

August 20, 2021

Mr. David Lewis
Executive Secretary
Financial Action Task Force (FATF)
2 Rue André Pascal 75116
Paris, France



RE: Revisions to Recommendation 24 - White Paper for Public Consultation

Dear Mr. Lewis:

The Institute of International Finance (“IIF”) is grateful for the opportunity to comment on the Financial Action Task Force (“FATF”) consultation on amendments to Recommendation 24 (“R.24”) on the transparency and beneficial ownership (“BO”) of legal persons (the “Consultation”)¹. We greatly appreciate the FATF’s outreach to interested stakeholders in this important area and we have long supported its wider work in mitigating and preventing the effects of financial crime globally.

The focus on beneficial ownership information reporting is critical. We have long called on governments around the world to enact beneficial ownership registries and to make them internationally coherent, transparent, and more effective. As we all know, identifying the true beneficial owner or individual exercising control in a business relationship is vital for both the public and the private sector in the fight against financial crime and entree by financial institutions to reliable, verified, and accessible beneficial ownership information remains a global priority.

Though the concept of beneficial ownership registries is embedded in R.24, progress in implementation is uneven across the globe. Where it is made available, a common theme is that the data is held and maintained by a public body that lacks the financial and human resources to effectively police the quality of the data. This issue needs to be addressed through both policy change and investment.

In this regard, the FATF has an important opportunity through amendments to R.24 to ensure global consistency and effectiveness in the reporting of beneficial ownership information and address some of the shortcomings present in the current framework for many countries. The FATF Mutual Evaluation process - with a clear focus on effectiveness - should also work to proactively address inadequacies in national implementation of the standards as well as measure the interoperability of registries to enable cross-border connectivity.

As such, we reflect herein on some important principles for beneficial ownership reporting which would be helpful for standardization at the international level through the FATF and we offer some specific input to the questions highlighted by the Consultation. We also note that implementation of new beneficial ownership registries - and updates to existing registries - is currently underway in various countries around the world and so expeditious adoption of amendments to the FATF standards will enable them to be

¹ FATF, *Revisions to Recommendation 24 - White Paper for Public Consultation*, June 2021

considered sooner rather than later as a means of addressing further global coherence in design and operation.

We look forward to engaging with you further as beneficial ownership reporting reform efforts continue at the FATF and around the world. If you have any questions, please do not hesitate to contact me or Matthew Ekberg at mekberg@iif.com.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Andrés Portilla'. The signature is fluid and cursive, with a large initial 'A' and 'P'.

Andrés Portilla
Managing Director, Regulatory Affairs
Institute of International Finance (IIF)

Revisions to FATF Recommendation 24

1. **Key Issues:** In developing amendments to R.24, we respectfully suggest that the FATF consider certain key issues and principles for incorporation into the FATF standards, guidance, and processes.

First, we believe the FATF has a significant opportunity to enhance the effectiveness of jurisdictional beneficial ownership registries by ensuring high standards are in place internationally which include a regular review of registries to ensure weak spots are mitigated, including the use of false documentation or inaccurate identities to hide beneficial ownership interests. There should be further work to examine the role of interoperability and international cooperation with and across domestic and regional registries to identify where complex international corporate structures may be shielding criminal activity. Registries must also be sufficiently staffed and resourced to validate the beneficial ownership information provided.

Second, it should be made clear by the FATF that jurisdictional authorities should not rely on financial institutions to verify the information in registries, act as gatekeepers, or to depend on discrepancy reporting as a means of validation. There should be increased emphasis embedded in R.24 on requiring the legal entities *themselves* to be more forthcoming in a verifiable way to satisfy Customer Due Diligence (“CDD”) requirements. R.24 should support and enable registries which are enforceable at a jurisdictional level in terms of those required to provide information. They should be actively policed and backed by the government as a trustworthy source of due diligence material. Countries should also reconcile centralized registries with tax information and have penalties/de-registration for non-compliance/false information reporting.²

Third, in order for the registry to be reliable, it should be clear in R.24 that the public sector should stand by the contextual reference data they provide, ensuring it is a source upon which the regulated sector can rely both practically and legally if the integrity of the verification information is appropriate for effective risk management. Financial institutions should not be expected to ensure the quality of information maintained in a beneficial ownership registry.

This approach is more likely to support consistency of information available to both financial institutions and government authorities, as well as help contain compliance costs that are factored into the commercial decisions that can impact financial inclusion. Additionally, the time and resources spent on beneficial ownership collection and verification (particularly for new accounts of existing customers, which the financial institution already knows) can be reallocated to areas of higher risk mitigation value, in line with the risk-based (“RBA”) approach.

Fourth, access to beneficial ownership information should be made available first and foremost to those who have a legitimate purpose for needing this information, such as financial intelligence units (“FIU”), regulatory bodies, law enforcement and financial institutions. Security of information and genuine data privacy/protection concerns are key considerations which the FATF should take into account when considering amendments to R.24 regarding access to registries.³

² We note that, for example, in some countries, providing false or misleading information to the state, provincial, or federal government (and in some cases to a financial institution) is considered a crime, subject to pertinent penalties. This however is not a uniform approach and standardization in recommendations on how to police registries more generally would assist in greater harmonization of enforcement across jurisdictions and would help enhance the underlying integrity of registries. Secondly, any use of numbered companies in registries should be backed by actual reporting information of the underlying beneficial owner in order to reduce risk.

³ Based on this, tiered access for legitimate interest by other stakeholders beyond competent authorities and financial institutions could be considered.

Fifth, the FATF should ensure inconsistencies in national approaches to beneficial ownership information accessibility and reporting are mitigated. Operational burdens with little to no risk management value arise when countries implement different requirements that seek to yield the same results. Country coordination on common standards would improve effectiveness in risk mitigation by financial institutions and would also further protect the global financial system. Addressing inconsistencies through the Mutual Evaluation process should be prioritized and should first be dealt with by clear expectations under R.24 and its interpretive note (“INR.24”). However, effectiveness would be enhanced if the FATF were to establishment further risk-based global assessments in specific areas - such as the examination by the FATF of all countries at the same time on this issue and other areas of significant importance.⁴ This dynamic approach would remove the lag time between Mutual Evaluations, which can stymie reforms.

2. **Additional Feedback on Questions 1-16:** In addition to the key issues outlined above, we offer the following specific input on the Consultation questions in relation to possible amendments to R.24.

Question 1: Should countries be required to apply measures to assess the money laundering (“ML”) and terrorist financing (“TF”) risks to all types of legal persons created in the country and to at least some foreign-created legal persons and take appropriate steps to manage and mitigate the risks?

We believe FATF should carefully examine the desired outcomes from this amendment, and we see challenges regarding whether one country can exert an extra-territorial requirement on another country in respect of the nature or content of their beneficial ownership information. We can see political and practical difficulties in application of such a revision to R.24, particularly for foreign-created legal persons if they are not listed in regulated markets or if they are not subject to sufficient public disclosure requirements.

The risk assessments of countries should consider the misuse of legal persons in general, rather than distinguish between the domestic and the foreign. Covered entities are already obliged to obtain beneficial ownership information from their clients. The FATF should factor into its country assessments the ease by which beneficial ownership information can be obtained / confirmed (*e.g.*, whether the country maintains a registry and whether that information can be leveraged), such that financial institutions can factor this into their client risk assessments. Such assessments by the FATF should be clear and transparent, with lists of countries with compliant and effective regimes published regularly (please see the comment under section one of this letter regarding regular risk-based global assessments in specific policy areas).

Question 2: What constitutes a sufficient link with the country? How should countries determine which foreign-created legal persons have a sufficient link with the country? Is there an alternative standard to “sufficient link” that could be used? What are the practical issues met/envisaged regarding the identification and risk assessment of foreign created legal persons?

We believe the intended outcome of the revision proposed in Question 2 is not entirely clear. Specifically, “sufficient link” could imply a number of scenarios with different interpretations across jurisdictions and institutions. An alternative standard to “sufficient link” could be registries that can be shared among countries; however, this would require addressing hurdles to cross-border information exchange,

⁴ As the FATF is currently undertaking a strategic review, such issues as this could be considered as means of better ensuring effective implementation of the FATF standards.

including bank secrecy and data privacy considerations.⁵ The FATF could more simply recommend that countries identify attributes of foreign legal persons that would make them of increased ML/TF risk.

Question 3: What do you see as the key benefits and disadvantages of a BO registry, and (b) what are the alternative approaches to registries, such as BO information held by companies, FIs, and DNFBPs, and their key benefits and disadvantages?

As emphasized as the outset, identifying the true beneficial owner or individual exercising control in a business relationship is vital for both the public and the private sector in the fight against financial crime and entree by financial institutions to reliable, verified, and accessible beneficial ownership information through registries is critical. However, we believe that beneficial ownership registries are only as good as the content within them and the ability to access that content. Content should be verified and kept up to date, countries should be encouraged to caveat the content of any registry according to its limitations, along with ensuring transparency over the accuracy of the data.

We note again that jurisdictional authorities should not rely on financial institutions to verify the information in registries, act as gatekeepers, or to depend on discrepancy reporting as a means of validation. There should be increased emphasis embedded in R.24 on requiring the legal entities reporting their beneficial ownership information to be more forthcoming in a verifiable way. Otherwise, the benefits of a registry will be limited and its role in the wider disruption of illicit activity will be diminished. A registry which does not fulfil these characteristics may risk becoming a weak link in the identification of true beneficial ownership information.

Question 4: What are the key attributes and role regulators play in ensuring that a BO registry has adequate, accurate and up-to-date BO information available for competent authorities? Does this make a difference if BO information is held by a BO registry and alternative approaches to registries (e.g. BO information held by companies, FIs, and DNFBPs)?

As noted previously, countries should ensure that information held in any beneficial ownership registry is accurate and up to date or that its limitations are transparent in forming part of the country's assessment of the ML/TF risk of the relevant legal entities. Upfront validation and ongoing verification processes embedded in legislative or regulatory frameworks should be applied along with a standardized means of filing the data in the registry with unique identifiers⁶ that can be leveraged to confirm the information. Governments should also apply sanctions against reporting false or misleading data to a registry.

If alternatives to registries are considered, the adequacy and verifiability of beneficial ownership data should remain a government responsibility. Otherwise, reliance on the data by financial institutions, law enforcement and other stakeholders can be called into question. Lastly, authorities should ensure registries are sufficiently staffed and resourced (including with relative analytics capability) to validate the beneficial ownership information provided.

Question 5: How should the accuracy of BO information disclosed to the BO Registry be confirmed?

⁵ Please see: IIF, *Economic and Financial Crime Risk and the Sharing of Intelligence: Updating and Enabling International and Domestic Cooperation in Combatting Illicit Financial Flows*, October 2020 for further background on issues concerning information sharing: <https://www.iif.com/Publications/ID/4125/IIF-Staff-Paper-on-Financial-Crime-Intelligence-Sharing>

⁶ Please see Question Five for further commentary on the Legal Entity Identifier ("LEI") in this regard.

As noted, there should be increased emphasis embedded in R.24 on requiring the legal entities *themselves* to be more forthcoming in a verifiable way through appropriate legal documents to satisfy CDD standards. An independent and reliable registry should be enforceable in terms of those required to provide information, actively policed, and backed by the government as a reliable source of due diligence information.

As noted, up front validation and ongoing verification processes should be applied through standardized means of filing the data in the registry with unique identifiers that can be leveraged to authenticate the information. For example, the use of the Legal Entity Identifier (“LEI”) should be considered in the context of beneficial ownership information reporting to enhance methods and tools for transparency.

The LEI provides for the unambiguous identification of legal entities and could be effectively leveraged by law enforcement and regulators in identifying the actual entity that owns a structure or in monitoring. Incorporating the LEI into a registry as a required field and encouraging its use would aid in securing further reliable information on overall control and enhancing customer due diligence generally.

Question 6: What role should the private sector play, if any, in ensuring that the BO information is adequate, accurate and up to date? What lessons should be learned from private sector use of existing registries?

We reemphasize that FATF jurisdictional authorities should not rely on financial institutions to verify the information in registries or act as gatekeepers. The process whereby financial institutions may be asked to verify beneficial ownership information in a registry can lead to duplication concerns⁷, timing and accuracy issues⁸, and legality and enforceability issues.⁹

However, there is still a role for the private sector to play in partnership with the public sector. The private sector may still compare the registry information with other information that they may hold concerning legal entities on the registry and suspicious discrepancies could be reported via Suspicious Activity Reports (“SAR”) which are then shared with registries for investigation - though authorities should not depend on such discrepancy reporting as a means of validation.

As a practical point on lessons learned from registries, in certain cases we understand that two different registries may be required in some jurisdictions with a lack of alignment and a lack of data validation for either registry. Streamlining international standards should also assist in clarifying such duplication and validation issues in reporting.

Question 7: What effective mechanisms (aside from a BO registry) would achieve the objective of having adequate, accurate and up-to-date BO information for competent authorities? What conditions need to be in place for authorities to rely on financial institutions and DNFBPs to hold BO information? How could BO information held by obliged entities as part of their CDD be utilized in this regard?

⁷ For example, a legal entity will often have multiple relationships with different financial institutions, and it is impractical and inefficient for each of those financial institutions to verify the content of the beneficial ownership register separately and independently.

⁸ For example, accuracy and timing can be impacted when the information is updated across financial institutions without the benefit of centralized validation.

⁹ We note that financial institutions have no power over the creation and registration of legal entities and have no legal basis for compiling beneficial ownership registers for those legal entities.

Laws and regulations which require jurisdictions to have adequate, accurate and up-to-date beneficial ownership information available to competent authorities and financial institutions should be considered a fundamental building block to an effective financial crime risk management regime.

The use of a 'shared service' third party beneficial ownership service (with all relevant data points/attributes included), where legal entities can voluntarily provide their beneficial ownership data for verification once to be relied on by multiple users, could be explored as an additional means of ensuring conditions are correct for the holding of beneficial ownership information.

Question 8: How can the compliance burden on low-risk companies be reduced, without creating loopholes that could be exploited by criminals?

Companies that are already subject to legal disclosure requirements – such as publicly-traded companies - could be exempted from the registry, in line with the risk-based approach. However, there should be a clear, transparent, and uniform approach to companies which are not required to log beneficial ownership in a register. A low cost means of beneficial information verification should also be promoted by governments through support for the use of digital IDs.¹⁰

Question 9: Who should play a role in the verification of BO information? How effective is the framework on discrepancy reporting? What are the possible verification approaches that can balance the need for accuracy and compliance cost?

Verification of beneficial ownership information is a multi-party approach, with the focus on reporting entities themselves providing accurate information actively policed and backed by the government as a reliable source of due diligence information. Again, implementing unique identifiers¹¹ that need to be provided for each beneficial owner and filed with the registry would also help the operator to validate the identity of beneficial owners leveraging government databases and would assist in balancing accuracy with compliance cost.

Question 10: Should BO registries (where they exist) follow a risk-based approach to verifying of BO information?

We do not believe verification of information in registries can be risk-based, as the information must be correct and verified by the authorities of the register in order for it to be relied upon. The usefulness of the registry is severely diminished if users do not know whether the information in it has been verified. A risk-based approach would also neglect the fact that legal persons that are assessed low risk could be used for ML/TF and the RBA could be inconsistently applied across countries, leading to potential exploitation of the register – which is something the FATF should carefully monitor.

Question 11: How frequently should disclosed BO information be updated or re-confirmed (e.g., annually, within a set period after a change is made)?

Ensuring updated and reliable beneficial ownership information in registries is essential to the efficacy of their use in the wider fight against financial crime. Timely and accurate review of such information is therefore critical. A requirement, for instance, should exist for companies to update the registry within

¹⁰ For further information on digital identity, please see: IIF, *Digital Identities in Financial Services Part 1: Embedding in AML Frameworks*, August 2019: https://www.iif.com/Portals/0/Files/content/Innovation/08272019_iif_digital_id_part_1.pdf

¹¹ Please see Question Five for further commentary on the LEI in this regard.

30 days of a change and all information should be re-confirmed annually. However, over time, technology should enable more timely and efficient updates using such innovations as digital identity.

Question 12: Should access to a BO registry or another mechanism be extended beyond national (AML/CFT) competent authorities (e.g., to AML/CFT obliged entities such as financial institutions and/or DNFBPs)?

Transparency in registries can improve their accuracy, however, access to beneficial ownership information should first and foremost be available to those who have a legitimate purpose for needing this information, such as FIUs, regulatory bodies, law enforcement and financial institutions. Data should be published in accordance with local privacy and data protection legislation, and governments should mitigate any risks that may arise from publication through controlling varying levels of access to beneficial ownership information in the registry among stakeholders – such as tiered access based on legitimate interest to other stakeholders beyond competent authorities and financial institutions.

Question 13: What measures should be taken to address concerns relating to privacy, security, and potential misuse of BO information, arising from access to BO information?

Security of information and data privacy/protection concerns are key considerations which the FATF should take into account when considering amendments to R.24 regarding access to registries. Ensuring access first and foremost to those who have a legitimate purpose for needing this information, such as FIUs, regulatory bodies, law enforcement and financial institutions, will assist in alleviating concerns around privacy, security, and potential misuse of beneficial ownership information, as these stakeholders are well versed in ensuring the highest standards are upheld. Limited or tiered access for other stakeholders with a legitimate interest – along with standards which can mitigate cyber attacks or similar negative incursions - should be considered. A dialogue between authorities overseeing beneficial ownership registries and data protection authorities will also help to ensure the supervisory and regulatory objectives of both can be upheld in a way which is not mutually exclusive.

Questions 14 and 15: Should issuance of new physical bearer shares without any traceability be prohibited? Should existing physical bearer shares be immobilized or converted?

We agree that bearer shares should be prohibited if no sufficient information were available for the shareholder(s). This should include entities that have disclosed owners but can issue bearer shares. Material ownership or control through bearer shares should have those shares immobilized or converted, although exceptions may be warranted, as increased transparency is critical in the fight against financial crime, in particular tax evasion and sanctions circumvention.

However, with the information now available from the FATF Mutual Evaluation Reports, the FATF could provide a valuable service by maintaining a table with the national rules surrounding bearer shares. Allowing the private sector to use such resources in their risk-based measures often leads to more efficient results than outright prohibitions.

Question 16: With regard to nominee arrangements, what are the benefits and disadvantages of requesting nominee directors and stakeholders to declare their status? Are there alternative equivalent measures that would offer the same level of transparency?

We see limited disadvantages in requesting nominee directors and stakeholders to declare their status and would encourage additional transparency overall, however, it is unclear how having nominee shareholders declare their status serves a direct purpose (as nominee arrangements should not include

any activities related to direct control of the company operations) if disclosure of the ultimate beneficial ownership information is a requirement.