchange of information through the Egmont Group, and information sharing for tax purposes. However, in the case of automatic exchange of banking information according to the OECD's SRC, the use that can be made of the information received from other countries is limited [this is related to point b) above, although in that case it refers to information provided by local financial institutions, not from abroad]. The Convention on Mutual Administrative Assistance in Tax Matters, which serves as the legal basis for automatic exchange, limits the use of information received from abroad to tax purposes only (which would exclude non-tax related cases of ML/TF or corruption). However, many Latin American countries have signed the Punta del Este Declaration which calls on countries to cooperate and use the information received also for AML/CFT purposes.⁸⁰ At the end of 2019, the Punta del Este Declaration was signed by Argentina, Chile, Colombia, Ecuador, Panama, Paraguay, Peru and Uruguay. If the information is allowed to be used widely (beyond tax purposes), the banking and BO information received could be used to feed and validate BO registers.

⁷⁹ Paragraph 9 sets forth that: "Requiring that a DNFBP in the country is authorised by the company, and accountable to competent authorities, for providing all basic information and available beneficial ownership information, and giving further assistance to the authorities."

⁸⁰ <https://www.oecd.org/tax/transparency/Latin-American-Ministerial-Declaration.pdf>



Stage III: Quality of basic and BO information

199. The quality of the information depends on three main factors: having complete identifying data, that the data are up to date, and finally and most difficult, that they are verified to be true.

i. Complete information

200. Firstly, the information must be complete, providing sufficient identifying data to be able to determine which individual is involved. Requiring only the full name is insufficient as there may be thousands of people with the same name and surname. Additional data that may be requested are date of birth, address, identification or passport number, or tax identification number. GAFILAT member countries with regulations requiring the declaration of BO to an authority already require the detailed information regarding this identification data.

201. One of the ways to verify that the information is complete would be to ensure that no entity or legal process is admitted for registration if it does not contain all the required fields. This already applies in most countries where formalities control prevents incomplete incorporation forms from being accepted.

Transparency proposals

202. Countries should always require sufficient identifying data in addition to name, such as address, date of birth, national identity card number, and tax identification number. If any information is missing, the entity should not be registered.

ii. Updated information

203. Updating of information is essential, in accordance with the requirements of the FATF and the Global Forum. Having information on the original shareholders or BO can be useful as a starting point, but not enough to identify current BO, especially if we consider the use of shelf companies or drawer companies, which are created in advance, but to remain dormant and for the sole purpose of being sold to individuals seeking a readymade company, with an open bank account and an old incorporation date.

204. Basic and BO information could be updated at least with each change, whether a transfer of shares or increase in capital, the appointment of a new trust beneficiary, and if no change occurred, at least once a year. By updating the information even if there were no changes, cases where the entity alleges an error or oversight are avoided, as an affidavit could be sent regarding its updated list of partners, directors and BO, even if it is the same as the one in the register.

205. In cases where the updated list is only reported once a year (but not with every change), the history of all previous shareholders and BO should be required. The website of the Superintendence of Companies, Securities and Insurance of Ecuador provides for each entity a “Kardex” of shareholders, describing who transferred each share to whom and its date.

ILLUSTRATION 20. HISTORY OF SHARE TRANSFERS IN ECUADOR

Identificación	Nombre	Transacción	Fecha de Resolución	Tipo Inversión	Valor
[REDACTED]	[REDACTED]	CONSTITUCION	2004-09-27	NACIONAL	400.00
[REDACTED]	[REDACTED]	CONSTITUCION	2004-09-27	NACIONAL	400.00
SUBTOTAL:					800.00
[REDACTED]	[REDACTED]	TRANSFERENCIA DE ACCIONES	2005-10-04	NACIONAL	-400.00
[REDACTED]	[REDACTED]	TRANSFERENCIA DE ACCIONES	2005-10-04	NACIONAL	-400.00
[REDACTED]	[REDACTED]	TRANSFERENCIA DE ACCIONES	2005-10-04	NACIONAL	400.00
[REDACTED]	[REDACTED]	TRANSFERENCIA DE ACCIONES	2005-10-04	NACIONAL	400.00
SUBTOTAL:					0.00
[REDACTED]	[REDACTED]	TRANSFERENCIA DE ACCIONES	2005-10-10	NACIONAL	-400.00
[REDACTED]	[REDACTED]	TRANSFERENCIA DE ACCIONES	2005-10-10	NACIONAL	-400.00
[REDACTED]	[REDACTED]	TRANSFERENCIA DE ACCIONES	2005-10-10	NACIONAL	800.00
SUBTOTAL:					0.00

206. Finally, one way of encouraging shareholders and BO to update their information would be similar to the proposal applicable as an anti-abuse measure against the use of nominee shareholders or straw men. The proposal is to consider the registers as having constitutive, not merely declaratory, effect. In other words, the right is acquired upon registration. A shareholder or BO who is not on the register would have no right to vote or receive dividends, even if he or she has paid the price. A vote taken by partners who were not already registered would be void. Similarly, a director who had resigned but remained on the register would remain liable.



Transparency proposals

207. If an automated register exists, it could automatically know and notify all entities that have not sent at least their annual update as an affidavit with the current list of members, BO and directors, as well as the history of changes. In this case, appropriate sanctions should be applied, including removal of the entity from the register if non-compliance persists.

208. In addition, and as an incentive where no automated register exists, the information in the register could be considered “constitutive” in nature so that any rights would exist only from the time of registration, and civil and criminal obligations and liabilities would be maintained until the partner or director is removed from the register, for example, by resignation.

iii. Verified information

209. The FATF and the Global Forum require the information to be accurate (and true). The most complex phase is to verify that the information is true, and free of errors or wilful omissions. Verification can be subdivided into four categories.

a) Authentication

210. First of all, it must be confirmed that the person is who he or she says he or she is. The most basic way to do that is to present official documentation such as a national identity card or a passport containing a photo and name. In cases where companies are incorporated remotely, sending copies of the documents, as well as a video interview, can help with verification.

211. In the case of legal entities, there is already what is called the Legal Entity Identifier or LEI which is a unique identification number for a legal entity.⁸¹ In the future, there may be a similar unique identification number for individuals to avoid cases where people with the same name are confused with each other or cases where an individual lies about his or her name.

⁸¹ <https://www.gleif.org/en/about-lei/introducing-the-legal-entity-identifier-lei>



212. In addition, biometric data can be considered, at least for certain types of higher risk companies. The Argentine tax administration requires the registration of biometric data for online access to documents and taxpayer notifications and for other procedures.⁸² The United Nations has established a retinal-based refugee assistance programme.⁸³ Other mechanisms to determine authenticity may be through the IP address (in case a person claims to live in country A but his or her IP is from country B), or even more sophisticated fingerprint techniques (way of using the computer mouse or typing on the keyboard) that credit cards apply to prevent fraud in online purchases.

213. In those countries where the intervention of a notary, notary public or lawyer is required, they can perform the authentication and certification of the identity card or passport, especially if they are foreign shareholders, directors or BO (FATF 2019: 52).

b) Authorization

214. The second step is to verify that the person creating the entity is authorised to do so, especially if it is a corporate service provider doing so on behalf of another. The most basic form is the submission of a power of attorney. However, it can be difficult to corroborate, especially in the case of persons abroad.

215. One of the risks identified by the FATF is the use of stolen or rented passports of foreign students to open bank accounts (FATF 2018: 40), which could also be used for the incorporation of legal persons. In such a case, an innocent individual may be held liable for the behaviour of a legal person or be considered in default if he or she was responsible for a loan to the company.

216. One proposal would therefore be for the company register or authority to notify the person of his or her participation in a legal person, so that the person can confirm that he or she is aware of it. While in the past the publication of notices in newspapers was required, more modern ways can be thought of such as sending an e-mail or calling the telephone number in the State's database (and not the number given to the registry because it may be the impostor's). In this way, the citizen should confirm to the State that

⁸² https://www.afip.gob.ar/genericos/guiavirtual/consultas_detalle.aspx?id=12902723

⁸³ <https://www.reuters.com/article/us-un-refugees-blockchain/u-n-glimpses-into-blockchain-future-with-eye-scan-payments-for-refugees-idUSKBN19C0BB>



he or she is aware of and agrees to be part of the entity, before registration is admitted. This is similar to email service providers that contact the user on his mobile phone or another email box, if the email was accessed from a different device or country than usual.

217. Costa Rica, for example, allows BO to view personal information contained in the BO register. Those countries that allow this may act preventively and directly warn the person about all entities to which he or she is related, so that he or she may confirm or correct the information.

c) Validation

218. The third phase is even more complex and depends largely on automation to be manageable. It consists of determining that the data entered are in principle feasible.

219. Firstly, the validity must be checked when data are entered. Forms, especially if they are online for remote company incorporation, should only support valid data and not free text. While this seems obvious, Global Witness in analysing the UK register found over 500 different ways of describing being of English nationality.⁸⁴

220. Other examples of validated data, especially if it refers to residents, is to admit only “numbers” instead of letters, and enough digits for the document number or the tax identification number. Similarly, Italy controls that no shares are declared for more than 100% of the capital (FATF 2019: 34).

201. Secondly, there is consistency, which is based on ensuring that the data entered at least matches the data in the register. For example, if company A registers its chain of ownership, describing that its shareholder is company B, whose shareholder is company C (C -> B -> A), the data registered by company B and C should match the description by A. If company B registers company X as its shareholder (X -> B) instead of company C, the register should detect this inconsistency and not allow the contradictory registration. Costa Rica performs this type of analysis (see item iv below). Similarly, if company A describes that John is a shareholder with an identification number 1234, the register should not admit any other person who claims to have the same identification number but whose name is Peter.

⁸⁴ <https://www.globalwitness.org/en/blog/what-does-uk-beneficial-ownership-data-show-us/>



202. In addition, the information should be checked against other State databases, especially data held by the tax administration or the civil registry (FATF 2019: 44). For example, the tax administration should verify that the tax identification number belongs to the same person.

203. The ideal scenario, to avoid errors and to facilitate the work of users, would be for the register to fill in the form in advance with the data already held by the State as is the case in Denmark and Belgium (FATF 2019: 47, 48), for example, from the national identity card or tax identification number. The user could confirm or require a change (although such a change would also require updating the data in the different bodies in order to be valid).

204. A problem, however, arises when the entity has elements from abroad, either foreign entities in the chain of ownership, or a BO or shareholder resident in another country. In this case, the State may not have any data on them to corroborate the statement. In this case, there are two alternatives. If the information includes data contained in a foreign register, for example the shareholders of a company, the registers could be interconnected or at least an online matching mechanism could be established with those registers that are public and online. AMLD 5 requires Member States to establish interconnected registers. Finland and Estonia have already interconnected their company registers.⁸⁵ Another option is to require parties abroad to certify their identity with a local notary, bank or RI, which would be responsible for the accuracy of the information, as is the case in Slovakia (see item iv below).

205. In GAFILAT countries the authorities could do the same, even if the registers are not public. Interconnection would make it possible to collate data to verify the information registered. Indeed, several authorities described that when there are foreign elements in a local entity, it generally involves legal vehicles either from tax havens or from neighbouring countries. A regional interconnection of registers would facilitate investigations involving elements from nearby countries.

⁸⁵ <https://www.tallinna24.ee/artikkel/848835-suomen-kaupparekisteritiedot-nyt-viron-kaupparekisterin-kaytettavissa>



206. Thirdly, there is legal validation, which consists of checking whether the data entered are those permitted by law. The most important thing, especially with regard to personal liability, is that the register does not contain either shareholders or directors who are deceased (according to the civil registry data), or those who are disqualified from holding office, for example disqualified directors, bankrupts, etc.

207. Fourthly, there is plausible validation, which is perhaps the most complex. It consists in determining whether the data are real and consistent. The most basic would be, for example, to ensure that the address of the legal entity includes a real street and an existing number. In addition, it would be necessary to corroborate that a building (rather than a park) is located at that address, and that the address declared by the entity is not impossible because it is well known that it belongs to another entity. For example, a company could put the government house or the address of a public school as its own address. In one country, it was reported that many companies created remotely within 24 hours had declared an address that referred to a square or a park.

d) Patterns and red flags

208. The last type of verification that requires the use of sophisticated data analysis technologies is an exploratory analysis of the profile of structures and BO, or the detection of more explicit red flags (FATF 2019: 44).

209. One of the easiest red flags to detect are company factories, where one address is the same for thousands of entities, or when the same individual is a shareholder or especially a director of thousands of companies. Similar cases involve individuals who are on UN or country sanctions lists (e.g. the US OFAC), or who are convicted of or investigated for a crime. The register of the British territory of Jersey carries out this type of analysis (FATF 2019: 36).

210. However, sophisticated verification should be able to identify cases where all the information is real and consistent with the state's basis, but it can be noted that these are straw men and not BO. In Argentina, for example, the media described the case of a retired man receiving the minimum pension and living in a poor neighbourhood who was listed as a proxy for a mutual fund that had invested to acquire the company that prints paper



money, the Argentine peso.⁸⁶ In another case published by an Argentine newspaper, millions of dollars had been channelled through companies whose shareholders received pensions for people with low incomes and another for poor neighbourhoods without access to the gas distribution network.⁸⁷

211. To determine what is considered common and what is striking, it is necessary to know the structure of the companies incorporated in the country and of their shareholders and BO. The more data available, the more refined the analysis can be. This can include, for example, the number of tiers up to the BO, the number of shareholders and their percentages of capital (it is not the same if two shareholders have 50% each, if two shareholders have 99 and 1%, or a company with one hundred shareholders with 1%). For example, an investigation of Italian companies infiltrated by the mafia found that the presence of female shareholders or directors was an indicator of being infiltrated by the mafia, when comparing the female presence with the average Italian company (surely these were the wives or daughters of criminals acting as figureheads).⁸⁸

212. Other data to be analysed in the profile of local entities is the presence of special legal types or the inclusion of tax haven entities. If there is a database with entities investigated or accused of illicit activities, the similarity of each new entity with the pattern used by those involved in illicit activities could be analysed.

213. Once the entity begins to operate, and especially if the register or verifying entity has access, even more sophisticated analyses such as ratio comparisons could be performed. For example, the level of declared income, compared with the number of employees, the seniority of the entity, etc. In order to detect shell companies, it could be analysed not only if the company has employees (which could be fictional) but mainly if it has gas and electricity or internet consumption. More examples of ratios are described in the Tax Justice Network report.⁸⁹

⁸⁶ <https://www.lanacion.com.ar/politica/jubilado-sin-plata-y-controla-ciccone-nid1447857>

⁸⁷ <https://www.lanacion.com.ar/politica/canalizaron-reintegros-por-716-millones-pero-sus-accionistas-cobran-la-auh-nid2205250>

⁸⁸ http://www.transcrime.it/wp-content/uploads/2018/12/MORE_FinalReport.pdf



iv. Forms of verification

214. Countries can choose different forms of verification, leaving it in different hands, similar to how to ensure the availability of information.

i) In the hands of the authority

a) MANUAL

215. Countries can establish a unit or select a group of officials, either within the register or externally, to verify the information. Uruguay, for example, commissioned the National Internal Audit Office (AIN) to analyse and audit the information on BO.

VERIFICATION IN URUGUAY BY THE NATIONAL INTERNAL AUDIT OFFICE (AIN)

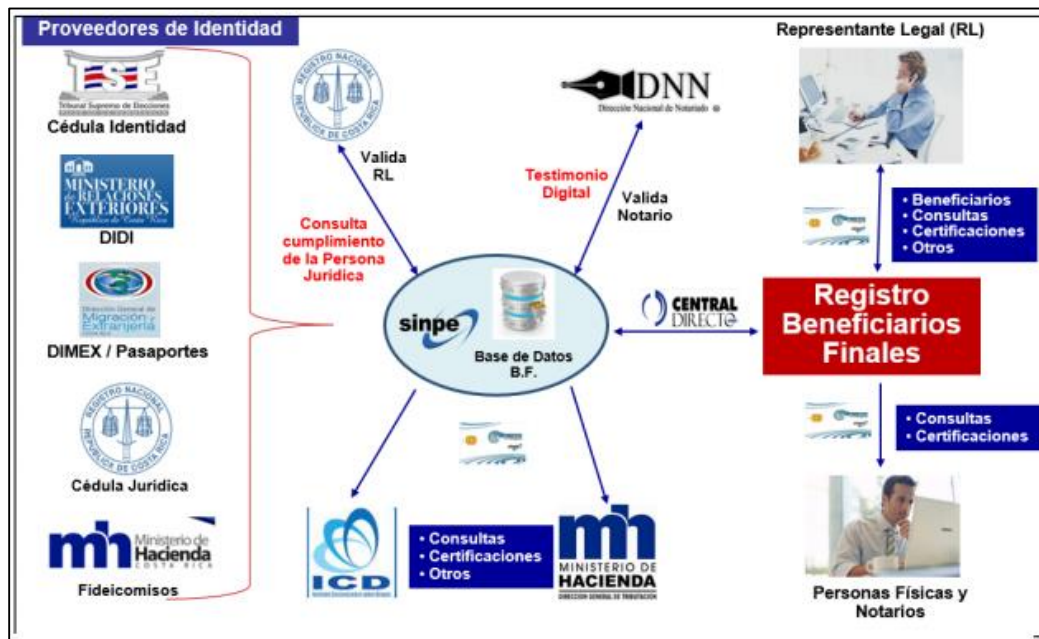
According to GAFILAT's 2020 Evaluation of Uruguay, "The AIN has a commission of 8 persons specifically dedicated to this matter, who carry out actions from the office through which they validate the BO information communicated to the BCU. For the purposes of its duties, the AIN has the power to request information from the reporting institutions of the DGR, the BPS and the DGI. (...) It also held talks, workshops and trainings in different forums and areas; attended face-to-face consultations, by telephone and by e-mail; and on its website it made available to the general public all the information, instructions and guidelines with examples of the different types of entities, frequently asked questions and communications related to compliance with applicable regulations. (...) In the cases that are considered appropriate, the AIN requires directly to the company the presentation of the books of shareholders to validate the chain of ownership. The findings identified in the proceedings are as follows: 254 non-compliant companies were identified for failing to communicate BO information to the BCU, which was notified to the DGI for the suspension of the single certificate. 177 companies were identified with possible deficiencies in the communication of BO information to the BCU. Checks were carried out on the accuracy and truthfulness of the information, and ex officio proceedings were initiated

b) AUTOMATISED

216. Ideally, to facilitate verification and save resources, countries with digitised registers can automate verification. In Peru, the regulation on the annual declaration of BO to the tax administration requires the validation of the information and/or documentation provided by the BO with the information contained in the registers or

databases of the National Registry of Identification and Civil Status (RENIEC), the National Superintendence of Public Registries (SUNARP), the Superintendence of Banking, Insurance and Pension Fund Administrators (SBS), and with the data of the RUC that appears on the SUNAT website, among other sources of information.”⁹⁰ In the Dominican Republic, the tax administration (which obtains BO declarations) has a project to automatically exchange information in real time with the company register.⁹¹ Costa Rica, for example, has established a system for cross-referencing internal registry information (to ensure the consistency of what is declared to the registry), in addition to cross-referencing information with other State databases.

ILLUSTRATION 41. COSTA RICA’S REGISTER VERIFICATION SYSTEM



217. The FATF report on best BO practices describes the automated systems of several European countries. Austria requires various measures to verify information on BO, including automated real-time cross-checks with government databases, automated sanctions in case of missing information, the addition of a public warning to warn users that a company has potentially incomplete or erroneous information, and a risk score

90 GAFILAT 2020 Follow-up Report on Peru, p. 5.

91 Peer Review of the 2019 Global Forum on Dominican Republic, p. 33.



system for non-resident BO based on the risk of their country of residence, leading to further investigations by Austrian authorities (FATF 2019: 45, 46, 57).

218. Denmark also carries out automated cross-checks, including validation checks (e.g., to prevent dead people from being registered). If the information on the BO is not checked, a company cannot be incorporated. The most suspicious cases are subjected to manual analysis (FATF 2019: 48, 57).

219. In the Netherlands, the TRACK system of the Agency for Scrutiny, Integrity and Screening performs risk analysis by automatically scanning several closed and public sources on a daily basis, to search for relevant financial or criminal records of directors and (legal) persons in their immediate environment. The data includes the Companies Register, the Municipal Citizens Register and the Central Insolvency Register, as well as other public sources. In addition, data is obtained from the tax authorities, the Judicial Information Service and the National Police Agency. If the computer system reveals a higher risk, either immediately after registration or later, during the lifetime of the legal entity, this specialised Agency will conduct a more in-depth analysis. If the analysis confirms that there is indeed a higher risk, a red flag will be sent to a group of recipients, including the law enforcement and supervisory authorities, such as the Public Prosecution Service, the Police, the Tax Intelligence and Investigation Service, the Central Bank of the Netherlands, the Netherlands Financial Market Authority, and the Tax and Customs Administration. The Agency for Scrutiny, Integrity and Control also provides “network maps” for, among others, law enforcement and supervisory agencies. A network map outlines the relevant relationships between a legal person of interest and other persons or legal entities, including legal persons in bankruptcy or removed from the register (FATF 2019: 50).

ii) Handled by the private sector

220. Countries can also choose to outsource verification to the private sector, saving costs and transferring them to the private sector, although the private sector’s performance would need to be monitored. For example, in Slovakia, a system was established to verify the BO of state-contracted companies in which a corporate service



provider or local lawyer must verify the identity of the BO, and will be liable in case of error.⁹²

221. Additionally, if notaries and financial institutions must be involved in the process of incorporating entities, they can facilitate verification, especially if they are required to report any discrepancies to the register as required by the best practices paper (FATF 2019: 75).

222. Uruguay, for example, compared the information registered with the information held by RIs. As described in the 2020 GAFILAT Mutual Evaluation Report on Uruguay: “Authorities informed that, in order to verify the BO data available in the BCU registry, (...) a sample of 344 entities was selected, and in September 2019 financial institutions (FIs) were requested to report on the BO included in their CDD procedures, from which it was established that in 25 cases (7.27%) there is a difference between the BO identified by the FIs and the information contained in the BCU registry.”

iii) Held by the public

223. The UK could be considered a case where verification is carried out by the general public, including private sector investors and shareholders, civil society organizations and investigative journalists. For example, in 8 months the UK register received 58,352 reports to modify or correct the information held.⁹³ The FATF best practices paper also described how the civil society organisation Global Witness conducted an analysis of data from the English company register, available in open data format, and reported errors and red flags in the register (see section C.III.iii). From companies declaring other companies as BO, companies with a circular control structure, directors mentioned on US sanctions lists, or deceased persons appearing as shareholders (FATF 2019: 51).

v. Additional measures to facilitate verification of information

224. In parallel to the mechanisms available, additional and complementary measures can be taken to facilitate verification.

⁹² <https://ceelegalmatters.com/slovakia/6605-world-wide-rarity-anti-letterbox-companies-act-in-slovakia>

⁹³ <https://www.gov.uk/government/news/6-things-you-need-to-know-about-our-performance>



Quantitative and qualitative limits to the chain of ownership

225. In most countries, freedom of enterprise allows an entity to be formed with any type of chain of ownership, including an unlimited number of tiers and types of entities. This makes it difficult for authorities to verify the BO because many more steps, resources, and requests for information from abroad will be required, the longer the chain, the more countries and more opaque or sophisticated types of entities. Examples of the latter would be entities with bearer shares; discretionary trusts where the beneficiary is at the discretion of the trustee and can change at any time; protected cell companies similar to Series LLCs where a company is subdivided into different cells or units, each with different shareholders or investors and independent estates; or Liechtenstein Anstalts, which can have a structure similar to a company or a trust, depending on the discretion of its founder.

226. In response to these obstacles, and contrary to the “absolute” freedom of enterprise, countries could establish different types of limits.

A) QUANTITATIVE LIMIT: limits can be set on the number of tiers up to the BO, for example 2 or 3. The creation of more tiers would not necessarily be prohibited, but should be justified. Purposes such as maintaining opacity or avoiding or minimising tax payments should not be allowed as reasons for creating more tiers. A distinction could also be made between an actual multinational company with operations in many countries or, conversely, a passive entity used by an individual solely as a holding company for his assets, for example, to exercise indirect ownership over his real estate and other property.

B) QUALITATIVE LIMIT: limits may be established on the type of entity to be included in the chain, prohibiting, for example, companies that have issued or may issue bearer shares, or entities incorporated in countries where there is no company or beneficial ownership register, or where there is no exchange of information. In this case, the FATF proposes that countries establish lists of countries with higher risk and adopt measures against entities from those countries (FATF 2019: 70).

Resident natural person as civil and/or criminally liable

227. One of the greatest conflicts in controlling compliance with the law occurs when there are no persons or assets in the country over which the authority would have



jurisdiction to enforce a sanction or penalty. If a company has all its shareholders, directors and assets abroad, it is difficult for the local authority to take any action if a crime has already been committed. The same would occur if the directors are other entities rather than individuals.

228. One way to revert this situation would be the obligation of each entity to have at least one resident natural person who is civil or criminally liable for the basic and BO information declared, as suggested in the Interpretive Note to R.24 of the FATF.⁹⁴ Many jurisdictions already require the obligation to hire a resident agent (e.g. Panama⁹⁵ or the British territories of Jersey and Guernsey⁹⁶), to whom the responsibility for the company's information could be extended, in order to prevent the latter from registering companies about which he or she does not have sufficient information. Slovakia provides a similar mechanism where a local lawyer is responsible for verification of BO information for companies seeking to contract with the state (see item iv above). Uruguay requires that a notary public verify the entity's BO information and register it with the BCU's BO register.⁹⁷

Stage IV: Effective use of information

I. USE OF INFORMATION WHEN THERE IS AN ONGOING INVESTIGATION

229. Once the basic and quality BO information is accessed in a timely manner, it still remains to ensure that the information can be effectively used. This requires technological and budgetary resources, as well as an adequate number of trained staff and the ability to share information with relevant authorities.

230. Some authorities of GAFILAT member countries consider that the greatest challenge they face is related to the lack of resources in terms of personnel. While the number of STRs and new responsibilities in managing a register increased, the budget and number of staff did not increase correspondingly, with the same number of people performing more tasks and processing more information.

94 Paragraph 9 of Interpretive Note 24 states: "Requiring that one or more natural persons resident in the country is authorised by the company, and accountable to competent authorities, for providing all basic information and available beneficial ownership information, and giving further assistance to the authorities."

95 Peer Review of the 2019 Global Forum on Panama, pp. 30-31

96 FATF 2019: 32, 35

97 GAFILAT 2019 Mutual Evaluation Report Report on Uruguay, p. 136



231. The best practices paper highlights the importance of having the capacity to make an effective risk analysis, for example, analysing jurisprudential cases, STRs, and identifying patterns, trends and preferences of legal types with criminal purposes (FATF 2019: 27).

232. In other cases, the lack of available technology prevents the optimal use of information, for example, by preventing the crossing of data or the complex analysis of large databases.

233. Finally, the lack of agreements with other agencies or the degree of confidentiality of the information (e.g., tax secrecy), may make it difficult to send information to all relevant authorities. However, the regulations of many GAFILAT member countries provide for access to BO information to other authorities (e.g., Costa Rica, Panama, Paraguay, Peru, Uruguay). The FATF best practices paper highlights for example the coordination in the Netherlands, where the Financial Experts Centre was established to share information among themselves, bringing together the Dutch Central Bank, the Netherlands Authority for the Financial Markets, the financial intelligence unit, the FIU-Netherlands, the Tax and Customs Administration, Tax Intelligence and Investigation Service (FIOD), the National Police and the Public Prosecution Service (FATF 2019: 55).

Transparency proposals

234. Countries could adopt the following measures to ensure effective use of basic and BO information:

- Carry out, as in the case of Uruguay (see section C.III.iv above), trainings for the private sector and related officials and publish guides to understand the importance of the issue, how to identify BO and how to detect suspicious cases.
- Increase the budget of the agencies responsible for managing, verifying, and analysing information
- Increase the number of operational staff in related agencies
- Increase the available technology, from the digitalisation of the register, allowing to have structured data (the data in separate fields and readable by a machine), to the



interconnection of State databases to allow data crossing, and the analysis by data mining and artificial intelligence.

- Establish a commission, similar to that of the Netherlands, with representation from different agencies including the tax authority, financial intelligence unit, financial regulator, company register, securities commission, etc., so that they can discuss how to improve the transparency of BO for the benefit of all stakeholders, and sign memoranda of understanding to allow cooperation and exchange of information between state agencies, and if possible with countries abroad.

- To understand to what extent budget and staffing should be increased, countries (or evaluations) could publish budget and staffing ratios by number of inhabitants, or by number of registered entities, or by number of RIs to determine if each country is below the ratio and should further increase its budget and staffing to be in line with the rest of the region.

II. INTERNATIONAL COOPERATION

235. Countries face similar challenges in increasing the availability and access to basic and BO information. Therefore, countries should cooperate with each other not only to exchange information or interconnect registers, but also to establish synergies, learn from the best experiences, holding training or coaching meetings to explain everything from how they carried out the process of establishing a register, to how they verify the information, or how they cross-check it. As described by one authority during the interview, interpersonal relationships between authorities from different countries (and from different agencies within the same country) can play a fundamental role in facilitating information exchange and cooperation.

236. Authorities in Peru, for example, held a training session with the Costa Rican authority to learn about its experience in establishing the register (although one has it with the Central Bank and the other with the tax administration).

Transparency proposals



237. Establish regional cooperation to learn and improve the transparency of BO and encourage interpersonal relationships between authorities to build trust, for example, by holding training or coaching meetings to explain everything from how they carried out the process of establishing a register, to how they verify information, or how they cross-check it.

III. PREVENTIVE USE OF INFORMATION

238. In many cases, especially when the registers keep paper or outdated information, they act more like a repository of little-used information, except when data needs to be found as part of an investigation and it may not be there, or may be lost or stolen (by accident or deliberately).

239. Instead, basic and BO registers should serve as a dynamic database not only to obtain more details reactively, as a response to an ongoing investigation, but mainly in a preventive manner. A register containing verified information (whether through automated means, alert detection and profile analysis, etc.) could be a key element in allowing legal vehicles to operate. Especially if the register is accessible by RIs, or even by the general public, consulting the register could be compulsory prior to performing any act. If the register notices that an entity has some problem, either inconsistencies in its statements or lack of updated data, a bank, for example, should prevent that entity from opening an account or transferring money. Paraguay⁹⁸ and Brazil⁹⁹ establish these sanctions in case the entity has not declared its BO.

240. For example, a notary should prevent them from buying or selling property. The entity with incomplete data according to the register could not be a party to a lawsuit, etc. In this way, the availability and access to basic and quality BO information would help

98 Art. 8, Law 6446: "Upon expiration of the established registration and reporting deadlines, the legal persons and arrangements that have not complied with the aforementioned obligation, until such time as the obligation is formalised, shall be subject to the following consequences: 1.- They may not open new accounts, issue debt or equity securities, or carry out deposit or remittance procedures, or perform other operations whether active, passive or neutral before the entities that make up the Financial System considered as reporting institutions pursuant to Article 13 of Law No. 1015/1997 "WHICH PREVENTS AND REPRESSES ILLEGAL ACTS AIMED AT THE LEGITIMATION OF MONEY OR GOODS", such as: Banks, Finance Companies, Exchange Houses, Stock Brokers, Cooperatives, and other financial entities;

2.- Blocking of the Single Taxpayer Registry (RUC) by the Undersecretariat of State for Taxation (SET) under the Ministry of Finance; and, 3. Suspension of the processing of any other presentation before the authority that enforces this Law."

99 Art. 9, Regulatory Instruction 1863/2018.



not only to solve crimes, but also to prevent them. The same register should warn authorities, through STRs or as an automatic notification, if an entity has contradictory information, or if an individual on a sanction list is listed as a new shareholder, director or BO.

Transparency proposals

241. Especially if the register is accessible by RIs, or even by the general public, the register could be compulsory for consultation prior to performing any act. If the register notices that an entity has some problem, either inconsistencies in its statements or lack of updated data, the entity should be prohibited from operating in the economy: a bank for example should prevent that entity from opening an account or transferring money. A notary should prevent them from buying or selling property.

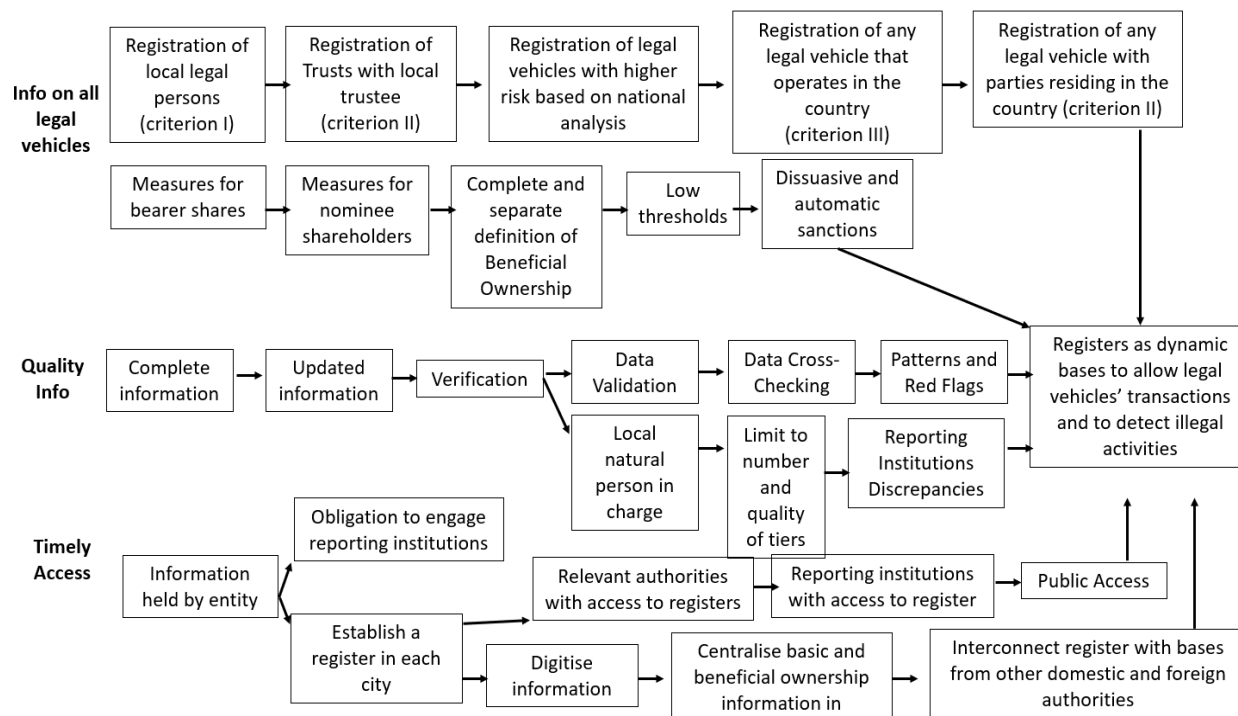
Section D. Roadmap

242. Each country has different contexts and challenges. The following figure attempts to present a roadmap option that describes the possible steps towards implementing the proposals mentioned in this paper, as implementing all measures at the same time would be impossible.

243. The objective would be to ensure the availability and access to quality basic and BO information for all authorities and users, and thus allow this information to not only shed light on investigations and prosecutions, but mainly to act preventively to detect cases.



ILLUSTRATION 22. ROADMAP TO GREATER TRANSPARENCY



244. The roadmap covers the first 3 steps in an interrelated way. In terms of the information available on all legal vehicles, two parallel paths are proposed. On the one hand, starting with the most common conditions in which legal entities and trusts must be registered, moving on to the criterion of having operations in the country and having resident parties. The other path begins by resolving the most urgent issue of bearer shares, followed by nominee shareholders, improving definitions, lowering thresholds to cover a greater number of persons, and especially establishing effective sanctions for being truly dissuasive as well as automatic.

245. In terms of quality information, the first step could be to ensure that the information is complete, then updated, and finally verified through two parallel mechanisms. On the one hand, start with data validation at the time of registration, followed by data cross-checking, and finally a sophisticated analysis to establish patterns and red flags. In parallel, complementary measures can be taken such as requiring the appointment of a resident natural person to be responsible for the information registered, establishing qualitative and quantitative limits to the chain of ownership of local entities, and requiring financial institutions to report discrepancies between the information they obtained from their customers and the information in the register.



246. Finally, with respect to access, the most basic and inexpensive thing to do is to require the information from the entity itself, from which two complementary paths emerge. On the side of the private sector, to impose the obligation to hire or employ a RI for them to obtain and verify the BO information. On the other hand, to establish a register in the hands of an authority (e.g. company register, central bank, tax administration, etc.) that collects BO declarations. If the register is decentralised, the first step is to digitise it, and then centralise both the basic and BO information, and finally interconnect the register with other State bases and foreign registers to verify the information. In terms of access to register information, starting with access by all relevant authorities, consideration could be given to RIs (e.g., to reporting discrepancies) and finally the general public, to encourage use by investors, business people, investigative journalists, and civil society organizations that can also assist with verification.

247. These steps, which can be taken in this order or another, would increase the availability and access to information, and could transform records into dynamic bases that allow both for the operation of entities and the prevention of crimes.

Section E. How to generate change towards greater transparency

248. Transparency at the global level is increasing, although not necessarily evenly. Based on the interviews and international experiences, some examples of challenges or obstacles to progress can be listed, as well as situations that led to the decision to begin the change towards greater availability and access to information.

Means to address general challenges and/or obstacles to transparency

- **Meeting International Standards**

Some GAFILAT countries described the evaluations and ratings by bodies such as GAFILAT, the OECD Global Forum, and the threat of being placed on a grey or black list as generating sufficient external pressure for internal change. In other words, undergoing evaluations from abroad can provide the international pressure needed to bring about change.

- **International Coordination**



The international or at least regional trend towards greater transparency can generate peer pressure or at least demonstrate that business will not be lost because the same requirements are established in all countries.

To avoid free riders, countries that implement transparency improvements must pressure others to do the same, so that others do not abuse their offer of secrecy. This generates a virtuous cycle where everyone cooperates so that no one reduces their transparency. The European Union, for example, is considering including the issue of BO as a factor in considering a country on its list of non-cooperative jurisdictions with the corresponding sanctions.¹⁰⁰

- **Regulatory compliance of correspondent financial institutions**

Some countries described that there may be private sector allies, especially from financial institutions such as correspondent banks that must undergo stricter changes in their home country and require greater transparency in the country of operation. Financial institutions that perform due diligence measures also often support greater transparency to facilitate their work.

- **Increased transparency does not necessarily mean more bureaucracy**

Many countries are opting for the incorporation of remote companies without the need for other professionals such as lawyers or notaries.

However, this should be allowed as long as the register has forms to verify the information and sanction errors and omissions. Otherwise, the ease of incorporating companies online may become a risk to transparency.

- **Training for the public and private sectors**

Training is the best way to demonstrate that the new system is not necessarily bad (and thus gain support) as well as to avoid unintended mistakes.

¹⁰⁰ <https://www.greens-efa.eu/files/doc/docs/1b95852c69d1f7315acaceda88625e45.pdf>



Uruguay, for example, developed numerous training cases for both the private and public sectors, and published guides, case examples, and FAQs.

5. Conclusions

249. The transparency of basic and BO information is of utmost importance not only to avoid damage to the reputation of countries by obtaining a bad rating or being included in a grey or black list, but mainly to facilitate the work of authorities, RIs and society in general.

250. Ideally, the basic and BO information contained for example in a public register managed by a government authority, should serve as a dynamic database not only to obtain more details reactively, as a response to an ongoing investigation, but mainly preventively. A register containing verified information (whether through automated means, alert detection and profile analysis, etc.) could be a key tool in allowing legal vehicles to operate. For example, the register could be mandatory for consultation prior to performing any act. If the register notices that an entity has some problem, either inconsistencies in its statements or lack of updated data, a bank, for example, should prevent that entity from opening an account or transferring money. A notary should prevent them from buying or selling property. In this way, the availability and access to basic and quality BO information would help not only to solve crimes, but also to prevent them.

251. Countries are in different contexts in terms of transparency, centralisation, digitalisation and access to information. This work seeks to provide a series of proposals that can be implemented to improve transparency depending on the situation in each country. A country with decentralised and paper-based registers may choose to create a new digital register in the hands of a well-resourced authority, such as the central bank or the tax administration, or opt to audit companies considered to be of higher risk, or improve the imposition of sanctions, especially those preventive ones such as the limit or prohibition to operate or integrate local entities for those foreign companies whose countries lack sufficient transparency or information exchange. Furthermore, those countries that already have a digitised BO registry may opt to improve the verification of information by cross-checking data with local and international databases, both public



and private, or by establishing a specialised agency, or by opening the registry for investors, business people, journalists and civil society organisations to take part in the verification.

252. In any case, countries should understand that, although they may opt for different alternatives, they should consider the best cases and learn from others because although efforts and progress will be noticed, in the end international organisations, local authorities, and public opinion will focus on concrete results and the effective possibility of ensuring access to and use of information to prevent money laundering and financing of terrorism, among other crimes.

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Annex I- Summary of Transparency Proposals

Challenge	Proposals to increase transparency
I. Availability of information on all relevant legal vehicles	
Availability and access to information on all relevant legal vehicles	Require basic and BO information (e.g. on a register) on any of the 3 criteria: place of incorporation, resident party (e.g. partner, BO, director), or local operations (registrable assets, relationships with RIs, provision of goods or services, or being subject to tax).
Corroborate BO information and avoid cases of circular ownership or fragmented indirect ownership	Require the same level of transparency for basic and BO information Require the registration of the entire chain of ownership up to the BO
BO definitions for different legal vehicles	Establish different definitions according to the type of legal vehicle. Include in the definition parties who may be present in foreign vehicles (e.g. the “protector”), or add in the definition “or any other person with effective control” to cover foreign law figures Establish definitions for mixed structures that combine different types of legal entities, e.g. trust and commercial company
Legal persons as part of a trust to avoid registration of all parties	Require that if the party to a trust, e.g. the settlor, is a legal entity, that all shareholders must be identified
Thresholds in the BO definition	Set thresholds as low as possible, e.g. 1% or 1 share.



Challenge	Proposals to increase transparency
	<p>Establish thresholds for non-ownership control, e.g. right to vote, to remove or appoint directors, individuals with management powers or over bank accounts</p> <p>Require the identification of all individuals who exceed the ownership threshold or who are controlled by other means (versus the “cascade” that allows the process to be completed and no one else to be identified, if someone who exceeds the ownership threshold has already been identified)</p> <p>To counteract the “noise” of many identified BO, require the reason why each BO is registered (e.g. “X is BO for having 80% of the votes”).</p>
Bearer shares	<p>Prohibit bearer shares or require their immobilisation with a government authority, establishing as a sanction for non-compliance the absolute and definitive loss of all rights Alternatively, require immobilisation with a resident private custodian (e.g. bank or lawyer) who must notify the authorities of each change, and who is liable for failure to submit information.</p> <p>The presence of bearer shares at any tier in the chain of ownership should never be considered a reason to allow non-identification of BO.</p>
Nominee shareholders (straw men)	<p>Require them to disclose their status and/or obtain a license to operate (but they may choose not to).</p> <p>Banning nominee shareholders through two strategies:</p> <ol style="list-style-type: none"> 1. Considering that the presence of a nominee shareholder causes the loss of the right over the shares, which would pass to the company (if there are real shareholders) or to the State. 2. Considering the nominee shareholder as the real subject of rights, and not recognising any rights on the BO, without the



Challenge	Proposals to increase transparency
	possibility of proving a secret agreement, to discourage BO from using figureheads as they could keep all the assets.
Optimal and dissuasive sanctions	<p>In addition to fines, administrative or criminal sanctions, the right that is being pursued should be affected. For instance:</p> <ul style="list-style-type: none"> - Annulling the shares or eliminate the right to vote or dividend if the shareholder does not declare his BO or if the holder of bearer shares does not immobilize them; - Removing the entity from the register, if the entity does not provide or update the information; or - Creating a list of non-compliant persons who should not be able to incorporate or form part of entities in the future. <p>To apply the criminal sanctions, require the presence of a resident natural person who is personally liable for the entity's failure to comply</p>
II. Access to information	
Mechanism to ensure availability and access to information	Establish a central, digitised, online register of basic and BO information held by a government authority, and require the intervention of RIs (e.g. banks and notaries) to assist in the verification of the information
What information to show	Publish information on shareholders, chain of ownership and BO in the same place (do not require the user to navigate through the register to find the shareholder of the shareholder until you reach the BO, nor give only the data of the shareholder and the BO without describing the chain of ownership).
Who manages the BO Registry	Computerization and technology criteria, management resources, expertise, information security and information sharing capabilities should be considered in choosing the authority that will manage the register.
How to access information	Those authorised to access to the information should be able to access it as quickly as possible, and in the least number of



Challenge	Proposals to increase transparency
	steps (or authorisations), using many fields to search for information (e.g. name, address or tax ID of the entity, or name of shareholders or BO), and filtering the results by type of legal vehicle, country of incorporation, date, etc.
Who accesses the information	In accordance with the confidentiality and personal data protection rules of each country, allow access to as many stakeholders as possible (local authorities, foreign authorities, RIs, the general public), to enable more people to use and verify the information.
How to protect privacy if the register is public	<p>Publish only some identifying details such as full name, address, month and year of birth (but not the day), country of nationality and country of residence (but not the passport number).</p> <p>Enable the request for exceptions so that information is not made public if a risk or danger is proven, in the specific case (the EU 5th Directive allows this)</p>
<p>Other sources of information:</p> <ul style="list-style-type: none"> a) Tax Administration b) RI c) Suspicious Transaction Reports d) DNFBP e) Information from abroad 	<ul style="list-style-type: none"> a) Signing memoranda of understanding for the tax administration to cooperate and exchange information to feed and verify the BO register b) Creating a BO register in the hands of the financial regulator from information obtained by financial institutions from their customers, or sharing this information with the BO register (if it already exists) b') Extend the obligations of financial institutions in the framework of the automatic exchange of banking information so that tax administrations receive information on all account holders, and can use this information to feed and verify the BO register c) Adding new types of reports that can provide relevant data. Argentina, for example, requires RIs to file Cash Transaction



Challenge	Proposals to increase transparency
	<p>Reports (CTRs), Cash Transaction Reports for Foreign Exchange Operations, and International Transfer Reports (ITRs).</p> <p>d) Establish a registry system with the information of notaries, similar to the system in Spain to facilitate access and verification</p> <p>d') Requiring that DNFBPs in the country are authorised by the company, and accountable to competent authorities, for providing all basic information and available BO information, and giving further assistance to the authorities, without being able to invoke professional secrecy or other confidentiality requirements.</p> <p>e) All countries could sign the Punta del Este Declaration agreed at the Global Forum meeting to allow the use of the information automatically exchanged not only for tax purposes, but also to combat corruption and money laundering, and thus be able to feed into the BO register</p>
III. Quality of the information: complete, updated and verified	
Complete information	Require sufficient identifying data in addition to name, such as address, date of birth, national identity card number and tax identification number. If any information is missing, the entity should not be registered.
Updated information	<p><u>Technological Aspect</u>: if an automated register exists, it could automatically notify all entities that have not sent at least their annual update as an affidavit with the current list of members, BO and directors, as well as the history of changes. Corresponding sanctions should be applied automatically, including removal of the entity from the register if non-compliance persists.</p> <p><u>Regulatory aspect</u>: consider that the information in the register is of a “constitutive” nature so that any rights would exist from the moment of registration: a person could not receive</p>



Challenge	Proposals to increase transparency
	<p>dividends or vote if he or she was not listed as a partner in the trade register, and any decision with his or her vote would be null and void. Similarly, civil and criminal obligations and liabilities would remain until the partner or director is removed from the register, for example, by resignation.</p>
<p>Verification of information:</p> <p>a) Authentication (that the persons are who they say they are)</p>	<p>Require the presentation of official documents with photo, which are verified by a notary.</p> <p>For higher risk cases or remote constitution: also request biometric data and video conference</p>
<p>b) Authorisation (that the person is authorised to incorporate the entity)</p>	<p>Ideally, if the State has the individuals' contact details, e.g. email or mobile phone, the register should notify them each time an entity is created in which they are related, so that they can confirm their authorisation (similar to an email provider consulting the user if they open their box on a new computer).</p> <p>Alternatively, publish the name of all partners, directors and BO, so that the list can be consulted by any individual.</p> <p>If registration is confidential, authorize individuals to request from the register any information related to themselves to verify their agreement (e.g. Costa Rica).</p>
<p>c) Validation</p>	<p>- In the online forms it is not possible to fill in free text, but rather to opt for pre-established lists (e.g. country of nationality), forms of validation (e.g. the document number must contain at least X digits), or to pre-fill in the data with the information that the State already has from the document number or tax number.</p> <p>- Crossing the data against other State databases (e.g. not allowing an individual to be a shareholder if he is listed in the civil register as deceased), and consistency of data within the register (not allowing company A to claim that its shareholder</p>



Challenge	Proposals to increase transparency
	<p>is company B, whose shareholder is company C; while company B claims company Z as its shareholder).</p> <ul style="list-style-type: none"> - Interconnect registers to verify information from foreign entities (e.g. Finland and Estonia, and the EU 5th Directive).
d) Patterns and red flags	<ul style="list-style-type: none"> - Search for shell companies and nominee directors by identifying many entities with the same address or directors - Compare the list of members and directors against lists of sanctions, disqualified directors, etc. - Implement sophisticated analysis and data mining to establish patterns, profiles and look for outliers, e.g. from industry ratios (number of employees, gas consumption, revenues, etc.)
Ways to verify information and in whose hands	<p>Ideally, countries would adopt automated verification mechanisms (e.g. Costa Rica, Austria, Denmark or the Netherlands) and manual ones (e.g. Uruguay), requiring not only the authorities but also the private sector (e.g. Slovakia) and the public sector (e.g. United Kingdom) to participate in the verification</p>
Additional regulatory tools to facilitate verification	<p>1) Establish limits to the chain of ownership to make it easier for authorities to obtain and verify information from abroad:</p> <ul style="list-style-type: none"> - Set quantitative limit: allow only a limited number of tiers (e.g. 2 or 3) up to the BO, unless the need for more tiers is justified. The number could be higher for multinational companies with actual operations, and lower for entities that are only used as an asset holding company, e.g. as a property owner. - Set qualitative limit: only admit foreign entities from countries with an acceptable level of transparency or which exchange information with the country.



Challenge	Proposals to increase transparency
	2) Ensure compliance by requiring that there is at least one natural person resident in the country who is responsible for the information declared by the entity
IV. Effective use of information	
To facilitate investigations	<ul style="list-style-type: none"> - Training of the private sector and officials (e.g. Uruguay) - Increase the budget of the agencies responsible for managing, verifying, and analysing information - Increase the number of operational staff in related agencies - Increase the available technology, from the digitalisation of the register, allowing to have structured data (the data in separate fields and readable by a machine), to the interconnection of State databases to allow data crossing, and the analysis by data mining and artificial intelligence. - Establish a commission, similar to that of the Netherlands, with representation from different agencies including the tax authority, financial intelligence unit, financial regulator, company register, securities commission, etc., so that they can discuss how to improve the transparency of BO for the benefit of all stakeholders, and sign cooperation and exchange of information agreements between state agencies, and if possible with countries abroad. - To understand to what extent budget and staffing should be increased, countries (or evaluations) could publish budget and staffing ratios by number of inhabitants, or by number of registered entities, or by number of RIs to determine if each country is below the ratio.
Regional Cooperation	Establish regional cooperation to learn and improve the transparency of BO, for example, conducting bilateral meetings or training internships or training among officials from different countries to explain everything from how they



Challenge	Proposals to increase transparency
	<p>carried out the process of establishing a register, to how they verify information, or how they cross-check it.</p> <p>Encourage interpersonal relationships between authorities to build trust and facilitate cooperation and exchange of information.</p>
Preventive use of information	<p>If the register is accessible by RIs, or even by the general public, consultation of the register could be compulsory prior to performing any act. If the register notices that an entity has some problem, either inconsistencies in its statements or lack of updated data, a bank, for example, should prevent that entity from opening an account or transferring money. A notary should prevent them from buying or selling property. In addition, the register should alert the authorities.</p>



Annex II - Written questionnaire sent to the authorities

1. AVAILABILITY OF BASIC INFORMATION

	<p>1. Is there any basic information about the legal vehicle? (name, address, registration number, partners/shareholders, directors/authorities, tax identification key)?</p> <p>2. Is there a company, trade and/or trust register containing this information? If so, is this centralised (one for the whole country) or are there several local registers?</p> <p>3. Besides the register (if any), who else holds basic information? (e.g. the tax authority)</p> <p>4. Are bearer shares prohibited? If allowed, can they move freely, or must they be immobilised/registered/held by a government or private custodian?</p>
GENERAL REMARKS	
Local legal persons	
Local law trusts	
Exceptions (legal entities, corporate types or types of partners excluded)	
FOREIGN (with assets/participations or operations in the country)	
Foreign legal persons	
Foreign law trusts, with a trustee or local administrator	
Others	



2. AVAILABILITY OF BENEFICIAL OWNERSHIP INFORMATION

	<p>1. Is there any information on Beneficial Ownership?</p> <p>2. What are the ownership, voting and/or control thresholds for identifying a beneficial owner? (e.g. more than 20% of the shares or voting rights)</p> <p>3. Should the whole chain of ownership be registered up to the beneficial owner?</p> <p>4. Is there a beneficial ownership register? If so, is this centralised (one for the whole country) or are there several local registers?</p> <p>5. Besides the register (if any), who else holds beneficial ownership information? (e.g. the tax authority, reporting institutions, etc.)</p> <p>6. Should the register (or whoever holds the information on the beneficial ownership) indicate the percentage of ownership/voting or type of control of each beneficial owner (e.g. John Johnson is the final beneficiary because he owns 80% of the shares) or are all the final beneficiaries only identified without indicating how they exercise ownership or control)?</p>
GENERAL REMARKS	
Local legal persons	
Local law trusts	<p>[Specify <u>also</u> for trusts:]</p> <p>7. Which parties to the trust should be identified as beneficial owners (e.g. settlor, protector, trustee, beneficiary, etc)?</p> <p>8. Are there restrictions to be a trustee or any other party to the trust (e.g. trustee can only be a local financial institution)?</p>
Exceptions (legal entities, corporate types or types of partners/shareholders excluded)	
FOREIGN (with assets/participations or operations in the country)	
Foreign legal persons	
Foreign law trusts, with a trustee or local administrator	
Others	



3. ACCESS TO BASIC AND BENEFICIAL OWNERSHIP INFORMATION

	<p>1. Basic and beneficial ownership information is of a public nature? If so, is access free? Is it online or in person?</p> <p>2. If access is not public, which authorities have access to basic and beneficial ownership information?</p> <p>3. How is the information accessed? (e.g. is a court order required, a formal requirement for each access, or does any authority have unrestricted access to the information? Within what time frame should basic and beneficial ownership information be provided? How is the information provided (e.g. on paper, by mail)? Are there any sanctions in case the information is not provided within the established time frame?</p> <p>4. Can basic and beneficial ownership information of local legal vehicles be shared with authorities abroad?</p>
GENERAL REMARKS	
Local legal vehicles (distinguish between legal entities and trusts, if necessary)	Access to basic information:
	Access to beneficial ownership information:
Foreign legal vehicles (with assets or operations in the country)	Access to basic information:
	Access to beneficial ownership information:

4. QUALITY OF INFORMATION

	<p>What is the quality of the information? [distinguish between basic and beneficial ownership information, if necessary]</p> <p>a. complete (if it allows an individual or company to be identified without doubt)</p> <p>b. updated (at each change, or at least annually);</p> <p>c. verified (the information is corroborated to be true/reasonable/valid, e.g. a deceased person should not be able to be listed as a shareholder or final beneficiary)</p>
GENERAL REMARKS	



Quality of information on local legal vehicles	
Quality of information on foreign legal vehicles (with assets or operations in the country)	

5. USES

	How relevant is the basic and beneficial ownership information to investigations? Is it used preventively (to detect unknown cases) or to investigate known crimes?
GENERAL REMARKS	
On local legal vehicles	
On foreign legal vehicles (with assets or operations in the country)	

6. FOREIGN INFORMATION

	How relevant is basic or beneficial ownership information held abroad to local authority investigations? How is the information obtained from abroad?
GENERAL REMARKS	
Investigations on local legal vehicles	
Investigations on foreign legal vehicles (with assets or	



operations in the country)	
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7. CHALLENGES

	<p>1. What are the challenges in having timely access to quality information that is useful? (e.g. technological, budgetary, human resources, need for legislative change, etc.)</p> <p>2. Are there any particular legal vehicles that make investigations difficult or complex? (e.g. the use of foreign trusts)</p> <p>3. Were there any practices or developments that improved the situation? (e.g. training of authorities and the private sector, a new type of sanction, etc.)</p>
Local legal vehicles	<p>Challenges:</p> <p>Learning/good practices:</p>
Foreign legal vehicles (with assets or operations in the country)	<p>Challenges:</p> <p>Learning/good practices:</p>

Annex III - Call interview questions guide

1. WHICH IS MORE USEFUL: BASIC INFORMATION OR BENEFICIAL OWNERSHIP (BO) INFORMATION?

- a) Both are equally useful (e.g. beneficial ownership data is not sufficient if basic company information, including statutes, shareholders or directors, is not known)
- b) Basic information is not sufficient/not useful in itself to solve a case or an investigation, but it serves as a clue to identify the BO, which is the really relevant data
- c) It depends on the case. Sometimes basic information is sufficient to solve a case/investigation (even if the BO is not known), while in other cases the BO data is sufficient (even if the basic data of shareholders or directors is not known).



2. WHAT IS THE PURPOSE OF THE BO INFORMATION?

- a) To be able to start an investigation (without this information, you cannot start)
- b) To develop/extend an investigation (provides clues to obtain even more relevant data, e.g. other decision makers)
- c) To conclude an investigation (to convict those truly responsible, and not only the directors or figureheads)

3. FROM THE PERSPECTIVE OF THE FIU, WHAT ARE THE MOST EFFECTIVE SOURCES FOR OBTAINING BO INFORMATION IN YOUR COUNTRY? DO THEY RELATE TO EACH OTHER, E.G. FROM THE STR IS INFORMATION SEARCHED FROM THE REGISTER? CAN YOU RANK THEM ACCORDING TO IMPORTANCE/UTILITY/EFFECTIVENESS?

- a) Company register
- b) BO Register
- c) Information available from other authorities (e.g. tax authority, central bank, insurance superintendence, etc.)
- d) Information available from banks and other financial institutions
- e) Information available from lawyers, notaries and other DNFBPs
- f) Information available in the hands of the legal vehicle (commercial company, trust, etc)
- g) Information arising from Suspicious Transaction Reports
- h) Information spontaneously exchanged through the Egmont Group
- i) Information provided by the tax authority, by exchange of information for tax purposes
- j) Other

4. HOW RELEVANT IS THE INFORMATION HELD ABROAD TO LOCAL INVESTIGATIONS?

- a) Information from abroad is never or rarely needed to initiate/develop/conclude a local investigation. Local information is sufficient.
- b) Some investigations depend on information from abroad (the more complex ones?)



- c) Without foreign information it is impossible to conclude/start/develop a local investigation

4'. IF INFORMATION FROM ABROAD IS NECESSARY, THIS IS BECAUSE:

- a) The investigation is about a local legal vehicle, but the chain of ownership includes entities from abroad
- b) The investigation is about a local legal vehicle, but the chain of ownership includes foreign entities
- c) The investigation is about a local legal vehicle, but the beneficial owner is a foreigner

5. OF ALL THE STEPS NECESSARY FOR THE FIU TO OBTAIN QUALITY INFORMATION ON BENEFICIAL OWNERSHIP IN A TIMELY MANNER IN ORDER TO USE IT EFFICIENTLY, WHERE ARE THE GREATEST CHALLENGES?

- a) There is not enough information: Not all legal vehicles need to obtain beneficial ownership information, or bearer shares exist that make it difficult to obtain beneficial ownership information. In other words, there is no information on beneficial ownership in the country for some legal vehicles
- b) The information is there, but it is not of good quality: All legal vehicles must obtain information on beneficial ownership, but this is not always complete, updated or verified.
- c) Quality information is available, but access is poor: Quality information (complete, updated and verified) exists in the country for all legal vehicles, but it is very difficult for the FIU to access this information (we do not have access, or access takes a long time, or the information is obtained on paper and is difficult to process)
- d) We do not have the resources to analyse/use the information: The FIU has access to quality information and access is optimal, but once we have the information, we lack the staff/budget/technology to use it.

6. IF YOU COULD CHOOSE IMPROVEMENTS IN RELATION TO BENEFICIAL OWNERSHIP TRANSPARENCY, YOU WOULD CHOOSE: (CHOOSE THE APPROPRIATE ONES, IN ORDER OF PRIORITY)

- a) To have a central, computerised register of basic and BO information in the country
- b) To be able to have timely access to information that already exists in the hands of other authorities (e.g. information held by the tax authority)
- c) To be able to have timely access to information that already exists in the hands of banks and other financial institutions



- d) To be able to have timely access to information that already exists in the hands of lawyers, notaries, and other DNFBPs
- e) Improving the quality/data on beneficial ownership of Suspicious Transaction Reports
- f) Having more staff in the FIU to analyse/get the information
- g) Having more budget in the FIU to analyse/get the information
- h) Having more technology available in the FIU to analyse/get the information
- i) To be able to carry out more/better audits/supervisions of the reporting institutions
- j) To be able to automatically/digitally cross-check the information in the country against other state databases (e.g. to compare the information obtained/informed by a bank with the information held by the company register or tax authority)
- k) Increased training for the private sector (banks, financial institutions, DNFBPs)
- l) Increased training for public officials (staff of the company register, FIU, tax authority, etc.)
- m) To be able to apply greater sanctions to beneficial owners who do not identify themselves/do not report information to the legal vehicle (e.g. that the commercial company can cancel the shares if the shareholder does not inform it who the beneficial owner is)
- n) To be able to apply greater sanctions to legal vehicles that do not obtain/report information on beneficial owners (e.g. that the company register suspends/withdraws from the register a company that did not report its beneficial ownership)
- o) To be able to apply greater sanctions to banks, financial institutions, lawyers and DNFBPs that do not obtain information on beneficial owners of their customers and/or do not report this information in Suspicious Transaction Reports
- p) Others

7. THRESHOLDS IN THE BO DEFINITION

- a) Does the current threshold (e.g. more than 20% of shares or voting rights) in your legislation cover all relevant persons?
- b) What would be the ideal threshold or condition for covering all relevant persons? (1%, 1 share, power of attorney, etc)?



8. *RATIOS*

- a) FIU budget
- b) Number of staff in FIU
- c) Number of staff in analysis area
- d) Population of the country
- e) Number of reporting institutions