

Comments on the FATF public consultation on the draft Amendments to Recommendation 24

Risk-based approach for foreign legal persons

Q1. Should countries be required to apply measures to assess the ML and TF risks to all types of legal persons created in the country and also to at least some foreign-created legal persons and take appropriate steps to manage and mitigate the risks?

In some jurisdictions, such as the European Union, persons subject to AML/CFT rules are already obligated to identify the beneficial owner (both within or outside the national territory), and to take reasonable steps to verify the identity of the beneficial owner. If an insurer cannot identify a beneficial owner or does not understand the structure of the legal person, it will not do business with them.

Some jurisdictions, such as the European Union¹, have chosen to set up central registers of beneficial owners. The establishment of these registers at national level is already complex, so it could be difficult for a state to keep a register of foreign legal persons. A more effective solution would be to link existing national registers. A European project will eventually lead to a compilation of all national beneficial ownership registers (BORIS Regulation published in the EU OFFICIAL JOURNAL on 2 March 2021).

Q2. 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?

The diversity of situations does not seem to make it possible to define this concept effectively.

Multipronged approach to collection of Beneficial Ownership information

Q3. (a) 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?

Official registries are the best solution. They allow for a structured, comprehensive approach (ie the centralisation of all legal persons' data) and quality information (ie beneficial ownership information is adequate, accurate and up-to-date).

¹ The central register may be a commercial register, a company register or a public register (Article 30 of the 4Th directive LCB-FT)

However, to ensure that the official register is effective, it must meet certain conditions:

- There must be measures to ensure completeness, such as an obligation for legal persons to declare their beneficial owners to the register, combined with measures to monitor compliance with these obligations (and effective sanctions in the event of non-declaration).
- The authorities in charge of the register should ensure the quality of the data contained in it (including verification that the beneficial ownership information is adequate, accurate and up to date).
- The registry should be accessible to persons subject to AML/CFT rules and free of charge as part of the implementation of AML/CFT vigilance.
- The consultation of the register by persons subject to AML/CFT rules must be automated (and suitable for mass consultations).
- Consultation of the register by entities subject to the register must be carried out by means of homogenized/standardised technical solutions (ie it must have a single IT solution).
- The register must be consulted by means of a standardised identification key for legal persons (international identification number).

If approaches other than that of official registers are possible, these approaches should in any case be alternative and follow the principle of the risk-based approach.

Q4. 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)?

The authorities in charge of the register must be responsible for the proper maintenance of the register and must verify that the information is:

- Complete (ie that all legal persons have declared their beneficial owners)
- Accurate (ie the information declared must be verified)
- Up to date

An approach other than that of an official register would be less relevant because it would not allow the same quality and reliability of information. The provision of beneficial ownership information by regulated persons would be dependent on the information-handling procedures of each regulated person.

Q5. How should the accuracy of BO information disclosed to the BO Registry be confirmed?



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It is the responsibility of legal persons to obtain and maintain accurate and up-to-date information on their beneficial owners. Beneficial owners must transmit the necessary information to the legal person.

It is the responsibility of the authorities in charge of the register to verify the information provided by the registrants.

Q6. 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?

As part of the implementation of AML-CFT vigilance, regulated persons should take reasonable steps (including checking the registry) to identify beneficial owners.

The role of the private sector can only be complementary to that of the authority in charge of keeping the register, which is responsible for the completeness of the data (all legal persons must declare their beneficial owners), the quality of the data and their regular updating. The authority must therefore be given the necessary powers to carry out its mission.

States must ensure that companies that do not comply with their obligation to declare their beneficial owners are identified and that the sanctions intended in this case are effectively implemented.

Q7. 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 utilised in this regard?

Official registries are the best solution. They allow for a comprehensive approach (ie the centralisation of all legal persons' data) and quality information (ie that beneficial ownership information is adequate, accurate and up-to-date).

The option of central registers has therefore been selected by the European Union for example.

For persons subject to AML/CFT rules, the identification of beneficial owners is justified and necessary for the implementation of customer due diligence measures. They are not intended to collect this information for any other purpose.

The use of centralised registries avoids the need for a variety of solutions based on private entities with different levels of requirements. A solution based on a diversity of private actors can lead to a situation of unfair competition: some legal persons may seek to avoid the most demanding financial institutions in terms of identifying beneficial owners.

Adequate, accurate, and up-to-date information

Q9. 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?

The authorities in charge of the central registers of beneficial owners should also be responsible for verifying the information contained in those registers.

When the regulated entity should report discrepancies, the mechanism for reporting discrepancies should not differ from the mechanism for consulting the register (parallelism of procedures). An effective mechanism for reporting discrepancies should make it possible to make reports according to procedures adapted to the size of the regulated entity, which implies the need for some of them to be able to report according to automated procedures.

Q10. Should BO registries (where they exist) follow a risk-based approach to verifying of BO information?

The effectiveness of a centralised register of beneficial owners depends on its completeness and reliability. Therefore, it is important to ensure that the register is comprehensive and that the information it contains is reliable. Verification of the data contained in beneficial ownership registers using a risk-based approach would only result in degrading the quality of the data contained in those registers.

On the other hand, in the context of the implementation of the AML-FT due diligence measures, regulated persons must be able to adapt the verification of beneficial ownership identifying information that they have collected according to measures adapted to the risk of ML-FT.

Q11. How frequently should disclosed BO information be updated or re-confirmed (e.g. annually, within a set period after a change is made)?

Legal persons should declare their beneficial owners to the BO registries whenever a change occurs.

Regulated persons should update the beneficial ownership information of their clients' legal persons according to the risk-based approach.

The authority in charge of the central register should update the register with each change declared by legal persons: ie as soon as the information is declared to the authority, it is accessible in the register (via an online posting without delay).

Access to information

Q12. 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)?

Yes, access to a beneficial owners' registry is a must for obliged entities. In some jurisdictions, information stored in the central registers of beneficiaries is already accessible to obliged entities, as part of customer due diligence.

Q13. What measures should be taken to address concerns relating to privacy, security and potential misuse of BO information, arising from access to BO information?

Certain information in the register should be strictly reserved for authorised persons, such as relevant authorities and reporting entities in the context of the implementation of AML/CFT vigilance.

It is also important that the registry meets the current standard in terms of computer security to allow authorized persons to connect by limiting security risks (eg realization of "pentest"). This point is very important because the lack of a secure environment could call into question the use of the registry by certain actors (in order to comply with internal regulations and procedures in terms of IT security).

Bearer Shares and Nominee arrangements

Q14. Should issuance of new physical bearer shares without any traceability be prohibited?

Yes, this rule has already been introduced in some states.

Contacts

Fabrice Perrier, chair of the GFIA AML/CFT working group (f.perrier@ffa-assurance.fr)

Pierre Lebard, GFIA secretariat (secretariat@gfiainsurance.org)

About GFIA

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