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Members of the FACTI Panel are producing implementation notes on how they see the FACTI Panel Recommendations being implemented in practice. The notes are meant as supplementary to the FACTI Panel report and recommendations, and seek to provide more detail on how all actors can take actions on the FACTI Panel blueprint for financial integrity for sustainable development. The notes, however, represent the views of their authors, and not of the whole FACTI Panel.

BENEFICIAL OWNERSHIP REGISTRIES

IMPLEMENTATION NOTE ON FACTI PANEL RECOMMENDATION 3A BY SUSAN ROSE-ACKERMAN

RECOMMENDATION 3A: INTERNATIONAL ANTI-MONEY-LAUNDERING STANDARDS SHOULD REQUIRE THAT ALL COUNTRIES CREATE A CENTRALIZED REGISTRY FOR HOLDING BENEFICIAL OWNERSHIP INFORMATION ON ALL LEGAL VEHICLES. THE STANDARDS SHOULD ENCOURAGE COUNTRIES TO MAKE THE INFORMATION PUBLIC.

INTRODUCTION

Individuals have rights to privacy, but these rights have been exploited by the wealthy elite and perverted into a secrecy privilege accorded to legal entities. Allowing people to use the right to privacy to hide their ownership of assets limits efforts to enhance financial integrity for sustainable development.

Secrecy flourishes because of State policies. A basic tool for addressing these secrecy risks is to identify the natural persons who ultimately own, control or benefit from legal vehicles: their “beneficial owners”. The Financial Action Task Force (FATF) first agreed on a standard for beneficial ownership information in 2003. The current recommendation requires that competent authorities have timely access to accurate and updated beneficial ownership information. However, compliance with the standard is relatively low, and even compliance would not be adequate because of lack of information, verification, and sanctions, as well as built-in loopholes, such as secretive structures. Moreover, information is not available to all parties who need it.

Without this information, authorities would be unable to determine that apparently legitimate and unrelated companies and trusts are in fact implicated in a global financial crime or tax-abuse scheme. Asset recovery is also made extremely difficult, and in the private sector, companies have difficulty knowing who owns the entities with which they do business.

PROPOSED SOLUTION

Moving from secrecy to transparency is an essential step towards creating financial integrity for sustainable development. However, developing new social norms around financial integrity requires changes both in attitudes and in expectations about others’ behavior.

There is great value in having an online, public registry of the beneficial ownership of all kinds of financial arrangements and private-sector entities, and many countries have already adopted such policies, based on the FATF and Global Forum standards. The FACTI Panel believes that “Member States

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should adopt a mandate for this at the United Nations." It also recommends that "the FATF and Global Forum ... develop and agree on the detailed standards and associated technical information." The FACTI Panel has emphasized that transparency to outsiders, not just law enforcement agencies, will make registers a much more powerful tool for financial integrity for sustainable development. If the public can access and understand the data, that access can help incentivize

ethical business conduct, rebuild public trust, and strengthen the social contract.

Member States should consider the content of the standard, transitional arrangements, capacity building provisions, and national enforcement mechanisms, as well as encouraging the creation of public registries.

IMPLEMENTATION

Content of a strengthened beneficial ownership information standard and guidance: The FACTI Panel's work identified a number of shortcomings in existing practices. To remedy these shortcomings, the following areas need to be addressed as States seek to strengthen international norms. (1) There should be a centralized registry to maintain the information. That information should be complemented by a multi-pronged approach with information also held by other actors. (2) Coverage for all legal vehicles (both entities and arrangements) is needed to ensure comprehensive standards despite different legal frameworks in each jurisdiction. This expansive scope should include investment funds and non-profit entities, which have been exploited for money-laundering purposes. It should also have no or very low-thresholds for ownership/control to help prevent avoidance measures via split ownerships. (3) There should be uniform definitions for classes of legal and natural people that, nevertheless, can accommodate different legal systems. (4) A set of clear core information requirements should be established that include demographic and biographical information, beneficial ownership history, method of ownership or control, and relevant family connection information used for detecting attempts to circumvent the rules. These core information requirements should be accompanied by an ownership data standard that can be used for sharing data in a standardised format. (5) Mechanisms for verification should include both automated information systems for all entries, including cross border automated checks where possible, and risk-based human review for all registrations. (6) Information on a full ownership chain used to exercise ownership or control should be registered if there are intermediary legal entities or arrangements.

Transitional arrangements: Although many States already have moved towards adopting centralized registries, there is a clear need to allow time for other States to put in place robust systems for the secure holding and maintenance of beneficial ownership information. Collection of information for newly registered financial vehicles can begin almost immediately, but it would be reasonable to give all countries at least two years to bring such systems fully up to date for all entities. A longer transition time of five years for poorer countries with less administrative capacity, but which do not pose significant risks to the international system, may be a reasonable compromise.

Capacity building provision: Throughout the transitional period, poor countries need to be able to obtain assistance in establishing the capacity to set up and maintain such systems. The Panel has called for the maintenance of model/off-the-shelf systems that can lessen the cost of implementing financial integrity systems. Beneficial ownership registry software is an ideal candidate for such public-goods provision. Developing countries will still need assistance with setting up the registry, training officials, and integrating it with existing national systems, for example, those for corporate registration. Donors have an important role to play in making this happen, and can work with FATF, FATF-style regional bodies, UNODC, World Bank, IMF or other capacity building entities to roll out such capacity building.

National enforcement mechanisms: Enforcement of beneficial ownership provisions ultimately depends on establishing effective sanctions in case of submitting the wrong information or for failing to update or to file any information at all. Guidance issued by FATF should emphasize strong sanctions as good practice, including criminal liability for executives and directors for knowingly false filings. For entities and legal arrangements that do not have complete, up-to-date information on the register, the guidance can advocate that countries de-register the vehicle, refuse to enforce all contracts by that legal vehicle in court, as well as making legal entities ineligible for public sector procurement and contracts at all levels of government. Banks, lawyers, and other professionals should face sanction for assisting in any transaction involving an unregistered or de-registered entity.

Encouragement for public registries: The FACTI Panel stopped short of calling for all registries to be public at this time, in part because of the different societal norms regarding transparency around the world. Nevertheless, the standards and associated guidance should strongly encourage a public registry approach. FATF Members also endorse an open data standard for public registers, which would further encourage standardization and permit automated, cross-border verification. This development can build on the work done by OpenOwnership, a non-profit that works with partners worldwide in governments, businesses, civil society organisations, academia, and the media.

LOOKING FORWARD

The Panel believes that the ongoing FATF review is a particularly important opportunity for strengthening the beneficial ownership information standard. FATF has begun a public consultation on changes to its Recommendation 24 on beneficial ownership information for legal entities, and it

will first consider proposed revisions in October 2021, before likely finalising any changes in early 2022. The Annex provides some suggested amendments to both recommendations 24 and 25 of the FATF standards.

ANNEX: POSSIBLE FATF RECOMMENDATION LANGUAGE

Below is possible language for use in revised FATF Recommendations:

24. Transparency and beneficial ownership of legal persons

Countries should take measures to prevent the misuse of legal persons for money laundering or terrorist financing. Countries should maintain central registries of complete, accurate, verified and updated information on the beneficial ownership and control of all legal persons. In particular, countries that have legal persons that are able to issue bearer shares or bearer share warrants, or which allow nominee shareholders or nominee directors, should take effective measures to ensure that they are not misused for money laundering or terrorist financing. Countries are encouraged to facilitate access to beneficial ownership and control information by non-state actors.

25. Transparency and beneficial ownership of legal arrangements

Countries should take measures to prevent the misuse of legal arrangements for money laundering or terrorist financing. In particular, countries should maintain central registries of complete, accurate, verified and updated information on the beneficial ownership and control of all legal arrangements, including information on the settlor(s), trustee(s), protector(s), and beneficiaries of trusts. Countries are encouraged to facilitate access to beneficial ownership and control information by non-state actors.

ANNEX: FURTHER READING

FATF. 2019. "Best Practices on Beneficial Ownership for Legal Persons". Paris: FATF. <https://www.fatf-gafi.org/media/fatf/documents/Best-Practices-Beneficial-Ownership-Legal-Persons.pdf>.

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Harari, Moran, Andres Knobel, Markus Meinzer, and Miroslav Palanský. 2020. "Ownership Registration of Different Types Of Legal Structures From An International Comparative Perspective. State of Play of Beneficial Ownership - Update 2020". SSRN Electronic Journal. doi:10.2139/ssrn.3620126.

Willebois, Emile van der Does de, Emily M. Halter, Robert A. Harrison, Ji Won Park, and J.C. Sharman. 2011. The Puppet Masters: How The Corrupt Use Legal Structures To Hide Stolen Assets And What To Do About It. Stolen Asset Recovery Initiative at Washington, D.C: World Bank Group.