BENEFICIAL OWNERSHIP REGISTRIES

IMPLEMENTATION NOTE ON FACTI PANEL RECOMMENDATION 3A
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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
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.

Members 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.
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


